SENATE—*Thursday, March 11, 1971*

The Senate met at 10:30 a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

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

Almighty God, from whom cometh every good and perfect gift, we give Thee thanks for life and thought, for work and duty, for high craftsmanship and noble art, for the sacrament of love, for the offices of religion age-old and worldwide, and for this Nation rich in opportunity and promise. Guide by Thy higher wisdom all in the service of this Government. Enable us to pass every day in the spirit of gratitude, and with devoted hearts live so as to use each hour and every faculty in the repayment of Thy goodness, through Him in whom our thanksgiving is most deeply given, even Jesus Christ our Lord. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 11, 1971.

To the Senate:

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

ALLEN J. ELLENDER,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, March 10, 1971, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

BLACKFEET AND GROS VENTRE TRIBES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 34, S. 671.

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

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

A bill (S. 671) to provide for division and for the disposition of the funds appropriated to pay a judgment in favor of the Blackfeet Tribe of the Blackfeet Indian Reservation, Mont., and Gros Ventre Tribe of the Fort Belknap Reservation, Mont., in Indian Claims Commission docket numbered 279–A, and for other purposes.

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

Mr. SCOTT. Mr. President, reserving the right to object—and I shall not object—may I inquire in which State those tribes are located?

Mr. MANSFIELD. The Big Sky State.

Mr. SCOTT. I thank the majority leader.

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

There being no objection, the bill was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 671

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the funds appropriated by the Act of October 21, 1968 (82 Stat. 1190, 1198), to pay a judgment to the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, and the Gros Ventre Tribe of the Fort Belknap Reservation, Montana, in Indian Claims Commission docket numbered 279–A, together with interest thereon, after payment of attorney fees, litigation expenses, and the cost of carrying out the provisions of this Act, shall be divided by the Secretary of the Interior on the basis of 73.2 per centum to the Blackfeet Tribe and 26.8 per centum to the Gros Ventre Tribe.

SEC. 2. From the funds so credited to the Blackfeet Tribe, a per capita payment of $150 shall be made to each person whose name appears on or is entitled to appear on the membership roll of the Blackfeet Tribe living as of the date of this Act. A share or interest payable to enrollees less than eighteen years of age or under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines appropriate to protect the best interest of such persons.

SEC. 3. The provisions of the Act of June 10, 1896 (29 Stat. 336), to the contrary notwithstanding, the Secretary of the Interior may make available to the Blackfeet Tribal Council for disbursement by a duly appointed agent of the Blackfeet Tribe such sum from the funds credited hereunder to the Blackfeet Tribe as may be necessary to make the per capita payment provided for in section 2 herein.

SEC. 4. The remainder of the fund shall remain in the Treasury of the United States or be placed in commercial banks or other depositories which will, in the discretion of the Secretary, be most advantageous to the tribe, and to remain there until the Blackfeet Tribe and the Gros Ventre Tribe have adopted plans satisfactory to the Secretary and approved by the Congress.

SEC. 5. Any part of the funds that may be distributed per capita shall not be subject to Federal or State income tax, and shall not be considered in determining eligibility for public assistance.

SEC. 6. The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–27), 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. 671 is to authorize division and disposition of judgment funds awarded to the Blackfeet Tribe of the Blackfeet Reservation, Mont., and the Gros Ventre Tribe of the Fort Belknap Reservation, Mont.

BACKGROUND

The Blackfeet and Gros Ventre Tribes of Indians were determined by the Indian Claims Commission on March 31, 1967, in docket 279–A, to be entitled to recover on land ceded in 1888. The United States Government, defendant, was determined liable to the petitioners in the sum of $11,125,606.40, less justified credits and offsets to which the defendant was found to be entitled under the Indian Claims Commission Act.

The Government's liability to the two tribes was subsequently adjusted to $8,679,814.92. The funds were appropriated by the act of October 21, 1968.

The two tribes became involved in a rather prolonged controversy regarding division of the funds. This was ultimately resolved on the basis of 73.2 per centum to the Blackfeet Tribe and 26.8 per centum to the Gros Ventre Tribe.

The bill authorizes the Secretary to make a $150 per capita payment, out of funds set aside for the Blackfeet Tribe, to each person whose name appears on or is entitled to appear on the Blackfeet membership roll living as of the date of this act. Such payments are to be exempt in determining eligibility for public assistance.

Section 4 of S. 671 provides that the balance of the fund shall remain in an appropriate depository until the Blackfeet and Gros Ventre have developed plans satisfactory to the Secretary and approved by Congress.

During the last session of Congress, the Senators from Montana introduced S. 4209 to accomplish essentially the same purposes as S. 671. However, the bill was revised to conform to the desires of the Blackfeet Tribal Council and was introduced as S. 4491 later in the session. No action was taken on either bill.

COST

No additional expenditure of Federal funds will result from the enactment of S. 671.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session for the consideration of nominations on the calendar.

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

U.S. PATENT OFFICE

The ACTING PRESIDENT pro tempore. The clerk will please state the first nomination on the Executive Calendar.

The assistant legislative clerk read the nomination of Rene Desloge Tegtmeyer, of Virginia, to be an Assistant Commissioner of Patents.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The ACTING PRESIDENT pro tempore. Without objection, the nomination will be considered; and, without objection, it is confirmed.

DEPARTMENT OF JUSTICE

Mr. THURMOND. Mr. President, I ask that the nomination of John K. Grisso, of South Carolina, to be U.S. attorney for the district of South Carolina to succeed Joseph O. Rogers, Jr., resigning, be called up.

The ACTING PRESIDENT pro tempore. The nomination will be stated.

The assistant legislative clerk read the nomination of John K. Grisso, of South Carolina, to be U.S. attorney for the district of South Carolina.

The ACTING PRESIDENT pro tempore. Without objection, the nomination will be considered.

Mr. THURMOND. Mr. President, it is a pleasure for me today to move that the Senate confirm the nomination of the Honorable John K. Grisso, to be U.S. attorney for the district of South Carolina.

John Grisso comes to this position exceptionally well qualified. A graduate of Duke University and the University of South Carolina School of Law, he has practiced law successfully for 17 years, including a term as solicitor of South Carolina's 11th Judicial Circuit from 1961 to 1965. He is a member of the bar associations of Anderson County, S.C., and also the American Bar Association, and has served as circuit vice president of the South Carolina Bar Association. In addition, he has served with distinction in numerous civic organizations, as chairman of the United Fund, the Anderson County Tuberculosis Association, and board member of the YMCA; he is a member of the Junior Chamber of Commerce, Rotary, Elks, Masons, and the Shriners.

John Grisso is married to the former Ann Ballentine and they are the parents of four fine children. He has served as chairman of the board of the deacons of the First Presbyterian Church in Anderson, S.C., and also as an elder. His record of service to the community has exhibited a concern for the welfare of his fellow citizens. His public life has also included an active role in the political affairs of South Carolina. John Grisso was a candidate for Congress in both 1966 and 1968.

It is a pleasure to support the nomination of such a well qualified individual for an important post, such as U.S. attorney. I am confident that John Grisso will serve the people of South Carolina and the judicial branch of our Government with distinction in this post.

The ACTING PRESIDENT pro tempore. The question is, Will the Senate advise and consider to the nomination?

The nomination was confirmed.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The assistant legislative clerk read the nomination of James C. Fletcher, of Utah, to be Administrator of the National Aeronautics and Space Administration.

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

Mr. MANSFIELD. Mr. President, I request that the President be immediately notified of the confirmation of the nominations.

The ACTING PRESIDENT pro tempore. Without objection, the President will be so notified.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

There being no objection, the Senate resumed the consideration of legislative business.

The ACTING PRESIDENT pro tempore. Does the Senator from Pennsylvania desire recognition?

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the next 20 minutes are to be controlled by the distinguished Senator from Virginia (Mr. BYRD) and the distinguished Senator from Kansas (Mr. DOLE).

The Chair recognizes the Senator from Virginia (Mr. BYRD).

PRESIDENT NIXON'S FOREIGN POLICY

Mr. BYRD of Virginia. Mr. President, President Nixon's rare on-the-record interview, which he gave C. L. Sulzberger of the New York Times, is thought provoking.

The President summed up his foreign policy and, in so doing, gave in concise fashion his hopes and fears, and his deep beliefs, concerning war and peace.

Excerpts from the interview were published in the New York Times of Wednesday, March 10, 1971.

The President, it seems to the Senator from Virginia, is seeking to steer an appropriate and logical course in matters affecting our relations with other nations.

As a student of history, he knows—and asserts—that in seeking to achieve a peaceful world the foundation of foreign policy of the world's greatest nation must be soundly rooted.

President Nixon feels that in regard to our foreign affairs—and particularly Vietnam—he is caught in a vicious crossfire, and it becomes increasingly difficult to make people understand.

The crossfires to which the President refers are those on the one hand who he feels would have the United States adopt a policy of isolationism and renounce our worldwide responsibilities. He calls these superdoves—and at the other extreme he sees what he calls the superhawks.

The President is trying to steer a middle course, and in his interview with Mr. Sulzberger he suggests that he is finding it quite difficult.

It seems to me the President is on the right track, namely, that the United States cannot and should not pursue indefinitely a role of world policeman, nor can it, or should it, shirk all responsibility for problems and events beyond our shores.

While we must be realistic as to what this Nation can logically undertake in the way of foreign commitments, we cannot, as a great world power, escape our responsibilities in this imperfect world of violence.

The new trend toward isolationism stems to a considerable extent from our involvement in Vietnam. The public is disillusioned, and justifiably so.

But the sharp attack on President Nixon in regard to Vietnam does not seem to me to be justified.

From the beginning, I have stated publicly time and time again that I feel it was a grave error of judgment for our country to become involved in a ground war in Asia.

But Richard M. Nixon had no responsibility in this regard.

When he assumed office, there were 535,000 American military personnel in Vietnam.

By the end of next month, more than 265,000 Americans will have been withdrawn from Vietnam during the short time Richard Nixon has been President. This reduces to about one-half the number of military personnel who were in Vietnam when he took office a little over 2 years ago.

So, as I said, President Nixon is making progress in disengaging U.S. forces in Vietnam. He wants to do it in a way best calculated to bring about a peaceful world in the future.

I would like to see this war ended—or at least U.S. participation in it—at the earliest possible date, preferably tomorrow.

If President Nixon were not making progress in disengaging American troops, I would not be on the floor of the Senate today speaking in his behalf.

But the President is making progress.

The Commander in Chief has a responsibility to disengage American troops in Vietnam at the earliest possible time. He also has a responsibility for U.S. role in other areas of the world.

In his interview with Mr. Sulzberger, President Nixon emphasized the need for a strong national defense. Too many today, I fear, would too drastically reduce our defenses.

The Soviet Union has now passed the United States in intercontinental ballistic missiles. In several more years they will pass us in submarines carrying nuclear missiles.

I agree with President Nixon and support his assertion that we must not foolishly fall behind in our defense posture.

The United States remains ahead in surface Navy and in the air, but the Soviets are ahead in ICBM's and soon will pass us in nuclear submarine strength.

In determining America's role in foreign policy, we must look at the world as it is today, not as we might wish it to be.

There are two great sources which present a potential threat—Russia and China. Certainly the people of neither of those nations want war.

But both nations are dictatorships where the people themselves have little or no control over their government.

The political leaders of both nations are motivated by a philosophy which they themselves admit is expansionist in character.

Only the United States has sufficient strength to help maintain a balance in Europe and other areas that might otherwise be affected.

The President has asserted, and I agree, that we must continue our Soviet negotiations and open the door of cooperation to China.

But this in itself does not permit us to let down our guard and slacken our defenses. We have not yet reached that point.

Perhaps something helpful may come from the Strategic Arms Limitation Talks now in progress in Vienna between the United States and the Soviet Union. But real progress in this respect is down the road quite a way, I fear.

In this uncertain period of our history, the best interest of our Nation can be served, I feel, by supporting the Commander in Chief in his efforts to reduce American commitments overseas without going to the extreme of complete isolationism.

Mr. President, I ask unanimous consent to have printed in the RECORD following the end of the colloquy excerpts from the interview of President Nixon with Mr. Sulzberger, as published in the New York Times of Wednesday, March 10, 1971.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

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

Mr. BYRD of Virginia. I am happy to yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I commend the able Senator from Virginia for the very sound statement he has just made.

When President Nixon became President, he had four choices with regard to the Vietnam war. One was that he could continue the no-win policy—in other words, just defend it, not fighting to win and not bombing to any extent. Under that policy, the United States lost about 45,000 of the flower of this land, and several hundred thousand were injured. Certainly, the American people did not favor continuing such a policy.

A second possible course the President had was just to withdraw entirely, as even some Members of Congress and some Senators have suggested. I do not believe the American people want that done. I do not believe the parents of those 45,000 men would want to feel that their sons had died in vain. I do not believe that the several hundred thousand who were injured, some blinded and maimed for life, would want to feel that their sacrifices were in vain, and that the United States just withdrew and turned that part of the world over to the Communists, such action would enable these Communist dictators to make great progress in taking over the world for communism.

The third course was to go for a military victory; and frankly, Mr. President, I was hoping that President Nixon would pursue that course. But under the circumstances, I realize the handicaps that he faced in attempting to do that, after this country had been in war in Vietnam since 1963, for more than 6 years. I can realize the difficulties there would have been in suddenly reversing the policy, and the effect that it might have had on world politics, though I would have preferred that course.

That brings us to the fourth course of action, which President Nixon has followed, and that is Vietnamization.

Vietnamization simply means providing the guns, the equipment, and the wherewithal to fight the war, to our allies, the Vietnamese. Also it involves training their troops to use this modern equipment. That was our President's chosen course.

I agree that we never should have sent those thousands of troops to Vietnam, to bog down in a land war, as suggested by the distinguished Senator from Virginia. Air power should have been used. Sea power should have been used. As I have stated, heretofore, in my opinion this war could have been resolved within a period of 2 months, with a mopup operation of 6 months, and we could have won the war long, long ago.

Under the circumstances, however, is there any question but that our President is doing the very best he can? I feel that the American people should back him, and we should stop this backbiting, we should stop this attacking of the Commander in Chief. Yes, we have a right to express ourselves, but if the critics can come up with something better than withdrawing, let them come forth with it.

Mr. President, the distinguished Senator from Virginia is to be commended for the statement he has made.

Mr. BYRD of Virginia. I thank my colleague from South Carolina. I yield now to the Senator from Kansas.

Mr. DOLE. Mr. President, I associate myself with the remarks of the Senator from Virginia and the Senator from South Carolina.

VIETNAMIZATION AND U.S. POLICY THROUGHOUT THE WORLD

Mr. President, during the past several weeks we have seen much handwringing, and we have heard many gloomy pontifications over the campaign of the South Vietnamese Armed Forces to interdict enemy traffic on the Ho Chi Minh Trail in Laos. We have been subjected to a strident, if not altogether unpredictable, outcry against what is condemned as an expansion of the war, despoilation of sacred neutral territory, and flirtation with World War III.

The scenario is painted in tones ranging from somber to black with a warmonger President subverting the processes of democracy by denigrating the Secretary of State and entrusting his power to an unavailable Rasputin-like adviser in the White House.

Admittedly, a script of intrigue, doom, and alarm makes good press.

But the generation and propagation of such shallow and senseless publicity is contrary to the national interest and a disservice to those who seek rational and reasoned discussion of our proper role in world affairs.

THE REAL STORY

Mr. President, unfortunately, the success story of President Nixon's Vietnamization programs has not been given the attention it justly deserves. Rather than examining the indexes of success, we have heard only about the difficulties experienced by the South Vietnamese in Laos or Cambodia. But, Mr. President, the American people deserve to know more. The representatives of the media and highly publicized congressional pundits who interpret the events of Southeast Asia to suit their own views of the word have claimed that the 3d Corps area around Saigon is vulnerable to attack, because the South Vietnamese troops formerly stationed there are in Cambodia or Laos. But what they neglected to mention was that South Vietnam could mount attacks against supply lines in Laos or Cambodia with troops from other regions because the 3d and 4th Corps areas have been secured and the South Vietnamese there are going about their lives in peace.

What has not been pointed out is that South Vietnamese units are meeting crack North Vietnamese troops on their own terms and they are proving themselves with valor and distinction.

While the United States has certainly provided air support in Laos, it has not been mentioned that 75 percent of the air power used in Cambodia is supplied by the South Vietnamese. And as has proven to be the case in Cambodia, we can expect the South Vietnamese to take over an increasing share of the airpower in Laos.

AIR POWER

Another aspect of the Laotian operations that has apparently escaped the attention of the critics is that our use of air power in Laos is not a new piece of strategy. We have been bombing the Ho Chi Minh Trail for months. What has changed is that our use of air power is now much more effective, because the South Vietnamese are attacking the antiaircraft emplacements which have been protecting the trails from our air strikes.

Those who measure South Vietnamese success by the number of routes that have been interdicted misunderstand the importance of the South Vietnamese effort. With every trail they interdict, with every route they sever, they enable our air power to search out and strike other trails.

What we must remember in evaluating the Laos and Cambodia incursions is not so much how many trucks are destroyed or arms captured, although these factors are important. Of major importance is

whether we can disrupt and threaten the North Vietnamese supply network to such an extent that they will either stop sending supplies or divert those supplies to other trails where we can concentrate our air strike capabilities to destroy them.

VIETNAMIZATION: ONLY 2 YEARS OLD

To those who say, "Why do we continue a policy that has failed for the past 10 years?" I would point out that President Nixon's Vietnamization policy is not 10 years old. It is barely 2 years old. This country is not following a strategy of the 1960's: using American manpower to fight our allies' wars for them. Rather, we are following a strategy for the 1970's, dedicated to enabling our allies throughout the world to stand on their own strengths and defend their own freedoms.

MAJOR OBJECTIVE IS PEACE

The major objective of our policy is to create a structure for lasting world peace. We seek a peace, not based on dictated or imposed conditions, for we realize that an imposed peace is not a lasting peace. We recognize that a lasting peace must be one which is supported by public opinion in the United States and other countries.

And it must be one which all nations have a real and valid interest in maintaining.

Time and again, President Nixon has emphasized his belief in pursuing a measured, thoroughly studied and above all an honest foreign policy. In his interview with C. L. Sulzberger appearing in Wednesday's New York Times—as indicated by the distinguished Senator from Virginia—the President forcefully and intelligently outlined the philosophy and substance of his foreign policy.

The new directions and new foundations of American foreign policy under President Nixon have strangely been ignored and overlooked by many who profess expertise in foreign policy matters. I submit that their incorrect and insensitive castigation of this administration is only further evidence of their own intellectual or political inflexibility, continued demonstration of their commitment to narrow and unyielding doctrine, and a regrettable commentary on the level of foreign policy debate in our country today.

I thank the distinguished Senator from Virginia.

Mr. BYRD of Virginia. I thank the Senator from Kansas.

I conclude by saying again that it seems to me that the President is making progress in disengaging American troops from South Vietnam; and I, for one, shall support his endeavors to bring this American involvement to a conclusion at the earliest possible date.

EXHIBIT 1

[From the New York Times, Mar. 10, 1971]

EXCERPTS FROM THE INTERVIEW GRANTED BY PRESIDENT NIXON ON FOREIGN AFFAIRS

Washington, March 9.—Following are excerpts from an interview with President Nixon conducted here yesterday by C. L. Sulzberger, foreign-affairs columnist of The New York Times. The transcript, which is unofficial, was prepared by Mr. Sulzberger from his notes.

I would strongly commend to you my second foreign-policy report, which I think you should read carefully. I have noticed in some quarters a tendency to discuss this matter sneeringly or condescendingly, saying there is nothing new in it.

But that isn't so. It sets forth new policy directions and outlines, the goals we hope to achieve—the goals not only for this Administration but for subsequent administrations. This is a long-range effort. It doesn't get into a country-by-country analysis except in connection with the Soviet Union.

However, everything you see there is a new philosophy of United States policy. It is the most complete and accurate description of the Nixon doctrine. This doctrine is designed for the specific purpose of maintaining a U.S. policy role in the world rather than a withdrawal from the world and international responsibilities.

The irony today, for those who look at the Washington scene, is that the great internationalists of the post-World War II period have become the neo-isolationists of the Vietnam war period and especially of the period accompanying the ending of that war. And it is ending.

This is also true of the attitude of those former internationalists with respect to our defense posture and defense spending. And, for some, it is even true of our foreign trade policy. There, of course it depends on individuals. For example, Senator Javits is an all-out free-trader and a "European," but he takes a dim view of the United States role in Asia. He would also be for a lower defense budget. I merely cite him as an example of what I mean and the varying attitudes I mention.

The point is, why has this happened? Why have many former internationalists developed neo-isolationist tendencies, at least in some degree? Part of the answer is simply that Americans, like all idealists, are very impatient people. They feel that if a good thing is going to happen it should happen instantly.

And a great many of these people are very disillusioned with the United Nations. I am not, personally, because I never expected it could settle all problems involving major powers but could nevertheless play a useful role in development and in peacekeeping in areas where the superpowers were not directly involved.

The older a nation and a people become, the more they become conscious of history and also of what is possible. Now I will explain to you what I mean. I rate myself as a deeply committed pacifist, perhaps because of my Quaker heritage from my mother. But I must deal with how peace can be achieved and how it must be preserved.

I know that some national leaders and some countries want to expand by conquest and are committed to expansion, and this obviously creates the danger of war. Moreover, some peoples have hated each other for years and years.

Look at the divided peoples of India and Pakistan. Look at the situation in the Middle East. You can't suddenly eliminate these differences, these hatreds, just because some political leaders get together. All you can hope for is to bring about a live-and-let-live situation.

With this in mind, I am deeply devoted to a desire that the United States should make the greatest possible contribution it can make to developing such a peaceful world.

It is not enough just to *be* for peace. The point is, what can we *do* about it?

Through an accident of history we find ourselves today in a situation where no one who is really for peace in this country can reject an American role in the rest of the world. Of course, we had our own period of colonial expansion as typified by Theodore Roosevelt and the idea of Manifest Destiny. But that period is fortunately gone.

Since then this country has fought in four wars which we didn't start, and really what they have in common is the effort to bring about a better chance for a peaceful world.

And this applies for the Vietnam war as well as the two World Wars and Korea. Obviously it was a political temptation when I started office to state simply that we would get out right away without any responsibility for what came next.

But I knew too much about history, about Asia, about the basic feeling in the United States. If we failed to achieve our limited goal—to let a small country exercise the right to choose its own way of life, without having a Communist government imposed upon it by force—if we failed to achieve this, we would not help the cause of peace.

For a time, perhaps, we would be seen as a kind of hero. But soon it would be seen that we had left behind a legacy of even greater dangers for Southeast Asia and for the Pacific region. And, after all, we are a Pacific power.

AMERICANS TIRING OF WORLD ROLE

In 1966 and 1967—culminating in 1968—the American people began to tire of playing a role in the world. We had fought four wars, selflessly and for no gain. We had provided some $100-billion in foreign aid, much of it to former enemies who are now our competitors, like Japan.

And we found ourselves committed in Vietnam, in a war where there are no heroes, only goats. Our people became sick of Vietnam and supported our men there only in order to get them out—after this period of change in mood. Somewhere a great change had taken place.

We had used our power for peace in four wars but this new attitude gained force: "If we can't handle this one, to hell with it."

We got caught up in a vicious cross fire, and it became increasingly difficult to make people understand. I must say that without television it might have been difficult for me to get people to understand a thing.

The cross fire I referred to was this. The superdoves opposed our commitment in Vietnam and *all* world responsibilities—Korea, the Philippines, the Middle East, Europe. This was the kind of isolationism of those who felt the United States shouldn't have played any role at all in Southeast Asia from the very start. For these people Vietnam was a distant, small, foreign country in just the terms that Chamberlain mentioned concerning Czechoslovakia at the time of Munich. These were the superdoves.

But on the other side, the opposite cross fire came from the superhawks. This group stood by their Commander-in-Chief, the President, but became fed up with the war for their own reasons. They felt that if the United States can't handle a distant little war, why then let's just pull out and build up our strength at home. Their logic also favored isolationism, but from another angle. And they want to develop a Fortress America at home and cram it full of missiles while the superdoves want us to pull out of the world also, but reducing our strength at home.

AND THOSE IN THE MIDDLE

In between there are those of us who stand in the middle of the cross fire. The superhawk feels it is his duty to support the President even if that same superhawk isn't sure he wants to see us do what we are doing. The superdove has a different attitude.

He is a good-hearted fellow, but when he

looks around and sees the problems of the poor, the blacks, the Indians, the poor whites, the pot-smoking kids, crime in the cities, urban slums, the environment, he says: "We must get out of the war right away and concern ourselves only with our problems at home."

The fact is, however, that there has never been so great a challenge to U.S. leadership. This war is ending. In fact, I seriously doubt if we will ever have another war. This is probably the very last one.

In any theoretical question of a war on the basis of "either them or us," I am sure everyone in the country would join in behind me. But this is not the case in a small country so far away involved in a situation so difficult to explain.

I am certain a Gallup poll would show that the great majority of the people would want to pull out of Vietnam. But a Gallup poll would also show that a great majority of the people would want to pull three or more divisions out of Europe. And it would also show that a great majority of the people would cut our defense budget.

Polls are not the answer. You must look at the facts. The Soviets now have three times the missile strength (ICBM) of ourselves. By 1974 they will pass us in submarine carrying nuclear missiles.

MRS. MEIR UNDERSTOOD HIM

All of these things are very directly related. For example, when Mrs. Meir, the Israeli Prime Minister, visited me, she understood me right away when I said that if America winds up the war in Vietnam in failure and an image is developed that the war was fought only by stupid scoundrels, there would be a wave of isolationism. This would embrace the U.S. role everywhere—including the Middle East. Mrs. Meir saw the point immediately.

As I see it, we have to take certain specific steps. First of all, what we now have to do is end the war—as we now are doing—in a way that gives South Vietnam a reasonable chance to survive without our help. But this doesn't mean we would withdraw all our responsibilities everywhere.

As I stated in first explaining the Nixon doctrine, our idea is to create a situation in which those lands to which we have obligations or in which we have interests, if they are ready to fight a fire, should be able to count on us to furnish the hose and water.

Meanwhile, in Europe, we can't cut down our forces until there is a mutual agreement with the other side. We must stand with our European friends if they will only do a bit more themselves in NATO—as they have indicated they will do.

And we cannot foolishly fall behind in the arms competition. In the United States, we remain ahead in the navy and in the air, but the Soviets are ahead in ICBM's and soon will pass us in modern submarine strength.

But each has a kind of sufficiency. The Soviets are a great land power opposite China as well as having far-reaching interests elsewhere. We are a great sea power and we must keep our strength. I am a strong Navy man myself. I believe in a strong conventional navy which helps us to play a peace-keeping role in such areas, for example, as Latin America.

These are all elements that must be considered with respect to each other. The main thing is that I'd like to see us not end the Vietnamese war foolishly and find ourselves all alone in the world. I could have chosen that course my very first day in office. But I want the American people to be able to be led by me, or by my successor, along a course that allows us to do what is needed to help keep the peace in this world.

We used to look to other nations to do this job once upon a time. But now only the United States plays a major role of this sort in the world. Our responsibilities are not limited to this great continent but include Europe, the Middle East, Southeast Asia, East Asia, many areas whose fate affects the peace of the world.

We must above all tend to our national obligations. We must not forget our alliances or our interests. Other nations must know that the United States has both the capability and the will to defend these allies and protect these interests.

Unless people understand this and understand it well, the United States will simply retreat into isolationism, both politically and diplomatically. We would, of course, continue to be an economic giant; but that is not enough.

Let us look at the world today. There are two great powers facing us. Russia and China. They are great powers and great people. Certainly neither of them wants war. But both are motivated by a philosophy which announces itself as expansionist in character. This they will admit themselves.

And only the United States has sufficient strength to be able to help maintain a balance in Europe and other areas that might otherwise be affected.

U.S.-SOVIET COOPERATION

What I am saying is not a cold-war philosophy. I hope that we can further develop our negotiations with the Soviet Union. For, although we recognize that their ideology is expansionist, they know what it means if the genie comes out of the bottle and that their interest in survival requires that they avoid a conflict with the United States. This means that we must find a way of cooperating.

For obviously pragmatic reasons, therefore, we can see peace slowly shaping up. First, as we are doing, we must end the war in Vietnam. We must continue our Soviet negotiations and open the door of cooperation to China. And in this way there will be a chance of building a world that is relatively peaceful.

I deliberately say relatively peaceful. That doesn't mean everyone will be disarmed, safe and loving everyone else. The kind of relative peace I envision is not the dream of my Quaker youth. But it is realistic, and, I am convinced we can bring it about.

Yet to do this, we can't heed either our superhawks whose policy would ultimately lead to war or to our superdoves who believe that only they are capable of achieving peace and that everyone else is a heretic. The trouble is that their policy of weakness would also quickly lead to war.

The day the United States quits playing a responsible role in the world—in Europe or Asia or the Middle East—or gives up or recedes from its efforts to maintain an adequate defense force—on that day this will become a very unsafe world to live in.

I can assure you that my words are those of a devoted pacifist. My very hardest job is to give out posthumous Medals of Honor.

I don't question the motives of those who oppose me. But I know this world. I have traveled about and talked to many leaders, and I know we have a chance to play a role in this world.

Another thing: People should be under no illusion that you can play a role in one area but wholly ignore another. Of course we're not going to get into every little firefight everywhere. The Nixon doctrine says only that we will help those who help themselves.

Sometimes people tend to forget the real situation prevailing today. When considering Asia, the great problem is that everyone overlooks the fact that non-Communist Asia—excluding India and Pakistan—produce three times as much as China. Why, Japan alone produces twice as much as China.

What is going to happen if we ignore such basic facts? The United States, as I said earlier is a Pacific power. And the SST will be built—if not by us, by someone else. And then we will be only three hours' flight from Japan.

There will be 400 million people in non-Communist Asia relying ever more upon us. Why Prime Minister Sato said not so long ago that Japan depends on the U.S. nuclear field.

In past times the No. 1 nation was always in that position because of military conquests. But the mantle of leadership fell on American shoulders not by our desire and not for the purposes of conquest. But we have that position today, and how we handle ourselves will determine the chances of world peace.

Do you know, in all my travels, not one leader I have talked to ever said to me in private that he feared the United States as a nation bent on conquest. And I have met many Communist leaders, as you know. Whatever some of them may pretend in public, they understand our true troubles and they are also thankful that the United States wants nothing—nothing but the right for everyone to live and let live.

CONFIDENCE IN THE PEOPLE

The big question to my mind is: Will our Establishment and our people meet their responsibilities? Frankly, I have far more confidence in our people than in the Establishment. The people seem to see the problem in simple terms: "By golly, we have to do the right thing."

But the real problem, what worries me most, is: Will our Establishment see it that way? I am not talking about my critics but about a basic, strange sickness that appears to have spread among those who usually, in this country, can be expected to see clearly ahead into the future.

These are the people who, after World War II, supported the Greek-Turkish aid program, the Marshall Plan, NATO. But today they are in disarray because of two things. They are terribly disillusioned about Vietnam, which is so hard a problem to understand. And they have an enormous concern with home problems of a sort and a degree that did not face us a generation earlier.

I understand these factors. There is a vast need for reforms, for improvements in health, education and environment. But we have to assume our responsibilities both abroad and at home. We have to do both. After all, if we manage to improve the environment and living conditions in this country we must also assure that we will be around to enjoy those improvements.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the Chair recognizes the distinguished Senator from Georgia (Mr. TALMADGE) for not to exceed 10 minutes.

(The remarks of Mr. TALMADGE when he introduced S. 1186 and the ensuing debate appear in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, under the previous order, the Chair recognizes the distinguished Senator from Idaho (Mr. CHURCH) for not to exceed 15 minutes.

(The remarks of Mr. CHURCH when he introduced S. 1188 appear in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair now recognizes the Senator from South Dakota.

(The remarks of Mr. McGOVERN when he introduced S. 1191 and the ensuing debate appear in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

VIETNAMIZATION AND PRISONERS OF WAR

Mr. McGOVERN. Mr. President, the plight of American servicemen held as prisoners of war in Indochina has aroused deep concern in all parts of our society.

That concern unquestionably crosses the lines of division over our Indochina policy itself. It is shared in equal measure by those who believe we should withdraw and by those who believe we should stay in Vietnam. We have all supported efforts to assure that the conditions of their imprisonment meet the standards of human decency established by the 1949 Geneva Convention.

Nevertheless, it is impossible to consider this issue without reference to the policy alternatives which have been presented as methods of ending our involvement in the war.

In my view the return of prisoners, along with the protection of withdrawing forces, should be our paramount objectives. I can see no other goal worth pursuing in that tragic conflict; certainly no other goal which would justify exposing our forces to continued risk and leaving our men languishing in Indochinese prisons.

I suggest, further, that these are two issues upon which the North Vietnamese and the National Liberation Front have been explicit in their negotiating position. If we would announce and follow a timetable for the withdrawal of all U.S. forces, as Senator HATFIELD and I have proposed in our bill, S. 376, we could expect immediate negotiations to assure the safety of our forces and the return of all prisoners of war.

Under the President's "Vietnamization" formula the prospects are just the opposite.

It proposes to withdraw U.S. forces in a condition of continued war, under which those remaining constitute both a potential threat and an inviting, increasingly vulnerable target for the other side.

And it exhibits either one of two indefensible attitudes toward the prisoners. If "Vietnamization" contemplates complete withdrawal in the absence of a settlement, then its architects must regard the prisoners as expendable. On the other hand, if it plans to keep U.S. forces involved so long as the adversaries hold American prisoners, as the President has suggested, then it exploits the prisoners as a justification for keeping American forces in Vietnam.

It is urgently important that we avoid confusion on this issue.

Secretary of Defense Melvin Laird, for example, told the Senate Foreign Relations Committee last year of the administration's determination:

> To see that the Geneva Conventions are lived up to and that these men are made free men.

But contrary to the impression he created, the Geneva Convention creates no obligation at all for the return of prisoners during continued war. Article 118 states that—

> Prisoners of war shall be released and repatriated without delay *after* the cessation of active hostilities. (Emphasis added.)

So while we can and should call for humane treatment of prisoners according to the Geneva standards, we cannot, so long as the war goes on, rely upon international law to demand their repatriation.

The administration has, in fact, recognized this painful truth. In the Foreign Relations Committee hearings last December, Senator FULBRIGHT asked Secretary of State Rogers how Vietnamization deals with prisoners of war, provoking the following exchange:

> Secretary ROGERS. "Well, you raise an extremely difficult question that has caused all kinds of difficulty. That is one of the reasons the President made the decision that he did about the prisoner of war camp. . . . I wish we had the answer. We do not have the answer to that."
>
> The CHAIRMAN. "So that the prisoners could stay there indefinitely, if there is no negotiated settlement; is that not correct?"
>
> Secretary ROGERS. "Well, I hate to say that as a fact because it (is) such a tragic fact, but I do not know what else to do."

Mr. President, on this point Prof. Richard A. Falk, who is Milbank professor of international law at Princeton University, has recently written an extremely important discussion of the prisoner of war issue, entitled "The American POW's: Pawns in Power Politics." It appears in the March 1971, issue of the progressive, and I ask unanimous consent that it be printed at this point in the RECORD.

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

THE AMERICAN POW'S: PAWNS IN POWER POLITICS

(By Richard A. Falk)

The status of U.S. prisoners of war in North Vietnam has moved in recent months from the periphery of American public concern to stage center. This upsurge of interest is no random shift of public sentiment. Nor does it stem from a recent increase in the number of POWs—most are pilots who were captured during the heavy bombing raids conducted against North Vietnam in the Johnson Administration—nor from any sudden deterioration in their circumstances. Rather, the new wave of concern is the result of a deliberate and cynical effort on the part of the Nixon Administration to exploit the plight of the POWs for its own domestic and international purposes.

Since the POW issue threatens to become—has already become, in fact—a major obstacle in the way of a negotiated settlement and even a pretext for re-escalating the war, it urgently demands the closest and most dispassionate analysis. The issue is an emotional one, and it has been confused by an unconscionable barrage of official propaganda. In this article I propose to demonstrate that the POW issue is being used to divert attention from the Administration's failure to negotiate an end to the war; that the Government's own Vietnam strategy is prolonging the prisoners' period of captivity, perhaps into the indefinite future; and that official professions of concern for the welfare of the POWs are totally at odds with the treatment being accorded North Vietnamese and National Liberation Front (NLF) prisoners, and even with the neglect of America's war wounded in veterans' hospitals here at home.

Unfortunately, even some leading opponents of the war have been beguiled into supporting President Nixon on the POW issue or, at best, have been reduced to embarrassed silence or to occasional quibbles on tactics. They have, in effect, conceded the validity of separating the POW issue from the settlement of the war, which is precisely the central objective and the basic fallacy of the Nixon approach. In part, this acquiescence on the part of the liberal opposition springs from genuine concern for the welfare of fellow Americans languishing in a distant land while a cruel and senseless war grinds on year after year.

Additionally, the POW issue provides some of the doves with a tempting opportunity to demonstrate to middle America that they also are patriotic and just as devoted to the protection of American POWs as the most vigorous hawks; many of them have accepted the Administration's main contention that on the POW issue all Americans of good will are united in their sense of outrage. And finally, there is a lack of real insight into the relationship between the POW issue and ending the war.

Much of the appeal for public support relies on the misleading claim that the prisoner issue is entirely separate from concern about the wisdom of the war, and, indeed, occupies a status above and beyond politics. Thus, H. Ross Perot, the Dallas computer billionaire, has organized his campaign on the POW issue (which has the Administration's full support) around this central proposition: "We have visited privately with a number of Senators who disagree with the Administration's position on the war, asking their active support in gaining the release of the prisoners. To a man, we found the Senators to be aware, concerned, sympathetic, and willing to take action to help these men. Again and again over the past year we have found that while there may be disagreement about the conduct of the war, our nation is united in its desire to gain the release of the prisoners."

A similar rationale was advanced by the American Broadcasting Company when it explained why it was appropriate to regard the half-time ceremony at this year's Army-Navy game as "non-political" and, therefore, as suitable for broadcast to its huge viewing audience. The ceremony was an elaborate presentation of the Administration's pitch on the POW issue, built around honoring the servicemen who participated in the raid of November 21, 1970, against the unoccupied prison camp at Son Tay deep in North Vietnamese territory. Roone Arledge, president of ABC Sports, declared: "I don't think the safety of American prisoners is a political issue."

Only weeks earlier, ABC had refused to broadcast a half-time show called "America the Beautiful" during the Buffalo-Holy Cross game because, as Mr. Arledge explained, "it was an editorial to get out of Vietnam." In the present climate a good American can be for or against the war and the issue is properly a subject of partisan politics, but all good Americans, regardless of their other views, are supposed to stand behind the Administration's effort to highlight the plight

of American POWs. In my view, a national consensus of this kind is unwarranted and dangerous.

It is true, of course, that all men of good will are united in their compassion for POWs who find themselves in vulnerable and tragic circumstances. But if such compassion is to be credible on a moral level, it must be related to *all* POWs, not just American POWs, and it must be in just proportion to the overall character and conduct of the war. The concern for American POWs has become so excessive that it overshadows the need and possibility of bringing the war to an end, and thereby, incidentally, achieving the safe release of the prisoners. The POW issue becomes pernicious when pro-war forces, trading on the genuine sympathies of all Americans for the prisoners, focus public attention on prisoner mistreatment—and consciously and zealously exaggerate it—as a way of rallying support for the Administration's program of prolonging and expanding the war.

Ironically, the POW issue has been brought to the fore precisely because the President's Vietnam strategy fails to make any effective provision for return of the prisoners. It almost seems, in retrospect, that the policy-planners who conceived of "Vietnamization" (letting Asians die for Americans or, as Ambassador Ellsworth Bunker is reported to have put it, "merely changing the color of the bodies") forgot about the American POWs in North Vietnam, who are not legally entitled to release and repatriation until, according to Article 118 of the Geneva Convention on the Treatment of Prisoners of War, "after the cessation of active hostilities."

As Mr. Nixon has made increasingly plain, his "plan" for ending the war is really a plan for winning the war (by securing South Vietnam for a staunchly anti-Communist regime in Saigon), but in a way that eliminates domestic political pressure by drastically reducing the flow of American blood and treasure. American casualties have dropped sharply in recent months and the anti-war movement has been quiescent. Heavy bombardment throughout Indochina continues; bombing is relatively inexpensive, control of the air is unchallenged outside the cities of North Vietnam, and air warfare, even if not an effective way of attaining military objectives, assures widespread destruction of enemy-held territory, and, for this reason, discourages the liberation of populated areas.

It seems clear that if Mr. Nixon could obtain the release of the American prisoners, the so-called low-cost, long-haul strategy of protracted warfare being pursued in Indochina could be carried on indefinitely without any serious prospect of adverse domestic political consequences. Furthermore, it seems evident that the Administration's emphasis on the humanitarian side of the prisoner issue is, in part, designed to neutralize the hostile propaganda generated by the My Lai disclosures and the upsurge of interest in the question of whether or not U.S. Government officials are guilty of war crimes. To shift the focus of righteous indignation to the alleged wrongs of the other side involves a monumental public relations buildup when the burden of wrongdoing and criminality is so clearly on our side, by any fair-minded calculus.

The POW concern is both old and new, its oldness related to a persisting American self-serving desire to confine moral and legal inquiry about the war to one single—and in the overall setting of death and devastation comparatively minor—aspect of the Vietnam War, namely, treatment of a rather small number of American POWs in North Vietnam. Its newness relates to the apparent discovery that it will be impossible for the United States to negotiate a release of American prisoners without negotiating a settlement of the war as a whole.

The proposals of North Vietnam and of the Provisional Revolutionary Government (PRG) of South Vietnam (the governmental organ of the National Liberation Front) at the Paris talks have made it clear that discussion leading to prisoner release can begin as soon as, but no sooner than, the principles and processes of an overall political settlement have been agreed upon. For the PRG the essence of a political settlement consists in obtaining an American commitment to withdraw *all* its troops within a fixed period of six to nine months—the other side seems somewhat flexible about exact timing—and an agreement that the organization of elections of a permanent government in Saigon will be supervised by an interim coalition government composed of the main political forces active in South Vietnam. More precisely, the PRG's Eight-Point peace proposal of September 17, 1970, calls for a formation of a provisional coalition government drawn from the PRG, the present Saigon regime (excluding President Thieu, Vice President Ky, and Premier Khiem), and third-force groups, whether or not presently inside South Vietnam.

Such a proposal is as inclusive as possible, giving the minimum condition of eliminating from power those Vietnamese leaders who have persistently fought against their own population, first for French colonial interests and since then on behalf of the American intervention. The proposal represents a major concession from an earlier NLF insistence on being the *sole authentic voice* of the South Vietnamese people. Unless the U.S. Government responds positively to the latest PRG proposal, there is little realistic prospect of securing the release of prisoners. North Vietnam and the PRG have more recently taken an additional peace initiative that has been ignored by U.S. negotiators in Paris and unnoticed by the media. At the December 23, 1970, session of the Paris talks the other side proposed an immediate cease-fire between American and Vietnamese fighting forces, to be followed by rapid and total withdrawal and release of POWs. In this second proposal to Washington, the struggle for control of South Vietnam would go on between the Saigon regime and the PRG and hence Washington would not be "imposing" any political solution on Saigon. The absence of a U.S. response can be explained only in terms of an unrenounced commitment to use American military power to control the political destiny of South Vietnam.

Some of the confusion surrounding the POW issue arises from a failure to distinguish among three quite distinct levels of the prisoner problem. This confusion is deepened by the efforts of both Washington and Hanoi to make use of the prisoners in the struggle to influence world public opinion. Separating these three levels makes it easier to understand who is accountable for what.

Level One: POW's as War Criminals. The POW issue first gained prominence on July 6, 1966, when captured American pilots were paraded through Hanoi in apparent preparation for their trial and punishment as war criminals. The U.S. Government charged that such a public display of prisoners violated the Geneva rules, specifically Article 13 of the Convention, which prohibits the public display of prisoners. By mid-July there were further indications that North Vietnam intended to try some of the prisoners. A major diplomatic effort was then initated by the United States to discourage the trials. Even Soviet diplomats were urged to play a role in persuading Hanoi not to go ahead. Diverse international figures, including the Secretary General of the United Nations and the Pope, sought to dissuade North Vietnam. Such anti-war leaders as Benjamin Spock, such organizations as the National Committee for a Sane Nuclear Policy, and a group of anti-war Senators joined in the appeal to North Vietnam and warned of adverse consequences that might follow from any trials, and especially from the imposition of death penalties.

On July 24, 1966, the North Vietnamese government announced the formation of a committee to investigate U.S. war crimes and President Ho Chi Minh cabled the Columbia Broadcasting System in reply to its inquiry that there was "no trial in view." On the same day, Ho Chi Minh was also quoted as saying that "the main criminals are not the American pilots captured in North Vietnam but the persons who sent them there—Johnson, Rusk, McNamara—these are the ones who should be brought to trial." After this flurry of excitement, the idea of prosecuting American POW's as war criminals was dropped by Hanoi, if indeed it had ever been actively contemplated.

On the merits, it seems to me that North Vietnam had a reasonable basis for regarding the captured pilots as potential war criminals. International law experts and moralists have been divided on the legality of indiscriminate aerial bombardment of populated areas. The use of air power in the 1930s by Mussolini's Italy against Ethiopia and by Nazi Germany on behalf of Franco's forces in the Spanish Civil War were occasions of universal public outrage. These instances of high-technology societies waging war against relatively helpless low-technology societies (with no capability for self-defense or retaliation) were apt precursors of the air war against North Vietnam.

At the time when North Vietnam seemed inclined to prosecute American fliers as war criminals, there was very little that it could do to alleviate the pressure upon itself. The bombing was being intensified from month to month, and North Vietnam might have correctly concluded that there were few better ways to focus public awareness on its plight than by initiating a series of war crimes trials. True, the POW's were instruments of the policymakers, but they could also serve as surrogates in circumstances where "the main criminals" could not be apprehended.

In addition, the prospect of criminal prosecution might have had a damaging impact on the morale of American pilots still active in the air war and might even have led to the reluctance of some to take part in future missions. By service manual regulations and by international law, American soldiers are not supposed to obey orders that call for the commission of war crimes, and prosecutions in North Vietnam and commentaries thereupon might have been thought to reinforce the general understanding in the Nuremberg Judgment that superior orders provide no legal justification for the commission of a war crime.

In the view of North Vietnam and many independent specialists in international law, the air war constituted a war crime both in its aggressive intent and in its daily execution. The air war, by bringing the war to North Vietnam, by its indiscriminate patterns of bombardment, and by the widespread use of such prohibited weapons as antipersonnel cluster bombs and delayed action bombs, clearly raised issues of criminality. As the Eichmann case had established years earlier, and government that captures a war criminal is empowered to prosecute him, regardless of where and when he acts, and under whose authority.

Hanoi's decision not to proceed might well have been influenced by the strong diplomatic initiative mounted from Washington. Obviously, prosecution of the pilots would have had an inflammatory impact on American policy-planners precisely because it was *their war* that was being adjudged. There was apprehension at the time that if the prosecutions had gone forward, the United States

would have responded by destroying Hanoi and Haiphong, possibly by destroying the dikes, certainly by escalating the war to even higher levels. It was, therefore, prudent for North Vietnam to abandon any effort to follow through with trials to demonstrate its contention that American POWs were manifest war criminals, but such prudence cannot be properly interpreted as a concession that such charges were unfounded or even that a course of prosecution was ill-conceived, if it was indeed conceived at all.

North Vietnam later cooperated with the war crimes tribunal organized by Bertrand Russell to expose the criminal nature of the war and has continued to gather information in support of its contention that it has been a victim of war crimes on a massive scale. At the latest session of the U.N. General Assembly, North Vietnam distributed through the Hungarian delegation a document alleging war crimes committed by the United States Government in Vietnam *since* the beginning of the Nixon Administration. It is noteworthy that this was the first occasion on which North Vietnam took an initiative to present its position within the U.N. setting.

Finally, the climate on war crimes in the United States has changed drastically since 1966, largely as a result of the disclosures surrounding the My Lai massacre. Although the Russell Tribunal Proceedings of 1967 (recently republished by Simon and Schuster under the title *Against the Crime of Silence*) stand up well under the tests of time and independent scrutiny, they were mainly ignored at the time, except for purposes of discrediting.

Today, by a curious inversion of circumstances, the U.S. Government is itself engaged in a series of war crimes trials directed against soldiers who were present at My Lai, and these soldiers are largely defending themselves by pointing to those higher up in command—those whom Ho Chi Minh called "the main criminals" in 1966. More remarkable still, I think, is the close similarity between Ho's accusation and a conclusion pertaining to the air war against North Vietnam that is reached in General Telford Taylor's recent book on war crimes, *Nuremberg and Vietnam: An American Tragedy*. "It was not President Kennedy himself but the men he brought to Washington as advisers and who stayed on with President Johnson—the Rusks, McNamaras, Bundys, and Rostows—who must bear the major responsibility for the war and the course it took."

Level Two: POWs as Victims. The most complicated, and in certain ways most valid, level of concern about the POWs has to do with their treatment during the course of their confinement. The problem is initially obscured by Hanoi's insistence that the Geneva rules do not apply since the prisoners are war criminals who fall within the scope of its formal reservation to Article 85 of the Geneva Convention, which reads: "Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention." North Vietnam's reservation, which was similar to that made by other Socialist countries, including the Soviet Union, accompanied its adherence in 1957 to the 1949 Geneva Convention: "The Democratic Republic of Vietnam declares that prisoners of war prosecuted and convicted for war crimes or for crimes against humanity, in accordance with principles laid down by the Nuremberg Court of Justice, shall not benefit from the present Convention, as specified in Article 85."

On this basis, North Vietnam contends that it is not bound by the Geneva rules, including particularly the provisions dealing with scheduled and unscheduled inspection of prison facilities and prisoners by the International Committee of the Red Cross (ICRC). North Vietnam's further position is that in the spirit of leniencey (that is, not as a matter of legal duty) American POWs have been treated humanely, have been allowed to exchange mail and receive gifts, and have received ample food and medical treatment.

Some analysts have contended that the reservation attached to Article 85 does not apply because these POWs have not been "prosecuted and convicted for war crimes." The North Vietnamese response to this position is that their policy is more beneficial to the POWs than would have been the case had they been prosecuted and convicted, and in all certainty given heavy sentences, very likely death sentences.

In my judgment, the North Vietnamese position—indeed the position of the entire Socialist bloc—on the reservation to Article 85 is undesirable, since it encourages belligerents to characterize each other's POW's as war criminals. If such practice is generalized, it defeats the humanitarian purposes that underlie the Geneva Conventions and probably leads to a general deterioration in treatment accorded POWs. I can, however, understand the reluctance of North Vietnam to allow ICRC representatives into its territory during a period of warfare, probably partly because of some concern about adverse propaganda, partly because of a worry about intelligence leads (not entirely unfounded in light of the Son Tay raid), and partly because the ICRC is looked upon as a Western-biased international institution whose claims of impartially could not be entirely trusted. It is difficult to assess these apprehensions but it is doubtful in any event that a different approach by North Vietnam on this issue would have discouraged American leaders from manipulating the POW issue to generate hostile propaganda.

As to actual conditions of treatment, reports vary. Among the visitors to camps from American peace groups, and from such countries as France and Japan, there seems to be general accord that POWs receive more food than do members of North Vietnam's army, that POWs are given medical treatment, that no systematic torture or brainwashing takes place, and that the POWs seem in good spirits. Indeed, some released prisoners and some still detained have praised their captors for according them humane and beneficial treatment under difficult circumstances. Some confusion has been purposely created by the Pentagon's cynical double policy of imposing a regime of silence on returned POWs who report no mistreatment and arranging maximum public exposure for those who allege bad conditions.

The most informed and reliable study now available of alleged torture of American POWs by the North Vietnamese has been made by John M. Van Dyke, formerly of the State Department's Legal Adviser's Office and currently attached to the Center for the Study of Democratic Institutions at Santa Barbara, California, who comes to the general conclusion that there have been instances of unauthorized mistreatment by particular prison guards or by townspeople near the scene of capture, but that there is no evidence at all that North Vietnam is pursuing a policy of torture or vengeance toward the POWs. Indeed, Van Dyke's careful analysis of the most publicized claims of torture by some released prisoners casts considerable doubt on the authority of their allegations.

It is true that North Vietnam was slow to meet Geneva standards on release of the names of POWs in its possession and on transmission of mail. Improvements in these respects have been taking place since December, 1969, when a peace activist, Cora Weiss, taking advantage of earlier initiatives of anti-war visitors to Hanoi, organized the Committee of Liaison with Families of Servicemen Detained in North Vietnam. Representatives of this committee have returned from Hanoi with large numbers of letters for families and considerable other prisoner information, such as confirmed names of captured and dead Americans, thereby sometimes ending the suspense of those families with a member listed as missing-in-action.

As of the end of 1970, the Committee had received and delivered a total of more than 3,200 letters from prisoners, and had forwarded at least one letter each from 332 of the 339 confirmed prisoners held in North Vietnam. This is impressive progress, considering that prior to the formation of the Committee fewer than 100 of the prisoners had been heard from by their families.

The work of the Committee has been carried on quietly, for its own sake, and without any effort to make use of the families of the prisoners for political purposes. However, the Government, instead of cooperating and facilitating this work, has attempted to discredit, harass, and obscure the tangible achievements of the Committee. For instance, when Robert Sheer returned from North Vietnam in mid-September, 1970, with 379 letters from prisoners, U.S. Customs officials, evidently acting on orders, seized the letters and placed them under bond. It took strenuous efforts by Sheer and the Committee of Liaison to obtain the release of the letters; as it was, their seizure delayed delivery to the families. Government officials, instead of citing the various accomplishments of the Committee as evidence of improvement in conditions for American POW's, only complain about the failure of North Vietnam to use "official channels." Such an objection is particularly inappropriate in view of the extravagant semi-official backing that has been accorded Perot's various efforts to publicize the prisoner issue—efforts that have, it seems, made it more difficult, not less so, for the North Vietnamese to improve the lot of American POWs.

The part-Government, part-private public relations campaign has now reached immense proportions—including the hiring of a professional fund raiser; the organization of prisoner families into the National League of Families of American Prisoners and Missing in Southeast Asia; the placement, at Perot's request, of purported replicas of the North Vietnamese prisons in the rotunda of the Capitol; the holding of a special joint session of Congress, again at Perot's request, to dramatize legislative concern; the issuance of 135 million POW-MIA (missing in action) postage stamps; the distribution of bumper stickers with the slogan, "Have a Heart Hanoi"; the mailing of 600,000 letters, over actor Jimmy Stewart's signature, beginning with the question, "Mommy, will Daddy be home for Christmas this year?" and appealing for funds to enable still more publicity on the prisoner issue; the stimulation of a separate campaign by veterans' organizations urging 50,000,000 Americans to write letters to POWs for Christmas, 1970, and to dump 100 tons of prisoner mail at the headquarters of the North Vietnamese delegation in Paris; the action by President Nixon in changing the official name of Veteran's Day to Prisoner of War Day; the frequent dedication of a minute of silence to American POWs prior to nationally televised football games; Nixon's policy of never discussing the war without castigating North Vietnam for its treatment of American POWs; and the Pentagon's practice of regularly sending families allegations and alleged pictures of tortured Americans. This enumeration of public relations initiatives is only illustrative and could be extended indefinitely.

Undoubtedly the most impressive American triumph on Level Two has been to secure

passage by a vote of sixty to sixteen, with thirty-four abstentions, in the U.N. General Assembly of a Resolution on the POW issue that centered on asserting an obligation of participants in a Vietnam-type conflict to apply the Geneva Convention, including its rules on ICRC inspection of prison facilities. This Resolution, opposed by the Communist bloc and most of the more radical Third World states, supports the American contention that the Geneva system provides the basic measuring rod for the adequacy of treatment standards accorded POWs. The Resolution is not likely to exert any influence on North Vietnam, but it does have some value in the propaganda war being waged around the POW issue.

Level Three: POWs as Hostages. The Nixon Administration has become increasingly aware that complaints about treatment may arouse indignation in this country, but will not obtain release of the POWs. Hence, a new phase of the POW issue has been initiated to portray the prisoners as hostages being improperly held by North Vietnam. Three separate techniques are being used to convince the public of this conclusion:

The treatment accorded POWs by North Vietnam is alleged to be so bad as to constitute an urgent humanitarian necessity to obtain their release;

An actual effort at rescue is carried out with great fanfare and its leaders are hailed and decorated as national heroes;

The Nixon Administration has put forward in Paris an offer of prisoner exchange which it promotes with such adjectives as "generous," "reasonable," and "dramatic."

President Nixon's language on the offer of a prisoner exchange (in his press conference last December 11), is revealing: ". . . Ambassador Bruce . . . offered to exchange, upon the part of both the United States and South Vietnam, 8,200 North Vietnamese that we have prisoner for approximately 800 Americans and other allied prisoners that they had. That's a ten to one ratio, but we're willing to do that." Defense Secretary Melvin R. Laird, testifying before the Senate Foreign Relations Committee, used entirely different—and erroneous—figures, but to the same effect, offering the North Vietnamese 36,000 of their prisoners in exchange for 3,000 allied prisoners. "At no time in the history of the world has there been such a dramatic proposal," Mr. Laird said.

Such an apparently one-sided offer can be understood only in relation to the no-negotiations posture of the United States in Paris and to the related inability to obtain the release of the prisoners so long as "active hostilities" continue. Mr. Nixon revealed his own frustrations, I think, when he added to his earlier comment on the prisoner exchange that "their failure to accept that offer will pinpoint something that is pretty generally known around the world and that is that this nation [North Vietnam] is an international outlaw, that it does not adhere to the rules of international conduct." To describe North Vietnam as "an international outlaw" for refusing such an offer, given American destructive conduct in the South, the bombing of the North, and the cruel treatment accorded North Vietnamese and NLF POWs, is to invert the real moral situation and plunge ever deeper into an infernal realm of Government-sponsored fantasy.

Nonetheless, the unwillingness of North Vietnam to agree to a prisoner exchange has actually led some American political figures to offer completely unfounded and highly racist explanations that imply they don't care about their men to nearly the same extent as we care for ours. Senator Claiborne Pell, Rhode Island Democrat, has asserted that "their interest in their prisoners, once they are gone, is far less than our interest in our people because of the difference, maybe, in human life and human values we have." Representative William Bray, Indiana Republican, has decided that "given Hanoi's attitude toward its own men—it probably counts one of ours worth 5,000 North Vietnamese." Few politicians want to acknowledge that when American prisoners are released, Washington loses its only remaining major incentive to negotiate a reasonable end to the war.

The whole approach of the Nixon Administration is designed to make people believe that the POW issue is properly separable from the overall settlement of the war, which it is not, never has been, and cannot be.

The Government's shift from a position of genuine, if somewhat hypocritical, concern for standards of prisoner treatment to the completely unreasonable and unwarranted demand for immediate prisoner release is designed to produce an atmosphere in which anything goes—including military incursions into North Vietnam—to obtain the return of these prisoners. The general endorsement of the Son Tay raid, even by critics of the war, suggests that the public relations effort has succeeded, at least temporarily, in making Americans believe that Hanoi is not entitled to retain American POWs any longer.

It seems clear that the Son Tay raid of November 21, 1970, was intended partly as a gesture and partly as a message to contradictory audiences:

One—The Son Tay raid was an essential *gesture* of concern with respect to the POWs stranded in North Vietnam. Without such gestures, the Nixon Administration's policy would inevitably come under eventual attack as entailing the sacrifice of the POWs to the cause of "Vietnamization" and for the sake of maintaining in power military puppets such as Thieu and Ky. In this regard, testimony by Defense Secretary Laird before the Senate Foreign Relations Committee seems significant. Arguing that the raid was a success despite its failure to free any POWs, Mr. Laird said that "what we have done here has shown all of these prisoners in North Vietnam that America does care." Committee Chairman Fulbright then asked Laird what would seem to be an innocent and rhetorical question: "Was there any doubt that America cares about them?" Laird gave the following answer: "Yes, I think there was doubt. I'm sure you've had an opportunity, as I have, to talk to the wives, mothers . . . and there is a question in their minds as to whether America is showing . . ." at which point Fulbright interjected "Well, that's no justification for it, I must say . . ."

This dialogue, I think, is more revealing than it may seem. Of course, there is doubt about whether the Government is showing concern, doubt based on its general lack of interest in bringing the war to an end and doubt raised by its continuing harassment of peace groups that have alone been able to provide families with tangible results. Ironically, further doubts have been raised by the Son Tay raid itself, since it subjected the POWs to immense risks. The evidence remains clouded as to whether the Administration knew at the time of the raid that the camp was empty. If the officials who gave the go-ahead order knew (or suspected) that Son Tay was abandoned (Laird admitted to Senator Franck Church that intelligence photos taken before the raid never showed prisoners on the camp grounds) then the whole undertaking was a *pure gesture* that rested on callous deception and dishonesty. But if these officials honestly believed that POWs were probably at Son Tay, then these POWs were being subjected to a serious risk of death not of their own choosing, mainly to let the folks at home know that the Administration cares. Even Laird said in his testimony to the Fulbright Committee that he "would assume" after the raid that other POWs "would be guarded more closely."

Two—The Son Tay raid conveyed a *message* of concern to the families of prisoners and to the domestic constituency which the Administration has sought to stir to frenzy on this issue. This frenzy can begin to boomerang if it once becomes clear to the public that it is primarily the Government's fault that the POWs remain in captivity.

Three—The Son Tay raid was also intended as a *message* to Hanoi that the POW issue, unless handled in a conciliatory fashion by North Vietnam, could result in punishing escalations, including even the resumption of steady bombing. In this respect the deep penetration of North Vietnamese territory, the indications that additional rescue attempts were contemplated in the future, the accompanying heavy bombardment in the vicinity of Son Tay and in the area above the DMZ, were part of a hard-line message that could be read as warning Hanoi to accept the offer of a prisoner exchange or else suffer great destruction.

From all of these points of view it is clear that the POWs are being jeopardized by higher priorities than Washington is willing to acknowledge: first, that it would rather win the war for Thieu and Ky than obtain the release of the prisoners; and, second, that it is willing to risk the lives and welfare of the prisoners if this is what it takes to demonstrate concern to their families and a wider aroused public.

Of course, there is even more to the Son Tay raid than this. The emphasis on the POW issue has enabled the Administration to deflect attention from the periodic and significant re-escalations of the war and from the failure to abide by the understanding to halt bombardment of North Vietnam. Hedrick Smith, writing in *The New York Times*, attributed to an unidentified official in the Nixon Administration thoughts that seem widely shared by advocates of a no-negotiations approach to ending the war: "By taking the offense himself Laird has pushed the bombing and the understanding into the background. He swamped the opposition. It's amazing how effective he has been with all this news about the Son Tay raid."

It is not surprising that some, although by no means all, of the champions of the POW issue have also been the most hawkish advocates of a win-policy in the war. The propaganda barrage on the prisoners often represents a bizarre blend of cruelty and perverse "humanitarianism" which was, perhaps, best summed up in the late Representative L. Mendel Rivers' judgment that "these men would ten thousand times rather be dead, and I am sure their families would rather they be, knowing that we tried to release them, than sitting as they are, not knowing, never knowing . . . And if they got to die . . . let us go up to Hanoi and bring them home in boxes . . ." This macabre vision of "solving" the prisoner issue by dragging their corpses out of the rubble of North Vietnam needs to be understood not only as pathology, which it is, but as the logic that inevitably underlies the position of all those who support the war. It is part of the overriding spirit of this counter-insurgency war, nowhere better summarized than in the justly famous comment of an Army major at Ben Tre, South Vietnam: "It became necessary to destroy the town to save it."

Throughout the war the United States has measured its "progress" not so much in *territorial* terms as by *kill* statistics—"the body count." Combat units compete in terms of body count totals, and individual soldiers have been offered such incentives as passes and leaves for contributing to the body count. Inevitably, this policy has led to instances of summary execution of North Vietnamese and NLF prisoners. A case in point, but only one of many, involved an order given on

September 5, 1969, by First Lieutenant James B. Duffy to kill an unarmed Vietnamese prisoner, who had been held through the night tied to a stake. Duffy was prosecuted and offered the principal defense that the Army's emphasis on body counts led him to think he was committing no wrong in ordering the prisoner shot. In Duffy's words, "Some people might have thought that it was wrong to judge a unit by the number of kills they get. I think it is the only way a unit should be judged. That is really the only mission we have in the field, to kill the enemy."

The court-martial found Duffy guilty of "involuntary manslaughter," a crime that in no respect corresponded with the undisputed facts, and added a recommendation of clemency. The result was a six months jail sentence and a fine requiring Duffy to forfeit $250 from his monthly salary for each of the next six months. Such a nominal punishment seemed to result from a recognition by the court-martial that Duffy's action was not an unusual or reprehensible interpretation of his duties given the prevailing attitude toward prisoners as body count potential. In other cases, there have been acquittals and numerous non-prosecutions in relation to prisoner murder and abuse by American GIs in South Vietnam.

Those prisoners taken by the United States are generally turned over to the Saigon regime, whose mistreatment and torture of POWs has frequently been documented. The United States, therefore, is in persistent violation of its obligations under the Geneva Convention as a detaining power. Article 12 makes it clear that the detaining government is responsible if it has grounds to suspect mistreatment of transferred POWs, and that it has a duty to demand the return of POWs if it learns that inhumane treatment is taking place.

The conditions of prison confinement in the Tiger Cages at Con Son Prison in South Vietnam finally brought home the extent to which the torture of political prisoners is a matter of standard practice in South Vietnam. The ICRC had complained to the Saigon regime in February, 1970, about keeping POWs at Con Son and other civil prisons. It is a violation of the Geneva Convention to keep POWs at camps not subject to inspection. [For a full account, see "The Congressional Jury that Convicted Itself" by Thomas R. Harkin in the October, 1970, issue of *The Progressive*.]

Such responsible groups as the American Friends Service Committee and the Fellowship of Reconciliation have published detailed accounts of torture being carried out as standard policy in the numerous prisons throughout South Vietnam.

What seems demonstrably clear is that individuals who deserve to be classified as POWs are being systematically mistreated in the prisons of South Vietnam, the U.S. Government has had ample knowledge of this mistreatment, and the United States finances and advises those Saigon bureaucrats and police officials who run the prison system. These conditions of known abuse exceed in scale and magnitude the most exaggerated accounts of mistreatment that have been alleged to exist in North Vietnam. There is fundamental doctrine in the law of equity that precludes one party from complaining about wrongs suffered if he enters court with "dirty hands."

Another indication of the hypocrisy attending the official crusade on the POW issue is the callous neglect of America's war wounded. More than 290,000 Americans have been wounded so far in the Vietnam War. Because of improved rescue and battlefield treatment techniques, many soldiers who receive injuries that would have been lethal in earlier wars are kept alive, but kept alive often to languish in American veterans hospitals that are dangerously understaffed and underfinanced.

The story has been documented by Senator Alan Cranston, California Democrat, who has made tireless efforts to secure adequate funds to assure decent treatment for these war wounded. Largely as a result of Senator Cranston's crusade, Congress increased the Veterans Administration appropriation by $105 million more than that requested by the President, but an amount still less than the additional $186 million that the hospital directors say they need. In November, 1970, Mr. Nixon vetoed as "inflationary" the Independent Offices appropriations bill which included this additional sum for the war wounded. What is one to say about a President who gains national publicity by inviting a few wounded veterans to the White House for a Thanksgiving dinner and fails to provide adequate hospital facilities for Americans wounded in Vietnam?

How can the American Government and citizenry raise such a howl about fewer than 500 POW's in North Vietnam and be so indifferent to the welfare of many more thousands of Americans who lie day after day in VA hospitals? Part of the answer is that the wounded war veterans are no longer politically useful to the war planners. In less dramatic terms, the same disregard for the welfare of veterans who return from Vietnam has been displayed by the failure of the Government to take any meaningful steps to facilitate their reintegration into American society.

The case against the Nixon Administration on the POW issue seems overwhelming. The vast machinery of Government propaganda has been employed to incite Americans into believing that it is barbaric for the North Vietnamese to retain custody over these prisoners. The campaign of cynical distortion rooted in hypocrisy has sought to disengage the POW issue in the public mind from the overall settlement of the war and to prevent Americans from appreciating that the refusal of Washington to negotiate a political settlement is what is keeping Americans in the prison camps of North Vietnam. Such a posture by Washington is particularly reprehensible because the latest PRG proposals seem to represent such a fruitful opportunity for bringing the war to a reasonable and honorable end—and for returning the POW's. It is also most unfortunate because the refusal to negotiate a settlement is based on a persisting American commitment to keep the Thieu-Ky regime in power despite the isolation of this regime from its own population and despite its increasing reliance on repression and torture to deal with moderate, non-Communist opposition forces.

The American people have been betrayed by their elected officials many times during the tragic course of the Vietnam war, but never more brazenly than in relation to the POW issue. It is time for public indignation about the fate of American prisoners to be directed at Washington, where it belongs. It is time for American troops and planes to be brought home from Asia. And it is time for all opponents of the war to show the courage to expose the Administration's abuse of the prisoner of war issue.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. At this time, in accordance with the previous order, the distinguished senior Senator from New York (Mr. JAVITS) is recognized for not to exceed 15 minutes.

(The remarks of Mr. JAVITS when he introduced S. 1193 appear in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

TRADE POLICIES IN THE 1970'S

Mr. JAVITS. Mr. President, I invite the attention of the Senate to a fine report made on trade by the distinguished senior Senator from Connecticut (Mr. RIBICOFF) entitled, "Trade Policies in the 1970's."

Senator RIBICOFF prepared this report following a factfinding mission to Europe during which he met with ranking European officials and with U.S. Ambassadors J. Robert Schaetzel, Robert Ellsworth and Arthur Watson.

Senator RIBICOFF's report is a forward-looking document which makes valuable recommendations concerning our future trade policies.

Senator RIBICOFF pinpoints the importance of the current negotiations between the Common Market and Great Britain, Ireland, Denmark, and Norway on expanding the Common Market. In my view it will be difficult for the EEC to adopt Senator RIBICOFF's proposal that the "Common Market should state now its intention that after enlargement is agreed to in principle, it would actively pursue liberal trade policies and seek a reduction of nontariff barriers" if the EEC is not convinced that the administration by deed as well as word seeks to maintain the liberal trade policies that have served us all so well for so many years.

The Senator from Connecticut's report, made as a member of the Committee on Finance, has an interesting statement regarding the present crisis in the textile situation with Japan.

Here is what he says, in part:

> We must look beyond our present problems with Japanese textile imports. Actually they are of a very temporary nature since the Japanese are rapidly losing their competitive position. Imports of textiles into Japan itself are on the rise as the level of Japanese wages approaches that of the Common Market countries.

Mr. President, the President of the United States has a grave responsibility now to evaluate a difficult situation in domestic politics and in foreign trade created by the proposed unilateral offer of Japan acting at the suggestion of the distinguished Chairman of the Ways and Means Committee Mr. MILLS to impose textile quotas on itself.

The value of the report of the Senator from Connecticut is that it demonstrates there is a real possibility that if the United States, in reaction to the failure to agree bilaterally with us on textile quotas by Japan, should go protectionist, as was contemplated in last year's trade bill, we must expect a serious reaction in Europe as well as in Japan, which must be a factor in the way the United States handles the present situation. Also this would affect future congressional consideration of trade legislation including legislation to extend generalized preferences to the less developed world under the commitment made by the Nixon administration in the OECD and United Nations.

My view is that we should not reject the Japanese initiative but should attempt to utilize it for the purpose of working out the situation.

I use those words advisedly because it is not necessary to be doctrinaire about whether an agreement is unilateral or bilateral so long as what is agreed to is satisfactory to the parties concerned.

I think the importance of the views expressed by the Senator from Connecticut (Mr. RIBICOFF) go to the essentials of coming to a conclusion regarding the textile issue with Japan.

I hope very much, therefore, that the President will be mindful of this report as he considers what should be the U.S. reaction to the Japanese situation.

I ask unanimous consent that the press report on the Ribicoff study which appeared in the Washington Post on March 6 be printed in the CONGRESSIONAL RECORD at this point.

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

TRADE NEW FOCUS OF FOREIGN POLICY, RIBICOFF REPORTS

(By Carole Shifrin)

Economic issues are replacing the traditional question of national security as the main focus of foreign policy, but the United States is unprepared to deal with this changing circumstance, Sen. Abraham Ribicoff (D-Conn.) told Congress yesterday.

"We must reorder our priorities in foreign affairs, elevating international economic problems to the high level of attention they deserve," he said in a report to the Senate Finance Committee. His report was based on two weeks of travel in Europe on behalf of the committee to examine trade and foreign policy problems.

Reordering priorities is a lesson other countries have already been learning, Ribicoff suggested.

"American diplomacy in the 1960's toward Europe, example, concentrated on NATO political-military issues—but these issues were of declining interest to Europeans," he said. "While we concerned ourselves with the NATO order of battle, the Germans were more concerned over orders for Volkswagens."

Ribicoff spread the blame for the uneasy international economic relations around, criticizing the European Economic Community (EEC) and Japan for pursuing aggressive trade expansion policies, and predicting "increasing conflict" unless "much greater sensitivity" was shown to America's very real economic problems.

Ribicoff said that during his travels, Europeans expressed "genuine concern" over the deterioration of U.S.-EEC relations, but defended their trade policies because of the favorable U.S. trade balance. But he noted in his report, "It is unfair to consider the U.S.-EEC economic relations as distinct from U.S.-NATO security arrangements. . . . Our trade surplus amounts to only a small fraction of our country's contributions to European security and the European economy.

"We should not hesitate to point to the considerable burden we still assume which enables Europe to pursue its commercial interests and to prosper free from fear of external threats."

While the EEC is already the predominant trading power in the world today—"one fact of economic life . . . not fully digested here"—it continues "to carry out policies of the past," he charged. He called on the EEC to declare its intention to "actively pursue liberal trade policies" and seek a reduction in nontariff barriers. Such a move would help ease pressures for new restrictions in the U.S., he maintained. He also called on Japan to pledge her future cooperation and restraint in trade matters.

He applauded the recent formation of a White House-level Council on International Economic Policy, noting it reflected a "belated awareness" of the dangers of treating foreign economic issues on a lower level than political issues, but said its importance was undercut when all its "relevant powers" were given back to the State Department.

DEATH OF A GREAT HISTORIAN—ALLAN NEVINS

Mr. JAVITS. Mr. President, to bequeath to the future an objective study of today's world is a legacy more valuable than any wealth could purchase. To give to the leaders of tomorrow's world an oral history by the leaders and witnesses of history in the making, provides for the student of contemporary history a unique opportunity to learn firsthand about the people and events which have shaped the course of the world.

Allan Nevins, historian and biographer, recipient of two Pulitzer prizes, and creator of the Columbia University oral history research program, has made possible this legacy, all the more valuable because his reflection of our history enables us to be wiser about the world we will shape for the future. Mr. Nevins' prolific pen has been stilled, but his works will long be with us, guiding us to a better world.

I ask unanimous consent that an editorial which appeared in the New York Times on March 6, 1971, and an obituary appearing the same day, be printed in the RECORD.

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

ALLAN NEVINS, HISTORIAN

A newspaperman once himself—on The Post, The Sun and The World—Allan Nevins brought to the writing of American history and biography a journalist's curiosity, dedication to balanced judgment and lively readability. These qualities, along with a scholarly mind, made his "Ordeal of the Union," an account of the Civil War period, the sort of history one reads for knowledge as well as pleasure. These attributes infuse his prize-winning biographies of Grover Cleveland and Hamilton Fish.

In addition to his books, Mr. Nevins made a distinguished contribution to American studies by instituting Columbia's Oral History Project, a program to record the candid memoirs of notable contemporary public figures. His idea was to enrich the source of material available to future scholars. Indeed, enrichment of others was what Mr. Nevins was all about, for his histories (and his biographies were history, too) were aimed at making Americans more intimately knowledgeable about themselves. No one could leave a better testament.

ALLAN NEVINS, HISTORIAN, DIES; WINNER OF TWO PULITZER PRIZES

MENLO PARK, CALIF., March 5.—Allan Nevins, the historian and biographer who won two Pulitzer Prizes and pioneered in the establishment of the oral history movement, died today in a nursing home after a long illness. He was 80 years old.

A TIRELESS RESEARCHER

(By Albin Krebs)

One of the most distinguished historians of his time, Allan Nevins was a prolific writer who brought to his work an engaging style, a profound sense of fairness, a deep humanism and a total respect for the truth.

For 30 years a history professor at Columbia University, Mr. Nevins was an indefatigable researcher who could deal with ease with all aspects of American history, from colonial times to the present.

His career was studded with honors, including a Pulitzer Prize in 1933 for a biography of Grover Cleveland and another in 1937 for a study of Hamilton Fish.

One of his major achievements was the establishment, at Columbia in 1948, of the oral history program, designed to aid future historians by preserving on tape and in typescript the opinions and recollections of hundreds of major contemporary figures.

Mr. Nevins's devotion to the interests of American historiography led to his appointment in 1961, as chairman of the Civil War Centennial Commission.

Mr. Nevins, known as a phenomenally tireless worker, was fond of saying that he didn't really think he had worked hard since he left his father's stock and grain farm to go to college.

He was born on the farm, near Camp Point, Ill., on May 20, 1890, the son of Joseph Allan and Emma Stahl Nevins. His father, who was of Scottish descent, sold insurance, but also worked on the farm and saw to it that his five children worked there 12 to 14 hours a day.

The elder Mr. Nevins did not approve of "frivolous" reading, and his 500-book library was devoted to economics, science and history. It was by reading voraciously at home that young Allan acquired an early interest in history.

At 18, the youth entered the University of Illinois, where he edited the campus daily newspaper and graduated Phi Beta Kappa in 1912. He remained in Urbana for another year, teaching English while working for his master's degree in history. His first book, "The Life of Robert Rogers," a biography of the colonial frontiersman, was written shortly before he completed his studies at Illinois and was published in 1914.

BECAME EDITORIAL WRITER

Since he regarded journalism as living history, Mr. Nevins in 1913 joined The New York Evening Post as an editorial writer. Ten years later he moved to The Sun as literary editor, and from 1925 to 1931 he wrote editorials for The World.

Meanwhile, he continued to build a reputation as a historian. He published "The American States During and After the Revolution" in 1924, and "The Emergence of Modern America" in 1927. His 1928 biography, "Frémont, the West's Greatest Adventure," served as the basis of the definitive "Frémont: Pathmarker of the West," which appeared 11 years later.

The Frémont work was highly praised by historians and reviewers. "It raises biography to the level of literature," a New York Times reviewer wrote. "Mr. Nevins possesses a valuable combination of gifts. He is careful, accurate, a tireless researcher. He has a style for which his years of newspaper work must be given some of the credit. He has in this book a warmth and at times a poetic quality which were missing in some of his more formal writing."

In 1928 Mr. Nevins became an assistant professor of history at Columbia. His career in journalism ended in 1931, when he was appointed DeWitt Clinton Professor of History at the university, where he remained until his retirement in 1958.

"Grover Cleveland: A Study in Courage," won Mr. Nevins a Pulitzer Prize in 1933, and his biography "Hamilton Fish: The Inner Story of the Grant Administration," won his second Pulitzer in 1937.

STUDY OF ROCKEFELLER

In 1940 he set out on two projects that were to reflect the central themes of his historical approach. The first was the publication of "John D. Rockefeller: The Heroic Age of American Enterprise" (later revised and published in 1953 as "A Study of John D.

Rockefeller, Industrialist and Philanthropist"). The second was his announcement that he would undertake the writing of a history of the United States from 1850 through the Civil War, a project he expected to occupy him the rest of his life.

The history, with the overall title "Ordeal of the Union," was to consist of eight volumes. The first two, published in 1947, won for Mr. Nevins the $10,000 Scribner's Centenary Prize and the prestigious Bancroft Prize for history.

Other volumes appeared over the years, and the last two in the series are scheduled by Scribner's for publication this year.

The first two volumes, supplemented by two subtitled "The Emergence of Lincoln" in 1950, constituted a sweeping chronicle of the lean years in American history after the Mexican War, when, as Mr. Nevins noted, mediocre men in the White House allowed unbridled sectionalism to carry the country to that point in 1861 when "for Americans, as for many others throughout history, war was easier than wisdom and courage."

NEW APPROACH URGED

In his other books, Mr. Nevins turned squarely to a historical theory to which he had only alluded in his study of John D. Rockefeller. The theory was that it was now time for American historians to re-examine the precepts of history advanced by Prof. Charles A. Beard in his influential "Economic Interpretation of the Constitution," published in 1913. Professor Beard had said that political thought in America had been dictated by the economic self-interest of the Founding Fathers, rather than by reference to abstract political considerations.

Professor Nevins said that American historians should stop apologizing for America's devotion to economic self-interest and start giving due credit and even tribute to industrial giants such as Rockefeller, McCormick, Carnegie and Ford—men who had prepared the country "none too soon and none too fast" for the trials America faced in World Wars I and II.

The Nevins thesis was calmly accepted, except by some of the younger, muckraking historians of the period. There was little of the sort of bitter name-calling that had marked publication of the Beard book. Not unexpectedly, the most violent attack on Mr. Nevins came from the Soviet newspaper Izvestia, which accused him of "groveling before Wall Street magnates."

It was an accusation silly on its face. Mr. Nevins, a liberally-oriented historian, was anything but a servant of financial interests. He possessed, however, an integrity respected by corporation executives as well as his fellow historians. Thus he was able to gain unprecedented access to the records of the Ford Motor Company for a three-volume history, "Ford," written in collaboration with Frank E. Hill and published between 1954 and 1963. The work rose sharply above the realm of corporate puffery, and showed Ford warts and all.

INDEPENDENCE STRESSED

A friend recalled in 1970 that while Mr. Nevins was working on the Ford trilogy, which the company had commissioned from Columbia, "Allan was so intent on demonstrating that he couldn't be 'bought' by Ford that year after year, when it came time to get a new car, he'd purchase a Chevrolet."

Mr. Nevins, called by Alfred A. Knopf, the publisher, "the most industrious and hard-working man of my acquaintance," wrote more than 50 books, only a few of them in collaboration, and hundreds of articles. He also edited at least 75 books and wrote hundreds of essays and book reviews, notably for the Saturday Review.

In 1965, Mr. Nevins's friends were astounded to learn that he had donated $500,000 to Columbia for a chair in economic history. During all his years there, he had never earned more than $11,500 annually. He was able to make the gift because he lived frugally, and put away in investments the income from his books and articles. The gift was anonymous, but Mr. Nevins later reluctantly agreed to Columbia's wishes that the chair be named for him, and the secret was out.

Mr. Nevins's singular devotion to Columbia, which an old friend recently characterized as "a love affair, the grand passion of his professional life," prompted him to arrange, with the aid of his fellow historian Henry Steele Commager, a $2-million bequest to the university.

The money, left by Frederic Bancroft, a historian and former librarian of the Department of State, went to Columbia instead of any one of several other universities Mr. Bancroft had considered because Professors Nevins and Commager "worked on the old man," as Mr. Nevins said, over a period of years.

"He finally did die, and we found that the two millions had been left to Columbia for the advancement of historical studies," Mr. Nevins said. "I had some ideas about how to use two millions, and one was in instituting our oral history office there."

YEARS IN SHAPING

The idea for what is now known as the Oral History Research Office spent many years brewing in Mr. Nevins's mind. In his newspaper days he had met many prominent people whose stories he knew would die with them unless they were recorded. He also knew that such important historical research tools as letters and confidential memos, readily available to the historian in the past, were being replaced in the modern world by telephone conversations "as ephemeral and irrevocable as breath itself."

The oral history collection, considered one of the most widely emulated of Columbia's innovations, was begun in 1948, with Mr. Nevins as the interviewer of important persons, and his graduate students taking notes. Later the project was expanded with the use of tape recorders, from which direct transcripts could be made. As of Jan. 1, 1971, the collection consisted of more than 326,000 pages of transcript of conversations with more than 2,500 witnesses to history.

Louis M. Starr, who is now director of the Oral History Research Office, and who studied under Mr. Nevins, recalled recently that "in the classroom, Allan, though obviously the most knowledgeable of men, was not a fiery, spellbinding lecturer." But, said Dr. Starr:

"When the dread day came for one's 'orals,' or again for defending one's dissertation, Allan Nevins became a lion at the side of the defendant. Colleagues grumbled that he defended his students' work as if he had written it himself—which, I fancy, was sometimes not far from the case. He had never bothered to acquire a Ph.D himself, but if you were one of his Ph.D candidates, you were a friend for life, and anyone against you was a pedant who deserved to be put down."

Bruce Catton, senior editor American heritage magazine, yesterday called Mr. Nevins "one of the very greatest historians we have ever had."

"Allan had the idea that history should be interesting as well as solidly researched," Mr. Catton said. "He wanted to make history a living, breathing record, and he succeeded in bringing history alive in this country, presenting it to readers as an intriguing story and not just something to improve their minds. He was one of the guiding forces behind founding of American Heritage." (At his death, Mr. Nevins was chairman of the magazine's advisory board.)

"His contribution to historiography was immense," Dr. Commager said. "Allan was the most productive, and in many ways the most creative, of modern historians, and he was an inspiration to other historians, especially the younger ones. He probably turned out more qualified doctoral candidates than anyone else, and his work will live on in his former students in every state."

VIGOR AND HUMOR

Mr. Nevins was a slight man 5 feet 8 inches tall, but he was vigorous well into his 70's, and he liked to take his colleagues on brisk walks that left them panting and him brimming with energy. His nose was prominent, a fact that led him to quip, after a toast had been proposed to him as "our own profile in courage," that he had "more profile than courage." His sense of humor also prompted him to suggest that his series "Ordeal of the Union" would be the perfect wedding gift.

Although he had to retire from Columbia in 1958, when he reached the mandatory retirement age of 68, Mr. Nevins did not slacken his writing and teaching pace. He became senior research associate of the Huntington Library in San Marino, Calif., from which he retired 18 months ago. In 1964, for an unprecedented second time, he held the chair of Harmsworth Professor of American History at Oxford University.

While serving as chairman of the Civil War Centennial Commission from 1961 to 1966, Mr Nevins edited the 16-volume "Civil War Impact" series. He was president of the American Academy of Arts and Letters from 1966 to 1968.

Mr. Nevins had been married since 1916 to the former Mary Fleming Richardson, who survives. He is also survived by two daughters, Mrs. John Loftis of Portola Valley, Calif., and Mrs. William Mayer of New York; two sisters, Mrs. Lewis Omer of Carthage, Ill., and Mrs. Edgar Wentworth of Asheville, N.C.; a brother, Gen. Arthur S. Nevins, U.S.A., retired, of Gettysburg, Pa.; and six grandchildren.

A memorial service will be held next Friday in Pasadena, Calif., at the Throop Memorial Church.

NEW YORK STATE LEGISLATURE RESOLUTION ON SOVIET ANTI-SEMITISM

Mr. JAVITS. Mr. President. The legislature of the State of New York, representing almost a tenth of the population of our Nation, has adopted a resolution indicating its concern with manifestations in the Soviet Union against its Jewish population and memorializing the Congress to endeavor to persuade the Soviets to discontinue these practices and permit emigration of Soviet Jews.

This resolution is evidence of the concern which pervades the Nation with respect to this issue, a concern which is in the finest historic tradition of our country, dating back to the early years of the Republic.

I ask unanimous consent to have printed in the RECORD the resolution of the legislature of the State of New York.

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

CONCURRENT RESOLUTION OF THE LEGISLATURE OF THE STATE OF NEW YORK MEMORIALIZING CONGRESS TO USE ALL MEANS TO PERSUADE THE SOVIET UNION TO CHANGE ITS OPPRESSIVE POLICIES TOWARDS SOVIET JEWRY

Whereas, persons of Jewish faith residing in the Soviet Union have long suffered persecution, oppression, and discrimination in their daily lives at the hands of the government of that country; and

Whereas, the authorities in the Soviet Union have suppressed, discouraged and prevented the free expression of Jewish education and culture, and have deprived Soviet

Jews of the opportunity of worshiping freely and in accordance with the traditions of their age-old faith; and

Whereas, the Soviet Union has consistently denied the right of Jewish people to emigrate from that country to Israel, the beloved country of their forefathers, or to any country of their choosing, and in fact the Soviet Union has continuously prohibited and blocked each and every attempt made by Jewish persons to so emigrate; and

Whereas, recently eleven persons, nine of whom were Jewish, were convicted and sentenced to extremely harsh punishment for allegedly making plans to hijack a Soviet airliner in an effort to emigrate from the Soviet Union;

Resolved (if the Assembly concur), that the Legislature of the State of New York respectfully, yet firmly, urge and memorialize the Ninety-Second Congress of the United States to manifest our country's position as the guardian of the traditions of liberty and justice for all, the dignity of all mankind, and the freedom of worship, by taking such affirmative action as will tend to persuade the Soviet Union to revise its official policies in the following manner:

(a) to terminate its practice of denying Soviet Jewry of the opportunity of worshiping in a free manner and in accordance with age-old Jewish traditions;

(b) to permit Jewish persons to emigrate freely from the Soviet Union to Israel or to any country of their choice without restriction or limitation; and

(c) to reexamine and reconsider the harshness of the penalties recently imposed on the eleven persons sentenced in a Leningrad court for allegedly making plans to hijack a Soviet airliner, and to consider the possibility of permitting such persons to emigrate to Israel;

and be it further

Resolved (if the Assembly concur), that a copy of this resolution be spread upon the journal, and that the Secretary of the Senate transmit properly authenticated copies of this resolution to the President of the Senate of the United States, to the Speaker of the House of Representatives, to the two United States Senators from New York State, and to each member of the House of Representatives from New York State.

By order of the Senate,

ALBERT J. ABRAMS,
Secretary.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. CHURCH). Under the previous order, there will now be a period for the transaction of routine morning business, not to exceed 45 minutes, with statements therein limited to 3 minutes.

The Senator from Vermont (Mr. AIKEN) is recognized for 3 minutes.

THE INDOCHINA OIL SITUATION

Mr. AIKEN. Mr. President, over the past several weeks, the Committee on Foreign Relations has received close to 10,000 inquiries in response to a letter-writing campaign sponsored by Another Mother for Peace, a west coast-based antiwar group which has raised the question of offshore oil concessions in connection with our involvement in Southeast Asia, particularly Vietnam.

I understand that many Members of Congress have received similar inquiries, as well as background information on the Southeast Asia oil issue.

Those who have received such material also know that the purpose of the letter-writing campaign is to have the Foreign Relations Committee hold hearings on this issue.

In response to the cards and letters sent to the committee, the chairman wrote to the Department of State on January 28 and February 12.

The purpose of these letters was to obtain basic information on South Vietnam's offshore oil situation, including what American oil companies are doing out there and what help, if any, our Government had given or is giving to assist South Vietnam in determining its offshore oil potential.

Similar information was requested on Thailand and Cambodia.

The State Department has replied to both letters and I ask unanimous consent that this exchange of correspondence be printed in the RECORD at the conclusion of my remarks; and I think it would also be helpful to have printed in the RECORD a recent Wall Street Journal article entitled, "World's Major Oil Firms Jam Singapore as Drilling Fever Spreads in Southeast Asia," and the January 1971, issue of "Economic Report" published by the Vietnam Council on Foreign Relations.

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

(See exhibit 1.)

Mr. AIKEN. Mr. President, I wish to draw my colleagues' attention to the lead article in this report, which carries the headline, "Green Light for Oil Men."

Mr. President, I think a comparison between these articles and the State Department's replies is worth noting.

Reading over these replies, one is led to believe that Vietnam's offshore oil prospects are less than encouraging and little interest has been expressed in them.

On the other hand, Vietnam Foreign Relations Council's economic report, which is a quasi-official government publication, states:

Somewhere in the continental shelf off South Vietnams shore lies hidden one of the most spectacular petroleum deposits in the world.

The report goes to say:

Expectations already running high have been strengthened by the intense interest of well-known international oil concerns.

EXHIBIT 1

DEPARTMENT OF STATE,
Washington, D.C., February 27, 1971.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I have your letter of February 12 requesting further information on offshore oil activities in the Viet-Nam area. The answers to your specific questions are as follows:

1. There are no oil refineries in Viet-Nam. Therefore, the oil distributing companies there—Shell, Caltex, and Esso—supply the Viet-Nam market from their refineries in the Persian Gulf and Singapore, primarily.

2. An "offshore concession zone" is an area in which concessions have been or will be granted. The "marine survey zone" indicated in Enclosure No. 2 to my letter of February 10 was established in 1969 by the Vietnamese Government for a single offshore seismic survey which was completed in the same year by the Ray Geophysical Division of Mandrel Industries. There would have been no particular reason to divide the zone into blocks since the work was done by one company over a two month period in 1969. Other offshore surface surveys have been conducted from time to time by the United Nations Economic Commission for Asia and the Far East (ECAFE) through its Committee for Coordination of Joint Prospecting for Mineral Resources in Asia Offshore Areas (established in 1966). Since these were international surveys with full cooperation from the countries in the area it is not likely that national marine survey zones established by Viet-Nam or the other countries were involved. We know of no survey being conducted now in the Viet-Nam offshore areas.

3. Of the two American oil companies with offices in Viet-Nam, Caltex and Esso, only the latter has expressed an interest in the country's offshore oil potential to the Department of State.

4. The Government of Viet-Nam has not issued any call for bids on offshore exploration rights and, therefore, is not likely to be receiving bids this month. To our knowledge there has been no official announcement on this matter nor are we aware of a timetable for opening the offshore zone to bids.

5. The Vietnamese petroleum law was drafted by the Ministry of Economy, submitted to the National Assembly, debated, amended and passed by the Assembly without any involvement by the United States Government. Nor was any technical assistance provided by our Government.

6. Neither the U.S. Geological Survey nor the U.S. Navy has done any oceanographic research work in the offshore areas of South Viet-Nam that would be useful in exploring for oil.

7. Thailand and Cambodia have held discussions concerning their conflicting offshore claims. These negotiations are still in progress.

8. *Thailand*

(A) Provisional concessions for offshore oil exploration have been granted to the following American firms: Union, Amoco, Gulf, Conoco, and Tenneco. Marathon Oil Company and Phillips Petroleum now share an interest in the concession originally obtained by Tenneco.

(B) None of these companies have received AID investment guarantees. Amoco, Gulf, Tenneco and Phillips have applied for investment guarantees and received a registration letter but have not provided a formal detailed application. None have received Thai Government approval which is required for guarantees.

(C) Thailand's "Consideration Bases in Applying for Petroleum Exploration and/or Production" do not indicate any specific fee for granting the concessions. Although it is possible that some type of "bonus" may have been paid to the Thai Government at the time the concession was awarded, we have no information on what amount, if any, might have been paid.

(D) The petroleum companies are operating in the Gulf of Thailand under provisional agreements pending final enactment of petroleum legislation. The terms are embodied in a document attached to the agreements entitled *Consideration Bases in Applying for Petroleum and/or Production*. This document is without legislative foundation and therefore does not contain the safeguards necessary for the firms to commit investment funds required for exploration.

Thailand's Parliament passed the Petroleum Act and Petroleum Income Tax Act on February 24, 1971; this legislation now awaits the formality of the King's signature. Some of its main features are summarized below.

Concessions—The initial term for concession awarded is not to exceed 8 years,

with an extension of 4 years possible. Petroleum production rights are not to exceed 30 years, with one extension not to exceed 10 years allowable.

Petroleum Prices—The selling price of crude oil for domestic consumption is geared to the price of imported crude oil delivered to domestic refineries and the price of natural gas for domestic consumption is not to exceed the average export price.

Royalty—Royalty is normally to be paid in cash at the rate of 12½ percent of the total value of petroleum sold or disposed of. It may be paid in kind if so required by the Minister of National Development in which case it is to be assessed at the rate equal to one-seventh of the total value of petroleum sold or disposed of.

Tax Exemption—The act provides for exemption from taxes imposed by the central, provincial and local government except for those specifically cited in the Act, such as royalties and the Petroleum Income Tax.

Petroleum Income Tax—The income tax rate is to be established by Royal Decree at not less than 50 percent nor more than 60 percent of the net profit derived from petroleum operations. Under the Act, the Minister of Finance is empowered to accord a reduction in the price used for calculating profits of not exceeding 7 percent of the posted price for a period of not to exceed 9 years from the date a company starts production.

(E) Oil is not now being produced since drilling has not yet been started. According to petroleum geologists, the seismic soundings and other preliminary exploratory work done so far have produced encouraging results, and there are good expectations that oil fields may exist in the Gulf of Thailand.

8. *Cambodia*

(A) The Government of Cambodia granted a concession November 22, 1969 to the French petroleum company ELF/ERAP covering the entire offshore oil area in Cambodia. No American company holds any concession in Cambodia.

(B) Thus, no AID investment guarantees are involved.

(C) The Department has no information on precisely what, if any, earnings the Cambodian Government has received from the concession. It has announced, however, authorization for ELF/ERAP to invest a total of $2.5 million during the first three years of validity of the exploration license, and $1.5 million a year in the fourth and fifth years. Tax rates are indicated below.

(D) According to published information, the Cambodian exploration license is for five years, renewable once. Any production license would be for an additional 30 years. ELF/ERAP is required to return to the Government after 18 months areas amounting to more than one-half the concession, and to commence drilling within two years. The concessionaire enjoys a 30-year guarantee against expropriation, the right to transfer profits up to 20 percent on the capital invested, and a right to repatriate capital, in case of disinvestment, at a rate of 20 percent per year. Surface rental taxes on the concession are fixed at $30 a square kilometer per year for the first five years, $80 for the four years following, $160 for the 11th through 20th years, $350 for the 21st through 30th years, and $400 for the 31st through 40th years. Royalties amount to 12.5 percent of production for the first 5 million tons per year, and 15 percent on any additional production. Whenever total taxable profits exceed total royalties, the difference between the two is subject to direct taxes of 50 percent. In case petroleum is discovered the Government has the option to participate up to the extent of 20 percent.

(E) No oil is being produced and so far as we are aware no drilling has yet taken place in Cambodian waters. We are not in a position to evaluate the prospects thoroughly, but apparently the Gulf of Thailand is generally considered to be a promising area for oil exploration.

9. We would not speculate at this time about the petroleum potential of the combined Gulf of Siam, South China Sea and Java Sea area since it is generally unexplored and unproven.

If I can be of further assistance, please do not hesitate to call on me.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

FEBRUARY 12, 1971.

Hon. DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations, Department of State, Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter of February 10 in response to my inquiry about South Vietnam's offshore oil prospects. I should appreciate clarification of some of the Department's answers to the questions which I raised. In addition, I think your letter raises some new questions, including several relating to Cambodia's and Thailand's offshore oil activities. I hope you will be able to provide me with answers to the following questions at your earliest convenience.

1. Who are South Vietnam's major oil suppliers? Does South Vietnam import oil from any of its neighbors in Southeast Asia? Are there any prospects for doing so?

2. What is the difference between an offshore concession zone" and a "marine survey zone?" Has South Vietnam divided its "marine survey zone" into blocks for bidding and/or concession purposes?

a. When did South Vietnam create its "marine survey zone?"

b. How large an area does the zone encompass?

c. What kind of survey work has been done so far? Who did the survey work?

d. Is the zone being surveyed at the present? If so, who is doing it?

3. How many American oil companies have offices in South Vietnam? Have any of these companies expressed an interest in South Vietnam's offshore oil potential to the Department?

4. Does the Government of South Vietnam plan to take bids later this month on exploration rights to its marine survey zone? Has there been any official announcement on this matter? What is South Vietnam's timetable for opening up its offshore zone to bids?

5. Did the United States Government assist the Government of South Vietnam in any way in either the drafting or writing of its petroleum exploration and exploitation law? Did the U.S. provide any type of background technical assistance?

6. Has the U.S. Geological Survey or the U.S. Navy done any oceanographic research work in South Vietnam's marine survey zone that would be useful in exploring for oil? If so, please indicate the nature of the work.

7. Are there or have there been negotiations among the countries bordering the Gulf of Siam aimed at resolving their conflicting offshore claims? If so, what results have these negotiations produced?

8. Please provide the following information concerning the offshore oil activities of Thailand and Cambodia:

a. Have concessions been let, either for exploration or exploitation? If so, do any American companies hold concessions? Which companies?

b. Have any of these companies either applied for or received AID investment guarantees?

c. How much have the two countries separately earned from the concessions awarded.

d. What are the terms of the concessions?

e. Is oil being produced? If so, how much? If not, what are the prospects?

9. I would appreciate the Department's comment on various reports to the effect that the combined Gulf of Siam, South China Sea and Java Sea area may rival the Middle East's petroleum potential. Is there any evidence to support such a claim?

As before, I am hopeful that you will provide this information on an unclassified basis.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

DEPARTMENT OF STATE,
Washington, D.C., February 10, 1971.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I have your letter of January 28 about South Vietnam's offshore oil prospects. All of Vietnam's petoleum is imported. It is not certain at this time whether there are any petroleum deposits in the country or in offshore areas. No concessions have been granted to any oil companies in Vietnam.

The Vietnamese Government presented a petroleum exploration and exploitation law to the Vietnamese National Assembly in 1969. The law was debated, amended, and passed by the Assembly in late 1970 and promulgated by President Thieu on December 1. An unofficial translation is attached (Enclosure 1).

The answers to your specific questions are as follows:

1. South Viet-Nam satisfies its current petroleum requirements solely through imports which have been at the rate of $30 million annually in recent years. It produces no petroleum in-country or offshore.

2. It is difficult to say when South Viet-Nam's offshore oil prospects were first recognized but it certainly was some years ago. The drain on that country's foreign exchange caused by petroleum imports has increased steadily, thus making the need for a domestic source more critical. Moreover, Viet-Nam has watched its neighbors in the area stake out concession zones and grant concessions in the Gulf of Siam/South China Sea area for several years now. The Vietnamese Government undertook preliminary surveys including some under United Nations' auspices. It prepared and submitted a draft petroleum law to the National Assembly in 1969. The promulgation of that law in December 1970 served to attract the interest of various international oil companies since it established for the first time the terms under which oil companies would operate in exploring and exploiting possible offshore petroleum deposits.

3. The Republic of Viet-Nam has not as yet defined an offshore concession zone. The boundaries of a marine survey zone established on an ad hoc basis in 1969 are indicated on an attached map (Enclosure 2).

4. The Republic of Viet-Nam is not a party to the 1958 Geneva Convention on the Continental Shelf. The marine survey zone indicated on the above-mentioned map suggests, however, that the Vietnamese are following the convention's definition of the continental shelf in the area surveyed.

5. As indicated above South Viet-Nam has not yet defined a concession zone. The attached State Department map on a U.S. Naval oceanographic base (Enclosure 3) portraying national concession boundaries in the Gulf of Siam indicates that concession boundaries of other countries in the area appear already to overlap. The overlaps will be increased if a future South Viet-Nam concession zone takes the same pattern as the marine survey zone that the Vietnamese Government has established.

6. The Republic of Viet-Nam has not

granted off-shore concessions nor has it offered any for bid. There is as yet no basis upon which to estimate how much it could earn from concessions.

7. Since no offshore oil has been discovered, it is not possible to estimate the country's offshore oil potential. The value of current petroleum imports is $30 million annually.

8. The United States Government has not provided South Viet-Nam any technical assistance relating to offshore oil exploration. Nor has the U.S. Geological Survey or the U.S. Navy performed any surveys for offshore oil deposits on the continental shelf of Viet-Nam.

If I can be of any further assistance in this matter please call on me.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

JANUARY 28, 1971.

Hon. DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations, Department of State, Washington, D.C.

DEAR MR. SECRETARY: During the past few weeks, the Foreign Relations Committee has received a number of inquiries concerning South Vietnam's offshore oil prospects. I would appreciate the Department providing the Committee with whatever information it may have on this matter, including answers to the following questions.

1. How does South Vietnam satisfy its current petroleum requirements? Does it import all of it? Does it produce any locally?

2. When were South Vietnam's offshore oil prospects first recognized? By whom?

3. (a) Has South Vietnam defined an offshore concession zone? If so, where?

(b) Please provide a detailed map showing the entire zone.

(c) How many square miles does the entire zone cover?

(d) What is the greatest depth within this zone?

(e) How many miles is the most distant point from shore?

4. (a) Is South Vietnam a party to the 1958 Geneva Convention on the Continental Shelf?

(b) Has it adopted legislation on this subject? If so, does it comply with the 1958 convention?

5. Does South Vietnam's offshore concession zone conflict with similar zones established by neighboring countries? Have any of these countries contested the boundaries of South Vietnam's concession zone? If so, when?

6. (a) Has the South Vietnamese Government granted offshore concessions? If so, please indicate the date, number, type (exploratory or production) and the companies involved. Have concessions been announced for the future? If so, when?

(b) What are the terms of these concessions and how do they compare with those awarded by the U.S. Department of Interior?

(c) How much has the South Vietnamese Government earned from its offshore oil concessions? Are there any estimates as to how much South Vietnam may earn from future concessions?

7. What are the estimates for South Vietnam's offshore oil potential? What are the high and low estimates? How do these compare with current consumption in South Vietnam? How do these compare with known world reserves?

8. (a) Has the United States Government provided South Vietnam with any type of technical assistance related either to defining the offshore concession zone or to determining through geological and seismic surveys prospective oil deposits in it? If so, what were the total costs involved?

(b) Have any Geological Survey personnel performed surveys of offshore South Vietnam? If so, when was this work done, for what purpose, and at what cost?

(c) Has the Navy performed any surveys of offshore South Vietnam? If so, where was this work done, for what purpose, and at what cost?

(d) Are any of the above being performed now?

(e) If the United States Government has been involved either directly or indirectly in helping South Vietnam determine its offshore oil prospects, what happened to the information collected? Was it turned over to the South Vietnamese? Was any of it made available to private firms?

I hope this information can be provided on an unclassified basis.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

[From the Wall Street Journal, Sept. 22, 1970]

WORLD'S MAJOR OIL FIRMS JAM SINGAPORE AS DRILLING FEVER SPREADS IN SOUTHEAST ASIA

(By William D. Hartley)

SINGAPORE.—The motley collection of freighters, tankers and passenger ships that have used this port of call for decades are finding themselves being pushed aside these days by a strange-looking "fleet" new to Southeast Asian waters.

"There's one of the new drilling rigs," points out an enthusiastic local businessman as he looks over busy Collyer Quay into the congested harbor. And there are some workboats and pipe-laying barges." On the street, newly arrived roustabouts, roughnecks and tool pushers mingle with crowds of souvenir hawkers as they wait to join the rigs. In the hotels and office buildings of this island city-state, the distinctive twang of a Southwestern U.S. accent is heard more and more.

Southeast Asia is gripped in the excitement of oil fever and just about every international company with position in the petroleum business has rushed to Singapore, which most use as headquarters, to get in on the action. The tempo is increasing. Preliminary seismic work is mostly finished and exploration drilling rigs are moving in.

Working in the waters around this area are such giants as Standard Oil Co. (New Jersey), Mobil Oil Corp., Gulf Oil Corp., Royal Dutch-Shell Group, British Petroleum Co., and such government-controlled ventures as the Italian AGIP S.p.A., Japan Petroleum Development Corp. and the French Enterprise de Recherches et d'Activités Petrolières. Drillers and service companies here include Reading & Bates Offshore Drilling Co., Dresser Industries Inc., Hughes Tool Co. and Santa Fe International Corp. The count changes daily, but in midsummer there were about 150 oil-related concerns in Singapore, all fighting for office space and houses. A few others base in nearby nations.

POTENTIAL BOOM

So far, results from all this activity are skimpy, but as one observer remarks, "You don't see any discouraged-looking people at the Petroleum Club bar." Laughs one American oil man: "We have a boom condition, without a boom. But it surely is a potential boom."

Most interest is centered in Southeast Asia's shallow waters. About 15 exploration rigs are working offshore—at something like $25,000 a day for each—in such places as the Java Sea, South China Sea and Strait of Malacca. That is double the number of rigs of a year ago. By the end of this year, Singapore officials estimate, there will be about 25 rigs drilling.

Other rigs are working on land in the Indonesian islands of Sumatra and Java, and there is some long-standing production in Sumatra, Java and Borneo.

Hopes remain high and oil men expect to stay here many years. They promised a minimum exploration investment of $262 million to win Indonesian drilling blocks, but they expect to spend many times that before they are finished. One oil executive notes that in many areas of the world where he has drilled "before we got a nickel out we were in the soup in the neighborhood of a couple of hundred million dollars." Chase Manhattan Bank estimates that $6 million will be spent in the Asian area on exploration and production between now and 1980, if oil is found.

The oil men are working in one of the biggest areas they yet have tackled. It is probably the largest contiguous continental shelf in the world, and one of the last major ones to be explored. Geologists say the area is "young"; that is, the sediment in which oil is formed flowed out from Asia's rivers after the basic rock crust was created. Anywhere from 600,000 to 900,000 square miles of shelf—geologists still are a bit unsure of the extent—are open for exploration. In the biggest area, the South China Sea from South Vietnam across to Borneo, the waters aren't deeper than 600 feet.

INTRIGUING AREA

The area intriguing the companies swings thousands of miles in a huge arc from the waters of the Bay of Bengal off Burma, through the Malay Peninsula to the Gulf of Siam and into the South China Sea. It extends off Borneo and into the Makassar Strait that divides that island from the Celebes. South, it runs through the Malacca Strait between Sumatra and the Malay Peninsula to the Java Sea, the Flores Sea, the Banda Sea and into the Coral Sea between New Guinea and Australia.

Nobody has even the foggiest idea of how much oil, if any, is there. One enthusiast says, "The potential is as large if not larger than the Middle East." But another shrugs, "Well, it isn't going to be any Kuwait."

Petroleum executives become tight-lipped on possible reserves and they scoff at any figures presented. Oil is found only by drilling and drilling is just getting under way, they contend.

Offshore explorations seem the most promising About 16% of the world's oil production comes at present from offshore operations, but this, by one estimate, will rise to 33% by 1980.

As a world oil supplier, Asia still ranks as a featherweight. Its total reserves in onshore and offshore deposits (excluding the area generally included in the Mideast) are currently put at only 13 billion barrels, less than a 10th of the known reserves in Saudi Arabia and a scant 2.4% of the world's known oils.

FOUR REPORTED STRIKES

To date, there have been, only four reported offshore strikes. A group headed by Atlantic Richfield Co. has brought in eight discovery wells in the Java Sea and it will start Indonesia's first offshore outpost next year.

Royal Dutch-Shell has discovered a new deposit north of its long-standing production fields off the coast of Brunei, a tiny British protectorate on the west coast of Borneo. That Shell discovery, in turn, has spurred a flurry of excitement in the Philippines, so far out of the picture, because the geology of the area may be an extension of one of the Philippine islands.

Union Oil Co. also has hit in the Indonesian area. It recently disclosed new tests that indicate it may have come up with a major find off the east coast of Borneo.

A group headed by Natemas Co. has a discovery off Sumatra.

"I don't doubt that there is going to be oil out here," remarks the local vice president of

one of major U.S. oil concerns. "The real questions are: How much? and Is it commercial?" If the oil is found in waters several hundred feet deep, drillers say, it may not be worth while to pump it up.

Another problem is that even if reserves are large, they might be spread thinly over wide areas, says J. K. Blake, a consulting geologist, making volume production difficult. Areas like Kuwait, he notes, have high production and thus lower costs because the petroleum is concentrated in large deposits.

The search is frustrating and often dangerous. Drilling rigs continually are hitting gas pockets, and one Jersey Standard rig was damaged off Malaysia early this year when one such pocket exploded. "We have found hydrocarbons in every hole," sighs the local head of a major American driller. "It is just a matter of locating the reservoirs."

BUZZING WITH RUMORS

Singapore constantly buzzes with rumors that this driller or that oil company has hit "a big one." One persistent rumor is that Jersey Standard has struck oil in its 28,000-square-mile concession off the east coast of Malaysia. Jersey Standard won't talk about it and other oil executives speculate that one reason, if the report is true, is that the company's block abuts the last area of the South China Sea still not handed out as concessions.

The area is South Vietnam's continental waters. The Vietnamese have divided the area into 18 blocks, which are expected to be parceled out soon, probably mostly to Americans. News of a nearby strike, the argument goes, might boost the terms.

Further, oil companies remain quiet to maintain a bargaining advantage. The block sizes are so immense—just one of Gulf's many blocks here is about the size of the state of Oklahoma—that they could tax the resources of even a Jersey Standard or Mobil to fully explore. Partners may be needed, executives say, and the less they know about what has been found so far, the better. Information could be a valuable trading point in exchange for participation.

Southeast Asia holds many advantages for oil companies. Most important, they say, is that the oil here is of low sulphur content. This is of great value in reducing air pollution. Middle Eastern oil has as much as 4% to 5% sulphur, says an oil man in Japan, where pollution from such oil is severe. When it is burned, it clogs the air with sulphur compounds.

Indonesian offshore production so far has "almost no sulphur content," notes a geologist, and the new offshore finds are also low in their sulphur count.

The Asian oil, too, is close to Japan, one of the world's fastest growing oil markets. Currently, Japan imports about 90% of its crude oil supplies and nearly all of this comes from the Middle East. Japanese oil users long have expressed concern about such concentration, particularly because of continuing troubles in the Mideast.

Oil consumption also is bound to rise sharply throughout the entire Asian region in coming years. The Chase Manhattan study of world energy growth expects Asian consumption to gain to slightly above five billion barrels a year by 1980 from a bit over two billion barrels last year.

It has been known for centuries that Southeast Asia harbors oil. Early explorers used crude seeping from the ground to caulk their wooden ships. In the Eighth Century, Indonesians used "fire balls" of crude petroleum in warfare. The Dutch, the colonial power in Indonesia, began developing production in the 19th Century.

Last year, Indonesia produced at the rate of 716,000 barrels a day and it expects to get to about one million barrels daily by the end of this year. It exports three-fourths of its output.

Production comes from onshore fields. They are run by a joint venture of Standard Oil Co. of California and Texaco Inc., or Caltex, and an old venture of Jersey Standard and Mobil named Standard Vacuum Co., which has been in Sumatra since 1912. There also is small production by a Japanese firm, North Sumatra Oil Development Corp. The Indonesians in a burst of anticolonialist sentiment in 1965 bought Royal Dutch Shell's facilities, but late last year Royal Dutch Shell returned when the government agreed to let it explore a large area in Borneo.

UNIQUE CONTRACTS

Indonesia has negotiated a set of unique contracts with the oil companies. Instead of giving them concessions—a term some oil men even refuse to use, so loaded with an aura of "exploitation" do the Indonesians consider it—the country and companies have "production-sharing contracts."

When oil eventually is produced, the oil companies may retain up to 40% of output to cover costs; the remainder is divided 65% to Pertamina, the Indonesian state-owned oil concern, and 35% to the producer, explains Robert Petty, a vice president of Gulf Oil. Royalties aren't paid and Pertamina takes the foreign concern's taxes out of its share.

One result of this will be to make the government-owned company a major oil exporter in coming years. And oil men generally like the clear-cut terms, as compared with the complicated royalty and tax agreements negotiated in Arab countries. "It sure obviates a lot of problems," says one financial man here.

[From the Vietnam Economic Report, January 1971]

GREEN LIGHT FOR OIL MEN

(By Our Economic Correspondent)

The face of South East Asia may change beyond recognition within this decade and the Viet Nam war may take a dramatic turn, if the South Vietnamese oil dream comes true. Somewhere in the continental shelf off the South Vietnamese shore lies hidden one of the most spectacular petroleum deposits in the world.

This at least has become common belief among Vietnamese geologists, mining experts, and government authorities. Expectations already running high have been strengthened by the intense interest of well-known international oil concerns. According to authoritative official sources, about fifteen foreign firms have to date approached the South Vietnamese Government to apply for reconnaissance permit. Reportedly one major company highly experienced in offshore exploration has even offered the Vietnamese unusually advantageous conditions such as bearing all the cost of immediate training of South Vietnamese technicians regardless of whether oil will ultimately be found or not.

As early as in June 1969, a petroleum bill was introduced by the Government of the Republic of Vietnam to the National Assembly, and despite their preoccupation with other political and economic matters of vital interest to the nation, both Houses have been since then working intensely on the bill. Their many sessions of studies, hearings and debates culminated last November in an amended final version which allows President Nguyen Van Thieu to promulgate on December 1, 1970 the (Law No. 011/70 on the Exploration and Exploitation of Petroleum and related conditions concerning taxes, dues, and exchange.)

The Law, also known officially as (011/70 Law on Petroleum), has 66 articles divided into six chapters to cover all phases of petroleum operations from preliminary reconnaissance to export and refining. Following is a summary of the chapters and their provisions:

CHAPTER I: General Provisions (Article 1 to Article 8);

CHAPTER II: Preliminary Reconnaissance Permit and Exploration Concession (Article 9 to Article 14);

CHAPTER III: Exploitation Concession (Article 15 to Article 22);

CHAPTER IV: Provisions concerning dues, taxes, and exchange (Article 23 to Article 38).

POLICY AND PROCEDURES

PETROLEUM LAW PROMULGATED

Law No. 011/70 on the Exploration and Exploitation of Petroleum and Conditions Related to Taxes, Fees and Foreign Exchange, was promulgated by President Nguyen Van Thieu on December 1, 1970.

The Petroleum Bill introduced by the Executive to the National Assembly in June last year was passed by both the Lower House and the Senate last month with some significant amendments.

Subject Law also known officially as the 011/70 Petroleum Law, deals primarily with offshore exploration and exploitation in the continental shelf off South Vietnam. Continental shelf is defined by the Law as the submarine plain not beyond 200 meters deep or at depth (beyond 200 meters) that can be explored for natural resources with technical means.

Already a great deal of interest has been recorded among international oil firms. Top government sources disclosed recently that about fifteen foreign companies had tentatively applied for Vietnamese petroleum rights. According to one Senator who has been very active in promoting the Petroleum Law, a British firm has conducted a preliminary survey around the Con Son Island and its findings indicate sizeable petroleum deposits in that area.

With the obvious objective of attracting foreign capital, the 011/70 Petroleum Law provides foreign investors with liberal conditions with respect to the repatriation of profit and capital, foreign exchange convertibility and the export of crude oil.

In terms of fiscal obligations and royalty to be paid by the concessionaire the Vietnamese Petroleum Law appears to be as competitive as that of any other country in the region.

INVESTMENT BILL INTRODUCED

On December 2, 1970 President Nguyen Van Thieu introduced the Investment Bill to the National Assembly. This Bill if passed is to supersede the currently in force Decree Law No. 2/63 on Investment in Vietnam promulgated in February 1963.

The newly-introduced Bill is oriented towards two main objectives:

a. To lay the necessary ground work for an immediate economic development drive as soon as the hostilites end;

b. To induce foreign entrepreneurs to invest in Vietnam.

The existing Decree Law No. 2/63 is considered by some as not attractive enough to compete for foreign capital with other capital-scarce countries in the region. In addition to liberal clauses allowing unlimited repatriation of profit and capital, the new Bill also provides for unqualified guaranty against nationalization which is a matter of primary concern for foreign investors.

Preliminary discussions of the Bill's draft version have been going on for more than a year among business circles, government agencies and members of the Legislative. It is therefore expected that the Bill would be passed by the National Assembly in the not too distant future.

(NOTE.—An analytical assessment of the newly introduced investment bill will be given in the coming issue of *Vietnam Economic Report*.)

IMPORT UNDER FRENCH CREDIT PROGRAM

By Communique No. 281 dated December 9, 1970 the Military Economy has decided

that as a matter of principle no machinery and equipment which are currently eligible for U.S. aid financing may be approved for import under the French Assurance Credit Program. The reason is that foreign exchange available under this program is actually a loan from the French Government at an interest of 6.7 percent per year which must be refunded with government-owned foreign exchange. Furthermore, the government wants to fully take advantage of U.S. aid foreign exchange which is being generously released to finance import.

The following machinery and equipment however shall be authorized for import under the French loan system:

1. Machinery and equipment for industrial projects approved by the Ministry of Economy;

2. Spare parts for repair or assembly of farming tractors and other equipment of French origin presently in operation, in this case the end-user must furnish the following detailed information;

Date machinery and equipment were imported and date operations started (copy of original import license must be attached to application);

List of spare parts projected for import when original application for import concerning machinery and equipment was submitted;

The last time spare parts were imported (list of such spare parts):

If possible, names of suppliers of spare parts.

3. Spare parts or equipment of French standards which cannot be replaced by those of American standards if the value applied for does not exceed US $5,000;

4. Components for the assembly of Citroën and Renault automobiles;

5. Certain commodities required by the Vietnam Power Company (to be examined on a case-by-case basis).

EXEMPTION FROM ADVANCE DEPOSIT

By a decision of the Ministry of Economy dated November 23, 1970 advance deposit on import license applications shall be exempted on a temporary basis for the following cases:

1. Import of raw materials by industrial firms for their own use (not for commercial resale) with government-owned foreign exchange, inclusive of raw materials for pharmaceutical products.

2. Import of commodities for commercial resale or industrial use from U.S. supplies with government owned foreign exchange.

The above exemption took effect as of November 23, 1970. License applications submitted before that date are subject to advance deposit payment as usual.

Mr. MANSFIELD. Mr. President, once again the distinguished Senator from Vermont, the ranking member of the Committee on Foreign Relations, has raised a question before the Senate which I think is worthy of the most serious consideration.

I, too, have been receiving a number of communications from my State relative to the allegations being raised. I have received an answer from the Department of State along the lines the distinguished Senator has mentioned.

It is my understanding that there has been a certain amount of serious discussion in various oil journals, with certain American companies being named as interested in exploring off the western area of Southeast Asia, in the vicinity of the Gulf of Siam, and extending not only offshore but downshore and south as well toward the area of Indonesia where we know there are many offshore deposits that are under lease by the Indonesian Government to American and other oil companies. I would suggest, therefore, that this matter could be cleared up, so that when we write to our constituents we could give them the full true story, whatever it may be.

Mr. President, I yield to the distinguished Senator from Vermont.

Mr. AIKEN. Mr. President, that is the reason that I had the material printed in the RECORD, to show that instead of writing long letters to our constituents, we could Xerox the pages of the RECORD and send them to our constituents in that way.

Apparently South Vietnam is contemplating selling the concessions to American concerns primarily, whereas I understand that Cambodia has granted the total concession for their coast to a French company.

Of course, the whole thing is not entirely clear. We do know that there is great promise over there. It is anticipated that the oil which can be found on the Indochina coast would be of a much higher quality and contain much less sulfur than that which is found in many of the other oil-producing areas of the world.

Mr. MANSFIELD. Mr. President, I hope that the whole story is laid bare so that when our constituents write us they can be given the full story in reply.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, informed the Senate that, pursuant to the provisions of Public Law 90–264, the Speaker had appointed Mr. GRAY, Mr. BLATNIK, Mr. HOWARD, Mr. MCEWEN, Mr. SCHWENGEL, and Mr. ZION as members of the National Visitor Facilities Advisory Commission, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of Public Law 90–321, as amended, the Speaker had appointed Mrs. SULLIVAN, Mr. GONZALEZ, and Mr. WILLIAMS as members of the National Commission on Consumer Finance, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of Public Law 372, 84th Congress, the Speaker had appointed Mr. THOMPSON of New Jersey, Mr. MURPHY of New York, Mr. GUDE, and Mr. FISH as members of the Franklin Delano Roosevelt Memorial Commission, on the part of the House.

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

H.R. 4246. An act to extend until March 31, 1973, certain provisions of law relating to interest rates, mortgage credit controls, and cost-of-living stabilization; and

H.R. 5432. An act to provide an extension of the interest equalization tax, and for other purposes.

HOUSE BILLS REFERRED

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

H.R. 4246. An act to extend until March 31, 1973, certain provisions of law relating to interest rates, mortgage credit controls, and cost-of-living stabilization; to the Committee on Banking, Housing and Urban Affairs.

H.R. 5432. An act to provide an extension of the interest equalization tax, and for other purposes; to the Committee on Finance.

CONCERN OVER U.S. NEGOTIATIONS WITH ROLLS-ROYCE AND THE UNITED KINGDOM

Mr. TAFT. Mr. President, I spoke on February 10 on the subject of the sad financial condition of Rolls-Royce and the impact which its bankruptcy might have on Lockheed. At the time, I reminded my colleagues that the controversy over the contract between Lockheed and Rolls-Royce had been the subject of a great deal of controversy at the time it was announced, because there had been an indication that the U.S. Government might "look with favor" on this arrangement for the purchase of engines from a foreign manufacturer. There was a number of people at that time who were skeptical that Rolls-Royce might be overcommitting themselves in undertaking this very large program. The foresight which these people had has certainly been borne out by the facts.

I want to again reiterate the concern that I have that there must be no behind-the-scenes, unannounced actions by the U.S. Government with respect to Rolls-Royce and the United Kingdom. There must be the fullest public disclosure and public discusion of any direct or indirect assistance.

Mr. BUCKLEY. Mr. President, since Rolls-Royce announced its bankruptcy, which they have attributed to problems they encountered in developing the RB–211 engine for the Lockheed L–1011 airbus, there has been considerable comment in the press about the impact this will have on the United Kingdom, and equally important, its impact on Lockheed Aircraft Co.

The precipitous announcement by Rolls-Royce has focused even more attention on the previously publicized problems Lockheed has had on some of its large defense programs and on its problems of financing its commercial L–1011 program.

The British press, as well as some comments in U.S. newspapers, has indicated that the British Government and the U.S. Government will have to provide a source of funds if Rolls-Royce is to continue its development and ultimate production of the RB–211 engines for the L–1011. In addition, it seems clear that if the Rolls-Royce engine program is to be continued, irrespective of the method of financing, Lockheed and its L–1011 airline customers will have to renegotiate substantial increases in the cost of the aircraft; Lockheed and the airlines will have to forgo previously agreed upon penalties for delays in meeting delivery schedules, which are estimated to range between 6 months to a year; and quite possibly, Lockheed and the airlines will

have to accept, without penalty, some lowering of performance of the aircraft/engine combination.

The gist of some of the newsstories and commentary which I have read imply that the only way to salvage Lockheed is to insure that the Rolls-Royce RB–211 program continues, through funds provided by the British Government, or possibly through some arrangement involving the U.S. Government.

This is not the sole alternative to the Lockheed dilemma. U.S. manufactured engines, such as those currently being used on the McDonnell Douglas DC–10 Trijet, which is a direct competitor to the Lockheed L–1011, and possibly engines currently used on the Boeing 747, can be substituted on the Lockheed airbus. In fact, the news services reported over the weekend that the President of Lockheed announced he was considering proposals made by two U.S. engine manufacturers.

While there would be additional costs and time delay in making the necessary modifications to the L–1011 so that it can utilize these U.S.-built engines, the cost and delay from this course of action may be no more extensive than would result from the continuation of the Rolls-Royce RB–211 program, and may be a more desirable alternative than any actions which might be taken to save this segment of Rolls-Royce. In fact, considering the technical risks which are apparently still prevalent in the RB–211 program, the use of U.S.-built engines for the L–1011 might be more advantageous, in the long run; and it would avoid a subsidy (which is unwarranted in any event) by the U.S. Government of a foreign firm.

Mr. MONTOYA. Mr. President, I should like to associate myself with the remarks of the distinguished junior Senator from Ohio.

Ever since the failure of the Rolls-Royce Co., and the halt in their development of the RB–211 engine for the Lockheed L–1011 airbus, we have heard a variety of proposals directed toward salvaging the L–1011 project. These proposals incorporate the dangers and threats to the Lockheed Aircraft Co. Generally these proposals include some kind of injection of new financial support or revised credit arrangements for Rolls-Royce in order to facilitate completion of the project. It has indeed been suggested that the only alternatives which are workable must include the production of a source of funds either from the British Government or from the Government of the United States.

There are a number of obvious reasons why the United States should avoid involvement in the salvation of Rolls-Royce for the purpose of completing the RB–211 engine. It is clear that even with additional sources of support it will be necessary for Lockheed to renegotiate sizable increases in the cost of the aircraft. Lockheed's airline customers and Lockheed itself will have to forgo delay penalties in meeting delivery schedules. These delays will amount to a minimum of 6 months and could stretch as long as a year or more. Lockheed and the airlines will have to accept, without penalty, obvious lowering of the performance of the aircraft-engine combination. Given these negative factors, it is clear we should seek an alternative other than the one provided by Rolls-Royce.

Mr. President, I submit that there are indeed engines produced by American manufacturers which could very well be substituted for the RB–211. For example, the engine utilized by the Douglas DC–10 trijet is a sound alternative. The engine which is currently performing for the Boeing 747 is a second alternative. Adaptation of either of these would, of course, be time consuming and costly. We already know, however, that considerable extensions of cost and time will also be necessary with the continuation of RB–211. It seems quite reasonable, therefore, to consider adaptation of American engines. In this way we minimize technical risks which could remain in the RB–211 program.

Mr. President, I would like to review very briefly the record of the Rolls-Royce Co.'s ability to meet its portion of Lockheed's critical project. The original contractual price for each Rolls engine was $840,000. That soon rose to $1,104,000. The original launching cost—received by Rolls-Royce from the British Government—was $156,000,000. That cost doubled, and by the time the company was forced into receivership it was still $200,000,000 short.

The company was also unable to meet its time deadlines for production line engines. These were promised for this fall. Not one of those produced met contractual specifications. This failure required an extension of from 6 to 12 months.

There is no reason to believe at this point, based on this kind of past record, that the Rolls-Royce Co.'s program would ever be any more successful at meeting the needs of Lockheed on time and within reasonable cost estimates.

The needs and the problems of the Lockheed L–1011 airbus project are at this point well known, as is the general financial situation of the company. It is very clear that the Rolls-Royce debacle has irrevocably worsened Lockheed's position. It seems inconceivable to me that the proper solution should be continuation of the Rolls-Royce involvement.

Mr. BROOKE. Mr. President, the subject raised by the distinguished and able junior Senator from Ohio has been of deep concern to me, both as a U.S. Senator and as a representative of the Commonwealth of Massachusetts.

Mr. President, Massachusetts is currently struggling with an unemployment rate considerably in excess of the national average. Certain areas in my State have been particularly affected by the present economic slowdown and by economic dislocations brought about by our shift away from a defense and space-oriented economy. New Bedford, Newburyport, Gloucester, North Adams, Ware, Milford, Lowell, and Plymouth, Mass.; all these communities and others are burdened by an unemployment rate in excess of 12 percent. It is difficult for me to believe that our Government would contemplate assisting foreign manufacture of airplane engines that we are capable of producing domestically.

We are, of course, sympathetic to the problem facing the Rolls-Royce Co., and it is an understandable business judgment for the Lockheed Co. to negotiate with Rolls-Royce in an attempt to press forward with the manufacture and delivery of the L–1011 airbus. But, in view of the rapidity with which air frame manufacturers and other defense-oriented companies turn to the Federal Government for assistance when in financial straits, it is difficult to understand, at a time of high domestic unemployment, the reluctance of the Lockheed Co. to use a domestic manufacturer, when a foreign engine producer is apparently unable to complete its contract. Since defense producers assert that it is in the national interest for the administration to guarantee their continuing viability, why is it not of equal importance for them to increase our employment and improve the national economy by purchasing important components domestically?

I would hope that the president of Lockheed will pursue his announcement that he has been considering proposals made by two U.S. engine manufacturers. Responsible action now on the part of American business would bolster its own argument that there is an equal obligation on the part of Government to support defense manufacturers in times of great economic stress.

QUORUM CALL

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

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

EXPANSION OF VOTING PRIVILEGES FOR 18-YEAR-OLDS

Mr. CHILES. Mr. President, as a newcomer to this distinguished body, the U.S. Senate, I feel compelled to express how deeply impressed I am with the manner in which the expansion of 18-year-old voting has been handled.

With dual elections, accompanied by heavy, unnecessary extra costs facing our States, the Senate moved expeditiously, getting Joint Resolution 7 through committee and onto the floor for decisive action. I am certainly proud to have been one of 86 Senators joining to cosponsor this important legislation, and I believe that this action provides a very convincing argument that the Senate can and does move decisively when the circumstances dictate.

As a supporter of voting by 18-year-olds in the Florida Legislature prior to

joining the U.S. Senate, I am very pleased. I am convinced that the quality of education our 18-, 19-, and 20-year-olds are receiving and the degree of maturity that they are showing in coping with the problems of this modern time will make them an important part of the electorate. Further, I believe that if we are to maintain our democratic form of government, it is imperative that we do all in our power to involve these young adults rather than keep them on the outside looking in. Like all Senators, I, too, have received a great deal of correspondence expressing concern about the dangers of giving the vote to radical youth. My information indicates, however, that that element is an extremely small percentage and should not dictate our shortchanging of responsible young people.

I strongly commend the Senate leadership, the leadership of the Judiciary Committee and, of course, the dedication and leadership of the distinguished Senator from West Virginia (Mr. RANDOLPH). And I congratulate all those Senators who participated in this far-reaching decision.

EXTENSION OF RIGHT TO VOTE

Mr. MOSS. Mr. President, I commend the Senator from West Virginia (Mr. RANDOLPH) for his great leadership in bringing up the constitutional amendment which was passed unanimously in this body yesterday.

I have constantly supported the extension of the right to vote to all of those persons who are 18 years of age and over. I voted to extend the vote in the last session when it was granted by legislative act. I believe the extension of the right to vote to 18-year-olds should be respected in the State elections as well as in Federal elections and, therefore, I was pleased to support the constitutional amendment. I hope the State legislatures will address themselves to this problem swiftly so that by the general election of 1972 we may have our 18-year-olds voting not only at the Federal level but also at the State level.

Mr. President, I think it is apparent to anyone who has had any contact with young people at this time that they are mature and well informed, desirous of participating in the political processes of this country, they are competent, and they have far more maturity and information than many previous generations.

If 21 was an appropriate age to vote when this Republic was founded, then certainly 18 is equally appropriate at this time of universal communication, universal education, travel, and all the advantages our young people have today. I think we will find they will exercise the franchise with discretion and thoughtfulness and bring a new infusion of thinking to the electorate, and it will be a welcome addition in this country.

Our whole focus should be to continually broaden the franchise and involve people and not to be restrictive. Certainly, one of the things we can do is to bring into the process those persons who are 18 years of age and older.

Therefore, I am most pleased this body acted expeditiously and I express the hope that the States will act with rapidity when the matter reaches them.

QUORUM

The PRESIDING OFFICER. Is there further morning business?

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. BYRD of West Virginia. Mr. President, under the regulations, any committee may have as many as four members of the committee staff on the floor at any one time during deliberations on a measure.

I am informed by the able Senator from New Mexico (Mr. MONTOYA) that it is the wish of the committee that there be eight members of the Committee on Public Works on the floor today during the consideration of the extension of the Appalachian Regional Development Act.

Therefore, I ask unanimous consent that four additional committee staff members be permitted the privilege of the floor today. The names of the eight members of the committee are: Richard Royce, Barry Meyer, John Yago, Philip Cummings, Bailey Guard, Judy Perente, Richard Herod, and Pauline Medlin.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that during any rollcall votes today on the unfinished business the able Senator from New Mexico (Mr. MONTOYA) may be permitted to have an assistant from his office, Mr. Karl Braithwaite, on the floor.

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

ORDER FOR UNFINISHED BUSINESS TO BE LAID BEFORE THE SENATE TODAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the morning business is closed today, the unfinished business be laid before the Senate.

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

SUSPENSION OF PASTORE RULE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Pastore rule not start operating today until the unfinished business is laid before the Senate.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PRINTING OF MILITARY SERVICE NEWSPAPERS IN SOUTHEAST ASIA INSTEAD OF AIRLIFT FROM JAPAN—REPORT BY COMPTROLLER GENERAL

A letter from the Comptroller General of the United States transmitting a report on the opportunity for substanial savings by the Department of Defense by printing military service newspapers in Southeast Asia instead of airlift from Japan (with an accompanying report); to the Committee on Government Operations.

REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATE CONCERNING UNAUTHORIZED RETENTION BY NATIONAL BUREAU OF STANDARDS OF MONEY ACCUMULATED TO EARNED LEAVE OF TRANSFERRED EMPLOYEES

A letter from the Comptroller General of the United States relating to unauthorized retention, in the working capital fund, by the National Bureau of Standards, Department of Commerce, of money accumulated for earned leave of transferred employees (with an accompanying report); to the Committee on Government Operations.

REPORTS OF A COMMITTEE

The following reports of a committee were submitted:

By Mr. CANNON, from the Committee on Rules and Administration, without amendment:

S. Con. Res. 9. Concurrent resolution authorizing the printing of additional copies of Senate hearings entitled "Investigation Into Electronic Battlefield Program" (Rep. No. 92-30);

H. Con. Res. 97. Concurrent resolution authorizing the printing of a revised edition of the publication entitled "History of the United States House of Representatives", and for other purposes (Rept. No. 92-33);

S. Res. 61. Resolution authorizing the printing of additional copies of Senate hearings on "Federal Handling of Mass Demonstrations" (Rept. No. 92-31); and

S. Res. 67. Resolution authorizing the printing of the report entitled "The Economics of Clean Air" as a Senate document (Rept. No. 92-32).

EXECUTIVE REPORTS OF A COMMITTEE

Mr. THURMOND. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nominations of 40 flag and general officers in the Army, Navy, and Marine Corps. I ask that these names be placed on the Executive Calendar.

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

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

Maj. Gen. William G. Thrash, U.S. Marine Corps, for commands and other duties determined by the President, for appointment to the grade of lieutenant general while so serving;

Lt. Gen. Raymond G. Davis, U.S. Marine Corps, for appointment as Assistant Commander of the Marine Corps, with the grade of general while so serving;

Maj. Gen. Wallace H. Robinson, Jr. U.S. Marine Corps, for commands and other duties determined by the President, for appointment to the grade of lieutenant general while so serving;

Gen. James Hilliard Polk, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of general;

Rear Adm. Frank W. Vannoy, Rear Adm. Means Johnston, Jr., and Rear Adm. Harold E. Shear, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of vice admiral while so serving;

Rear Adm. Frank W. Vannoy, U.S. Navy, for appointment as Navy senior member of the Military Staff Committee of the United Nations;

Maj. Gen. George Marion Seignious II, Army of the United States (brigadier general, U.S. Army), to be assigned to a position of importance and responsibility designated by the President, for appointment to the grade of lieutenant general while so serving; and

Brig. Gen. James F. Faulconer, and sundry other U.S. Army Reserve officers, for promotion as Reserve Commissioned officers of the Army.

Mr. THURMOND. Mr. President, in addition, I report favorably 2,478 promotions and appointments in the Navy in the grade of commander and below, 128 appointments in the Marine Corps in the grade of second lieutenant, and 312 appointments in the Air Force in the grade of major and below.

I am especially pleased to note that there are two South Carolinians on the general officer list. Maj. Gen. George Marion Seignious II, of Orangeburg, and presently commander in Berlin, is being nominated for promotion to lieutenant general. Col. Donald A. Yongue, also of Orangeburg, and postmaster there, is being nominated for promotion to brigadier general in the Army Reserve.

It is also a pleasure to note other outstanding officers on the promotion list. Brig. Gen. Stephen S. Ferebee, of Charlotte, N.C., is being nominated for promotion to major general. Rear Adm. Means Johnston, Jr., of Mississippi and Chief of the Navy's Legislative Liaison, is being nominated for promotion to vice admiral. I am glad to see that officers of their high caliber being suitably recognized.

I extend my congratulations and commendation of these fine Americans who have distinguished records in our Armed Forces. I am proud to play a personal part in the nomination of all these leaders for promotion.

Mr. President, since these names have already been printed in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

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

John S. Ingari and sundry other officers, for appointment in the Regular Air Force;

Robert R. Abbe and sundry other officers, for promotion in the U.S. Navy.

James R. Allen and sundry other Naval Reserve Officers Training Corps candidates, for promotion in the Navy;

Robin L. Adams and sundry other naval enlisted scientific education program candidates, for promotion in the Navy;

James E. Adrian and sundry other officers, for promotion in the Navy;

Rafael Candelario and Terrence L. Moore, staff noncommissioned officers, for temporary appointment in the Marine Corps; and

R. G. Anderson, and sundry other U.S. Naval Academy graduates, for permanent appointment in the Marine Corps.

BILLS AND JOINT RESOLUTIONS INTRODUCED

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. TALMADGE:

S. 1185. A bill for the relief of Virgillio Valdecanas and Erlinda L. Valdecanas. Referred to the Committee on the Judiciary.

S. 1186. A bill to provide increases in social security benefits. Referred to the Committee on Finance.

By Mr. MATHIAS:

S. 1187. A bill for the relief of Fermina L. Marinas. Referred to the Committee on the Judiciary.

By Mr. CHURCH:

S. 1188. A bill to amend section 620 of the Foreign Assistance Act of 1961 to prohibit foreign assistance from being provided to foreign countries which do not act to prevent narcotic drugs from unlawfully entering the United States. Referred to the Committee on Foreign Relations.

By Mr. BAYH:

S. 1189. A bill to extend the provisions of the Narcotic Addict Rehabilitation Act and to provide that members of the Armed Forces be discharged by reason of physical disability for civil commitment under such act when such members are suffering from drug addiction or drug dependence, and for other purposes. Referred to the Committee on Armed Services.

By Mr. CURTIS (for himself and Senator HRUSKA):

S. 1190. A bill to amend title 18 and title 28 of the United States Code with respect to the trial and review of criminal actions involving obscenity, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. McGOVERN (for himself, Mr. MATHIAS, Mr. HARRIS, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. KENNEDY, Mr. MUSKIE, Mr. NELSON, Mr. PROXMIRE, Mr. RIBICOFF, and Mr. WILLIAMS):

S. 1191. A bill to assist workers whose jobs may be terminated by reductions in defense and space spending, to establish a system of benefits to ease the transition of such workers to civilian occupations, to minimize the hardships encountered by communities which are dependent upon defense industry and employment, to encourage cooperation between the United States and defense contractors in meeting the challenge of economic conversion and diversification brought by changing defense needs of the United States, and to facilitate the transfer of public and private resources to new national priorities. Referred to the Committee on Government Operations.

By Mr. MOSS:

S. 1192. A bill to provide for the conveyance of the Weber River project to the Weber River Water Users' Association, Ogden, Utah. Referred to the Committee on Interior and Insular Affairs.

By Mr. JAVITS (for himself, Mr. BUCKLEY, Mr. CASE, and Mr. WILLIAMS):

S. 1193. A bill to provide for the establishment of the Gateway National Recreation Area in the States of New York and New Jersey, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. BURDICK:

S. 1194. A bill for the relief of An Kyong Ah (Susan Ann Dickinson); and

S. 1195. A bill for the relief of the estate of C. G. Okerson. Referred to the Committee on the Judiciary.

S. 1196. A bill for the relief of Merle Jacobson. Referred to the Committee on Post Office and Civil Service.

By Mr. MONDALE (for himself, Mr. YOUNG, Mr. BURDICK, Mr. CRANSTON, Mr. EAGLETON, Mr. GURNEY, Mr. HARRIS, Mr. HART, Mr. HATFIELD, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. MAGNUSON, Mr. McGOVERN, Mr. METCALF, Mr. MONTOYA, Mr. NELSON, Mr. STEVENS, Mr. STEVENSON, Mr. THURMOND, and Mr. TUNNEY):

S. 1197. A bill to extend availability of Federal crop insurance and to authorize the appropriation of funds for administrative expenses of the Federal crop insurance program. Referred to the Committee on Agriculture and Forestry.

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

S. 1198. A bill to authorize the Secretary of Agriculture to review as to its suitability for preservation as wilderness, the area commonly known as the "Indian Peaks Area" in the State of Colorado. Referred to the Committee on Interior and Insular Affairs.

By Mr. INOUYE (for himself, Mr. BENTSEN, Mr. CANNON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HUMPHREY, Mr. MAGNUSON, Mr. McGOVERN, Mr. METCALF, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. PELL, Mr. RIBICOFF, Mr. STEVENS, and Mr. STEVENSON):

S. 1199. A bill amending Title 13 of the U.S. Code by authorizing the Secretary of Commerce through the Bureau of the Census to undertake a quadrennial enrollment of those persons to vote in elections of the President and Vice President that meet the qualifications of the various States other than residency. This act is to be known as the Universal Enrollment Act of 1970. Referred to the Committee on Post Office and Civil Service.

By Mr. BROOKE:

S. 1200. A bill for the relief of Frederick F. Slack. Referred to the Committee on the Judiciary.

By Mr. PROXMIRE:

S. 1201. A bill to extend certain laws relating to the payment of interest on time and savings deposits, the control of credit and economic stabilization, to vest in the Federal Reserve Board authority to establish variable reserve requirements based on bank assets, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. THURMOND:

S. 1202. A bill to exempt certain orphanages from the excise tax on investment income of private foundations. Referred to the Committee on Finance.

By Mr. HARRIS (for himself, Mr. BIBLE, Mr. HART, Mr. HOLLINGS, Mr. INOUYE,

Mr. JAVITS, Mr. MCGOVERN, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MILLER, Mr. MONTOYA, Mr. MUSKIE, Mr. PROXMIRE, Mr. RANDOLPH, Mr. STEVENS, and Mr. WILLIAMS):

S. 1203. A bill designating certain election days as legal public holidays. Referred to the Committee on the Judiciary.

By Mr. MCGEE:

S. 1204. A bill to amend section 8332 of title 5, United States Code, to allow certain service to be credited for purposes of civil service retirement. Referred to the Committee on Post Office and Civil Service.

By Mr. GURNEY:

S. 1205. A bill to establish an Office of Consumer Affairs in the Executive Office of the President and a Bureau of Consumer Protection in order to secure within the Federal Government effective protection and representation of the interests of consumers, and for other purposes. Referred to the Committee on Government Operations.

By Mr. EASTLAND (for himself and Mr. HRUSKA):

S. 1206. A bill to amend subsection (d) of section 2 of the War Claims Act of 1948, as amended, relating to the terms of office of the members of the Foreign Claims Settlement Commission of the United States. Referred to the Committee on the Judiciary.

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

S. 1207. A bill to authorize insurance in connection with loans for the preservation of residential historic properties. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. TOWER (for himself and Mr. BENTSEN):

S. 1208. A bill to authorize the coinage of 50-cent pieces to commemorate the life of the Honorable Sam Rayburn and to assist in the support of the Sam Rayburn Library. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. HANSEN:

S. 1209. A bill to amend the act of October 17, 1968 (82 Stat. 1146), relating to the control of noxious plants on Federal lands. Referred to the Committee on Agriculture and Forestry.

By Mr. CRANSTON (for himself and Mr. TUNNEY):

S. 1210. A bill to regulate and foster commerce among the States by providing a uniform system for the application of sales and use taxes to interstate commerce. Referred to the Committee on Finance.

By Mr. PEARSON (for himself and Mr. DOLE):

S.J. Res. 69. Joint resolution to provide for a 1974 centennial celebration observing the introduction into the United States of Hard Red Winter wheat. Referred to the Committee on the Judiciary.

By Mr. CHILES:

S.J. Res. 70. A joint resolution to terminate certain statutory authorities currently in effect as the result of the Presidential proclamation issued on December 16, 1950, declaring a state of national emergency. Referred to the Committee on Armed Services.

By Mr. TOWER:

S.J. Res. 71. A joint resolution to authorize the Secretary of the Interior and the Administrator of the Environmental Protection Agency to conduct a study of the possible reuse of waste heat for productive purposes. Referred to the Committee on Interior and Insular Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TALMADGE:

S. 1186. A bill to provide increases in social security benefits. Referred to the Committee on Finance.

Mr. TALMADGE. Mr. President, put very simply, America's social security recipients have fallen on hard times. In recent years, their troubles have been compounded by rampant inflation which is draining the purchasing power from their life's savings and by skyrocketing living costs which are making it virtually impossible for them to make ends meet on their meager fixed incomes.

The U.S. Senate cannot continue to ask these aged, disabled, and dependent Americans to bite the bullet for a few more months while Congress meanders through its legislative maze.

Last year, acting to lessen the cruel plight of these people, the Senate passed by a vote of 81 to 0 the largest social insurance bill, in terms of dollars, in the history of our Republic. To say the least, it is unfortunate that Members of the other body planted their feet in concrete and refused even to meet with the Senate's conferees to resolve the differences in the House and Senate bills. Therefore, the need for immediate legislative relief is both urgent and great.

The bill which I introduce today contains four major provisions, three of which were incorporated in last year's Senate-passed bill.

First, my bill provides for an across-the-board, 10-percent increase in benefits, retroactive to January 1971.

Second, it provides for an increase from $64 under present law to $100 in the minimum primary insurance amount—the minimum monthly payment to beneficiaries when they start to receive benefits at age 65 or older.

Third, effective January 1971, my bill would increase by 10 percent the special cash payments that are made under present law to people age 72 or older who are not insured for regular cash benefits under the social security system.

Finally, under the provisions of my bill, the amount of annual exempt earnings for purposes of the so-called retirement test would be increased from the present figure of $1,680 to $2,400; and the dollar-for-dollar reduction in benefits presently imposed when earnings reach a certain amount would be eliminated.

The across-the-board, 10-percent increase and the increase in the minimum monthly payment, both of which would be retroactive to January 1971, will result in an estimated $5 billion in additional benefits going to some 25.7 million people during the first full year.

Under the provisions of my bill increasing by 10 percent the special cash payments to uninsured people age 72 or older, benefits will be raised from $46 to $50.60 for an individual and from $69 to $75.90 for couples, effective January 1971. An estimated $32 million in additional benefits would be paid out in the first full year to approximately 600,000 people.

Also, several thousand people who do not now get the special payments, because they receive benefits under another governmental pension system or because they receive welfare benefits, would qualify for payments.

My proposal makes significant changes in the present retirement test and removes several of its work disincentives which discourage social security beneficiaries from doing additional work or taking a job at higher pay. As the program now operates, a social security recipient under age 72 may earn up to $1,680 without losing any of his benefits.

However, if he earns more than $1,680 in a year, his benefits are reduced by $1 dollar for each $2 of earnings between $1,680 and $2,880, and for each $1 of earnings above $2,880. Moreover, because of taxes and work expenses, a beneficiary's spendable income—that is, his social security benefits plus his earnings after taxes—may be less if he earns slightly more than $2,880 than it would be if he earned less than $2,880.

My bill would remove these work penalizing and work disincentive aspects from the retirement test by increasing the amount of exempt earnings from $1,680 to $2,400 per year and by providing that social security benefits be reduced by only $1 for each $2 of earnings above $2,400, regardless of how much is earned.

For 1971, these retirement test changes would result in an estimated $680 million in additional benefits being paid to an estimated 1.3 million beneficiaries, hundreds of thousands of whom would not receive benefits under present law.

Mr. President, our Nation's social security recipients do not want to become public charges. But, unfortunately, many of them are turning to welfare as the only means of survival.

I submit that they do not deserve this cruel fate. Most of them are in the sunset years of what have been useful and productive lives—useful and productive to themselves, their families and their country. Those who are both able and willing to continue gainful employment should not be discouraged or penalized. Those who are unable to do so should not be forced to suffer poverty.

Therefore, the increase in benefits and the other adjustments in the social security program which I propose are, in my judgment, absolutely necessary. I would hope that my colleagues in both Houses agree, and I solicit their prompt attention and support for these measures.

Mr. President, I send the bill to the desk and ask unanimous consent that it be appropriately referred and printed in the RECORD.

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

S. 1186

A bill to provide increases in social security benefits

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 "Social Security Amendments of 1971."

INCREASE IN OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

SEC. 2. (a) Section 215(a) of the Social Security Act is amended by striking out the table and inserting in lieu thereof the following:

"TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I		II	III		IV	V
(Primary insurance benefit under 1939 act, as modified)		(Primary insurance amount under 1967 act)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
----------	$26.94	$90.60 or less	----------	$113	$100.00	$150.00
$26.95	27.46	91.90	$114	118	101.10	151.70
27.47	28.00	93.30	119	122	102.70	154.10
28.01	28.68	94.70	123	127	104.20	156.50
28.69	29.25	96.20	128	132	105.90	158.90
29.26	29.68	97.50	133	136	107.30	161.00
29.69	30.36	98.80	137	141	108.70	163.10
30.37	30.92	100.30	142	146	110.40	165.60
30.93	31.36	101.70	147	150	111.90	167.90
31.37	32.00	103.00	151	155	113.30	170.00
32.01	32.60	104.50	156	160	115.00	172.50
32.61	33.20	105.80	161	164	116.40	174.60
33.21	33.88	107.20	165	169	118.00	177.00
33.89	34.50	108.60	170	174	119.50	179.30
34.51	35.00	110.00	175	178	121.00	181.50
35.01	35.80	111.40	179	183	122.60	183.90
35.81	36.40	112.70	184	188	124.00	186.00
36.41	37.08	114.20	189	193	125.70	188.60
37.09	37.60	115.60	194	197	127.20	190.80
37.61	38.20	116.90	198	202	128.60	192.90
38.21	39.12	118.40	203	207	130.30	195.50
39.13	39.68	119.80	208	211	131.80	197.70
39.69	40.33	121.00	212	216	133.10	199.70
40.34	41.12	122.50	217	221	134.80	202.20
41.13	41.76	123.90	222	225	136.30	204.50
41.77	42.44	125.30	226	230	137.90	206.90
42.45	43.20	126.70	231	235	139.40	209.10
43.21	43.76	128.20	236	239	141.10	211.70
43.77	44.44	129.50	240	244	142.50	214.80
44.45	44.88	130.80	245	249	143.90	219.20
44.89	45.60	132.30	250	255	145.60	222.70
		133.70	254	258	147.10	227.10
		134.90	259	263	148.40	231.50
		136.40	264	267	150.10	235.00
		137.80	268	272	151.60	239.40
		139.20	273	277	153.20	243.80
		140.60	278	281	154.70	247.30
		142.00	282	286	156.20	251.70
		143.50	287	291	157.90	256.10
		144.70	292	295	159.20	259.60
		146.20	296	300	160.90	264.00
		147.60	301	305	162.40	268.40
		148.90	306	309	163.80	272.00
		150.40	310	314	165.50	276.40
		151.70	315	319	166.90	280.80
		153.00	320	323	168.30	284.30
		154.50	324	328	170.00	287.70
		155.90	329	333	171.50	293.10
		157.40	334	337	173.20	296.60
		158.60	338	342	174.50	301.00
		160.00	343	347	176.00	305.40
		161.50	348	351	177.70	308.90
		162.80	352	356	179.10	313.30
		164.30	357	361	180.80	317.70
		165.60	362	365	182.20	321.20
		166.90	366	370	183.60	325.60
		168.40	371	375	185.30	330.00
		169.80	376	379	186.80	333.60
		171.30	380	384	188.50	338.00
		172.50	385	389	189.80	342.40
		173.90	390	393	191.30	345.90
		175.40	394	398	193.00	350.30
		176.70	399	403	194.40	354.70
		178.20	404	407	196.10	358.20
		179.40	408	412	197.40	362.60
		180.70	413	417	198.80	367.00
		182.00	418	421	200.20	370.50
		183.40	422	426	201.80	374.90
		184.60	427	431	203.10	379.30
		185.90	432	436	204.50	383.70
		187.30	437	440	206.10	385.50

I		II	III		IV	V
(Primary insurance benefit under 1939 act, as modified)		(Primary insurance amount under 1967 act)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		$188.50	$441	$445	$207.40	$387.70
		189.80	446	450	208.80	389.90
		191.20	451	454	210.40	391.60
		192.40	455	459	211.70	393.81
		193.70	460	464	213.10	396.00
		195.00	465	468	214.50	397.80
		196.40	469	473	216.10	400.00
		197.60	474	478	217.40	402.20
		198.90	479	482	218.80	404.00
		200.30	483	487	220.40	406.20
		201.50	488	492	221.70	408.40
		202.80	493	496	223.10	410.10
		204.20	497	501	224.70	412.30
		205.40	502	506	226.00	414.50
		206.70	507	510	227.40	416.30
		208.00	511	515	228.80	418.50
		209.30	516	520	230.30	420.70
		210.60	521	524	231.70	422.40
		211.90	525	529	233.10	424.60
		213.30	530	534	234.70	426.80
		214.50	535	538	236.00	428.60
		215.80	539	543	237.40	430.80
		217.20	544	548	239.00	433.00
		218.40	549	553	240.30	435.20
		219.70	554	556	241.70	436.50
		220.80	557	560	242.90	438.30
		222.00	561	563	244.20	439.60
		223.10	564	567	245.50	441.40
		224.30	568	570	246.80	442.70
		225.40	571	574	248.00	444.40
		226.60	575	577	249.30	445.80
		227.70	578	581	250.50	447.50
		228.90	582	584	251.80	448.80
		230.00	585	588	253.00	450.60
		231.20	589	591	254.40	451.90
		232.30	592	595	255.60	453.70
		233.50	595	598	256.90	455.00
		234.60	599	602	258.10	456.80
		235.80	603	605	259.40	458.10
		236.90	606	609	260.60	459.80
		238.10	610	612	262.00	461.20
		239.20	613	616	263.20	462.90
		240.40	617	620	264.50	464.70
		241.50	621	623	265.70	466.00
		242.70	624	627	267.00	467.80
		243.80	628	630	268.20	469.40
		245.00	631	634	269.50	471.70
		246.10	635	637	270.80	473.90
		247.30	638	641	272.10	476.20
		248.40	642	644	273.30	478.30
		249.60	645	648	274.60	480.60
		250.70	649	650	275.80	482.70
			651	655	276.80	484.40
			656	660	277.80	486.20
			661	665	278.80	487.90
			666	670	279.80	489.70
			671	675	280.80	491.40
			676	680	281.80	493.20
			681	685	282.80	494.90
			686	690	283.80	496.70
			691	695	284.80	498.40
			696	700	285.80	500.20
			701	705	286.80	501.90
			706	710	287.80	503.70
			711	715	288.80	505.40
			716	720	289.80	507.20
			721	725	290.80	508.90
			726	730	291.80	510.70
			731	735	292.80	512.40
			736	740	293.80	514.20
			741	745	294.80	515.90
			746	750	295.80	517.70".

(b) Section 203(a) of such Act is amended by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) when two or more persons were entitled (without the application of section 202(j)(1) and section 223(b)) to monthly benefits under section 202 or 223 for January 1971 on the basis of the wages and self-employment income of such insured individual and at least one such person was so entitled for December 1970 on the basis of such wages and self-employment income, such total of benefits for January 1971 or any subsequent month shall not be reduced to less than the larger of—

"(A) the amount determined under this subsection without regard to this paragraph, or

"(B) an amount equal to the sum of the amounts derived by multiplying the benefit amount determined under this title (including this subsection, but without the application of section 222(b), section 202(q), and subsections (b), and (c), and (d) of this section), as in effect prior to the enactment of the Social Security Amendments of 1970, for each such person for such month, by 110 percent and raising each such increased amount, if it is not a multiple of $0.10, to the next higher multiple of $0.10;

but in any such case (i) paragraph (1) of this subsection shall not be applied to such total of benefits after the application of sub-

paragraph (B), and (ii) if section 202(k)(2)(A) was applicable in the case of any such benefits for January 1971, and ceases to apply after such month, the provisions of subparagraph (B) shall be applied, for and after the month in which section 202(k)(2)(A) ceases to apply, as though paragraph (1) had not been applicable to such total of benefits for January 1971, or".

(c) Section 215(b)(4) of such Act is amended by striking out "December 1969" each time it appears and inserting in lieu thereof "December 1970".

(d) Section 215(c) of such Act is amended to read as follows:

"Primary Insurance Amount Under 1969 Act

"(c)(1) For the purposes of column II of the table appearing in subsection (a) of this section, an individual's primary insurance amount shall be computed on the basis of the law in effect prior to the enactment of the Social Security Amendments of 1970.

"(2) The provisions of this subsection shall be applicable only in the case of an individual who became entitled to benefits under section 202(a) or section 223 before January 1971, or who died before such month."

(e) The amendments made by this section shall apply with respect to monthly benefits under title II of the Social Security Act for months after December 1970 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1970.

(f) If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act for December 1970 and became entitled to old-age insurance benefits under section 202(a) of such Act for January 1971, or he died in such month, then, for purposes of section 215(a)(4) of the Social Security Act (if applicable), the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(a) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.

INCREASE IN BENEFITS FOR CERTAIN INDIVIDUALS AGE 72 AND OVER

SEC. 3. (a)(1) Section 227(a) of the Social Security Act is amended by striking out "$46" and inserting in lieu thereof "$50.60", and by striking out "$23" and inserting in lieu thereof "$25.30".

(2) Section 227(b) of such Act is amended by striking out "$46" and inserting in lieu thereof "$50.60".

(b)(1) Section 228(b)(1) of such Act is amended by striking out "$46" and inserting in lieu thereof "$50.60".

(2) Section 228(b)(2) of such Act is amended by striking out "$46" and inserting in lieu thereof "$50.60", and by striking out "$23" and inserting in lieu thereof "$25.30".

(3) Section 228(c)(2) of such Act is amended by striking out "$23" and inserting in lieu thereof "$25.30".

(4) Section 228(c)(3)(A) of such Act is amended by striking out "$46" and inserting in lieu thereof "$50.60".

(5) Section 228(c)(3)(B) of Such Act is amended by striking out "$23" and inserting in lieu thereof "$25.30".

(c) The amendments made by subsections (a) and (b) shall apply with respect to monthly benefits under title II of the Social Security Act for months after December 1970.

LIBERALIZATION OF EARNINGS TEST

SEC. 4. (a)(1) Paragraphs (1) and (4)(B) of section 203(f) of the Social Security Act are each amended by striking out "$140" and inserting in lieu thereof "$200 or the exempt amount as determined under paragraph (8)".

(2) Paragraph (1)(A) of section 203(h) of such Act is amended by striking out "$140" and inserting in lieu thereof "$200 or the exempt amount as determined under subsection (f)(8)".

(3) Paragraph (3) of section 203(f) of such Act is amended to read as follows:

"(3) For purposes of paragraph (1) and subsection (h), an individual's excess earnings for a taxable year shall be 50 per centum of his earnings for such year in excess of the product of $200 or the exempt amount as determined under paragraph (8) multiplied by the number of months in such year. The excess earnings as derived under the preceding sentence if not a multiple of $1, shall be reduced to the next lower multiple of $1."

(b) The amendments made by this section shall apply with respect to taxable years ending after December 1970.

Mr. BYRD of Virginia. Mr. President, will the distinguished Senator from Georgia yield?

Mr. TALMADGE. I am happy to yield to the Senator from Virginia.

Mr. BYRD of Virginia. I support the position outlined by the distinguished Senator from Georgia. I would hope that the social security benefit increase would be approved by the Senate at an early date. Last December as the Senator from Georgia pointed out, the Senate approved a 10-percent increase for social security beneficiaries but, unfortunately, the House of Representatives did not go along.

I feel that it would be unwise to hold the social security bill hostage to some other bill. It should be brought before the Senate at an early date and passed.

The older people of this Nation who have paid into social security funds over the years are entitled to an increase in benefits. The cost of living has gone up sharply. It is still going up. The older people who live on fixed incomes are the ones hardest hit by inflation. Therefore, I believe that the proposal of the Senator from Georgia is sound and logical and I hope that it will be enacted into law.

Mr. TALMADGE. I thank my distinguished friend from Virginia and welcome his support and contribution toward this endeavor.

I would hope that the Senate could act expeditiously and speedily in this matter. If we act by way of amendment on some House-passed bill, I hope that the House will approve it immediately. It should become law at the earliest practical date in order to aid these people who are suffering so severely, so that we may be able to afford them some relief.

I know that the Senator from Virginia receives letters, as I do, by the score, every week. They are pathetic. They point out what their social security benefits amount to and what they have to pay in the way of providing for their food budgets, and so forth. From these letters we realize how utterly impossible it is for them to survive on their present income.

Mr. President, I yield the floor.

By Mr. CHURCH:

S. 1188. A bill to amend section 620 of the Foreign Assistance Act of 1961 to prohibit foreign assistance from being provided to foreign countries which do not act to prevent narcotic drugs from unlawfully entering the United States. Referred to the Committee on Foreign Relations.

PUTTING EFFECTIVE CURBS ON NARCOTICS FROM ABROAD

Mr. CHURCH. Mr. President, addiction to heroin and the crime it breeds has reached epidemic proportions in our cities. Stepped-up efforts to intercept the heroin as it enters the United States are proving futile. We must find a way to choke off the flow at the source, if we are to avert catastrophe.

A halt in our economic assistance to some foreign governments can be an effective tool in halting the flow of illegal narcotics. The very nations that have failed to stop the illegal traffic of narcotics across their boundaries into the United States are major recipients of our aid. I would not lightly recommend that this aid be halted unless I believed that the damage caused by illegal narcotics to our society was serious enough to warrant it. But, after reviewing the information available on the problems caused by narcotics addiction, I can reach no other conclusion.

The growth in the number of narcotics addicts in recent years has had crushing impact on our social structure. Street crime and burglary, direct results of widespread addiction, threaten the safety of every American citizen and the security of his home. Drug users become drug pushers to pay for their daily dosage, and youngsters from every walk of life are repeatedly exposed to the temptation offered by the junkie. The heroin addict, once a curiosity among the down-and-out, is today to be found most anywhere, in the ghetto and the suburbs, in the front office, as well as the shipping room. And more importantly, the addict's frantic search for heroin affects everyone within his reach, spreading fright and violence through every neighborhood.

Make no mistake about it. Narcotics, directly or indirectly, plague us all. There is the direct threat to young people more susceptible to the lures of the narcotics pusher. But every adult who lives or works in our cities is exposed to the growing threat of violent crime. Our tax bills reflect the cost of extra police, of overburdened courts, and of rehabilitation and custodial facilities for the addicted. In city after city, new, high-powered street lights are being installed to make it possible to travel at night with even a minimum of safety. Similarly, stores are forced to hire private police to protect property against theft. Insurance rates go up and up. The cumulative cost is staggering.

Addiction cries a tale of desperation. In some areas of New York City, addicts rip the pipes out of the walls of decaying buildings so that they can sell the metal to scrap dealers. In San Francisco, automobiles left even momentarily in certain neighborhoods are stripped clean of everything of value. Women in Washington hesitate to carry pocketbooks because of the threat of theft. To climb up the six flights of stairs in many a tenement house is to witness Dante's Inferno. Obviously, hard drugs do not account entirely for mounting crime. But law

officers and social workers are convinced that it is the major cause.

The price of addiction to hard drugs is staggering. In terms of thefts alone, the Department of Justice estimates that approximately $1.5 billion was stolen in 1969 to pay for the hard drugs used by addicts. It costs an addict somewhere between $35 and $50 a day to obtain a supply of heroin. He may get this money by stickups, or he may choose to steal merchandise. If he chooses to steal goods rather than money, he must take goods valued at about five times the amount of money needed. He must do this because the "fence" who buys his stolen goods will rarely give him more than 20 cents on the dollar. The estimate of $1.5 billion moreover, is way over on the conservative side. There are some estimates that this much is stolen in New York City alone.

If we accept the $1.5 billion figure, that alone is more than 10 times the $135 million the Federal Government will spend in 1971 to combat all forms of drug abuse. The cost of crime related to illegal hard drugs even exceeds the cost of all forms of Federal law enforcement—the Federal courts and prisons, the FBI, and all activities of the Department of Justice.

Not only is our heroin addiction problem immense; it is getting worse each day. It has been estimated by a number of experts that there are now 200,000 heroin addicts in the United States. But this is only an educated guess and probably too low. We know, for instance, that drug abuse is the major cause of death in New York City for those in the age category of 15 to 35. About 50 percent of those in New York City's jails are addicted. A report issued recently by the District of Columbia's Narcotics Treatment Administration showed an 18-month increase in addiction in the District from 1,162 to 16,800. The administration found that, only four blocks from the White House, 36 percent of all young men between 20 and 24, and one-quarter of all youths between 15 and 19, are heroin addicts.

We are only beginning to glimpse the magnitude of the drug problem. As for New York alone, Stewart Alsop warns in a recent editorial that—

> The real cost (of illegal narcotics) is the death of New York as a city in which people who have any choice at all will be willing to live. Rather than live out their lives in fear, those who can afford it are leaving the city. In time, unless the malignancy can be brought under control, New York will be a shell, its tax base wholly eroded, inhabited only by the very poor, and a tiny handful of those rich enough to insulate themselves from the surrounding sea of fear.

This is a dire prophecy that could apply equally to Washington, D.C., to San Francisco, or Baltimore. It is up to us to see that the prophecy is not fulfilled.

If heroin was produced in the United States, we could take those measures necessary to shut off the source of the narcotic. But the opium poppy, the plant from which heroin is made, is not grown in the United States. An estimated 40 tons of heroin is smuggled into the United States each year to feed our growing addiction. This heroin comes from opium grown in the Middle East, the Far East and, to a lesser extent, in Mexico. Turkey is the major source of illegal opium and its derivatives coming to our country, supplying about 80 percent of the total. Most of the remainder comes from the Far East. Iran and Afghanistan, however, are beginning to loom as major sources of supply.

Opium moves from Turkey and the Middle East to France where it is processed into heroin for smuggling into the United States. Most of the opium processing is done in small workshops in the Marseilles area. The processing does not require complicated equipment, which has made it difficult for the French to stamp out the trade. Once processed into heroin, the drug is smuggled into the United States either directly or via Canada or Mexico.

Despite an increase in the number of customs inspectors searching for illegal drugs, we have not managed to make a real dent in the flow. The head of the Bureau of Dangerous Drugs and Narcotics, John Ingersoll, has pointed out that the only limitation on the smuggling of illegal narcotics into this country is the imagination of the smuggler. It has been estimated that there are 32,000 places on a freighter where drugs could be hidden. Similarly, there are about 220 million people passing through our ports each year, hopelessly more than the number that could be thoroughly searched. And the trade in illegal heroin is profitable enough to make the occasional arrest worth the risk in the eyes of those who smuggle it into our country.

Although we have stepped up our efforts to stop these dangerous drugs at our borders, we are still not stemming the bulk of the flow. The Department of Justice reports, for example, that it seized 427 pounds of heroin in the United States in 1970 compared with 140 pounds in 1969, and 197 pounds of cocaine compared with 73. Working with foreign governments, the Bureau of Narcotics and Dangerous Drugs helped in the arrest of 207 individuals in 1970 compared with 214 in 1969. In 1970, 3,383 pounds of opium were seized compared with 290 pounds in 1969. Yet, these are tiny amounts when matched against the 40 tons estimated to be entering the country each year. I understand that many in the Bureau of Narcotics and Dangerous Drugs do not believe that it will ever be possible to stop this smuggling. This conclusion is echoed in the comment of Harvey R. Wellman, special assistant for narcotics matters to the Secretary of State, when he recently said that even with the most effective law enforcement progarm conceivable, only about 10 percent of the illegal drug traffic could be stopped.

What, then, are we to do to curtail the flow of hard drugs into our country? The experts believe the answer lies in the effective control of the seed beds in those countries where the opium poppy is grown. It is possible, given a determined government, to control the growth of the opium poppy closely enough so that practically no opium seeps into the illegal trade. In India, for example, opium is grown legally under a licensing system. The farmer is licensed to grow so many acres of opium. Once he has this total planted, it is inspected by a Government official. The farmer then harvests his crop and sells it to the Government. If he cannot account for the full amount of opium his acreage should yield, he is subject to a stiff fine or even imprisonment. This system is effective enough to prevent Indian opium from moving into the illegal trade.

Unfortunately, the Turkish Government has not exercised the same degree of control over its poppy harvest. Turkey does not have a licensing system. Rather, there are certain designated provinces in which it is legal to grow opium. Approximately 100,000 farmers in Turkey grow opium today. They are located in seven provinces. Although the number of provinces is being reduced from seven to four, there still will be no appreciable reduction in the amount of opium produced for illegal trade. All the Turkish Government has done is to drive the inefficient farmer out of business. Despite the administration's protracted negotiations with the Turkish Government, that country remains the major source of illegal narcotics entering the United States.

I find it difficult to understand the failure of the Turkish Government to clamp down on the illegal drug crop. True, the opium poppy has been grown for centuries in Turkey and the farmer resists attempts to limit its growth. The Government authorizes the legal harvest of about 100 tons of opium each year. The Government pays the farmer a set price for the legally grown opium. But the farmer can sell opium illegally at about three times the price he receives from the Government. Altogether, the total value of the illegal and legal trade in opium is not more than $6 million, an insignificant amount in the Turkish national income of $9 billion. If it were solely a question of money, we could well afford to use a small fraction of the $135 million we spend annually to control narcotics to buy up the entire Turkish opium crop.

I believe that the underlying reason for the failure of the Turkish Government to surpress the illegal opium trade is found in its lack of will. This is demonstrated in the laxity of Turkish law enforcement. The Iranian Government imposes a death penalty on those caught smuggling drugs. Turkey does not. Indeed, the Turks do not even use heavy fines or imprisonment, as has the Indian Government, to stop the illegal growth of opium. If the Turkish Government were much less efficient than the Iranian or Indian Governments, then there might be an excuse for its failure. But this is not the case. If Turkey wanted to stop the smuggling of opium to the heroin factories in Corsica or Marseilles, it could.

In the face of this indifference, must we remain helpless? If we had the commonsense, the United States could significantly reduce the international flow of illegal drugs. If we made it known that we intend to stop giving economic assistance to those nations, such as Turkey, that fail to exercise adequate controls over illegal drug production,

those nations would institute effective drug control measures.

Why in Turkey alone we are giving each year far more than 10 times as much in economic assistance as the total value of the legal and illegal opium crop produced. But as things now stand, even though the possibility of such a sanction has been mentioned in the past, the Turkish Government, for example, does not believe we will ever invoke it. As a member of NATO, Turkey is confident that it will remain immune to any cessation in the flow of our aid, even though the threat to our internal well-being from the traffic of illegal drugs is far greater today than any external threat to our security which could possibly be countered by Turkey.

Yet, the executive branch apparently continues to place greater weight on Turkey's role in the NATO alliance than it does on the drug epidemic preying upon our own youngsters. We are told, in detail, about the steps that the Turkish Government is taking to stop narcotics smuggling, but we are not told why the Turks stay so much less effective than the Indians. We are told, in detail, about the measures the French Government is taking in cooperation with the Department of Justice, but we are not told why heroin produced in the factories of Marseilles still finds its way into the hands of the pusher on the streets of Washington, our Nation's Capital. One can only surmise that the culprit governments have long since concluded that our executive branch lacks the will to invoke any realistic sanctions against the drug traffic. The time has come for the Congress of the United States to take action in its own right.

Earlier in this session, Representative RODINO, of New Jersey, and Senator MONDALE, of Minnesota, and Senator HARTKE, of Indiana, introduced bills that would suspend our aid to foreign governments if the President determined that appropriate measures were not being taken to stop the flow of illegal drugs into the United States. These distinguished lawmakers have taken an initiative. We owe them a debt of thanks.

These bills, in my judgment, reach in the right direction by posing the possibility of aid suspension as a deterrent to illegal drug production. But, if the deterrent is to be credible, it cannot be left to the President, acting through the State Department, to invoke. Congress has written a plethora of laws of this kind in the past, leaving their application to the discretion of the Executive. They just have not been used, and there is no reason whatever to anticipate a different result in this case.

If we are to write realistic curbs in the law—curbs that will be taken seriously by foreign governments—another method must be found.

Accordingly, I am today introducing a bill to amend the Foreign Assistance Act, which would empower the Comptroller General, as an agent of the Congress, to make an annual determination as to which foreign governments have failed to make appropriate steps to stop the flow of illegal narcotics from their countries into the United States.

Should he determine that a given government has failed to take such steps, he would notify the Congress and, after 90 days, no further economic assistance would be available to the country in question. Following the determination by the Comptroller General, if the President could furnish information indicating that the government in question had subsequently taken steps to curb the flow of illegal hard drugs into the United States, Congress could waive the provisions of the act. Similarly, if the President felt that other overriding national interests made it advisable to waive the provisions of the act, he could request the Congress to do so. But, in each case, Congress would make the determination after bearing the evidence from the executive departments as well as from the Comptroller General, who is directly responsible to Congress. So the final decision would be one in which the legislative branch of the country would participate.

The bill also requires that the Comptroller General submit an annual report to Congress on the effectiveness of measures being taken by foreign governments to stop the illegal flow of hard narcotics. The Congress has a need for an independent assessment of this aspect of our drug problem.

Mr. President, we must eradicate the epidemic of hard drug addiction. It is up to Congress to show that the people of the United States place the highest priority on this task. It is up to Congress to enact the laws needed without any more delay.

I send the bill to the desk and ask that it be appropriately referred.

I ask unanimous consent that the bill be printed in the RECORD, together with an article from the Idaho Statesman of March 3, 1971, indicating that the problem of drug addiction and its relationship to the rise in violent crime has even reached into my own State.

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

S. 1188

A bill to amend Section 620 of the Foreign Assistance Act of 1961 to prohibit foreign assistance from being provided to foreign countries which do not act to prevent narcotic drugs from unlawfully entering the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 620 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection:

"(v)(1) The Comptroller General of the United States shall review and determine annually (A) the effectiveness of measures being taken by each foreign country to prevent narcotic drugs, partially or completely produced or processed in such country, from unlawfully entering the United States, and (B) whether that country has undertaken appropriate measures to prevent any such narcotic drug from unlawfully entering the United States. Not later than March 31 of each year, the Comptroller General shall make a report to the Congress of his review and determinations for the preceding calendar year.

"(2) Except as otherwise provided paragraph (3) of this subsection, ninety days after the making of any such report to the Congress, any foreign country with respect to which the Comptroller General has reported a determination under paragraph (1) (B) of this subsection, that such country has not undertaken appropriate measures to prevent any such narcotic drugs from unlawfully entering the United States, shall thereafter receive no further economic assistance from the United States.

"(3) If the President finds that a foreign country referred to under paragraph (2) of this subsection has undertaken, after the determination of the Comptroller General, appropriate measures to prevent such narcotic drugs from unlawfully entering the United States, or finds that the overriding national interest requires that economic aid be continued, he may ask Congress to waive the provisions of such paragraph, and if the Congress concurs, the provisions of such paragraph shall not apply to that country unless the provisions of such paragraph would apply further to that country as a result of a subsequent report and determination.

"(4) The President is authorized to utilize such agencies and facilities of the Federal Government as he may deem appropriate to assist foreign countries in their efforts to prevent the unlawful entry of narcotic drugs into the United States. The President shall keep the Congress fully and currently informed with respect to any action taken by him under this paragraph.

"(5) No provisions of this or any other law shall be construed to authorize the President to waive the provisions of this subsection.

"(6) For purposes of this subsection—

"(A) 'narcotic drugs' has the same meaning as given that term under section 4731 of the Internal Revenue Code of 1954; and

"(B) 'foreign assistance' means any tangible or intangible item provided by the United States Government (by means of gift, loan, sale, credit sale, guaranty, or any other means) under this or any other law to a foreign country, including, but not limited to, any training, service, or technical advice, any item of real, personal, or mixed property, any agricultural commodity, United States dollars, and any currencies owned by the United States Government of any foreign country."

SEC. 2. The provisions of this Act shall be effective on the first July 1 occurring on or after the date of enactment of this Act.

QUESTIONS ON DRUG USE ANSWERED BY OFFICER

(NOTE.—The following questions about drugs and crime were submitted to Police Chief John Church. They were answered by Sgt. E. C. Palmer, who heads the department's Vice and Narcotics Division.)

1. What effect does drug use have on the incidence of crime in the Boise area? Is it related to our increasing number of holdups?

Drug use definitely is involved. Out of 29 armed robberies, 12 of these related back to narcotics. Of 65 burglaries, 35 related back to narcotics. Of five murders committed in the Boise City area in the past year, two of them were related directly to narcotics. In the past we felt that crimes of violence were not directly related to drugs. However, with the increased use of amphetamines, we find that crimes of violence are on the upswing.

By Mr. BAYH:

S. 1189. A bill to extend the provisions of the Narcotic Addict Rehabilitation Act and to provide that members of the Armed Forces be discharged by reason of physical disability for civil commitment under such act when such members are suffering from drug addiction or drug

dependence, and for other purposes. Referred to the Committee on Armed Services.

MEDICAL DISCHARGES AND REHABILITATION FOR ADDICTED AND DRUG DEPENDENT SERVICEMEN

Mr. BAYH. Mr. President, I introduce, for appropriate reference, a bill to amend title 10 of the United States Code to provide medical discharges for drug dependent or drug addicted servicemen and to allow for their treatment and rehabilitation under the provisions of title III of the Narcotic Addict Rehabilitation Act of 1966.

If this bill is enacted into law, it will mean a positive and meaningful step toward curbing drug abuse not only among service personnel but also among the civilian population to which these drug addicted servicemen have returned.

There has been substantial evidence of a serious drug abuse problem in the military on record for at least 2 years. The Defense Department has only recently recognized and acknowledged its existence and begun to implement a positive drug abuse policy intended both to curb the problem and treat the victims more humanely than it has in the past.

In view of the recognition of this serious problem by the Defense Department, Congress, and the Military Establishment must develop additional measures to cope with it and to implement them without further delay.

One such avenue is through the legislation which I propose today. It would allow the drug addicted or dependent serviceman to be medically, rather than punitively discharged. He would be placed into a program of hospitalization and treatment for an extended period of up to 42 months.

Such an approach to the problem would relieve the military of responsibility for the extended treatment and rehabilitation of serious drug abusers, a consideration which I believe is urgently needed.

There is ample evidence in the record of the Subcommittee to Investigate Juvenile Delinquency indicating that a drug addicted or dependent serviceman cannot function in his assigned duties and therefore is of little use to his unit.

The military's recent report, conducted by the Department of Defense, recognized this when it said:

> . . . it is recommended that in general for administrative purposes persons may be considered voluntarily incapacitated for duty up to 12 to 36 hours after the use of marihuana. . . .

However, under present discharge procedures this serious drug abuser is usually discharged under conditions other than honorable and is returned to his community with his drug problem only to come to the attention of civilian authorities when he commits a crime in order to maintain his drug habit.

It is far better to identify this man while still in the service, medically discharge him under the conditions of the bill that I propose today, and then remand him to a drug rehabilitation program.

Let me assure the Senate, however, that I do not mean to include the drug trafficker, who is neither a drug addicted nor dependent person. He must be dealt with punitively.

Legally and medically a drug addict is an ill person, rather than a criminal. As such he should be treated as one in need of medical assistance rather than punishment.

While I primarily will direct my remarks to the need and the provisions of this bill, I would also like to address myself to the need for a multifacet attack upon drug abuse in the military.

Rehabilitative efforts alone will not completely solve the military drug problem.

Intensive drug abuse education efforts must be developed and implemented so that each man who enters military service is made fully aware of the mental and physical effects of drug abuse, of the consequences his actions have on discipline, of his ability to perform his duties, and of the possibility that his drug use could endanger the lives of his comrades.

I am aware that some educational efforts are made in the military. But I also know of their shortcomings, which have been described in a recent Department of Defense task force report on drug abuse released in October 1970.

This report details the fact that the formal drug abuse training courses of instruction do not really have an impact upon the younger enlisted men. Perhaps this is so because the structured methods used reflect an "establishment" type of presentation, or because there exists a communications gap between the younger draftees and their older "lifer" instructors.

The military might be well advised to explore the feasibility of using young enlisted men to present programs of orientation and training on drug abuse; they might develop methods of communication and presentation that will be meaningful to the intended audience. The problems of communication in the military are no different from those in civilian life, they certainly are not unique, and as such, demand a flexible policy in the presentation of drug abuse education.

I am confident that this can and will be done.

In addition to an accelerated program of drug abuse education, there is need for intensified investigative efforts, preferably coordinated among the branches of service, to seek out and identify sources of supply of illicit drugs. This is especially essential in Southeast Asia because of an abundance of marihuana and opium in that area.

In cooperation with local officials, these drug sources should be eradicated wherever possible. Additional efforts must be made to apprehend and prosecute traffickers. Many of them are former military who have served in that area of the world and who have been discharged under conditions other than honorable, and have remained there to ply a trade in illicit narcotics.

If this investigative effort is to be successful, then sufficient funds must be made available to the appropriate military commands to carry it out.

For example, a subcommittee investigator who spent several weeks in Vietnam in the fall of 1970 reported to us and testified that the provost marshal for MACV—Military Assistance Command, Vietnam—with whom he spoke indicated that he did not have enough funds to carry out an intensive investigation of the sources of supply of illicit drugs. He said that he had only $13,000 for the remainder of that fiscal year to conduct such investigations. His needs an approximated $100,000.

And this was at a time when a supply of high-grade heroin was flooding the streets of Saigon and soldiers were dying from it at the rate of two a day.

I believe that these efforts coupled with the approach of this bill, to identify and then medically assist drug addicts and drug dependent men, will be most helpful in curbing a now runaway problem.

What are the dimensions of this unabated abuse of drugs by our men in the armed services?

In assessing the scope and extent of drug abuse in the military, the record that the Subcommittee To Investigate Juvenile Delinquency has compiled through our public hearings and staff investigations is of significant value.

The subcommittee's inquiries began in 1966.

A witness before the subcommittee that year, Dr. Robert Baird, has devoted substantial time and effort to the rehabilitation of drug addicts. He told the subcommittee of returning servicemen who were either drug addicted or drug dependent, and who continued their habits in the United States after tours of duty in Vietnam and other areas of the world.

An ex-marine, who appeared with Dr. Baird as one of his patients, told of the ready availability of drugs in the Far East and of how he mistakenly machinegunned friendly forces, induced by the hallucinating effects of barbiturates he had taken just prior to his flying mission.

Last year that marine died in Washington, D.C., of a suspected overdose of narcotics. He was found in a downtown motel with fresh needle marks in his arm and a hypodermic needle beside him.

Dr. Baird's concern was that the condition he described would worsen, that it would become more complex, and that efforts were then needed to cope with the problem.

The Defense Department at the time refused to pay attention to this assessment of the problem and the need for action to cope with it. One of Dr. Baird's recommendations was that drug addicted servicemen be given medical discharges rather than dishonorable or bad conduct discharges.

The basically punitive nature of the discharge policy of the Armed Forces, outlined in 1966, is still Department of Defense policy today.

Their Task Group on Drug Abuse recently recommended:

The Discharge System now in effect in the Armed Forces represents a fair and proper method of categorizing service. Changes in it should not be made for the sole reason of allowing drug abusers to receive Veterans benefits.

In addition, officers who were interviewed by a Defense Department investigative team in Southeast Asia, supported the punitive approach expressed in Defense Department policy. In fact the prevailing view, according to the report issued by the team, is that too few bad conduct charges are given and that the number of such discharges should be increased.

With regard to the discipline of drug abusers in Vietnam, the report also says:

C. Special Court: The majority of the commands are trying hard drug offenders, repeaters, chronic marihuana users and multiple drug users at this forum. It appears that the vast majority of court-martial cases for drug abuse are held at this forum.

I would agree that drug traffickers should be handled punitively. However, it is my firm conviction that the drug abuser, the chronic marihuana user and the multiple drug users should be disposed of by means other than punishment under the approach made possible in the bill I propose.

Unless there is more flexibility in the policy of the Department of Defense, we cannot hope to rehabilitate military drug addicts. The bill I introduce today is designed and intended to provide this needed flexibility.

The need for a more flexible military drug policy becomes more urgent daily, because of the changing patterns of drug abuse among servicemen, especially in Vietnam.

Evidence of this was presented to the subcommittee in the fall of 1970 by Jon Steinberg, a subcommittee investigator, who had just returned from an intensive investigation of drug abuse in Vietnam.

In citing these changing patterns of drug abuse, Steinberg presented Army statistics on heroin overdose deaths. The following excerpts from his testimony are pertinent to that point.

Steinberg testified:

For the first seven months of 1970 there was an average of two soldiers a month dying from drug overdoses. This was an increase of 50 percent over the monthly average for 1968. However, since late summer of this year a newly packaged, widely distributed, deadly, potent form of heroin is being, by U.S. standards, practically given away to our troops.

As a result, known drug overdose deaths increased 175 percent in August and September and combined with suspected overdose deaths the increase is 1000 percent, or 46 deaths.

During the first 18 days in October 1970 there were 35 *known* overdose deaths among our troops.

At that rate, instead of the two deaths a month we experienced from January through July, we are now experiencing two deaths a day.

Steinberg then went on to testify to the conditions in Vietnam in 1969, when he served there as a member of the Armed Forces, and compared that period with his most recent investigations there in late 1970.

He stated:

One year ago as a member of the Armed Forces I conducted a six month investigation into the drug problem in Vietnam. At that time it was substantiated that the use of marihuana and opium among American servicemen was quite extensive. However, there was little record of harder drug use, such as heroin, methamphetamine, barbiturates, etc. The situation today however is different. Since my last trip to Vietnam, as my opening remarks indicate, the use of heroin and the availability of heroin has steadily increased among U.S. servicemen.

Additional drug abuse data indicates that in 1969 marihuana was indeed a serious problem among the men in Vietnam and reinforces Steinberg's evaluation of the problem in 1969.

The results of a study conducted by U.S. Army Capt. Morris Stanton, Ph. D., in the fall of 1969 and only recently released by the Defense Department show that 50.1 percent of the younger enlisted men below the age of 27 and below the rank of E–7 had used marihuana while in Vietnam. Stanton's study was conducted among men leaving Vietnam and was obtained through the use of a questionnaire given the men and voluntarily answered by them at the time of their debarkation from Vietnam. His study reflected that one-fourth of the men indicated that they intended to continue marihuana use upon return to the United States.

Other data in Stanton's study show that the greatest relative increase in Vietnam of all of the drugs surveyed was of opium, which almost tripled among users during their Vietnam tour, as contrasted with use prior to Vietnam. Seventeen percent of the enlisted men indicated opium use during their stay in Vietnam, while only 6 percent indicated that they had used the drug prior to Vietnam.

And so Mr. President the evidence is clear. There is a substantial drug abuse problem among the men in Vietnam. It is becoming more complex and more severe. Changing patterns reflect that marihuana was the first drug to be used extensively, but that, as time has passed, increasing use of opium and heroin are now reported.

Quite obviously the military, especially in combat zones, is not equipped to treat and rehabilitate addicts and other dependent drug abusers. The amnesty programs which have begun in Vietnam cannot be expected to provide the answers to this problem.

An alternative must be developed to deal with chronic drug abusers, and I believe that the measure that I now propose is a reasonable alternative. I urge my colleagues to give this legislation their most serious consideration in the 92d Congress.

Responsible military leaders in Vietnam and physicians who are close to the problem in Vietnam agree with this approach.

They support the medical approach toward the problem which I introduce today.

Subcommittee investigator Steinberg discussed this legislation with a number of military officers, and indicated that almost to a man, these military leaders support the medical-rehabilitative approach taken by this legislation.

Excerpts from Steinberg's interviews with these men show their support for the bill. I will consequently identify several of these officers and cite their positions.

Col. Clotilde D. Bowen, the USARV psychiatric consultant—(the military's top psychiatrist in Vietnam)—said:

Certainly the military cannot do it here (treat drug addicts) in Vietnam. I would think the only possibility would be to return these people to the States, with the possibility that they would have some center there or some type of organization there to treat these people. But I don't think that this is really the mission of the Army, that is the point. Yes I do agree with this approach, (that recommended in the Bill). I think the one thing that we would have to watch in Vietnam though would be to carry out testing to be sure that they are truly addicted to drugs. . . . We do have some of these things available to us. We are getting Naline in the country, and we are going to be using it to test if people are truly addicted.

Maj. Jerome Char, the psychiatrist for the 101st Airmobile Division, estimated that anywhere from 40 to 50 percent of the men in his division experiment with or are hooked on hard drugs.

In relation to that high drug use rate, Major Char made the following observations about the amnesty program and the bill:

(Under the Amnesty Program) a man is supposed to turn in his drugs, seek treatment, but there is no real treatment available for the problem. It looks to me that the whole philosophy is sort of moral. A man should turn in drugs and then his conscience should catch up with him and he just is supposed to use his own willpower to stop using drugs. Which is a totally ridiculous idea. To advertise it (the Amnesty Program) as the answer to the problem I think is incorrect, because it just doesn't work. As Mr. Steinberg has outlined the program (contained in the Bill) it is a very good one and I think the authority should rest with the medical people in the Army. If it is determined that a man is psychologically or physically addicted I think he should be medically removed from the Army. And the program as Mr. Steinberg outlined it would be a very good one by trying to help these people when they get back to the States rather than by throwing them out on the streets where they have to take drugs.

Maj. John O. Ives, the psychiatrist for the 483d Air Force Hospital at Cam Rahn Bay, does not think the amnesty program can work.

What we are doing at the moment (with the AP) I do not consider at all adequate. We offer an AP which consists simply of an amnesty. A person is offered the chance to give himself up in return for amnesty from prosecution for anything he has done up to that time, after that the medical people see the person and give him help in withdrawing himself from drugs. We can do this quite effectively. However, I suspect that the rates of return to drugs are quite high. We have seen many individuals who have returned to the drug after being sent back to their units here in Vietnam. We have made certain attempts at aftercare but these have been lately unsuccessful. I feel quite strongly that because of the availability of drugs here in Vietnam, that it is difficult, extremely difficult, and almost impossible, to treat and expect a troop who has been on heroin to

stay off heroin once he is returned to his unit. Consequently, I agree with Colonel Bowen's proposal that people who have been addicted to heroin here in Vietnam should be evacuated to the United States as soon as possible.

Col. William Bethea, XXIV Corps surgeon, said the drug problem in Vietnam is uncontrollable under existing conditions for discharge and treatment:

If we took all the psychiatrists in the U.S. Army, we wouldn't have enough medical men to treat the drug abusers in Vietnam.

Lt. Col. Lawrence E. Ison, Brigade Surgeon, 1st Brigade, 5th Infantry Division, Mechanized, said that drug addiction should be treated as a medical problem, as it is in civilian life, and said of the bill:

The discharge and treatment provisions contained in the bill would be a great help.

Col. Jasper C. Vance, XXIV Corps Provost Marshal, said:

I am completely against giving a man a dishonorable discharge for his drug use. It's a medical problem. We owe it to the man and to our country.

Col. George A. Robinson, commander of the 355 Tactical Fighter Wing—Air Force—said the existing policy of discharge for military drug abusers is not acceptable:

We wait and allow a man to get in more serious trouble until we can get rid of him by dumping him on society where he'll even get into bigger trouble.

Maj. Richard Cameron, the 1st Air Cavalry Division psychiatrist, claimed that the amnesty program does not work, and as to treatment which could work, he said:

(The Amnesty Program) sort of reminds me of how we are approaching pollution in the United States. The Army for years has been sort of painting its own house, sort of dumping these people back in society, and I certainly think that we have to do more. I'm not sure this is the Army's job, but I think the civilian community has to do something with these people.

Mr. President, I believe that the need for this legislation has been documented, that the military is not particularly equipped to become involved in long-range programs of drug rehabilitation and that this bill, if enacted into law will provide a needed flexibility in Department of Defense drug abuse policy, which will benefit both the services and the drug addicted or dependent servicemen.

I urge that this bill be given the earliest consideration of each Senator and that it be enacted without undue delay.

By Mr. CURTIS (for himself and Senator HRUSKA):

S. 1190. A bill to amend title 18 and title 28 of the United States Code with respect to the trial and review of criminal actions involving obscenity, and for other purposes. Referred to the Committee on the Judiciary.

Mr. CURTIS. Mr. President, I am today introducing a bill which would deny to the Federal courts the power to disturb the finding of a jury that a writing or a publication or any other article is obscene. I submit that this is a reasonable approach to the growing problem of pornography and filth in the country.

What is obscene and detrimental to society is largely a question of fact, rather than a question of law. There is no fairer way to determine whether or not something is obscene than to submit the question to a jury of 12 men and women, who are carefully selected and who are well instructed by the court as to the rights of the parties and the law.

Because a majority of the Supreme Court of the United States, in past years, has seen fit to overturn the findings as to what is obscene and has substituted its own notions as to what was obscene, pornography and filth now prevail throughout the land on bookstands, in the mail, on the movie screen, and elsewhere. The exercise of the power by courts has not been successful, and the will of the people has been thwarted, and the evils of pornography have multipled.

I hope that this bill can soon become the law to the end that the question as to what is obscene and what is not can be decided by that American institution best equipped to make such a decision, the jury.

By Mr. McGOVERN (for himself, Mr. MATHIAS, Mr. HARRIS, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. KENNEDY, Mr. MUSKIE, Mr. NELSON, Mr. PROXMIRE, Mr. RIBICOFF, and Mr. WILLIAMS):

S. 1191. A bill to assist workers whose jobs may be terminated by reductions in defense and space spending, to establish a system of benefits to ease the transition of such workers to civilian occupations, to minimize the hardships encountered by communities which are dependent upon defense industry and employment, to encourage cooperation between the United States and defense contractors in meeting the challenge of economic conversion and diversification brought by changing defense needs of the United States, and to facilitate the transfer of public and private resources to new national priorities.

Referred to the Committee on Government Operations.

THE NATIONAL PEACETIME TRANSITIONAL ACT OF 1971

Mr. McGOVERN. Mr. President I introduce today on behalf of myself, Mr. MATHIAS, Mr. HARRIS, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. KENNEDY, Mr. MUSKIE, Mr. NELSON, Mr. PROXMIRE, Mr. RIBICOFF, and Mr. WILLIAMS the National Peacetime Transitional Act of 1971.

PEACETIME TRANSITION ACT

Mr. McGOVERN. Mr. President, the indicators of our current economic posture are painful enough on a nationwide scale.

They do not, however, reflect in a meaningful way the crisis situation faced by millions of workers and their families and thousands of communities who are economically dependent upon military plans and programs.

Special circumstances today have exacerbated this situation. Our changed tactics in Vietnam are releasing both members of the Armed Forces and workers in private industry. There is the prospect that the strategic arms limitation talks will produce further arms reductions. Congress is examining military spending requests with greater care than has been the case in the past and we are finding room for further significant cuts. The space program is on a plateau and does not stand ready to take up the slack. And all of this aggravated by the fact that military production is geographically concentrated, thus increasing the dependence of the communities where it takes place.

The plight of these workers and communities has been foreseeable. It is, moreover, a direct consequence of Federal policy. In a sense they have been held in economic bondage, and now they are being abandoned.

Since World War II we have spent some $1.1 trillion on weapons, plans, and programs for the Armed Forces. For the past quarter century the enterprise of war—payments for past wars, preparations for future wars, and the conduct of wars in progress—has consumed as much as two-thirds of all Federal spending. Today we suffer the consequences of that preoccupation.

It has twisted and distorted our national economy. Inflation has become a permanent characteristic, varying only in the rate at which it consumes the value of our dollars.

Our ability to compete in world markets has deteriorated, both because of inflation and because so much of our technical and scientific talent—as much as 63 percent of the total—has been working on more efficient methods of destruction instead of on maintaining and improving commercial productivity.

Whatever the conventional wisdom has been in years past, it is clear that war no longer holds any advantage at all for the business community. It is destructive of the sound economic structure business needs to survive.

Another consequence comes in the form of lost opportunities for urgent public programs.

President Eisenhower pointed out as long ago as April of 1953 that:

Every gun that is made, every warship launched, every rocket fired, signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and not clothed. We pay for a single fighter plane with a half million bushels of wheat. We pay for a single destroyer with new homes that could have housed more than 8,000 people.

To prepare for the greatest threats imaginable in the military sphere, we have stolen billions from programs which could truly add to our national strength—programs to protect and preserve our environment, to educate our young, to end the poverty and hunger which disable millions of our people, and to build viable systems in such fields as health, housing, transportation, law enforcement, and a long list of others. And all of us who are interested in these programs know that the thievery is still going on, as the Pentagon moves to claim nearly all of the savings accrued or anticipated from changed military demands.

Beyond this we have learned that excessive arms spending is not a neutral quantity. It is more serious than simple waste. The ABM and MIRV issues illustrate that the very production and deployment of some weapons can increase the danger by forcing further arms race escalation. The capability for involvement in conventional conflicts breeds the involvement itself, in wars which have no bearing on our national interest.

Such consequences suggest how important it is that we exert much more careful control over the elaborate strategies and gadgets served up to us in the Pentagon budget each year. I am convinced that we could cut at least $20 billion from this year's $76 billion military spending request, and that the net effect would be to strengthen our security and increase our safety.

But there is another result which serves to prevent budget decisions based on rational assessments of national need.

MILITARY DEPENDENCY

To supply the military with increasingly sophisticated implements, we have spawned an enormous industrial establishment devoted to their production. In combination with the Federal military payroll, the arms industry accounts for nearly 15 percent of the Nation's labor force—3.5 million men in uniform, 1.2 million civilian Pentagon workers, and some 7 or 8 million workers employed directly on military procurement and research and development in the private sector. It exists in every State in the Union, in some 5,200 communities where the plants of 22,000 major contractors and as many as 100,000 subcontractors are located.

For most of us, reductions in military spending mean new opportunities for more responsive Government, and a chance to turn our attention to more hopeful pursuits.

But for these people, cutbacks mean rising unemployment, a declining tax base, plunging property values, and shrunken markets. It is understandable that they resist, particularly when they recognize that the Government which has lured them out on this economic limb has little interest in protecting them when the limb is severed. And that is the case today.

To devise appropriate remedies, it is helpful to understand the nature of the industrial portion of the Military Establishment, particularly the largest companies which account for the lion's share of military procurement.

It is erroneous to describe these companies as part of the American free enterprise system. On the contrary, they are more properly considered as simple extensions of the Pentagon. They retain few, if any, meaningful characteristics of private business.

As Prof. Seymour Melman of Columbia University has pointed out in his important book, "Pentagon Capitalism, the Political Economy of War," the distinction between buyer and seller has literally disappeared in this important segment of the economy. The Department of Defense, through its Defense Supply Agency, participates in virtually every major management decision, including the procurement of key personnel.

Since only a very small portion of contract awards are based on competitive bidding, there is rarely a market test of efficiency or quality. Because work is related to "national security," considerations of cost play a minor role in decisions to move ahead with a given program. Price escalation, instead of resulting in lost business for the company, simply brings a few red faces in the Pentagon and higher costs to the taxpayer. Government supplies much of the machinery used in production. If a company's financial management is especially bad, the Government stands ready to assure continued survival of the firm by finding that it is essential to the national security.

The definition is far simpler if we think of these companies as part of the Federal establishment—as Federal agencies and maintained to implement national policy. As agencies of the Government they do have some unique characteristics. I suspect that our surveillance of costs is less stringent in this area than is generally the case, and ordinarily we do not expect Federal agencies to demand profits in exchange for their services. But aside from such factors it is difficult to find important distinctions.

As a consequence, industries which have existed in this environment are ill-suited to find alternatives when their services are no longer required. As the cutbacks of the past year have taken effect, it has become painfully clear that no serious plans for commissions are being made at the industry level.

Indeed, case histories which have come to my attention suggest that if any conversion planning is being done, it is coming from unemployed workers and impacted communities trying to prod reluctant industry management, usually to no avail.

The January 11, 1971 issue of the Nation magazine describes the efforts of a United Auto Workers local president, John Taylor, in Delaware County, Pa., to deal with the elimination of some 7,000 jobs at Boeing's Vertol division. He and other union officials developed a plan for the production of low-cost modular housing, to be transported to nearby communities engaged in urban renewal. The reported response of a Boeing official was probably not atypical:

> But think how many units of housing we'd have to sell to make as much money as we do on a single helicopter.

The company suggestion box approach has had little effect upon management, and the prospect for requiring conversion planning through collective bargaining is not much more promising. Wartime "no strike" pledges are usually in effect, and even if strikes were possible the compliant customer in Washington stands always willing to accept delayed delivery schedules due to work stoppages.

But if we regard these industries as part of the Federal Establishment, then their failure to plan should really come as no surprise.

Existing management does not have the slightest idea how to operate in unfamiliar civilian markets, or to face the rigors of competition.

Beyond that, it has no more expectation of a coming transition than the average management level civil servant has that his agency will be abolished and that his job will be eliminated. By the same token, management feels little obligation to plan for the continued productive use of the human and physical resources it commands.

And as a result, the workers, mayors, businessmen, professionals, and others who are caught are forced to become constituents of expanding arms outlays, even though they might be sympathetic to rearranged national priorities elsewhere.

Both reason and experience suggest, therefore, that if there is to be a response to the crisis in military industries it must come as a result of strong Federal leadership. We have waited too long for the wisdom of industry management to prevail, and I suggest that we will wait forever for sound business judgments from that source.

THE FEDERAL RESPONSIBILITY

In light of the complexity of the problem, we may be tempted to respond by trying to keep the industry alive—by using jobs as a justification for building more military hardware than we need.

But that approach is indefensible on all grounds—moral, political, and economic. With all the public tasks waiting to be performed in this country, it is unconscionable to regard the Pentagon as a job-creating enterprise. There is no area of Federal responsibility in which the "public works" concept is less appropriate or more damaging.

Certainly no one of us would suggest that we should keep the war in Vietnam going because of the jobs it provides.

Yet that premise differs little from a suggestion that we should continue robbing civilian programs, that we should press forward with the arms race, or that we should undermine our own economy for the same reason.

We must, instead, devise programs to protect workers, to encourage new enterprise in the communities which are damaged by military cutbacks, and to stimulate new jobs where work desperately needs to be done in both the public and private sectors.

The bill we introduce today is offered as one means by which these goals could be accomplished.

Its central provision requires that a portion of the profits earned on military, space, and atomic energy contracts be deposited in a reserve, to be administered by the National Commission on Peacetime Transition.

The funds would be available to pay benefits to workers whose workweeks have been shortened or whose jobs have been eliminated or downgraded as a consequence of reductions in military and space spending. The benefit struc-

ture is designed to replace the actual income lost as a consequence of cutbacks, and payments would be set at levels which, when combined with other income, would total prior earnings. It would encourage workers to enroll in retraining programs by suspending the requirement for accepting suitable employment during the retraining process. Benefits would last for up to 2 years.

The bill seeks to combine this protection with an incentive for the employer to plan for the transfer of its workers and its facilities to peacetime production. It requires conversion planning, with the assistance of the commission staff, as a condition of defense contract fulfillment, and it provides that funds remaining to the credit of the contractor in the trust fund will be returned, free of tax, after the transition has been completed.

Thus, if a contractor does not plan effectively, he stands to lose his entire deposit; if he completes the transfer he may receive back more than he would have had if the deposit had not been required and he had instead kept the funds as taxable income.

Because of the nature of the industry and its present management, I have to confess strong doubts about the ability of major contractors, and the defense-related divisions of nondefense companies, to implement the transition to nondefense work. Certainly the environment in which they operate leaves them with questionable capacity to compete effectively.

But the bill does give them that opportunity. If they refuse or if they are unable to make the transition, then the bill also creates incentives for directors and stockholders to find new management, or for the acquisition of facilities and the employment of workers by other companies. In either case, funds in the reserves would be available for loans to implement new enterprise.

The National Commission would be composed of members of the President's Cabinet, the Administrator of NASA, the chairman of the Atomic Energy Commission, the Director of the Arms Control and Disarmament Agency, the Chairman of the Council of Economic Advisers, and three representatives each from business and labor. It would be chaired by the Secretary of Labor, and it could invite additional public members to serve. It would have an executive secretary appointed by the President, and a staff to carry out its continuing responsibilities.

Along with administration of the act's terms, the Commission would be charged with long-range planning on public spending. It is contemplated that its activities in this sphere would lend guidance to workers who want to retrain for areas of expanding opportunities, as well as to contractors who might plan to pursue continued work with other Federal agencies.

We have prepared a detailed outline of the bill, and I ask unanimous consent that it and a copy of the bill itself be printed in the RECORD at this point.

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

S. 1191

A bill to assist workers whose jobs may be terminated by reductions in defense and space spending, to establish a system of benefits to ease the transition of such workers to civilian occupations, to minimize the hardships encountered by communities which are dependent upon defense industry and employment, to encourage cooperation between the United States and defense contractors in meeting the challenge of economic conversion and diversification brought by changing defense needs of the United States, and to facilitate the transfer of public and private resources to new national priorities

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 Peacetime Transition Act of 1971.

DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds and declares that during the past two decades a substantial portion of the economic scientific and human resources of the United States has been invested in defense programs; that the national government, having created an economic dependence upon such investments, has an obligation to alleviate the harmful consequences of reductions made possible by changing defense requirements; that expansionary national economic policies must be supplemented by programs directed toward specific regional and local needs; that these objectives can be served most efficiently by cooperative efforts which will, to the greatest extent possible, convert manpower and facilities to new pursuits in existing locations; that such conversion should expedite the transfer of resources to fill urgent civilian needs; and that the economic ability of the Nation and of management, labor and capital to adjust to changing security needs is consistent with the general welfare of the United States.

(b) It is the purpose of this Act to provide means (1) to protect the incomes of workers who are unemployed as a consequence of reductions in defense activity, (2) to assure an orderly transition from defense to civilian production with minimum dislocation to families and communities, and (3) to encourage conversion of technologies and managerial and worker skills developed in defense production to the service of high-priority civilian purposes.

DEFINITIONS

SEC. 3. As used in this Act the term—

(1) "Defense agency" means the Department of Defense, the Atomic Energy Commission, or the National Aeronautics and Space Administration.

(2) "Defense contractors" means any person having not less than fifty workers engaging in the furnishing of defense material pursuant to the terms of a defense contract, or a subcontract entered into for the performance of any such contract or part thereof; except that the term "defense contractor" shall not include any person whose total number of workers so engaged in the furnishing of such material is less than 5 per centum of his total work force within a defense facility.

(3) "Nonprofit contractor" means any nonprofit organization having not less than fifty worker engaged in the furnishing of defense material pursuant to the terms of a defense contract, or a subcontract entered into for the performance of any such contract or part thereof; except that the term "nonprofit contractor" shall not include any nonprofit organization whose total number of workers so engaged in the furnishing of such material is less than 5 per centum of his total work force within a defense facility.

(4) "Defense contract" means any contract including any amendment, addition to or extension of any existing contract, entered into between a person or nonprofit organization and a defense agency to furnish defense material to such agency.

(5) "Defense material" means any item of weaponry, munitions, equipment, supplies, or services intended for use in the establishment, maintenance, training, or operation of any element of the Armed Forces of the United States or of any other country or in the conduct of the United States space program.

(6) "Defense facility" means any plant or other establishment (or part thereof) engaged in the production repair, modification, maintenance, storage, or handling of defense material.

(7) "Person" means any corporation, firm, partnership, association, individual, or other entity, but shall not include a nonprofit organization.

(8) "Nonprofit organization" means any corporation, firm, partnership, association, or other entity not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(9) "Short workweek" means any workweek of less than forty hours, or in the event a defense facility has a regular workweek payable at straight-time wage rates other than forty hours, any workweek less than such regular workweek.

(10) "Downgraded" or "downgrading" means any action taken by a defense contractor or nonprofit contractor with respect to a worker which results in such worker receiving a lower rate of pay, or lesser fringe benefits, or both.

(11) "Displaced" or "displacement" means with respect to any worker of a defense facility or defense agency the separation, on a permanent or temporary basis, of such worker from his employment with such facility or agency.

(12) "State agency" means the agency of a State which administers its unemployment compensation law, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(13) "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(14) "Fund" means the Defense Facility Conversion Reserve Trust Fund established by section 302(a) of this Act.

(15) "Non-Profit Fund" means the fund established by section 302(c) of this Act.

TITLE I—ESTABLISHMENT OF THE COMMISSION

SEC. 101. (a) There is hereby established, in the Executive Office of the President, the National Commission on Peacetime Transition (hereafter referred to as the "Commission"), which shall be composed of—

(1) The Secretary of Defense;

(2) The Secretary of Agriculture;

(3) The Secretary of the Interior;

(4) The Secretary of Labor, who shall be Chairman of the Commission (referred to hereinafter as the "Chairman");

(5) The Secretary of Commerce;

(6) The Secretary of Health, Education, and Welfare;

(7) The Secretary of Housing and Urban Development;

(8) The Secretary of Transportation;

(9) The Chairman of the Atomic Energy Commission;

(10) The Administrator of the National Aeronautics and Space Administration;

(11) The Director of the United States Arms Control and Disarmament Agency;

(12) The Chairman of the Council of Economic Advisers;

(13) Three persons, appointed by the Chairman of the Commission, who are representative of labor; and

(14) Three persons, appointed by the Chairman of the Commission, who are representative of management.

(b) The Secretary of Labor shall preside

over meetings of the Commission; except that in his unavoidable absence he may designate a member of the Commission to preside in his place.

(c) The Commission may invite additional individuals to serve as members of the Commission, either on a temporary or permanent basis, except that the membership of the Commission shall not exceed twenty-three members at any time.

(d)(1) The Commission is authorized to appoint a staff in accordance with paragraph (2) of this subsection, and to establish one or more task forces to assist the Commission in carrying out its duties under this Act. The staff shall be headed by an Executive Secretary who shall be appointed by the President of the United States (after consultation with the Commission) and who shall be compensated at the rate provided for grade 18 of the General Schedule. The members of such staff and task forces shall include, among others, marketing specialists, production engineers, plant layout men, and manpower training experts. It shall be the duty of the staff and any task force established by the Commission, at the request of the Commission, to assist defense contractors and nonprofit contractors with the development of conversion plans submitted by them pursuant to this Act, to review and evaluate such plans, to provide assistance in connection with their execution, and to carry out such other duties as the Commission may prescribe.

(2) The Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable in accordance with the applicable provisions of title 5, United States Code. The Commission may also procure temporary and intermittent services to the same extent as authorized for the departments by section 3109 of title 5, United States Code.

(3) The Commission shall take all reasonable steps to encourage, and give preference in assigning its staff and task forces to assist, defense contractors and nonprofit contractors to convert their defense facilities to production useful for the attainment of national priority goals, such as housing and urban rehabilitation, educational and health facilities and equipment, and elimination of environmental pollution.

(4) The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this Act, and each department, bureau, agency, board, commission, office, independent establishment, or instrumentality, is authorized and directed to furnish such information, suggestions, estimates, and statistics directly to the Commission upon request made by the Chairman.

(e) Members of the Commission who are officers or employees of the Federal Government shall receive no additional compensation by virtue of membership on the Commission. Other members of the Commission shall receive compensation at the rate of not to exceed $100 per diem when engaged in the performance of duties of the Commission. Each member of the Commission shall be reimbursed, as authorized by law (5 U.S.C. 73b–2), for travel and subsistence and other necessary expenses incurred by him in carrying out the duties of the Commission.

DUTIES OF THE COMMISSION

SEC. 102. It shall be the duty of the Commission to—

(1) define appropriate policies and programs to be carried out by departments and agencies of the Federal Government for peacetime transition capability, which shall include with respect to various degrees of economic conversion schedules of civilian public and private investment and education and retraining for occupational conversion, and to report to the President and the Congress on such policies and programs within one year of the date of enactment of this Act;

(2) convene a National Conference on Industrial Transition and Growth, within one year after the date of enactment of this Act, to consider the problems arising from appropriate planning and programing by all sectors of a transition to a civilian economy, and to encourage action to facilitate the Nation's economic conversion capability;

(3) consult with the Governors of the States and the Commissioner of the District of Columbia to encourage appropriate studies and conferences at the State, local and regional level, in support of a coordinated effort to improve the Nation's economic conversion capability, and make available to the Governors of the States and the Commissioner of the District of Columbia such funds, appropriated pursuant to title VI of this Act, as shall constitute not more than 50 per centum of the total costs associated with the preparation of such studies or the holding of such conferences;

(4) collect and disseminate to defense contractors and nonprofit contractors engaged in the furnishing of defense material to any defense agency information (other than information concerning proprietary trade secrets) useful to such contractors in preparation for conversion of their productive facilities to other uses consistent with policies and programs developed in accordance with the provisions of this Act;

(5) consult with trade and industry associations, labor unions, and professional societies, to encourage and enlist their support for a coordinated effort to improve the Nation's economic conversion capability;

(6) perform the duties imposed upon the Commission by this Act, and promulgate such regulations as may be necessary to carry out the provisions of this Act;

(7) make such recommendations to the President and to the Congress as will further the purposes of this Act, and

(8) enter into agreements with other Federal departments, with agencies of State and local governments, and with private groups and individuals in order to carry out the purposes and provisions of this Act.

ADDITIONAL DUTIES OF THE COMMISSION AND STAFF

SEC. 103. (a) It shall be the duty of the Commission to review any conversion plan submitted to the Commission pursuant to section 201 of this Act with a view to (1) determining whether such plan conforms to the requirements of title II; (2) assessing the feasibility of such plan; (3) ascertaining whether the defense contractor or nonprofit contractor submitting such plan has made a reasonable effort to coordinate his plan with subcontractors and other firms in the same labor market area; and (4) determining whether such plan is generally consistent with plans submitted by other defense contractors and nonprofit contractors within such labor market area pursuant to title II of this Act. In reviewing any such plan, the Commission shall consult with the union representing the employees of the defense contractor or nonprofit contractor submitting such plan, and with representatives of the appropriate State and local governments.

(b)(1) Following the review of a conversion plan of a defense contractor or nonprofit contractor under this section, the Commission shall notify such contractor, in writing, of the results of its review of his plan, including any weaknesses or deficiencies therein. The notice shall further contain, where appropriate, a statement directing his attention to opportunities which he may have overlooked to convert his defense facilities to civilian production useful for the attainment of national priority goals.

(2) If a defense contractor required by the provisions of this Act to submit a conversion plan fails to submit such plan, or if on the basis of its review, the Commission determines that a conversion plan submitted by a defense contractor does not meet the requirements of title II of this Act, the Commission shall notify the appropriate defense agency of that fact, and such agency shall, upon receipt of that notification, withhold 15 per centum of any payment owed to such contractor on account of any defense contract entered into on or after the date of the enactment of this Act between such contractor and agency until the agency has been further notified by the Commission that a plan has been submitted or that the plan submitted has been modified by the contractor so as to bring it into conformity with the provisions of such title. If, on the basis of such review, the Commission determines that a conversion plan submitted by a nonprofit contractor does not meet such requirements, the Commission is authorized to withhold any further payments to such contractor from the Non-Profit Fund until the Commission has determined that such plan has been modified by the contractor so as to bring it into conformity with such requirements.

(c) The Commission shall, from time to time, publish, and make available to the public, a written report concerning its activities under this section. Such report shall contain information and other data sufficient to inform interested persons and nonprofit organizations as to production opportunities likely to result from the execution of conversion plans reviewed by it pursuant to this section, and the dangers of possible overproduction or underproduction of certain goods and services which might result from the execution of such plans.

TITLE II—ECONOMIC CONVERSION PEACETIME TRANSITION PLANS

SEC. 201. (a) No defense agency shall enter into any defense contract with any person or nonprofit organization involving the furnishing of defense material to such agency unless the contract contains a provision under which the defense contractor or nonprofit contractor is required, subject to the provisions of section 202 of this Act, to file with the Commission, no later than one year from the date of such contract, and thereafter keep current, a plan (referred to in this Act as a "transition plan") setting forth how he intends to convert his defense facility into a facility capable of providing employment for his workers engaged in the furnishing of defense material to a defense agency when and if such wrokers are no longer required for that purpose because the need for such material no longer exists or is substantially reduced. The provision shall further require that the obligations under this subsection shall continue notwithstanding completion or termination of the contract, if after such completion or termination the person or nonprofit organization remains within the definition of either section 3(2) or section 3(3) of this Act.

(b) Each transition plan filed pursuant to subsection (a) shall contain such information and other data as the Commission may prescribe, including the following:

(1) The type of product or service to be produced or provided.

(2) A statement setting forth the basis for such contractor's belief that a market for the proposed product or service is available, including details of any marketing studies or surveys made.

(3) A description of efforts undertaken and preparations made by the contractor to market the proposed product or service, including contracts established with market outlets and potential customers.

(4) A list of the machinery and equipment used, at the time of the filing of such plan, by such contractor in connection with the

furnishing of defense materials which may be directly converted to the proposed civilian production; a list of machinery and equipment so used at such time that would require modification for that purpose; a list of additional machinery and equipment which would have to be procured by any such contractor for that purpose; a description of the nature and extent of plant layout changes which would be required for such proposed civilian production; and a detailed description of the nature and amount of manpower retraining that would be necessary for conversion to such production.

(5) The estimated costs, at current prices, of the physical conversion and manpower retraining referred to in paragraph (4) of this subsection.

(6) An estimate of the time period required from the initiation of the conversion process to its completion, and of employment levels during each month of such period.

(7) In the case of prime defense contractors or prime nonprofit contractors, a detailed description of contacts and arrangements made with subcontractors to facilitate the maximum possible degree of coordination of their respective transition plans.

(8) In the case of prime defense contractors and nonprofit contractors, and their subcontractors, a detailed description of contacts and arrangements made by them with other firms in the same labor market area designed to facilitate maintenance of employment levels in that area.

(9) A statement as to how the foregoing elements in the transition plan would be effected, and to what extent they would have to be modified, in the event defense production is gradually reduced rather than totally eliminated at a single point in time.

(c) (1) Moneys deposited in the special reserve account of the Fund and earmarked to the credit of a defense contractor in accordance with section 302(a)(1) of this Act shall be available for use by such contractor in meeting expenses incurred by him in developing and carrying out his transition plan submitted pursuant to section 201 of this Act.

(2) Moneys appropriated to the Non-Profit Fund pursuant to section 302(c) of this Act shall be available for use, in accordance with this Act, by any nonprofit contractor in meeting expenses incurred by him in developing and carrying out his transition plan under this Act.

SEC. 202. (a) In any case in which a defense contractor or a nonprofit contractor determines that his defense facility cannot be converted to civilian production he shall notify the Commission, in writing, of that fact. Such notification shall set forth the basis on which that determination was made, together with such other information and data as the Commission may require. If the Commission determines that such defense facility cannot be so converted, it may authorize such contractor to file with the Commission, in lieu of the transition plan required under section 201, copies of one or more contracts, approved by the Commission, entered into between such defense contractor or nonprofit contractor and any other person or nonprofit organization under which such person or nonprofit organization agrees to undertake to attempt to provide employment, including such retraining as may be necessary, for employees displaced from such defense facility. No such contract filed by a defense contractor under this section shall be approved by the Commission unless it contains a provision under which the moneys in the special reserve account in the Fund earmarked to the credit of such contractor in accordance with the provisions of section 302 (a)(1) of this Act shall be available for payment of employee transition benefits under title V of this Act and of all costs incurred by such person or nonprofit organization arising out of the absorption (including retraining) by such person or organization of such displaced workers.

(b) In any case involving any such contract entered into between a nonprofit contractor and any person or nonprofit organization under which such person or organization agrees to undertake to attempt to provide employment, including such retraining as may be necessary, for employees of such contractor so displaced, moneys appropriated to the Non-Profit Fund pursuant to section 302(c) of this Act shall be available for payment or reimbursement of all costs incurred by such person or nonprofit organization arising out of the absorption (including retraining) by such person or organization of such displaced workers.

SEC. 202(c). In any case in which a defense contractor fails to submit contracts in lieu of a transition plan authorized by the Commission under subsection (a) of this section, the Commission may endeavor to arrange such contracts on behalf of the defense contractor, and may commit monies in the special reserve account earmarked to the credit of such contractor for the payment of all costs arising out of the absorption (including retraining) of such displaced workers.

SEC. 203. (a) In any case in which a defense contractor fails to execute the transition plan (or any part thereof) submitted by him in accordance with section 201 of this Act with respect to his defense facility, the Commission is authorized to take over, convert, and operate such facility, or take over and arrange, by contract or otherwise, for the conversion and operation by another person of such facility, in accordance with the plan submitted by such defense contractor or a plan recommended by the Commission or, with its approval, by the Commission's staff and task forces. The Commission shall pay to the defense contractor whose facility is taken over pursuant to this section a reasonable rent out of any moneys in the special reserve account in the fund earmarked to the credit of the defense contractor in accordance with the provisions of section 302(a)(1) of this Act. Employee transition benefits under title V of this Act, and all costs arising out of the development and execution of any such transition plan in accordance with this section by the Commission or such person, shall be paid out of such moneys in such account so earmarked.

SEC. 204. (a) With respect to any amounts authorized to be paid under this title out of moneys in the special reserve account of the fund, the Commission shall, from time to time, certify to the Secretary of the Treasury (1) the name of the defense contractor or other person entitled to receive such payment, (2) the amount thereof, and (3) the name of the defense contractor whose earmarked moneys in such account is to be charged in connection with such payment. With respect to any amounts authorized to be paid to the Commission pursuant to section 203 of this title out of moneys in the special reserve account of the fund, the Commission shall, from time to time, certify to the Secretary of the Treasury (1) the amount thereof, and (2) the name of the defense contractor whose earmarked moneys in such account is to be charged in connection with such payment. The Secretary of the Treasury shall make such payments from the special reserve account of the fund to such contractor, person, or Commission in accordance with such certification.

(b) With respect to any amounts authorized to be paid under this title out of the Non-Profit Fund, the Commission shall, from time to time, certify to the Secretary of the Treasury (1) the name of the nonprofit contractor or other person or nonprofit organization entitled to receive such payment, and (2) the amount thereof. The Secretary of the Treasury shall make such payments, from the Non-Profit Fund, to such nonprofit contractor, person, or organization in accordance with such certification.

SEC. 205. (a) Each defense agency shall file with the Commission, and keep current on not less than an annual basis, a transition plan with respect to each of its facilities in the United States (including agreements or arrangements entered into by such agency contemplating the operation of such facility by another Federal agency or private organization) setting forth how that agency intends to convert such facility into a facility capable of providing employment for its workers when such workers are no longer needed for defense purposes. Such plan shall be filed at such time and contain such information as the Commission may prescribe.

(b) In any case in which a defense agency determines that any of its facilities cannot be converted to a nondefense use, such agency shall, with respect to any such facility, file with the Commission, on an annual basis, plans (including details of arrangements made with other Federal agencies) designed to facilitate the employment of workers of such facility displaced because they were no longer needed by such facility for defense purposes.

(c) In addition to the other requirements of this section, the Department of Defense shall report to the Commission, on an annual basis, with respect to action taken by such Department, including training for civilian employment, to facilitate the absorption into the civilian economy of individuals released from the Armed Forces of the United States.

SEC. 206. The Commission shall by such means as it determines appropriate, inform Federal and State governmental and private manpower training agencies with respect to the training and retraining needs which the Commission estimates may result on account of the execution of transition plans pursuant to this Act.

SEC. 207. On and after the date of the enactment of this Act, each defense contract entered into between a defense agency and a defense contractor or nonprofit contractor shall contain a provision under which such contractor is required to notify the appropriate State employment service of all vacant jobs to be filled by new hires (as distinguished from vacant jobs to be filled by promotion, transfer, or recall of laid off workers) by such contractor.

TITLE III—CONVERSION RESERVES

SEC. 301. No defense agency shall enter into any defense contract with any person involving the furnishing of defense material to such agency unless the contract contains a provision under which the defense contractor is required to pay to the Commission an amount equal to 12½ per centum of all profits (determined prior to any exclusions for Federal or State taxes) resulting from such contract: *Provided, however,* that in no case shall a defense contractor be required to make further payments to the Commission under such provision if the Commission determines that of the fund established by section 302 of this Act, the portion earmarked to the credit of such contractor would be sufficient to cover payment of the employee transition benefits provided by Title V of this Act to all workers then employed by such contractor who would be eligible for benefits in the event of termination of all of the contractor's defense contracts. Profits payable to the Commission pursuant to this section shall be computed in such manner, and paid at such time, as the Commission; after consultation with the Comptroller General, shall by regulation prescribe. In no case, however, shall payments required to be made by a defense contractor pursuant to this section be considered as a cost item in the negotiating or bidding of any defense contract, or in determining profit for purposes of this sec-

tion or any provision of law relating to the renegotiation of defense contracts.

SEC. 302. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Defense Facility Conversion Reserve Trust Fund" (referred to in this Act as the "fund"). The fund shall consist of two parts, one of which shall be known as the "special reserve account" and the other as the "general pool reserve account". Amounts paid by a defense contractor to the Commission pursuant to section 301 of this Act shall be deposited in the fund as follows:

(1) 90 per centum of such amounts shall be deposited in the special reserve account and earmarked to the credit of the defense contractor making such payments; and

(2) 10 per centum of such amounts shall be deposited in the general pool reserve account.

(b) There is authorized to be appropriated to the general pool reserve account in the fund such amounts as may be necessary to enable the Secretary of the Treasury to make the payments and other disbursements authorized by sections 403 and 504 of this Act.

(c) There is hereby established in the Treasury of the United States a fund to be known as the "Non-Profit Fund". There is authorized to be appropriated to the Non-Profit Fund such amounts as may be necessary to enable the Secretary of the Treasury to make loans pursuant to section 402, and payments authorized to be made in accordance with sections 201(c)(2) and 202(b) of this Act.

SEC. 303. (a) It shall be the duty of the Secretary of the Treasury to invest such portion of the moneys in the fund as is not, in the judgment of the Secretary, required to meet current withdrawal requirements. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(b) Any obligation acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(c) Any interest earned by reason of the investment pursuant to this section of any moneys of a defense contractor in the fund shall be deposited in the account from which the moneys so invested were acquired and shall be available for disbursement in accordance with this Act.

SEC. 304. (a)(1) Upon written application of any defense contractor, the Commission is authorized, if such contractor has not engaged in the furnishing of defense material to a defense agency during any period of twenty-four consecutive calendar months following the date of the enactment of this Act, to provide for the return of all unexpended moneys (including interest credited thereon) of such contractor remaining to his credit in the special reserve account as of the date of such application, if all of his obligations under this Act have been satisfied.

(2) Upon written application of any defense contractor, the Commission is authorized, if the number of his workers engaged in the furnishing of defense material to a defense agency during the twenty-four calendar month period immediately preceding such application was continuously more than 20 per centum below the peak annual average number of his workers engaged in the furnishing of such materials during the period commencing on the date of the enactment of this Act and ending on the date immediately preceding the date of such application, to provide for the return to such contractor of a portion of his unexpended moneys (including interest credited thereon) remaining to his credit in the special reserve account of the fund as of the date of such application. Such portion to be so returned to such contractor shall be an amount equal to the excess of his unexpended moneys (including interest credited thereon) so remaining to his credit in such account as of the date of such application over the same percentage of his total deposits therein (including interest credited thereon) as his average defense employment during such two-year period preceding his application is of his aforementioned peak annual average defense employment. No more than one such application under this paragraph shall be approved with respect to any one defense contractor within any twelve calendar month period.

(b)(1) Upon written application of any defense contractor, the Commission is authorized, if such contractor has not engaged in the furnishing of defense material to a defense agency during any period of twenty-four consecutive calendar months following the date of the enactment of this Act, to provide for the return to such contractor of a portion of the moneys (including interest credited thereon) in the general pool reserve account. Such portion to be returned to such contractor shall be an amount equal to the percentage of such moneys (including interest credited thereon) remaining in such account as of the date of such application, equal to the percentage which his total deposits therein (reduced by a percentage equal to the percentage decrease in employment used in calculating any moneys previously returned to him under paragraph (2) of this subsection and including interest credited on such reduced amount) amount to in relation to the difference between (i) the total of all moneys previously paid into or credited to the general pool reserve account and (ii) the sum of all deposits (including interest credited theron) previously returned from the general pool reserve account in accordance with this paragraph and paragraph (2) of this subsection.

(2) Upon written application of any defense contractor, the Commission is authorized, if the number of his workers engaged in the furnishing of defense material to a defense agency during the twenty-four calendar month period immediately preceding such application was continuously more than 20 per centum below the peak annual average number of his workers engaged in the furnishing of such material during the period commencing on the date of the enactment of this Act and ending on the date immediately preceding the date of such application, to provide for the return to such contractor of a portion of the moneys (including interest credited thereon) remaining in the general pool reserve account. Such portion to be so returned to such contractor shall be an amount equal to a percentage of his total deposits (including interest credited thereon) in such general pool reserve account equal to the percentage reduction in his defense employment, adjusted by the ratio of the total amount (including interest) remaining in such general pool reserve account at the date of such application to the total of all deposits (including interest credited thereon) made to such account pursuant to this act by defense contractors who, if they cease to be engaged in furnishing defense materials, may become entitled to have moneys returned to them under paragraph (1) of this subsection.

(3) Notwithstanding any other provision of this subsection, no moneys shall be returned to any such defense contractor pursuant to this subsection if the total amount expended from such fund in order to meet his obligations and other expenses under this Act equals or exceeds the total amount of his deposits to the fund (including interest credited thereon).

(4) All amounts returned to a defense contractor pursuant to this section shall be exempt from the Federal income tax laws.

TITLE IV—DEFENSE CONTRACTOR BENEFITS

SEC. 401. (a) Any defense contractor requiring funds to carry on, expand, or initiate a civilian business or other civilian activity in the same labor market as his defense operations may be authorized by the Commission to borrow from funds in the special reserve account and earmarked to his credit in accordance with section 302(a)(1) of this Act, at a rate of interest equivalent to the current prevailing rate on long-term Treasury bonds.

(b) No loan shall be made pursuant to subsection (a) of this section unless the defense contractor requesting such loan has—

(1) obtained or arranged to obtain, from a reputable private lending agency, a loan, equal to at least 10 per centum of the amount requested pursuant to subsection (a), for use for the same purpose as that for which a loan is requested under such subsection, and such lending agency has agreed to share proportionately in any losses which might be incurred on the combined loans; and

(2) included in his transition plan submitted pursuant to section 201 of this Act provisions for employing workers, displaced from any defense facility operated by such defense contractor, in such civilian business or activity to the extent that employment opportunities are available for such workers under a seniority or other arrangement which is fair to workers in both such operations.

(c) Interest owing on such loan referred to in subsection (a) shall be paid by the defense contractor to the Commission for deposit by it in the special reserve account of the fund. Such interest payments shall be earmarked to the credit of such contractor in accordance with section 302(a)(1) of this Act and shall be available for disbursement in accordance with the provisions of this Act.

SEC. 402. (a) Any nonprofit contractor requiring funds to carry on, expand, or initiate a civilian business or other civilian activity in the same labor market as his defense operations may be authorized by the Commission to borrow from moneys in the Non-Profit Fund at a rate of interest equivalent to the current prevailing rate on long-term Treasury bonds.

(b) No loan shall be made pursuant to subsection (a) of this section unless the nonprofit contractor requesting such loan has—

(1) obtained or arranged to obtain, from a reputable private lending agency, a loan equal to at least 10 per centum of the

amount requested pursuant to subsection (a), for use for the same purpose as that for which a loan is requested under such subsection, and such lending agency has agreed to share proportionately in any losses which might be incurred on the combined loans; and

(2) included in his transition plan submitted pursuant to section 201 of this Act provisions for employing workers, displaced from any defense facility operated by such nonprofit contractor, in such civilian business or activity to the extent that employment opportunities are available for such workers under a seniority or other arrangement which is fair to workers in both such operations.

(c) Interest owing on such loans referred to in subsection (a) of this section shall be paid by the nonprofit contractor to the Commission for deposit by it in the Non-Profit Fund and shall be available for disbursement in accordance with the provisions of this Act.

SEC. 403. In any case in which a defense contractor, after meeting costs of transition benefits for his workers in accordance with title V of this Act, is unable to meet the costs involved in carrying out his transition plan submitted pursuant to section 201 of this Act out of his earmarked funds in the special reserve account of the fund, the Commission is authorized to direct the Secretary of the Treasury to guarantee up to 90 per centum of any loan obtained by such contractor from a reputable private lending agency for that purpose and to pay, out of moneys appropriated pursuant to section 302(b) of this Act, three-fourths of the interest charges on such loan in excess of 5 per centum per annum; except that the guarantee and interest subsidy shall be available only for a loan not in excess of an amount that the Commission determines might reasonably be required to provide employment for the number of such contractor's workers to be transferred, by reason of their displacement, from defense to civilian production in accordance with such conversion plan.

TITLE V—EMPLOYEE TRANSITION BENEFITS

SEC. 501. (a) Any defense contract entered into between a defense contractor or a nonprofit contractor and a defense agency shall contain a provision under which such contractor is required to report to the Secretary of Labor, or, in the case of a State which has entered into a contract with the Commission pursuant to section 503 of this Act, with the appropriate State agency, all displacements, short workweeks, or downgradings affecting workers employed by such contractor in a defense facility in connection with the furnishing of defense materials to a defense agency pursuant to such contract, and to specify, with respect to each affected worker, whether or not his displacement, short workweek, or downgrading was attributable, in whole or in part, to a reduction of the volume of defense work in such facility. Any worker listed in any such report as having been affected by a reduction in the volume of defense work conducted by such facility, including any worker found upon appeal in accordance with subsection (b) of this section to have been so affected, shall be certified by the Secretary of Labor or State agency, as the case may be, as a worker eligible for transition benefits in accordance with section 502 of this Act.

(b) Any worker (or union representing such worker) of a defense contractor or nonprofit contractor aggrieved by any matter contained in a report filed by such contractor pursuant to subsection (a) of this section (or by any matter relating to his certification, or failure to be so certified, or his eligibility for such transition benefits, or the kind or amount thereof), shall be entitled to appeal such matter to the Secretary of Labor, or, if such worker is in a State which has entered into a contract with the Commission pursuant to section 503 of this Act, to the appropriate State agency.

SEC. 502. (a) Subject to the provisions of subsection (d) of this section any worker certified pursuant to section 501 of this Act as eligible for transition benefits by reason of his displacement from a defense facility shall be entitled, for the two-year period following his displacement, to whichever of the following benefits are applicable:

(1) Compensation, on a weekly basis, in an amount which, when added to any benefits which such worker receives or is entitled to receive for such weekly period under any Federal or State unemployment compensation program (or any plan of his employer providing for such benefits) by reason of his displacement, and any earnings during such weekly period from other employment, equals the amount of such worker's regular weekly wages (for a forty-hour workweek or, in the event a defense facility has a regular workweek payable at straight-time wage rates other than forty hours, for such regular workweek) prior to his displacement.

(2) If such worker is otherwise employed during any such displacement period, compensation, in addition to that provided for in paragraph (1), in an amount equal to the difference between the costs incurred by him in connection with his meals, transportation, and other matters on account of such employment, and the costs which he would have incurred for such meals, transportation, and other matters on account of his prior employment if he had not been displaced.

(3) Vested pension credit under any applicable pension plan maintained by the defense facility from which he was displaced, for the period of his employment with such facility, and the two-year period following his displacement; except that pension credit during such two-year period shall be reduced to the extent of vested pension credit earned with another employer during such two-year period.

(4) Maintenance of any hospital, surgical, medical, disability, life (and other survivor) insurance coverage which such individual (including members of his family) had by reason of his employment by such defense facility prior to such displacement; except that if such worker so displaced is otherwise employed during such two-year period, such worker shall be entitled to receive benefits under this paragraph to the extent necessary to provide such worker with the same aforementioned protection as he (including members of his family) would have had if he had not been displaced.

(5) Retraining for civilian work in the defense contractor's or nonprofit contractor's defense facility providing pay and status as comparable as possible to the employment from which he was displaced.

(6) Subject to the provisions of section 504(b) of this Act, retraining approved by the Secretary of Labor, or, in the case of a worker in a State which has entered into a contract with the Commission pursuant to section 503 of this Act, by the State agency, and reimbursement for all reasonable relocation expenses, including the difference between the appraised value of his home and any lesser amount received in a bona fide arms length sales transaction, incurred by such worker in moving himself and his family to another location in order to take advantage of an employment opportunity to which he is referred, or which is determined to be suitable, by the Secretary of Labor or, in the case of a worker in a State which has entered into a contract with the Commission pursuant to section 503 of this Act, by the State agency.

(b) Any worker certified pursuant to section 501 of this Act as eligible for transition benefits by reason of his having been placed on a short workweek by a defense facility shall be entitled, during the two-year period following such certification, to compensation, on a weekly basis, in an amount which, when added to any earnings from his defense facility or other employment, during such weekly period, equals the amount of such worker's regular weekly wages (for a forty-hour workweek or, in the event a defense facility has a regular workweek payable at straight-time wage rates other than forty hours, for such regular workweek) prior to his having been placed on a short workweek.

(c) Any worker certified pursuant to section 501 of this Act as eligible for transition benefits by reason of his employment with a defense facility being downgraded shall be entitled, during the two-year period following such certification, to compensation, on a weekly basis, in an amount which, when added to any other earnings, during such weekly period, from his employment, equals the amount of such worker's regular weekly wages (for a forty-hour workweek, or in the event a defense facility has a regular work-week payable at straight-time wage rates other than forty hours, for such regular workweek) prior to such downgrading.

(d) In the case of a worker whose period of employment with the defense contractor (including periods of layoff, illness or authorized absence for other reason) was less than six months, the benefits provided in subsections (a)(1), (a)(2), (a)(3), (a)(4), (b), (c), and (d) of this section shall be applicable (separately or in combination) for a number of weeks no greater than the number of weeks in such period of employment.

SEC. 503. (a) The Commission is authorized, on behalf of the United States, to enter into an agreement with a State, or with any agency administering the unemployment compensation law of any State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954, which shall include the provisions described in paragraphs (1) and (2) of this subsection:

(1) such State agency will, as agent of the Commission, make certifications and other determinations required in section 501 of this Act, make such payments and provide such benefits are are authorized by section 502 of this Act, on the basis provided for in this Act, and will otherwise cooperate with the Commission and other State agencies in carrying out the provisions of sections 207, 501, and 502 of this Act; and

(2) such State agency shall be reimbursed for all benefits paid pursuant to such agreement, and all administrative costs incurred in carrying out such agreement.

(b)(1) There shall be paid to each State agency which has an agreement under this section, either in advance or by way of reimbursement, as may be determined by the Commission, such sum as the Commission estimates the agency will be entitled to receive under such agreement for each calendar month, reduced or increased, as the case may be, by any sum by which the Commission finds that its estimates for any prior calendar month were greater or less than amounts which should have been paid to the agency. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Commission and the State agency.

(2) The Commission shall from time to time certify to the Secretary of the Treasury for payment to each State agency which has an agreement under this section sums payable to such agency under paragraph (1) of this subsection. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the agency, in accordance with such

certification, from the fund or the Non-Profit Fund in such manner as is authorized by section 504 of this Act.

(3) All money paid a State agency under any such agreement shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned, at the time specified in such agreement, to the Treasury. Moneys paid from the fund and so returned shall be redeposited in the fund to the credit of the appropriate defense contractor. Moneys paid from the Non-Profit Fund and so returned shall be redeposited in such Non-Profit Fund.

(c) In any case involving a worker entitled to benefits under section 502 who is in a State with respect to which there is no agreement pursuant to this section, the Secreary of Labor shall, under regulations prescribed by him, administer such benefits on behalf of such worker. The Secretary of Laobr, in administering such benefits, shall, from time to time, certify to the Secretary of the Treasury for payment to such worker the amounts of such benefits to which he is entitled, and the Secretary of the Treasury shall make payments to such worker, in accordance with such certification, from the fund or the Non-Profit Fund in such manner as is authorized by section 504 of this Act.

SEC. 504. (a)(1) All transition benefits payable or provided to a worker of a defense contractor in accordance with this title shall be chargeable against moneys of such contractor deposited in the special reserve account of the fund and earmarked to his credit in accordance with section 302(a)(1) of this Act. In any case in which such moneys so earmarked are insufficient to pay or provide such benefits, moneys in the general pool reserve account of the fund shall be available to the extent of such insufficiency for that purpose. To the extent that such moneys in the general pool reserve account are insufficient to pay or provide such benefits, moneys appropriated to the general pool reserve account pursuant to section 302(b) of this Act shall be available for that purpose.

(2) All transition benefits payable or provided to a worker of a nonprofit contractor in accordance with this title shall be paid from moneys available in the Non-Profit Fund.

(b) Notwithstanding the provisions of subsection (a)(1) of this section, transition benefits payable or to be provided to any worker of a defense contractor pursuant to section 502(a)(6) of this Act shall not be charged against any moneys of such contractor in the special reserve account of the fund as provided for in subsection (a)(1), unless the Commission has first determined that the worker is unlikely to be reemployed by such contractor within a period of one year following his displacement, and that retraining or relocation, or both, is required to enable such worker to obtain employment comparable in pay and status to that from which he was displaced. In the event no such determination is made, such benefits authorized under section 502(a)(6) of this Act shall be payable or provided from moneys in the general pool reserve account of the fund.

SEC. 505. In no case shall any displaced worker be eligible for benefits under section 502(a) of this Act unless such worker agrees (1) to maintain, on a current basis, during the period of his displacement, an active registration with the Secretary of Labor or an appropriate State employment agency, as the case may be, and (2) to accept any employment, determined by the Secretary of Labor or agency, as the case may be, to be suitable, to which he is referred by the Secretary of Labor or such agency. No such benefits shall be paid under this Act to any worker who fails to maintain such registration or to accept such employment: *Provided, however,* That failure by a worker to accept suitable employment shall not affect his eligibility to receive benefits under section 502(a) of this Act if he is engaged in retraining pursuant to section 502(a)(5) or section 502(a)(6) of this Act.

SEC. 506. In no case shall any transition benefits paid pursuant to this Act be taken into consideration in determining eligibility for unemployment compensation under any Federal or State unemployment compensation law or in determining the amount of entitlement thereunder.

TITLE VI—APPROPRIATIONS

SEC. 601. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

PEACETIME TRANSITION ACT

(Outline of legislation introduced by Senators McGovern and Mathias)

I. APPLICATION

A. Agencies whose contracts are covered by the bill include the Department of Defense, the Atomic Energy Commission, and the National Aeronautics and Space Administration. Coverage is limited to contracts for weapons, munitions, equipment, supplies or services to be used in the establishment or operation of the armed forces or in the conduct of the U.S. space program.

B. The provisions of the bill extend to enterprises, including non-profit organizations, with 50 or more workers engaged in furnishing defense materials or services, unless the total number of workers is less than 5 percent of the work force in a defense facility operated by the employer.

C. Employee benefits would be available to workers of the contractor who are employed, in whole or in part, in the performance of defense contracts.

II. ADMINISTRATION

A. Federal responsibilities created by the Act would be performed by a National Commission on Peacetime Transition composed of members of the Cabinet; the chairmen of the Atomic Energy Commission and the Council of Economic Advisers; the Administrator of the National Aeronautics and Space Administration; the Director of the Arms Control and Disarmament Agency; three representatives each from business and labor, and up to five additional public members. The Commission would be chaired by the Secretary of Labor, and would have an Executive Secretary appointed by the President. It would be authorized to appoint professional staff to conduct day-to-day operations.

B. The Secretary of Labor would be authorized to enter into agreements with appropriate State agencies for the administration of employee benefit provisions of the Act, under provisions similar to those presently in effect for unemployment compensation for employees of the Federal government.

III. DUTIES OF THE COMMISSION

A. The Commission would be obliged by the Act to define appropriate Federal policies and programs to assist in the development of conversion capability, including estimated patterns of public and private investment and proposals for occupational conversion, and to report to the President and the Congress within one year. Within the same period it would convene a national conference on industrial conversion and growth, to consider means of encouraging planning by all sectors. It would be empowered to make recommendations to the President and the Congress.

B. The Commission would consult with State governments, and would encourage studies at the State, local and regional level. It would be authorized to contribute as much as 50 percent of the costs of such studies.

C. The Commission would collect and disseminate relevant information to contractors, and would consult with trade and industry associations, labor unions, and professional societies to enlist their support for a coordinated conversion effort.

D. The Commission staff would be charged with assisting in the development of contractor conversion plans and with evaluating them in light of the requirements of the Act. The Commission may order revisions in plans submitted by the contractors, and may direct the appropriate agency to withhold a percentage of payments owing on contracts until plans meet the requirements of the Act.

IV. FINANCING

A. Funds for payments of employee benefits and for loans to contractors implementing conversion plans would be generated by contractor deposits of twelve and one-half percent of their before-tax profits from defense business in conversion reserves held in trust by the commission. Ninety percent of the funds deposited by each contractor would be held to his credit in a "special reserve account," and the remaining 10 percent would be held to his credit in a "general pooled reserve account."

B. Funds for the payment of employee benefits in the case of non-profit defense contractors would be contributed by the Federal Government, and held in a "non-profit reserve account."

C. The Act authorizes additional appropriations as required to meet the administrative expenses of the Commission and to backstop funds in the reserves.

V. EMPLOYEE BENEFITS

A. Eligibility would be based upon a worker's being affected by reductions in the volume of defense work, as reported to the Secretary of Labor to the appropriate state agency where a Federal-State agreement exists. Such reports would be required of the contractor as a condition of defense contracts, and would include a listing of all displacements, short workweeks or downgradings caused by cutbacks in the contractor's defense production.

B. A worker would not be eligible for benefits unless he maintained an active registration with the appropriate State employment agency and agreed to accept any work deemed suitable by such agency, except that workers engaged in approved retraining programs would not be required to accept employment during their enrollment in such programs.

C. Benefits would be calculated to replace the actual income loss resulting from the defense cutback. Payments would be in the amounts necessary to equal, when added to other income of the beneficiary such as unemployment compensation or earnings from other employment, his earnings prior to being laid off or downgraded. Payments to individual workers would extend for up to two years, so long as they remained eligible during that period.

D. In addition to income benefits, workers would be entitled to receive vested pension credit under applicable pension plans; maintenance of hospital, surgical, medical, disability, and life insurance coverage had by reason of his prior employment; expenses of relocation for new employment or training; and, where possible, retraining in the employer's facility.

E. Benefits would be paid from funds earmarked to the credit of the contractor in the "special reserve account" administered by the Commission. If such funds were exhausted, further payments would be made from the "general pooled reserve account," including funds contributed by all contractors covered by the Act. If the "general pooled reserve account" were exhausted, the Act would authorize appropriations from general revenues. Benefits for employees of

non-profit contractors would be paid from the "non-profit" portion of the trust fund.

VI. CONTRACTOR OBLIGATIONS

A. As a condition of fulfillment of new defense contracts and renewals, extensions or adjustments of old contracts, defense enterprises would be required to deposit twelve and one-half percent of their before-tax profits from such contracts with the Commission, to be held in trust for the purposes of the Act. Such contributions would continue until the amount in the "special reserve account" held to the credit of the contractor would be sufficient to cover employee conversion benefits for the number of workers then employed who might become eligible for benefits under the terms of the Act. In addition, contractors would be obliged to submit, and keep current on an annual basis, detailed plans for the conversion of defense facilities to facilities capable of providing employment for workers in civilian-oriented work when they are no longer required for defense purposes.

B. If a contractor determined that his defense facility could not be converted, he would be required to file with the Commission contracts under which another person would agree to attempt to provide employment for displaced workers. The contracts would have to include provisions for the availability of funds in the "special reserve account" to pay employee conversion benefits as required.

C. Failure to execute the conversion plan filed by the contractor when defense work is reduced would result in authority for the Commission to assume control of the facility for reasonable compensation and either operate it under the conversion plan or arrange, by contract, for its conversion and operation by another person.

VII. CONTRACTOR BENEFITS

A. If the contractor has not been engaged in defense work for a twenty-four month period, he may reclaim all funds held to his credit by the Commission, provided that all employee benefit claims from such funds have been satisfied.

B. If employment in a defense facility were reduced by twenty percent or more over a twenty-four month period, the contractor would be allowed to reclaim the same proportionate share of funds held to his credit by the Commission, provided that all employee benefit claims from such funds have been satisfied.

C. Funds in the contractor's "special reserve account" would be available for the formulation of the conversion plans required by the Act.

D. The Commission could authorize contractors to borrow from funds held to their credit in the "special reserve account" for the implementation of conversion plans, if the contractor has obtained a loan from a private lending agency of at least 10 percent of the cost and has agreed to employ existing workers in the new enterprise to be developed to the extent employment opportunities are available. Interest on the loans would be at the rate currently prevailing on long-term Treasury Bonds. Non-profit contractors would be authorized to borrow on a similar basis from the "non-profit" portion of the fund. In cases where there are insufficient funds remaining for loans, the Act would authorize Federal guarantees for up to 90 percent of any private loan obtained by the contractor, and to pay three-fourths of any interest charges in excess of 5 percent from the "general pooled reserve account."

E. The Commission staff would be available to provide technical assistance in the formulation of conversion plans. The Commission would be directed by the Act to give priority attention in the assignment of staff and other recourses to conversion plans directed toward important public needs.

F. Any funds from the special and general pooled reserve accounts remaining after conversion and after payment of all employee benefit claims would be returned to the contractor, along with interest accrued from the contractor's borrowings and from other investments of the fund by the Secretary of the Treasury.

THE PEACETIME TRANSITION ACT

Mr. MATHIAS. Mr. President, I thank the Senator from South Dakota for yielding at this time.

For about 12 years, since I first came to Congress during the recession era of 1960–61, I have been impressed by the unfulfilled need for a method of evening out the peaks and dips in the defense industry. It has traditionally been feast or famine for American defense contractors with a resulting situation that is dangerous for national security and in human terms is catastrophic for the men and women who devote their employable years to defense work.

In the intervening years I have repeatedly urged the Arms Control and Disarmanent Agency to assume greater responsibility in the area of conversion of defense industry.

The virtue of such a plan is threefold. In the first place it enhances national security by insuring the vitality of the defense industry; secondly, it serves the humanitarian function of aiding the men and women who devote their employable years to that industry; and third, not unimportantly, it reduces the sinister facade of the so-called military industrial complex which has been of such great concern to so many Americans.

I am, therefore, joining with Senator McGOVERN in introducing the Peacetime Transition Act in the hope that our joint efforts will bring overdue results. This act addresses the economic and social problems faced by defense and defense-related industries and their employees in adjusting to cutbacks and changing patterns of military spending.

The act encourages defense firms and related nonprofit institutions to formulate and implement conversion plans as America moves from a wartime to a peacetime economy. It also provides for a program of worker benefits, extending over a 2-year period if necessary, which will maintain the level of income of those scientists, engineers, technicians, and other workers who are laid off or downgraded or who suffer reduced workweeks as a result of reduced orders from the Department of Defense, Atomic Energy Commission, and the National Aeronautics and Space Administration.

The bill establishes a commission with broad powers, headed by the Secretary of Labor, which will coordinate the national conversion effort, oversee the development of conversion plans of industries and institutions which are recipients of Government-awarded defense contracts, and administer the worker benefits program in conjunction with appropriate State agencies. Financing for payments of employee benefits and for loans to contractors implementing conversion plans will be generated by contractor deposits of 12½ percent of their before-tax profits from defense business.

I believe that the Senator from South Dakota has explained the dual nature of this incentive. These deposits will be held in trust by the Commission in conversion reserves. In the case of nonprofit defense contractors, funds will be contributed by the Federal Government, and held in a special reserve account.

The act does more than verbally exhort defense industries to plan toward the conversion of their facilities. It provides that failure to execute the required approved conversion plan, filed by the contractor, when defense work is reduced will result in authority for the Commission to assume control of the facility for reasonable compensation and either operate it under the conversion plan or arrange, by contract, for its conversion and operation by another person. The act also provides that any funds from the reserve accounts held by the Commission which remain after conversion and after payment of all employee benefit claims, will be returned to the contractor. In such an event, the contractor would also receive the interest accrued from his borrowings and from other investments of the fund by the Secretary of the Treasury.

As one can see, the Peacetime Transition Act provides some very strong inducements and incentives. Such strength is of paramount importance, however, because the human need and economic necessity for sound economic conversion has never been more compelling than it is today. We face in America an immediate crisis. Anyone who wants to see this crisis face to face can do so within a half hour's drive from the Capitol. Drive up and down Route 70–S, in the State of Maryland, where some of the best educated, best trained, most experienced researchers, and scientists in America are now unemployed. The economic effects of our partial disengagement from the war in Indochina, coupled with the counterinflationary policies required to pay for the extravagances of the 1960's, have abnormally depressed the Nation's economic growth in real terms. In an economy as sophisticated and interdependent as that of 20th century America, this slowdown has dramatically increased unemployment in all sectors. White-collar executives and blue-collar workers have found themselves shoulder to shoulder on the sidewalks without any expectation of imminent employment. Hardest hit, however, have been the managers, scientists, technicians, and workers who the Government, under the impetus of Sputnik 1 and 2 and our later involvement in Indochina, so actively and enthusiastically encouraged to cast their destinies with defense and aerospace industries.

We all hope that the fiscal and monetary policies adopted by the administration are resolving our current economic problems. Yet, even if the national unemployment rate sinks back toward that level of manpower turnover which is considered normal, and even if the economy regains a healthy growth rate, defense related industries will still be caught in the grip of a slowly, but continually, diminishing market.

These industries have been directly affected by a reordering of Federal

spending in favor of those programs of education, health, housing, transportation, and environmental control which suffered during the past 5 years as casualties of the Vietnam war. The future security and well-being of our country and our civilization are dependent upon development and progress in these domestic fields. We have realized that we can no longer afford the luxury of producing products which accrue no residual or lasting benefit to the society that manufactures them. We have realized that we will eventually starve ourselves if we continue to harness an inordinate amount of our technology, our mental creativity, our human energy, our natural resources, and our invested capital in the production of materials which result either in useless bits of shrapnel strewn among the trees of a jungle far away from home, or in mammoth stockpiles which cannot be eaten, breathed, lived in, or driven to work. In short, we have realized that national security is predicated on more than the construction and deployment of armies, tanks, and missiles.

At the same time it is important that we recognize that peace, or at least the cessation of American involvement in Indochina, may be a very difficult thing for the American economy to digest. We are all anxiously watching what we hope is the end of our participation in the war in Indochina. We pray that soon all of our soldier sons will return home, ready to live and work, raise families and grow, in America. They are more than entitled to this expectation. Yet if that possibility is approaching, so is the bleak specter of a wrenching dislocation of our economy. There will be a great rejoicing when the war finally ends, as it must, but twice in my lifetime I have seen the joy of a war's end turn to the bitterness of a hectic postwar readjustment.

We must act now to cushion this blow which could fall on America's workers, industries, and communities. We need to move toward an orderly economic transition. To do so we need not only to provide employment for those defense workers already falling prey to military disengagement and changing priorities, but we need also, to be ready to help and employ men who are and will be returning from the service. If we do not, we will be forced to stand helplessly by and watch the souls and sinews or our fellow citizens crushed on the wheel of peace. It should be clear that the demand for economic conversion is nonpolitical and nonpartisan. It derives from a national problem which affects us all. Conservative estimates place the number of highly skilled scientists and engineers presently unemployed or in danger of being laid off this year at over 100,000. The technician whose security is closely linked with the scientist is similarly threatened. These economic dislocations and the possibilities of widespread unemployment should have been foreseen and prepared for in the past.

Some years ago, the Fairchild Co. of Hagerstown, Md., experienced an early taste of the serious problems which can result from changes in policy and emphasis within the Department of Defense and the Federal Government. It was determined that the famous "flying boxcars"—the cargo workhorses of the armed services for many years—had become obsolete. When the Department of Defense no longer wished to buy the "flying boxcar," a completely new operation was required at the Fairchild Aircraft plant in Washington County, Md. During this conversion from one type of equipment to another, there was a period of hard unemployment.

It is apparent that if these conditions plagued American industry and economy then, serious setbacks would result if we should someday be able to reduce or eliminate the enormous expenditures for armaments which constituted a significant percentage of the American industrial and commercial effort. If simply changing from one kind of airplane to another could throw an American community into a state of depression and create chronic conditions of unemployment, there would soon be trouble with a capital "T" if disarmament should mean that we would be able to reduce our defense effort by even 10 percent.

At that time in 1964, I felt it prudent to introduce in the House of Representatives legislation which would have provided for a study of the consequences of disarmament on our economy and an exploration of new ways to achieve economic conversion from a nation centering on defense industry to a nation centering on peaceful industrial enterprise.

Unfortunately, that bill did not pass. But if action is deemed in retrospect to have been prudent then, it is imperative now. Maryland, with nine counties vulnerable to high or medium economic dislocations from defense cutbacks, needs the help that can be provided with this legislation. The Nation, with important industrial centers such as Seattle, Wash., and Lawrence, Mass., in severe recession, needs this legislation. Our highly skilled scientists and defense workers need the chance to contribute once more to America's economic future. It is time to recognize the dangers that confront us, and to act expeditiously toward alleviating them.

Mr. President, how much time do we have remaining?

The ACTING PRESIDENT pro tempore. Two additional minutes.

Mr. MATHIAS. Mr. President, I yield the remainder of that time to my distinguished colleague from South Dakota, for any concluding remarks he may wish to make.

Mr. McGOVERN. Mr. President, I thank the Senator from Maryland for his joint sponsorship of this measure. I regard it as one of the most urgent priorities before the country today.

I think all of us are interested in doing what we can to eliminate needless military spending, so that we can move on with some of the other urgent unmet needs of our society in the field of health care, education, and high pollution efforts, the provision of public service employment, and other matters of that kind. But I do not think we are going to take those steps without some serious dislocation in the absence of the kind of legislation that the Senator from Maryland and I are introducing today. So I commend the Senator from Maryland for the leadership he is providing in this area.

Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of the bill just introduced by Senator MATHIAS and myself: Senators HARRIS, HUGHES, HUMPHREY, INOUYE, MUSKIE, NELSON, PROXMIRE, RIBICOFF, and WILLIAMS.

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

Mr. MATHIAS. Mr. President, this is an urgent national problem. It is not limited by any State boundaries. It is a problem which exists in California—on the west coast—and in the midcontinent. But in my own State of Maryland we have almost a classic example of this problem, where we have nine counties highly vulnerable, and this provides a perfect testing area in which this bill can be applied, I believe, to the benefit of the entire United States.

By Mr. JAVITS (for himself, Mr. BUCKLEY, Mr. CASE, and Mr. WILLIAMS):

S. 1193. A bill to provide for the establishment of the Gateway National Recreation Area in the States of New York and New Jersey, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

THE GATEWAY NATIONAL RECREATION AREA

Mr. JAVITS. Mr. President, I am today introducing, for myself and Senators BUCKLEY, CASE, and WILLIAMS, a bill to establish the Gateway National Recreation Area.

Our bill would establish a Gateway National Recreation Area including lands, marshes, and submerged lands in the New York Harbor area and covering initially the Jamaica Bay area, the Breezy Point area, and the Great Kills area, all in New York; the Sandy Hook area including Fort Hancock in New Jersey; and the Hoffman-Swineburne landfill area in New York Harbor. Additional lands may be acquired up to a maximum of 25,000 acres in the recreation area.

We have consulted the Department of the Interior in the drafting of our bill, but the Department does not take any position on the measure. We have taken this action because we feel that the administration does not plan to submit legislation to establish the Gateway National Recreation Area and we feel it is essential that such an area be established by the Federal Government to serve an established 50 million people who will annually use the facilities when fully developed.

Over 2 years ago, Senators and Representatives from New York and New Jersey contemplated introduction of a gateway bill and, in fact, several bills were introduced in the House. However, action on this legislation was delayed since the Department of the Interior indicated that it would be sending legislation to the Congress establishing the Gateway Recreation Area.

On May 13, 1969, former Secretary Hickel announced that the gateway

would be the first in a series of urban recreation areas to be located near large population centers. Since that time, no legislation has been sent to the Congress concerning the gateway area, and the administration's latest action in proposing to turn back part of Fort Hancock to the State of New Jersey indicates that the administration apparently does not plan to submit such legislation to the Congress at this time. We have expressed our disappointment to the President in a letter of February 9, 1971, and asked that the decision be reconsidered. But we feel it is necessary at this point to take the initiative in introducing legislation for the establishment of the Gateway National Recreation Area.

We believe that the Federal Government is the appropriate entity to administer the recreation area and to provide the large-scale development of recreational and other facilities that will be needed. However, the initial cost of the recreation area can be held down since all land included at this time is owned by Federal, State, or city governments.

The recreation area will serve 15 million people who live within a 2-hour drive of the facilities as well as others from all over the Nation. Approximately half a million people a day will be able to use the swimming, fishing, boating, recreational, and cultural facilities available upon completion of the development program proposed by the Department of the Interior. On an annual basis, 50 million people will visit the recreation area when it is fully operational. We believe that the establishment of a Gateway National Recreation Area is the most appropriate way to fulfill the pledge to bring parks to the people where the people are. Similar bills have been introduced in the House of Representatives, and we shall do our utmost to get prompt and favorable consideration by the Congress for this legislation.

I ask unanimous consent that the text of the letter of February 9, 1971, to the President be printed in the RECORD, together with the text of the bill, and the text of a telegram received from Mayor John V. Lindsay of New York supporting this bill.

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

S. 1193

A bill to provide for the establishment of the Gateway National Recreation Area in the States of New York and New Jersey, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to preserve and protect for the use and enjoyment of present and future generations an area possessing outstanding natural and recreational features, the Secretary of the Interior (hereinafter referred to as the "Secretary") may establish the Gateway National Recreation Area (hereinafter referred to as the "recreation area"). The boundaries of the recreation area shall include the lands, marshes, and submerged lands in the New York Harbor area, as generally depicted on the map entitled "Boundary Map, Proposed Gateway National Recreation Area", numbered 951–40,000, and dated April 1970, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary shall establish the recreation area by publication of a notice to that effect in the Federal Register at such time as he determines that lands, waters, and interests therein sufficient to constitute an efficiently administrable recreation area have been acquired for administration in accordance with the purposes of this Act. The Secretary may from time to time make adjustments in the boundaries of the recreation area, but the total area within the boundaries shall not exceed 25,000 acres of land, marsh, and submerged land, except that notwithstanding the foregoing acreage limitation, the Secretary may revise the boundaries to include any Federal lands that may be determined to be excess to the needs of another Federal agency and transferred to the administrative jurisdiction of the Secretary for the purposes of this Act.

SEC. 2. (a) Subject to the provisions of subsection (c), within the boundaries of the recreation area the Secretary may acquire lands and waters or interests therein by donation, purchase with donated or appropriated funds, or exchange. Property owned by the States of New York or New Jersey or any political subdivision thereof may be acquired only by donation. With the concurrence of the agency having custody thereof, any Federal property within the boundaries of the recreation area may be transferred without consideration to the administrative jurisdiction of the Secretary for administration as part of the recreation area.

(b) The Secretary may also acquire, by any of the methods set forth in subsection (a), lands and interests therein on the shores of the Hudson River, the Upper Bay, Raritan Bay, and Sandy Hook Bay, which he deems necessary or desirable to provide docking or other access facilities, and related administrative and public use facilities, for the units of the recreation area. The Secretary may contract for the rental of such facilities, and any rental payments for such facilities for the purposes of this subsection shall be deemed to be part of the annual operating costs of the recreation area.

With the exception of property that the Secretary determines is necessary for purposes of administration, preservation, or public use, any owners (hereinafter in this section referred to as "owner") of improved property on the date of its acquisition by the Secretary may retain the right of use and occupancy of the improved property for noncommercial residential purposes, for a term, as the owner may elect, ending either (1) upon the death of the owner or his spouse, whichever occurs later, or (2) not more than twenty-five years from the date of acquisition. The Secretary shall pay to the owner the fair market value of the property on the date of such acquisition, less the fair market value on such date of the term retained by the owner. Such right (1) shall be subject to such terms and conditions as the Secretary deems appropriate to assure that the property is used in accordance with the purposes of this Act, (2) may be transferred or assigned, (3) may be terminated with respect to the entire property by the Secretary upon his determination that the property or any portion thereof has ceased to be used for noncommercial residential purposes, and upon tender to the holder of the right an amount equal to the fair market value, as of the date of the tender, of that portion of the right which remains unexpired on the date of termination, and (4) may be terminated with respect to the entire property if the Secretary finds that the property or any portion thereof is being used in a manner that does not comply with water quality, waste disposal, or sewage treatment standards established pursuant to applicable Federal or State laws. Nothing in this subsection shall be deemed to limit the authority of the Secretary under any other provision of law to enforce any such standards or to take any measures otherwise authorized by law to abate pollution.

(c) As used in this section the term "improved property" means a detached one-family dwelling, construction of which was begun before December 1970, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use: *Provided,* That the Secretary may exclude from any improved property any waters or land fronting thereon, together with so much of the land adjoining such waters or land as he deems necessary for public access thereto.

SEC. 3. (a) Prior to the establishment of the recreation area and thereafter, the Secretary shall administer the lands, waters, and interests therein acquired for the recreation area in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4), as amended and supplemented, except that the Secretary may utilize such statutory authority available to him for the conservation and management of wildlife and natural resources as he deems appropriate to carry out the purposes of this Act.

(b) Notwithstanding any other provision of law, the Secretary may provide such services and facilities, including ferry services, and docking facilities, directly or by negotiated contract, without advertising and without securing competitive bids, with public or private agencies or persons, as he deems necessary or desirable for access to the units of the recreation area.

(c) The Secretary is authorized to enter into cooperative agreements with the States of New York and New Jersey, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire prevention agencies.

SEC. 4. Any cuts, landfill, dredging, beach protective works, or other similar projects on, within the vicinity of, or directly or indirectly affecting any unit of the recreation area that are undertaken by or under authority of the Chief of Engineers, Department of the Army, shall be carried out only in accordance with a plan that is acceptable to the Secretary and is consistent with the purposes of this Act.

SEC. 5. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

FEBRUARY, 9, 1971.

DEAR MR. PRESIDENT: In your Environmental Message submitted on February 8, 1971, you stated that parts of Fort Hancock in New Jersey which have been scheduled to be included in the Gateway National Recreation Area proposal will be disposed of by the Federal Government to the State of New Jersey. This action appears to signify an end to plans for Federal legislation creating a Gateway National Recreation Area and we would like to express our strong disappointment over any such development.

About two years ago introduction of legislation was being considered by the New York and New Jersey Congressional Delegations regarding the establishment of a Gateway National Recreation Area. No action was taken on this legislation because of commitments received from the Department of the Interior to the effect that legislation would be submitted to the Congress by the Administration to establish the Gateway National Recreation Area within a short time.

On May 13, 1969, former Secretary Hickel announced a nationwide program to establish urban recreational areas in and near

large population centers. At that time, the Gateway National Recreational Area was slated to be one of the first of its type and was to be located in the New York Harbor area involving property in the States of New York and New Jersey. Since that time, no legislative proposal has been submitted to the Congress, even though one had apparently been drafted by the Department of the Interior and submitted to the Office of Management and Budget for approval.

On August 20, 1970, the four Senators from the States of New York and New Jersey wrote you a letter expressing their support for the Gateway Project. At that time they asked for an indication as to when legislation would be submitted to the Congress. In a letter from your staff dated September 22, 1970, it was indicated that the Office of Management and Budget had the proposal under careful study and would make recommendations to the new Congress shortly after it convened.

This latest action involving Fort Hancock indicates that the Administration does not plan to submit any legislation creating the Gateway National Recreation Area. We feel this is most unfortunate and unwise.

The Gateway National Recreation Area would be a tremendous asset to the nation as well as to the States of New Jersey and New York. The project would convert into a national park 20,000 acres of lands and waters, sands and surfs, islands, wildlife, marsh and uplands, and would provide a priceless recreational opportunity for this highly populated area. When developed it is estimated that the park will provide facilities for 50-million visitors annually. In your recent State of the Union Message, you referred to the need for an expanded parks system in the United States and expressed a desire to put parks where the people are. The Gateway project would be a most fitting way to carry out this concept expressed in your Message.

The States and localities of New York and New Jersey are not in a position to put together a recreation area as large as the contemplated Gateway project and would be hard pressed to find the financial resources to carry out such a plan or anything approaching it.

Therefore we respectfully request that no decision be taken to cancel the Gateway project and that instead the Administration submit a legislative proposal to the Congress establishing the Gateway National Recreation Area.

Very truly yours,

JACOB K. JAVITS,
JAMES L. BUCKLEY,
CLIFFORD P. CASE,
HARRISON A. WILLIAMS, Jr.

DEAR JACK: I understand you will be introducing in the United States Senate a bill to create Gateway National Park. We in New York wholeheartedly support your effort to provide vitally needed recreational facilities for the millions of citizens living in New York and New Jersey. As you know, the creation of such an "urban park" has long been among the city's highest priorities. The passage of this proposal would be a fulfillment of the President's pledge to bring "parks to the people." I congratulate you on the introduction of this landmark legislation and assure you of whatever support you may need to achieve this historic breakthrough in park and recreational facilities for all the people of this Nation.

Sincerely,

JOHN V. LINDSAY,
Mayor, City of New York.

Mr. WILLIAMS. Mr. President, I want to add my most emphatic support to what the senior Senator from New York has just said regarding the proposed gateway project. In these days of urban blight, when the urgent needs of the city in the areas of health, education, housing, and drug abuse occupy the highest priorities in our thoughts, if not always in our budgetary processes, we tend to ignore the needs of urban residents in another important area, that of recreation. For while it is certainly true that there should be no more overriding concern than the alleviation of immediate human suffering, we should also recognize the positive contribution that recreational areas within easy reach of urban dwellers can make in this respect. The urban resident should be able, if only for a short time, to leave his oppressive surroundings and enjoy the benefits of the clean and natural surrounding that a national recreation area would provide.

The gateway concept would not only provide these vitally needed recreational areas and convenient access to them, but through the resources and management of the Federal Government would insure that these areas would be developed in a way which would optimize the possibilities of regulating pollution and insure the most efficient coordination of the available land areas. The alternative development of separate regional parks in a haphazard fashion would not accomplish this goal of increasing urban recreational opportunities in nearly as satisfactory a fashion.

By Mr. MONDALE (for himself, Mr. YOUNG, Mr. BURDICK, Mr. CRANSTON, Mr. EAGLETON, Mr. GURNEY, Mr. HARRIS, Mr. HART, Mr. HATFIELD, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. MAGNUSON, Mr. MCGOVERN, Mr. METCALF, Mr. MONTOYA, Mr. NELSON, Mr. STEVENS, Mr. STEVENSON, Mr. THURMOND, and Mr. TUNNEY):

S. 1197. A bill to extend availability of Federal crop insurance and to authorize the appropriation of funds for administrative expenses of the Federal crop insurance program. Referred to the Committee on Agriculture and Forestry.

FEDERAL CROP INSURANCE

Mr. MONDALE. Mr. President, I introduce for myself and Senators YOUNG, BURDICK, CRANSTON, EAGLETON, GURNEY, HARRIS, HART, HATFIELD, HOLLINGS, HUGHES, HUMPHREY, INOUYE, MAGNUSON, MCGOVERN, METCALF, MONTOYA, NELSON, STEVENS, STEVENSON, THURMOND, and TUNNEY, amendments to the Federal Crop Insurance Act, 7 U.S.C. 1508. We are proud that 22 Senators from both parties have joined in support of this bill.

For the past 33 years the Federal Crop Insurance Corporation has offered a kind of hazard protection to farmers that was unavailable through private insurance sources. Only in recent years has any private insurance been offered on an all-risk basis, and then only in a few States for a few crops.

The Federal Crop Insurance Corporation provides protection against such hazards as: insect and wildlife damage, plant diseases, fire, drought, wind, and other weather conditions. Coverage has gradually been extended, so that it now includes 26 different crops. Yet less than half the counties in the country are able to take part in the program, and not all crops are insured in all locations.

As farm production costs continue to increase, experts cite the need for still greater all-risk crop insurance. Comparable insurance is generally not available from private sources. In only 11 States is all-risk private insurance offered and there just a few crops are covered. The oldest private program started in 1965; the others are only a year old.

In short, the need for Federal insurance is expanding, but the program is not. Coverage cannot be extended to include all crops in all counties because there is a statutory limitation on administrative costs.

In 1938, when the Federal Crop Insurance Corporation came into existence, a limit of $12 million for administrative expenses to be paid out of appropriations was altogether adequate. However, after three decades of inflation it is completely unreasonable to leave the ceiling unchanged.

The program was intended to be, and has been, essentially self-supporting; that is, indemnities have normally been fully covered by premiums. Administration expenses were to be paid out of appropriated funds. The problem is that administrative costs are now also coming out of the premiums paid. Since 1962 between $1.7 and $3.7 million per year have been taken out of premiums to meet administrative expenses. It is small wonder the program has not been able to expand to meet our farmers' current needs.

The bill we are introducing will raise the outdated limit on administrative costs from $12 to $20 million. In addition, the Corporation will be directed to extend coverage to all areas where the relevant crops would constitute an important part of the local agricultural income.

It has been proposed by some that appropriations for administrative expenses be abolished rather than raised. They would have all of the administrative expenses paid out of premiums. With administrative expenses now running in excess of $12 million each year and premiums currently at a level of approximately $50 million a year, that would mean an increase in premiums of almost 25 percent. With so many of our Nation's farmers operating on incredibly narrow margins, such an increase would force many of them to forgo this essential protection and face the risk of financial ruin.

We introduce this legislation because we feel the farmer needs more help, not less. It is in that spirit that we review the recommendations of the "Task Force 70" study of the Corporation with great interest. Although this bill does not bear directly on the matter, we are anxious that adequate local service not be sacrificed in the name of efficiency by concentrating the insurance and claims functions in 13 new territorial offices of the Corporation. It is hoped that the

increased appropriations provided by this bill will substantially reduce the pressure to economize by closing State and county offices, which are vital to providing the needed services to our farmers.

Mr. President, if the Government can afford to pay 100 percent of the cost of repairing public facilities damaged by natural disasters, surely it can afford to pay just the administrative expenses for disaster insurance which is so vital to the interests of our much neglected farmers. During the past 33 years the program has proven its mettle. We feel it deserves our continued support.

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

S. 1198. A bill to authorize the Secretary of Agriculture to review as to its suitability for preservation as wilderness, the area commonly known as the "Indian Peaks Area" in the State of Colorado. Referred to the Committee on Interior and Insular Affairs.

INDIAN PEAK WILDERNESS

Mr. ALLOTT. Mr. President, on behalf of myself and Senator DOMINICK, I send to the desk for appropriate reference, a bill which directs the Secretary of Agriculture to conduct a study, pursuant to the 1964 Wilderness Act, of an area containing approximately 75,000 acres located partially in Arapaho National Forest and partially in Roosevelt National Forest, and lying generally south of the southern boundary of Rocky Mountain National Park in Colorado.

The Rocky Mountain National Park in Colorado is known for its rich natural scenic values. Its Trail Ridge Road near Estes Park has afforded millions, over the years, with their first breathtaking exposure to the inspiring majesty of the Continental Divide and the Rocky Mountains.

Within the panorama which unfolds before the visitor to the Rocky Mountain National Park, lies as area to the south of the park, transversing the Continental Divide, which has come to be known as the Indian Peaks area:

The Denver Post on December 22, 1970, said of this area:

> Once proposed as part of Rocky Mountain Park and managed as a virtual wilderness area by the Forest Service, Indian Peaks is in sharp contrast to the sprawling high tundra prominent in the park. Access is by horseback or on foot. The Forest Service prohibits vehicles.
>
> Its ragged peaks, sheer walls rising above forests that have not been logged—bear proud names: Arapaho, Navajo, Apache, Paiute, Kiowa, Arikaree, Ogallalla, Pawnee, Shoshoni. Many of these are over 13,000 feet high.

The Wilderness Act defines a wilderness area as one which is—

> In contrast with those areas where man and his own works dominate the landscape . . . of . . . primeval character and influence . . . appears to have been affected primarily by the forces of nature (and) . . . has outstanding opportunities for solitude or a primitive and unconfined type of recreation.

Mr. President, if it is concluded that the Indian Peaks area meets the requirements of the act, there will indeed be an unusual and striking "contrast" in the words of the act, for, approximately 30 or 40 air miles away, lies the great metropolitan area of Denver.

Residents of Denver, and surrounding communities such as Boulder, the site of Colorado University, will thus have preserved, within a few miles, the antithesis to the affairs of man's population centers.

This wilderness area would be as close to a major population center if not closer, than any present wilderness area I know.

The bill I introduce today, if enacted, would require that the Secretary complete his review and report his findings to the President within 18 months following enactment. In conducting his review, the Secretary shall comply with all of the requirements of the Wilderness Act, including, but not limited to the provisions concerning public hearings, mineral survey, boundary study, and land use study. In other words, it is to be treated the same as a "primitive" area.

The need for such legislation stems from the fact that under the Wilderness Act, the Secretary of Agriculture is authorized to review only areas classified as "primitive" as of the date of enactment. While there are six designated "primitive" areas in Colorado, under the jurisdiction of the Forest Service, the Indian Peaks area is not one of them. The six "primitive" areas in Colorado are: Flat Top, Gore Range-Eagle Nest, San Juan, Uncompahgre, Upper Rio Grande, and Wilson Mountain.

As Senators know, five administratively designated "wilderness" areas became congressionally designated wilderness areas upon passage of the Wilderness Act. They are: La Garita, Maroon Bells-Snowmass, Mount Zirkel, Rawah, and West Elk.

Should it be determined that the Indian Peaks area qualifies as wilderness, and all of the "primitive" areas are ultimately added to the Wilderness System, the Forest Service will have an even dozen wilderness areas in Colorado to administer.

Mr. President, it is my hope that the Congress will act favorably on this measure at an early date so that the Department of Agriculture can proceed expeditiously in its study and make its recommendations.

By Mr. INOUYE (for himself, Mr. BENTSEN, Mr. CANNON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HUMPHREY, Mr. MAGNUSON, Mr. MCGOVERN, Mr. METCALF, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. PELL, Mr. RIBICOFF, Mr. STEVENS, and Mr. STEVENSON):

S. 1199. A bill amending title 13 of the United States Code by authorizing the Secretary of Commerce through the Bureau of the Census to undertake a quadrennial enrollment of those persons to vote in elections of the President and Vice President that meet the qualifications of the various States other than residency. This act is to be known as the Universal Enrollment Act of 1970. Referred to the Committee on Post Office and Civil Service.

Mr. INOUYE. Mr. President, I introduce for appropriate reference, legislation to be known as the Universal Voter Enrollment Act. Joining with me as cosponsors are Senators BENTSEN, CANNON, GRAVEL, HARRIS, HART, HUMPHREY, MAGNUSON, MCGOVERN, METCALF, MONTOYA, MOSS, MUSKIE, PELL, RIBICOFF, STEVENS, and STEVENSON.

Mr. President, this important measure is identical to a measure introduced by myself and others late in the 91st Congress. At that time it was also introduced in the House by Congressman MORRIS K. UDALL and others.

While it was introduced too late in the 91st Congress for the measure to receive consideration, in the interim it has attracted considerable attention and added support. I am, therefore, most pleased to have the opportunity to bring this measure once more before this body.

My interest in the Universal Voter Enrollment Act was sparked by my service on the Freedom To Vote Task Force Committee which was organized by the Democratic National Committee to study the problems of voter participation. This task force was fortunate to be under the very able leadership of former Attorney General Ramsey Clark and the legislation proposed here is an attempt in a significant and meaningful way to remove the barriers to full participation in the electoral process which were discovered in the process of that Commission's deliberations.

The study of voter participation—or rather lack of participation—leads one to the inescapable conclusion that procedural difficulties in meeting registration and local residence requirements and in meeting difficult absentee voting requirements are primarily responsible for the failure to participate. That failure has long been a serious blot on our claims to democratic procedures. It is estimated that 14 million Americans could not participate in the 1968 elections for these reasons. Some 6 million could not meet the necessary residence requirements and some 8 million were unable to get to the polls or make arrangements for absentee voting despite the fact that they were otherwise qualified.

This measure is designed to totally remove those barriers to participation in the electoral process.

This legislation is designed to do the following:

It would abolish State and local residence requirements for voting for President and Vice President.

This legislation provides for an enrollment plan which would seek out and encourage the enrollment of persons who are qualified but not now enrolled. While it establishes the Director of the Census Bureau as the National Director of Enrollment the bill contains powerful incentive to the States in the form of a direct grant to States for congressional districts where enrollment exceeds 90 percent of those eligible.

For a 3-week period preceding each Presidential election the National Director of enrollment will conduct an intensive, door-to-door drive to enroll all eligible persons who have failed to register but who are otherwise qualified.

On election day all persons so enrolled will be permitted to vote for President

and Vice President even though they might not be eligible to vote in the State elections. If, for any reason any would-be voter was missed in the enrollment drive he would still be able to vote on election day by signing an appropriate affidavit to preclude any kind of fraud.

Persons absent from their own election district would be able to cast special absentee ballots in the nearest polling place—even if in another State—upon proper identification. These ballots would then be mailed back to their own election districts and counted once eligibility is established.

This legislation will also establish a National Enrollment Commission of nine members, including the Secretary of Commerce and the Director of the Bureau of the Census to consult with, and give advice to, the National Director of Enrollment.

The legislation provides further that no national registry of persons shall be compiled or maintained but the rolls shall be made available to State and local election officials and otherwise destroyed 30 days after election.

In each Federal election year district directors of enrollment would be employed by the Federal Government to organize and supervise the voter enrollment program in that district with the help of volunteer staff except that no such district official shall be appointed for those districts with more than 90 percent of eligible voters enrolled. Such districts will receive $100,000 in lieu thereof.

Mr. President, I believe this bill goes to the heart of one of the major problems confronting our political system—the need to get more people involved in a constructive way in the decisionmaking democratic process. The first step to full citizen participation is to make it possible for that citizen to vote. The record today is far from satisfactory.

In presidential elections our voter turnout barely exceeds 60 percent. Other Western nations have 75- to 90-percent participation. In 1968 some 47 million Americans of voting age failed to vote—almost 40 percent of the total. In 1964 it was 43 million and in 1960 it was 39 million.

Unless we do something to make voting less difficult, or in many cases even possible, we will have well over 50 million Americans of voting age who will not participate in the 1972 elections. The number of nonvoters will exceed those casting their ballots for the winning candidate by a wide margin.

Registration is not concerned with how people vote but only with making it possible for them to vote. State registration laws, designed as a means of discouraging fraud, have too often become a means of discouraging participation. I introduce this measure ir a sincere effort to reverse that trend.

By Mr. PROXMIRE:

S. 1201. A bill to extend certain laws relating to the payment of interest on time and savings deposits, the control of credit and economic stabilization, to vest in the Federal Reserve Board authority to establish variable reserve requirements based on bank assets, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

EXTENSION OF INTEREST RATE CONTROL AUTHORITY

Mr. PROXMIRE. Mr. President, I introduce for appropriate reference a bill to extend for 2 additional years the authority to regulate maximum rates of interest payable on time and savings deposits issued by financial institutions. This legislation was first enacted by the Congress in 1966 in order to restrain excessive competition for funds between large commercial banks and smaller commercial banks and savings and loan associations. This competition for funds caused large amounts of money to leave savings and loan associations and other mortgage oriented thrift institutions with a disastrous impact upon residential home construction. Thus, the renewal of the authority is essential to maintain the stability of our housing industry.

Section 2 of the legislation would make permanent the authority given last year to the President to implement a program of voluntary credit controls. Under this program, the President can establish committees of lenders to work out voluntary programs for allocating credit to those areas of the economy most in need. This authority was used successfully during the Korean war to allocate credit to essential uses without the necessity for abnormally high interest rates.

Section 3 of the legislation would extend for an additional 6 months the standby authority of the President to institute a program of mandatory price and wage controls. I am sure the committee would want to give the renewal of this authority careful consideration. For example, certain questions have been raised as to whether it is fair or proper to apply such authority to one specific industry such as the construction industry. It may be the committee will conclude that the President's authority to apply price and wage controls selectively should be restricted.

Section 4 of the legislation would clarify the Federal Reserve Board's authority to establish supplementary reserve requirements on commercial bank assets. In 1966, the Congress amended the Federal Reserve Act to give the Board more flexible authority for establishing commercial bank reserve requirements.

The House committee report on this legislation includes the following language:

> Under existing law, the Board is authorized to change reserve requirements "in order to prevent injurious credit expansion or contraction." In order to negate any suggestion that this would prohibit the making of a set of changes whose overall effect was neither expansionary or contractive, this phrase has been dropped from the revised provision. Your committee considers it essential that there be no legal impediment to a reasoned selectivity and discrimination in the formulation of monetary policy. (H. Rep. No. 1777, 89th Cong., pp. 3, 9).

Likewise, the Senate committee report included the following language:

> (2) In its present form, section 19 authorizes the Board to modify reserve requirement "in order to prevent injurious credit expansion or contraction." As explained in the House Report on the bill, this phrase was omitted to negate any suggestion that it limits authority to make changes in reserve requirements designed to encourage shifts in the structure of bank deposits and assets, as contrasted to expansion or contraction in the volume of credit. (S. Rept. No. 1601, 89th Cong., p. 5).

Consequently, under present law it would seem permissible for the Board to prescribe a higher ratio against that part of a member bank's demand deposits that equals the amount of the bank's loans to foreigners. Conversely, the Board could encourage loans of certain types, such as loans for residential housing construction, by fixing a reserve ratio lower than the general ratio for that amount of the bank's demand deposits that equals the amount of such loans.

Even though Congress intended to give the Board authority to establish flexible reserve requirements, I believe this authority could be more effectively carried out if the Board were given specific authority to base these reserve requirements on commercial bank assets as well as deposits. Reserve requirements on commercial bank assets could provide an effective way of insulating the housing industry from the ups and downs of monetary policy. The Board could, for example, provide commercial banks with an incentive to invest more of their funds in housing by establishing lower reserve requirements or even no reserve requirements on a bank's investment in residential mortgages.

Conversely, the Board could discourage the flow of credit in inflationary sectors of the economy by establishing higher reserve requirements on loans or investments in those areas. For example, if the Board concluded that business expenditures for plant and equipment were proceeding at an economically unsustainable rate, the Board could curb this type of spending by establishing higher reserve requirements on commercial bank loans for these purposes.

Similarly, during a period of credit restraint the Board could curb the use of commercial bank credit for other less essential purposes including loans to finance corporate acquisitions, loans to finance securities speculation, loans to finance the construction of luxury hotels or resorts, or other less essential loans.

If effectively used by the Board, this authority could alleviate the burden of monetary policy on such sectors of the economy as housing, urban and rural development, State and local governments, small business, and agriculture. It could insure that the impact of monetary policy is spread more evenly through the economy rather than falling upon one or two industries.

The proposal to establish variable reserve requirements on bank assets was first suggested by Gov. Andrew F. Brimmer in a speech given on April 1, 1970. A recent report issued by the House Committee on Banking and Currency revealed that a large number of foreign central banks use a wide variety of instruments to selectively allocate credit including the use of variable reserve requirements.

Section 5 of the legislation would amend the Credit Control Act of 1969 to

give the Federal Reserve Board the authority to establish selective credit controls on its own initiative. Under this act, the Board is not able to act unless specifically authorized by the President. Since the Board is responsible for the overall execution of monetary policy, I believe it should be able to preserve its traditional independence from the executive branch with respect to selective credit controls.

Mr. President, all of these provisions are designed to improve the execution of economic policy. They are designed to provide the President and the Federal Reserve Board with more flexible authorities to control inflation, and to bring down the rate of unemployment. I am hopeful that these proposals will be given the most serious consideration and review by the Committee on Banking, Housing and Urban Affairs.

By Mr. THURMOND:

S. 1202. A bill to exempt certain orphanages from the excise tax on investment income of private foundations. Referred to the Committee on Finance.

AMENDMENT OF TAX REFORM ACT OF 1969 EXEMPTING ORPHANAGES

Mr. THURMOND. Mr. President, under the Tax Reform Act of 1969 private foundations which receive more than one-third of their income from investments are subject to a 4-percent excise tax on that part of their income that is received from investments. The committee report on this legislation indicates that the tax is intended "to cover the cost of examining the finances and activities of the foundation to see that it continues to qualify for exemption."

The purpose of the excise tax imposed by the Tax Reform Act on private foundations is to cover the cost of examining these foundations in order to prevent acts, or failures to act, which are not in the best interest of philanthropic obligations. The intent is to benefit the public by encouraging private foundations to utilize their funds for charitable purposes, as opposed to business or political purposes.

Mr. President, the activities of many organizations which have been classified as private foundations are questionable and such foundations should be carefully and continually examined to insure that they are not violating the provisions under which they are accorded a tax-exempt status. As to such general private foundations, the 4-percent excise tax, as provided under the Tax Reform Act, is understandable.

It has come to my attention, however, that an orphanage or children's home, which is classified as a private foundation, is also subject to this 4-percent excise tax if more than one-third of its income is derived from investments. In my judgment, this section of the tax law works an injustice to orphanages that Congress did not intend and should be amended so that this inequity can be corrected.

Mr. John K. Crosswell, a citizen of Sumter County, S.C., died in 1929 and left the bulk of his estate for the purpose of building and operating an orphanage. The orphanage that was established is known as the John K. Crosswell Home and is located in Sumter, S.C. This orphanage is presently the home for 33 children and receives most of its income from investments from the estate of Mr. Crosswell. The home operates on a very tight budget trying to accommodate as many children as possible and provide these children with the kind of home that they deserve.

Mr. President, the 4-percent excise tax on a foundation's income from investments presently applies to orphanages and children's homes such as the Crosswell Home. Since the enactment of the Tax Reform Act, the Crosswell Home must pay an annual excise tax of about $4,000. This amount must be deducted from the home's already tight operating budget thereby impairing the service the home can render to orphaned children.

The John K. Crosswell Home, and similar orphanages, relieve the taxpayers of this country of a burden which they would have to assume if such organizations as this were not in existence. If there were more privately operated homes such as these our Government would not have to assume the responsibility. We constantly hear that Government should provide more assistance to the needy and underprivileged in this country. The imposition of this excise tax on orphanages is a clear example of the Federal Government actually preventing assistance to needy children.

Mr. President, when the Tax Reform Act was enacted in 1969, I am doubtful that those who advocated the section which imposes the 4-percent excise tax on private foundations considered the effect this tax would have on orphanages and children's homes.

Hospitals fall into a special category under the Tax Reform Act and the work of an orphanage is just as important in the life of children who might require such a facility as is a hospital. The Internal Revenue Service has informed me that they have no records that indicate the possible number of orphanages that fall in the category of the Crosswell Home and are assessed this 4-percent excise tax. To my knowledge, the Crosswell Home is the only one of its kind in South Carolina and I doubt that there are many such orphanages of this type in the country.

Mr. President, there is no doubt nor has there ever been any doubt that the Crosswell Home is a purely charitable organization. In fact, this orphanage is required to submit an annual CPA audit of the estate to the judge of probate of the county in which it is located and also to the attorney general of South Carolina.

A terrible injustice will continue if orphanages and children's homes are not exempted from the 4-percent excise tax which they are presently required to pay. If Congress fails to recognize the inequity of the tax provision as it now applies to the John K. Crosswell Home, then this orphanage and similar homes like it will be severely impaired and the important services these homes render to needy children will be reduced.

Mr. President, I send the bill to the desk and ask that it be appropriately referred. I also ask unanimous consent that it be printed in the RECORD.

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

S. 1202

A bill to exempt certain orphanages from the excise tax on investment income of private foundations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 4940 of the Internal Revenue Code of 1954 (relating to excise tax based on investment income) is amended by adding at the end thereof the following new subsection:

"(d) Certain Orphanages.—The taxes imposed by subsections (a) and (b) shall not apply, for any taxable year, to a private foundation the principal purpose and function of which is to maintain and operate an orphanage or similar home for children, if substantially all of its net investment income for the taxable year is used to defray the expenses of maintaining and operating such orphanage or home."

(b) The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1969.

By Mr. HARRIS (for himself, Mr. BIBLE, Mr. HART, Mr. HOLLINGS, Mr. INOUYE, Mr. JAVITS, Mr. MCGOVERN, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MILLER, Mr. MONTOYA, Mr. MUSKIE, Mr. PROXMIRE, Mr. RANDOLPH, Mr. STEVENS, and Mr. WILLIAMS):

S. 1203. A bill designating certain election days as legal public holidays. Referred to the Committee on the Judiciary.

DESIGNATION OF CERTAIN ELECTION DAYS AS LEGAL PUBLIC HOLIDAYS

Mr. HARRIS. Mr. President, for myself and Senators WILLIAMS of New Jersey, BIBLE, INOUYE, RANDOLPH, MILLER, STEVENS, MANSFIELD, PROXMIRE, HOLLINGS, HART, MONTOYA, JAVITS, and MAGNUSON, I introduce a bill which would make the first Tuesday after the first Monday in November a national election holiday during presidential election years.

In a democracy such as ours the right to vote is fundamental. It is appalling, however, to know that 47 million American citizens failed to exercise this privilege during the last presidential election in 1968. The number of nonvoters in 1964 was 43 million; in 1960, the figure was 39 million. Within the 8-year span—1960–68—the number of nonvoters in presidential elections increased by eight million persons.

If the present trend continues, the nonvoting population of the United States may increase to approximately 90 million people over the next 20 years.

It is interesting to know that the number of nonvoters in the United States now exceeds the total voting electorates of France, England, Italy, Canada, West Germany, and Australia.

In the 1968 election, nonvoters exceeded the total number of people who voted for President Nixon by approximately 17 million persons. For every vote separating the two major mandidates in that election there were 150 people who

did not vote. In 1960, for every vote separating the major candidates, there were 330 people who did not vote.

Recent elections in Canada and England show that at least 75 percent of the electorate participated. Other democratic nations reached turnouts of 80 to 90 percent. This contrasts with 61 percent participation in the American election of 1968.

The decline of democratic participation holds both a danger and a paradox. First, the danger is that democratic institutions cannot function effectively or respond promptly to the needs of their citizens unless the citizens themselves participate in the decisions affecting their daily lives. A government that "derives its just powers from the consent of the governed" must hear the voice of the people if it is to make orderly, systematic adjustments to the problems of change. It cannot assume that silence is consent. Such silence might well indicate alienation, frustration and a widening rift between the government and the governed.

Second, the paradox or dilemma in American politics is the fact that while millions of citizens are struggling for a more active role in public decisionmaking, participation in the electoral process continues to wane. To this end there can be little hope for success in self-determination or participation in decisionmaking when so many citizens are not involved even to the extent of voting in a national election.

Encouraging voting in national elections is necessary in order to involve presently nonvoting citizens with the processes of government. Presidential elections are the focal point of our political system. During the 19th century, when three out of four Americans voted for President, the impact of the Presidency was remote to the average citizen.

This, however, is not true today. Every American citizen today is affected by decisions or actions of the President. Presidential policy in foreign affairs, particularly in such places as Vietnam and the Middle East, is of direct concern to all citizens. Daily the people of the Nation look to the wisdom and leadership of the President to solve such urgent problems as inflation, unemployment, poverty, discrimination, and the pollution of our environment.

We might assume that people who vote believe in the system. They participate and have a stake in government. But to the nonparticipants—in this case, nonvoters—their stake in government is not so apparent. Their alienation from the system is harmful not only in their own lives, but because it threatens the survival of democracy itself.

One of the major barriers to citizen participation has been voter registration requirements, which unnecessarily bar millions of voters in every election. In areas of our country where there are no registration requirements the voter turnout averages 10 to 15 percent higher than in areas where there are restrictions.

State residency requirements in our highly mobile society exclude millions of Americans from voting. Long lines, short hours, inaccessible places, and registration periods remote from the date of election, all limit voter participation.

The universal voter enrollment plan can overcome these hurdles. Experience in Canada, South Dakota, Idaho, and parts of California and Washington, shows that such a program can achieve registration of better than 90 percent of the voting age population. This is because the Government, through the National Election Commission, takes an active role in the registration of its citizens.

The bill which I introduce today would establish a national holiday on the first Tuesday after the first Monday in November during presidential elections. Such a holiday would help to assure an opportunity for voter participation and would solemnize this important occasion for the exercise of a citizen's responsibilities in a free society.

At present 12 European countries have their elections on Sundays or public holidays. All of them have a larger voter turnout than does the United States.

Mr. President, I ask unanimous consent that the table which I have prepared showing countries having elections on Sundays or public holidays be printed in the RECORD at this point in my remarks.

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

COUNTRIES HAVING ELECTIONS ON SUNDAYS OR PUBLIC HOLIDAYS

Country and date of most recent election	Turnout (percent)	Election days
LRS–2:		
Austria,[1] Mar. 6, 1966	95	Sunday or other public holiday.
Belgium,[2] Mar. 31, 1968.	90	Sunday.
Denmark, Jan. 23, 1968.	[3] 90	Do.
Finland, Mar. 20–21, 1966.	[3] 75–85	Sunday and following Monday.
France, June 15, 1969	68.9	Sunday.
Germany (West), Sept. 19, 1969.	86.8	Sunday or legal holiday.
Italy,[2] May 19–20, 1968.	[3] 93	Sunday.
Luxembourg,[2] Dec. 15, 1968.	Heavy	Do.
Norway, Sept. 7–8, 1969.	----------	Sunday and following Monday.
LRS–3:		
Portugal, Oct. 26, 1969	(4)	Sunday.
Spain, Oct. 10, 1967	64.3	Do.[5]
Sweden, Sept. 15, 1968	89.3	Do.

[1] Voting compulsory. In Austria, voting is compulsory for presidential elections only. In Italy voting is quasi-compulsory. The penalty for non-voting is a public posting of the names of the individuals; and, with repeated offenses, a blot on the certificate of character (reference) necessary for positions in the civil service; and, eventually, non-eligibility for public office. In Luxembourg, the compulsory voting requirement apparently is not strictly enforced.
[2] Ibid.
[3] Estimated.
[4] 18 percent of eligible voters; 61 percent of registered voters.
[5] Although elections in Spain are traditionally held on Sundays, the election in 1967 was held on a Tuesday, which was declared a "partial holiday."

Mr. HARRIS. Mr. President, the United States has pioneered in the development of democratic institutions. Our system has proven resilient and responsive to many stresses and strains. As our Nation's 200th anniversary approaches, we should declare our presidential elections a national holiday. The greater participation of our citizens would be a most fitting tribute to the form and stability of our Government.

By Mr. GURNEY:

S. 1205. A bill to establish an Office of Consumer Affairs in the Executive Office of the President and a Bureau of Consumer Protection in order to secure within the Federal Government effective protection and representation of the interests of consumers, and for other purposes. Referred to the Committee on Government Operations.

THE CONSUMER PROTECTION ACT OF 1971

Mr. GURNEY. Mr. President, I am introducing for appropriate reference, the Consumer Protection Act of 1971. This legislation is designed to strengthen and coordinate Federal efforts in the area of consumer protection. In addition, this bill will provide an advocate for the consumer point of view before the Federal agencies responsible for setting rates and taking other actions which have a direct effect on consumers.

More specifically, the main purpose of my bill is twofold: First, it would upgrade the Office of Consumer Affairs in the Executive Office of the President to statutory responsibilities. It shall be the responsibility of this office to formulate policy, coordinate, encourage and assist in the development of programs, and provide assistance in the operation of consumer protection activities.

The office will be headed by a director to be appointed by the President and confirmed by the Senate. In addition to the above-mentioned duties, the Office of Consumer Affairs will also publish and distribute a Consumer Register especially designed to provide consumers with useful information developed by the Federal Government and from other sources.

Second, this bill would make statutory within the Federal Trade Commission a Bureau of Consumer Protection, to be headed by a Consumer Counsel appointed by the President with the advice and consent of the Senate. This Bureau would be vested with the responsibility of representing consumer interests before other Federal agencies and courts.

During the past several years, Congress has become increasingly aware of, and properly concerned with, consumer protection. As President Nixon mentioned in his consumer message to Congress:

> In today's marketplace, however, the consumer often finds himself confronted with what seems an impenetrable complexity in many of our consumer goods, in the advertising claims that surround them, the merchandising methods that purvey them and the means available to conceal their quality. The result is a degree of confusion that often confounds the unwary, and too easily can be made to favor the unscrupulous. I believe new safeguards are needed, both to protect the consumer and to reward the responsible businessman.

In a recent Chicago Tribune article, Robert Pitofsky, head of the Federal Trade Commission's Consumer Protection Bureau zeroes in on the situation in this way:

> There are two problems: the consumers aren't represented in government and there is a growing intolerance against being had.

At present, five Federal agencies are responsible for consumer protection;

consumer-related activities, which number in the hundreds, are spread through 33 Federal agencies. There is a good deal of interagency conflict regarding consumer protection functions—for example, the Food and Drug Administration may want to license a pesticide which the Public Health Service contends to be harmful to health. And the obvious lack of clearly defined consumer advocacy responsibility has the understandably frustrated consumer asking himself, "Who is looking out for my interests?"

These are but some of the problems we must deal with, the questions we must answer, in considering consumer legislation. The Consumer Protection Act of 1971 is, I feel, a giant step forward in solving these problems.

For one thing, the Office of Consumer Affairs will be able to oversee and advise on the development of effective consumer programs, thus reducing the interagency conflict and costly repetition.

The consumer advocacy function, which is virtually nonexistent at this time, is the real stepchild of Federal consumer protection activities. By entrusting this responsibility to the Bureau of Consumer Protection, the consumer will at last have a champion—a place to turn for redress against agency actions.

In performing this advocacy function, this bill requires that when the Bureau intervenes before an agency, it must issue a written statement indicating:

First, the manner in which its intervention may substantially benefit consumer interests.

Second, the reasons why such interests are not being adequately protected by the agency in question.

Third, the specific interests of the consumers to be protected.

In addition to its advocacy functions, the Bureau would also encourage and support research studies; conduct conferences, surveys, and investigations; keep Congress informed and make recommendations to other Federal agencies concerning research, studies, and other information within their authority.

The Consumer Protection Act has been introduced in the House by Congressmen ERLENBORN and BROWN of Ohio.

Another bill, with similar purpose, but different emphasis and direction, has been introduced in this body by my able colleagues, Senators RIBICOFF and JAVITS. I was interested to note that in his introductory comments, the distinguished Senator from New York expressed agreement with the idea of giving statutory permanence to the existing Office of Consumer Affairs, rather than creating a Council of Consumer Advisers. I am pleased also to note the attitude that we should give careful consideration to the various proposals which have been offered. I look forward to further discussion of our respective proposals in the Government Operations Committee.

One of the principal differences between our proposals should be pointed out. Instead of establishing an independent Consumer Protection Agency, which would conceivably add more red-tape and expense to the bureaucracy and further duplicate existing procedures, this bill will give the Federal Trade Commission the necessary tools to serve as a consumer advocate in Federal matters.

Since 1938, authority for direct consumer protection has been entrusted to the FTC. When Congress first began its study of consumer problems, it was evident that the FTC did not have a particularly impressive record of effectiveness in the area of consumer protection. Many critics charged that it had, in fact, almost become an advocate of industry.

In the past years, however, that attitude has changed within the FTC, and the consumer has found a champion there. I think it is most important, as we consider consumer legislation, to be aware of the specific changes and progress being made by the FTC, and I ask to have printed at this point two articles. First, a summary of recent FTC activities in the area of consumer protection, and second, an article by Ronald G. Shafer which appeared in the Wall Street Journal of February 24.

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

SUMMARY OF RECENT FTC ACTIVITIES

I. STRUCTURAL AND ORGANIZATIONAL CHANGES

Case backlog

Some 450 cases, each on the docket for more than 18 months prior to January 1970, have been closed. Steps have been taken to assure that this case backlog problem will not crop up again.

Public information

Whereas the FTC previously was predisposed to withholding information on its action, virtually all actions are now spread on the public record, except for information which, by law, cannot be made public.

Field offices

The eleven field offices have been empowerd to act on thir own initiative, to carry out investigations, to issue investigative subpenas, and to prepare their own complaints—functions which previously had to be approved and usually were performed at Washington.

Consumer protection specialists

A new position, Consumer Protection Specialist, was established. Ten of these Specialists have been trained and assigned to each of the eleven Field Offices where they assist the legal staffs in detecting and correcting deceptive and unfair business practices in their incipiency.

Consumer protection committees

Joint Consumer Protection Committees are now in operation in six major cities—Chicago, Los Angeles, Detroit, San Francisco, Philadelphia, and Boston—and more are being set up. The major goals of these committees, which bring together consumer experts from the FTC and State and local consumer protection agencies, are to:

Bring to bear Federal, State, and city laws to stop fraudulent practices;

Pool information to establish priorities for efforts in both education and enforcement;

Give the city and metropolitan area consumers a one-stop complaint service in that an individual complaint filed with the committee will automatically be transferred to the appropriate and responsible agency for action without further effort by the consumer;

Determine the patterns of regional violations, if any, and

Avoid duplication of efforts among consumer protection agencies and develop a quick response liaison system among them.

Included in the data received and computerized by these committees are:

The specific business concerns that generate consumer complaints in these cities.

The nature of those most complained about businesses.

The most common deceptive practices in the area.

These deceptions which are in interstate commerce, and

The current status of disposition of each complaint filed by an individual consumer.

Consumer advisory boards

CAB's have been created in New Orleans and Chicago, and more are planned. These Boards consist of area representatives of private and public service. Their dual purpose is to advise the Commission on consumer problems and to suggest solutions for Commission consideration and action.

Office of policy planning and evaluation

To help the Commission to devote its resources and manpower in meaningful actions and thus eliminate the pursuit of the trivial, an Office of Policy Planning and Evaluation has been created.

Rules of practices and procedures

An Advisory Council has been appointed to recommend rules and practices that will expedite hearings, appeals, and other legal procedures while retaining all safeguards to the rights and interests of parties involved in FTC adjudication.

Intervention in proceedings

As an unprecedent experiment, the FTC will allow an organization representing consumer interests—Students Opposing Unfair Practices, Inc. (SOUP)—to intervene in its proceeding against a major tire manufacturer charged with misrepresenting the price and safety of its tires.

II. ENFORCEMENT OF STATUTES WITH INNOVATIVE CONSUMER PROTECTION WEAPONRY

With statutory power presently limited to issuing complaints and cease and desist orders, both of which generally result in long delays before decisions are reached, the Commission under Chairman Miles W. Kirkpatrick and his immediate predecessor, Caspar W. Weinberger, has nevertheless launched an aggressive consumer protection policy.

New weapons employed by the FTC that are being tested in the courts include:

Making an advertiser document its claims with adequate and well-controlled scientific studies.

Prohibiting alleged misrepresentations for a specified period unless certain conditions are met.

Prohibiting misleading claims of nutritional and environmental claims.

Requiring that past advertising deceptions be included in subsequent advertising of a product.

Banning products from the market place for adverse effects.

Preventing deception in promotional games.

Preventing advertising that deceives trusting children.

Enforcing anti-trust laws aimed at preventing collective actions that eliminate competition.

Rejecting voluntary assurances from companies that they will not pursue reciprocal dealings that say "we will buy from you if you buy from us."

Reviving a long-ignored FTC weapon of obtaining court injunctions to quash false advertisements of foods, drugs, devices, and cosmetics.

Among the FTC's actions during the past year—most of which are still wending their way through the adjudicatory process—are the following:

Issued complaint against Pfizer, Inc., involving advertising claim that its "Un-burn"

sunburn treatment stops pain and anesthetizes nerves.

Filed complaint against Firestone Tire & Rubber Co. that challenges its claim that wide oval tires stop 25 per cent quicker than cars with conventional tires.

Filed complaints against Lever Brothers, Colgate-Palmolive Co., and Procter & Gamble Co. and their advertising agencies that charge them with misrepresenting in claiming that the enzymes in their products remove all types of stains from fabrics.

Issued cease and desist orders against the above that would prohibit the manufacturers from making stain removal claims for one year unless certain conditions are met.

Ordered the Chemway Corp. to stop claiming that mercury treated dental products kill germs and to stop using mercury on its dental products unless it conducts adequate and well-controlled studies to prove that the product is not dangerous to the consumer.

Ordered the Carnation Co. to stop making unwarranted nutritional claims for its Carnation Instant Breakfast.

Charged Mars, Inc., with misrepresenting the nutritional value of its Milky Way Chocolate bars.

Ordered Standard Oil of California to disclose in 25 per cent of its gasoline ads for one year that past claims that its Chevron F-310 significantly reduces air pollution were found by the FTC to be deceptive.

Barred Coca-Cola from making nutrient claims for any of its products for one year unless 25 per cent of the ads contained a statement that past claims that its Hi-C is a good buy because it is high in vitamins were found by the FTC to be false implications.

Filed a complaint against the DuPont Co. that would require DuPont to disclose possible adverse effects on automotive cooling systems from using Zerex Antileak Antifreeze and that may lead to a ban on sales of the product.

Issued a complaint charging that contestants in the Coca-Cola Co.'s "Big Name Bingo" were deceived by any undisclosed rule and, consequently, many were not awarded the $100 prize to which they are entitled.

Issued a complaint charging, among other things, that only $13,000 in prizes were actually awarded in the 1968 "McDonald's $500,000 Sweepstakes."

Filed a complaint alleging that commercials by Mattel Inc., for its "Hot Wheels" racing car sets unfairly exploit children and that its "Dancerina" doll does not walk by itself as advertised.

Issued a complaint against Topper, Corp., charging that its toy autos do not have doors and hoods that open as represented in their ads.

Charged that five tire manufacturing companies—Goodyear, Firestone, Uniroyal, Goodrich, and General—violated the law by following "parallel courses of business conduct constituting unfair methods of competition," and thus collectively acquired 99 per cent of the bus tire-leasing market.

Ordered the Bendix Corp. to sell the Fram Corp., which it acquired in 1967, because its acquisition may lessen competition in the replacement market for passenger car oil, air, and fuel filters, which are also produced by Bendix.

Ordered the OKC Corp. to sell the Jahncke Service, Inc., which it bought in 1969, on similar grounds.

Charged seven soft-drink companies (Coca-Cola Co., Atlanta, Ga.; PepsiCo. Inc., Purchase, N.Y.; Royal Crown Cola Co., Columbus, Ga.; Seven-Up Co., St. Louis, Mo.; Crush International Ltd., a Canadian based firm with offices in Evanston, Ill.; National Industries Inc., Louisville, Ky.; and Dr. Pepper Co., Dallas, Tex.) with curbing competition among their licensed bottlers by restricting the bottlers' sales territories.

Filed complaints charging the use of deceptive practices to get long-term subscriptions and harassment of deceived subscribers against Cowles Communications and the Hearst Corp., along with two of its wholly owned subsidiary publishing sales services.

Sought-and obtained—a court injunction against Medi-Hair International which requires the firm to disclose potential dangers of its hair-replacing surgical treatment and would prohibit the surgery until 24 hours after the customer has been informed of the risks by an independent physician.

Issued a proposed consent order, prohibiting the Columbia Broadcasting System Inc. from making, or continuing, exclusive agreements for records or prerecorded tapes.

III. TRADE REGULATION RULEMAKING

The Commission also has the power to solve broad consumer problems by issuing trade regulation rules. The following is a listing of significant rules that have been proposed by the FTC during the past year:

To require that marketers of gasoline products post research octane ratings in a clear and concise manner on gasoline pumps.

To ban negative option sales plans, whereby an individual in effect agrees to a purchase because he does not indicate he does not wish to make such purchase.

To regulate billing and credit practices. (Note: Hearings on these proposed rules have been deferred in compliance with a request by Senator Proxmire of Wisconsin, who plans similar hearings.)

To enable new car buyers to obtain more complete and accurate information on prices.

To protect the right of consumers to press claims against unsatisfactory products or services purchased on installment contracts when such contracts are subsequently sold to a third party, such as a finance company.

To require that soap products carry a warning label which would allow the public, for the first time, to compare the phosphate content of detergents.

FEDERAL TRADE AGENCY SETS OUT TO PROVE IT IS THE CONSUMER'S FRIEND

(By Ronald G. Shafer)

WASHINGTON.—The little old lady was languishing with a bad case of tired blood. But a recent transfusion has the old gal kicking up her heels like a liberated woman.

That's the consensus view of the 56-year-old Federal Trade Commission, also known as "the little old lady of Pennsylvania Avenue," since a revitalization began about a year ago under new leadership chosen by Richard Nixon.

The "old" FTC was much mocked as a feeble enforcer of consumer protection and anti-trust laws. Its image was opitomized by a fruitless 11-year effort, begun in 1959, to get J. B. Williams Co. to stop advertising that its Geritol tonic could relieve "tired blood" in older Americans.

But that image is rapidly changing. Among other things, the "new" FTC has finally taken the Geritol people to court, seeking $1 million in penalties. And it's reaching out in other directions, seeking "to give consumers better, broader and quicker protection," says Joseph Martin, the agency's general counsel.

ASPIRIN, NOT CHINCHILLA

The commission will strive increasingly to bring major cases raising issues with broad consumer impact (such as challenges to deceptive advertising of widely sold products) rather than emphasizing narrower questions involving, say, sales of chinchilla furs or instead of responding to individual consumers' gripes. Coming targets are likely to include pain relief claims for aspirin and nutrition claims for bread.

The remodeled FTC will probe the outer limits of its authority by seeking preliminary court injunctions to quickly quash some suspect sales practices and by imposing tougher sanctions, such as requiring advertisers to publicly confess past deception. It will even ban some products or ads.

The commission may also test its power to require restitution. Several complaints now before it seek to require offending companies to pay damages or refunds to consumers.

One complaint proposes to require Coca-Cola Co. to award $100 prizes to many persons said to have been wrongfully deprived of such prizes in a promotional game in 1969. The charge states that Coca-Cola and Glendinning Co., which devised the contest, failed to disclose that some questions required more than one answer. The complaint is being challenged by both Coca-Cola and Glendinning.

The new FTC is steaming ahead on other consumer-protection courses. In recent months, it has taken tough action ranging from a requirement that gasoline octane ratings be posted on gas pumps to a proposal that would require phosphate-detergent packages to carry a warning that such detergents pollute water.

GETTING STRONGER EVERY DAY

"The Federal Trade Commission is alive and well and getting stronger every day," asserts Miles W. Kirkpatrick, the 52-year-old Philadelphia antitrust lawyer who took over as FTC chairman in September. He succeeded Caspar Weinberger, a California attorney who got the reform ball rolling after he took office in January 1970 with a Presidential mandate to shape up the commission. (In August, Mr. Weinberger became deputy director of the President's Office of Management and Budget.)

Just how successful the new FTC will be remains to be seen. Several of its potentially powerful enforcement actions are sure to be challenged in court. But the agency's new boldness is winning the applause of consumer advocates—and is making business groups a little nervous.

Indications so far are that "the commission is waking up to its responsibilities, which is attributable to a new and more vigilant staff," says Ralph Nader. "If they keep up the accelerated pace, the FTC may become a prime recruiting group for idealistic young lawyers who want to use the authority of a democratic government to protect consumers and root out anticompetitive practices."

The business community has more mixed views. "The most prevalent feeling is that a strengthened FTC is preferable to an independent (government) consumer agency," says Kenneth Stinger, an official of the U.S. Chamber of Commerce. "But there's also a little feeling that they might be going too far; this really frightens a few people." Some advertising men complain that some FTC proposals, such as requiring corrective ads are "antibusiness."

NOT OUT TO ATTACK BUSINESS

In an effort to calm such fears, Basil Mezines, the FTC executive director, recently assured a grocery-industry group that the FTC wouldn't allow its interest in consumerism "to cloak an attack on business." He and other FTC officials say tough action in selected cases protects businessmen who don't deceive. One antitrust case now before the commission involves a company that may have grabbed a major chunk of a consumer-produce market through deceptive ads, these officials say.

FTC officials agree with businessmen that a strengthened commission is preferable to a new federal consumer-protection agency. Congress this year is expected to consider legislation to create an agency with power to intervene on behalf of consumers in all regulatory proceedings. But FTC men suggest it might be more practical just to give them the added power and funds.

"It seems to me if there's going to be a consumer advocate agency, we might as well be it," say chairman Kirkpatrick. "We have the staff. we're here, we don't have to be created."

Such a move would surely be fought by persons active in consumer affairs, but there appears to be nonpartisan support for legislation, which the President is likely to request in a special message to Congress today, to reinforce and expand the FTC's authority to obtain preliminary injunctions, impose penalties and police certain local frauds.

Reforms at the FTC began in early 1969 after a report by Nader aides blasted the agency and its top staff officials as inept consumer protectors. A committee of the American Bar Association, in a study requested by President Nixon, subsequently agreed that the FTC spent too much time on trivial matters, such as a charge that a company's "navy shoes weren't made by the Navy, and said that it relied too much on voluntary compliances that critics call toothless.

The ABA committee, which was headed by current FTC chairman Kirkpatrick, recommended that the commission be reformed or abolished.

THE MISSION AND THE PEOPLE

The FTC has the mission of enforcing the Federal Trade Commission act barring "unfair and deceptive" trade practices, plus textile labeling rules, flammable fabrics laws and certain antitrust statutes. Its actions, based on staff investigations and proposals, are voted on by the five commission members. The commission currently consists of three Republicans—Chairman Kirkpatrick, Mary Gardiner Jones and David Dennison—and two Democrats—A. Everette MacIntyre and former chairman Paul Rand Dixon, who bore the brunt of the past criticism.

In contrast to past public quarreling, the commission now seems united behind the activist efforts. "I don't see anybody dragging his heels," says Commissioner Jones, a strong supporter of the new direction.

FTC officials say the prospect of litigation won't slow their movement toward tougher and more innovative enforcements. But "we still have to win some cases," admits 41-year-old Robert Pitofsky, a New York University law professor who was appointed head of the FTC's Consumer Protection Bureau last November. Mr. Pitofsky was counsel to the ABA committee that prepared the report urging more aggressive FTC action.

That report, and parts of the Nader critique, are serving as road maps for FTC reform. In reaction to complaints about excessive bureaucracy, Mr. Weinberger slashed the number of operating bureaus to two from four. He also began replacing veteran officials with aggressive newcomers.

"It's startling how changes in the cast of characters (at the staff level) have changed the whole ball game," says Commissioner Jones. "I look forward to the time when they will be wilder than we are and we have to put the brakes on. In the past, the commission was pulling the staff along." Officials say the FTC has become a popular place for bright young lawyers. The agency plans to hire about 50 of them this summer, including at least one of "Nader's raiders."

SWITCH IN PRIORITIES

One big change based on the ABA report is the switch in priorities to big cases with big impact. That means emphasis on deceptive advertising and product claims beamed at millions of consumers, especially those dealing with health and safety.

The FTC can formulate trade regulations setting requirements for entire industries, and in these, too, says an official, "we've gotten away from rules on the sizes of sleeping bags" and have moved to more substantial issues. Thus the commission has proposed rules requiring certain auto-pricing disclosures, and it wants a three-day "cooling-off period" on door-to-door sales, to give the customer a chance to change his mind.

Another change is tougher penalties. In the past, most FTC complaints were settled by orders that merely stopped an alleged deception, often long after it had already ended. "The old sin-no-more remedies just don't work," says Mr. Pitofsky. Future orders will be designed to "take away the fruits" reaped from deceptive tactics, he says.

Still another goal is quicker action. Last month, for the first time in a decade, the FTC obtained a preliminary court injunction—this one against a California hair replacement company. The commission charged the company, Medi-Hair International, failed to disclose medical risks of its process, which involves surgically placing anchors in customers' scalps to hold weavings of hair. Officials plan to seek similar court action in other cases.

For the long range, however, the FTC sees antitrust action to increase competition as its heavy artillery for the defense of the consumer. The antitrust efforts, involving action against price-fixing, mergers and existing industrial concentration, will be intensified in the coming year. Particular efforts will be made "to identify and eliminate illegal business conduct in basic consumer industries and in industries affecting the prices of essential consumer commodities," according to a statement in the administration's new budget. Alan Ward, new director of the FTC's Bureau of Competition, indicates he will look into franchising arrangements.

The FTC already is investigating concentration in seven industries; cereals, drugs, automobiles, steel, electrical machinery, chemicals and energy. The studies are aimed at determining whether companies in an industry with only a few major producers are less responsive to competitive forces than those in less-concentrated industries.

If such studies "establish that firms in such industries tend to compete through advertising gimmicks rather than price," says general counsel Martin, "then I am certain that the FTC will wage increasing and effective warfare against such industrial concentrations."

Mr. GURNEY. In conclusion, Mr. President, I refer again to the President's consumer message, in which he refers to the placement of the consumer advocacy function within the FTC:

I believe that this is a better approach than the creation of still another independent agency which would only add to the proliferation of agencies without dealing with the problems of effectiveness to which the Advisory Council (on Executive Reorganization) report addresses itself.

Mr. President, I ask that the following summary of my bill be printed in the RECORD.

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

CONSUMER PROTECTION ACT OF 1971

OFFICE OF CONSUMER AFFAIRS

The Consumer Protection Act of 1971 upgrades the Office of Consumer Affairs in the Executive Office of the President to statutory responsibilities. The Office, headed by a Director appointed by the President with the advice and consent of the Senate, has the primary responsibility for the oversight, coordination, and direction of consumer policy and operations among Federal agencies.

BUREAU OF CONSUMER PROTECTION AND REPRESENTATION OF CONSUMER INTERESTS

In addition, there is established by law within the Federal Trade Commission a Bureau of Consumer Protection, headed by a Consumer Counsel appointed by the President with the advice and consent of the Senate. The primary responsibility of the Bureau is to represent the interests of consumers before other Federal agencies and courts.

PRODUCT TESTING

In support of its representational functions, the Bureau shall have the right to contract with other agencies and non-Federal sources to conduct produce testing. Other than for this purpose, however, the Act does not authorize the Bureau or the Office directly or indirectly to engage in or support product testing.

CONSUMER COMPLAINTS

Additionally, the Bureau is authorized to receive, evaluate, develop, and act upon complaints from consumers. This authority includes transmission by the Bureau of such complaints to other Federal agencies and non-Federal sources for investigation and action.

As part of its responsibility in this area, the Bureau shall maintain a public document room where complaints may be made available to the public for inspection and copying. To safeguard against abuse, these complaints shall not be available to the public until three conditions have been met:

1. The complaintant has given permission for his complaint to be made public.
2. The party complained against has been given at least 60 days in which to comment.
3. The governmental agency to which the complaint has been referred has indicated how it intends to handle the complaint.

CONSUMER INFORMATION

Both the Bureau and the Office are authorized to gather and disseminate to the public information of interest to consumers, including information concerning items purchased by the Federal Government for its own use.

As part of the consumer information authority, the Office is authorized to publish and ditsribute a Consumer Register designed to make available to consumers information which may be of interest to them, including that relating to government activities.

Under the Act, interested persons are given the right to comment before the release of such information pertaining to brand names, and Federal agencies are prohibited from declaring one product to be superior to another.

OTHER FEDERAL ACTION

The Act provides that every Federal agency, in taking action that substantially affects the interests of consumers, shall provide notice of such action to the Office and the Bureau and shall give due consideration to the valid interests of consumers.

THREE-YEAR AUTHORIZATION

The authorization for both the Bureau and the Office is limited to three years.

DEFINITION OF CONSUMER

A consumer is defined in the Act as "any person who is offered goods or services for personal, family, or household purposes."

By Mr. TOWER (for himself and Mr. BENTSEN):

S. 1208. A bill to authorize the coinage of 50-cent pieces to commemorate the life of the Honorable Sam Rayburn and to assist in the support of the Sam Rayburn Library. Referred to the Committee on Banking, Housing, and Urban Affairs.

SAM RAYBURN 50 CENT PIECE AUTHORIZING LEGISLATION

Mr. TOWER. Mr. President, it is with pride today that I introduce, for myself and for the junior Senator from Texas (Mr. BENTSEN), legislation to authorize the minting of a 50-cent piece in the likeness of the late Speaker of the House, Sam Rayburn. This man, who embodied much of what is great about our State of Texas, was first elected to Congress

in 1913 and served in every succeeding Congress until his death in November of 1961. He was first elected Speaker of the House of Representatives in 1940 and held that position longer than any other person in the history of the United States Congress.

Mr. President, Texans have always admired Sam Rayburn and his courage in fighting for what is right. In many respects, he represents the independence that has characterized Texans over the years. Even when Franklin Roosevelt was immensely popular and at the height of his career, Sam Rayburn would not hesitate to oppose and temper Roosevelt's programs when he thought it in the best interest of the Nation.

Mr. President, I had been in the Senate only a few short months when Speaker Sam passed away in 1961, yet I felt that I knew him well. As a young boy, he had worked in the cottonfields of Texas with the rest of his family in order that they might have enough to eat. He left home at 17 to attend East Texas Normal College and at that time his father gave him the entire family savings of $25. He worked his way through college by sweeping the floors of different establishments in the town.

It was this hard work and character, which his father told him was his only legacy, that Sam Rayburn personified throughout his life. He never shrank from any task and persevered through all adversity. It is for his individualism and leadership in troubled times that Sam Rayburn will be remembered.

Mr. President, at the current time, every coin that we mint has the likeness of a former President on it. While I certainly have nothing against any of the distinguished Americans whose likeness appears on our coins, I do believe that there are many outstanding Americans who should be likewise honored. In former times, we had a variety of persons and even symbols on the face of our coins; I do not believe that the only suitable cover for our coins are former Presidents. I would like to see the likeness of my great fellow Texan, loyal American, and believer in the individual, Sam Rayburn, honored on the next half dollar that we mint in the United States.

By Mr. HANSEN:

S. 1209. A bill to amend the act of October 17, 1968 (82 Stat. 1146), relating to the control of noxious plants on Federal lands. Referred to the Committee on Agriculture and Forestry.

Mr. HANSEN. Mr. President, I introduce today a bill to aid in the control of noxious plants on Federal lands. I propose this legislation in the interest of governmental efficiency. Its purpose is simple. It would streamline administrative procedures used in controlling weeds on Government lands.

Under existing regulations established by the Carlson-Foley Act, Public Law 90–583, which was approved October 17, 1968, several Federal agencies are involved in developing cooperative programs with State agricultural agencies, through which the control programs are carried out. In brief, the provisions of the Carlson-Foley Act as it now stands are as follows:

The law directs Federal agency heads to permit State agricultural agencies to enter Federal lands and destroy noxious plants if: first, such entry is in accordance with a program approved by that Federal agency; second, the means by which noxious plants are controlled are acceptable to the Federal agency head, and third, the same procedure required by the State program with respect to private land has been followed.

The law prohibits entry if the agency head certifies it is inconsistent with national security, and provides that State expenses will be reimbursable by the Federal agency to the extent that funds appropriated specifically for that purpose are available in the fiscal year in which the expenses are incurred.

The Carlson-Foley Act is good legislation, but it has not been implemented, and no funds have been appropriated for its implementation, because there is no efficient procedure established through which State and Federal agencies may set up cooperative control programs.

Under the amendment I am proposing to the Carlson-Foley Act, the coordinating function for cooperative programs with the States would be centralized in the U.S. Department of Agriculture, rather than scattered among all the heads of the many Federal agencies administering public lands.

In Wyoming, for example, 48.2 percent of our land area is federally owned, and the ownership is scattered among nearly a dozen agencies. Included are the Bureau of Land Management with 17.5 million acres; the Fish and Wildlife Service, the National Park Service, the Bureau of Reclamation, and the Bureau of Indian Affairs—all in the Department of the Interior.

In the Department of Agriculture, we have the Forest Service with its 9 million acres in Wyoming. The Defense Department administers a few thousand acres of Wyoming land. In the Department of Transportation, the Federal Aviation Administration owns 544 acres. A tract about the same size is owned by the Veterans' Administration. In some other Western States, the pattern of Federal ownership is even more fragmented and complex.

It is easy to see, Mr. President, that with so many Federal agencies involved, a State effort to develop a weed control program on Federal lands is almost impossible. The State is forced to work with as many as a dozen separate agencies in developing a program and requesting reimbursement for control work done. Streamlining is badly needed.

The need for weed control programs is not the central question to be considered here, since my bill seeks merely to improve the administration of the existing Carlson-Foley Act.

But I do believe that effective control programs have not been possible because of the inefficiency of the administrative apparatus, and I would like to take a moment to discuss the importance of control programs.

The State of Wyoming has one of the most effective statewide weed control programs in the Nation. But the effectiveness of the State program is reduced by the inability of the State to control weeds on contiguous Federal lands. It does little good to spend money on control programs on private and State lands when they are continually reinfested due to the lack of control on Federal lands.

The State of Wyoming could extend its program to Federal lands, via cooperative programs with Federal agencies administering land in Wyoming. In order to to do this, Wyoming must negotiate separately with each of the various agencies involved, and each has different policies regarding weed control. Despite the passage of the Carlson-Foley Act, which authorizes reimbursement to the States for the cost of control efforts on Federal lands, only a pittance is requested by agencies for weed control, and the States have no assurance that they will be reimbursed for their efforts.

My bill would centralize this reimbursement process and the coordination of State-Federal programs in one agency, without diminishing the authority of other agencies over the lands they must administer. This procedure would reduce administrative costs, would greatly streamline the procedure required for setting up cooperative Federal-State programs, and would allow the States to get on with the job of setting up workable programs where Federal lands are involved.

Mr. President, noxious weeds compete with crops and desirable plants for air, water, and soil. In Wyoming, it is estimated by the State Department of Agriculture that weeds reduce returns to farmers from agronomic crops by an incredible $23 million annually. Millions more are spent for control programs—both by individual farmers and by governmental agencies—and still, in Western States, weeds are winning the battle.

There is no way to accurately measure the economic loss caused by noxious weeds, but it is astronomic.

The need for weed control is obvious. It is my hope this amendment to the Carlsen-Foley Act will be approved, so that effective control programs can be set up in public lands States and we can begin to see some results for the dollars we spend. I believe, also, that passage of this amendment would increase the efficiency of the Federal-State effort to the extent that we would be in a much better position to see that adequate appropriations are approved, for control programs.

Mr. President, I ask unanimous consent that the full text of the bill be entered at this point in the RECORD.

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

S. 1209

A bill to amend the Act of October 17, 1968 (82 Stat. 1146), relating to the control of noxious plants on Federal lands

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the control of noxious plants on land under the control or jurisdiction of the Federal Gov-

ernment", approved October 17, 1968 (82 Stat. 1146), is amended to read as follows:

"That (a) the Secretary of Agriculture is authorized and directed to permit the commissioner of agriculture or other proper agency head of any State in which there is in effect a program for the control of noxious plants to enter upon any Federal lands within such State and destroy noxious plants growing on such lands, if such entry is in accordance with a program submitted to and approved by the Secretary of Agriculture.

"(b) In any case in which a program or part thereof submitted to the Secretary of Agriculture pursuant to subsection (a) of this section includes lands under the jurisdiction or control of a Federal department or agency other than the Department of Agriculture, the Secretary of Agriculture shall consult with the head of such department or agency and shall not approve such program or part thereof to the extent that it includes such lands, if such head has (1) certified to the Secretary of Agriculture that entry on such lands is inconsistent with national security; or (2) informed the Secretary of Agriculture that the means by which noxious plants are to be destroyed on such lands under the proposed program are not acceptable to the head of such department or agency. No program submitted to the Secretary of Agriculture pursuant to this Act shall be approved by him unless he first determines that the same procedures required by the State program with respect to privately owned land is to be followed in the proposed program submitted for approval under this Act.

"SEC. 2. Any State incurring expenses pursuant to the first section of this Act upon presentation of an itemized account of such expenses shall be reimbursed by the Secretary of Agriculture: *Provided*, That such reimbursement shall be only to the extent that funds appropriated specifically to carry out the purposes of this Act are available therefor during the fiscal year in which the expenses are incurred.

"SEC. 3. There are hereby authorized to be appropriated such sums as the Congress may determine to be necessary to carry out the purposes of this Act.".

SEC. 2. The provisions of this Act shall take effect upon the expiration of the ninety day period following the date of its enactment.

By Mr. CRANSTON (for himself and Mr. TUNNEY):

S. 1210. A bill to regulate and foster commerce among the States by providing a uniform system for the application of sales and use taxes to interstate commerce. Referred to the Committee on Finance.

THE INTERSTATE SALES AND USE TAX ACT

Mr. CRANSTON. Mr. President, I introduce, for appropriate reference, for myself and Mr. TUNNEY, a bill to provide a uniform system for the application of State and local sales and use taxes to transactions in interstate commerce. It is entitled "The Interstate Sales and Use Tax Act."

This legislation focuses attention directly on the basic issues involved in the application of State and local sales and use taxes to transactions in interstate commerce. I want to provide an opportunity for the consideration and debate of these issues on their individual merits.

Since Congress first directed that a study be made of interstate taxation there have been some very significant developments. First, it has become clear, beyond any reasonable doubt, that an attempt to resolve all interstate tax problems by the adoption of a single set of jurisdictional standards is unrealistic and does not recognize the intrinsic differences between sales and use taxes and other State and local taxes. The disregard of this principle has substantially contributed to the controversy which exists in the field of interstate taxation today.

Recently, there have been a number of significant developments in the application of sales and use taxes to interstate transactions. These developments render irrelevant much of the previous testimony in support of Federal legislation in this field.

For example, the Supreme Court has conclusively dealt with the issue of catalog and mail order sales which were once the subject of extended testimony and debate. On many other issues the States have voluntarily acted to provide uniformity where it was previously lacking.

The one development that stands out has been the widespread realization among national and local businessmen, economists, and experts in public finance, as well as State and local tax officials, that it is essential that we distinguish basic differences in jurisdictional rules applicable to sales and use taxes from those applicable to the corporation income tax. Since the first interstate taxation bill was introduced in 1965, there has been steadily increasing recognition of the inequity and unsoundness of attempting to apply the principle of Public Law 86–272 to the collection of sales and use taxes. This conclusion has been for reasons well founded in both logic and efficacy.

The purpose of Public Law 86–272 is to reduce the tax compliance burden on interstate sellers by simplifying the allocation of income among States. This is achieved by precluding the apportionment of income for net income tax purposes by any State in which a multistate seller does no more than solicit orders for acceptance at and shipment from an out-of-State point. No matter what the merits of Public Law 86–272 for corporation income tax purposes, its application to sales and use taxes would have disastrous consequences.

If the principles of that law were applied to sales and use taxes, the multistate seller would be free of tax obligations even though he maintains an unlimited number of salesmen in a State, so long as he had no place of business in that State and the orders taken were filled by shipments from outside the State. The tax loss to State and local governments, at rates of 5 percent or more in many States, would be substantial. In California, it is estimated that the loss in revenue would be $12.5 million in the first year alone. Of even greater concern is the very significant competitive advantage that would be granted to out-of-State sellers over local retailers. This tax advantage would lead to further penetration of local markets by the vendors given such tax immunity.

A different situation exists in the application of Public Law 86–272 to income taxes. The tax loss to any State is measured by net income from sales. Discrimination against local business is therefore less significant.

I have an exhibit compiled from the records of the California State Board of Equalization which illustrates the fiscal and competitive consequences if Congress were to extend the principle of Public Law 86–272 to sales and use taxes. It shows the type of business activities engaged in by some of the companies that would be exonerated from responsibility for collection of sales and use taxes. These 22 companies annually make over $37 million in sales through solicitation by sales representatives within California. Nationwide, their sales run into hundreds of millions of dollars each year. Mr. President, I ask unanimous consent that the exhibit be printed at this point in the RECORD.

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

EXHIBIT

1. This firm sells ready-to-wear dresses. Sales personnel within California obtain "hostesses" to arrange a "social party." A "stylist" attends the party and exhibits sample garments. Orders are submitted by the "stylist" to, and are filled from, a point outside the state by a combined shipment to the "hostess." State and local sales and use taxes in California for the fiscal year 1967–1968 totalled $403,500. This firm would no longer be subject to sales tax, nor required to collect the use tax. This translates into sales in excess of $8 million in direct competition with California retailers.

2. A shoe manufacturer makes sales in California through commission salesmen direct to consumer customers. California sales for the fiscal year ended 6–30–68 amounted to $350,000 with tax paid in excess of $17,000.

3. A shoe manufacturing firm sells through sales representatives on a house-to-house basis. This firm paid tax of more than $48,000 on sales of $960,000.

4. A company sells household utensils, pots, pans, etc., through independent representatives to consumer customers on a house-to-house basis. Sales last year exceeded a quarter million dollars, with a tax payment in excess of $12,500.

5. This business is conducted by two related corporations. One sells jewelry, the other sells cosmetics, through solicitors operating within California. Their annual state and local sales and use taxes aggregate $175,000. Under the proposed federal restriction, $3,500,000 of sales with local solicitation would not subject the companies to the California Sales and Use Tax Laws.

6. A large greeting card firm has independent sales solicitors taking orders from consumer customers in California. Last year's volume of sales in California was almost a half million dollars, with tax paid of $24,900.

7. A firm sells educational books through commission salesmen on a door-to-door basis. Sales made were in excess of $525,000, tax paid of $25,300.

8. Another firm sells Bibles, for all denominations, on a door-to-door basis through commissioned salesmen. Sales for last year totalled more than $460,000, and tax paid exceeded $23,000.

9. A firm engaged in the sale of books, magazines, and record albums, has agents located in California who operate from their homes. These agents solicit orders which are filled, and shipped from a point outside the state direct to the purchaser. It would be discharged from further liability on $7,500,000 of annual sales on which it now pays $375,000 in taxes. An affiliated corporation of this firm does maintain offices in California. It would be an easy matter to direct all publications of a nontaxable nature through the corporation maintaining an office in the state, and all taxable publications, and other items of a

taxable nature, through the corporation with no office in the state. The enactment of this legislation would provide the opportunity for tax avoidance.

10. A firm with independent sales representatives sells dry goods direct to consumer customers. This firm's sales last year fell just short of $500,000, and they paid tax of $24,350.

11. A correspondence school makes sales of educational material and school supplies directly to the student through independent sales representatives. Annual sales in California totalled $732,000, with tax payable of $36,600.

12. A corporation makes direct sales of general merchandise to credit card holders of large national firms. Individual sales amounts are small, however, the volume is quite large with last year's sales exceeding $450,000, and payment of tax in the amount of $22,700.

13. This firm has 20 photographic salesmen in California who take and sell pictures to students and schools. Annual sales exceed $800,000, with a tax liability of $40,650.

14. This manufacturer is engaged in the sale of desks and public seating equipment to many vendees within the state. Sales are made by resident salesmen. Tax paid last year was in excess of $37,000.

15. This firm supplies prescription lenses, frames, and accessories to optometrists and oculists. All sales are made through resident salesmen. The sales to California purchasers in the last fiscal year amounted to $1,252,000, with a tax liability of $62,600.

Four additional optical firms making sales in the same manner as described above made sales in the amount of $1,600,000, with a total tax paid of $79,000.

16. A manufacturer and seller of yearbooks makes sales through representatives without offices to students and schools. The tax paid amounts to $110,000.

17. Another publisher of yearbooks makes sales of these and other specialty publications in the same manner as indicated in number sixteen. Their sales are also to students and schools. The tax revenue from this account is $120,000 per year.

18. Another company has independent sales agents soliciting orders for their products which are advertising specialties, executive gifts, metal signs, etc. This firm paid tax of $27,050 on sales of $540,000.

19. This taxpayer operates in California through resident salesmen making sales of uniforms to various employers and organizations throughout the state. All sales are made through taxpayer's sales representatives. California taxable sales during the last fiscal year exceeded one quarter of a million dollars.

20. A manufacturer and seller of rubber processing machinery and barbage disposers make sales as a result of solicitation by sales representatives, with no office maintained in this state. Sales for last year totalled $1,600,000, and tax paid of $80,000.

21. A supplier of industrial chemicals and disinfectants made sales through resident salesmen in excess of $2,000,000 last year, and paid tax in the amout of $110,000.

22. This firm is a manufacturer of industrial mixers. Most of its sales are to bakeries and other food processing industries. Orders are solicited by an independent sales representative. Sales for the fiscal year ended June 30, 1968, exceeded $500,000, with total tax paid in excess of $25,000.

Mr. CRANSTON. Mr. President, I propose to provide the Congress, businessmen, consumers, and State tax officials alike, with the opportunity to consider a uniform system for the application of sales and use taxes in interstate commerce which is based on the premise that there are some problems in the sales and use tax field that are different from those found in the income tax field and consequently they require different solutions.

My bill utilizes to the fullest extent possible the work already done by the committees of the Congress in this area. The remedial provisions of my bill are directed exclusively to the solution of today's interstate sales and use tax problems, and it retains the time-tested sales and use tax jurisdiction based on sales solicitation within the State.

The presence of sales personnel within a State provides the most logical jurisdictional standard. Sales people make sales, with or without fixed business locations, in direct competition to local merchants, and the courts have recognized that their presence within a State provides a rational connection between the benefits derived and the tax collection burden assumed by the seller.

At this point, I would like to explain some of the major provisions of the "Interstate Sales and Use Tax Act." The basic purpose of the act is to provide a uniform system for the application of the sales and use taxes of the several States and their political subdivisions with respect to sales of tangible personal property in interstate commerce.

First, title I of the act would establish jurisdictional standards applicable to the imposition and collection of sales and use taxes on interstate sales. Under these standards a State could not impose a sales or use tax on a person with respect to the interstate sale of personal property for delivery in that State, unless the person has "a business location within the State," regularly solicits orders by salesmen, solicitors, or representatives in the State—this does not include solicitation solely by direct mail or advertising via newspaper, radio, and TV.

Under title I, a State may also impose the tax on a person who regularly engages in the delivery of property in the State other than by common carrier or U.S. mail.

Title II makes it clear that a sale in interstate commerce can only be taxed by one State. It exempts from the tax the reasonable transportation cost of property into the State and in the case of new residents of a State, it exempts from the tax, household goods or automobiles purchased in another State and used in that State for 90 days.

Also, under title II, a strictly local sale or use tax may not be imposed by a political subdivision of a State unless the seller has a business location in the jurisdiction where the property is to be delivered or unless the seller makes regular deliveries into that jurisdiction other than by common carrier or U.S. mail. However, any uniform system of State-administered local taxes would be treated as State taxes for the purpose of the act.

Finally, title III contains definition and miscellaneous provisions. In defining "use tax" it is made clear that use tax as referred to in this act, means a use tax which is complimentary to a sales tax. Specifically excluded from the definition of "use tax" are those taxes which are complimentary to certain excise taxes such as those imposed on cigarettes.

One of the miscellaneous provisions of title III authorizes contiguous States to enter into reciprocal agreements whereby a seller with a business location in one State could be required by that State to collect its sister's sale or use tax for personal property sold in the sister State. This agreement would be applicable to the seller even though he would not otherwise be liable under the act for the sister State's tax.

Mr. President, in developing this bill I am greatly indebted, and wish to give credit, to the Chamber of Commerce of the State of California, the California Manufacturer's Association, the California Retailer's Association, and the State Board of Equalization, whose study and expertise largely made this bill possible. In addition, Governor Reagan and his administration have given this measure their active support.

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

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

S. 1210

A bill to regulate and foster commerce among the States by providing a uniform system for the application of sales and use taxes to interstate commerce

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 "Interstate Sales and Use Tax Act".

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TITLE I—JURISDICTION TO TAX

SEC. 101. UNIFORM SALES AND USE TAX JURISDICTIONAL STANDARD.

No State or political subdivision thereof shall have power to impose a sales tax or to require a person to collect a sales or use tax

with respect to an interstate sale of tangible personal property for delivery in the State unless the person—

(1) has a business location in the State, or

(2) regularly solicits orders for the sale of tangible personal property by salesmen, solicitors, or representatives in the State, unless his activity in the State consists solely of solicitation by direct mail or advertising via newspapers, radio, or television, or

(3) regularly engages in the delivery of property in the State other than by common carrier or United States mail.

A State or political subdivision shall have power, subject to the provisions of sections 201, 205, and 324 of this Act, to impose a sales tax, or, to require seller collection of a sales or use tax with respect to an interstate sale of tangible personal property, if it is not denied power to do so under the preceding sentence.

TITLE II—UNIFORM RULES FOR APPLICATION OF TAX

SEC. 201. REDUCTION OF MULTIPLE TAXATION.

(a) LOCATION OF SALES.—A State or political subdivision thereof may impose a sales tax or require a seller to collect a sales or use tax with respect to an interstate sale of tangible personal property only if the destination of the sale is—

(1) in that State, or

(2) in a contiguous State or political subdivision of a contiugous State for which the tax is required to be collected under reciprocal collection agreements as authorized under section 324 of this Act.

(b) CREDIT FOR PRIOR TAXES.—The amount of any use tax imposed with respect to tangible personal property shall be reduced by the amount of any sales or use tax previously incurred and paid by a person with respect to the property on account of liability to another State or political subdivision thereof.

(c) REFUND.—A person who pays a use tax imposed with respect to tangible personal property shall be entitled to a refund from the State or political subdivision thereof imposing the tax, up to the amount of the tax so paid, for any sales or use tax subsequently paid with respect to the same property on account of prior liability to another State or political subdivision thereof.

(d) LIMITATION ON CREDIT FOR PRIOR TAXES.—A credit or refund otherwise permitted under subsections (b) and (c) shall not be allowed with respect to taxes which are measured by periodic payments made under a lease to the extent that the taxes imposed by the other State or political subdivision thereof were also measured by periodic payments made under a lease for a period prior to the possession, storage, use, or other consumption of the property in the State or political subdivision thereof imposing the tax.

(e) VEHICLES AND MOTOR FUELS.—

(1) VEHICLES.—Nothing in subsection (a) shall affect the power of a State or political subdivision thereof to impose or require the collection of a sales or use tax with respect to vehicles that are registered in the State.

(2) FUELS.—Nothing in this section shall affect the power of a State or political subdivision thereof to impose or require the collection of a sales or use tax with respect to motor fuels consumed in the State.

SEC. 202. EXEMPTIONS FOR HOUSEHOLD GOODS, INCLUDING MOTOR VEHICLES, IN THE CASE OF PERSONS WHO ESTABLISH RESIDENCE.

No State or political subdivision thereof may impose a sales tax, use tax, or other nonrecurring tax measured by cost or value with respect to household goods, including motor vehicles, brought into the State by a person who establishes residence in that State if the goods were acquired and used by that person ninety days or more before use of the property in the State in which he establishes such residence.

SEC. 203. TREATMENT OF TRANSPORTATION CHARGES WITH RESPECT TO INTERSTATE SALES.

Where the freight charges or other charges for transporting tangible personal property from the seller or supplier directly to the purchaser incidental to an interstate sale are separately stated in writing by the seller to the purchaser, to the extent that such charges do not exceed a reasonable charge for transportation by facilities of the seller or the charge for the transportation by the carrier when the transportation is by other than the seller's facilities, no State or political subdivision may include such charges in the measure of a sales or use tax imposed with respect to the sale or use of the property.

SEC. 204. LIABILITY OF SELLERS ON EXEMPT SALES.

No seller shall be liable for the collection or payment of a sales or use tax with respect to an interstate sale of tangible personal property if the purchaser of such property furnishes or has furnished to the seller a certificate or other written form of evidence indicating the basis for exemption, or the reason the seller is not required to pay or collect the tax. Any such certificate or writing shall give the name and address of the purchaser, his registration number, if any, and shall be signed by the purchaser or his representative.

SEC. 205. LOCAL SALES AND USE TAXES.

(a) LIMITATION ON SELLER COLLECTION.—No seller shall be required by a State or political subdivision thereof

(1) to collect a sales or use tax of a political subdivision with respect to interstate sales, or

(2) to classify interstate sales for sales or use tax purposes according to geographic areas of the State in any manner

except with respect to those interstate sales with destinations in political subdivisions in which the seller has a business location, or regularly makes delivery other than by common carrier or United States mail.

(b) LOCAL TAXES TREATED AS STATE TAXES.—Notwithstanding the limitations in subsection (a), to the extent that State and any local sales and use taxes are imposed in all geographic areas of a State upon like transactions at the same combined State and local rate, are administered by the State, and are otherwise applied uniformly so that the seller is not required to classify interstate sales according to geographic areas of the State in any manner whatsoever, such sales or use taxes, whether imposed by the State or by political subdivisions, shall be treated as State taxes for the purposes of this Act.

TITLE III—DEFINITIONS AND MISCELLANEOUS PROVISIONS

PART A—DEFINITIONS

SEC. 301. SALES TAX.

A "sales tax" is any tax imposed with respect to retail sales, and measured by the sales price of tangible personal property or services with respect thereto, which is required by State law to be stated separately from the sale price by the seller, or which is customarily stated separately from the sales price.

SEC. 302. USE TAX.

A "use tax" is any nonrecurring tax complementary to a sales tax measured by the purchase price or value of tangible personal property or services sold, which is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership or possession of that property or the leasing of that property from another, including any consumption, keeping, retention, or other use of tangible personal property.

SEC. 303. SALE; SALES PRICE; PURCHASE PRICE.

The terms "sale", "sales price", and "purchase price" shall be deemed to include leases and rental payments under leases.

SEC. 304. INTERSTATE SALE.

An "interstate sale" is a sale in which the tangible personal property sold is shipped or delivered to the purchaser in a State from a point outside that State.

SEC. 305. DESTINATION.

The destination of a sale is in the State or political subdivision in which possession of the property is physically transferred to the purchaser or to which the property is shipped to the purchaser regardless of the f.o.b. point or other conditions of the sale.

SEC. 306. BUSINESS LOCATION.

(a) GENERAL RULE.—A person shall be considered to have a business location within a State or within a political subdivision only if that person—

(1) owns or leases real property within the State, or within the political subdivision,

(2) has one or more employees located in the State, or in the political subdivision,

(3) regularly maintains a stock of tangible personal property in the State, or in the political subdivision, for sale in the ordinary course of its business, or

(4) regularly leases out tangible personal property for use in the State, or in the political subdivision.

For the purpose of paragraph (3), property which is on consignment in the hands of a consignee, and which is offered for sale by the consignee on his own account, shall not be considered as stock maintained by the consignor. If a person has a business location in a State, or in the political subdivision, solely by reason of paragraph (4), he shall be considered to have a business location in the State, or in the political subdivision, only with respect to such leased property.

SEC. 307. LOCATION OF EMPLOYEE.

An employee shall be considered to be located in a State or in a political subdivision if—

(1) his service is performed entirely within that State, or within that political subdivision, or

(2) his service is performed both within and without that State, or that political subdivision, but in the performance of his service he regularly commences his activities at, and return to, a place within the State or within the political subdivision.

SEC. 308. STATE.

The term "State" means the several States of the United States and the District of Columbia.

SEC. 309. STATE LAW.

References in this Act to "State law", "the laws of the State", and the like shall be deemed to include a State constitution, and to include the statutes and other legislative acts, judicial decision, and administrative regulations and rulings of a State and of any political subdivision.

PART B—MISCELLANEOUS PROVISIONS

SEC. 321. PROHIBITION AGAINST GEOGRAPHICAL DISCRIMINATION.

(a) IN GENERAL.—No provision of State law shall make any person liable for a greater amount of sales or use tax with respect to tangible personal property by virtue of the location of any occurrence in a State outside the taxing State, than the amount of the tax for which such person would otherwise be liable if such occurrence were within the State. For purposes of this subsection, the term "occurrence" includes incorporation, qualification to do business, and the making

of a tax payment, and includes an activity of the taxpayer or of a person (including an agency of a State or local government) receiving payments from or making payments to the taxpayer.

(b) COMPUTATION OF TAX LIABILITY UNDER DISCRIMINATORY LAWS.—When any State law is in conflict with subsection (a), tax liability may be discharged in the manner which would be provided under State law if the occurrence in question were within the taxing State.

SEC. 322. PROHIBITION AGAINST OUT-OF-STATE AUDIT CHARGES.

No charge may be imposed by a State or political subdivision thereof to cover any part of the cost of conducting outside that State an audit for a tax to which this Act applies.

SEC. 323. PERMISSIBLE TAXES.

The fact that a tax to which this Act applies is imposed by a State or political subdivision thereof in the form of an excise, privilege, or license tax shall not prevent the imposition of the tax on a person engaged exclusively in interstate commerce within the Senate; but such a tax may be enforced against a person engaged exclusively in interstate commerce within the State solely as a revenue measure and not by ouster from the State or by criminal or other penalty for engaging in commerce within the State without permission from the State.

SEC. 324. RECIPROCAL COLLECTION AGREEMENTS.

When authorized by State law, reciprocal agreements may be made between two contiguous States for the purpose of requiring a seller with a business location in one of the States to collect applicable state use tax (including any tax treated as a State tax under Subsection (b) of Section 205 of this Act) for, and to remit that tax to, the other State into which the seller makes sales of tangible personal property, even though he is otherwise not subject to the jurisdiction of such other States under Section 101 of this Act.

SEC. 325. LIABILITY WITH RESPECT TO UNASSESSED TAXES.

No State or political subdivision thereof shall have the power, after the date of the enactment of this Act, to assess against any person for any period ending on or before such date a sales or use tax with respect to tangible personal property, if during such period that person was not registered in the State for the purpose of collecting tax, had no business location in the State, did not regularly solicit orders for the sale of tangible personal property by salesmen, solicitors, or other representatives in the State or did not regularly engage in the delivery of property in the State other than by common carrier or United States mail.

SEC. 326. EFFECTIVE DATES.

Sections 101, 321, 322, and 325 of this Act shall take effect on the date of the enactment of this Act. Section 205 shall take effect on the first day of the first calendar quarter commencing five years after the enactment of this Act. The remaining provisions of this Act shall take effect on the first day of the second calendar quarter commencing after the enactment of this Act.

By Mr. PEARSON (for himself and Mr. DOLE):

S.J. Res. 69. Joint resolution to provide for a 1974 Centennial Celebration Observing the Introduction into the United States of Hard Red Winter Wheat. Referred to the Committee on the Judiciary.

RESOLUTION IN RECOGNITION OF THE HARD RED WINTER WHEAT CENTENNIAL

Mr. PEARSON. Mr. President, I introduce a joint resolution to provide for a 1974 centennial celebration observing the introduction into the United States of Hard Red Winter Wheat. This joint resolution is cosponsored by my distinguished colleague from Kansas, Senator BOB DOLE. This resolution has been introduced in the House by Congressman KEITH SEBELIUS, whose Big First District is the heart of the Nation's Hard Red Winter Wheat region.

Mr. President, the Russian Mennonite families who settled in the community of Hillsboro, Kans., brought from their native land a portion of seed wheat, which they first planted in 1874. This wheat was new to the Western Hemisphere. It was the original Hard Red Winter Wheat, which since has been responsible for the prominence of Kansas as "Breadbasket" for all Americans and millions of other people throughout the world.

The legislation which I introduce today would provide for a 1974 centennial celebration in Kansas to commemorate the historic introduction of Hard Red Winter Wheat in this hemisphere. This proposal has been drafted, also, to recognize in an appropriate manner the dedication with which Kansas wheat farmers have served the Nation and the hungry everywhere.

I believe it entirely appropriate for Congress to request a Presidential proclamation calling upon the people of the United States to observe this centennial, with appropriate ceremonies and activities to be focused in the State of Kansas where such wheat was first grown.

Mr. President, I ask unanimous consent to include at the conclusion of these remarks the text of this joint resolution, and urge that its provisions be considered by Congress at the earliest practicable time.

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

S.J. RES. 69

Joint resolution to provide for a 1974 centennial celebration observing the introduction into the United States of Hard Red Winter wheat

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in recognition of the national and international significance of the introduction of Hard Red Winter wheat into the United States in 1874 and the advantages it has brought to our way of life by increasing the supply of grain essential to the Nation's diet, permitting the cultivation of the High Plains area, giving impetus to the development of the farm implement industry, and providing a nutritious staple for our food-for-peace program and for combating malnutrition and hunger throughout the world, the year 1974 be designated as a Centennial for Celebrating the Introduction Into the United States of Hard Red Winter Wheat, and the President is requested to issue a proclamation calling on the people of the United States to observe such centennial, with appropriate ceremonies and activities to be focused in the State of Kansas where such wheat was first grown in the United States.

By Mr. TOWER:

S.J. Res. 71. A joint resolution to authorize the Secretary of the Interior and the Administrator of the Environmental Protection Agency to conduct a study of the possible reuse of waste heat for productive purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. TOWER. Mr. President, the proper care of our environment is a subject that is of extreme importance to us today, and for as long as the human race continues to survive. We have long since passed the population levels where humans could afford to act on the environment and leave it to handle its own repair and renewal. We have to plan ahead to counter the deleterious effects we have on the environment.

One area where we are behind in planning is in the field of making the maximum use of our fuel and energy resources, so that not only are they conserved for future use, but there will be greater benefits to be derived for our effort expenditure. An aspect of proper fuel utilization is the case of finding more ways to utilize waste heat from our many sources of energy conversion: Fossil-fuel-powered electrical generators, nuclear-powered electrical generators, automobile engines, building heating and cooling plants, incinerators, and so forth. A recent article from the publication Chemical Engineering on this subject describes several potential uses of waste heat, which will be of interest to anyone interested in the care of our environment and the minimization of pollutive substances at large in our world. I ask unanimous consent that the text of the article be printed at this point in my remarks.

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

WASTE HEAT MAY BECOME AN ASSET BY THE END OF THIS DECADE

New power generating capacity to be planned within the next year or two will include concepts for actually using heat that is now being discharged directly into waterways or into the air by means of cooling towers.

The first method to be incorporated in designs will couple a giant water desalting plant to a nuclear power generating station. At a capacity level of 50-million to 100-million gallons per day, actual cost of the fresh water will probably be down to about 35¢ to 40¢ per 1,000 gallons in contrast to 85¢ to $1 desalted water today.

Considerable attention will be paid to developing satellite industrial and residential areas around future nuclear generating plants. Waste heat could then be delivered to the industries at reasonably low cost and to nearby homes for hot water and space heating. On the Hudson River near Indian Point, N.Y., eleven power plants planned or operating could heat 800,000 housing units while supplying 5,500 megawatts of electricity.

Cooling water from a nuclear power plant may be particularly suited to aquaculture. Near the Hinkley Point power station, Bridgewater, England, for example, shrimp are maturing three times faster than normal in water that is 7 degrees warmer than in the nearby Bristol Channel. And TVA is gathering evidence that heated water from its

Gallatin steam plant may be lengthening the growing season for catfish fingerlings. Furthermore, 1 billion gallons per day of hot water from the AEC plant at Aiken, S.C., seems to stimulate growth of fish, turtles and alligators in Par Pond.

Studies have shown that about 20,000 miles of desert coastline around the world could be converted into likely locations for integrated power-water-food complexes. Large quantities of a number of different vegetables such as beans, beets, broccoli, cabbage, cantaloupes and watermelons have matured much more rapidly and at higher yields while growing in sand within enclosures that are heated and humidfied to the 100% level.

Mr. TOWER. Mr. President, I am introducing today a resolution to authorize the Secretary of the Interior and the Administrator of the Environmental Protection Agency to investigate the potential of waste heat reutilization, both technologically and economically, so that Congress may have a report on this important subject and be able to act accordingly within the next several years.

Mr. President, I ask unanimous consent that the text of my resolution be printed at the conclusion of my remarks.

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

S.J. RES. 71

Joint resolution to authorize the Secretary of the Interior and the Administrator of the Environmental Protection Agency to conduct a study of the possible reuse of waste heat for productive purposes

Whereas the Congress is vitally concerned with environmental quality and the preservation of scarce mineral resources;

Whereas the Congress recognizes that much wasted heat energy is released to the environment in the various processes of converting fossil fuels into electrical and mechanical energy and converting nuclear fuels into electrical energy;

Whereas the Congress recognizes that while there are many potential uses for waste heat, including the desalination of salt water, the heating of buildings, additional conversion to mechanical and electrical energy, facilitating the destruction of biodegradable wastes, and many others, there has been little research into either the technology or the economics of this concept;

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior and the Administrator of the Environmental Protection Agency are authorized to carry out a study and investigation of the possible uses of waste heat and of the economic feasibility of so utilizing waste heat.

SEC. 2. In carrying out such study and investigation authorized by the first section of this joint resolution, the Secretary of the Interior and the Administrator of the Environmental Protection Agency are authorized to enter into contracts or other arrangements with public or private agencies or institutions, or individuals.

SEC. 3. On or before the expiration of two years following the date of approval of this joint resolution, the Secretary of the Interior and the Administrator of the Environmental Protection Agency shall transmit to the President and the Congress a written report of their activities pursuant to this joint resoluion, including their findings and recommendations resulting from the study and investigation authorized herein.

SEC. 4. There is authorized to be appropriated such sum, not to exceed $500,000, as may be necesary to carry out this joint resolution.

ADDITIONAL COSPONSORS OF BILLS

S. 28

At the request of Mr. Moss, the Senator from Wyoming (Mr. HANSEN) was added as a cosponsor of S. 28, a bill to clarify the relationship of interests of the United States and of the States in the use of waters of certain streams.

S. 219

At the request of Mr. Moss, the Senator from Wyoming (Mr. HANSEN) was added as a cosponsor of S. 219, a bill to amend the Water Resources Research Act of 1964 to increase the authorization for water resources research and institutes, and for other purposes.

S. 322

At the request of Mr. Moss, the Senator from Pennsylvania (Mr. SCHWEIKER) was added as a cosponsor of S. 322, a bill to terminate all price support programs for tobacco beginning with the 1972 crop of tobacco.

S. 350

At the request of Mr. HATFIELD, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 350, the American Forestry Act.

S. 575

Mr. BYRD of West Virginia. Mr. President, in behalf of my senior colleague (Mr. RANDOLPH), I ask unanimous consent that, at the next printing, the names of the Senator from Ohio (Mr. TAFT) and the Senator from South Carolina (Mr. THURMOND) be added as cosponsors of S. 575, authorizing funds for the extension of the Appalachian regional development program.

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

S. 592

At the request of Mr. INOUYE, the Senator from Colorado (Mr. DOMINICK) and the Senator from Michigan (Mr. HART) were added as cosponsors of S. 592, to repeal the Emergency Detention Act of 1950 (title II of the Internal Security Act of 1950).

S. 687

At the request of Mr. BOGGS, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 687, the Opportunities Industrialization Assistance Act.

S. 698 AND S. 699

At the request of Mr. COTTON, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 698, a bill to promote the safety of ports, harbors, waterfront areas, and navigable waters of the United States; and to S. 699, a bill to require a radiotelephone on certain vessels while navigating upon specified waters of the United States.

S. 835

At the request of Mr. HARRIS, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 835, the Alaskan Native claims bill.

S. 1026

At the request of Mr. Moss, the Senator from Idaho (Mr. CHURCH) was added as a cosponsor to S. 1026, a bill to amend the Small Reclamation Projects Act of 1956, as amended.

S. 1071

At the request of Mr. BOGGS, the Senator from Maryland (Mr. BEALL) and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 1071, a bill to clarify the status of funds of the Treasury deposited with the States under the act of June 23, 1836.

S. 1111

At the request of Mr. RIBICOFF, the Senator from Pennsylvania (Mr. SCHWEIKER) was added as a cosponsor of S. 1111, to allow a tax credit for certain expenses of higher education.

S. 1113

At the request of Mr. BAKER, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 1113, a bill to establish a structure that will provide integrated knowledge and understanding of the ecological, social, and technological problems associated with air pollution, water pollution, and other related problems.

S. 1116

Mr. BYRD of West Virginia. Mr. President, in behalf of the Senator from Washington (Mr. JACKSON), I ask unanimous consent that, at the next printing, the names of the Senator from Idaho (Mr. CHURCH), and the Senator from Connecticut (Mr. WEICKER), and the Senator from North Dakota (Mr. BURDICK) be added as cosponsors of S. 1116, a bill to require the protection, management, and control of wild free roaming horses and burros on public lands.

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

S. 1191

Mr. BYRD of West Virginia. Mr. President, in behalf of the Senator from South Dakota (Mr. MCGOVERN), I ask unanimous consent that the name of the Senator from Michigan (Mr. HART) be added to the list of cosponsors of the bill introduced earlier today by Senator MCGOVERN.

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

ADDITIONAL COSPONSORS OF JOINT RESOLUTIONS

At the request of Mr. BAKER, the Senator from Tennessee (Mr. BROCK), the Senator from Kansas (Mr. DOLE), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of Senate Joint Resolution 66, providing for the designation and adoption of the American marigold as the national floral emblem of the United States.

S.J. RES. 68

At the request of Mr. BYRD of Virginia, the Senator from Virginia (Mr. SPONG) was added as a cosponsor of Senate Joint Resolution 68, a joint resolution restoring full rights of citizenship to Gen. R. E. Lee.

ADDITIONAL COSPONSOR OF A CONCURRENT RESOLUTION

At the request of Mr. CHILES, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of Senate Con-

current Resolution 4, expressing the sense of the Congress on the expanded use of model cities program.

SENATE RESOLUTION 71—SUBMISSION OF A RESOLUTION TO REFER SENATE BILL 1200 TO THE COURT OF CLAIMS

Mr. BROOKE submitted the following resolution (S. Res. 71); which was referred to the Committee on the Judiciary:

S. RES. 71

Resolved, That the bill (S. 1200) entitled "A bill for the relief of Frederick F. Slack", now pending in the Senate, together with all accompanying papers, is referred to the chief commissioner of the United States Court of Claims. The chief commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States, or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant.

SENATE RESOLUTION 72—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO MRS. MARJORIE S. MORGAN

Mr. CANNON, from the Committee on Rules and Administration, reported the following original resolution (S. Res. 72); which was placed on the calendar:

S. RES. 72

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Marjorie S. Morgan, widow of Walter L. Morgan, Jr., an employee of the Senate at the time of his death, a sum equal to one year's compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

REGULATION OF THE FEDERAL ELECTIVE PROCESS—AMENDMENT

AMENDMENT NO. 14

Mr. PEARSON. Mr. President, I submit today for appropriate reference an amendment to S. 1, the bill I previously joined in sponsoring with my distinguished colleague from Alaska, Senator GRAVEL.

The purpose of this amendment is to equitably treat all media, broadcast and nonbroadcast alike, by requiring that for 30 days prior to a primary election and for 45 days prior to a general election no newspaper, magazine, or other periodical, or billboard facility may charge any candidate for public office a rate higher than the lowest unit rates which that facility charges for any other type of advertising.

S. 1 and previous bills which I have urged did not contain this requirement of lowest unit rates for nonbroadcast media because my research had prompted me to believe that constitutional protections surrounding freedom of the press might be compromised by such a requirement. However, recent hearings before the Senate Communications Subcommittee and legislation on this point proposed by Senators SCOTT and MATHIAS, have convinced me that language can be drawn that is specific enough to avoid fringing upon these constitutionally guaranteed rights.

Mr. President, the basis for this amendment rests on the right of Congress to regulate the conduct of elections and on the right of Congress to regulate commerce, including postal rates for news distributions. Moreover, this amendment would allow the Congress to achieve a measure of control over campaigns for elective office in an even handed, nondiscriminatory manner.

I wish to emphasize that this amendment does not mandate what the exact rates for nonbroadcast media must be. Any newspaper or magazine or billboard may charge whatever rate it wishes, so long as they do not charge a higher rate for political advertising than they charge for business advertising. Simply stated, no newspaper should be able to charge more for its advertising space simply because the customer is a political candidate rather than a toothpaste company.

The definition of "lowest unit rate," Mr. President, contains sufficient flexibility to allow for those customers who deal in volume, for varying rates according to the advertising space in the newspaper, magazine or periodical, or on the location of the billboard, in the same way that lowest unit rates for broadcast time include flexibility for varying degrees of prime time.

Mr. President, all media must understand that they may not profiteer at the expense of candidates for public office, at the expense of those processes by which we choose our leaders.

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

The ACTING PRESIDENT pro tempore (Mr. ALLEN). The amendment will be received and printed, and will be appropriately referred; and, without objection, the amendment will be printed in the RECORD.

The Amendment (No. 14) was referred to the Committees on Rules and Administration, Commerce, and Finance, jointly, as follows:

AMENDMENT NO. 14

On page 16, between lines 2 and 3, insert the following:

"CHARGES FOR USE OF NONBROADCAST MEDIA

"SEC. 205. (a) For the purposes of this section, the term—

"(1) 'nonbroadcast media' means newspapers, magazines or other periodical publications, or billboard facilities; and

"(2) 'a person' means an individual, partnership, association or corporation engaged in the business of furnishing nonbroadcast media services.

"(b) (1) During the 30 days preceding the date of any primary election, and during the 45 days preceding the date of any general or special election, to the extent a person chooses to make space in his nonbroadcast medium available to a candidate for any public office in connection with such candidate's campaign for nomination for election, or election, to such office, such space shall be made available at the lowest unit rate charged by that person to his commercial users for equivalent space.

"(2) Whenever a person chooses to make space in his nonbroadcast medium available to any candidate for any public office in connection with such candidate's campaign for nomination for election, or election, to such office, he shall make an equivalent amount of space available at the same rate to any other legally qualified candidate for the same office.

"(c) Violation of the provisions of this section is punishable by a fine of not more than $500, or imprisonment for not more than six months, or both."

PROGRAMS OF PUBLIC SERVICE EMPLOYMENT FOR UNEMPLOYED PERSONS—AMENDMENTS

AMENDMENTS NOS. 15, 16, AND 17

OLDER WORKERS IN PUBLIC SERVICE EMPLOYMENT JOBS

Mr. CRANSTON. Mr. President, I send to the desk today for printing an amendment to S. 31, the proposed Emergency Employment Act of 1971, to provide special recognition of the need for public service employment jobs for persons 45 and older. Under the terms of this amendment, the Secretary of Labor, in providing public service employment through various cities, States, and nonprofit grantees would be charged with a positive mandate to make special provision for these older and middle-aged persons who are out of work.

Under the amendment the Secretary would be directed to determine the number of jobs to be allocated to middle-aged and older persons on the basis of the number of such older persons who are unemployed relative to the number of unemployed persons in the total population. Given the present unemployment of one million persons 45 and older out of approximately 4.8 million unemployed persons (in February 1971), this amendment would yield 20.8 percent of the public service employment jobs for these older citizens. Since under the terms of the bill approximately 225,000 jobs would be created over a 2-year period, this would mean that about 46,800 jobs in the public service employment field would be allocated to persons 45 years of age and older.

The reason for affording this special status to older persons is dramatically demonstrated by some statistics developed by the Senate's Special Committee on Aging. Since January of 1969 the number of unemployed persons 45 and older has almost doubled. And the duration of their unemployment has increased over 200 percent during that same period so that today approximately 365,000 older persons have been unemployed for 15 weeks or longer, whereas that figure was only 115,000 2 years ago.

If current labor force participation trends continue, one of every six men aged 55 to 59 will no longer be in the work force by the time he reaches 65. Ten years ago the ratio was only one out of eight. And this one in six ratio is only for the short run; it will get worse unless major policy changes are made.

Figures for middle age and older persons are deceptive—they do not include labor force dropouts, those who have given up the active search for employment. During the last decade, there has

been an alarmingly large increase in the number of men aged 45 or older who have withdrawn from the work force—too often unwillingly. During the past 10 years, these workers have increased from 6 million to 8.3 million—a 38-percent increase.

It is my hope that through this amendment the chronic unemployment among our older citizens can be reduced significantly.

I am delighted to be joined in this amendment by the new chairman of the Special Committee on Aging, the Senator from Idaho (Mr. CHURCH), the recent past chairman of that committee and now the chairman of the Labor and Public Welfare Committee, the Senator from New Jersey (Mr. WILLIAMS), the ranking majority member of the Labor and Public Welfare Committee and a great champion of causes for the elderly, the Senator from West Virginia (Mr. RANDOLPH), and the newly appointed chairman of the Labor and Public Welfare Committee's Subcommittee on Aging, on which I am the ranking majority member, the Senator from Missouri (Mr. EAGLETON).

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

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

AMENDMENT NO. 15

On page 11, line 7, strike out "APPORTIONMENT" and insert in lieu thereof "DISTRIBUTION OF FUNDS".

On page 11, line 8, insert "(a)" after "SEC. 8.".

On page 11, insert between lines 12 and 13 the following:

"(b) The Secretary shall make funds under this Act available especially for the purpose of providing public service employment for middle-aged and older persons who are unemployed. The Secretary shall base his determination under this subsection on the number of persons 45 years of age and older who are unemployed relative to the number of persons in the total population who are unemployed."

Mr. CHURCH. Mr. President, I strongly support the Cranston amendment to the Emergency Employment Act, S. 31.

As chairman of the Senate Committee on Aging, I shall address my remarks to the provisions in the amendment which would assure proper representation for middle-aged and older persons in the public service employment programs authorized under the bill.

At present, only a relatively small proportion of our Nation's training and employment efforts has been directed at the needs of persons 45 and older. By whatever standard of measurement one would choose to employ, these individuals have been underrepresented in our manpower and work programs. Today persons 45 and older constitute about 34 percent of our civilian labor force; they comprise nearly 22 percent of the total unemployment in the United States; they represent 34 percent of the long-term unemployed, 15 weeks or longer; and they account for 40 percent of all persons without jobs for 27 weeks or longer. Yet, they constitute only about 4 percent of all enrollees in the existing manpower programs.

Without specific statutory direction, the outlook for improvement will not be encouraging.

However, the provisions in the Cranston amendment can help assure that the needs of persons 45 and older will not be overlooked or ignored. Of special significance, it would establish an equitable formula—based on the number of jobless individuals 45 and older to the total unemployment in the United States—to help these persons to obtain gainful employment.

Despite the critical demand for expanded communiy services in rural and urban areas, many communities lack the financial resources to meet these urgent needs. Many localities are crumbling at the core. Their neighborhoods are rundown or blighted. Their schools, libraries, hospitals, and recreation programs are deteriorating or are overcrowded. And their public health and sanitation programs are seriously understaffed.

But, the provisions in this bill can help to provide new career opportunities for thousands of middle-aged and older persons—as well as younger individuals—who now find themselves unemployed or underemployed. In addition, it can also open the doors for opportunities for occupational development or upward mobility in jobs that are badly needed now. At the same time, necessary community services can be greatly strengthened and improved.

Mr. President, I urge approval of the Cranston amendment to the Emergency Employment Act.

RECENTLY RETURNED VETERANS IN PUBLIC SERVICE EMPLOYMENT JOBS

Mr. CRANSTON. Mr. President, I send to the desk today for printing an amendment to S. 31, the proposed Emergency Employment Act of 1971, to provide special recognition of the needs for public service employment jobs for recently returned veterans. As chairman of the Veterans' Affairs Subcommittee of the Labor and Public Welfare Committee in the last Congress, I conducted extensive hearings on veterans unemployment and general readjustment problems. We found that high rates of unemployment inflict an especially serious handicap on recently returned veterans.

The unemployment rate for young veterans is significantly higher than that among their nonveteran peers. For example, during the last 3 months of 1970, the most recent period for which data is available, the unemployment rate among veterans 20 to 29 years old was 7.9 percent, compared to a 6.8 percent rate for nonveterans in the same age group.

Comparable figures for the previous period in 1969 were 4.8 percent unemployment among veterans and 3.3 for nonveterans 20 to 29 years old. This tremendous increase in unemployment rates in a single year highlights the crisis we face.

Part of the problem is related to the great increase in the number of recent veterans returning to a tight job market. Military separations during the last few years have increased from 565,000 in fiscal year 1966 to 1,003,000 in 1969, and 1,120,000 in 1970. It is estimated that another million young veterans will be thrust upon the job market during fiscal year 1971. Thus, over 90,000 young veterans begin looking for jobs each month, far too often without success.

We know that 268,000 veterans 20 to 29 years old were unemployed during the last quarter of 1970. These men made up 31 percent of all unemployed men in the 20 to 29 year age group. The average number of all unemployed in the country during this period of October, November, and December of 1970 was 4.5 million. Thus, young veterans make up almost 6 percent of all those who are unemployed.

In view of the sacrifices these men have made, in terms of risk of life and falling behind their peers in education attainment and career achievement, we have a special obligation to do all that we can to insure that they be placed on at least an equitable basis in their search for employment.

Under the terms of the amendment I will propose the Secretary of Labor, in providing public service employment through various cities, States, and nonprofit grantees, would be charged with a positive mandate to make special provision for these recently returned veterans—those who separated in 1970 or later, when the overall unemployment rate crossed the so-called 4-percent full employment level.

Under the amendment, the Secretary would be directed to determine the number of jobs to be allocated to recently separated veterans on the basis of the number of such veterans who are unemployed relative to the number of unemployed persons in the total population. Given the best estimate of the present unemployment level for 20 to 29 year old veterans—268,000—out of approximately 4.5 million unemployed persons, this amendment would yield about 6 percent of the public service employment jobs for Vietnam veterans. Since under the terms of the bill approximately 225,000 jobs would be created over a 2-year period, this would mean that a minimum of approximately 13,500 jobs in the public service employment field would be allocated to these ex-servicemen.

Mr. President, I wish to make very clear a number of points about my intentions in planning to offer this amendment. First, I have deliberately set the eligibility date at the point where overall unemployment in the country crossed the 4-percent level and began to move toward the crisis proportions confronting us today. This January 1, 1970, date accords with the emergency purpose of S. 31 to provide relatively short-term relief to the enormous unemployment problem plaguing the country.

Second, the amendment does not set up a special categorial program for veterans but rather charges the Secretary, in ways he would determine, to see that our recently returned veterans are at least equitably treated under the public service employment programs to be set up under the act. It also avoids a rigid reservation or set aside of funds which many of us believe should be avoided in

an emergency measure such as this, particularly if we are to escape Presidential veto this time.

Third, I do not intend that the terms of this amendment should unduly limit the Secretary in making available public service employment jobs for veterans. Toward, this and another amendment to S. 31, which I now send to the desk for printing, calls for additional consideration for the needs of recent veterans. This amendment would provide that the Secretary shall give special consideration to programs designed to provide public service jobs for recently separated veterans. This same amendment would also extend this special consideration to programs designed to employ others for whom the Federal Government bears a similar special responsibility—those who are unemployed as a result of technological changes and shifts in the pattern of Federal expenditures, as in the defense, aerospace, and construction industries.

Finally, Mr. President, there is a great opportunity under this public service employment program to assist educationally and economically disadvantaged veterans enrolled in college under the GI bill and who are struggling to make ends meet. Many more of these often high school dropout or otherwise educationally deprived veterans could pursue college or junior college training if they had part-time jobs to supplement their GI bill educational assistance allowances. By taking one public service job and dividing it among two GI bill trainees, we could make it possible for two educationally disadvantaged veterans to pursue higher education while at the same time expanding the effect of the public service employment program in terms of its human impact. Such a half-time public service job would also provide very valuable work experience for these veterans, perhaps leading to future career and educational specialization choices.

While the amendment does not specify such a half-time program, I would hope that the Secretary would give serious consideration to the great potential of such an allocation of public service jobs. Along the same lines, I would hope that, to the extent practicable, he would also give special preferences to veterans disabled with service-connected conditions who are nevertheless employable.

Mr. President, an unemployment rate of almost 8 percent among young veterans is totally unacceptable on its face. But a breakdown of the group yields even more startling disparities and untenable results.

A recently published study by the Department of Defense found that men who served in combat occupations such as the infantry and gun crews tend to have the highest unemployment; and that men who serve a duty tour in Vietnam are more likely to be unemployed than those servicemen who did not. Thus, we are doing the least for those whom we have required to make the greatest sacrifices.

I feel very strongly that we owe a paramount duty to our returning veterans, especially those who served in Vietnam. We must make a special effort to help these men readjust to civilian life in a productive way and, at a minimum, to place our veterans on an equal footing with others who will be competing for these public service jobs.

Mr. President, I ask unanimous consent that the text of the two amendments I intend to offer to S. 31 be printed in the RECORD at this point.

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

AMENDMENT No. 16

On page 11, line 7, strike out "APPORTIONMENT" and insert in lieu thereof "DISTRIBUTION OF FUND".

On page 11, line 8, insert "(a)" after "Sec. 8.".

On page 11, insert between lines 12 and 13 the following:

"(b) The Secretary shall make funds under this Act available especially for the purpose of providing public service employment for veterans recently separated from service and who are unemployed. The Secretary shall base his determination under this subsection on the number of persons separated from active military, naval or air service on or after January 1, 1970, who are unemployed relative to the number of persons in the total population who are unemployed."

AMENDMENT No. 17

On page 17, add the following new subsection:

"(1) In providing financial assistance under this Act, The Secretary shall give special consideration to programs designed to provide public service employment for recently returned veterans who are unemployed and persons who have become unemployed as a result of technological changes and shifts in the pattern of Federal expenditures, as in the defense, aerospace and construction industries."

ADDITIONAL STATEMENTS

MICHIGAN'S LEGISLATURE HONORS POW'S AND MISSING IN ACTION

Mr. GRIFFIN. Mr. President, on Wednesday, February 17, I was privileged to attend a joint convention of the Michigan Legislature arranged by its leadership to honor Michigan men who are missing in action or being held captive in Indochina.

The Michigan Legislature adopted a concurrent resolution which I hope will be read by Communist authorities in Hanoi, the Vietcong and the Pathet Lao. This resolution underscores the deep concern of the American people that our men being held captive in Indochina are not receiving humane treatment, and that the Geneva Convention regarding prisoners of war is being disregarded by their captors.

The text of the resolution observes that:

During this decade and now, there has been a return to barbarism in the treatment of many hundreds of unknown soldiers among the living.

It continues:

Known prisoners of war and many missing in action who are unknown prisoners of war are daily, hourly, suffering and dying of cruel and barbarously inhumane treatment by their North Vietnam captors in contemptuous violation of the articles of the Geneva Convention—which Hanoi signed in 1957 as solemn pledge of agreement to provide humane treatment to all captives taken during wartime; and . . . proof has been obtained of these extreme cruelties practiced daily; and for the thousands of relatives and friends of such living sacrifices, these facts bring a never-ending anguish.

One of the two principal speakers at the joint convention was Mrs. Bruce Johnson of Salina, Kans., a former Michigan resident whose husband, Bruce, has been missing in South Vietnam for nearly 6 years.

Mrs. Johnson's husband, Bruce, has been missing longer than all but two of the American servicemen lost in Southeast Asia. Throughout that long period of time she has never received a word from the Vietcong or North Vietnamese regarding the whereabouts or physical condition of her husband.

Joining Mrs. Johnson as the other featured speaker was Col. Norris Overly, a native son of Michigan, who is one of only nine Americans repatriated by Hanoi. Colonel Overly's account of his experience in captivity substantiates charges recited in the resolution of the Michigan Legislature concerning the treatment of captive men.

All who attended the joint session were moved by the eloquent words of Mrs. Johnson and Colonel Overly.

In attendance at the joint convention were Michigan Gov. William G. Milliken, Lt. Gov. James Brickley, Speaker of the House William Ryan, Senate Majority Leader Robert Vander Laan, in addition to the members of both legislative bodies.

Senator PHILIP A. HART had planned to attend the session, but was unable to leave Washington because of committee responsibilities. His remarks were read by Secretary of State Richard Austin.

Also in attendance were many members of the brave families of our missing and captive men.

Mr. President, to date the legislatures of only a few States in our Nation have held joint sessions to focus attention to the tragic plight of the prisoners of war. I believe the leaders and members of Michigan's Legislature deserve high commendation for setting this example which, hopefully, will be followed by other State legislatures throughout the Nation.

Mr. President, during the course of the joint session, majority leader Vander Laan of the Michigan State Senate requested on behalf of the State legislature that I present a copy of the concurrent resolution to the President of the U.S. Senate and to the Speaker of the U.S. House of Representatives. Copies of the resolution have been delivered in accordance with that request.

Mr. President, I ask unanimous consent that the text of the resolution be printed in the RECORD.

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

A CONCURRENT RESOLUTION ON PRISONERS OF WAR

Whereas, The Unknown Soldier is not solely represented among the dead, where for generations those unknown sacrifices to their countries' service have been publicly and

ceremoniously honored and great monuments are erected to their memory. During this decade and now, there has been a return to barbarism in the treatment of many hundreds of unknown soldiers among the living; and

Whereas, Known prisoners of war and many "Missing In Action" who are unknown prisioners of war are daily, hourly, suffering and dying of cruel and barbarously inhumane treatment by their North Vietnam captors in contemptuous violation of the articles of the Geneva Convention—which Hanoi signed in 1957 as solemn pledge of agreement to provide humane treatment to all captives taken in wartime; and

Whereas, Proof has been obtained of these extreme cruelties practiced daily; and for the thousands of relatives and friends of such living sacrifices, these facts bring a never-ending anguish. Not only are barbarities of extreme abuses and corrosive public ridicule inflicted, but Hanoi thus far refuses to release any listing of prisoners of war, deliberately spreading anguish among families of American service personnel and thereby compounding Communist barbarities; and

Whereas, Although the contention as to whether America should continue her presence in Southeast Asia is currently dividing this Nation, that contention should neither divert nor delay the compelling need for immediate action concerning American prisoners of war. By any civilized standard, by any claim to humane decencies, this Nation, through her public, demands humane treatment and release of American prisoners of war; now therefore be it

Resolved by the Senate (the House of Representatives concurring), That hereby the Congress of the United States is memorialized, requesting that immediate and effective measures be taken to obtain identification of POW and MIA personnel; to compel treatment for such prisoners according to Hanoi's signatory with the Geneva Convention articles with humane treatment; to impose impartial inspection by authorized agencies of prison facilities; to effect immediate repatriation of the sick and wounded prisoners; and, without exception, to establish and sustain the right of communication between prisoners and their families; and be it further

Resolved, That copies of this resolution be transmitted to the President of the Senate and the Speaker of the House of each of the sister State Legislatures; and to the President of the Senate, the Speaker of the House of Representatives and to each Member of the Michigan delegation to the Congress of the United States.

Adopted by the Senate, February 16, 1971.

Adopted by the House of Representatives, February 16, 1971.

INTERVIEW OF PRESIDENT NIXON BY C. L. SULZBERGER

Mr. SCOTT. Mr. President, the foreign affairs specialist for the New York Times has prepared a penetrating report on his recent interview of President Nixon. This report is entitled, "Mr. Nixon in the Mirror." The last paragraph of the column sums up very clearly the viewpoint of the President in his quest for peace. It says:

But the Nixon seen by the President himself is a pragmatic Quaker who not only wants peace but is patient enough to do something about it in a realistic way, even if it takes a long time during which he has to experience the vicious crossfire of those who disagree with his policies.

I ask unanimous consent that these remarks be printed in the RECORD with the entire column by Mr. Sulzberger.

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

[From the New York Times, Mar. 10, 1971]

MR. NIXON IN THE MIRROR

(By C. L. Sulzberger)

WASHINGTON.—The most interesting thing about President Nixon is that he regards himself as a genuine but practical pacifist who is slowly building a world which may never see another war. He attributes this urge to his maternal Quaker heritage, but he views his approach as necessarily pragmatic, cautious and based upon wide international experience.

For him there are two quintessential problems: how peace can be achieved and how it can be preserved. But he insists it isn't enough just to be for peace; one must also do something about it. In his own effort to "do something" he considers himself hampered by oppositional extremes he labels as superdoves and superhawks.

He is in fact just as much of a One World advocate as was Wendell Willkie or, one might add, Lyndon Johnson. Furthermore he obviously considers it ridiculous to think that the United States can escape its inherited responsibilities.

Therefore he opposes both the right-wing and left-wing advocates of what he sees as neo-isolationism. He doesn't think a fortress America (for him, the aim of the superhawks) could exist as a reality. And he doesn't think a benevolent, weak America, relying not on its ultimate defense abilities but on the goodwill of others, could endure.

He insists not only that he intends to end the Vietnam war but that he is already engaged in doing just that. For him, he says sadly, the hardest task is awarding posthumous medals of honor. He professes the highest possible regard for peace—not just for today but for tomorrow and the indefinite future. But, he underscores, this is an immensely difficult process and virtually all corners of the world are in one or another way involved.

Another interesting aspect of the President when he talks in relaxed fashion is his evident populist feeling. He cherishes deep mistrust for the Establishment, comparable, perhaps, to his predecessor's mistrust for "East Coast liberals."

Although Nixon is obviously sad to find among his bitterest political enemies today some of those who were in the forefront of American internationalism after World War II, he trusts the judgment of the common man. He feels the instinctual beliefs of the people at large will sustain him in applying a program often savagely attacked by Establishment leaders.

It is quite fascinating to observe his introspective efforts to link the cautious pragmatism of his fairly tough current approach with memories of his boyhood. Somewhat sadly he says: "The kind of relative peace I envision is not the dream of my Quaker youth. But it is realistic."

As he describes it the big question he faces is: "Will our Establishment and our people meet their responsibilities?" He insists he will meet his own: not only terminating the Indochina war in such a way that South Vietnam has a realistic chance of surviving; but maintaining a sufficient military posture to keep the world in balance while negotiations gradually wind down tensions.

Everyone knows the President is an expert politician. Nevertheless, he takes pains to stress that the fundamental program he now pursues is not dictated by political reasons but by the long-range national interest.

Nevertheless, he clearly relishes the thought that some of those now vying for next year's Democratic nomination indicate they will make Vietnam a major issue. For Nixon it is folly to develop an issue for the voters which is going to be a non-issue by the time they vote—and it is his full intention that this shall be the case.

Thus it is obvious from conversations such as the writer has had more than once with the President that when he looks in the mirror he sees a different Nixon from the image so often hammered by political opponents, editorial writers and cartoonists. For them he is a right-wing war-monger, a brinksman *par excellence* who ignores pressing social problems of a schizophrenic and tormented nation.

But the Nixon seen by the President himself is a pragmatic Quaker who not only wants peace but is patient enough to do something about it in a realistic way, even if it takes a long time during which he has to experience the "vicious crossfire" of those who disagree with his policies.

TRIBUTE TO RICHARD BREVARD RUSSELL, LATE A SENATOR FROM THE STATE OF GEORGIA

Mr. MONDALE. Mr. President, on behalf of the distinguished Senator from Massachusetts (Mr. KENNEDY), I ask unanimous consent to have printed in the RECORD a tribute by him to the late Senator Russell, of Georgia.

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

TRIBUTE TO RICHARD BREVARD RUSSELL, LATE A SENATOR FROM STATE OF GEORGIA

(Statement by Senator KENNEDY)

Mr. President, all of us in the Senate feel a great sense of sadness at the passing of our colleague, Senator Richard Brevard Russell, of Georgia. Although we often faced the issues with profound differences of opinion, his death represents, to me, not only the loss of one of the most able men ever to grace the Senate, but also a long time friend, admired associate, and learned tutor.

In 1962, when I first came to the Senate, President Kennedy told me that my "first order of business" as a Senator should be to "speak with Dick Russell." That first hour Senator Russell and I spent together marked the beginning of a strong association of respect and admiration.

Senator Russell struggled long hours, working with total dedication, for the things in which he believed. Through his efforts, we now have school lunch programs, aid to farmers, assistance for the hungry, and funding for better education and highway construction.

He was a brilliant defender of the Nation's servicemen and its superb military strength. Because of his abiding concern for a strong America in the free world, he helped to equip every soldier with the best material, strategic knowledge, and skill the world has ever known.

Although he took a firm position on our defense and national security, he was always aware of the danger of over-commitment in Southeast Asia. As early as 1954, he warned the country that he was weary of "seeing American soldiers being used as gladiators to be thrown into every arena around the world." He also warned that our commitment would be a "long, drawn-out affair, costly in both blood and treasure."

Senator Russell has been well-described as a Georgia Giant, a Senator's Senator. No one rivalled him in legislative skill and ability, or in knowledge and mastery of the rules. He was kind, he was dedicated, he was earnest, he was the Senate's mentor and friend.

Richard Russell gave half his lifetime—four decades—to every aspect of the Senate and its functioning. He served the Nation well, dedicating his most strenuous efforts to Congress, to each of us individually as Senators, and to his grateful State and Nation. We admired him for his brilliance, we loved him for his warm humanity, and we shall miss him in the Senate.

THE CHALLENGE OF A MODERN FEDERAL CRIMINAL CODE

INTRODUCTION

Mr. McCLELLAN. Mr. President, Dean Roscoe Pound, writing in 1935, identified as the four chief factors that influence the quality of American justice: personnel, administration, procedure and substantive law. (Pound, "Toward a Better Criminal Law," A.B.A. Rep. 322 (1935)). It is evident, too, as Pound concluded, that these factors must be ranked in this same order of relative importance. (Ibid.) On the whole, better judges, prosecutors and enforcement officers, better organization of courts, better administrative methods and more adequate administrative personnel must come first in any effective program for the improvement of our Nation's system of criminal justice. Nevertheless, the men who staff that system will have to be guided by the authoritatively prescribed criminal procedure. They will also be giving effect to the authoritatively prescribed criminal law. An archaic procedure or a patchwork criminal law, as all experience shows, will give better results, if well administered, than the most modern procedure or a well-reasoned, up-to-date substantive criminal law, if ill-administered. Even so, the conclusion seems unavoidable: the satisfactory administration of criminal justice must ultimately rest, as Pound noted, upon a satisfactory criminal code. (Ibid.) This means, in short, that our concern with criminal justice problems must embrace reform not only of personnel, administration and procedure; it must also reach out to the substantive law itself.

Mr. President, it was with these conclusions in mind that I supported, in 1966, Public Law 89–801 (80 Stat. 1516), which established the National Commission on Reform of Federal Criminal Laws, and personally welcomed the opportunity to serve on the Commission, along with my colleagues, the distinguished Senators from Nebraska (Mr. HRUSKA) and North Carolina (Mr. ERVIN). Under Public Law 89–801, the Commission was charged with the important duty of making a complete review of the statutory and case law of the United States. Section 3 of the act, in pertinent part, provided:

> The Commission shall make complete study of the statutory and case law of the United States which constitutes the Federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the federal system of criminal justice. It shall be the further duty of the Commission to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice.

As the Members of this body are aware, the Commission duly completed its work and forwarded its recommendations to the President and the Congress on January 7 of this year. The Subcommittee on Criminal Laws and Procedures, which I am privileged to chair, has now begun, moreover, an extensive series of hearings on these most important recommendations. The first hearing took place on February 10. Testimony was received from, among others, the Attorney General, former Gov. Pat Brown, the Commission's Chairman, and Congressman POFF of Virginia, the Commission's Vice Chairman. The final report of the Commission, the result of nearly 3 years of deliberation by the Commission, its advisory committee consultants and staff, is, as the testimony before the subcommittee indicated, the most comprehensive call for a reconsideration of Federal penal policy ever issued.

Nevertheless, the recommendations of the Commission were submitted to the President and the Congress, I should like to emphasize, solely as a "work basis" upon which "the Congress" itself could undertake the necessary reform of the substantive criminal law. As the Commission's transmittal letter noted, it was the task of the Commission to "fairly expose the relevant policy issues and facilitate the necessary choices by the Congress." Consequently, the legislative task that now faces the Congress can only be fairly described as formidable and monumental. As the Congress begins to undertake this task, I suggest, therefore, that it is only appropriate as a preface to that task that we examine the history of other attempts at reform and codification and, in particular, the growth of Federal criminal law. As Maitland aptly observed:

> Today we study the day before yesterday in order that yesterday may not paralyze today and today may not paralyze tomorrow. (3 *Maitland, Collected Papers* 439 (1911))

Modern attempts at reform and codification—the Model Penal Code, the Codes of Louisiana, Wisconsin, Minnesota, Illinois and New York—will remain relevant areas for possible later empirical study by the Subcommittee.

THE HISTORY OF CODIFICATION

Mr. President, the subject of codification is intimately connected with the idea of a written law. (See generally III *Pound, Jurisprudence* 675–38 (1959)) It is a form of the demand for a complete, intelligible and authoritative statement of the precepts governing relations between individuals and the state and personal conduct. It is a phase of the universal demand that, in a civilized community, every man be assured of knowing what he may do and what he may not do. Few did not call Caligula tyrant, when he published his decrees on the columns of Rome too high to be read, in order that he might have more subjects to punish. The idea of a written law accessible to all is related to the idea behind our bill of rights. It is a part of the quest of a government of laws and not of men. And its history reaches into antiquity.

I. THE ROMAN LAW BACKGROUND

Roman law itself had a tradition of written law. Down to the codification of Justinian, the Twelve Tables—450 B.C.—constituted the theoretical foundation of the *ius civile*. Indeed, Justinian was not the first to envision a code. We are told that Julius Caesar had among other plans that of making a digest of the law, reducing the *ius civile* to method, and bringing together the finest and best of the essential works on the law. But it was not until 429, that Theodosius II appointed a Commission to compile the imperial legislation after Constantine. This project failed and a new commission was appointed in 435. Its work, known as the Theodosian Code, was completed and promulgated in 438 to take effect in 439. It was not, however, what we know as a modern code. No systematic treatment was given either to the general aspects of criminal law theory or punishments. Instead, it was little more than a compilation of the law then in effect in reference to specific offenses.

The real work of codification in the Roman law did not begin until 528. Substantially 100 years after Theodosius' first start, the Emperor Justinian, at the instance of his minister Tribonian, set out to codify the whole of the body of Roman law. A commission of 10, composed of judges, lawyers, and one law professor, was appointed to prepare a complete revision of imperial legislation. Its product is known as the "Code," and it was completed in a year. Next Justinian appointed another commission of sixteen, this time composed of judges, lawyers, and four law professors, to compile and systematize the text book learning of the Roman law—contained in the treatises of the great jurisconsuls and their commentaries. This was completed, rather hastily, in 3 years. Its product was known as the "Digest," and it was given legal authority in 533. Finally, an instructional text was prepared for students by a commission of three, Tribonian and two law professors. Known as the "Institutes," it, too, was given legal authority. Together with the subsequent legislation of Justinian, compiled into what we call the "Novels," these various parts are what we now speak of as Justinian's codification—the great Corpus Juris Civilis. Like the Theodosian Code, it was not what we would call a code today, but it was an enormous achievement. It put in systematic form the results of a thousand years of development of Roman law, and it has inspired other legal systems to this day. Gibbon aptly observed:

> The vain titles of the victories of Justinian are crumbled into dust; but the name of the legislator is inscribed on a fair and everlasting monument. (II Gibbon, "The Decline and Fall of the Roman Empire" 322 (Modern Lib. ed. 1932)).

II. THE FIRST BEGINNING: THE CAROLINA

In the modern world, the Penal Code of the Emperor Charles V, which was promulgated in 1552, is the first important legislation that might be properly called a code. It was known as the "Carolina," even though the Emperor himself had little to do in drawing it up or enacting it. A product of the revived interest in Roman Law of the Italian jurists of the 16th century, the Carolina was primarily procedural in character. Yet it is chiefly renowned for its introduction into continental legislation of aspects of the general doctrines of the criminal law. The Carolina will long be remembered in connection with its treatment of defenses to crimes and its

seminal examination of sentencing policy. At the time of its consideration by the German diets of Augsberg and Regensburg, however, it was widely opposed. The City of Ulm, at the Town Assembly at Esslingren in 1523, for example, declared:

> The . . . [Code] tends solely to the disadvantage of the States of the realm. . . . (Quote in Von Bar, *History of Continental Criminal Law* 216 (1916).)

Its acceptance was only made possible by the famous "Savings Clause," which provided:

> In gracious consideration of the electors and the princes and the States [the Emperor does not] desire . . . to detract from their ancient and well-established legal and customary usages. (*Ibid.*)

On the whole, the effect of the Carolina may be said to have been beneficial particularly in the south of Germany, where it moved toward a more humanitarian system of punishments, placing checks on the otherwise virtually unlimited discretion of judicial officers. But its accompanying movement toward national uniformity came at a high price in the North, for the Carolina provided that a conviction could not be obtained upon mere circumstantial evidence. This led to the general introduction of torture to obtain sure proof by confession, a practice not widely followed in the North at the time of the Carolina's promulgation.

III. CODIFICATION IN FRANCE

Despite the early start of the Carolina in Germany, it was in France after the revolution that codification played its most important role on the European continent. Reform, of course, antedated the revolution in France. Catherine II of Russia encouraged a number of individual philosophers and actually gave instructions for drafting a criminal code. Frederick the Great, influenced by the ideas of the Encyclopedists, began his reign by the abolition of torture. In France itself, Colbert, the minister of Louis XIV (1667–1670) projected a code, and a beginning was made in a series of royal ordinances. Two other attempts were made under Louis XV, but it was not until after the Revolution that these beginnings bore fruit. It was in the platform of the Party of the Revolution, moreover, that the ideas of reform were best expressed: equality, individuality, and mitigation of the severity of the penal system, the suppression of discretionary powers of judicial officers to define crimes and assess punishments, the abolition of crimes against religion and private morality, publicity for criminal procedure, assistance of counsel, the end of the compulsory oath of the accused, and the institution of the jury. Montesquieu, Beccaria, and Voltaire, all called for a reform of the prevailing system of arbitrary criminal justice, and their call was heeded in France.

In 1793, after the revolution was underway and at the direction of the Convention, the process of reform began, and Cambaceres brought forth a draft civil code. But out of suspicion of its Roman law influence, it was rejected as not revolutionary enough. It was felt that an attempt should be made to realize the philosophical idea of simple democratic laws accessible to all citizens, and a vote was taken to appoint a committee of philosophers to draw up such a new draft. As might be expected, nothing came of this suggestion. While Cambaceres brought forth two new drafts after the fall of Robespierre, success had to await a new Justinian.

In 1800, Napoleon, as First Consul, took up the matter with characteristic vigor, appointing a new commission of four. Within 4 months, a new draft, but one which followed much of Cambaceres' proposals, was put together. This Code, too, met with political opposition, since there were those in the legislative bodies of the French nation who systematically opposed all projects of the First Consul. Politics, seemingly, has always played its part. Napoleon responded by reforming the legislative body, and in March 1804, he obtained the successful approval of the Code, that today bears his name and that has served as a model for other codes throughout the world. The Civil Code was soon followed by Codes of Civil Procedure, Commercial Law, and, of course, Penal Law and Criminal Procedure.

A Commission, composed of Vieillard, Target, Oudard, Treillhard and Blondel, had been appointed under the Consulate to consider the codification of the criminal law. Its report was first considered by the criminal courts, and key issues, formulated by Napoleon himself, were debated in the Council of State. Nevertheless, principally because of Napoleon's opposition to the jury, action was suspended for 3 years. Consequently, the Code of Criminal Procedure was not enacted until 1808, while the Penal Code was not enacted until 1810. Neither went into effect, however, until 1811. The Government waited until then to put them into effect, so that a newly reorganized magistracy would be ready to receive them.

Montesquieu, Beccaria, and Voltaire had called for reform, but it was the ideas of Jeremy Bentham, the English utilitarian, that were used in implementing it. Bentham's works had been translated and published in France in 1802, and it was his doctrines that undoubtedly formed the basis of the new Code. The Penal Code was at once reactionary and forward looking. Justice was not its aim, save perhaps in the requirement that penalties be proportionate. Instead, it rested solely on the need to punish that flowed from the concept of deterrence. Reform of the individual was not even considered. Its definition of crimes, while an improvement over the system of unlimited discretion of the old regime, still gave too wide a scope to criminality. Barbarous mutilations, too, were authorized, and its system of imprisonment was a fraud, for there were no penitentiaries appropriate for the various punishments. On the other hand, as a work of codification, the Code was drawn with simplicity, clearness and order, while under its sentencing provisions, punishments were no longer absolutely fixed, and the important advance of a maximum and a minimum term of imprisonment was also introduced.

In the meantime, a reaction against legislative codification set in along with the disenchantment that followed the abandonment of the simplistic 18th-century notion that human reason was adequate and beneficial for every task. The Revolution of Reason had, after all, given way to the Reign of Terror and the Rise of Napoleon himself. Indeed, after these events, few men of reason remained optimistic about the nature of man. In the place of the earlier optimism of the school of reason, the more realistic approach of the historical school arose, skeptical as to the efficacy of lawmaking and thoroughly disbelieving in the neccessarily good results of codification or reform. General interest in codification did not revive in Europe until the last quarter of the 19th century, when the legislative activity of the German Empire led to a succession of new codes.

IV. ITS HIGHEST ACHIEVEMENT: THE GERMAN CIVIL CODE

In the preparation of the German Civil Code, the most important of the Codes, the first commission was appointed in 1874. It consisted of six judges, three lawyers, and two professors. The code was drafted and redrafted from 1880 to 1887. The draft was then published and general criticism was invited. The proposed code was subjected to criticisms by all segments of German life. At the end of 3 years, a new commission, composed of eight judges, two lawyers, and one professor, was appointed to draw up a new code drawing on the first draft and its criticisms for a guide. It took 6 years to finish the final draft. Published in 1896, it did not finally take effect until 1900. A product of 23 years of extraordinarily thorough work, it offers itself as the model way in which an enduring and satisfactory codification product may be produced.

V. CODIFICATION AT COMMON LAW

In contrast to activity on the continent, codification of the common law was first proposed in 1614 by Francis Bacon, then Attorney General. He suggested:

> The penal laws should be reviewed by a commission to the end that such as are obsolete and snaring may be repealed and such are fit to continue and concern one matter may be reduced respectively to one clear form of law. (6 Spedding, *Letters and Life of Bacon* 41 (1869).)

A series of political controversies, however, intervened, and Parliament was dissolved before it could act on Bacon's plan. Bacon then persuaded the King to take the matter up by royal commission. Seven lawyers, including Sir Edward Coke, were appointed. The commission found almost 600 statutes fit to be repealed, but owing again to political controversy, nothing came of the project. Consequently, the English common law, by the time of the American Revolution, had never experienced comprehensive codification. Unlike its Roman law rival after the time of Justinian, there was no single source from which its contours could be determined; it was, in Coke's famous phrase, a work of "artificial reason", the meaning of which had

to be gathered by long study of statute and text.

VI. CODIFICATION IN THE UNITED STATES: LIVINGSTON'S CODE

In the United States, during our formative years, agitation for codification was relatively widespread. It grew out of local hostility toward English institutions and English law in the period after the revolution and the favorable attitude that existed toward things French that followed the advent of Jeffersonian democracy. It was also the product of the excellent reception given in the United States to the writings of Bentham, particularly by men like Edward Livingston of Louisiana.

In 1803 at the age of 39, Livingston, the son of a prominent New York family, was both U.S. attorney for New York and the mayor of the city of New York itself. Following a yellow fever epidemic that year, Livingston suffered serious financial reverses. Consequently, he sold his possessions, resigned his positions, and left New York to seek a new life in Louisiana, where he quickly rose to become a leading member of the bar and the father of the American codification movement.

On February 10, 1820, the General Assembly of Louisiana, in the tradition of French law, passed the historic act providing that there be prepared for the State a comprehensive code of criminal law to be "founded on one principle, viz., the prevention of crime; that all offenses should be clearly and explicitly defined, in language generally understood; that punishments should be proportioned to offenses; and the duty of magistrates, executive officers and individuals assisting them, should be pointed out by law." (I "The Complete Works of Edward Livingston on Criminal Jurisprudence" 1 (1873).)

Livingston, at the age of 57, at the peak of his intellectual vigor, a linguist versed in Latin, French, and Spanish, a scholar familiar with Roman and comparative law, and the common law alike, received the appointment to prepare the new code. Two years of intensive and unremitting labor led to the completion of the project, but at the very end, fire tragically and totally destroyed the manuscript. Indefatigable, Livingston started afresh and produced the work we know today in 1824. Nevertheless, the code was never adopted by the State legislature, largely because of the provincial opposition of the Louisiana bar. It was too far ahead of its time. It gathered the unremitted praise, nonetheless, of men like Bentham, Kent, Story, and Marshall. It formed the basis, too, of a proposed Federal Penal Code later offered by Livingston as a representative in Congress from the State of Louisiana. But like the Louisiana legislature, Congress never acted on Livingston's proposed code.

VII. CODIFICATION IN THE UNITED STATES: THE FIELD CODE

If Livingston's work in Louisiana and the Congress did not immediately bear fruit, David Dudley Field's work in New York did. In the New York Constitutional Convention in 1846, Field, another disciple of Bentham, urged a general code, and largely as a result of his advocacy, the constitution of 1847 provided for commissioners to reform procedure and codify the law. (Const. N.Y. 1846 6 § 24) The commission was appointed in 1847, and by 1850, complete codes of civil and criminal procedure were submitted to the legislature. Only the code of civil procedure was adopted in New York at that time. Nevertheless, in 1857, the legislature again called for codification, and Field, William Curtis Noyes, and Alexander W. Bradford were appointed commissioners. By 1865, the full text of five codes had been produced: civil procedure, criminal procedure, penal code, civil code, and the political code. Nevertheless, Field's work again met with less than full acceptance, and only the code of criminal procedure was adopted in New York, but the penal code and the code of criminal procedure were widely adopted elsewhere. Indeed, sixteen other jurisdictions accepted both the penal code and the code of criminal procedure, while four jurisdictions, including California, adopted all five of the Field Codes. Seldom has one man achieved so much, yet it must be acknowledged that the codes were by no means always well drawn. Often, they presupposed too great a knowledge of pre-existing law. The task of codification was plainly more than one man could undertake, even with help and eighteen years of tireless work.

THE DEVELOPMENT OF FEDERAL CRIMINAL LAW

VIII. THE CONSTITUTIONAL BASIS

Chronologically, the history of the Federal criminal laws might well begin with the Crime Act of 1790, which defined for the Federal Government such offenses as treason, piracy, counterfeiting, perjury and bribery in Federal court, murder and other crimes on the high seas, and infractions of the law of nations as well as other offenses in areas subject to Federal jurisdiction. (See generally Conboy, "Federal Criminal Law," in "Law: A Century of Progress 1835–1935," 294–346 (1937).) Actually, any examination of the history of Federal criminal law must begin with those provisions of the Constitution itself that are the basis of Federal criminal law. "The people of the United States," who brought the new government into existence, assigned to the Federal Government certain powers and imposed upon it certain limitations. For present purposes, the most important of those powers was that which authorized the Congress "to make all laws necessary and proper" (Const., Art. I, § 8 (18)) to the exercise of other powers granted by the Constitution, for it is, in a special sense, upon this provision that the Federal criminal jurisprudence rests. As Mr. Justice Field observed in *United States* v. *Fox*, 95 U.S. (5 Otto) 670, 672 (1877):

> There is no doubt of the competency of Congress to provide, by suitable penalties, for the enforcement of all legislation necessary or proper to the execution of powers with which it is entrusted. . . . Any act committed with a view of evading the legislation of Congress passed in the execution of any of its powers, . . . may properly be made an offense against the United States. But an act committed within a State, whether for a good or a bad purpose, or whether with an honest or a criminal intent, cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. An act not having any such relation is one in respect to which the State can alone legislate.

Indeed, the implication of the Necessary and Proper Clause for Federal criminal jurisprudence did not escape the attention of those who feared the ratification of the Constitution. Mason of Virginia, a delegate to the convention, but one who refused to sign the Constitution, argued that this clause would permit the Congress, among other things, to "constitute new crimes." (Quoted in Conboy, *supra* at 296.) To this, a reply was made by Iredell of North Carolina, afterwards associate justice of the Supreme Court. After noting that the Constitution made reference only to a few select offenses, he commented:

> These are offenses immediately affecting the security, the honor or the interests of the United States at large, and of course must come within the sphere of the legislative authority which is entrusted with their protection. Beyond these authorities, Congress can exercise no other power of this kind, except in the enactment of penalties to enforce their acts of legislation in the cases where express authority is delegated to them, and if they could not enforce such acts by the enacting of penalties those powers would be altogether useless, since a legislative regulation without some sanction would be an absurd thing indeed. (Ford, *Pamphlets on the Constitution* 359 (1888).)

IX. THE CRIMES ACT OF 1790

In 1789, under the power to "constitute Tribunals inferior to the Supreme Court," (Const., Art. I, § 8(9)) Congress passed the first Judicial Act. One provision gave the newly created District Courts "exclusively of the courts of the several States, cognizance of all crimes and offenses that shall be cognizable under the authority of the United States." (Act of Sept. 24, 1789, c. 20, 1 Stat. 73, 76). In the following year, the Congress passed the first crime act. (Act of April 30, 1790, c. 9, 1 Stat. 112.) In addition to listing certain offenses against the operations of government, those committed on the high seas or against the law of nations, areas specifically noted by the Constitution, the act contained provisions implementing the power, conferred by the Constitution, of exclusive authority over "all places purchased by the consent of the Legislature" (Const., Art. I, § 8(17)) of the several States, the so-called Federal enclaves. Nevertheless, the Act of 1790 specified only the more serious offense. Other crimes ran the actual risk of going unwhipped of justice. The gravity of this situation was indicated by Justice Story in 1816 in these terms:

> Few, very few of the practical crimes, (if I may so say,) are now punishable by statutes, and if the courts have no general common law jurisdiction (which is a vexed question,) they are wholly dispunishable. The State Courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes, may in these places be now committed with im-

punity. (I *Life and Letters of Joseph Story* 297 (1851)).

X. THE COMMON LAW CRIMES CONTROVERSY

Story's "vexed question" of 1816 was authoritatively settled in that year by the Supreme Court in *United States* v. *Coolidge*, 14 U.S. (1 Wheat) 415 (1816). Was it necessary for Congress to specify all the offenses that might be committed against the authority of the United States? A number of the activist members of the early Federalist judiciary did not think specific legislation was necessary. In 1799, Chief Justice Ellsworth in his famous charge to the Federal Grand Jury of the Circuit Court of South Carolina, had, after all, told the jury to indict on the basis of the common law. (See I *Warren, The Supreme Court in United States History* 162 (1922).)

But this opinion, as Story indicated, was not universally shared. Jefferson himself commented on the theory in a letter to Pinckney in these terms:

I consider all the encroachments made on . . . [the Constitution] heretofore as nothing, as mere retail stuff compared with the wholesale doctrine, that is a common law in force in the United States of which and of all the cases within its provisions, . . . [the Federal] Courts have cognizance. It is complete consolidation. (*Id.* at 163–64)

Although *Coolidge* settled the issue, it is more accurate to credit *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812), with deciding it. *Hudson* originated in the Connecticut District Court and was referred by that court, after long delay, to the Supreme Court. The indictment was based on alleged libel, one of many aimed at Jefferson when he was President. All the others Jefferson had succeeded in having dismissed, and Madison, President when the case came on in 1812, was heir to Jefferson's opinions. This no doubt explains why Pinckney, then the Attorney General, declined to argue the case.

So did the opposing counsel. Thereupon, Justice Johnson, for the Court, declining to examine how far "an implied power (of any political body) to preserve its own existence is applicable to the peculiar character of our Constitution," disavowed that "the courts of that government are vested with jurisdiction over any particular act done by an individual, in supposed violation of the peace and dignity of the sovereign power (of the Federal Government.) The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense." 11 U.S. (7 Cranch) at 22–34.

Four years later, in *United States* v. *Coolidge*, the proceedings were merely perfunctory. Justice Story, in the Circuit Court of the District of Massachusetts, from which the case was referred when the judges were divided, had expressed the opinion that all criminal offenses within the admiralty jurisdiction were cognizable in the circuit court, and, in the absence of positive law, were punishable by fine and imprisonment. The Attorney General again declined to argue, in deference to the decision in the *Hudson* case. Justice Story observed that he "did not take the question to be settled by that case." 14 U.S. (Wheaton) at 191 Justice Johnson "considered it to be settled by the authority of that case." (*Ibid.*) Justice Bushrod Washington would divest himself "of all prejudice arising from the case, whenever counsel can be found ready to argue it." (*Ibid.*) Justice Livingston was "disposed to hear an argument on the point. This case was brought up for that purpose." *Id.* at 416. Until it was argued, the former decision must stand—and that was all.

A few days before, in his opinion supporting Justice Story in the matter of appeals from the Court of Appeals of Virginia, Justice Johnson, after emphasizing the desire "to prevent dissension and collision," had mentioned that "at present, the uncontrollable exercise of criminal jurisdiction is most securely confided to the state tribunals." (See *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 372, 376 (1816).) "Securely confided" it might be, but in this there was no consolation for federal judges. District Judge Peters commented, in a letter written the next month, that under the *Coolidge* decision:

I cannot carry on the business of my district. Treason is defined by the Constitution; but most other crimes are barely named . . . [O]ur jurisdiction of crimes punishable at common law is excluded. . . . Every crime, not defined in our statutes—murder, rape, all the lesser offenses may be committed with impunity in places under the exclusive jurisdiction of the United States. * * * I had little difficulty before; . . . but now my hands are tied, and my mind padlocked. (Warren, Id. at 441)

The difficulty, moreover, continued to recur. In 1818, in *United States* v. *Bevans*, 16 U.S. (3 Wheat.) 336, 385 (1818), the Supreme Court held, by Chief Justice Marshall, that while, under the Constitution, "the judicial power shall extend to all cases of admiralty and maritime jurisdiction," Congress had not, in the statute of 1790, "so exercised this power as to confer on the courts of the United States jurisdiction over murder, committed in the waters of a State where the tide ebbs and flows." Again, in 1820, in *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76 (1820)), it was decided that manslaughter committed on an American ship in the river Tigris, in China, which being tidal water was not "on the high seas," could not be punished under the act of 1790.

XI. THE CRIMES ACT OF 1825

What Story was not able to do as a Justice, he remedied through his friendship with Webster, then chairman of the House Judiciary Committee. Webster and Story carefully drafted and revised the Crimes Act of 1825, and Webster successfully guided it through the Congress. (Act of March 3, 1825, and Webster successfully guided it through the Congress. (Act of March 3, 1825, c. 65, 4 Stat. 115.) In section 4, "the high seas" was amplified to include "any river, haven, creek, basin, or bay, within the admiralty and maritime jurisdiction of the United States," and under section 5, offenses committed on an American ship "while lying in a port or place" in a foreign country were to be punishable in the same way as offenses committed on the high seas, unless the offender was brought to trial in the foreign country. Another important contribution was made by section 3, which provided that, in any of the places ceded by a State to the United States:

[where] . . . the punishment of which offense is not specially provided for by any law of the United States, such offense shall, upon a conviction in any court of the United States having cognizance thereof, be liable to, and receive the same punishment as the laws of the state . . . provide for the like offense when committed within the body of any county of such state.

And the concluding section of the Act of 1825 provided: "Nothing in this act contained shall be construed to deprive the courts of the individual states, of jurisdiction, under the laws of the several states, over offenses made punishable by this act."

XII. THE REVISED STATUTES OF 1877

From 1825 up to the close of the Civil War, additions to the list of statutory crimes were not numerous and broke little new ground. When the Revised Statutes of 1873 was put together, in the title devoted to crimes, some offenses were included that had been enacted in and before 1820 in connection with Negro slavery, some that had been enacted incidental to the war itself, and some that had been the sequel to the 15 amendment. These were reminders of the conflict over slavery and secession that had dominated the attention of Congress in the period from 1825 to 1865.

The work of the revision of 1873–77 derives from a statute of 1866 (Act of January 27, 1866 c. 7 (14 Stat. 8), whereby Congress authorized the appointment of three persons, learned in the law, to bring together, in convenient order, all the statutes or parts of statutes then effective, and to "arrange the same under titles, chapters, and sections, or other were classified under such chapters as suitable divisions."

Of the 5,601 sections numbered in this revision, title LXX, Crimes, accounts for 227, from section 5325 to section 5550. The plan adopted in grouping offenses is indicated by the chapter headings: one, General Provisions; two, Crimes against the Existence of Government; three, Crimes Arising within the Maritime and Territorial Jurisdiction of the United States; four, Crimes against Justice; five, Crimes against the Operations of the Government; six, Official Misconduct, etc.; seven, Crimes against the Elective Franchise and Civil Rights of Citizens; eight, the Punishment of Accessories; and nine, Prisoners and Their Treatment.

A further and, in the main, correcting edition, with the addition of all amendments made up to the close of the 1877 session of Congress, was issued in 1878. This revision served the Nation reasonably well for almost thirty years.

XIII. THE PENAL CODE OF 1909

When, in 1909, Congress passed an "Act to codify, revise, and amend the penal laws of the United States," (Act of March 4, 1909, c. 321, 35 Stat. 1143) there was a difference in the naming of chapters, which at once suggests a considerable extension of scope. Offenses

against the existence of government; against the elective franchise and civil rights; against the operations of the government, relating to official duties; against public justice; against the currency and coinage; within the admiralty, maritime, and territorial jurisdiction; piracy, neutrality, and the slave trade all were included, as before—some of them considerably enlarged. The new sections were: Chapter eight, Offenses against the Postal Service, and Chapter nine, Offenses against Foreign and Interstate Commerce.

This revision of 1909 was a much more comprehensive effort than any that had preceded it. In the main, the earlier revision had merely compiled existing statutes, while in this one, Congress labored also to perfect the form. Everything redundant or obsolete was omitted, and such changes or additions as were needed to clarify the intention were freely made.

The history of the revision substantiates this appraisal. Its necessity was made plain by a passage in the report by which the Congressional Joint Committee on the Revision of the Laws accompanied the presentation of its bill. Referring to enactments since the revision of 1878, the report commented that since then:

> More laws of a permanent nature have been passed than had been from the time of the adoption of the Constitution down to the time of that revision. These are scattered through nearly twenty bulky volumes of the Statutes at Large. They are commingled with a voluminous mass of temporary enactments, and are frequently embodied in appropriation bills, the title and context of which would give no indication of their purport, and the very existence of which is discovered only by the trained lawyer and the painstaking student. (S. Rep. No. 10, 60th Cong., 1st Sess. 1909)

There was, it was felt, an imperative demand for clear and systematic compilation. Search for Federal statute law, even if all the Statutes at Large, temporary enactments, and appropriations bills mentioned by the committee were not examined, had to be made through the 1878 edition of the Revised Statutes, through a first and second supplement, and through volumes 32, 33, and 34 of the Statutes at Large. It was, therefore, contemplated to supersede all these by a statute which, when completed and enacted, would become the original and authoritative law of the land.

Preparation for the work of the joint committee had been made by a statutory revision commission, appointed under authority of an act of June 4, 1897 (30 Stat. 58) whose work at first was limited to revising and codifying the criminal and penal laws of the United States. On June 1, 1898, the commission was instructed, by concurrent resolution, to prepare a code for Alaska, in the emergency occasioned by the gold rush, and it made a report on November 28, 1898. A codification of the postal laws was reported February 10, 1899. On March 3, 1899, the commission was further instructed "to revise and codify the laws concerning the jurisdiction and practice of the courts of the United States, including the Judiciary Act, the acts in amendment thereof and supplementary thereto, and all the acts providing for the removal, appeal and transfer of causes." (Act of March 3, 1899, 30 Stat. 1116.) On November 10, 1899, a progress report was made to Attorney General John W. Griggs, and it was transmitted by him to Congress December 18, 1899. Another was made November 15, 1900, and the work of the commission was again enlarged, March 3, 1901, to include "all the laws of the United States of a permanent and general nature in force when the same shall be reported." (Act of March 3, 1901, 31 Stat. 1181.)

A codification of the criminal law was reported May 15, 1901, and copies were sent to various bar associations for consideration. The scope of the work may be inferred from the comment of a committee of the Association of the Bar of the City of New York that it considered "the proposed great extension of Federal criminal jurisdiction over the whole field of common law and statutory crime within the territorial and maritime jurisdiction of the United States to be unnecessary and very unwise." (Quoted in Conboy *id.* at 313.) The report did, in fact, include, in six subchapters, a great number of proposals new to the Federal law and explained in the margin by reference to laws of the several States.

Nevertheless, the work of the commission continued and, on March 3, 1905, it was directed to add to its reports any laws enacted since they were made. (March 3, 1903, 33 Stat. 1285.) On June 30, 1906, the commission was required to make its final report by December 15. A report was filed, and the result of the labors of the commission passed into the hands of a Special Joint Committee of Congress on the Revision of the Laws, appointed by concurrent resolution, approved March 2, 1907.

The proposed work of codification submitted by the commission incorporated 174 new sections, 21 embodying and 10 creating new offenses. The joint committee's reception of this product, however, was not altogether sympathetic with the assumption of powers by the commission to go beyond mere codification. The committee observed:

> The Commission interpreted its powers, under the various acts creating it, to authorize it to alter and amend what it deemed the imperfections of existing statutes, and to embody in its work such new legislation as in its judgment was required to supply the inequalities of the existing law. Its recommendations to Congress, based upon this theory report many of the sections altered in form and expressed in different language; many others so changed as to include different subject matters; and many new sections embracing subjects upon which Congress has never attempted before to legislate, but does not exhibit anywhere a simple codification of the existing laws. (S. Rep. No. 10, 60th Cong., 1st sess. 2 (1909))

On January 7, 1908, the joint committee reported on the Commission's draft, and submitted a bill, which became a statute March 4, 1909, to take effect January 1, 1910, known as the Criminal Code of 1909, (Act of March 4, 1909, c. 321, 35 Stat. 1143).

Although some of the commission's proposals were not adopted, largely out of a fear that it might "retard" or "prevent" the work of codification (S. Rep. No. 10, 60th Cong., 1st Sess. 6 (1909)), the chapter divisions into which it had grouped the laws were retained. Indeed, despite some apparent displeasure with the work of the Commission, great respect was manifested throughout for the legal attainments and the industry of the members of the Commission. It was on their suggestion that the chapters on postal laws and on foreign and interstate commerce were included in the code. As to this last, the committee said in its report:

> The foreign and interstate commerce has assumed proportions so vast, is growing so rapidly, and legislative enactments pertaining thereto are already so numerous, that it also seemed proper to collect the penal legislation relative thereto under a distinctive head. (*Id.* at 9.)

XIV. THE "ONE PEOPLE" CONCEPT

Between the Code of 1909 and the codification of 1948, a number of significant new Federal criminal offenses were enacted. Their significance can be best understood, however, by prefacing their consideration by a reference to Madison's conception of the scope of the powers of the Federal Government. In the *Federalist* No. 44, he observed:

> The powers delegated by the proposed Constitution to the Federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the state.

This limited conception of the role of the Federal Government stands in sharp contrast, of course, with what as a matter of history has come to pass. For example, in June 1910, less than 6 months after the Code of 1909 went into effect, Congress passed the Mann Act, a provision against the "moral misuse" of the facilities of interstate commerce. (Act of June 25, 1910, c. 395, 36 Stat. 825.) In *Hoke* v. *United States*, 227 U.S. 308, 322 (1913), upholding the act, Mr. Justice McKenna employed expressions which, when considered, serve as a reminder that, since 1872, Congress had been acting, intermittently, upon a principle foreign to Madison's that did not come into application until after the Civil War. He said:

> Our dual form of government has its perplexities . . . but it must be kept in mind that we are one people . . . and the powers [granted to the Federal government] . . . are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral.

The inference is plain. Lotteries, frauds, circulation of obscene literature, prostitution, narcotic addiction, all were, at first, well within what Madison had in mind when he commented that the powers reserved to the States extended to "all the objects which, in the ordinary course of affairs, concern . . . the internal order, improvement and prosperity of the state." The trouble was that it proved,

as we became not only one people, but one nation, impossible for the States, under their own powers, effectually to preserve "internal order" in these matters when the facilities of the mails were seen to operate, in one fashion, and the privileges of interstate commerce, in another, to negate the efforts of any state to suppress what the people of the nation saw as national evils. In the judgment of many, these evils were pervasive throughout the whole nation. There were, moreover, Federal constitutional powers under which they could be attacked by the enactment of federal criminal legislation. From time to time, therefore, Congress made use of the powers assigned to the general government, singly or in combination, "to promote the general welfare, material and moral."

The validity of the Mann Act was upheld in *Hoke* v. *United States*, as I just noted, and again in *Caminetti* v. *United States*, 242 U.S. 471 (1917). In *Hoke*, Mr. Justice McKenna held that the interstate commerce power had been rightly used to "promote the general welfare, material and moral," by the suppression of prostitution. In *Caminetti*, however, he felt obliged to dissent on the ground that the statute's history showed the white-slave law was meant to suppress prostitution, and that its provisions should be construed in the sense that this was the evil the Mann Act dealt with. The majority held, however, that the words "for any other immoral purpose" must be given their natural significance. Consequently, the court upheld the conviction which was for an interstate transportation of a woman for an "immoral" purpose; "to wit, to become the defendant's mistress."

The Harrison Act (Act of Jan. 17, 1914, c. 9, 38 Stat. 275) for the control of narcotics is another example of powers employed in combination to deal with a matter of perceived general welfare. Opium and its derivatives were of foreign origin and therefore articles of foreign commerce. They could be dealt with under the commerce power, it was thought, in the same fashion that the problem to which their importation gave rise. When this proved ineffective, the taxing power was brought in, and it is under the taxing power that the regulation was accomplished in the years immediately after 1914. The history of this development is instructive.

Opium had been imported since 1832. By 1870, its use had spread from the Chinese on the Pacific coast to vicious white elements. In 1875, California and Nevada realized that control was necessary, and ordinances were enacted in San Francisco and Virginia City. Congress increased the duty on opium to $6, then $10, then $12 a pound, but this only led to profitable smuggling, with wider and clandestine distribution of the drug. It was as easily introduced into States that had antinarcotic laws as into any that had not. In 1909, therefore, Congress decided to prohibit importation of opium, except in such amounts as were required for legitimate use—import, manufacture, and distribution of this supply to be controlled under regulations issued by the Treasury. (Act of Feb. 8, 1909, c. 100, 35 Stat. 614.) Penalties for violations of the act were specified, and illicit drugs were to be seized and forfeited without the necessity of instituting forfeiture proceedings. What developed was that while importer, jobber, and manufacturer might observe the regulations applying to them, conservation of the supply for legitimate use, and ultimate disposal for that purpose only, were not realized in practice. In 1914, an international convention was arranged and ratified by the Senate. Next in the same years the Harrison act was passed, setting up an elaborate structure of control under a series of internal revenue items levied under the taxing power.

When the Act of 1909, dealing with importations was under review in *Brolan* v. *United States*, 236 U.S. 216, 220 (1915), Chief Justice White, for the Supreme Court, had no difficulty in affirming the power of Congress to legislate and the extension of that power to "the control of those things which are essential to make the power existing and operative." Consequently, the Court quickly disposed of the argument that had been advanced that the police power in respect to the public health, morals and welfare of the citizens of each state could be exercised only by that particular state. Nevertheless, when the Harrison Act was upheld four years later in *United States* v. *Doremus*, 249 U.S. 86 (1919), the Chief Justice dissented. He was one of four who refused to admit that production of revenue was the real purpose of Congress under the Act, or that attaching to the taxing power something not itself within Federal jurisdiction was sufficient to keep it there for constitutional purposes.

Crimes connected with robbery from cars and trucks moving in interstate commerce, were other logical subjects for Federal enactments. But the reason was not so obvious when the interstate commerce power was invoked by the Dyer Act, in 1919, (Act of Oct. 29, 1919, c. 89, 41 Stat. 324) for the recovery of stolen automobiles that had been driven across State boundaries. (See 18 U.S.C. 2311–13.) Fifteen years later, Congress, while earlier reluctant to add to the burden of the Federal agencies by exerting the interstate commerce power against receivers of stolen property, eventually added that offense, too, to the lengthening list of federal offenses. (18 U.S.C. 2315.)

I have here, of course, touched only on the high points in the history of the development of Federal criminal law. Other offenses, traditionally a local problem, not now considered federal, include kidnapping (18 U.S.C. 1201), threatening to extort money for ransom (18 U.S.C. 876–77), moving to another State to avoid prosecution or to avoid giving testimony (18 U.S.C. 1073)—all under the interstate commerce power. These enactments did not deprive the states of jurisdiction over such crimes, but, at least in theory, were designed merely to supplement the effectiveness of the States in dealing with them, and national attention has been rightly and widely attracted to the activities of the Federal investigating agencies in pursuit of those who fell within these enactments.

XV. THE REVISION OF 1948

Thirty-nine years passed between the Code of 1909 and the revision of 1948, a period longer than the elapsed time between the revision of 1878 and 1909. Consequently, the need for an up to date code was again widely and rightly recognized, and work began on the new Federal criminal code by the House Committee on Revision in 1943. (See generally, H.R. No. 304, 80th Cong. 1st Sess. (1947)). In connection with that effort some 1,500 letters were mailed to the Federal judges, U.S. attorneys, deans of law schools, and presidents of bar associations, explaining the revision and asking for advice and assistance. Many of the letters in response to this appeal contained concrete recommendations for the improvement of the criminal code. These were cataloged, studied, and made available to the revision staff. As will be seen by the reviser's notes, which appear in the appendix to the act, more than one of these suggestions helped shape the revision, and all of them made the task easier. In addition, the criminal section of the American Bar Association, meeting in Chicago September 1944, received a report on the preliminary draft, and the section passed a resolution approving this draft.

Following the introduction of the bill as H.R. 2200 in the 79th Congress, on February 15, 1945, copies of the proposed new title 18 were sent to every Member of Congress. A more mature bill was introduced in the 80th Congress as H.R. 1600; it was later superseded by H.R. 3190. Both H.R. 2200 and H.R. 1600 were widely distributed in an effort to obtain the wise counsel and suggestions of all interested in the administration of our Federal criminal laws.

As the work of revision progressed, the advice of Government officials was sought in problems affecting particular departments or agencies. It was also found advisable to ask questions and to submit the text of proposed section to these departments and agencies. Occasionally, the revisers conferred with the heads of agencies. The officials in charge of a department or agency that might be affected by the revision were kept fully informed. Copies of the preliminary draft were sent to all Government officials who might have the slightest interest in the work.

Naturally, the Department of Justice was more concerned with a revision of the Federal criminal laws than any other governmental body. Consequently, members of that Department were informed of every step of the revision from the first preliminary analysis to the final draft. Although revision, rather than reform, was the goal of the new 1948 Code, the revision staff did not shrink from a preceived need to change, at least in the structure of the Code. The old system of classification, for example, was discarded, and an alphabetical arrangement used in many State codes was adopted.

In part I of the new title 18, crimes were classified under such chapters as arson, bribery, and fraud and false state-

ments. In parts 2–4, covering procedure, prisons, and juvenile delinquents, the chapters were arranged in the logical sequence of events.

Future growth by acts of Congress were provided for by adopting a flexible numbering system. Chapters were given odd numbers, leaving the even numbers to accommodate related chapters in the future. Room for approximately 40 section numbers was left at the end of each chapter.

By assigning to chapter I all general provisions and definitions, it was possible to omit repetitive phrases common to many sections. For example, by inserting the word "causes" in the definition of "principals" (18 USC 2(b)), it was possible to omit that word altogether with such expressions as "aids or abets" and "causes or procures" from many other sections. By defining "United States" and other terms in chapter I, it was also possible to avoid the use of the same definitions in other chapters. (18 U.S.C. 5 ("United States") 6 ("department" "agency").)

Many inconsistencies in punishments were discovered. Some appeared too lenient, but others too harsh when compared with crimes of similar gravity. The problem was twofold. First, it was found that in spite of an exact definition of felonies and misdemeanors, 29 punishments were inaccurately labeled, resulting in conflicting court opinions. This problem was solved by omitting from each of the 29 punishments any description of the offense as a felony or misdemeanor, leaving the test as to the kind of crime, to the definition section. Second, serious disparities in punishments were discovered when the character of various crimes was considered. Before attempting to eliminate these differences, a master table showing the character of each offense and its punishment was prepared. In this way, many inequalities were eliminated, and uniformity brought out of the conflicts which time had developed.

A clear and uniform style was an important aim of the revision. Verbose phrases were pruned, ambiguous terms rewritten, and archaic expressions eliminated. For example, the definition of a petty offense was reduced from 53 to 30 words without change in substance (18 USC 1(3)). Such phrases as "of any kind whatever" were omitted from many sections as redundant. Another example is section 656 to which U.S. District Judge Emerich B. Freed referred in his review of the revision before the Judicial Conference of the Sixth Circuit. Judge Freed said:

> The verbose, involved, and extremely ambiguous sections dealing with embezzlement or misapplication by an officer or employee of a bank are reduced to simple, clear, and unambiguous language. It might be added that no other criminal statute, with the single exception of that covering conspiracy, has been the subject of more numerous judicial interpretations, due largely to the present involved language (Quoted in H.R. No. 304, 80th Cong. 1st Sess. 8 (1947)).

In the description of offenses, the word "whoever" was used as the first work in each section defining a crime. This style was followed by the revisers of the 1909 Code with good results. Frequently, a number of "whoever" clauses were found, each spelling out a different crime, run together in one paragraph. These were set out in separate paragraphs.

Punishment provisions were written in the alternative and minimum terms and fines were omitted. The qualifications "upon conviction" and "hard labor" were deleted as surplusage.

In many instances similar sections were consolidated without making fundamental changes in the offenses involved. This was true especially in the case of sections brought into revision from titles 7, Agriculture; 12, Banks and Banking; and 15, Commerce and Trade.

Good examples of such consolidations will be found in the chapter Embezzlement and Theft. There, in one instance, 11 sections were consolidated into one, resulting in a tremendous saving of space and notable improvement in style and substance. (See generally, Chapter 13, 18 U.S.C. 641–64.)

Federal criminal law has not, of course, ceased to develop after the successful processing of the 1948 revision. New legislation strengthening the hand of Federal Government against the forces of organized crime, for example, was enacted in 1961 and 1970. See, e.g., 18 U.S.C. 1952 (travel in aid of racketeering); 18 U.S.C. 1955 (gambling business). On the whole, these developments have done little more than to carry forward tendencies already manifest in Federal criminal jurisprudence. I note, however, the emergence of controversy over the power of the Congress to make a legislative finding of the jurisdictional aspect of an offense sufficient for conviction without a particular showing in each prosecution. Circuit courts of appeal have split on the necessity of such a showing and its possible constitutional impropriety, for example, under the gun control provisions of title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (82 Stat. 197). *Compare United States* v. *Bass*, 8 Crim. Law Reptr. 2246 (11–30–70) (required to avoid constitutional doubt) *with Synnes* v. *United States*, 8 Crim Law Reptr. 2387 (8th Cir. 2–1–71) (not required and constitutional). Nevertheless, the Supreme Court has granted certiorari on this issue in the context of the extortionate credit provision of the 1968 act, 18 U.S.C. 981–96, and we may safely expect enlightment on this question soon. *Perez* v. *United States* 7 Crim. L. Reptr. 2176 (2d Cir. 1970), *cert. granted*, 8 Crim. Law Reptr. 4053 (11–18–70).

THE RECOMMENDATIONS OF THE COMMISSION

Mr. President, since 1948, title 18 has served the Nation well. It is now time, however, to consider the need for a new attempt at codification, reform and revision on the national level. There are, of course, those who will be reluctant to undertake this task. The arguments against codification have changed little over the years. They were summarized in 1950 by Prof. J. Denson Smith, the director of the Louisiana Law Institute, shortly after Louisiana became the first State to undergo codification in this century. Professor Smith observed:

> It was claimed that Louisiana had a system of criminal law that was working very well; under it Louisiana had succeeded in establishing a very good record in bringing to the bar of justice offenders against its order; the shortcomings and deficiencies of its system were known and understood and could be reckoned with; the jurisprudence was established; any new system would only multiply many fold whatever confusion existed; a long and laborious, costly and distressing period of uncertainty would be the fruit of adopting a new criminal code. Present also was the belief that experienced practitioners would lose the advantage of the special knowledge of the intricacies of the common law system and would be no better off than the beginner and that district attorneys and judges would have to revamp their files of charges, instructions and other forms. [Smith, "How Louisiana Prepared and Adopted a New Criminal Code" 41 J. of Crim. L., Crim. P.S. 125–26 (1950)]

Professor Smith also summarized the experience of his State with codification. He observed:

> Under the Criminal Code of 1942 criminal law administration in Louisiana has been greatly improved. Instead of being productive of confusion as was claimed it has done much to simplify; instead of creating uncertainty it has brought assurance; and the envisioned difficulties of adjusting to the new system have not materialized. It is perhaps not too much to believe that the outspoken opponents and the enervating skeptics as well would not now return to the old order. [Id. at 135]

For me, at least, arguments of this character are now of only academic value. I see the need for Federal codification, reform and revision as now beyond further discussion or argument. Indeed, in my judgment, the Congress settled this overall question when it created the National Commission in 1966 by Public Law 89–801. Instead, what faces the Congress today is a much different series of far more fundamental issues. The Congress must review the work product of the Commission and decide not whether, but how codification, reform and revision should be undertaken. In contrast to the issue of codification or not, here no issues are settled. All questions are open for debate. It is to the recommendations of the Commission, therefore, that I now turn.

Mr. President, there are four essential features in the proposed Code that dictated its architecture, organization and scope. Rejection of these basic premises would compel wholesale rewriting or possibly rejection of the proposed Code itself as a basis for a comprehensive codification, reform and revision of title 18. It is important, therefore, to obtain a clear idea of these features in order that a discriminating judgment on their wisdom may be made.

XVI. THE TECHNIQUE OF DRAFTING

Mr. President, the first of the four essential features of the proposed Code is its overall drafting technique. Offenses are succinctly stated—the verbosity of present statutory language, especially in defining matters by enumerated examples, is avoided. For example, present 18 USC § 2312 proscribes theft of motor vehicles, defined in 18 USC 2311 to mean "automobile, automobile truck, automobile wagon, motorcycle or self-propelled vehicle designed for running on land but not on rails." The comparable section of the Code, a general theft provision, simply describes the term "property of another" (section 1732). The kind of sim-

plified drafting of the proposed Code avoids the absurdities of the rule of strict construction, which prompted the Supreme Court in *Boyle* v. *United States*, 283 U.S. 25 (1931), to hold that "motor vehicles" did not cover airplanes, and which required the Department of Justice to seek amendment of the statute.

The contrary approach of present law may also be illustrated by 18 U.S.C. 659. It makes criminal unlawful takings from interstate shipments by proscribing thefts from 19 different kinds of facilities, serially enumerating each and concluding with an inclusive phrase outlawing thefts from interstate shipments. The comparable Code provision, section 1732 (see also, 1740(1), 201(i)), simply uses the final inclusive phrase of 18 U.S.C. 659 ("property which is the subject of the offense is moving in interstate or foreign commerce or constitutes or is part of an interstate or a foreign shipment"). The drafting of the new Code, therefore, avoids the web of litigation and the hypertechnicalities of pleading and proving the precise interstate character of the shipment. *Compare United States* v. *Wora*, 246 F. 2d 203 (2d Cir. 1957), *Tingley* v. *United States*, 34 F. 2d (10th Cir. 1929), *cert. denied* 280 U.S. 598 (1930); *United States* v. *D'Antonio*, 342 F. 2d 667, 671 (7th Cir. 1965).

In short, the manner in which offenses are drafted is designed to avoid the need for extensive cataloguing of terms for definitional purposes. This is made possible principally by a fundamental innovation in the proposed Code: The rule of strict construction is restated to mean construction in light of purpose. The Code is explicit in directing that its provisions be construed to achieve its codified ends, for example, "vindication of public norms by the imposition of merited punishment" and "fair warning of what is criminal" (section 102). The Code also provides that the term "includes," used in the various Code offenses, is to be read as if the phrase "but is not limited to" is also set forth (section 109(s)). Consequently, by the simple technique of drafting simply, a more rational penal policy can be implemented with confidence that it will not be frustrated in the courts by the inherent ambiguity of human language. Mr. Justice Johnson in *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheaton) 141, 172 (1816) aptly stated the difficulty with words: "Language is essentially defective in precision; more so, than those are aware of, who are not in the habit of subjecting it to philological analysis."

XVII. THE TREATMENT OF FEDERAL JURISDICTION

Mr. President, the second of the essential features of the proposed Code is its treatment of Federal jurisdiction. Indeed, it is the keystone of its suggested reform. Alone among the four basic premises, rejection of it would require forsaking the present form of the Code as even a work basis for a new Code.

The framework underlying the Code's treatment of Federal jurisdiction is the following: Federal penal laws are defined with a focus on punishing misconduct within the Federal jurisdiction, rather than, as is often now the case, some interference with a jurisdictional factor itself.

To illustrate: under the present mail fraud statute (18 U.S.C. § 1341), the offense is written, and its "gist" has been accurately perceived on the level of legal analysis, not as fraud punishable by the Federal Government because its mails are used, but as a sullying of the Federal sovereign by depositing fraud-related materials in its mails. See, e.g., *Bozell* v. *United States*, 139 F. 2d 183 (6th Cir. 1943), *cert. denied*, 321 U.S. 800 (1943). Consequently, each mailing is a separate offense, even though it was done in execution of the same fraud. See, e.g., *Wood* v. *United States*, 299 F. 2d 359 (8th Cir. 1960); *Becker* v. *United States*, 91 F 2d 550 (9th Cir. 1937). Yet the mailing of one letter in one scheme to defraud and its defrauding of 10 victims remains only one offense; the offense is punishable by a maximum of only 5 years no matter what the enormity of the fraud perpetrated may actually be. Finally, under present law, the Government must prove that the defendant at least contemplated that his fraud would be committed by use of the mails. See, e.g., *United States* v. *Kellerman*, 431 F. 2d 319 (2d Cir. 1970). Under the proposed Code, the offense is conceived and formulated as fraud. Use of the mails becomes the jurisdictional base under which the offense may be federally prosecuted, with the consequence that each of the aspects of the present law just mentioned is reversed.

In shifting the focus of Federal penal statutes from jurisdiction to the underlying misconduct as the gist of the criminal offense, the proposed Code effects a major reform of most of the older Title 18 provisions by generalizing the policy underlying many of the statutes enacted during the last decade. Thus, title 18's long standing section 1503, proscribing intimidation of witness-informants, makes that offense punishable by a maximum of only 5 years in jail, even though the intimidation may have ultimately taken the form of murder. In contrast, the 1968 amendment to 18 U.S.C. § 242, proscribing intimidation of citizens in the exercise of civil rights, changed the maximum penalty from 1 year to life imprisonment for intimidation by murder. In short, the proposed Code standardizes a treatment of Federal offenses sometimes but not always found in present law towards which the Congress has been gradually moving.

Other illustrations follows: in title 18's bank robbery statute (18 USC 2113) punishment is keyed to the underlying misconduct (20 years basic offense; 25 years if committed by assault; death if by murder or kidnapping), not to an interference with the Federal sovereign's jurisdictational base, the Federal Deposit Insurance Corporation. In contrast, 18 USC § 1952, enacted in 1961, followed a different route in attacking organized crime. Each crossing of State lines was made an offense, punishable by no more than 5 years, even though the racketeer ultimately perpetrated only one or more massive arsons, heinous extortions, or murder itself. *Compare* Sections 1732(b), 1735(1), 201(b), 1601, 1701, 205, 3201(1) 1(b): 15 years.

This reform in treatment of jurisdiction and criminal conduct is implemented in the following fashion. The element of Federal jurisdiction, called a jurisdictional "base" in the Code, is stated separately from the definition of the offense, which solely defines the misconduct involved. This is done by defining the offense (see, e.g., § 1721: robbery) and then itemizing in a separate subsection to the section the jurisdictional circumstances under which Federal prosecution can be undertaken. The most convenient way to visualize this is to imagine that in chapter 103 of title 18 (robbery and burglary) the jurisdictional factors in each of the robbery offenses there are taken out, leaving five formulations of the offense of robbery. These "pure" offenses, separated from their jurisdictional factors, are then consolidated and the elements standardized. What emerges then is one offense: Robbery. The various jurisdictional factors are then picked up, cataloged and included in a subsection itemizing the jurisdictional circumstances or "basis" under which the offense of "robbery" may be federally prosecuted.

They would be: special maritime and territorial jurisdiction (section 2111); property of the United States (section 2112); Federal Deposit Insurance Corporation banks (section 2113); and the mails (section 2114). However, instead of setting forth the jurisdictional bases *in haec verba* in each jurisdictional subsection, they are cataloged in a general jurisdictional section (section 201) and selective cross reference is made to this provision in the jurisdictional subsections to the various offenses as a simplified drafting technique. This is little more than an economy measure to avoid prolixity by the constant recitation of jurisdictional basis common to scores of offenses, that is, the mails, interstate travel, et cetera. Of course, some offenses in the proposed Code, as in present law, are inherently Federal and so there is not always a need for a separate jurisdictional subsection. See, e.g., espionage (chapters 11 and 12), tax (sections 1401–1409), civil rights (sections 1501–1516), smuggling (sections 1406–1409), bankruptcy fraud (section 1756). In addition, there are selected instances where offenses have unique jurisdictional basis which must be set out in specially applicable sections (see, e.g., section 1740(4): pertaining to theft so as to cover depredations of employee benefit plans, small business investment corporations, Economic Opportunity funds, pension plans and the funds of common carriers).

Several key results naturally flow from the proposed Code's treatment of Federal jurisdiction:

Definitions of offenses can be consolidated and standardized. Thus, in the illustration already given, the Code's section on robbery (section 1721) telescopes the robbery of banks (18 USC 2113), the mails and other Federal property (18 USC 2114), as well as robbery "affecting commerce" (18 USC 1951). The end result is that the various anomalies in the present proliferation of robbery statutes

are obviated. See, e.g., 18 USC 2111 ("by force and violence, or by intimidation, takes"); 18 USC 2112 ("robs"); 18 USC 2114 ("assaults . . . with intent to . . . purloin"); 18 USC 1951 ("unlawful . . . detaining of personal property from . . . another . . . against his will . . .").

Maximum sentence limits can be appropriately raised or lowered. Since the focus of the statutes is on the criminal misconduct, not the breach of Federal jurisdictional factor, punishment can be proportionate to the conduct rather than scaled to the jurisdictional aspect. Thus, as noted above, 18 USC 1952 proscribing, *inter alia*, interstate travel with intent to commit arson, is presently punishable by a maximum of five years' imprisonment, even though the arson resulted in the destruction of an entire building. Under the proposed Code, sections 1701 and 3201, this conduct would be punishable by up to 15 years.

Under the proposed Code, moreover, the prosecution need no longer prove knowledge on the part of the defendant that he was trespassing upon area subject to the control of the Federal sovereign, that is, at the time an individual crossed the State lines, he intended to incite a riot (see 18 USC 210) or he had a purpose to engage in prostitution (see 18 USC 2421). Instead, the offense becomes inciting to riot (section 1801(1)) or promoting prostitution (section 1841 (1)), subject to prosecution by the Federal Government if the defendant travelled interstate in its commission or consummation. Present Federal law, handles this question of knowledge of the Federal aspect in an inconsistent fashion. Indeed, it is possible to say that the requirement from provision to provision, apparently follows no discernable course. More often than not, knowledge is not even required, but when it is, the requirement does not seem to be rooted in any defensible rationale. Often it is little more than an accident of statutory draftsmanship. Thus, sometimes it is required, *United States* v. *Miller*, 379 F. 2d 483, 487 (7th Cir. 1967), *cert. denied*, 389 U.S. 930 (1968) (§ 1952: travel in aid of racketeering), other times not, *United States* v. *Kierschke*, 315 F. 2d 315 (6th Cir. 1963) (§ 2314: transportation of stolen property), while sometimes the cases under a specific provision are actually in conflict. *Compare Burke* v. *United States*, 400 F. 2d 866 (5th Cir. 1968), *cert. denied*, 395 U.S. 919 (1969) (§ 111 assault federal officer: need not know officer was Federal) with *United States* v. *Bell*, 219 F. Supp. 260 (E.D.N.Y. 1963) (*contra*). The requirement of knowledge, in short, often merely serves as a "technicality" that permits a "guilty" offender to "get off." See, e.g., *United States* v. *Barrow*, 363 F. 2d 62 (3d), *cert. denied*, 385 U.S. 1001 (1966).

Under the proposed Code, the existence of multiple jurisdictional bases also do not result in a multiplication of offenses. (Section 205) Thus, theft on a military reservation of Government property from the mail would no longer be three offenses, but, instead, one, with three jurisdictional bases (Federal enclave, U.S. mails, property of the Federal Government), proof of any one of which would suffice for the conviction of the offense of "theft." (See sections 1732(a), 1740(1), 201(a), (d), (f) and 205.)

Next, the definitions of offenses are framed in a fashion consistent with the terms of international treaties for extradition. Presently, serious problems are encountered when the United States desires to extradite a defendant from a foreign country for a Federal crime, since the factor of Federal jurisdiction is formulated as an element of the crime itself. See, e.g., *In Re Lamar*, 2 Western Weekly Rept. 471, 477 (Sup. Ct. of Alberta 1946) (mail fraud not extradictable as fraud). International extradition treaties uniformly do not afford extradition for jurisdictional trespasses, but only for specified criminal misconduct. Thus, where extradition is desired for mail fraud under 18 USC 1341, because our courts, quite rightly, have stated that the "gist of the offense" is the use of the mails, not the fraud, even though the treaty may permit extradition for "felonious fraud," since they do not provide for extradition for mailing a letter pursuant to a fraud, extradition is not possible, a result that may be justified among lawyers for reasons of legal analysis intelligible only to lawyers. As a matter of social policy, it is absurd.

Finally, a congressional mandate is given for restraint in the exercise of Federal jurisdiction where it overlaps with local authority, a key item in the Code's attempt to reach a reasonable balance between Federal and local power in the criminal justice area. The proposed Code, having consolidated offenses and itemized in one place the principal reaches of modern Federal criminal jurisdiction for each offense, makes visible for the first time the scope of present Federal jurisdiction. Accordingly, the proposed Code contains an introductory section, which expresses, for the first time, the will of Congress that Federal prosecution not be undertaken just because Federal jurisdiction to prosecute exists; the offense should be deferred to local authorities unless there is a "substantial Federal interest" in prosecuting it. The classic instances of a "substantial Federal interest" are then set forth, including where "the offense is serious and local law enforcement is impeded by interstate aspects of the case; an offense is believed to be associated with organized criminal activities extending beyond State lines;" and "local law enforcement has been so corrupted as to substantially undermine its effectiveness." (Section 207) This section is intended, therefore, to afford a vehicle for the Congress to express itself on the proper role of the Federal sovereign in the executive and judicial enforcement of the laws enacted by it, rather than to continue to permit *ad hoc* resolution of these fundamental legislative policy matters by the varying sensibilities of judges, prosecutors and investigators.

XVIII. THE SENTENCING SCHEME

Mr. President, the third of the essential features of the Code is its new scheme of sentencing. Its key features are its streamlined character, its assumption of some system of appellate review of sentences, and its establishment of standards for the imposition of long prison terms.

The proposed Code takes the 18 different maximum prison terms and 14 different fine levels found in title 18 alone and standardizes them into essentially six. (See sections 3002, 3201, 3301.) This is done by classifying each offense as either one of three classes of felonies, one of two classes of misdemeanor, or an infraction. Standard penalty levels are then established, one for each class of offense. By the adoption of this systematization, a consistent proportionality among offenses and penalties may be achieved.

In addition, the proposed Code's sentencing scheme is predicated on the concept of appellate review, although its scope and manner of implementation were not resolved by the Commission. (See section 1291 and Commentary at p. 317 of report.) Thus, guidelines are formulated for imposing: sentences in the upper ranges of authorized maxima (See section 3202; the same criteria in Title X of the Organized Crime Control Act of 1970 (P.L. 91–452), plus dangerous weapon used and mentally abnormal aggressive defendant, are employed; this achieves for the Code legislatively what Title X provided for judicially: proportionality between the various terms), judicially imposed minima (see section 3201(3)) and the grant or denial of probation (see section 3101). A variation of the scheme to bring standards into a previously standardless area is the requirement of the Code that the judge simply set forth his reasons for granting, for example, a defendant an unconditional discharge (section 3105) imposing a consecutive sentence (section 3204) or meting out a higher sentence on resentencing (section 3005).

Other similar provisions should be noted. In the area of parole, after the first year of imprisonment, release by the parole board is to be determined according to enumerated criteria, including whether the defendant, if released, would violate his conditions of parole (see section 3404). Nevertheless, after service of 5 years or two-thirds of the prison component of any sentence, the defendant must be released, except where in the judgment of the parole board he poses a high risk of serious criminality while on parole. (See section 3402.) Most importantly, each sentence to imprisonment must contain a mandatory parole component (see section 3201 (2)). The purpose of this provision is to maintain control of hardened offenders after their initial release from prison. Under present law, the hardened offender serves the maximum of his sentence, then is released without any restraint, while the less dangerous offender is released earlier, but subject to supervision, an anomalous result.

Other pertinent provisions of the sentencing scheme are the following: a recidivist provision for misdemeanants (section 3003), retention of split sentences with a provision for intermittent service of jail terms (section 3106); organizations (labor unions and corporations) can be required, as part of a sentence, to give notice of their misconduct to pos-

sible victims of their crimes (section 3007); irrespective of the ordinary fine available for a class of offense, the defendant may be sentenced to a fine up to twice his gain or the loss occasioned to the victim by his misconduct (section 3001(2)). On the issue of minimum mandatory sentences, the Code's statutory text abandons them, but the report of the Commission notes that a substantial number of Commissioners favored a scheme of presumptive minimum mandatory sentences for certain offenses (wholesaling in narcotics, using a gun to commit a felony). The judge would be statutorily directed to sentence a defendant to at least a modest prison term in the usual case, and required to state his reasons for not imposing such a sentence where he felt the case was not usual. Here again the essential assumption of the sentencing scheme of appellate review is evident.

XIX. THE TECHNIQUE OF GRADING

Mr. President, the last of the four essential features of the proposed Code is its use of a "piggyback" means for achieving appropriate sentence grading. "Piggyback" grading means the following: Crimes against persons (such as assault) and property (such as arson) occurring in the course of a Federal offense become federally prosecutable as related offenses. To illustrate: Intimidation of a Federal judge is punishable by 5 years imprisonment under present 18 USC 1503 as well as proposed section 1366. If the intimidation takes the form of murder of the judge, prosecution may be had under the proposed Code for the "murder" as well as the "intimidation."

This technique of grading is not new to Federal criminal jurisprudence. It is simply a generalization of a scheme idiosyncratically found in many present Federal offenses. For example, in the present bank robbery statute (18 USC 2113) the basic offense of bank robbery is punishable with a maximum of 20 years, but the maximum may be increased up to 25 years if assault occurs in the course of the bank robbery, or up to death if there is a murder or kidnapping in the course of the bank robbery. See also 18 USC 34 (aircraft and motor vehicles); 242 (civil rights); 844(d) (explosives); 1201 (kidnapping); 1751 (crimes against the President). I note, too, that the courts have uniformly upheld the constitutionality of this "piggyback" technique. See, e.g., *Gilmore* v. *U.S.* 124 F. 2d 537 (10th Cir. 1942), *cert. denied*, 316 U.S. 661 (1943); *Clark* v. *U.S.*, 184 F. 2d 952 (10th Cir. 1950), *cert. denied*, 340 U.S. 955 (1951).

Mr. President, the "piggyback" technique of grading under the proposed Code provides for a rational and uniform means of grading Federal offenses, for a scaling the relative seriousness of misconduct integral to the commission of a "basic" offense, and for an achieving of a clear proportionality where compound qualities are present in criminal misconduct. The variety of the present means of achieving the same result, therefore, can be eliminated. I note, too, that the means now employed sometimes create more problems than they solve. Present title 18 sections, for example, denote the factors aggravating an offense but, more often than not, fail to define them. See, e.g., "assault," which is undefined in 18 USC 21(d). *Compare*, 13 USC 2113 ("assault") *with* 18 USC 844(d) ("personal injury"); 18 USC 2113 *and* 1751 ("kill"), *with* 18 USC 242 *and* 844(d) ("death results"). Only rarely are the aggravating factors formulated by defining them in terms of another offsense as was done, for example, in 49 USC 1472 (airplane obstruction: assault as defined in 18 USC 113 occurring in course thereof.) In addition, the present means of grading are legally vulnerable, since they are often ambiguous, if not unconstitutionally vague. In 18 USC 844(d), for example, the threshold crime is stated as the transportation and receipt of explosives, but the offense is then graded according to whether or not "personal injury" or "death" results. "Results" from what? "The transportation or receipt" or how the explosive was deployed thereafter? And how "result"? From fortuity? Negligence? Recklessness?

Under "piggyback" grading, the "kill" and "death" of present law become the crimes, fully defined, of "murder" and "homicide" while the "personal injury" and "life in jeopardy" of present law become the crime of "assault." Problems with "result" are avoided by requiring only that the assault or homicide occur in the course of the commission of the underlying offense. Consequently, unnecessary problems with the troublesome issue of causation are obviated.

Other special techniques of grading are also employed. Only two warrant comment here. In some instances, whether given misconduct is a felony or a misdemeanor is to be determined by the judge at sentencing, if the defendant can establish certain factors by preponderance of the evidence. (See, e.g., section 1822(3) regarding drugs (misdemeanor if the defendant can show he did not act for profit, to further commercial distribution or transfer to a juvenile) and section 1001(3) regarding attempt (graded same as completed offense unless defendant shows attempt efforts did not achieve proximity to the completed offense). The decision to bring into title 18 all Federal felonies results in another grading implication of the proposed Code. Under the proposed Code, crimes in the other titles of the United States Code cannot be punishable by more than misdemeanor penalties. To illustrate, the Code's offense of draft evasion in section 1108 proscribes avoiding the draft by failure to register, failure to report or refusal to submit for induction or civilian work, while the purely prophylactic provisions in present 50 USC App. 462, which under the proposed Code would remain in title 50 (such as failure to notify the board of a last known address) are, by operation of sections 1006 and 3007 made misdemeanors.

XX. THE IMPACT OF THE CODE

Mr. President, at this stage of our consideration of the proposed Code, it is not possible, of course, to assess what the overall impact of the proposed Code might have on the Federal system of criminal justice if implemented in its present form and embodying its various policy judgments. Some tentative conclusions, however, may be made. More detailed analysis will have to await further hearings. From such statistics as are readily available (see generally, *Report of the Director of Administrative Office of the United States Courts 1968–70*. Tables D–2 and G) the ten most frequently prosecuted Federal offenses, in approximate order of frequency, are:

1. the Dyer Act (18 USC 2312)
2. illegal entry by aliens (8 USC 1326)
3. narcotics (Comprehensive Drug Abuse Prevention and Control Act of 1970, section 401 *et seq.*)
4. selective service (50 USC App. 462)
5. moonshining (26 USC 5601)
6. postal depredations (18 USC 1708–1709)
7. interstate transportation of forged money orders (18 USC 2314)
8. bank robbery (18 USC 2113)
9. theft from interstate shipment (18 USC 659)
10. bank embezzlement (18 USC 656)

Prosecution under these statutes comprise over 50 percent of the criminal business of the Federal courts, and correspondingly consume, in all likelihood, a similar devotion of investigative and correctional resources. Accordingly, the potential statistical impact of the Code on the Federal criminal justice system may be a relatively measurable quality.

The character of some of the major differences between several of the more significant present title 18 sections and those suggested by the proposed Code may be tentatively assessed now. In half of these statutes there is little change. For example, between the Dyer Act (18 USC 2311 *et seq*) and corresponding Code provisions, there are only two significant differences: The proposed Code codifies judicially fashioned meanings of "stolen" in present law by constituting them in three provisions: Section 1732 covering vehicles taken with intent to deprive the owner; Section 1733 covering car rentals (unauthorized excessive use) and Section 1736 covering just unauthorized use ("joyriding"). Unlawful takings of motor vehicles are graded as a felony or a misdemeanor depending upon the value of the car, its unauthorized use or the loss measured by the restoration required (over $500 is a felony).

Again, with respect to immigration violations under present law, comparison with its companion Code provision (section 1221 (1)(d)), discloses that the offenses are identical, except for the following: the requisite culpability in present law is codified, and the current separate offense of being found in the United States after prior deportation is formulated as a presumption (see section 103 (3)) that if an individual is found in the United States after having been previously deported he is presumptively guilty of the offense of entering the United States illegally. Current prosecutive and sentencing policy, moreover, is codified by grading the offense as a felony if there was a prior deportation and it was for a felony of moral turpitude (see section 1221 (2)(a)) or it was a third violation (see section 3303). Otherwise, it is graded a misdemeanor.

As in the firearms area, noted below, the proposed drug provisions constitute the implementing of criminal penalties

for an assumed regulatory scheme that would appear elsewhere in the Federal Code. ((see sections 1821–29) The Commission, however, expressed no preference for the proposed provision over those found in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91–513), which was enacted by the Congress while the Commission was working on its provision. Nevertheless, the Commission did recommend, over the objections of a substantial body of opinion, that the penalty for possession of marihuana be reduced to that of an infraction, which would embrace only a fine and no possibility of imprisonment.

The scope of the offense of tax evasion under the proposed Code, which includes excise taxes on illicit liquor, is discussed in more detail below. The principal problem in the excise tax area, of course, is "moonshining." Title 26 of present law contains a number of felony provisions in this area. (See 26 USC 5601–08) section 1403, together with the definitions of section 1409 and the presumptions of section 1405, carries forward these offenses in a simplified form. The principal change in the law is to remove the possibility of felony treatment for the consumer. (See 26 USC 5601(a)(11), 5604(a)). An attempt, too, has also been made to square the presumptions of present law with the recent teaching of the Supreme Court in *United States* v. *Gaines*, 380 U.S. 63 (1965) and *Turner* v. *United States*, 396 U.S. 398 (1970).

While postal and interstate shipment theft, postal and bank embezzlement are substantially changed, once the offenses of larceny and embezzlement are mastered, facility is achieved with respect to all theft and embezzlement provisions, as well as robbery of Government property or car theft, since the Code standardizes the definitions of these crimes: only the applicable jurisdictional bases vary.

In addition to these statutes, which comprise the majority of Federal prosecutions, it will be helpful, I think, to highlight several other noteworthy areas of the Code, so that the Senate might have some idea of the range and the substantive scope of the reforms proposed by the Commission.

General Purposes (see section 102): For the first time in Federal criminal jurisprudence; the Code would explicitly recognize the inclusive and multipurpose character of a modern penal code. See generally, Hart, "The Aim of the Criminal Law" 22 *Law and Contemporary Prob.* (1951); Hall, *The Criminal Law* 296–324 (1960). Fundamentally, the Code rests on the notion of individual responsibility, and it recognizes the just need in any civilized society for the vindication of its more significant social norms by the imposition of merited punishment. At the same time, base revenge is eschewed as a purpose of the Code. In addition to this overall intrinsic purpose, the Coder gives explicit recognition to the social need to seek the extrinsic purposes of measured deterrence, forwardlooking rehabilitation, and carefully circumscribed incapacitation.

Requirements of Culpability (section 302): For the first time in Federal jurisprudence, the various aspects of culpability will be defined, what Mr. Justice Jackson called "the variety, disparity and confusion" of judicial definitions of "the requisite but elusive mental element" in crime. *Morissette* v. *United States*, 342 U.S. 246, 252 (1952). Definitions of "intentionally", "knowingly", "recklessly", "negligently", and "willfully" are provided. They have their chief function in distinquishing the various grades of offenses. Comparable schemes of culpability are found in the Model Penal Code § 2.02 (1962) of the American Law Institute and the N.Y. Penal Code §15.05 (1965). They have been criticized in these terms:

> If the draftsmen wish to force trial judges to stop and puzzle over abstruse wording, that discipline can do no harm. But the trouble is that the draftsmen are here engaged in linguistic embroidery to which lay jurors would inevitably be exposed. This worries me—and I do not derogate from the individual abilities of lay jurymen. But awkward phrases and shrouded concepts bother me; for instructions in the law—jury charges—are delivered to jurors orally, and may go on for hours. Furthermore, they may contain a variety of precepts with which the jurors have never before had to deal, and concerning which, if a verdict is to be reached, the jurors must all end up as of one mind, convinced beyond a reasonable doubt. Nor can the Code's protagonists—if they are, at this time, to be realists—respond, "these definitions are not for the jury; the judge may simplify them, using his own words, when he charges." Trial judges do not like to be reversed, and the safe course for them is to charge the law precisely as the legislature has handed it down. Being human, they follow the course of safety. And should a judge not do this in the first instance, any able defense attorney, fearing the likelihood that his client's guilt has been sufficiently proven and therefore banking on confusion as the only way to avoid conviction, would be likely to insist that these statutory definitions be read to the jurors, and that they be instructed to acquit unless satisfied, on the proof, that "purposely" or "knowingly," as thus defined, has been established.

(Kuk, "A Prosecutor Considers the Model Penal Code [1963] Columbia L. Rev., 608, 622–23.) For a general discussion of the question, see Remington and Helstad, "The Mental Element in Crime—A Legislative Problem" [1952] Wis. L. Rev. 644.

Mental Disease or Defect (section 503): Here the Code adopts for the first time in Federal criminal jurisprudence a nation-wide standard for exculpation based on mental disease or defect. Neither the "right-wrong" test of *McNaughton*, 10 Cl. & F. 200, 8 [1843] Eng. Rept. (House of Lords), nor the "mental disease-product" test of *Durham* v. *United States*, 214 F. 2d 862 (1954) was followed. Instead, the Commission recommended the "substantial capacity to appreciate and conform" test of the Model Penal Code § 4.01 (1961) of the American Law Institute, which has been followed in a number of Circuit Courts of Appeal. See, e.g., *United States* v. *Freeman*, 357 F. 2d 606 (2nd 1966).

Limits on the Use of Force: Excessive Force, Deadly Force (section 607): This provision of the Code formulates provisions, which negatively define assault and homicide. Instead of casting them as standards, the application of which depend on all the facts and circumstances, they are written as precise rules of conduct. On the whole, they would confine the use of deadly force against a person to a last resort defense of himself or any other person. For example, contrary to present law, they would require, where safe, retreat from a home or place of work under certain circumstances.

Mistake of Law (section 609): Under Federal law, ignorance of the law is never an excuse. In general, too, Federal law does not now recognize a defense based on a mistake of law. *Horning* v. *District of Columbia*, 254 U.S. 135, 137 (1920). Nevertheless, where the definition of the offense itself requires knowledge of a legal duty, a mistake as to the character of the duty may be a defense. *United States* v. *Murdock*, 290 U.S. 389 (1933). Section 609, however, provides that a good faith mistake of law made in reliance on a statute, opinion or other official pronouncement would be an affirmative defense. Such a defense is recognized in the Model Penal Code § 2.04 (1962) of the American Law Institute and in *N.Y. Penal Law* § 15.20 (1965) and *Ill.* Rev. Code § 4–8 (1961). A substantial body of opinion on the Commission preferred not to go beyond the scope of present law. Fuller, *The Morality of Law*, 72–74 (1964) has observed of such defenses in the area of economic regulation, where it seems that Section 609 would have its greatest impact, that:

> The required intent is so little susceptible of definite proof or disproof that the trier of fact is almost inevitably drawn to asking: "Does he look like the kind who would stick by the rules or one who would cheat on them when he saw a chance?" This question, unfortunately, leads easily into another, "Does he look like my kind?"

Subsequent Prosecution by a Local Government: When Barred (section 708). Present Federal law sometimes bars a subsequent Federal prosecution after a state prosecution. See, e.g., 18 USC 2117 (burglary of interstate vehicle). In contrast, this provision extends that policy and formulates, under specified circumstances, an absolute statutory bar to subsequent state prosecution, where there has been a prior Federal prosecution, a result not now compelled under the relevant decisions of the Supreme Court. See, e.g., *Bartkus* v. *Illinois*, 359 U.S. 121 (1959) (subsequent state not barred by Federal); *Abbate* v. *United States*, 359 U.S. 187 (1959) (subsequent Federal not barred by state). This provision was included in the Code over the objections of a substantial body of opinion.

Criminal Facilitation (section 1002): For the first time in Federal jurisprudence, this provision would introduce a new degree of criminal complicity. The cases are not without conflict, but the general Federal rule now seems to require not only knowledge, but also a "stake in the venture" before a finding of criminal complicity could be made. *Compare United States* v. *Peoni*, 100 F. 2d 401, 402 (2d Cir. 1938) (Hand, J: stake), *with Backun* v. *United States*, 112

F. 2d 635, 637 (4th Cir. 1940) (Parker, J.: knowledge). Under section 1002, "facilitation" could be found where knowledge plus the substantial facilitation of an actual offense were present. This position was rejected for the Model Penal Code by the American Law Institute, but has been adopted in New York. *Compare* Model Penal Code § 2.06(3)(a) (1962) *with* N.Y. Penal Code § 115.00 (1965). Seen generally Williams, *Criminal Law: The General Part* 369–370 (2nd ed. 1961).

Tax Evasion (section 1401): The respective formulations of tax evasion are practically the same. (*Compare* 26 USC 7201 *with* 1401.) The proposed Code carries forward current statutory formulations in the words of present law. Section 1401 of the Code specifies the kinds of conduct now held to constitute evasion. After cataloguing the classic kinds of conduct that constitute tax evasion under present law, the section concludes with the general language of present law: "attempt in any manner to evade." Evasion by filing a false return is made an evasion offense to evade even though there is no tax deficiency. In contrast, false material statements, felonious under present 26 USC 7206, remains so under the proposed Code only if accompanied by an intent to evade. Finally, tax evasion is graded like a theft provision depending on the amount of the deficiency.

Para-Military Activities (section 1004): For the first time in Federal law, private armies would be outlawed. The acquisition, caching, use or, of training in, weapons for political purposes by associations of ten or more persons, other than those authorized by law, would be made a Federal offense. Today, such organizations are merely required to register under 18 USC 2386.

Civil Rights and Elections (chapter 15): Proposals were placed before the Commission which would have substantially modified present law. The culpability element articulated in *Screws* v. *United States*, 325 U.S. 91 (1945), for example, would have been modified, and the requirement of "color of law" would have been omitted. The Commission recommended, however, the mere recodification of the present law without substantial modification, either to enlarge or restrict its scope.

Sodomy (sections 1643–44): Federal law today deals with sodomy primarily through the operation of the Assimilated Crimes Act, 18 USC 13. See, e.g., *United States* v. *Gill*, 204 F. 2d 740, 7th Cir., *cert. denied*, 346 U.S. 825 (1953). Under proposed section 1643, a new offense of aggravated involuntary sodomy, treated like forcible rape, would be recognized. Involuntary sodomy would also be subject to punishment under section 1644. But consentual sodomy would not be covered. Note here that by virtue of section 209(2) the effect of this omission would be to make licit conduct now generally illicit under State law adopted and applicable in Federal enclaves.

Riots (sections 1801–04): The proposed Code eliminates the requirement of present law that the prosecution prove intent to incite to riot at the time that state lines are crossed. (*Compare* 18 USC 1801 *with* section 1832). In addition, penalties are substantially raised (up to 30 years) for serious harm to persons or property committed by both leaders of and participants in riots. The "affecting commerce" jurisdictional reach of present law is eliminated. Instead, federal jurisdiction is confined to cases where the Attorney General certifies that the riot involved or apparently would involve over a hundred persons and was substantially furthered from sources outside the State. The propriety of such certifications, however, are explicitly made not litigable. (See section 104) Finally, in any riot within the federal jurisdiction, it is an infraction to disobey orders to clear the street, whether as a participant, bystander or news media personnel. (See section 1804)

Firearms (sections 1811–13): Over the objections of a substantial body of opinion, the Commission recommended a federal ban on handguns and the requirement of registration on a national scale of all firearms. Otherwise, the proposed provisions contain only the implementing criminal provisions of assumed regulatory law that would, of course, appear in other titles of the federal code. Consequently, the Code sections, as presently drafted, are perfectly amenable to assimilating present law with or without substantial change. (*Compare* 18 U.S.C. 921–928. (The Gun Control Act of 1968), 18 U.S.C. App. 1201–1203 (The Omnibus Crime Control *and* Safe Streets Act of 1968), and 26 U.S.C. 5901–5872.)

Obscenity (section 1851): Over the objections of a substantial body of opinion, the Commission recommended an obscenity provision that constitutes a repudiation of the Commission on Obscenity and Pornography: the full constitutional definition of obscenity is retained, felony penalties are continued for offensive dissemination, and the Department of Justice's prosecutive policy with respect to private dissemination is codified. (Compare 18 U.S.C. 1461–64)

Sentence of Death and Life Imprisonment (chapter 36): The Commission recommended the abolition of capital punishment, and the abolitionists' position is fully integrated into the Code. The Commission, however, proposed an alternative provision with respect to capital punishment and the procedural aspects of its implementation. The retentionist provisions, supported by a substantial body of opinion on the Commission, entail preservation of capital punishment for selected crimes, including murder and treason with jury and judicial guidelines codified for the imposition of the death penalty by enumerating aggravating and mitigating circumstances. The structure of the Code will accommodate either resolution of this issue. (Compare 18 U.S.C. 2113(e))

CONCLUSION

Mr. President, what emerges from even this summary review of various features of the proposed Code is its integral, yet flexible character. To recapitulate, the keystone of the Code is, of course, its treatment of Federal jurisdiction as a matter of legislative policy, limited by constitutional authority and vindicated by a discriminating exercise of executive discretion. Thus, offenses are defined in terms of the nature of the criminal misconduct involved rather than a factor of Federal jurisdiction, and it would be no longer a definitional element of the offense, but instead a "basis" under" which the misconduct becomes prosecutable by the Federal sovereign, not unlike the showing of the place where the offense occurred now required to establish state jurisdiction to prosecute. See, e.g., the classic decision, *State* v. *Hall*, 114 N.C. 909, 19 S.E. 602 (1894), which held that where a North Carolina citizen fired into Tennessee, killing a man, the murder prosecution had to be brought in Tennessee.

From this treatment of Federal jurisdiction the other basic features of the Code naturally flow: Its mode of defining offenses, its manner of grading them, the penalty levels provided, the sentencing scheme, and its comprehensive character. Once the jurisdictional aspect is taken out of the definition of the offense, there is no longer any occasion to retain the present variety of statutes distinguishable only by their respective jurisdictional factors. Codification, reform, and revision becomes possible. Offenses may be consolidated and standardized, while the jurisdictional factors upon which Federal prosecution may be undertaken can be cataloged and made selectively applicable to each offense. It becomes also possible to grade offenses in terms of their compound criminal misconduct aspects. And since offenses are no longer distinguishable by jurisdictional factors, it becomes unnecessary to rely upon undefined and concepts like "kill" or "personal injury" to vary the penalty structure. The Code's treatment of Federal jurisdiction, resulting in standardized definitions of offenses, also recommends a streamlined sentencing scheme. Each offense may be classified and keyed to a finite number of penalty levels. Finally, the Code's implementation of Federal jurisdiction recommends its comprehensive quality: Once offenses are no longer formulated in terms of their jurisdictional aspect, it becomes possible to have a codification of a comprehensive set of defenses and to bring into title 18 many offenses now lodged in other titles. Beyond this core treatment of Federal jurisdiction and the comprehensive implementation of it in these grading and drafting techniques, it should be emphasized, I suggest, that the various specific provisions of the Code are wholly adjustable to reflect legal and policy judgment entirely different from those tentatively posed by the Commission. The Code structure could be, without undue effort, adopted to fit a variety of substantive positions. Consequently, each of the individual provisions of the Code may be and should be treated as separate policy issues.

Mr. President, there are lessons, too, that we should draw from the history of codification, and apply to our consideration of these issues. Initially, I suggest, history teaches us that no one man or even a few men working together can sum up or reform the law of their time and place. Mr. Justice Cardozo

made this point in his *The growth of the Law* 140–41 (1924) when he wrote:

> For the task in truth is one to baffle the wisdom of the wisest. Law is the expression of a principle of order to which men must conform in their conduct and relations as members of society, if friction and waste are to be avoided among the units of the aggregate, the atoms of the mass. The expression may be false if those who formulate it, lawyer and judge and legislator, are blind to any phase of the life whose inner harmony they are commissioned to interpret and maintain. No one of us has a vision at once so keen and so broad as to penetrate these unsounded depths and gather in its sweep this enveloping horizon. We can only cling for the most part to the accumulated experience of the past, and to the maxims and principles and rules and standards in which that experience is embodied. Little is the positive contribution that any one of us can hope to make, the impetus that any one of us can give, to the movement forward through the ages. That little will call for the straining of every faculty, the bending of every energy, the appeal to every available resource, within us or without.

Embodying Tribonian's work, Justinian's Code, termed by history a magnificent achievement, even so, shows the limits of the imagination and scholarship of Tribonian and his associates. Similarly, the codes of Field and Livingston, great though they were, carry with them the inevitable defects of limited authorship. The whole of the law is a field too vast for one man or even a few men to till alone or together. What this should teach us, of course, is that it is necessary to bring to bear on the issues raised by the recommendations of the National Commission the critical judgment of as many individuals as possible, not just those from the academy, but investigators, trial lawyers, judges and members of the community at large. Had Livingston, for example, taken the trouble to involve the practicing bar of Louisiana in his project, his code might have been found acceptable. In contrast, we must follow the example of Germany in the development of its monumental Civil Code. Able and experienced though the Commission, its staff, consultants and advisory committee may have been, its greatest wisdom, I suggest, lay in seeing its work product as a basis upon which the Nation could work its will. Consequently, the careful course Congress followed in the revision of 1948 recommends itself even more so when codification and reform are added to the basic task of revision. Only by involving all segments and viewpoints of the community in the process will it be possible to say at the successful end of our task that our work product expresses the judgment of the Nation on what a citizen may do and may not do without incurring its formal condemnation. We must turn now to involve those other individuals in our task.

History, too, teaches the unwisdom of haste. The Codes of Justinian and Napoleon carried with them the imperfections of too little attention to detail. Each stands in sharp and unfavorable contrast with the remarkable effort of the German nation in the production of its Civil Code. It is not, of course, necessary that an ideal or perfect product be produced. History should enjoin upon us a measure of humility. The code that we write today will serve others tomorrow, but we must recognize that what we do today will be tomorrow reexamined. If nothing else, history teaches us that each new generation rightly desires to write its own fundamental code of conduct. Again, a reference to Mr. Justice Cardozo is in point. In his *The Nature of the Judicial Process* 177, 179 (1921) he observed:

> The flaws . . . there [are] . . . in every human institution. Because they are not only there but visible, we have faith that they will be corrected. There is no assurance that the rule of the majority will be the expression of perfect reason when embodied in constitution or in statute. . . . The tide rises and falls, but the sands of error crumble.
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> I sometimes think that we worry ourselves overmuch about the enduring consequences of our errors. They may work a little confusion for a time. In the end, they will be modified or corrected or their teachings ignored. The future takes care of such things. In the endless process of testing and retesting, there is a constant rejection of the dross, and a constant retention of whatever is pure and sound and fine.

But we ought not fail to give to the task before us whatever time is necessary to get the job done. The Commission has now labored for three years. Its product deserves in our processing the same careful attention it received in its formulation.

We must remember, moreover, that history tells us that we must write a code for our time and place. We are indeed one people, in Mr. Justice McKenna's phrase, but much of our strength as a people stems from our diversity of our people and the differences in our land and ways of life.

Charles V showed much wisdom in recognizing the need for such diversity and that deference to such diversity was a price worth paying to achieve the genuine humanitarian advances of the Carolina. Those who were responsible for the Carolina did not insist on their view obtaining in every provision. In contrast, Livingston's Code, too far ahead of its time, influenced the future, but never governed a present. Holmes expressed well the teaching of history that we should learn when he observed in the *Common Law* 36 (Howe ed. 1963) that:

> The first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community, whether right or wrong.

No one will count our product worthwhile if its success requires the people of any place or region unnecessarily to conform to national standards not their own. Recall, too, that the Carolina teaches us that the consequences of a humanitarian rule in one region may be baneful in another. To be sure we cannot remain a single Nation unless we give due recognition in all places and all regions to the fundamental human rights possessed by all our citizens. But standards of personal conduct do vary from region to region. We ought to give due attention to the legitimate demands of that diversity. Mr. Justice Black, in *Younger* v. *Harris*, 8 Crim. Law Reptr. 3103, 3105 (Feb. 23, 1971) put it this way:

> [O]ne familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism." The concept does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, "Our Federalism," born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future.

Mr. President, I know of no surer lesson of history than that politics should not be mixed in the process of codification, reform and revision, but that it inevitably will, in some measure, taint our work. Bacon's plan for reform aborted because of politics. Napoleon's Code became possible only through extraordinary legislative means. The work of Livingston and Field had to run the gauntlet of political criticism. If we are to develop a new Federal Code, codifying, reforming and revising our laws, we ought, however, to put aside politics or at least minimize its impact on our work product to whatever degree possible. Crime and criminal justice are too important for our people to be made the subject of narrow political advantage. Too much is at stake and too great is the need for reform to run the risk of losing it all for the momentary gains of politics.

On the other hand, debate is not only to be expected, but to be welcomed, for it is only through the examination of diverse views stated by able advocates that we can reach sound decisions. No one has a monopoly on truth. Any one who has an open mind can learn from those who disagree with him. I would hope, however, that as we undertake this reform that all could pledge themselves to the same goal: a comprehensive new Code. Differences should be confined to particular issues and not generalized to the Code itself. Otherwise, I fear our task will be in vain.

Finally, I would be less than frank if I did not express my concern that recent history of legislation in the criminal justice area in Congress did not raise the serious question that the benefit achieved by it for society as a whole may not have been purchased at too high a price in accompanying social division. In processing this Code, I would hope that all men of good faith would recognize on the part of others a similar dedication to the welfare of society and the freedom of the individual. Prof. Herbert Wechsler aptly expressed the character of the task before us:

> Whatever views one holds about the penal law, no one will question its importance in society. This is the law on which men place

their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. If penal law is weak or ineffective, basic human interests are in jeopardy. If it is harsh or arbitrary in its impact, it works a gross injustice on those caught within its toils. The law that carries such responsibilities should surely be as rational and just as law can be. Nowhere in the entire legal field is more at stake for the community, for the individual.

(Wechsler, "The Challenge of a Model Penal Code," 65 Harv. L. Rev. 1098–99 (1952). I call, therefore, for the exercise of quiet reason, not emotional rhetoric in the important task that faces us.

PROPOSED CODE SUBMITTED BY NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

Mr. McCLELLAN. Mr. President the Subcommittee on Criminal Laws and Procedures recently began its inquiry into the recommendations of the National Commission on Reform of Federal Criminal Laws, which were submitted to the President and the Congress on January 7, 1971. The final report of the Commission contains a proposed new Federal criminal code—title 18, United States Code—formulated as a "work basis" in terms of which the Congress might proceed to consider the necessary reform of the Federal criminal justice system. The text of the proposed code is supplemented by commentary on the various provisions. I note, too, that the text, as well as the commentary, often contains, usually in brackets, both policy and logical alternative formulations to those found in the text itself. Some of these alternatives were supported by a substantial body of opinion on the Commission, while others were not. Consequently, it is misleading to speak of the proposed code of the Commission without including within the code the noted alternatives. Nevertheless, in order that my colleagues may have the opportunity to examine the proposed code in its suggested statutory form, I request unanimous consent that excerpts from the report be included in the RECORD at this point.

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

THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS,
Washington, D.C., January 7, 1971.

To the President and Congress:

I hereby transmit to you the Fnal Report of the National Commission on Reform of Federal Criminal Laws pursuant to Section 8 of Public Law 89–801, as amended by Public Law 91–39.

The Commission submits this proposed revision of Title 18, United States Code as a work basis upon which the Congress may undertake the necessary reform of the substantive federal criminal laws. The scope and organization of the proposed Code, its general approach to the problem of federal jurisdiction, and the basic outlines of its sentencing system, hold promise as a logical framework for a twentieth century penal code. Individually we have reservations, sometimes strong on the resolution of particular issues. Nevertheless, we are, as a Commission, satisfied that the provisions embodied in the text, together with their noted alternatives, fairly expose the relevant policy issues and should facilitate the necessary legislative choices by the Congress.

It is to be hoped that this work of reform, so necessary to the fair and effective administration of justice, may merit the due consideration of the Congress and that it will contribute to the resolution, on a constructive basis, of these difficult issues.

By Direction of the Commission,
EDMUND G. BROWN,
Chairman.

FINAL REPORT OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS

FORWARD

The Final Report of the National Commission on Reform of the Federal Criminal Laws comprises a proposed Federal Criminal Code to replace most of Title 18 of the United States Code. Comments accompanying the sections of the proposed Code provide brief explanations of the statutory texts and possible alternatives. More elaborate explanations will be found in published Working Papers. Earlier drafts of many provisions are set forth in the Study Draft of a new Federal Criminal Code, published in June, 1970. Interim Reports of the Commission were filed on November 4, 1968 and March 17, 1969. The Interim Report of March 17, 1969 recommended a standard immunity provision to replace the scores of divergent immunity provisions in existing laws; a standard provision along the lines recommended by the Commission was enacted in Title II of the Organized Crime Control Act of 1970 (18 U.S.C. §§ 6001–6005).

The Commission's statutory mandate was very broad, including a review not only of substantive criminal law and the sentencing system but also of procedure and all other aspects of "the federal system of criminal justice". However, the Commission determined at the very beginning of its work that it would be inadvisable to spread the available resources so widely. Taking into account that Congress, the Judicial Conference, other Commissions, and privately financed projects were engaged in the studies of many issues of criminal law other than a substantive penal code, the Commission selected that field as its central concern.

The Final Report is the result of nearly three years of deliberation by the Commission, its Advisory Committee, consultants and staff. The Advisory Committee, headed by retired Justice and former Attorney General, Tom C. Clark, consisted of fifteen persons with a broad range of experience, including three United States Attorneys, a former state attorney general who has since become a member of the President's cabinet as Secretary of Health, Education and Welfare, a judge of a state supreme court, a former Judge Advocate General of the Army, and well-known professors of criminology and constitutional and criminal law.[1] The drafting process was as follows: The Commission's staff and consultants, working with law enforcement agencies, prepared preliminary drafts and supporting memoranda. These drew upon the reports of other bodies such as the President's Commission on Law Enforcement and Administration of Justice, the National Commission on Causes and Prevention of Violence, the National Advisory Commission on Civil Disorders, the American Bar Association Project on Standards for Criminal Justice, the American Law Institute, the National Council on Crime and Delinquency and numerous state penal law revision commissions. Preliminary drafts were reviewed by the Advisory Committee and the Commission in periodic discussion meetings.

At the conclusion of this first phase of intensive study, the Commission published the Study Draft of June 1970 in order to secure the benefit of public criticism before the Commission made its decisions.[2] This procedure, affording a pre-Report view of proposals under consideration, was unique in Commission practice; and suggestions and criticisms addressed to the Study Draft aided greatly in the preparation of the Final Report. Many departments and agencies of the government counseled with the Commission staff and submitted memoranda. The Commission has had the benefit of informal exchanges with committees of the U.S. Judicial Conference. A number of prosecutors and private practitioners have written to the Commission and their comments have been taken into account in revising the Study Draft provisions.

The Commission considered asking Congress for an extension of its life beyond the scheduled termination date of January 7, 1971, so as to permit a longer interval between circulation of the Study Draft in June 1970 and the issuance of this Report six months later. The decision not to seek an extension was based on the recognition that Congress bore the ultimate responsibility with respect to both fundamentals and matters of detail argued in many of the comments being received. Further debate within the Commission would not have contributed measurably to solutions, but would have postponed the legislative process without significant gain. Comments on the Study Draft which continue to be addressed to the Commission, as well as comments on the Final Report, can be forwarded to the Judiciary Committees of Congress and the Department of Justice.

Among the basic features of the proposed Code are the following:

(1) Unlike existing Title 18, the Code is comprehensive. It brings together all federal felonies, many of which are presently found outside Title 18; it codifies common defenses, which presently are left to conflicting common law decisions by the courts; it establishes standard principles of criminal liability and standard meanings for terms employed in the definitions of offenses and defenses.

(2) The sentencing system is overhauled. The chaotic variety of existing offenses and penalties is replaced by a limited number of classes of crime: three classes of felony and two of misdemeanors, with a standard range of penalties for each class. Statutory guidelines are formulated for the exercise of discretion within the range of sentencing authority.

(3) For the first time, the question of what is criminal is clearly differentiated from the question of what criminal behavior falls within federal jurisdiction. Thus, robbery, fraud and other offenses are defined in familiar ways, with a separate statement for each offense of the circumstances in which the federal government's law enforcement apparatus can be brought into play, *e.g.*, if the mails or means of interstate commerce are involved. For the first time, there is explicit Congressional guidance for the exercise of restraint in bringing local transactions into federal courts merely because technical federal jurisdiction exists. See § 207.

(4) The proposed Code is an integrated system, *i.e.*, the parts are closely interrelated. This means that the definition of each offense in Part B must be considered in relation to defenses and definitions of terms that appear in Part A—General Provisions, and in relation to the sentencing system in Part C. The length of authorized prison terms, *e.g.*, § 3201, must be considered in relation to restraints on imposing sentences within the "upper range" of the sentencing authority

Footnotes at end of article.

(§ 3202) and to the structure of the parole system (Ch. 34). A characteristic feature of the integration achieved in this Code is the system relating the prosecution for more serious federal offenses to the commission of certain lesser offenses. For example, offenses like impersonating a federal official, obstructing justice, or violating federal civil rights may be given a relatively low classification for the ordinary violator because, as a result of the "piggy-back jurisdiction" (§ 201(b)), the offender may be prosecuted federally for any serious felony associated with that underlying offense, *e.g.*, murder, fraud, kidnapping. The integral quality of the Code does not mean, however, that particular provisions of the principal text cannot be modified to reflect policy judgments different from those proposed. Thus even on questions of fundamental policy such as capital punishment, the basic design of the Code can assimilate either abolition or retention, whichever is Congress' ultimate judgment. Accordingly, rejection of a particular Code provision does not require rejection of the whole.

A few further observations on the nature of the Commission's task may be useful. The Commission was directed by Congress to "improve" and "reform," not merely to recodify existing law. Among the duties placed upon the Commission by statute was an explicit obligation to propose "changes in the penalty structure [to] better serve the ends of justice."[3] The Commission has not embarked on change lightly. Reforms, improvements, and changes cannot be accomplished without willingness to modify old practices and old language. Whatever temporary inconvenience may be entailed during a period of changeover from the old to an improved new Code will be more than compensated by the reduced difficulty which future judges, lawyers, law enforcement agents and investigators, and legislators and their assistants will experience in comprehending and working with a modernized, comprehensive and systematic federal criminal code.

Members of the Commission have been keenly aware of the importance of taking into account divergent individual viewpoints if reform is to be achieved. Various measures were taken to make possible the consensus on the Report. It is made clear in the letter transmitting this Report that no Commissioner is committed to every feature of the proposed Code. In addition at a number of points the draft statute sets forth, within brackets, alternative formulations that had substantial support within the Commission. Other alternatives with support, sometimes substantial, within the Commission are discussed in comment. Another class of alternatives was posed by extensive penal legislation enacted by Congress so late in 1970 as to preclude adequate deliberation by the Commission and its Advisory Committee on the differences between the newly enacted laws and proposals in this Report.[4] Unless otherwise indicated, therefore, such differences are not to be regarded as disapproval by the Commission of a position varying from the Report. Some reexamination of these most recent laws will no doubt be undertaken in this general penal law reform.[5]

The Commission has enjoyed bipartisan support during the present and preceding administrations. It has been encouraged not only by the readiness of Congress and the Executive to meet its modest budget in a time of financial stringency, but also by the favorable terms in which two Presidents have referred to the enterprise in the course of the Commission's work.[6] Such endorsements obviously do not represent a commitment to the Commission's Final Report or any particular feature of it. They do testify to the possibility of pursuing in a non-partisan spirit the effort to improve the administration of criminal justice.

NOTE ON AVAILABILITY OF DOCUMENTS

Volumes I and II of the Working Papers were published in August, 1970. These volumes and the Study Draft of June 1970 are available for purchase, in sets only. (Study Draft and 2 volumes of Working Papers), from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for $8.25. A third Volume of Working Papers is in the course of publication and will be for sale by the Superintendent of Documents in March 1971. It will contain additional memoranda by the Commission's staff and consultants as well as guidelines, prepared by the staff of the Commission, for the drafting of a bill which would incorporate the Code provisions. These guidelines deal with transitional provisions, amendments of the procedural provisions in Part II of Title 18, and amendments and deletions in other Titles of the United States Code which would be needed or may merit consideration in conforming them to the Code provisions.

FOOTNOTES

[1] A listing of Commission and Advisory Committee members and summaries of their professional backgrounds may be found in Appendices A and B at the end of this volume. A listing of the staff and consultants may be found at pages vii and viii of this volume.

[2] Approximately 5,000 copies of the Study Draft and Working Papers were circulated by the Commission. Copies were furnished to all federal agencies, members of Congress, staff of pertinent Congressional committees, federal judges, state attorneys general, chief justices, metropolitan district attorneys and numerous law schools, law professors, bar and professional associations, research bodies and private attorneys. Comments received in response to this circulation are being deposited as reference material with the National Archives, Washington, D.C.

[3] P.L. 89-301 § 3 (89th Cong.), reproduced in Appendix A at the end of this volume.

[4] E.g., Title IX, Organized Crime Control Act of 1970 (P.L. 91-452); The Omnibus Crime Control Act of 1970 (awaiting Presidential signature at this writing).

[5] See S. Rep. 91-617 (91st Cong., 2nd Sess.) p. 89.

[6] See President Johnson's Special Message on the Challenge of Crime to Our Society, 1968 U.S. Code Cong. and Admin. News 216, 224; President Nixon's Special Message on Organized Crime, 1969. U.S. Code Cong. and Admin. News 527, 530; Representative Celler's Statement in Working Papers of The National Commission on Reform of Federal Criminal Laws, Volumes I and II, pages ix.

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TITLE 18—UNITED STATES CODE

Part A. General Provisions

Chapter 1. Preliminary Provisions

§ 101. Title; Effective Date; Application.

(1) Title and Citation. Title 18 of the United States Code shall be entitled "Crime and Corrections" and may be cited as "18 U.S.C. §——" or as "Federal Criminal Code §——."

(2) Effective Date and Application. This Code shall become effective one year after the date of enactment. Unless otherwise provided this Code shall apply to prosecutions under any Act of Congress except the Uniform Code of Military Justice, District of Columbia Code and Canal Zone Code.

* * * * *

§ 102. General Purposes.

The general purposes of this Code are to establish a system of prohibitions, penalties,

and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which federal protection is appropriate. To this end, the provisions of this Code are intended, and shall be construed, to achieve the following objectives:

(a) to insure the public safety through (i) vindication of public norms by the imposition of merited punishment; (ii) the deterrent influence of the penalties hereinafter provided; (iii) the rehabilitation of those convicted of violations of this Code; and (iv) such confinement as may be necessary to prevent likely recurrence of serious criminal behavior;

(b) by definition and grading of offenses, to define the limits and systematize the exercise of discretion in punishment and to give fair warning of what is prohibited and of the consequences of violation;

(c) to prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among indvidual offenders;

(d) to safeguard conduct that is without guilt from condemnation as criminal and to condemn conduct that is with guilt as criminal;

(e) to prevent arbitrary or oppressive treatment of persons accused or convicted of offenses;

(f) to define the scope of federal interest in law enforcement against specific offenses and to systematize the exercise of federal criminal jurisdiction.

* * * * *

§ 103. Proof and Presumptions.

(1) Proof Beyond Reasonable Doubt. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. An accused is assumed to be innocent until convicted. The fact that he has been arrested, confined or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial. "Element of an offense" means: (a) the forbidden conduct; (b) the attendant circumstances specified in the definition and grading of the offense; (c) the required culpability; (d) any required result; and (e) the nonexistence of a defense as to which there is evidence in the case sufficient to give rise to a reasonable doubt on the issue. The existence of federal jurisdiction is not an element of the offense; but it shall be proved by the prosecution beyond a reasonable doubt.

(2) Defenses. Subsection (1) does not require negating a defense (a) by allegation in the indictment, information, or other charge or (b) by proof unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue. Unless it is otherwise provided or the context plainly requires otherwise, when a statute outside this Code defining an offense, or a related statute, or a rule or regulation thereunder, contains a provision constituting an exception from criminal liability for conduct which would otherwise be included within the prohibition of the offense, that the defendant came within such exception is a defense.

(3) Affirmative Defenses. Subsection (1) does not apply to any defense which a statute explicitly designates as an "affirmative defense." Defenses so designated must be proved by the defendant by a preponderance of evidence.

(4) Presumptions. When a statute establishes a presumption, it has the following consequences:

(a) when there is sufficient evidence of the facts which gave rise to the presumption, the presumed fact is deemed sufficiently proved to warrant submission of the issue to a jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact;

(b) in submitting the issue of the existence of the presumed fact to a jury, the court shall charge that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the jury may arrive at that judgment on the basis of the presumption alone, since the law regards the facts giving rise to the presumption as strong evidence of the fact presumed.

(5) Prima Facie Case. When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof and without additional instructions attributing any special probative force to the facts proved.

§ 104. Authorization and Certification by Attorney General.

Whenever authorization or certification by the Attorney General is required in this Code as a condition for prosecution, such responsibility may be delegated only to the Deputy Attorney General or to an Assistant Attorney General. Although prosecution cannot proceed absent authorization or certification, no other questions relating to the exercise of the responsibility are litigable.

§ 109. General Definitions.

Unless it is otherwise provided or a different meaning plainly is required:

(a) "aircraft" includes spacecraft;

(b) "bodily injury" means any impairment of physical condition, including physical pain;

(c) "this Code" means the Federal Criminal Code;

(d) "court of the United States" means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under 28 U.S.C. § 132, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court and the Court of Military Appeals;

(e) "crime" means a misdemeanor or a felony and does not include an infraction; but "criminal" and "criminally", when used as an adjective or adverb, refer to any offense;

(f) "dangerous weapon" means any switch blade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles or sand club; any slingshot; and any projector of, or bomb or any object containing or capable of producing and emitting, any noxious liquid, gas or substance;

(g) "destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile or similar device;

(h) "element of an offense" has the meaning prescribed in section 103(1);

(i) "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material or any part thereof may cause an explosion.

(j) "felony" means an offense for which a term of imprisonment of more than one year is authorized by a federal statute, or would be if federal jurisdiction existed;

(k) "firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka or cannon;

(l) "force" means physical action;

(m) "government" means (i) the government of any nation or any political unit within any nation, (ii) any agency, subdivision or department of the foregoing, including the executive, legislative and judicial branches, (iii) any corporation or other association organized by a government for the execution of a government program and subject to control by a government or (iv) any corporation or agency established pursuant to interstate compact or international treaty between or among governments for the execution of an intergovernmental program;

(n) "government agency" includes any department, independent establishment, commission, administration, authority, board or bureau of a government or any corporation in which a government has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense;

(o) "harm" means loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person in whose welfare he is interested;

(p) "human being" means a person who has been born and is alive;

(q) "included offense" means an offense (i) which is established by proof of the same or less than all the facts required to establish commission of the offense charged, (ii) which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged or (iii) which differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission;

(r) "includes" should be read as if the phrase "but is not limited to" were also set forth;

(s) "infraction" means an offense for which a sentence of imprisonment is not authorized;

(t) "intentionally" and variants thereof designate the standard prescribed in section 302(1);

(u) "judge" includes justice of the Supreme Court;

(v) "knowingly" and variants thereof designate the standard prescribed in section 302(1);

(w) "law enforcement officer" means a public servant authorized by law or by a government agency or branch to conduct or engage in investigations or prosecutions for violations of law;

(x) "local" means of or pertaining to any political unit within any state;

(y) "magistrate" includes commissioner;

(z) "misdemeanor" means an offense for which a term of imprisonment of one year or less is authorized by a federal statute, or would be if federal jurisdiction existed;

(aa) "negligently" and variants thereof designate the standard prescribed in section 302(1);

(ab) "offense" means conduct for which a term of imprisonment or a fine is authorized by a federal statute, or would be if federal jurisdiction existed;

(ac) "official action" means a decision, opinion, recommendation, vote or other exercise of discretion;

(ad) "official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with any such proceeding;

(ae) "person" means a human being and a corporation or organization as defined in section 409;

(af) "public servant" means an officer or employee of a government or a person authorized to act for or on behalf of a government or serving a government as an adviser or consultant. The term includes Members of Congress, members of the state legis-

latures, Resident Commissioners, judges and jurors;

(ag) "reasonably believes" designates a belief which is not recklessly held by the actor;

(ah) "recklessly" and variants thereof designate the standard prescribed in section 302(1);

(ai) "section" means a section of this Code; "subsection" or "paragraph" refers to a subsection or paragraph of the section or subsection, as the case may be, in which the term is used;

(aj) "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ;

(ak) "state" includes Puerto Rico, the Canal Zone, the District of Columbia, American Samoa, Guam, the Virgin Islands, Johnston Island, Midway Island, Wake Island, and Kingman's Reef and any other territory or possession of the United States;

(al) "think of value" means a gain or advantage, or anything regarded, or which might reasonably be regarded, by the beneficiary as a gain or advantage, including a gain or advantage to any other person. "Thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests or anything else the primary significance of which is economic gain;

(am) "United States", in a territorial sense, includes all states and all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone;

(an) "United States," when not used in a territorial sense, means government, as defined in paragraph (m), of the United States.

§ 201. Common Jurisdictional Bases.

Federal jurisdiction to penalize an offense under this Code exists under the circumstances which are set forth as the jurisdictional base or bases for that offense.

Bases commonly used in this Code are as follows:

(a) the offense is committed within the special maritime and territorial jurisdiction of the United States as defined in section 210;

(b) the offense is committed in the course of committing or in immediate flight from the commission of any other offense defined in this Code over which federal jurisdiction exists;

(c) the victim is a federal public servant engaged in the performance of his official duties or is the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice President-elect, or any individual who is acting as President under the Constitution and laws of the United States, a candidate for President or Vice President, or any member or member-designate of the President's cabinet, or a member of Congress, or a federal judge, or a head of a foreign nation or a foreign minister, ambassador or other public minister;

(d) the property which is the subject of the offense is owned by or in the custody or control of the United States or is being manufactured, constructed, or stored for the United States;

(e) the United States mails or a facility in interstate or foreign commerce is used in the commission or consummation of the offense;

(f) the offense is against a transportation, communication, or power facility of interstate or foreign commerce or against a United States mail facility;

(g) the offense affects interstate or foreign commerce;

(h) movement of any person across a state or United States boundary occurs in the commission or consummation of the offense;

(i) the property which is the subject of the offense is moving in interstate or foreign commerce or constitutes or is part of an interstate or foreign shipment;

(j) the property which is the subject of the offense is moved across a state or United States boundary in the commission or consummation of the offense;

(k) the property which is the subject of the offense is owned by or in the custody of a national credit institution;

(l) the offense is committed under circumstances amounting to piracy, as prescribed in section 212.

When no base is specified for an offense, federal jurisdiction exists if the offense is committed anywhere within the United States, or within the special maritime and territorial jurisdiction of the United States.

§ 202. Jurisdiction Over Included Offenses.

If federal jurisdiction of a charged offense exists, federal jurisdiction to convict of an included offense defined in a federal statute likewise exists.

§ 203. Prospective Federal Jurisdiction.

(1) Inchoate Offenses. Federal jurisdiction exists with respect to attempt, solicitation or conspiracy when a circumstance giving rise to federal jurisdiction over such inchoate offense has occurred or would occur if the principal offense were committed.

(2) Completed Offenses. Federal jurisdiction over a completed offense exists, although no circumstance otherwise giving rise to federal jurisdiction has yet occurred, if the actor took a substantial step in connection with such offense designed or likely to establish federal jurisdiction.

§ 204. Culpability Not Required As to Jurisdiction.

Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for federal jurisdiction.

§ 205. Multiple Jurisdictional Bases.

The existence of federal jurisdiction may be alleged as resting on more than one base but proof of any one base is sufficient. The existence of multiple jurisdictional bases for an offense does not increase the number of offenses committed.

§ 206. Federal Jurisdiction Not Preemptive.

The existence of federal jurisdiction over an offense shall not, in itself, prevent any state or local government from exercising jurisdiction to enforce its own laws applicable to the conduct in question.

§ 207. Discretionary Restraint in Exercise of Concurrent Jurisdiction.

Notwithstanding the existence of concurrent jurisdiction, federal law enforcement agencies are authorized to decline or discontinue federal enforcement efforts whenever the offense can effectively be prosecuted by nonfederal agencies and it appears that there is no substantial Federal interest in further prosecution or that the offense primarily affects state, local or foreign interests. A substantial federal interest exists in the following circumstances, among others:

(a) the offense is serious and state or local law enforcement is impeded by interstate aspects of the case; (b) federal enforcement is believed to be necessary to vindicate federally-protected civil rights; (c) if federal jurisdiction exists under section 201(b), the offense is closely related to the underlying offense, as to which there is a substantial federal interest; (d) an offense apparently limited in its impact is believed to be associated with organized criminal activities extending beyond state lines; (e) state or local law enforcement has been so corrupted as to undermine its effectiveness substantially.

Where federal law enforcement efforts are discontinued in deference to state, local or foreign prosecution, federal agencies are directed to cooperate with state, local or foreign agencies, by providing them with evidence already gathered or otherwise, to the extent that this is practicable without prejudice to federal law enforcement. The Attorney General is authorized to promulgate additional guidelines for the exercise of discretion in employing federal criminal jurisdiction. The presence or absence of a federal interest and any other question relating to the exercise of the discretion referred to in this section are for the prosecuting authorities alone and are not litigable.

§ 208. Extraterritorial Jurisdiction.

Except as otherwise expressly provided by statute or treaty, extraterritorial jurisdiction over an offense exists when:

(a) one of the following is a victim or intended victim of a crime of violence: the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice President-elect, or any individual who is acting as President under the Constitution and laws of the United States, a candidate for President or Vice President or any member or member-designate of the President's cabinet, or a member of Congress, or a federal judge;

(b) the offense is treason, or is espionage or sabotage by a national of the United States;

(c) the offense consists of a forgery or counterfeiting, or an uttering of forged copies or counterfeits, of the seals, currency, instruments of credit, stamps, passports, or public documents issued by the United States; or perjury or a false statement in an official proceeding of the United States; or a false statement in a matter within the jurisdiction of the government of the United States; or other fraud against the United States, or theft of property in which the United States has an interest, or, if committed by a national or resident of the United States, any other obstruction of or interference with a United States government function;

(d) the accused participates outside the United States in a federal offense committed in whole or in part within the United States, or the offense constitutes an attempt, solicitation, or conspiracy to commit a federal offense within the United States;

(e) the offense is a federal offense involving entry of persons or property into the United States;

(f) the offense is committed by a federal public servant who is outside the territory of the United States because of his official duties or by a member of his household residing abroad or by a person accompanying the military forces of the United States;

(g) such jurisdiction is provided by treaty; or

(h) the offense is committed by or against a national of the United States outside the jurisdiction of any nation.

§ 209. Assimilated Offenses.

(1) When Assimilated. A person is guilty of a federal offense if he engages in conduct within an enclave which, if engaged in within the jurisdiction of the state or local government in which the enclave is located, would be punishable as an offense under the state or local law then in force, except that this section does not apply when federal law penalizes or immunizes the conduct. Conduct is immunized within the meaning of this subsection if, having regard to federal legislation as to the conduct constituting the type of offense and the failure of Congress to penalize the specific conduct in question, it may be inferred that Congress did not intend to extend penal sanctions to such conduct.

(2) Grading. If the maximum confinement authorized by the state or local law exceeds 30 days, the assimilated offense is a Class A misdemeanor; if such confinement is 30 days or less, a Class B misdemeanor; if there is no such confinement, an infraction. Notwithstanding the classification here provided, the term of imprisonment or fine imposed shall not exceed the maximum authorized by the state or local law, and the offense shall not be deemed a crime if the state or local law provides that it is not a crime.

(3) "Enclave" Defined. In this section "enclave" means a place in the special maritime and territorial jurisdiction of the United States.

§ 210. Special Maritime and Territorial Jurisdiction. Defined.

"Special maritime and territorial jurisdiction of the United States" means:

(a) the high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any state or local government, when such vessel is within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular state;

(b) any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line;

(c) any lands reserved on or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof; or any place purchased or otherwise acquired by the United States by consent of the legislature of the state in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building;

(d) any unorganized territory or possession of the United States;

(e) any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States;

(f) any aircraft or spacecraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the law of the United States, or any state or local government thereof, which such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state, or while such spacecraft is in flight; and

(g) any aircraft within the special aircraft jurisdiction of the United States as defined in 49 U.S.C. § 1301(32);

§ 211. Special Limited Jurisdiction.

(1) Indian Country. Federal jurisdiction over offenses committed in Indian country exists as provided in 25 U.S.C. § 212.

(2) Canal Zone. This Code is applicable in the Canal Zone as provided in the Canal Zone Code. It is also applicable, as there provided, to the corridor over which the United States exercises jurisdiction pursuant to the provisions of Article IX of the General Treaty of Friendship and Cooperation between the United States of America and the Republic of Panama, signed March 2, 1936, to the extent that such application to the corridor is consistent with the nature of the rights of the United States in the corridor as provided by treaty.

* * * * *

§ 212. Piracy As Jurisdictional Base.

For the purposes of section 201 (*1*) the offense is within piracy jurisdiction if it is committed for private ends by the crew or the passengers of a private ship or a private aircraft, or committed by the crew of a warship or government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft, and is directed:

(a) on or over the high seas, against another ship or aircraft or against persons or property on board another ship or aircraft; or

(b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any nation or government.

"High seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of any nation or government.

* * * * *

In this Chapter:

(a) "interstate commerce" means commerce between one state, as defined in section 109, and another state;

(b) "foreign commerce" means commerce with a foreign country;

(c) "President-elect" and "Vice President-elect" mean such persons as are the apparently successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with 3 U.S.C. §§ 1, 2;

(d) "national credit institution" means a member bank of the Federal Reserve System; a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States; a bank the deposits of which are insured by the Federal Deposit Insurance Corporation; a Federal Savings and Loan Association; an "insured institution" as defined in 12 U.S.C. § 1724; and a "Federal Credit Union" as defined in 12 U.S.C. § 1752.

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Chapter 3. Basis of Criminal Liability; Culpability; Causation

§ 301. Basis of Liability for Offenses.

(1) Conduct. A person commits an offense only if he engages in conduct, including an act, an omission, or possession, in violation of a statute which provides that the conduct is an offense.

(2) Omissions. A person who omits to perform an act does not commit an offense unless he has a legal duty to perform the act.

(3) Publication Required. A person does not commit an offense if he engages in conduct in violation only of a statute or regulation thereunder that has not been published.

* * * * *

§ 302 Requirements of Culpability.

(1) Kinds of Culpability. A person engages in conduct:

(a) "intentionally" if, when he engages in the conduct, it is his purpose to do so;

(b) "knowingly" if, when he engages in the conduct, he knows or has a firm belief unaccompanied by substantial doubt that he is doing so, whether or not it is his purpose to do so;

(c) "recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 502, awareness of the risk is not required where its absence is due to voluntary intoxication;

(d) "negligently" if he engages in the conduct of unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; and

(e) "willfully" if he engages in the conduct intentionally, knowingly, or recklessly.

(2) Where Culpability Not Specified. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willful. Except as otherwise expressly provided or unless the context otherwise requires, if a statute provides that conduct is an infraction without including a requirement of culpability, no culpability is required.

(3) Factors to Which Requirement of Culpability Applies.

(a) Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally," the culpability required as to an attendant circumstance is "knowingly."

(b) Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required kind of culpability is required with respect to the result.

(c) Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for federal jurisdiction or for grading.

(d) Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in Part A of this Code or Chapter 10; otherwise the least kind of culpability required for the offense is required with respect to such facts.

(e) A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.

(4) Specified Culpability Requirement Satisfied by Higher Culpability. If conduct is an offense if a person engages in it negligently, the conduct is an offense also if a person engages in it intentionally, knowingly, or recklessly. If conduct is an offense if a person engages in it recklessly, the conduct is an offense also if a person engages in it intentionally or knowingly. If conduct is an offense if a person engages in it knowingly the conduct is an offense also if a person engages in it intentionally.

(5) No Requirement of Awareness that Conduct is Criminal. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this Code.

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§ 303. Mistake of Fact in Affirmative Defenses.

Except as otherwise expressly provided, a mistaken belief that the facts which constitute an affirmative defense exist is not a defense.

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§ 304. Ignorance or Mistake Negating Culpability.

A person does not commit an offense if when he engages in conduct he is ignorant or mistaken about a matter of fact or law and the ignorance or mistake negates the kind of culpability required for commission of the offense.

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§ 305. Causal Relationship Between Conduct and Result.

Causation may be found where the result would not have occurred but for the conduct of the accused operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the accused clearly insufficient.

Chapter 4. Complicity

§ 401. Accomplices.

(1) Liability Defined. A person may be convicted of an offense based upon the conduct of another person when:

(a) acting with the kind of culpability required for the offense, he causes the other to engage in such conduct; or

(b) with intent that an offense be committed, he commands, induces, procures, or aids the other to commit it or, having a legal duty to prevent its commission, he fails to make proper effort to do so; or

(c) he is a co-conspirator and his association with the offense meets the requirements of either of the other paragraphs of this subsection.

A person is not liable under this subsection for the conduct of another person when he is either expressly or by implication made not accountable for such conduct by the statute defining the offense or related provisions, because he is a victim of the offense or otherwise.

(2) Defenses Precluded. Except as otherwise provided, in any prosecution in which the liability of the defendant is based upon the conduct of another person, it is no defense that:

(a) the defendant does not belong to the class of persons who, because of their official status or other capacity or characteristic, are by definition of the offense the only persons capable of directly committing it; or

(b) the person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted or has been convicted of a different offense, or is immune from prosecution, or is otherwise not subject to justice.

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§ 402. Corporate Criminal Liability.

(1) Liability Defined. A corporation may be convicted of:

(a) any offense committed by an agent of the corporation within the scope of his employment on the basis of conduct authorized, requested or commanded, by any of the following or a combination of them:

[(a) any offense committed in furtherance of its affairs on the basis of conduct done, authorized, requested, commanded, ratified or recklessly tolerated in violation of a duty to maintain effective supervision of corporate affairs, by any of the following or a combination of them:]

(i) the board of directors;

(ii) an executive officer or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees;

(iii) any person, whether or not an officer of the corporation, who controls the corporation or is responsibly involved in forming its policy;

(iv) any other person for whose act or omission the statute defining the offense provides corporate responsibility for offenses;

(b) any offense consisting of an omission to discharge a specific duty of affirmative conduct imposed on corporations by law;

(c) any misdemeanor committed by an agent of the corporation within the scope of his employment; or

(d) any offense for which an individual may be convicted without proof of culpability, committed by an agent of the corporation within the scope of his employment.

(2) Defense Precluded. It is no defense that an individual upon whose conduct liability of the corporation for an offense is based has been acquitted, has not been prosecuted or convicted or has been convicted of a different offense, or is immune from prosecution, or is otherwise not subject to justice.

* * * * *

§ 403. Individual Accountability for Conduct on Behalf of Organizations.

(1) Conduct on Behalf of Organization. A person is legally accountable for any conduct he performs or causes to be performed in the name of an organization or in its behalf to the same extent as if the conduct were performed in his own name or behalf.

(2) Omission. Except as otherwise expressly provided, whenever a duty to act is imposed upon an organization by a statute or regulation thereunder, any agent of the organization having primary responsibility for the subject matter of the duty is legally accountable for an omission to perform the required act to the same extent as if the duty were imposed directly upon himself.

(3) Accomplice of Organization. When an individual is convicted of an offense as an accomplice of an organization, he is subject to the sentence authorized when a natural person is convicted of that offense.

(4) Default in Supervision. A person responsible for supervising relevant activities of an organization is guilty of an offense if he manifests his assent to the commission of an offense for which the organization may be convicted by his willful default in supervision within the range of that responsibility which contributes to the occurrence of that offense. Conviction under this subsection shall be of an offense of the same class as the offense for which the organization may be convicted, except that if the latter offense is a felony, conviction under this subsection shall be for a Class A misdemeanor.

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§ 409. General Provisions for Chapter 4.

(1) Definitions. In this Chapter:

(a) "organization" means any legal entity, whether or not organized as a corporation or unincorporated association, but does not include an entity organized as or by a governmental agency for the execution of a governmental program;

(b) "agent" means any partner, director, officer, servant, employee, or other person authorized to act in behalf of an organization.

(2) Unincorporated Associations. Nothing in this Chapter shall limit or extend the criminal liability of an unincorporated association.

* * * * *

Chapter 5. Responsibility Defenses: Juveniles; Intoxication; Mental Disease or Defect

§ 501. Juveniles.

A prosecution of any person as an adult shall be barred if the offense was committed:

(a) when he was less than fifteen years old in any case, or when he was less than sixteen years old in the case of offenses other than murder, aggravated assault, rape and aggravated involuntary sodomy; or

(b) when he was less than eighteen years old unless trial as an adult is ordered by the district court to promote justice.

* * * * *

§ 502. Intoxication

(1) Defense Precluded. Except as provided in subsection (3), intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease within the meaning of section 503. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.

(2) Recklessness. A person is reckless with respect to an element of an offense even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.

(3) When a Defense. Intoxication which (a) is not self-induced, or (b) if self-induced, is grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible, is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacked substantial capacity either to appreciate its criminality or to conform his conduct to the requirements of law.

(4) Definitions. In this section:

(a) "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of alcohol, drugs or other substances into the body;

(b) "self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would otherwise afford a defense to a charge of crime.

* * * * *

§ 503. Mental Disease or Defect.

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. "Mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Lack of criminal responsibility under this section is a defense

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Chapter 6. Defenses Involving Justification and Excuse

§ 601. Justification.

(1) Defense. Except as otherwise expressly provided, justification or excuse under this Chapter is a defense.

(2) Danger to Other Persons. If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this Chapter are unavailable in a prosecution for such recklessness or negligence, as the case may be.

(3) Civil Remedy Unimpaired. That conduct may be justified or excused within the meaning of this Chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

(4) State Prosecution of Federal Public Servant. The defenses of justification and excuse may be asserted in a state or local prosecution of a federal public servant, or a person acting at his direction, based on acts performed in the course of the public servant's official duties.

§ 602. Execution of Public Duty.

(1) Authorized by Law. Conduct engaged in by a public servant in the course of his official duties is justified when it is required or authorized by law.

(2) Directed by a Public Servant. A person who has been directed by a public servant to assist that public servant is justified in using force to carry out the public servant's direction, unless the action being taken by the public servant is plainly unlawful.

(3) Citizen's Arrest. A person is justified in using force upon another in order to effect his arrest or prevent his escape when a public servant authorized to make the arrest or prevent the escape is not available, if the other person has committed, in the presence of the actor, any crime which the actor is justified in using force to prevent or if the other person has committed a felony involving force or violence.

* * * * *

§ 603. Self-Defense.

A person is justified in using force upon another person in order to defend himself against danger of imminent unlawful bodily

injury, sexual assault or detention by such other person, except that:

(a) a person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant under color of law, but excessive force may be resisted; and

(b) a person is not justified in using force if (i) he intentionally provokes unlawful action by another person in order to cause bodily injury or death to such other person, or (ii) he has entered into a mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action.

* * * * *

§ 604. Defense of Others.

A person is justified in using force upon another person in order to defend anyone else if (a) the person defended would be justified in defending himself, and (b) the person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

* * * * *

§ 605. Use of Force by Persons with Parental, Custodial or Similar Responsibilities.

The use of force upon another person is justified under any of the following circumstances:

(a) a parent, guardian or other person responsible for the care and supervision of a minor under eighteen years old, or teacher or other person responsible for the care and supervision of such a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline. The force used for this purpose may be such as is reasonable, whether or not it is "necessary" as required by section 607(1), but must not be designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement or gross degradation;

(b) a guardian or other person responsible for the care and supervision of an incompetent person, or a person acting at the direction of the guardian or responsible person, may use force upon the incompetent person for the purpose of safeguarding or promoting his welfare, including the prevention of his misconduct or, when he is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution. The force used for these purposes may be such as is reasonable, whether or not it is "necessary" as required by section 607(1), but must not be designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement or gross degradation;

(c) a person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place where others are assembled, or a person acting at the responsible person's direction, may use force to maintain order;

(d) a duly licensed physician, or a person acting at his direction, may use force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered (i) in an emergency, or (ii) with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or (iii) by order of a court of competent jurisdiction;

(e) a person may use force upon another person about to commit suicide or suffer serious bodily injury in order to prevent the death or serious bodily injury of such other person.

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§ 606. Use of Force in Defense of Premises and Property.

Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or upon premises, or to prevent an unlawful carrying away or damaging of property, if the person using such force first requests the person against whom such force is to be used to desist from his interference with the premises or property, except that:

(a) request is not necessary if (i) it would be useless to make the request, or (ii) it would be dangerous to make the request, or (iii) substantial damage would be done to the property sought to be protected before the request could effectively be made;

(b) the use of force is not justified to prevent or terminate a trespass if it will expose the trespasser to substantial danger of serious bodily injury.

* * * * *

§ 607. Limits on the Use of Force: Excessive Forces; Deadly Force.

(1) Excessive Force. A person is not justified in using more force than is necessary and appropriate under the circumstances.

(2) Deadly Force. Deadly force is justified in the following instances:

(a) when it is expressly authorized by a federal statute or occurs in the lawful conduct of war;

[(a) when it is authorized by a federal law or occurs in the necessary and appropriate conduct of war;]

(b) when used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence, except that the use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the person menaced. A person seeking to protect someone else must, before using deadly force, try to cause that person to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby; but (i) a public servant or an officer of a ship or aircraft justified in using force in the performance of his duties or a person justified in using force in his assistance need not desist from his efforts because of resistance or threatened resistance by or on behalf of the person against whom his action is directed, and (ii) no person is required to retreat from his dwelling, or place of work, unless he was the original aggressor or is assailed by a person who he knows also dwells or works there;

(c) When used by a person in possession or control of a dwelling or place of work, or a person who is licensed or privileged to be thereon, if such force is necessary to prevent commission of arson, burglary, robbery or a felony involving violence upon or in the dwelling or place of work or to prevent a person in flight immediately after committing a robbery or burglary from taking the fruits thereof from the dwelling or place of work, and the use of force other than deadly force for such purposes would expose anyone to substantial danger of serious bodily injury;

(d) when used by a public servant authorized to effect arrests or prevent escapes, if such force is necessary to effect an arrest or to prevent the escape from custody of a person who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that he is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay;

(e) when used by a guard or other public servant, if such force is necessary to prevent the escape of a prisoner from a detention facility unless he knows that the prisoner is not such a person as described in paragraph (d) above. A detention facility is any place used for the confinement, pursuant to a court order, of a person (i) charged with or convicted of an offense, or (ii) charged with being or adjudicated a youth offender or juvenile delinquent, or (iii) held for extradition, or (iv) otherwise confined pursuant to court order;

(f) when used by a public servant, if such force is necessary (i) to prevent overt and forceful acts of treason, insurrection or sabotage, or (ii) to prevent murder, manslaughter, aggravated assault, arson, robbery, burglary or kidnapping in the course of a riot if the deadly force is employed following reasonable notice of intent to employ deadly force, and does not carry with it an unreasonable danger to life of nonparticipants in the riot, and is employed pursuant to a decision or order of a public servant having supervisory authority over ten or more other public servants concerned in the suppression of the riot;

(g) when used by an officer of a ship or aircraft if such force is necessary to prevent overt and forceful acts of mutiny, after the participants in such acts against whom such force is to be used have been ordered to cease and given reasonable notice of intent to employ deadly force;

(h) when used by a duly licensed physician, or a person acting at his direction, if such force is necessary in order to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered (i) in an emergency, or (ii) with the consent of the patient or, if the patient is a minor or an incompetent person with the consent of his parent, guardian or other person entrusted with his care and supervision, or (iii) by order of a court of competent jurisdiction;

(i) when used by a person who is directed or authorized to use deadly force by a public servant or an officer of a ship or aircraft and who does not know that, if such is the case, the public servant or such officer is himself not authorized to use deadly force under the circumstances.

* * * * *

§ 608. Excuse.

(1) Mistake. A person's conduct is excused if he believes that the factual situation is such that his conduct is necessary and appropriate for any of the purposes which would establish a justification or excuse under this Chapter, even though his belief is mistaken, except that, if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense for which negligence or recklessness, as the case may be, suffices to establish culpability. Excuse under this subsection is a defense or affirmative defense according to which type of defense would be established had the facts been as the person believed them to be.

(2) Marginal Transgression of Limit of Justification. A person's conduct is excused if it would otherwise be justified or excused under this Chapter but is marginally hasty or excessive because he was confronted with an emergency precluding adequate appraisal or measured reaction.

* * * * *

§ 609. Mistake of Law.

Except as otherwise expressly provided, a person's good faith belief that conduct does not constitute a crime is an affirmative defense if he acted in reasonable reliance upon a statement of the law contained in:

(a) a statute or other enactment;

(b) a judicial decision, opinion, order or judgment;

(c) an administrative order or grant of permission; or

(d) an official interpretation of the public servant or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the crime.

* * * * *

§ 610. Duress.

(1) Affirmative Defense. In a prosecution for any offense it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another. In a prosecution for an offense which does not constitute a felony, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning of this section exists only if the force, threat or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.

(2) Defense Precluded. The defense defined in this section is not available to a person who, by voluntarily entering into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

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§ 619. Definitions for Chapter 6.

In this Chapter:

(a) "force" means physical action, threat or menace against another, and includes confinement;

(b) "deadly force" means force which a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Intentionally firing a firearm or hurling a destructive device in the direction of another person or at a moving vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force;

(c) "premises" means all or any part of a building or real property, or any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein;

(d) "dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a person's home or place of lodging.

* * * * *

Chapter 7. Temporal and Other Restraints on Prosecution

§ 701. Statute of Limitations.

(1) Bar. A prosecution shall be barred if it was commenced after the expiration of the applicable period of limitation.

(2) Limitation Periods Generally. Except as provided in subsections (3)–(5), prosecution must be commenced within the following periods after the offense:

(a) ten years for sections 1101 (Treason), 1102 (Participating in or Facilitating War Against the United States Within Its Territory) and 1112 (Espionage). Any prosecution commenced more than five years after the offense shall be dismissed if the defendant, on a motion addressed to the court, establishes by a preponderance of the evidence that the crime and his connection with it were known to responsible officials for more than one year prior to commencement of prosecution and that prosecution could, with reasonable diligence, have been commenced more than one year prior to its commencement;

(b) five years for all other felonies; and

(c) three years for all other offenses.

(3) Extended Period for Murder. Murder may be prosecuted at any time. Any prosecution commenced more than ten years after the offense shall be dismissed if the defendant, on a motion addressed to the court, establishes by a preponderance of the evidence that the crime and his connection with it were known to responsible officials for more than one year prior to commencement of prosecution and that prosecution could, with reasonable diligence, have been commenced more than one year prior to its commencement.

(4) Extended Period for Organized Crime and Official Cover-Ups. The period of limitation shall be ten years for any felony committed in the course of the operation of a criminal syndicate involving connivance of a public servant. A prosecution which is timely only by virtue of this subsection shall be dismissed as to any defendant who, on a motion addressed to the court, establishes by a preponderance of the evidence that he was not a leader of the criminal syndicate or a public servant conniving in any part of the criminal business charged, or that the crime and his connection with it were known to responsible officials other than conniving participants more than one year prior to commencement of prosecution and prosecution could, with reasonable diligence, have been commenced more than one year prior to its commencement. "Leader" means one who organizes, manages, directs, supervises or finances a criminal syndicate or knowingly employs violence or intimidation to promote or facilitate its criminal objects, or with intent to promote or facilitate its criminal objects, furnishes legal, accounting or other managerial assistance. A "criminal syndicate" is an association of ten or more persons for engaging on a continuing basis in felonies of the following character: illicit trafficking in narcotics or other dangerous substances, liquor, weapons, or stolen goods; gambling; prostitution; extortion; bribery; theft of property having an aggregated value of more than $100,000; engaging in a criminal usury business; counterfeiting; bankruptcy or insurance frauds by arson or otherwise; and smuggling. If more than ten persons are so associated, any group of ten or more associates is a "criminal syndicate" although it is or was only a part of a larger association. Association, within the meaning of this subsection, exists among persons engaged in carrying on the criminal operation although:

(a) associates may not know each other's identity;

(b) membership in the association may change from time to time; and

(c) associates may stand in a wholesaler-retailer or other arm's length relationship in an illicit distribution operation.

(5) Extended Period to Commence New Prosecution. If a timely complaint, indictment or information is dismissed for any error, defect, insufficiency or irregularity, a new prosecution may be commenced within three months after the dismissal even though the period of limitation has expired at the time of such dismissal or will expire within such three months.

(6) Commencement of Prosecution.

(a) A prosecution is commenced upon the filing of a complaint before a judicial officer of the United States empowered to issue a warrant or upon the filing of an indictment or information. Commencement of prosecution for one offense shall be deemed commencement of prosecution for any included offenses.

(b) A prosecution shall be deemed to have been timely commenced notwithstanding that the period of limitation has expired:

(i) for an offense included in the offense charged, if as to the offense charged the period of limitation has not expired or there is no such period, and there is, after the evidence on either side is closed at the trial, sufficient evidence to sustain a conviction of the offense charged; or

(ii) for any offense to which the defendant enters a plea of guilty or nolo contendere.

* * * * *

§ 702. Entrapment.

(1) Affirmative Defense. It is an affirmative defense that the defendant was entrapped into committing the offense.

(2) Entrapment Defined. Entrapment occurs when a law enforcement agent induces the commission of an offense, using persuasion or other means likely to cause normally law-abiding persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(3) Law Enforcement Agent Defined. In this section "law enforcement agent" includes personnel of state and local law enforcement agencies as well as of the United States, and any person cooperating with such an agency.

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§ 703. Prosecution for Multiple Related Offenses.

(1) Multiple Related Charges. When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense.

(2) Limitation on Separate Trials. Unless otherwise ordered by the court to promote justice, a defendant shall not be subject to separate trials for multiple offenses (a) based on the same conduct, (b) arising from the same criminal episode, or (c) based on a series of acts or omissions motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or persons or their property, if such offenses are within the jurisdiction of the court and known to the United States Attorney at the time the defendant is arraigned on the first indictment or information.

* * * * *

§ 704. When Prosecution Barred by Former Prosecution for Same Offense.

A prosecution is barred by a former prosecution of the defendant if it is for violation of the same statute and is based upon the same facts as the former prosecution, and:

(a) the former prosecution resulted in an acquittal by a finding of not guilty or a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of an included offense is an acquittal of the inclusive offense, although the conviction is subsequently set aside;

(b) the former prosecution was terminated by a final order or judgment for the defendant, which has not been set aside, reversed or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense;

(c) the former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, or a verdict or plea of guilty which has not been set aside and which is capable of supporting a judgment; or

(d) the former prosecution was terminated after the jury was impaneled and sworn or, in the case of a trial by the court, after the first witness was sworn, except that termination under the following circumstances does not bar a subsequent prosecution:

(i) the defendant consented to the termination or waived, by motion to dismiss or otherwise, his right to object to the termination;

(ii) it was physically impossible to proceed with the trial in conformity with law; or there was a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or prejudicial conduct, in or outside the

courtroom, made it impossible to proceed with the trial without injustice to either the defendant or the government; or the jury was unable to agree upon a verdict; or false statements of a juror on voir dire prevented a fair trial, provided that the prosecution did not bring about any of the foregoing circumstances with intent to cause termination of the trial.

* * * * *

§ 705. When Prosecution Barred by Former Prosecution for Different Offense.

A prosecution is barred by a former prosecution of the defendant although it is for a violation of a different statute or is based on facts different from those in the former prosecution, if:

(a) the former prosecution resulted in an acquittal or in a conviction as defined in section 704 (a) and (c) or was a barring termination under section 704(d) and the subsequent prosecution is for any offense for which the defendant should have been tried in the first prosecution under section 703(2) unless the court ordered a separate trial of the charge of such offense; or

(b) the former prosecution was terminated by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

* * * * *

§ 706. Prosecutions Under Other Federal Codes.

Sections 704 and 705 shall apply to prosecutions and former prosecutions under the Uniform Code of Military Justice, the District of Columbia Code, the Canal Zone Code, the criminal laws of Puerto Rico and of the territories and possessions of the United States, except that "violation of the same statute" in section 704 shall be construed as violation of a cognate statute.

* * * * *

§ 707. Former Prosecution in Another Jurisdiction: When a Bar.

When conduct constitutes a federal offense and an offense under the law of a local government or a foreign nation, a prosecution by the local government or foreign nation is a bar to a subsequent federal prosecution under either of the following circumstances:

(a) the first prosecution resulted in an acquittal or a conviction as defined in section 704 (a) and (c) or was a barring termination under section 704(d) and the subsequent prosecution is based on the same conduct or arose from the same criminal episode, unless (i) the law defining the offense of which the defendant was formerly convicted or acquitted is intended to prevent a substantially different harm or evil from the law defining the offense for which he is subsequently prosecuted, or (ii) the second offense was not consummated when the first trial began; or

(b) the first prosecution was terminated by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition which must be established for conviction of the offense of which the defendant is subsequently prosecuted;

unless the Attorney General of the United States certifies that the interests of the United States would be unduly harmed if the federal prosecution is barred. In this section, "local" means of or pertaining to any of the 50 states of the United States or any political unit within any of the 50 states.

* * * * *

§ 708. Subsequent Prosecution by a Local Government: When Barred.

When conduct constitutes a federal offense and an offense under local law, a federal prosecution is a bar to subsequent prosecution by a local government under either of the following circumstances.

(a) the federal prosecution resulted in an acquittal or a conviction as defined in section 704 (a) and (c) or was a barring termination under section 704(d) and the subsequent prosecution is based on the same conduct or arose from the same criminal episode, unless (i) the statute defining the offense of which the defendant was formerly convicted or acquitted is intended to prevent a substantially different harm or evil from the law defining the offense for which he is subsequently prosecuted; or (ii) the second offense was not consummated when the first trial began; or

(b) the federal prosecution was terminated by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

In this section, "local" has the meaning prescribed in section 707.

* * * * *

§ 709. When Former Prosecution Is Invalid or Fraudulently Procured.

A former prosecution is not a bar within the meaning of sections 704, 705, 706, 707 and 708 under any of the following circumstances:

(a) it was before a court which lacked jurisdiction over the defendant or the offense;

(b) it was for a lesser offense than could have been charged under the facts of the case, and the prosecution was procured by the defendant, without the knowledge of the appropriate prosecutor, for the purpose of avoiding prosecution for a greater offense and the possible consequences thereof; or

(c) it resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a writ of habeas corpus, coram nobis or similar process.

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Part B. Specific Offenses

Chapter 10. Offenses of General Applicability

§ 1001. Criminal Attempt.

(1) Offense. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A substantial step is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

(2) Complicity. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under section 401 were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime, for example, because he has a defense of justification or entrapment.

(3) Grading. Criminal attempt is an offense of the same class as the offense attempted, except that (a) an attempt to commit a Class A felony shall be a Class B felony, and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the crime, an attempt to commit a Class B felony shall be a Class C felony and an attempt to commit a Class C felony shall be a Class A misdemeanor.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section as prescribed in section 203.

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§ 1002. Criminal Facilitation.

(1) Offense. A person is guilty of criminal facilitation if he knowingly provides substantial assistance to a person intending to commit a felony, and that person, in fact, commits the crime contemplated, or a like or related felony, employing the assistance so provided. The ready lawful availability from others of the goods or services provided by a defendant is a factor to be considered in determining whether or not his assistance was substantial. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the felony facilitated or related statutes.

(2) Defense Precluded. Except as otherwise provided, it is no defense to a prosecution under this section that the person whose conduct the defendant facilitated has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

(3) Grading. Facilitation of a Class A felony is a Class C felony. Facilitation of a Class B or Class C felony is a Class A misdemeanor.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the felony facilitated is a federal felony.

§ 1003. Criminal Solicitation.

(1) Offense. A person is guilty of criminal solicitation if he commands, induces, entreats, or otherwise attempts to persuade another person to commit a particular felony, whether as principal or accomplice with intent to promote or facilitate the commission of that felony, and under circumstances strongly corroborative of that intent, and the person solicited commits an overt act in response to the solicitation.

(2) Defense. It is a defense to a prosecution under this section that, if the criminal object were achieved, the defendant would be a victim of the offense or the offense is so defined that his conduct would be inevitably incident to its commission or he otherwise would not be guilty under the statute defining the offense or as an accomplice under section 401.

(3) Defense Precluded. It is no defense to a prosecution under this section that the person solicited could not be guilty of the offense because of lack of responsibility or culpability, or other incapacity or defense.

(4) Grading. Criminal solicitation is an offense of the class next below that of the crime solicited.

(5) Jurisdiction. There is federal jurisdiction over an offense defined in this section as prescribed in section 203.

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§ 1004. Criminal Conspiracy.

(1) Offense. A person is guilty of conspiracy if he agrees with one or more persons to engage in or cause the performance of conduct which, in fact, constitutes a crime or crimes, and any one or more of such persons does an act to effect an objective of the conspiracy. The agreement need not be explicit but may be implicit in the fact of collaboration or existence of other circumstances.

(2) Parties to Conspiracy. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.

(3) Duration of Conspiracy. A conspiracy

shall be deemed to continue until its objectives are accomplished, frustrated or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed to have been abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.

(4) Defense Precluded. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

(5) Liability as Accomplice. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in section 401.

(6) Grading. Conspiracy shall be subject to the penalties provided for attempt in section 1001(3).

(7) Jurisdiction. There is federal jurisdiction over an offense defined in this section as prescribed in section 203.

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§ 1005. General Provisions Regarding Sections 1001 to 1004.

(1) Not To Apply to One Another. An offense defined in sections 1001 to 1004 shall not apply to another offense defined in sections 1001 to 1004.

(2) Attempt and Conspiracy Offenses Outside This Chapter. Whenever "attempt" or "conspiracy" is made an offense outside this Chapter, it shall mean attempt or conspiracy, as the case may be, as defined in this Chapter.

(3) Renunciation Defense.

(a) Attempt. In a prosecution under section 1001 it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

(b) Solicitation and Conspiracy. In a prosecution under section 1003 or 1004 it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the crime or crimes contemplated by the conspiracy, as the case may be.

(c) "Voluntary and Complete" Defined. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (i) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime, or (ii) a decision to postpone the criminal conduct until another time or to substitute another victim or another but similar objective.

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§ 1006. Regulatory Offenses.

(1) Section Applicable When Invoked by Another Statute. This section shall govern the use of sanctions to enforce a penal regulation whenever and to the extent that another statute so provides. The limits on a sentence to pay a fine provided in Part C of this Code shall not apply if the other statute fixes a different limit. "Penal regulation" means any requirement of a statute, regulation, rule, or order which is enforcible by criminal sanctions, forfeiture or civil penalty.

(2) General Scheme of Regulatory Sanctions.

(a) Nonculpable Violations. A person who violates a penal regulation is guilty of an infraction. Culpability as to conduct or the existence of the penal regulation need not be proved under this paragraph, except to the extent required by the penal regulation.

(b) Willful Violations. A person who willfully violates a penal regulation is guilty of a Class B misdemeanor. Willfulness as to both the conduct and the existence of the penal regulation is required.

(c) Flouting Regulatory Authority. A person is guilty of a Class A misdemeanor if he flouts regulatory authority by willful and persistent disobedience of any body of related penal regulations.

(3) Dangerous Violations of Prophylactic Regulations. A person is guilty of a Class A misdemeanor if he willfully violates a penal regulation and thereby, in fact, creates a substantial likelihood of harm to life, health, or property, or of any other harm against which the penal regulation was directed.

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§ 1101. Treason.

A national of the United States is guilty of treason, a Class A felony, if, when the United States is engaged in international war, he participates in or facilitates military activity of the enemy with intent to aid the enemy or prevent or obstruct a victory of the United States. It is a defense to prosecution under this section that the defendant believed that he was not a national of the United States and such belief was not recklessly held or arrived at. "National of the United States" means a person who is a citizen of the United States or is domiciled in the United States, except that a person shall not be deemed a national solely because of domicile if by treaty or international law such domicile does not entail allegiance to the United States.

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§ 1102. Participating in or Facilitating War Against the United States Within Its Territory.

(1) Offense. A person is guilty of a Class A felony if, within the territory of the United States when the United States is engaged in international war, he participates in or facilitates military activity of the enemy with intent to aid the enemy or prevent or obstruct a victory of the United States.

(2) Defense. It is an affirmative defense to a prosecution under this section that the defendant acted as a member of the armed service of the enemy in accordance with the laws of war and that he was not or reasonably believed he was not a national of the United States, as defined in section 1101.

* * * * *

§ 1103. Armed Insurrection.

(1) Engaging in Armed Insurrection. A person is guilty of a Class B felony if he engages in an armed insurrection with intent to overthrow, supplant or change the form of the government of the United States or of a state.

(2) Leading Armed Insurrection. A person is guilty of a Class A felony if, with intent to overthrow, supplant or change the form of the government of the United States or of a state, he directs or leads an armed insurrection, or organizes or provides a substantial portion of the resources of an armed insurrection which is in progress or is impending or any part of such insurrection involving 100 persons or more.

(3) Advocating Armed Insurrection. A person is guilty of a Class C felony if, with intent to induce or otherwise cause others to engage in armed insurrection in violation of subsection (1), he:

(a) advocates the desirability or necessity of armed insurrection under circumstances in which there is substantial likelihood his advocacy will imminently produce a violation of subsection (1) or (2); or

(b) organizes an association which engages in the advocacy prohibited in paragraph (a), or, as an active member of such association, facilitates such advocacy.

(4) Attempt; Conspiracy; Facilitation; Solicitation. A person shall not be convicted under sections 1001 through 1004;

(a) with respect to subsection (3)(a) unless he engaged in conduct under circumstances in which there was a substantial likelihood that it would imminently produce a violation of subsection (1) or (2); or

(b) with respect to subsection (1), (2) or (3)(b) if his conduct constituted no more than an attempt or conspiracy to violate subsection (3)(a) under circumstances in which there was no substantial likelihood that such attempt or conspiracy would imminently produce a violation of this section.

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§ 1104. Para-Military Activities.

(1) Offense. A person is guilty of an offense if he knowingly engages in, or intentionally facilitates, para-military activities not authorized by law. "Para-military activities" means acquisition, caching, use, or training in the use, of weapons for political purposes by or on behalf of an association of ten or more persons. Activities authorized by law include activities of the armed forces of the United States or of a state, including reserves and the National Guard, and federal, state or local law enforcement operations.

(2) Grading. The offense is a Class B felony if the actor organizes, directs, leads or provides a substantial portion of the resources for para-military activities involving an association of 100 or more persons. Otherwise the offense is a Class C felony.

* * * * *

§ 1105. Sabotage.

(1) Wartime Sabotage. A person is guilty of sabotage if, in time of war and with intent to impair the military effectiveness of the United States, he:

(a) damages or tampers with anything of direct military significance or a vital public facility as defined in section 1709(c);

(b) defectively makes or repairs anything of direct military significance;

(c) delays or obstructs transportation, communication or power service of or furnished to the defense establishment; or

(d) causes or creates a risk of catastrophe as defined in section 1704(4) by any means listed in section 1704(1).

Sabotage under this subsection is a Class A felony if it jeopardizes life or the success of a combat operation. Otherwise it is a Class B felony.

(2) Other Catastrophic Sabotage. A person is guilty of a Class A felony if, whether or not in time of war, with intent to impair the military effectiveness of the United States, he impairs the efficacy of military missiles, space vessels, satellites, nuclear weaponry, early warning systems, or other means of defense or retaliation against catastrophic enemy attack.

(3) Definitions. In this section:

(a) "defense establishment" means the defense establishment of the United States or of a nation at war with any nation with which the United States is at war;

(b) "anything of direct military significance" means armament or anything else peculiarly suited for military use, and includes such a thing in course of manufacture, transport, or other servicing or preparation for the defense establishment.

* * * * *

§ 1106. Recklessly Impairing Military Effectiveness.

A person is guilty of a Class C felony if, in reckless disregard of a substantial risk of seriously impairing the military effectiveness of the United States, he intentionally engages, in time of war, in the conduct prohibited in paragraphs (a) through (d) of

section 1105(1), or, whether or not in time of war, in the conduct prohibited in section 1105(2).

* * * * *

§ 1107. Intentionally Impairing Defense Functions.

A person is guilty of a Class C felony if, with intent to impair the military effectiveness of the United States, he engages in the conduct prohibited in paragraphs (a) through (d) of section 1105(1) and thereby causes a loss which is, in fact, in excess of $5,000.

* * * * *

§ 1108. Avoiding Military Service Obligations.

(1) Offense. A person is guilty of a Class C felony if, in violation of the regulatory act and with intent to avoid service in the armed forces of the United States or the performance of civilian work in lieu of induction into the armed forces, he:

(a) fails to register;

(b) fails to report for induction into the armed forces;

(c) refuses induction into the armed forces; or

(d) refuses or fails to perform, or avoids the performance of, civilian work required of him.

"Regulatory act" means Selective Service Act of 1967, or any other statute applicable to the recruiting of personnel for the armed forces, and any rules or regulations issued pursuant thereto.

(2) Duration of Offense. An offense under subsection (1)(a) is deemed to continue until the actor is no longer under a duty to register as provided in the regulatory act.

* * * * *

§ 1109. Obstruction of Recruiting or Induction into Armed Forces.

A person is guilty of a Class C felony if:

(a) in time of war, he intentionally and substantially obstructs the recruiting service by physical interference or obstacle or solicits another to violate section 1108; or

(b) with intent to avoid or delay his or another's service in the armed forces of the United States, he employs force, threat or deception to influence a public servant in his official action.

"Recruiting service" means a voluntary enlistment system, the Selective Service System or any other system for obtaining personnel for the armed forces of the United States.

* * * * *

§ 1110. Causing Insubordination in the Armed Forces.

(1) Offense. A person is guilty of an offense if he intentionally causes insubordination, mutiny or refusal of duty by a member of the armed forces of the United States.

(2) Grading. The offense is a Class B felony if committed in time of war and it consists of (a) causing mutiny, or (b) causing insubordination or refusal of duty of ten or more persons, or (c) causing insubordination or refusal of duty in or directly relating to a combat operation. Otherwise it is a Class C felony.

* * * * *

§ 1111. Impairing Military Effectiveness by False Statement.

(1) Offense. A person is guilty of an offense if, in time of war and with intent to aid the enemy or to prevent or obstruct the success of military operations of the United States, he knowingly makes or conveys a false statement of fact concerning losses, plans, operations or conduct of the armed forces of the United States or those of the enemy, civilian or military catastrophe, or other report likely to affect the strategy or tactics of the armed forces of the United States or likely to create general panic or serious disruption.

(2) Grading. The offense is a Class B felony if it causes serious impairment of the military effectiveness of the United States. Otherwise it is a Class C felony.

* * * * *

§ 1112. Espionage.

(1) Offense. A person is guilty of espionage if he:

(a) reveals national security information to a foreign power or agent thereof with intent that such information be used in a manner prejudicial to the safety or interest of the United States; or

(b) in time of war, elicits, collects or records, or publishes or otherwise communicates national security information with intent that it be communicated to the enemy.

(2) Grading. Espionage is a Class A felony if committed in time of war or if the information directly concerns military missiles, space vessels, satellites, nuclear weaponry, early warning systems or other means of defense or retaliation against catastrophic enemy attack, war plans, or any other major element of defense strategy, including security intelligence. Otherwise espionage is a Class B felony.

(3) Attempt and Conspiracy. Attempted espionage and conspiracy to commit espionage are punishable equally with the completed offense. Without limiting the applicability of section 1001 (Criminal Attempt), any of the following acts is sufficient to constitute a substantial step under section 1001 toward commission of espionage under subsection (1)(a): obtaining, collecting, or eliciting national security information or entering a restricted area to obtain such information.

(4) Definitions. In this section:

(a) "national security information" means information regarding:

(i) the military capability of the United States or of a nation at war with a nation with which the United States is at war;

(ii) military or defense planning or operations of the United States;

(iii) military communications, research or development of the United States;

(iv) restricted data as defined in 42 U.S.C. § 2014 (relating to atomic energy);

(v) security intelligence of the United States, including information relating to intelligence operations, activities, plans, estimates, analyses, sources and methods;

(vi) classified communications information as defined in section 1114;

(vii) in time of war, any other information relating to national defense which might be useful to the enemy;

(b) "military" connotes land, sea or air military and both offensive and defensive measures;

(c) "foreign power" includes any foreign government, faction, party, or military force, or persons purporting to act as such, whether or not recognized by the United States, any international organization, and any armed insurrection within the United States.

(d) "agent" means representative, officer, agent or employee or, in case of a nation, a subject or citizen.

* * * * *

§ 1113. Mishandling National Security Information.

A person is guilty of a Class C felony if, in reckless disregard of potential injury to the national security of the United States, he:

(a) knowingly reveals national security information to anyone not authorized to receive it;

(b) violates a known duty, to which he is subject as a public servant, as to custody, care or disposition of national security information or as to reporting an unlawful removal, delivery, loss, destruction, or compromise of the security of such information; or

(c) knowingly having possession of a document or thing containing national security information, fails to deliver it on demand to a public servant of the United States entitled to receive it.

"National security information" has the meaning prescribed in section 1112(4).

* * * * *

§ 1114. Misuse of Classified Communications Information.

(1) Offense. A person is guilty of a Class C felony if he knowingly:

(a) communicates classified communications information or otherwise makes it available to an unauthorized person;

(b) publishes classified communications information; or

(c) uses classified communcations information in a manner prejudicial to the safety or interest of the United States.

(2) Attempt and Conspiracy. Attempt and conspiracy to violate this section are punishable equally with the completed offense.

(3) Definitions. In this section:

(a) "communications information" means information:

(i) regarding the nature, preparation or use of any code, cipher or cryptographic system of the United States or of a foreign power;

(ii) regarding the design, construction, use, maintenance or repair of any device, apparatus or appliance used or prepared or planned for use by the United States or a foreign power for cryptographic or intelligence surveillance purposes;

(iii) regarding the intelligence surveillance activities of the United States or a foreign power; or

(iv) obtained by the process of intelligence surveillance from the communications of a foreign power;

(b) communications information is "classified" if, at the time the conduct is engaged in, the communications information is, for reasons of national security, specifically designated by a United States government agency for limited or restricted dissemination or distribution;

(c) "code," "cipher" and "cryptographic system" include, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance or means of communications;

(d) "intelligence surveillance" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

(e) "unauthorized person" means a person who, or agency which, is not authorized to receive communications information by the President or by the head of a United States government agency which is expressly designated by the President to engage in intelligence surveillance activities for the United States;

(f) "foreign power" has the meaning prescribed in section 1112(4).

(4) Congressional Use. This section shall not apply to the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States or joint committee thereof. Inapplicability under this subsection is a defense.

* * * * *

§ 1115. Communication of Classified Information by Public Servant.

(1) Offense. A public servant or former public servant is guilty of a Class C felony if he communicates classified information to an agent or representative of a foreign government or to an officer or member of an organization defined in 50 U.S.C. § 782(5) (communist organizations). "Classified information" means information the dissemination of which has been restricted by clas-

sification by the President or by the head of a United States government agency with the approval of the President as affecting the security of the United States.

(2) Defenses.

(a) It is a defense to prosecution under this section that the public servant or former public servant was specifically authorized by the President or by the head of the United States government agency which he served to make the communication prohibited by this section.

(b) It is an affirmative defense to a prosecution under this section that the former public servant obtained the information in a manner unrelated to his having been a public servant or, if not so obtained, it was not classified while he was a public servant.

* * * * *

§ 1116. Prohibited Recipients Obtaining Information.

An agent or representative of a foreign government or an officer or member of an organization defined in 50 U.S.C. § 782(5) (communist organizations) is guilty of a Class C felony if he:

(a) knowingly obtains classified information, as defined in section 1115; or

(b) solicits another to commit a crime defined in sections 1112, 1113, 1114 or 1115.

* * * * *

§ 1117. Wartime Censorship of Communications.

A person is guilty of a Class C felony if, in time of declared war and in violation of a statute of the United States, or regulation, rule or order issued pursuant thereto, he:

(a) knowingly communicates or attempts to communicate with the enemy or an ally of the enemy;

(b) knowingly evades or attempts to evade submission to censorship of any communication passing or intended to pass between the United States and a foreign nation;

(c) uses any code or device with intent to conceal from censorship the meaning of a communication described in paragraphs (a) and (b); or

(d) uses any mode of communication knowing it is prohibited by such statute or regulation, rule or order issued pursuant thereto.

* * * * *

§ 1118. Harboring or Concealing National Security Offenders.

A person is guilty of a Class C felony if he knowingly harbors or conceals another who has committed or is about to commit treason (section 1101), sabotage (section 1005), espionage (section 1112), or murder of the President or Vice President (section 1601).

* * * * *

§ 1119. Aiding Deserters.

(1) Offense. A person is guilty of an offense if he intentionally assists a member of the armed forces of the United States to desert or attempt to desert or, knowing that a member of the armed forces has deserted, he engages in the conduct prohibited in paragraphs (a) through (d) of subsection (1) of section 1303 with intent to aid the other to avoid discovery or apprehension.

(2) Grading. The offense is a Class C felony if it is committed in time of war. Otherwise it is a Class A misdemeanor.

§ 1120. Aiding Escape of Prisoner of War or Enemy Alien.

A person is guilty of a Class C felony if he intentionally:

(a) facilitates the escape of a prisoner of war held by the United States or any of its allies or of a person apprehended or detained as an enemy alien by the United States or any of its allies; or

* * * * *

(b) interferes with, hinders, delays or prevents the discovery or apprehension of a prisoner of war or an enemy alien who has escaped from the custody of or detention by the United States or any of its allies, by engaging in the conduct prohibited in paragraphs (a) through (d) of subsection (1) of section 1303.

* * * * *

§ 1121. Offenses Relating to Vital Materials.

A person is guilty of a Class B felony if, with intent to injure the United States or to secure an advantage to a foreign power in the event of a military confrontation with the United States, he engages in conduct prohibited or declared to be unlawful by 42 U.S.C. §§ 2077, 2122, 2131, 2276 (relating to atomic engery) or 50 U.S.C. § 167c (relating to helium). "Foreign power" has the meaning prescribed in section 1112(4).

* * * * *

§ 1122. Person Trained in Foreign Espionage or Sabotage.

A person is guilty of a Class C felony if knowingly:

(a) fails to register with the Attorney General as required by 50 U.S.C. § 851 (relating to persons trained in a foreign espionage or sabotage system); or

(b) makes a false written statement in a registration statement required by 50 U.S.C. § 851, when the statement is material and he does not believe it to be true.

* * * * *

§ 1129. Time of War; Culpability.

Time of war or wartime, for the purposes of this Chapter, means time when the United States is at war. Culpability as to the state of war need not be proved.

* * * * *

Chapter 12. Foreign Relations, Immigration and Nationality

FOREIGN RELATIONS AND TRADE

§ 1201. Military Expeditions Against Friendly Powers.

(1) Offense. A person is guilty of a Class C felony if he:

(a) launches an air attack from the United States against a friendly power;

(b) organizes a military expedition assembled in the United States to engage in armed hostilities against a friendly power; or

(c) within the United States, joins or knowingly provides substantial resources or transportation from the United States to a military expedition described in paragraph (b).

(2) Definitions. In this section:

(a) "friendly power" means a foreign government, whether or not recognized by the United States, or a faction engaged in armed hostilities, with which the United States is at peace;

(b) "armed hostilities" means international war or civil war, rebellion or insurrection.

* * * * *

§ 1202. Conspiracy to Commit Offenses Against a Friendly Nation.

A person is guilty of a Class C felony if he agrees with another to engage in conduct hostile to a friendly nation within the territory of any foreign nation and if a party to the agreement engages in conduct within the United States constituting a substantial step toward effecting the objective of the agreement. "Conduct hostile to a friendly nation" means:

(a) gathering information relating to the national defense of a friendly nation while such nation is engaged in international war, with intent to reveal such information to the injury of such nation or to aid its enemy;

(b) intentionally killing a public servant of a friendly nation on account of his official duties; or

(c) engaging in theft or intentional destruction of or damage to or tampering with property belonging to or in the custody of the government of a friendly nation, or the intentional destruction of or damage to or tampering with a vital public facility located within the territory of a friendly nation, provided the conduct under this paragraph would constitute a felony if the property belonged to the United States or was a vital public facility as defined in section 1709(c). "Friendly nation" means a nation with which the United States is at peace.

* * * * *

§ 1203. Unlawful Recruiting for and Enlistment in Foreign Armed Forces.

(1) Offense. A person is guilty of a Class A misdemeanor if, within the United States, he:

(a) enters or agrees to enter the armed forces of a foreign nation; or

(b) recruits or attempts to recruit another for the armed forces of a foreign nation.

(2) Defense. It is an affirmative defense to a prosecution under this section that the conduct was authorized by statute or a regulation, rule, or order issued pursuant thereto.

* * * * *

§ 1204. International Transactions.

(1) Offense. A person is guilty of a Class C felony if he engages in conduct prohibited or declared to be unlawful by a statute listed in subsection (2), with intent to conceal a transaction from a government agency authorized to administer the statute or with knowledge that his unlawful conduct substantially obstructs, impairs or perverts the administration of the statute or any government function.

(2) Statutes. The following statutes are covered by subsection (1):

(a) 12 U.S.C. § 95a or 50 U.S.C. App. § 5(b) (relating to embargo on gold bullion and regulation of foreign-owned property);

(b) 22 U.S.C. § 447(c) (relating to financial and arms transactions with belligerents);

(c) 22 U.S.C. § 287c(b) (relating to support of United Nations Security Council resolutions);

(d) 50 U.S.C. App. § 3(a) (relating to unlicensed trading with the enemy);

(e) 50 U.S.C. App. § 2405(b) (relating to exports to communist-dominated nations under Export Control Act).

* * * * *

§ 1205. Orders prohibiting Departure of Vessels and Aircraft.

A person is guilty of a Class C felony if he knowingly causes the departure from the United States of a vessel or aircraft in violation of an order prohibiting its departure. "Order" means an order issued pursuant to a federal statute designed to restrict the delivery of the vessel or aircraft, or the supply of goods or services, to a foreign nation engaged in armed hostilities.

* * * * *

§ 1206. Failure of Foreign Agents to Register.

A person who fails to register as a foreign agent as required by a federal statute is guilty of a Class C felony if he surreptitiously engages in the activity with respect to which the registration requirement is imposed or attempts to conceal the fact he is a foreign agent.

* * * * *

§ 121. Unlawful Entry Into the United States.

(1) Offense. An alien is guilty of an offense if he intentionally:

(a) enters the United States at a time or place other than as designated pursuant to a federal statute;

(b) eludes examination or inspection by immigration officers;

(c) obtains entry to the United States by deception; or

(d) enters the United States after having

been arrested and deported or excluded and deported from the United States.

(2) Grading. The offense is a Class C felony if:

(a) entry is obtained by the use of an entry document or certificate of naturalization or citizenship which the actor knows is forged or counterfeit or belongs or pertains to another; or

(b) the offense constitutes a violation of subsection (1)(d) and the alien previously has been arrested and deported because he was convicted of a felony involving moral turpitude. Otherwise the offense is a Class A misdemeanor.

(3) Defense. It is an affirmative defense to a prosecution under subsection (1)(d) that:

(a) the Attorney General had expressly consented to the alien's reapplying for admission to the United States prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory; or

(b) with respect to an alien previously excluded and deported, he was not required by a federal statute to obtain such advance consent.

(4) Presumption. In a prosecution under subsection (1)(d), an alien who is found in the United States after having been deported is presumed to have intentionally reentered the United States.

* * * * *

§ 1222. Unlawfully Bringing Aliens Into the United States.

(1) Offense. A person is guilty of an offense if he intentionally brings into or lands in the United States another who is an alien, including an alien crewman, not admitted to the United States by an immigration officer or not lawfully entitled to enter or reside within the United States.

(2) Grading. The offense is a Class C felony if the actor engages in the prohibited conduct as consideration for a thing of pecuniary value or with knowledge the alien intends to commit a felony in the United States. Otherwise it is a Class A misdemeanor.

* * * * *

§ 1233. Hindering Discovery of Illegal Entrants.

(1) Offense. A person is guilty of an offense if, with intent to hinder, delay or prevent the discovery or apprehension of another who is an alien, including an alien crewman, and who has unlawfully entered or is unlawfully within the United States, he:

(a) harbors or conceals such alien;

(b) provides such alien with a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension;

(c) conceals, alters, mutilates or destroys a document or thing; or

(d) warns such alien of impending discovery or appprehension.

(2) Grading. The offense is a Class C felony if the actor engages in the conduct:

(a) as consideration for a thing of pecuniary value;

(b) with intent to receive consideration for placing such alien in the employ of another;

(c) with intent such alien be employed or continued in the employ of an enterprise operated for profit; or

(d) with knowledge such alien intends to commit a felony in the United States.

Otherwise the offense is a Class A misdemeanor.

* * * * *

§ 1224. Obtaining Naturalization or Evidence of Citizenship by Deception.

A person is guilty of a Class C felony if he intentionally obtains by deception United States naturalization, registration in the alien registry of the United States, or the issuance of a certificate of United States naturalization or citizenship for or to any person not entitled thereto.

* * * * *

§ 1225. Fradulent Acquisition or Improper Use of Passports.

A person is guilty of a Class C felony if:

(a) he intentionally obtains the issuance of a United States passport by deception; or

(b) with intent to obstruct, impair or pervert a government function which is, in fact, federal, he uses a United States passport the issuance of which was obtained by deception or which was issued for the use of another.

* * * * *

§ 1229. Definitions for Sections 1221 to 1225.

(1) "Alien" and Related Terms. The definitions of "alien", "application for admission", "crewman", "entry", "immigration officer", and "United States" provided in 8 U.S.C. § 1101 shall apply to sections 1221 to 1223.

(2) "Deception". In sections 1221, 1224 and 1225, "deception" means:

(a) creating or reinforcing a false impression as to fact, law, status, value, intention or other state of mind by false written statement, impersonation or the presentation of a forged or counterfeit writing; or

(b) preventing a public servant from acquiring information which would affect his official action.

* * * * *

Chapter 13. Integrity and Effectiveness of Government Operations

PHYSICAL OBSTRUCTION OF GOVERNMENT FUNCTION AND RELATED OFFENSES

§ 1301. Physical Obstruction of Government Function.

(1) Offense. A person is guilty of a Class A misdemeanor if, by physical interference or obstacle, he intentionally obstructs, impairs or perverts the administration of law or other government function.

(2) Applicability to Arrest. This section does not apply to the conduct of a person obstructing arrest of himself; but such conduct is subject to section 1302. This section does apply to the conduct of a person obstructing arrest of another. Inapplicability under this subsection is a defense.

(3) Defense. It is a defense to a prosecution under this section that the administration of law or other government function was not lawful; but it is no defense that the defendant mistakenly believed that the administration of law or other government function was not lawful. For the purposes of this section the conduct of a public servant acting in good faith and under color of law in the execution of a warrant or other process for arrest or search and seizure shall be deemed lawful.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the government function is a federal government function.

* * * * *

§ 1302. Preventing Arrest or Discharge of Other Duties.

(1) Offense. A person is guilty of a Class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty.

(2) Defense. It is a defense to a prosecution under this section that the public servant was not acting lawfully; but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the public servant is a federal public servant or the official duty is a federal official duty.

* * * * *

§ 1303. Hindering Law Enforcement.

(1) Offense. A person is guilty of hindering law enforcement if he intentionally interferes with, hinders, delays or prevents the discovery, apprehension, prosecution, conviction or punishment of another for an offense by:

(a) harboring or concealing the other;

(b) providing the other with a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension;

(c) concealing, altering, mutilating or destroying a document or thing, regardless of its admissibility in evidence; or

(d) warning the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law.

(2) Grading. Hindering law enforcement is a Class C felony if the actor:

(a) knows of the conduct of the other and such conduct constitutes a Class A or Class B felony; or

(b) knows that the other has been charged with or convicted of a crime and such crime is a Class A or Class B felony. Otherwise hindering law enforcement is a Class A misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the principal offense is a federal offense.

* * * * *

§ 1304. Aiding Consummation of Crime.

(1) Offense. A person is guilty of aiding consummation of crime if he intentionally aids another to secret, disguise, or convert the proceeds of a crime or otherwise profit from a crime.

(2) Grading. Aiding consummation of a crime:

(a) is a Class C felony if the actor knows of the conduct of the other and such conduct constitutes a Class A or Class B felony; and

(b) is a Class A misdemeanor if the actor knows of the conduct of the other and such conduct constitutes a Class C felony or a Class A misdemeanor.

Otherwise aiding consummation of a crime is a misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the principal crime is a federal crime.

* * * * *

§ 1305. Failure to Appear After Release; Bail Jumping.

(1) Offense. A person is guilty of an offense if, after having been released pursuant to the Bail Reform Act of 1966, upon condition or undertaking that he will subsequently appear before a court or judicial officer as required, he fails to appear as required.

(2) Grading. The offense is a Class C felony if the actor was released in connection with a charge of felony or while awaiting sentence or pending appeal or certiorari after conviction of any crime. Otherwise it is a Class A misdemeanor.

(3) Defense. It is an affirmative defense to a prosecution under this section that the defendant was prevented from appearing at the specified time and place by circumstances to the creation of which he did not contribute in reckless disregard of the requirement to appear.

* * * * *

§ 1306. Escape.

(1) Offense. A person is guilty of escape if, without lawful authority, he removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period.

(2) Grading. Escape is a Class felony if the actor uses a firearm, destructive device or other dangerous weapon in effecting or attempting to effect his removal from official detention. Escape is a Class C felony if (a) the actor uses any other force or threat of force against another in effecting or attempting to effect his removal from official detention, or (b) the person escaping was in official detention by virtue of his arrest for, or on charge of, a felony or pursuant to his conviction of any offense. Otherwise escape is a Class A misdemeanor.

(3) Definitions. In this section:

(a) "official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition or deportation, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work and recreation; but "official detention" does not include supervision on probation or parole or constraint incidental to release under [18 U.S.C., Chapter 207 (Release) and § 5035 (Juvenile)];

(b) "conviction of an offense" does not include an adjudication of juvenile delinquency.

(4) Defenses. Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority shall not be a defense to a prosecution under this section if the escape is from prison or other facility used for official detention or from detention pursuant to commitment by an official proceeding. In the case of other detentions, irregularity or lack of jurisdiction shall be an affirmative defense if (a) the escape involved no substantial risk of harm to the person or property of anyone other than the detainee, or (b) the detaining authority did not act in good faith under color of law.

(5) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the official detention involves federal law enforcement or the escape is from a federal public servant or federal facility used for official detention.

* * * * *

§ 1307. Public Servants Permitting Escape.

(1) Offense. A public servant concerned in official detention pursuant to process issued by a court, judge or magistrate is guilty of a Class A misdemeanor if he recklessly permits an escape and is guilty of a Class B misdemeanor if he negligently permits an escape. "Official detention" has the meaning prescribed in section 1306(3).

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the public servant is a federal public servant or the process is federal process.

* * * * *

§ 1308. Inciting or Leading Riot in Detention Facilities.

(1) Offense. A person is guilty of a Class C felony if, with intent to cause, continue, or enlarge a riot, he solicits a group of five or more persons to engage in a riot in a facility used for official detention or engages in conduct intended to serve as the beginning of or signal for such riot, or participates in planning such riot, or, in the course of such riot, issues commands or instructions in furtherance thereof.

(2) Definitions. In this section:

(a) "riot" means a disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the operation of the facility or other government function;

(b) "official detention" has the meaning prescribed in section 1306(3).

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the facility is a federal facility.

§ 1309. Introducing or Possessing Contraband Useful for Escape.

(1) Introducing Contraband. A person is guilty of a Class C felony if he unlawfully provides an inmate of an official detention facility with any tool, weapon or other object which may be useful for escape. Such person is guilty of a Class B felony if the object is a firearm, destructive device or other dangerous weapon.

(2) Possession of Contraband. An inmate of an official detention facility is guilty of a Class C felony if he unlawfully procures, makes or otherwise provides himself with, or has in his possession, any tool, weapon or other object which may be useful for escape. Such person is guilty of a Class B felony if the object is a firearm, destructive device or other dangerous weapon.

(3) Definitions. In this section:

(a) "unlawfully" means surreptitiously or contrary to a statute or regulation, rule or order issued pursuant thereto;

(b) "official detention" has the meaning prescribed in section 1306(3).

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the facility is a federal facility.

§ 1310. Flight to Avoid Prosecution or Giving Testimony.

(1) Offense. A person is guilty of a Class C felony if he moves or travels across a state or United States boundary with intent:

(a) to avoid prosecution, or detention after conviction, under the laws of the place from which he flees, for an attempt or conspiracy to commit, or commission of: (i) an offense involving willful infliction of bodily injury, property damage or property destruction by fire or explosion, or (ii) any felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of that state; or

(b) (i) to avoid appearing as a witness, producing information, or giving testimony in any official proceeding in such place in which the commission of an offense described in paragraphs (a) (i) or (a) (ii) of this section is charged or under investigation; or (ii) to avoid contempt proceedings or other criminal prosecution, or custody or confinement after conviction, for such avoidance.

(2) Discretionary Exercise of Jurisdiction. In addition to the authorization for discretionary restraint in the exercise of federal jurisdiction by section 207, federal law enforcement agencies are authorized to decline or discontinue federal enforcement efforts whenever it appears that the conduct which is the subject of the official proceeding, prosecution or conviction would not, were it committed within federal jurisdiction, constitute a federal felony. No prosecution shall be instituted under this section unless expressly authorized by the Attorney General.

(3) Commission of Other Offenses in the Course of Flight. Commission of an offense defined in this section shall not be a basis for application of section 201(b) to confer federal jurisdiction over commission of another offense

(4) Venue. Violations of this section may be prosecuted only in the federal judicial district in which the original crime or contempt was alleged to have been committed, or in which the person was held in custody or confinement.

* * * * *

OBSTRUCTION OF JUSTICE

§ 1321. Tampering With Witnesses and Informants in Proceedings.

(1) Tampering. A person is guilty of a Class C felony if he uses force, threat, deception or bribery:

(a) with intent to influence another's testimony in an official proceeding; or

(b) with intent to induce or otherwise cause another:

(i) to withhold any testimony, information, document or thing from an official proceeding, whether or not the other person would be legally privileged to do so;

(ii) to violate section 1323 (Tampering With Physical Evidence);

(iii) to elude legal process summoning him to testify in an official proceeding; or

(iv) to absent himself from an official proceeding to which he has been summoned.

(2) Soliciting Bribe. A person is guilty of a Class C felony if he solicits, accepts or agrees to accept from another a thing of pecuniary value as consideration for:

(a) influencing the actor's testimony in an official proceeding; or

(b) the actor's engaging in the conduct described in paragraphs (i) through (iv) of subsection 1(b).

(3) Defenses.

(a) It is a defense to a prosecution under this section for use of threat with intent to influence another's testimony that the threat was not of unlawful harm and was used solely to influence the other to testify truthfully.

(b) In a prosecution under this section based on bribery, it shall be an affirmative defense that any consideration for a person's refraining from instigating or pressing the prosecution of an offense was to be limited to restitution or indemnification for harm caused by the offense.

(c) It is no defense to a prosecution under this section that an official proceeding was not pending or about to be instituted.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the official proceeding is a federal official proceeding.

(5) Witness Fees and Expenses. This section shall not be construed to prohibit the payment or receipt of witness fees provided by statute, or the payment, by the party upon whose behalf a witness is called, and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at an official proceeding, or in the case of expert witnesses, a reasonable fee for preparing and presenting an expert opinion.

* * * * *

§ 1322. Tampering With Informants in Criminal Investigations.

(1) Offense. A person is guilty of a Class C felony if, believing another may have information relating to an offense, he deceives such other person or employs force, threat or bribery with intent to hinder, delay or prevent communication of such information to a law enforcement officer. The affirmative defense in subsection (3) (b) of section 1321 applies to this section.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the principal offense is a federal offense or when the law enforcement officer is a federal public servant.

§ 1323. Tampering With Physical Evidence.

(1) Offense. A person is guilty of an offense if, believing an official proceeding is pending or about to be instituted or believing process, demand or order has been issued or is about to be issued, he alters, destroys, mutilates, conceals or removes a record, document or thing with intent to impair its verity or availability in such official proceeding or

for the purposes of such process, demand or order.

(2) Grading. The offense is a Class C felony if the actor substantially obstructs, impairs or perverts prosecution for a felony. Otherwise it is a Class A misdemeanor.

(3) Definition. In this section "process, demand or order" means process, demand or order authorized by law for the seizure, production, copying, discovery or examination of a record, document or thing.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the official proceeding which is pending or contemplated is or would be a federal official proceeding or when the process, demand, or order is or would be issued by a federal public servant.

* * * * *

§ 1324. Harassment of and Communication With Jurors.

(1) Offense. A person is guilty of a Class A misdemeanor if, with intent to influence the official action of another as a juror, he communicates with him other than as part of the proceedings in a case, or harasses or alarms him. Conduct directed against the juror's spouse or other relative residing in the same household with the juror shall be deemed conduct directed against the juror.

(2) Definition. In this section "juror" means a grand juror or a petit juror and includes a person who has been drawn or summoned to attend as a prospective juror.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the juror is a federal juror.

* * * * *

§ 1325. Demonstrating to Influence Judicial Proceedings.

(1) Offense. A person is guilty of a Class B misdemeanor if, with intent to influence a judge, juror or witness in the discharge of his duties in a judicial proceeding, he pickets, parades, uses a sound-amplifying device, displays a placard or sign containing written or pictorial matter, or otherwise engages in a demonstration in or on the grounds of a building housing a court of the United States or of a residence of or usual place of occupancy by such judge, juror or witnesses or on a public way near such building, residence or place. "Near" shall not be construed to mean a place more than 200 feet from such building, residence or place, unless otherwise modified by court rule.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the judicial proceeding is a federal judicial proceeding.

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§ 1326. Eavesdropping on Jury Deliberations.

(1) Offense. A person is guilty of a Class A misdemeanor if he intentionally:

(a) records the proceedings of a jury while such jury is deliberating or voting; or

(b) listens to or observes the proceedings of any jury of which he is not a member while such jury is deliberating or voting.

(2) Defense. This section shall not apply to the taking of notes by a juror in connection with and solely for the purpose of assisting him in the performance of his official duties. Inapplicability under this subsection is a defense.

(3) Definitions. In this section "jury" means grand jury or petit jury, and "juror" means grand juror or petit juror.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the jury is a federal jury.

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§ 1327. Nondisclosure of Retainer in Criminal Matter.

(1) Offense. A person employed for compensation to influence the official action of a public servant with respect to the initiation, conduct or dismissal of a prosecution for an offense or the imposition or modification of a sentence is guilty of a Class A misdemeanor if he privately addresses to such public servant any representation, entreaty, argument or other communication intended to influence official action without disclosing the fact of such employment, knowing that the public servant is unaware of it.

(2) Applicability to Attorney-At-Law. This section does not apply to an attorney-at-law or to a person authorized by statute or regulation to act in a representative capacity with respect to the official action when he is acting in such capacity and makes known to the public servant or has indicated in any manner authorized by law that he is acting in such capacity. Inapplicability under this subsection is a defense.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the public servant is a federal public servant.

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CRIMINAL CONTEMPT AND RELATED OFFENSES

§ 1341. Criminal Contempt.

(1) Power of Court. A court of the United States shall have power to punish, as authorized under this section, such contempt of its authority, and none other, as:

(a) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(b) misbehavior of any of its officers in their official transactions;

(c) disobedience or resistance to its lawful writ, process, order, rule, decree or command.

(2) Status as Offense; Grading. Except as otherwise provided, a criminal contempt proceeding under this section shall be deemed prosecution for an offense for the purposes of Part A (General Provisions) and Part C (Sentencing) of this Code. Criminal contempt shall be treated as a Class B misdemeanor, except that the defendant may be sentenced to a term of imprisonment of no more than six months, and, if the criminal contempt is disobedience of or resistance to a court's lawful temporary restraining order or preliminary or final injunction or other final order, other than for the payment of money, the defendant may be sentenced to pay a fine in any amount deemed just by the court.

(3) Successive Prosecutions. Notwithstanding the provisions of sections 704, 705, 706, 707 and 708 (relating to multiple prosecutions), a criminal contempt proceeding under this section is not a bar to subsequent prosecution for a specific offense if the court certifies in the judgment of conviction of criminal contempt, or the order terminating the proceeding without acquittal or dismissal, that a summary criminal contempt proceeding was necessary to prevent repetition of misbehavior disruptive of an ongoing proceeding and that subsequent prosecution as a specific offense is warranted. In a subsequent prosecution the defendant shall receive credit for all time spent in custody and any fine paid by him pursuant to the criminal contempt proceeding.

(4) Civil Contempt Preserved. This section shall not be construed to deprive a court of its power, by civil contempt proceedings, to compel compliance with its lawful writ, process, order, rule, decree, or command, or to compensate a complainant for losses sustained by reason of disobedience or resistance thereto, in accordance with the prevailing usages of law and equity, including the power of detention.

* * * * *

§ 1342. Failure To Appear as Witness, To Produce Information or To Be Sworn.

(1) Failure To Appear or To Produce. A person who has been lawfully ordered to appear at a specified time and place to testify or to produce information in an official proceeding is guilty of a Class A misdemeanor if, without lawful privilege, he fails to appear or to produce the information at that time and place.

(2) Refusal to be Sworn. A person attending an official proceeding is guilty of a Class A misdemeanor if, without lawful privilege, he fails to comply with a lawful order:

(a) to occupy or remain at the designated place from which he is to testify as a witness in such proceeding; or

(b) to be sworn or to make equivalent affirmation as a witness in such proceeding.

(3) Defenses. It is a defense to a prosecution under this section that the defendant:

(a) was prevented from appearing at the specified time and place or unable to produce the information because of circumstances to the creation of which he did not contribute in reckless disregard of the requirement to appear or to produce; or

(b) complied with the order before his failure to do so substantially affected the proceeding.

(4) Definitions. In this section:

(a) "official proceeding" means

(i) an official proceeding before a judge or court of the United States, a United States magistrate, a referee in bankruptcy or a federal grand jury;

(ii) an official proceeding before Congress;

(iii) a federal official proceeding in which pursuant to lawful authority a court orders attendance or the production of information;

(iv) an official proceeding before an authorized agency;

(v) an official proceeding which otherwise is made expressly subject to this section;

(b) "authorized agency" means an agency authorized by federal statute to issue subpoenas or similar process supported by the sanctions of this section;

(c) "official proceeding before Congress" means an inquiry authorized before either House or any joint committee established by a joint or concurrent resolution of the two Houses of Congress or any committee or subcommittee of either House of Congress;

(d) "information" means a book, paper, document, record, or other tangible object.

* * * * *

§ 1343. Refusal to Testify.

(1) Offense. A person is guilty of a Class A misdemeanor if, without lawful privilege, he refuses:

(a) to answer a question pertinent to the subject under inquiry in an official proceeding before Congress and continues in such a refusal after the presiding officer directs him to answer and advises him that his continuing refusal may make him subject to criminal prosecution; or

(b) to answer a question in any other official proceeding and continues in such refusal after a federal court or federal judge or, in a proceeding before a United States magistrate or referee in bankruptcy, the presiding officer directs or orders him to answer and advises him that his continuing refusal may make him subject to criminal prosecution.

(2) Defense. It is a defense to a prosecution under this section that the defendant complied with the direction or order before his refusal to do so substantially affected the proceeding.

(3) Definition. "Official proceeding before Congress" has the meaning prescribed in subsection (4)(c) of section 1342.

* * * * *

§ 1344. Hindering Proceedings by Disorderly Conduct.

(1) Intentional Hindering. A person is guilty of a Class A misdemeanor if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

(2) Reckless Hindering. A person is guilty of an offense if he recklessly hinders an offi-

cial proceeding by noise or violent or tumultuous behavior or disturbance. The offense is a class D misdemeanor if it continues after explicit official request to desist. Otherwise it is an infraction.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the official proceeding is a federal official proceeding.

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§ 1345. Disobedience of Judicial Order.

(1) Offense. A person is guilty of a Class A misdemeanor if he disobeys or resists a lawful temporary restraining order or preliminary or final injunction or other final order, other than for the payment of money, of a court of the United States.

(2) Fines. Notwithstanding the limitations of section 3301 (Authorized Fines), the defendant may be sentenced to pay a fine in any amount deemed just by the court.

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§ 1346. Soliciting Obstruction of Proceedings.

A person is guilty of a Class A misdemeanor if he solicits another to commit an offense defined in sections 1342, 1343, 1344(1) or 1345.

* * * * *

§ 1349. Certification for Prosecution of Offenses Under Sections 1342 to 1345.

(1) Judicial Proceeding. No person shall be prosecuted under sections 1342, 1343, 1344 or 1345 if the official proceeding involved is before a court of the United States unless the judge or a majority of the judges sitting certifies the case to the appropriate United States Attorney to be considered for possible prosecution, except that this provision does not apply to a prosecution under section 1345 if the United States or an agency thereof is a party to the matter in which the order issues. If the certification includes a recommendation that a prosecution be instituted, the United States Attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for its action.

(2) Grand Jury Proceeding. If the official proceeding involved is a grand jury proceeding, no person shall be prosecuted:

(a) under section 1342 unless a judge certifies the case to the appropriate United States Attorney to be considered for possible prosecution;

(b) under section 1343 unless the judge whose direction has allegedly been disobeyed, or any other judge of that court if the original judge is no longer serving, certifies the case to the appropriate United States Attorney to be considered for possible prosecution.

If the certification includes a recommendation that a prosecution be instituted, the United States Attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for its action.

(3) Proceedings Before Magistrate or Referee in Bankruptcy. No person shall be prosecuted under sections 1342 or 1343 if the official proceeding involved is before a United States magistrate or referee in bankruptcy unless a district court judge certifies the case to the appropriate United States Attorney to be considered for possible prosecution. If the certification includes a recommendation that a prosecution be instituted, the United States Attorney shall have the duty to institute prosecution or to bring the matter before the grand jury for its action.

(4) Congressional Proceedings. No person shall be prosecuted under sections 1342 or 1343 if the official proceedings involved is before Congress, unless the facts of such violation are reported to either House of Congress while Congress is in session, or, when Congress is not in session, a statement of the facts constituting such violation is reported to and filed with the President of the Senate or the Speaker of the House. If the report is made while Congress is in session and the appropriate House has so ordered, the President of the Senate or the Speaker of the House, as the case may be, shall certify, or if the report is made when Congress is not in session, such officer may certify, the statement of facts under the seal of the appropriate House to the appropriate United States Attorney, whose duty it shall be to bring the matter before the grand jury for its action.

(5) Lack of Certification a Bar. Failure to comply with the certification requirements of this section is a bar to prosecution. The defendant shall have the burden of proving such failure to comply by a preponderance of the evidence, and shall be entitled to have the issue determined by the court out of the presence of the jury, if any, and to exclusion of any reference to the need or fact of certification from the attention of the jury.

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PERJURY, FALSE STATEMENTS AND INTEGRITY OF PUBLIC RECORDS

§ 1351. Perjury.

(1) Offense. A person is guilty of perjury, a Class C felony, if, in an official proceeding, he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and he does not believe it to be true.

(2) Corroboration. No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by the testimony of one person.

[(2) Proof. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.]

(3) Inconsistent Statements. Where in the course of one or more official proceedings, the defendant made a statement under oath or equivalent affirmation inconsistent with another statement made by him under oath or equivalent affirmation to the degree that one of them is necessarily false, both having been made within the period of the statute of limitations, the prosecution may set forth the statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant to be true. Proof that the defendant made such statements shall constitute a prima facie case that one or the other of the statements was false; but in the absence of sufficient proof of which statement was false, the defendant may be convicted under this section only if each of such statements was material to the official proceeding in which it was made.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the official proceeding is a federal official proceeding.

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§ 1352. False Statements.

(1) False Swearing in Official Proceedings. A person is guilty of a Class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.

(2) Other Falsity in Government Matters. A person is guilty of a Class A misdemeanor if, in a governmental matter, he:

(a) makes a false written statement, when the statement is material and he does not believe it to be true;

(b) intentionally creates a false impression in a written application for a pecuniary or other benefit, by omitting information necessary to prevent a material statement therein from being misleading;

(c) submits or invites reliance on any material writing which he knows to be forged, altered or otherwise lacking in authenticity;

(d) submits or invites reliance on any sample, specimen, map, boundary-mark or other object which he knows to be false in a material respect; or

(e) uses a trick, scheme or device which he knows to be misleading in a material respect.

(3) Statement in Criminal Investigation. This section does not apply to information given during the course of an investigation into possible commission of an offense unless the information is given in an official proceeding or the declarant is otherwise under a legal duty to give the information. Inapplicability under this subsection is a defense.

(4) Definition. A matter is a "governmental matter" if it is within the jurisdiction of a government agency or of an office, agency or other establishment in the legislative or the judicial branch of government.

(5) Jurisdiction. There is federal jurisdiction over an offense defined in:

(a) subsection (1) when the official proceeding is a federal official proceeding;

(b) subsection (2) when the government is the government of the United States, or when the government is a state or local government and the falsity constituting the offense is that a person is a citizen of the United States.

* * * * *

§ 1353. False Statement Obstructing the Foreign Relations of the United States.

A person is guilty of a Class C felony if, in relation to a dispute between a foreign government and the United States, he makes a false statement under oath or equivalent affirmation, when the statement is material and he does not believe it to be true:

(a) with knowledge that it may be used to influence the measures or conduct of any foreign government or public servant thereof to the injury of the United States; or

(b) with intent to influence any measure of or action by the United States to the injury of the United States.

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§ 1354. False Reports to Security Officials.

(1) Offense. A person is guilty of a Class A misdemeanor if he:

(a) gives false information to a law enforcement officer with intent to falsely implicate another; or

(b) falsely reports to a law enforcement officer or other security official the occurrence of a crime of violence or other incident calling for an emergency response when he knows that the incident did not occur. "Security official" means fireman or other public servant responsible for averting or dealing with emergencies involving public safety.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the law enforcement officer or security official is a federal law enforcement officer or security official.

* * * * *

§ 1355. General Provisions for Sections 1351 to 1354.

(1) Materiality. Falsification is material under sections 1351, 1352, 1353 and 1354 regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the official proceeding or the disposition of the matter in which the statement is made. Whether a falsification is material in a given factual situation is a question of law. It is no defense that the declarant mistakenly believed the falsification to be immaterial.

(2) Irregularities No Defense. It is no defense to a prosecution under sections 1351 1352 or 1353 that the oath or affirmation was administered or taken in an irregular manner

or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at a time when the actor represents it as being so verified shall be deemed to have been duly sworn or affirmed.

(3) Defense of Retraction. It is a defense to a prosecution under sections 1351, 1352, 1353 or 1354 that the actor retracted the falsification in the course of the official proceeding or matter in which it was made, if in fact he did so before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding or the matter.

(4) Definition of "Statement". In sections 1351, 1352 and 1353 "statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

* * * * *

§ 1356. Tampering With Public Records.

(1) Offense. A person is guilty of a Class A misdemeanor if he:

(a) knowingly makes a false entry in or false alteration of a government record; or

(b) knowingly without lawful authority destroys, conceals, removes or otherwise impairs the verity or availability of a government record.

(2) Definition. In this section "government record" means:

(a) any record, document or thing belonging to, or received or kept by the government for information or record;

(b) any other record, document or thing required to be kept by law, pursuant, in fact, to a statute which expressly invokes the sanctions of this section.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section when the government is the federal government or the statute which invokes the sanctions of this section is a federal statute.

* * * * *

BRIBERY AND INTIMIDATION

§ 1361. Bribery.

(1) Offense. A person is guilty of bribery, a Class C felony, if he knowingly offers, gives or agrees to give to another, or solicits, accepts or agrees tc accept from another, a thing of value as consideration for:

(a) the recipient's official action as a public servant; or

(b) the recipient's violation of a known legal duty as a public servant.

(2) Defense Precluded. It is no defense to a prosecution under this section that a recipient was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(3) Prima Facie Case. A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was offered, given or agreed to be given by, or solicited, accepted or agreed to be accepted from a person having an interest in an imminent or pending (a) examination, investigation, arrest, or judicial or administrative proceeding, or (b) bid, contract, claim, or application, and that interest could be affected by the recipient's performance or nonperformance of his official action or violation of his known legal duty as a public servant.

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§ 1362. Unlawful Rewarding of Public Servants.

(1) Receiving Unlawful Reward. A public servant is guilty of a Class A misdemeanor if he solicits, accepts or agrees to accept a thing of pecuniary value for:

(a) having engaged in official action as a public servant; or

(b) having violated a legal duty as a public servant.

(2) Giving Unlawful Reward. A person is guilty of a Class A misdemeanor if he knowingly offers, gives or agrees to give a thing of pecuniary value, receipt of which is prohibited by this section.

* * * * *

§ 1363. Unlawful Compensation for Assistance in Government Matters.

(1) Receiving Unlawful Compensation. A public servant is guilty of a Class A misdemeanor if he solicits, accepts or agrees to accept a thing of pecuniary value as compensation for advice or other assistance in preparing or promoting a bill, contract, claim or other matter which is or is likely to be subject to his official action.

(2) Giving Unlawful Compensation. A person is guilty of a Class A misdemeanor if he knowingly offers, gives or agrees to give a thing of pecuniary value to a public servant, receipt of which is prohibited by this section.

* * * * *

§ 1364. Trading in Public Office and Political Endorsement.

(1) Offense. A person is guilty of a Class A misdemeanor if he solicits, accepts or agrees to accept, or offers, gives or agrees to give, a thing of pecuniary value as consideration for approval or disapproval by a public servant or party official of a person for:

(a) appointment, employment, advancement or retention as a public servant; or

(b) designation or nomination as a candidate for elective office.

(2) Definitions. In this section:

(a) "approval" includes recommendation, failure to disapprove, or any other manifestation of favor or acquiescence;

(b) "disapproval" includes failure to approve, or any other manifestation of disfavor or nonacquiescence;

(c) "party official" means a person who holds a position or office in a political party, whether by election, appointment or otherwise.

* * * * *

§ 1365. Trading in Special Influence.

A person is guilty of a Class A misdemeanor if he knowingly offers, gives or agrees to give, or solicits, accepts or agrees to accept a thing of pecuniary value for exerting, or procuring another to exert, special influence upon a public servant with respect to his legal duty or official as a public servant. "Special influence" means power to influence through kinship or by reason of position as a public servant or party official, as defined in section 1364.

* * * * *

§ 1366. Threatening Public Servants.

(1) Threats Relating to Official Proceedings or To Secure Breach of Duty. A person is guilty of a Class C felony if he threatens harm to another with intent to influence his official action as a public servant in a pending or prospective judicial or administrative proceeding held before him, or with intent to influence him to violate his duty as a public servant.

(2) Other Threats. A person is guilty of a Class C felony if, with intent to influence another's official action as a public servant, he threatens:

(a) to commit any crime or to do anything unlawful;

(b) to accuse anyone of a crime; or

(c) to expose a secret or publicize an asserted fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt or ridicule, or to impair another's credit or business repute.

(3) Defense Precluded. It is no defense to a prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction or for any other reason.

* * * * *

§ 1367. Retaliation.

A person is guilty of a Class A misdemeanor if he harms another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness or informant. "Informant" means a person who has communicated information to the government in connection with any government function.

* * * * *

§ 1368. Federal Jurisdiction Over Offenses in Sections 1361 to 1367.

(1) Federal Bribery and Intimidation. There is federal jurisdiction over offenses defined in:

(a) sections 1361, 1362, 1365, and 1366 when the official action or duty involved is as a federal public servant:

(b) section 1363 when the public servant is a federal public servant;

(c) section 1364 when the service involved in subsection (1) (a) is federal public service or the elective office is federal elective office;

(d) section 1367 when the service involved was as a federal public servant, a federal witness or a federal informant.

(2) State and Local Bribery and Intimidation. There is federal jurisdiction over offenses defined in sections 1361, 1362, 1366 and 1367 under paragraphs (a), (b), (e) and (h) of section 201.

* * * * *

§ 1369. Definition for Sections 1361 to 1368.

In sections 1361 through 1368 "thing of value" and "thing of pecuniary value" do not include (a) salary, fees and other compensation paid by the government in behalf of which the official action or legal duty is performed, or (b) concurrence in official action in the course of legitimate compromise among public servants.

* * * * *

OFFICIAL MISCONDUCT REGARDING CONFIDENTIAL INFORMATION AND SPECULATION

§ 1371. Disclosure of Confidential Information Provided to Government.

A person is guilty of a Class A misdemeanor if, in knowing violation of a duty imposed on him as a federal public servant, he discloses any confidential information which he has acquired as a federal public servant. "Confidential information" means information made available to the United States government under a governmental assurance of confidence.

* * * * *

§ 1372. Speculating or Wagering on Official Action or Information.

(1) Speculating During and After Employment. A person is guilty of a Class A misdemeanor if during employment as a federal public servant, or within one year thereafter, in contemplation of official action by himself as a federal public servant or by an agency of the United States with which he is or has been associated as a federal public servant, or in reliance on information to which he has or had access only in his capacity as a federal public servant, he:

(a) acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action;

(b) speculates or wagers on the basis of such information or official action; or

(c) aids another to do any of the foregoing.

(2) Taking Official Action After Speculation. A person is guilty of a Class A misdemeanor if as a federal public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

* * * * *

IMPERSONATING OFFICIALS

§ 1381. Impersonating Officials.

(1) Offense. A person is guilty of an offense if he falsely pretends to be:

(a) a public servant or foreign official and acts as if to exercise the authority of such public servant or foreign official; or

(b) a public servant or a former public servant or a foreign official and thereby obtains a thing of value.

(2) Defense Precluded. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.

(3) Definition. In this section "foreign official" means an official of a foreign government of a character which is customarily accredited as such to the United States, the United Nations or the Organization of American States, and includes diplomatic and consular officials.

(4) Grading. An offense under subsection (1) (a) is a Class A misdemeanor. An offense under subsection (1) (b) is a Class B misdemeanor.

(5) Jurisdiction.

(a) There is federal jurisdiction over an offense of impersonation of a public servant, present or former, defined in this section when the public servant is a federal public servant.

(b) Federal jurisdiction over an offense of impersonation of a foreign official defined in this section extends to any such offense committed anywhere within the United States or the special maritime or territorial jurisdiction as defined in section 210.

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Chapter 14. Internal Revenue and Customs Offenses

* * * * *

INTERNAL REVENUE OFFENSES

§ 1401. Tax Evasion.

(1) Offense. A person is guilty of tax evasion if:

(a) with intent to evade any tax, he files or causes the filing of a tax return or information return which is false as to a material matter;

(b) with intent to evade payment of any tax which is due, he removes or conceals assets;

(c) with intent to evade payment, he fails to account for or pay over when due taxes previously collected or withheld, or received from another with the understanding that they will be paid over to the United States;

(d) with intent to evade any tax, he removes, destroys, mutilates, alters or tampers with any property in the custody, control or possession of the United States or any agent thereof;

(e) with intent to evade any tax, he knowingly fails to file an income, excise, estate or gift tax return when due; or

(f) he otherwise attempts in any manner to evade or defeat any income, excise, estate or gift tax.

(2) Grading. Tax evasion is:

(a) a Class B felony if the amount of the tax deficiency exceeds $25,000; and

(b) a Class C felony if the amount of the tax deficiency exceeds $500.

Otherwise it is a Class A misdemeanor.

* * * * *

§ 1402. Knowing Disregard of Tax Obligations.

A person is guilty of a Class A misdemeanor if he knowingly:

(a) fails to file a tax return when due;

(b) engages in an occupation or enterprise without having registered or purchased a stamp if that is required by a statute in Title 26 of the United States Code;

(c) fails to withhold or collect any tax which he is required by statute to withhold or collect;

(d) after having received the notice provided for in 26 U.S.C. § 7512(a), fails to deposit collected taxes in a special bank account as provided in 26 U.S.C. § 7512(b), or having deposited funds in such account, pays any of them to anyone other than the United States or authorized agent thereof; or

(e) fails to furnish a true statement to an employee regarding tax withheld as required under 26 U.S.C. § 6051.

* * * * *

§ 1403. Unlawful Trafficking in Taxable Objects.

(1) Offense. A person is guilty of an offense if he traffics in a taxable object knowing that the object has been or is being imported, manufactured, produced, removed, possessed, used, transferred or sold in violation of a federal revenue statute or a regulation, rule or order issued pursuant thereto.

(2) Grading. The offense is a Class C felony if the taxable object is distilled spirits and the actor is not qualified under Title 26 of the United States Code as a distiller, bonded warehouseman, rectifier or bottler of distilled spirits or is so qualified and acts with intent to evade the tax. Otherwise it is a Class A misdemeanor.

(3) Defenses. It is an affirmative defense to a prosecution under this section that all taxes imposed upon the object or upon trafficking therein were paid prior to the defendant's trafficking in the object; but it is no defense that such taxes were not yet due.

* * * * *

§ 1404. Possession of Unlawfully Distilled Spirits.

A person is guilty of a Class B misdemeanor if he possesses distilled spirits, knowing that a tax imposed thereon or on the trafficking therein has not been paid.

* * * * *

§ 1405. Presumptions Applicable to Sections 1403 and 1404.

(1) Containers, Stamps, Certificates and Labels. For purposes of sections 1403 and 1404, proof that a person was found in possession of an object therein described, which object was not in the container required by statute or a regulation issued pursuant thereto, or which did not bear a stamp, certificate or label required by statute or a regulation issued pursuant thereto, gives rise to a presumption of the culpability specified in those sections and that the tax was not paid.

(2) Presence at Still or Distilling Apparatus. For the purposes of section 1403, proof that a person was present at a place where a still or distilling apparatus was then set up or where mash, wort or wash was then possessed gives rise to a presumption:

(a) that such person was a trafficker in distilled spirits; and

(b) if the signs or permits were not there displayed as required by statute or a regulation issued pursuant thereto, that such person had the culpability specified in that section.

(3) Possession of Distilled Spirits. For the purposes of section 1403, possession of a quantity of distilled spirits in excess of five gallons gives rise to a presumption that the possessor was trafficking in such distilled spirits.

* * * * *

§ 1409. Definitions for Sections 1401 to 1409.

In sections 1401 to 1409:

(a) "object" includes certificates and other documents;

(b) "possession" includes custody or control, jointly or severally exercised;

(c) "produce" and "manufacture," and variants thereof, include the gathering together of equipment or materials for the purpose of producing or manufacturing, as the case may be;

(d) "tax" means a tax imposed by a federal statute, an exaction denominated a "tax" by a federal statute, and any penalty, addition to tax, additional amount, or interest thereon, but does not include tariffs or customs duties or tolls, levies or charges which are not denominated a "tax" by a federal statute;

(e) "tax return" means a written report of the taxpayer's tax obligations which is required to be filed by a federal statute or regulation issued pursuant thereto. The term includes reports of taxes withheld or collected, income tax returns, estate and gift tax returns, excise and other tax returns of any individual, corporation or other entity required to file returns and pay taxes in conjunction with a tax return, but does not include interim reports, information returns or returns of estimated tax;

(f) "taxable object" means an object upon the manufacture, production, removal, possession, import, sale or transfer of which a tax is imposed;

(g) "traffics in" means produces, manufactures, possesses with intent to transfer, transfers, dispenses, imports, receives with intent to transfer, sells or offers or agrees to do any of the foregoing.

* * * * *

§ 1411. Smuggling.

(1) Offense. A person is guilty of smuggling if he:

(a) knowingly evades examination by the government of an object being introduced into the United States;

(b) knowingly deceives or makes a false statement with intent to deceive the government as to a matter material to the purpose of an examination by the government of an object being introduced into the United States;

(c) knowingly evades assessment or payment when due of the customs duty upon an object being introduced into the United States;

(d) knowingly introduces an object into the United States the introduction of which is prohibited, whether absolutely or conditionally, pursuant to a federal statute; or

(e) receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of an object the assessment or payment of the duty upon which, in fact, is being or has been evaded or the introduction of which, in fact, is prohibited, absolutely or conditionally, pursuant to a federal statute, knowingly that the object was unlawfully introduced into the United States.

(2) Grading. Smuggling is a Class C felony if:

(a) the value of the object exceeds $500;

(b) the duty which would have been due on the object exceeds $100;

(c) the object is being or was introduced for use in a business; or

(d) the actor knows that introduction is prohibited, whether absolutely or conditionally, because objects of that class may cause or be used to cause bodily injury or property damage.

Otherwise smuggling is a Class A misdemeanor. Notwithstanding the grading provided in this subsection, if the statute prohibiting introduction of an object, or a related statute, provides lesser grading for the same conduct, the lesser grading applies.

(3) Definitions. In this section:

(a) "introduces" and variants thereof mean importing or transporting or bringing into, or landing in, the United States from outside the United States or from customs custody or control;

(b) "object" includes any article, goods, wares and merchandise and an animate as well as inanimate thing;

(c) "United States" does not include the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island or Guam.

(4) Determining Value and Duty. The value of an object shall be its highest value, determined by any reasonable standard, regardless of its value for purposes of determining the amount of duty owing, if any. Smugglings committed pursuant to one scheme or course of conduct may be charged as one offense, and the value of, or the duty

owing on, the objects introduced may be aggregated in determining the grade of the offense.

(5) Charging Smuggling. An indictment or information charging smuggling under this section which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of smuggling. The defendant may be found guilty of smuggling under such an indictment or information if his conduct falls under any of the paragraphs of subsection (1), so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet.

* * * * *

Chapter 15. Civil Rights and Elections

PROTECTION OF FEDERAL RIGHTS GENERALLY

§ 1501. Conspiracy Against Rights of Citizens.

A person is guilty of a Class A misdemeanor:

(a) if he conspires with another to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of, or because of his having so exercised, any right or privilege secured to him by the constitution or laws of the United States; or

(b) if, with intent to prevent or hinder another's free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, he goes on such other's premises with another or others or goes in disguise on the highway with another or others.

* * * * *

§ 1502. Deprivation of Rights Under Color of Law.

A person is guilty of a Class A misdemeanor if, under color of any law, statute, ordinance, regulation or custom, he intentionally subjects any inhabitant of any state:

(a) to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States; or

(b) to different punishments, pains or penalties on account of such inhabitant being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens.

* * * * *

§ 1511. Interference With Elections, Federal or Federally Assisted Programs and Employment.

A person is guilty of a Class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force [or by economic coercion], intentionally injures, intimidates or interferes with another because he is or has been, or in order to intimidate him or any other person from:

(a) voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official in any primary, special, or general election;

(b) participating in or enjoying the benefits of any program, service, facility, or activity provided or administered by the United States, or receiving federal financial assistance including (i) serving as a grand or petit juror in any court of the United States or attending court in connection with such possible service, or (ii) qualifying for or operating in a contractual relationship with the federal government, or (iii) qualifying for or enjoying the benefits of a federal loan or federal guarantee of any loan; or

(c) applying for or enjoying employment, or any prequisite thereof, by any federal government agency.

* * * *

§ 1512. Discrimination in Public Education, State Activities, Employment, Public Accommodations, Housing, Interstate Travel.

A person is guilty of a Class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force [or by economic coercion], intentionally injures, intimidates or interferes with another because of his race, color, religion or national origin and because he is or has been, or in order to intimidate him or any other person from:

(a) enrolling in or attending any public school or public college;

(b) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any state or subdivision thereof;

(c) serving, or attending upon any court of any state in connection with possible service, as a grand or petit juror;

(d) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishment. Nothing in this paragraph shall limit the lawful action in support of such guest policy as he chooses to adopt of a proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence;

(e) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any state or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(f) selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

(g) traveling among the states or in interstate commerce, or using any facility which is an integral part of interstate travel, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air.

* * * * *

§ 1513. Interference With Persons Affording Civil Rights to Others.

A person is guilty of a Class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force [or by economic coercion], intentionally injures, intimidates or interferes with another because he is or has been, or in order to intimidate him or any other person from, affording, in official or private capacity, another person or class of persons opportunity or protection to participate in any benefit or activity described in section 1511 or to participate without discrimination on account of race, color, religion, or national origin in any benefit or activity described in section 1512.

* * * * *

§ 1514. Interference With Persons Aiding Others to Avail Themselves of Civil Rights.

A person is guilty of a Class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force [or by economic coercion], intentionally injures, intimidates or interferes with another because he is or has been, or in order to intimidate him or any other person from, lawfully aiding or encouraging other persons to participate in any benefit or activity described in section 1511 or to participate without discrimination on account of race, color, religion, or national origin in any benefit or activity described in section 1512.

* * * * *

§ 1515. Discriminatory Interference With Speech or Assembly Related to Civil Rights Activities.

A person is guilty of a Class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force [or by economic coercion], intentionally injures, intimidates or interferes with another because he is or has been, or in order to intimidate him or any other person from participating lawfully in speech or peaceful assembly opposing any denial of opportunity to participate in any benefit or activity described in section 1511 or to participate without discrimination on account of race, color, religion, or national origin in any benefit or activity described in section 1512.

* * * * *

§ 1516. Attorney General Certification for Prosecutions Under Sections 1511 to 1515.

No prosecution shall be instituted for offenses defined in sections 1511 to 1515 unless the Attorney General certifies that a prosecution by the United States is in the public interest and necessary to secure substantial justice. Nothing in this section shall be construed, however, to limit the authority of federal officers, or a federal grand jury, to investigate possible violations of sections 1511 to 1515.

* * * * *

ABUSE OF FEDERAL OFFICIAL AUTHORITY

§ 1521. Unlawful Acts Under Color of Federal Law.

A federal public servant acting under color of law or a person acting under color of federal law is guilty of a Class A misdemeanor if he intentionally:

(a) subject another to unlawful violence or detention; or

(b) exceeds his authority in making an arrest or a search and seizure.

* * * * *

PROTECTION OF POLITICAL PROCESSES

§ 1531. Safeguarding Elections.

A person is guilty of a Class A misdemeanor if, in connection with any primary, general or special election, he:

(a) makes or induces any false voting registration;

(b) offers, gives or agrees to give a thing of pecuniary value to another as consideration for the recipient's voting or withholding his vote or voting for or against any candidate or issue or for such conduct by another;

(c) solicits, accepts or agrees to accept a thing of pecuniary value as consideration for conduct prohibited under paragraphs (a) or (b); or

(d) otherwise obstructs or interferes with the lawful conduct of such election or registration therefor.

* * * * *

§ 1532. Deprivation of Federal Benefits for Political Purposes.

A person is guilty of a Class A misdemeanor if he intentionally withholds from or deprives another or threatens to withhold from or deprive another of the benefit of any federal program or federally-supported program, or a federal government contract, with intent to interfere with, restrain, or coerce any person in the exercise of his right to vote for any candidate or issue at any election, or in the exercise of any other political right.

* * * * *

§ 1533. Misuse of Personnel Authority for Political Purposes.

A federal public servant is guilty of a Class A misdemeanor if he discharges, promotes, or degrades another federal public servant, or in any manner changes or promises or threatens to change the official rank or compensation of another federal public servant, for giving or withholding or neglecting to make a contribution of money or other thing of value for any political purpose.

* * * * *

§ 1534. Political Contributions of Federal Public Servants.

(1) Solicitation by Federal Public Servant. A federal public servant is guilty of a Class A misdemeanor if he solicits a contribution for any political purpose from another federal public servant, or if, in response to such a solicitation, he makes a political contribution to another federal public servant.

(2) Solicitation in Federal Facility. Any person is guilty of a Class A misdemeanor if he solicits or receives a political contribution in a federal building or facility.

* * * * *

§ 1535. Troops at Polls.

A public servant is guilty of a Class C felony if he orders, brings, keeps, or has under his authority or control any troops at any place where a general or special election or primary election is held, unless such force be necessary to repel armed invasion or violent interference with the election process.

* * * * *

FOREIGN POLITICAL CONTRIBUTIONS

§ 1541. Political Contributions by Agents of Foreign Principals.

(1) Contributor. An agent of a foreign principal is guilty of a Class C felony if, directly or indirectly, in his capacity as such agent he knowingly makes a contribution or promises to make a contribution, in connection with any primary, special, or general election, or political convention or caucus held to select candidates for any political office.

(2) Recipient. A person is guilty of a Class C felony if he knowingly solicits, accepts or agrees to accept any contribution prohibited by subsection (1).

(3) Definitions. In this section:

(a) "foreign principal" has the meaning prescribed in 22 U.S.C. § 611(b), but does not include a person who is a citizen of the United States;

(b) "agent of a foreign principal" means a person who acts as an agent, representative, employee, or servant, or a person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any substantial portion of whose activities are directly or indirectly supervised, directed, or controlled by a foreign principal.

* * * * *

PROJECTION OF LEGITIMATE LABOR ACTIVITIES

§ 1551. Strikebreaking.

(1) Offense. A person is guilty of a Class A misdemeanor if he intentionally, by force or threat of force, obstructs or interferes with:

(a) peaceful picketing by employees during any labor controversy affecting wages, hours, or conditions of labor; or

(b) the exercise by employees of any of the bargaining.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a) or (h) of section 201.

* * * * *

INTERCEPTION OF PRIVATE COMMUNICATIONS

§ 1561. Interception of Wire or Oral Communications.

(1) Offense. A person is guilty of a Class C felony if he:

(a) intentionally intercepts any wire or oral communication by use of any electronic, mechanical, or other device; or

(b) intentionally discloses to any other person or intentionally uses the contents of any wire or oral communication, knowing that the information was obtained through the interception of a wire or oral communication.

(2) Defenses. It is a defense to a prosecution under this section that:

(a) the actor was authorized to intercept, disclose or use, as the case may be, the wire or oral communication under [18 U.S., §§ 2516–19, 2511(2)(a) & (b)];

(b) the actor was (i) a person acting under color of law to intercept a wire or oral communication and (ii) he was a party to the communication or one of the parties to the communication had given prior content to such interception;

(c) (i) the actor was a party to the communication or one of the parties to the communication had given prior consent to such interception and (ii) such communication was not intercepted for the purpose of committing a crime or other unlawful harm; or

(d) the provisions of [18 U.S., § 2511(3)] apply.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (c), (e) (f) or (g) of section 201.

* * * * *

§ 1562. Traffic in Intercepting Devices.

(1) Manufacture, Distribution, or Possession. A person is guilty of a Class C felony if he manufactures, assembles, possesses, transports or sells an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications.

(2) Advertising. A person is guilty of a Class A misdemeanor if he places in a newspaper, magazine, handbill, or other publication an advertisement of an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful for surreptitious interception of wire or oral communications, or knowing that such advertisement promotes the use of such device for surreptitious interception of wire or oral communications.

(3) Defenses. It is a defense to a prosecution under this section that the actor was:

(a) an officer, agent, or employee of, or a person under contract with, a communications common carrier, acting within the normal course of the business of the communications common carrier; or

(b) a public servant acting in the course of his official duties or a person acting within the scope of a government contract made by a person acting in the course of his official duties.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (e), (g) or (j) of section 201.

* * * * *

§ 1563. Definitions for Sections 1561 to 1563.

In sections 1561 to 1563:

(a) "wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications;

(b) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(c) "intercept" means the aural acquisition of the contents of any wire or oral communication through the use of an electronic, mechanical, or other device;

(d) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

(i) any telephone or telegraph instrument, equipment or facility, or any component thereof, (A) furnished to the subscriber or used by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (B) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(ii) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(e) "contents," when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication;

(f) "communications common carrier" shall have the meaning prescribed for the term "common carrier" by 47 U.S.C. § 153(h).

* * * * *

§ 1564. Interception of Correspondence.

(1) Offense. A person is guilty of a Class A misdemeanor if, knowing that a letter, postal card, or other written private correspondence has not yet been delivered to the person to whom it is directed, and knowing that he does not have the consent of the sender or receiver of the correspondence, he:

(a) damages or destroys the correspondence, with intent to prevent its delivery;

(b) opens or reads sealed correspondence, with intent to discover its contents; or

(c) knowing that sealed correspondence has been opened or read in violation of paragraph (b), intentionally divulges its contents, in whole or in part, or a summary of any portion thereof.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (c), (e) or (f) of section 201.

* * * * *

Chapter 16. Offenses Involving Danger To The Person

HOMICIDE

§ 1601. Murder.

A person is guilty of murder, a Class A felony, if he:

(a) intentionally or knowingly causes the death of another human being;

(b) causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or

(c) acting either alone or with one or more other persons, commits or attempts to commit treasor., offenses defined in sections 1102 or 1103, espionage, sabotage, robbery, burglary, kidnapping, felonious restraint, arson, rape, aggravated involuntary sodomy, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this paragraph in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(i) did not commit the homicidal act or in any way solicit, command, induce, procure, counsel or aid the commission thereof; and

(ii) was not armed with a firearm, destructive device, dangerous weapon or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury; and

(iii) reasonably believed that no other participant was armed with such a weapon; and

(iv) reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Paragraphs (a) and (b) shall be inapplicable in the circumstances covered by paragraph (b) of section 1602.

* * * * *

§ 1602. Manslaughter.

A person is guilty of manslaughter, a Class B felony, if he:

(a) recklessly causes the death of another human being; or

(b) causes the death of another human being under circumstances which would be murder, except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in his situation under the circumstances as he believes them to be. An emotional disturbance is excusable, within the meaning of this paragraph, if it is occasioned by any provocation, event or situation for which the offender was not culpably responsible.

* * * * *

§ 1603. Negligent Homicide.

A person is guilty of a Class C felony if he negligently causes the death of another human being.

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§ 1609. Federal Jurisdiction Over Homicide Offenses.

There is federal jurisdiction over an offense defined in sections 1601 to 1603 under paragraphs (a), (b), (c) or (l) of section 201.

* * * * *

ASSAULTS, LIFE ENDANGERING BEHAVIOR AND THREATS

§ 1611. Simple Assault.

(1) Offense. A person is guilty of an offense if he:

(a) willfully causes bodily injury to another human being; or

(b) negligently causes bodily injury to another human being by means of a firearm, destructive device or other weapon the use of which against a human being is likely to cause death or serious bodily injury.

(2) Grading. Simple assault is a Class A misdemeanor, unless committed in an unarmed fight or scuffle entered into mutually, in which case it is a Class B misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (c), or (l) of section 201.

* * * * *

§ 1612. Aggravated Assault.

(1) Offense. A person is guilty of a Class C felony if he:

(a) willfully causes serious bodily injury to another human being;

(b) knowingly causes bodily injury to another human being with a dangerous weapon or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;

(c) causes bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or

(d) fires a firearm or hurls a destructive device against another human being.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (c) or (l) of section 201.

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§ 1613. Reckless Endangerment.

(1) Offense. A person is guilty of an offense if he creates a substantial risk of serious bodily injury or death to another. The offense is a Class C felony if the circumstances manifest his extreme indifference to the value of human life. Otherwise it is a Class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a) or (l) of section 201 or when the offense is committed in the course of committing or in immediate flight from the commission of any other offense over which federal jurisdiction exists.

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§ 1614. Terrorizing.

(1) Offense. A person is guilty of a Class C felony if he:

(a) threatens to commit any crime of violence or act dangerous to human life, or

(b) falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false.

with intent to keep another human being in sustained fear for his or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption or inconvenience.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (c), (e), (f) or (l) of section 201.

* * * * *

§ 1615. Threats Against the President and Successors to the Presidency.

A person is guilty of a Class C felony if he threatens to commit any crime of violence against the President of the United States, the President-elect, the Vice President or, if there is no Vice President, the officer next in order of succession to the office of President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States:

(a) by a communication addressed to or intended to come to the attention of such official or his staff; or

(b) under any circumstances in which the threat is likely to be taken seriously as an expression of settled purpose.

"Threat" includes any knowingly false report that such violence is threatened or imminent. "President-elect" and "Vice President-elect" have the meanings prescribed in section 219(c).

* * * * *

§ 1616. Menacing.

(1) Offense. A person is guilty of a Class A misdemeanor if he knowingly places or attempts to place another human being in fear by menacing him with imminent serious bodily injury.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (c) or (l) of section 201.

* * * * *

§ 1617. Criminal Coercion.

(1) Offense. A person is guilty of a Class A misdemeanor if, with the intent to compel another to engage in or refrain from conduct, he threatens to:

(a) commit any crime;

(b) accuse anyone of a crime;

(c) expose a secret or publicize an asserted fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt or ridicule, or to impair another's credit or business repute; or

(d) take or withhold official action as a public servant, or cause a public servant to take or withhold official action.

(2) Defense. It is an affirmative defense to a prosecution under this section that the actor believed, whether or not mistakenly: (a) that the primary purpose of the threat was to cause the other to conduct himself in his own best interests, or (b) that a purpose of the threat was to cause the other to desist from misbehavior, engage in behavior from which he could not lawfully abstain, make good a wrong done by him, or refrain from taking any action or responsibility for which he was disqualified.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section:

(a) under paragraphs (a), (b), (c), (e), or (l) of section 201;

(b) when the threat is to accuse anyone of a federal crime or to commit a federal crime; or

(c) when the threat in subsection (1)(d) involves federal official action.

* * * * *

§ 1618. Harassment.

(1) Offense. A person is guilty of an offense if, with intent to frighten or harass another, he:

(a) communicates in writing or by telephone a threat to commit any violent felony;

(b) makes a telephone call anonymously or in offensively coarse language; or

(c) makes repeated telephone calls, whether or not a conversation ensues, with no purpose of legitimate communication.

(2) Grading. The offense is a Class A misdemeanor if it is under paragraph (a) of subsection (1). Otherwise it is a Class B misdemeanor.

(3) Jurisdiction. There is a federal jurisdiction over an offense defined in this section under paragraphs (a) or (e) of section 201.

* * * * *

§ 1619. Consent as a Defense.

(1) When a Defense. When conduct is an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury by all persons injured or threatened by the conduct is a defense if:

(a) neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;

(b) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

(c) the conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.

(2) Ineffective Consent. Assent does not constitute consent, within the meaning of this section, if:

(a) it is given by a person who is legally

incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;

(b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) it is induced by force, duress or deception.

KIDNAPPING AND RELATED OFFENSES

§ 1631. Kidnapping.

(1) Offense. A person is guilty of kidnapping if he abducts another or, having abducted another, continues to restrain him, with intent to do the following:

(a) hold him for ransom or reward;

(b) use him as a shield or hostage;

(c) hold him in a condition of involuntary servitude;

(d) terrorize him or a third person;

(e) commit a felony or attempt to commit a felony; or

(f) interfere with the performance of any government or political function.

(2) Grading. Kidnapping is a Class A felony unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a Class B felony.

* * * * *

§ 1632. Felonious Restraint.

A person is guilty of a Class C felony, if he:

(a) knowingly abducts another;

(b) knowingly restrains another under terrorizing circumstances or under circumstances exposing him to risk of serious bodily injury; or

(c) restrains another with intent to hold him in a condition of involuntary servitude.

§ 1633. Unlawful Imprisonment.

(1) Offense. A person is guilty of a Class A misdemeanor if he knowingly subjects another to unlawful restraint.

(2) Defense. It is a defense to a prosecution under this section that the actor is a parent or person in equivalent relation to the person restrained and that the person restrained is a child less than eighteen years old.

* * * * *

§ 1634. Federal Jurisdiction Over Kidnapping and Related Offenses.

(1) Generally. There is federal jurisdiction over an offense defined in sections 1631 to 1633 under paragraphs (a), (b), (c), (h) or (*l*) of section 201, or when the victim is a member of the immediate family of: the President of the United States, the President-elect, the Vice President, or, if there is no Vice President, the officer next in the order of succession to the office of President of the United States, the Vice President-elect, or any person who is acting as President under the Constitution and laws of the United States. "President-elect" and "Vice President-elect" have the meanings prescribed in section 219(c).

(2) Involuntary Servitude. Federal jurisdiction over an offense defined in sections 1631(c) or 1632(c) extends to any such offense committed anywhere within the United States or within the special maritime or territorial jurisdiction of the United States, as defined in section 210.

* * * * *

§ 1635. Usurping Control of Aircraft.

(1) Offense. A person is guilty of a Class A felony if, by force or threat of force, he usurps control of an aircraft in flight.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), or (l) of section 201.

* * * * *

§ 1639. Definitions for Sections 1631 to 1639.

In sections 1631 to 1639:

(a) "restrain" means to restrict the movements of a person unlawfully and without consent, so as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is "without consent" if it is accomplished by (i) force, intimidation or deception, or (ii) any means, including acquiescence of the victim, if he is a child less than fourteen years old or an incompetent person, and if the parent, guardian or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement;

(b) "abduct" means to restrain a person with intent to prevent his liberation by (i) secreting or holding him in a place where he is not likely to be found, or (ii) endangering or threatening to endanger the safety of any human being.

* * * * *

RAPE, INVOLUNTARY SODOMY AND SEXUAL ABUSE

§ 1641. Rape.

(1) Offense. A male who has sexual intercourse with a female not his wife is guilty of rape if:

(a) he compels her to submit by force, or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;

(b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge intoxicants or other means with intent to prevent resistance; or

(c) the victim is less than ten years old.

(2) Grading. Rape is a Class A felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, or if his conduct violates subsection (1)(c), or if the victim is not a voluntary companion of the actor and has not previously permitted him sexual liberties. Otherwise rape is a Class B felony.

* * * * *

§ 1642. Gross Sexual Imposition.

A male who has sexual intercourse with a female not his wife is guilty of a Class C felony if:

(a) he knows that she suffers from a mental disease or defect which renders her incapable of understanding the nature of her conduct;

(b) he knows that she is unaware that a sexual act is being committed upon her, or knows that she submits because she mistakenly supposes that he is her husband; or

(c) he compels her to submit by any threat that would render a female of reasonable firmness incapable of resisting.

* * * * *

§ 1643. Aggravated Involuntary Sodomy.

(1) Offense. A person who engages in deviate sexual intercourse with another, or who causes another to engage in deviate sexual intercourse, is guilty of an offense if:

(a) he compels the victim to submit by force or by threat of imminent death, serious bodily injury or kidnapping, to be inflicted on any human being;

(b) he has substantially impaired the victim's power to appraise or control his or her conduct by administering or employing without his or her knowledge intoxicants or other means with intent to prevent resistance; or

(c) the victim is less than ten years old.

(2) Grading. The offense is a Class A felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, or if his conduct violates subsection (1)(c), or if the victim is not a voluntary companion of the actor and has not previously permitted him sexual liberties. Otherwise the offense is a Class B felony.

* * * * *

§ 1644. Involuntary Sodomy.

A person who engages in deviate sexual intercourse with another, or who causes another to engage in deviate sexual intercourse, is guilty of a Class C felony if:

(a) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct;

(b) he knows that the other person is unaware that a sexual act is being committed upon him or her; or

(c) he compels the other person to submit by any threat that would render a person of reasonable firmness incapable of resisting.

* * * * *

§ 1645. Corruption of Minors.

(1) Offense. A male who has sexual intercourse with a female not his wife or any person who engages in deviate sexual intercourse with another or causes another to engage in deviate sexual intercourse is guilty of an offense if the other person is less than sixteen years old and the actor is at least five years older than the other person.

(2) Grading. The offense is a Class C felony, except when the actor is less than twenty-one years old, in which case it is a Class A misdemeanor.

* * * * *

§ 1646. Sexual Abuse of Wards.

A male who has sexual intercourse with a female not his wife or any person who engages in deviate sexual intercourse with another or causes another to engage in deviate sexual intercourse is guilty of a Class A misdemeanor if:

(a) the other person is in official custody or detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person; or

(b) the other person is less than twenty-one years old and the actor is his or her parent, guardian or otherwise responsible for general supervision of the other person's welfare.

* * * * *

§ 1647. Sexual Assault.

A person who knowingly has sexual contact with another not his spouse, or causes such other to have sexual contact with him, is guilty of a Class B misdemeanor if:

(a) he knows that the contact is offensive to the other person;

(b) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct;

(c) the other person is less than ten years old;

(d) he has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge intoxicants or other means for the purpose of preventing resistance;

(e) the other person is in official custody or detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over him or her;

(f) the other person is less than twenty-one years old and the actor is his or her parent, guardian or otherwise responsible for general supervision of the other person's welfare; or

(g) the other person is less than sixteen years old and the actor is not less than twenty-one years old.

* * * * *

§ 1648. General Provisions for Sections 1641 to 1647.

(1) Mistake as to Age. In section 1641 to 1647: (a) when the criminality of conduct

depends on a child's being below the age of ten, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than ten; (b) when criminality depends on the child's being below a critical age older than ten, it is an affirmative defense that the actor reasonably believed the child to be of the critical age or above.

(2) Spouse Relationships. In sections 1641 to 1647, when the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where the definition of an offense excludes conduct with a spouse or conduct by a female, this shall not preclude conviction of a spouse or female as accomplice in an offense which he or she causes another person, not within the exclusion, to perform.

(3) Prompt Complaint. No prosecution may be instituted or maintained under sections 1641 to 1647 unless the alleged offense was brought to the notice of public authority within three months of its occurrence or, where the alleged victim was less than sixteen years old or otherwise incompetent to make complaint, within three months after a parent, guardian or other competent person specifically interested in the victim, other than the alleged offender, learned of the offense.

(4) State Law. Sections 1645 to 1647 shall not apply to conduct which is not criminal under the law of a state within which the conduct occurs. Inapplicability under this subsection is a defense.

[(5) Testimony of Complainants. No person shall be convicted of any felony under sections 1641 to 1645 upon the uncorroborated testimony of the alleged victim. Corroboration may be circumstantial. In a prosecution before a jury for an offense under sections 1641 to 1647, the jury shall be instructed to evaluate the testimony of a victim or complaining witness with special care in view of the emotional involvement of the witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private.]

§ 1649. Definitions for Sections 1641 to 1649.

In sections 1641 to 1649:

(a) "sexual intercourse" occurs upon penetration, however, slight; emission is not required;

(b) "deviate sexual intercourse" means sexual contact between human beings who are not husband and wife consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva, or any form of sexual intercourse with an animal;

(c) "sexual contact" means any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire.

* * * * *

§ 1650. Federal Jurisdiction Over Offenses in Sections 1641 to 1647.

There is federal jurisdiction over an offense defined in sections 1641 to 1647 under paragraphs (a), (b) or (l) of section 201.

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Chapter 17. Offenses Against Property

ARSON AND OTHER PROPERTY DESTRUCTION

§ 1701. Arson.

(1) Offense. A person is guilty of arson, a Class B felony, if he starts or maintains a fire or causes an explosion with intent to destroy an entire or any substantial part of ing or inhabited structure of another or a vital public facility.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d), (e), (f), (h), (i) or (l) of section 201 and, in addition, when the offense is committed by means of an explosive or destructive device, under paragraph (g) of section 201 or if the building, inhabited structure or vital public facility is in whole or in part owned, possessed, or used by or leased to, any institution or organization receiving federal financial assistance.

* * * * *

§ 1702. Endangering by Fire or Explosion.

(1) Offense. A person is guilty of an offense if he intentionally starts or maintains a fire or causes an explosion and thereby recklessly:

(a) places another person in danger of death or bodily injury;

(b) places an entire or any substantial part of a building or inhabited structure of another or a vital public facility in danger of destruction; or

(c) causes damage to property of another constituting pecuniary loss in excess of $5,000.

(2) Grading. The offense is a Class B felony if the actor places another person in danger of death under circumstances manifesting an extreme indifference to the value of human life. Otherwise it is a Class C felony.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d), (f) or (l) of section 201.

* * * * *

§ 1703. Failure to Control or Report a Dangerous Fire.

(1) Offense. A person who knows that a fire which was started or maintained, albeit lawfully, by him or with his assent, is endangering life or a substantial amount of property of another is guilty of a Class A misdemeanor if he willfully fails either to take reasonable measures to put out or control the fire when he can do so without substantial risk to himself, or to give a prompt fire alarm.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a) or (d) of section 201.

* * * * *

§ 1704. Release of Destructive Forces.

(1) Causing Catastrophe. A person is guilty of a Class B felony if he intentionally causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison, radioactive material, bacteria, virus, or other dangerous and difficult-to-confine force or substance, and is guilty of a Class C felony if he does so willfully.

(2) Risking Catastrophe. A person is guilty of a Class A misdemeanor if he willfully creates a risk of catastrophe by fire, explosives or other means listed in subsection (1), although no fire, explosion or other destruction results.

(3) Failing to Prevent Catastrophe. A person who knowingly does an act which causes or which he knows is likely to cause an explosion, fire, flood, avalanche, collapse of building, or release of poison, radioactive material, bacteria, virus or other dangerous and difficult-to-confine force or substance, or assents to the doing of such act, is guilty of a Class A misdemeanor if he willfully fails to take reasonable measures to prevent catastrophe.

(4) Catastrophe Defined. Catastrophe means serious bodily injury to ten or more people or substantial damage to ten or more separate habitations or structures, or property loss in excess of $500,000.

(5) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d), (e), (f), (h), (i) or (l) of section 201, or when commission of the offense causes or threatens damage to an area in two or more states.

* * * * *

§ 1705. Criminal Mischief.

(1) Offense. A person is guilty of an offense if he:

(a) willfully tampers with tangible property of another so as to endanger person or property;

(b) willfully damages tangible property of another; or

(c) negligently damages tangible property of another by fire, explosives, or other dangerous means listed in section 1704(1).

(2) Grading. The offense is:

(a) a Class C felony if the actor intentionally causes pecuniary loss in excess of $5,000 or damages tangible property of another by means of an explosive or a destructive device; and

(b) a Class A misdemeanor if the actor recklessly causes pecuniary loss in excess of $5,000 or if the actor intentionally causes pecuniary loss in excess of $500.

Otherwise the offense is a Class B misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d), (f), (i) or (l) of section 201, and, in addition, over the offense defined in subsection (1)(b) of this section when it is committed by means of an explosive or destructive device, under paragraph (g) of section 201 or if the tangible property is in whole or in part, owned, possessed, or used by or leased to, any institution or organization receiving federal financial assistance.

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§ 1706. Tampering With or Damaging a Public Service.

(1) Offense. A person is guilty of an offense if he causes a substantial interruption or impairment of a public communication, transportation, supply of water, gas, power or other public service by: (a) tampering with or damaging the tangible property of another; (b) incapacitating an operator of such service; or (c) negligently damaging the tangible property of another by fire, explosive or other dangerous means listed in section 1704(1).

(2) Grading. The offense is a Class C felony if the actor engages in the conduct intentionally, and a Class A misdemeanor if the actor engages in the conduct knowingly or recklessly. Otherwise it is a Class B misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d), (f), (i) or (j) of section 201.

* * * * *

§ 1708. Consent a Defense to Sections 1701 to 1706.

Whenever in sections 1701 to 1706 it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.

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§ 1709. Definitions for Sections 1701 to 1709.

In sections 1701 to 1709:

(a) "inhabited structure" means a structure or vehicle:

(i) where any person lives or carries on business or other calling;

(ii) where people assemble for purposes of business, government, education, religion, entertainment or public transportation; or

(iii) which is used for overnight accommodation of persons.

Any such structure or vehicle is deemed to be "inhabited" regardless of whether a person is actually present. If a building or structure is divided into separately inhabited units, any unit which is property of another constitutes an inhabited structure of another;

(b) property is that "of another" if anyone

other than the actor has a possessory or proprietary interest therein;

(c) "vital public facility" includes a facility maintained for use as a bridge (whether over land or water), dam, tunnel, wharf, communications or radar installation, power station, or space launching facility.

* * * * *

BURGLARY AND OTHER CRIMINAL INTRUSION

§ 1711. Burglary.

(1) Offense. A person is guilty of burglary if he willfully enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the permises are not open to the public and the actor is not licensed, invited or otherwise privileged to enter or remain, as the case may be, with intent to commit a crime therein.

(2) Grading. Burglary is a Class B felony if:

(a) the offense is committed at night and is knowingly perpetrated in the dwelling of another; or

(b) in effecting entry or while in the premises or in immediate flight therefrom, the actor inflicts or attempts to inflict bodily injury or physical restraint on another, or menaces another with imminent serious bodily injury, or is armed with a firearm, destructive device or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

Otherwise burglary is a Class C felony.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d), (k), or (l) of section 201.

* * * * *

§ 1712. Criminal Trespass.

(1) Dwelling; Highly Secured Premises. A person is guilty of a Class A misdemeanor if, knowing that he is not licensed or privileged to do so, he enters or remains in a dwelling or in highly secured premises.

(2) Building; Structure; Enclosed Premises. A person is guilty of a Class B misdemeanor if, knowing that he is not licensed or privileged to do so, he:

(a) enters or remains in any building, occupied structure or storage structure, or separately secured or occupied portion thereof; or

(b) enters or remains in any place so enclosed as manifestly to exclude intruders.

(3) Any Premises. A person is guilty of an infraction if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders.

(4) Defenses. It is a defense to a prosecution under this section that:

(a) the premises were abandoned; or

(b) the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises.

(5) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d), (f), (k) or (*l*) of section 201.

* * * * *

§ 1713. Breaking Into or Concealment Within a Vehicle.

(1) Offense. A person is guilty of an offense if, knowing that he is not licensed or privileged to do so, he breaks into a vehicle, vessel or aircraft, or, with intent to commit a crime, conceals himself therein.

(2) Grading. The offense is a Class C felony if the actor is armed with a firearm, destructive device or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury. Otherwise it is a Class A misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b) or (l) of section 201.

* * * * *

§ 1714. Stowing Away.

(1) Offense. A person is guilty of a Class A misdemeanor if, knowing that he is not licensed or privileged to do so, he surreptitiously remains aboard a vessel or aircraft with intent to obtain transportation.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d) or (h) of section 201.

* * * * *

§ 1719. Definitions for Sections 1711 to 1719.

In sections 1711 to 1719:

(a) "occupied structure" means a structure or vehicle:

(i) where any person lives or carries on business or other calling; or

(ii) which is used for overnight accommodation of persons.

Any such structure or vehicle is deemed to be "occupied" regardless of whether a person is actually present;

(b) "storage structure" means any structure, truck, railway car, vessel or aircraft which is used primarily for the storage or transportation of property;

(c) "highly secured premises" means any place, maintained, in fact, by the United States which is continuously guarded and where display of visible identification is required of persons while they are on the premises;

(d) "dwelling" has the meaning prescribed in section 619;

(e) "night" means the period between 30 minutes past sunset and 30 minutes before sunrise.

* * * * *

ROBBERY

§ 1721. Robbery.

(1) Offense. A person is guilty of robbery if, in the course of committing a theft, he inflicts or attempts to inflict bodily injury upon another, or threatens or menaces another with imminent bodily injury.

(2) Grading. Robbery is a Class A felony if the actor fires a firearm or explodes or hurls a destructive device or directs the force of any other dangerous weapon against another. Robbery is a Class B felony if the robber possesses or pretends to possess a firearm, destructive device or other dangerous weapon, or menaces another with serious bodily injury, or inflicts bodily injury upon another, or is aided by an accomplice actually present. Otherwise robbery is a Class C felony.

(3) Definitions. In this section:

(a) an act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, whether or not the theft is successfully completed, or in immediate flight from the commission of, or an unsuccessful effort to commit, the theft;

(b) "dangerous weapon" means a weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (d), (g), (k) or (*l*) of section 201. No prosecution may be instituted under paragraph (g), however, unless expressly authorized by the Attorney General.

* * * * *

§ 1731. Consolidation of Theft Offenses.

(1) Construction. Conduct denominated theft in sections 1732 to 1734 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like.

(2) Charging Theft. An indictment or information charging theft under sections 1732 to 1734 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such an indictment or information if his conduct falls under any of sections 1732 to 1734, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet.

* * * * *

§ 1732. Theft of Property.

A person is guilty of theft if he:

(a) knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;

(b) knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or

(c) knowingly receives, retains or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

* * * * *

§ 1733. Theft of Services.

A person is guilty of theft if:

(a) he intentionally obtains services, known by him to be available only for compensation, by deception, threat, false token or other means to avoid payment for the services; or

(b) having control over the disposition of services of another to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception.

* * * * *

§ 1734. Theft of Property Lost, Mislaid or Delivered by Mistake.

A person is guilty of theft if he:

(a) retains or disposes of property of another when he knows it has been lost or mislaid, or

(b) retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property,

and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

§ 1735. Grading of Theft Offenses Under Sections 1732 to 1734.

(1) Class B Felony. Theft under sections 1732 to 1734 is a Class B felony if the property or services stolen exceed $100,000 in value or are acquired or retained by a threat to commit a Class A or Class B felony or to inflict serious bodily injury on the person threatened or on any other person.

(2) Class C Felony. Theft under sections 1732 to 1734 is a Class C felony if:

(a) the property or services stolen exceed $500 in value;

(b) the property or services stolen are acquired or retained by threat and (i) are acquired or retained by a public servant by a threat to take or withhold official action, or (ii) exceed $50 in value;

(c) the property or services stolen exceed $50 in value and are acquired or retained by

a public servant in the course of his official duties;

(d) the property stolen is a firearm, ammunition, explosive or destructive device or an automobile, aircraft or other motor-propelled vehicle;

(e) the property consists of any government file, record, document or other government paper stolen from any government office or from any public servant;

(f) the defendant is in the business of buying or selling stolen property and he receives, retains or disposes of the property in the course of that business;

(g) the property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument or obligation of the United States;

(h) the property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access; or

(i) the property is stolen from the United States mail and is first class mail or air mail.

(3) Class A Misdemeanor. All other theft under sections 1732 to 1734 is a Class A misdemeanor, unless the requirements of subsection (4) or (5) are met.

(4) Class B Misdemeanor. Theft under sections 1732 to 1734 of property or services of a value not exceeding $50 shall be a Class B misdemeanor if:

(a) the theft was not committed by threat;

(b) the theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and

(c) the defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of his official duties.

The special classification provided in this subsection shall apply if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.

(5) Infraction. Theft under section 1733 of services of a value not exceeding $10 shall be an infraction if the defendant was not a public servant who committed the theft in the course of his official duties. The special classification provided in this subsection shall apply if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.

(6) Attempt. Notwithstanding the provisions of section 1001(3), an attempt to commit a theft under sections 1732 to 1734 is punishable equally with the completed offense when the actor has completed all of the conduct which he believes necessary on his part to complete the theft except receipt of the property.

(7) Valuation. For purposes of grading, the amount involved in a theft under sections 1732 to 1734 shall be the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that he was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

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§ 1736. Unauthorized Use of a Vehicle.

(1) Offense. A person is guilty of an offense if, knowing that he does not have the consent of the owner, he takes, operates, or exercises control over an automobile, aircraft, motorcycle, motorboat, or other motor-propelled vehicle of another.

(2) Defense. It is a defense to a prosecution under this section that the actor reasonably believed that the owner would have consented had he known of the conduct on which the prosecution was based.

(3) Grading. The offense is a Class C felony if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of restoration exceed $500. Otherwise the offense is a Class A misdemeanor.

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§ 1737. Misapplication of Entrusted Property.

A person is guilty of a Class A misdemeanor if he disposes of, uses or transfers any interest in, property which has been entrusted to him as a fiduciary, or in his capacity as a public servant or an officer, director, agent, employee of, or a person controlling a financial institution, in a manner that he knows is not authorized and that he knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.

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§ 1738. Defrauding Secured Creditors.

(1) Offense. A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest.

(2) Grading. The offense is a Class A misdemeanor if the property has a value exceeding $500 and a Class B misdemeanor if the property has a value exceeding $50. Otherwise it is an infraction. Value to be determined as provided in section 1735(7).

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§ 1739. Defenses and Proof as to Theft and Related Offenses.

(1) Defenses. It is a defense to a prosecution under sections 1732 to 1738 that:

(a) the actor honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him; or

(b) the victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as man and wife.

(2) Proof. (a) It shall be a prima facie case of theft under sections 1732 to 1734 if it is shown that a public servant or an officer, director, agent or employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts. (b) It shall be prima facies evidence that the actor knows that property has been stolen if it is shown that, being a dealer, he acquired it for a consideration which he knew to be far below its reasonable value. "Dealer" means a person, whether licensed or not, who has repeatedly engaged in transactions in the type of property involved. (c) In any prosecution under sections 1732 to 1734 or 1737 where it is alleged that there is federal jurisdiction over the offense under paragraph (i) of section 201, the place from which and to which the shipment was made is presumed to have been as designated in the waybill or other shipping document of such shipment and the interstate character of the shipment of any property by pipeline systems is presumed from the interstate extension of the pipeline system.

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§ 1740. Jurisdiction over Theft and Related Offenses.

(1) Common Bases for Sections 1732 to 1737. There is federal jurisdiction over an offense defined in sections 1732 to 1737 under paragraphs (a), (b), (d), (e), (h), (i), (j), (k) or (l) of section 201.

(2) Section 1738. There is federal jurisdiction over an offense defined in section 1738 under paragraphs (a) or (b) of section 201 or when the United States holds a security interest in the property which is the subject of the offense.

(3) Additional Common Base for Sections 1732 to 1734. There is federal jurisdiction over an offense defined in sections 1732 to 1734 under paragraph (g) of section 201 when the theft is one in which property or services are acquired or retained by threat; but no prosecution may be instituted under this subsection unless expressly authorized by the Attorney General.

(4) Special Bases for Sections 1732 to 1734 and 1737. Federal jurisdiction over an offense defined in sections 1732 to 1734 and section 1737 also exists under any of the following circumstances:

(a) Federal Public Servant—when the offense is committed by a public servant of the United States acting under color of office;

(b) Misrepresentation of Federal Interest—when the offense is committed by a misrepresentation of United States ownership, guarantee, insurance or other interest of the United States in property involved in a transaction;

(c) Impersonation of Creditors—when the offense is committed by impersonation of a creditor of the United States;

(d) Indian Property—when the subject of the offense is property owned by or in the custody of a tribe, band, or community of Indians which is subject to federal statutes relating to Indian affairs or of any corporation, association or group which is organized under any of such statutes;

(e) Employee Benefit Plans—when the subject of the offense is property owned by or in the custody of any employee welfare benefit plan or employee pension benefit plan subject to 2 U.S.C., Ch. 10;

(f) Public Work Kickbacks—when any part of the compensation of a person employed in the construction, prosecution, completion or repair of any federal public building, federal public work, or building or work financed in whole or in part by loans or grants from the United States is obtained or retained by a threat or deception in relation to that person's employment;

(g) Funds Insured by Department of Housing and Urban Development—when the offense is commited in a transaction for a loan, advance of credit or mortgage insured by the United States Department of Housing and Urban Development;

(h) Small Business Investment Companies—when the offense is committed by an officer, director, agent, receiver or employee of, or person connected in any capacity with, a small business investment company, as defined in 15 U.S.C. § 662, and the subject of the offense is property owned by or in the custody of such small business investment company;

(i) Registered Investment Companies—when the subject of the offense is property owned by or in the custody of a registered investment company, as defined in 15 U.S.C. § 80a:

(j) Futures Commission Merchants—when the offense is committed by a futures commission merchant, as defined in 7 U.S.C. § 2, or any employee or agent thereof, and the subject of the offense is property of a customer received by such commission merchant;

(k) Common Carriers—when the offense is committed by an officer, director, manager or employe of a firm, association or corporation engaged in commerce as a common carrier,

and the subject of the offense is property owned by or in the custody of such common carrier;

(l) Federal Economic Opportunity Program—when the offense is committed by an officer, director, agent or employee of, or person connected in any capacity with, any agency receiving financial assistance under 42 U.S.C., Ch. 34, and the subject of the offense is property which is the subject of a grant or contract of assistance pursuant to such Chapter;

(m) Employment in Federal Economic Opportunity Program—when property of a person is obtained or retained by a threat in relation to that person's employment under a grant of contract of assistance pursuant to 42 U.S.C., Ch. 34;

(n) Labor Organizations—when the offense is committed by an officer, agent or employee of a labor organization, as defined in 29 U.S.C. § 152, and the subject of the offense is property owned by or in the custody of such labor organization;

(o) Commodity Credit Corporation—when the subject of the offense is property mortgaged or pledged to the Commodity Credit Corporation or is property mortgaged or pledged as security for any promissory note or other evidence of indebtedness which the Corporation has guaranteed or is obligated to purchase upon tender.

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§ 1741. Definitions for Theft and Related Offenses.

In sections 1731 to 1741:

(a) "deception" means: (i) creating or reinforcing a false impression, including false impressions as to fact, law, status, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not substantially perform the promise unless it is part of a continuing scheme to defraud; or (ii) preventing another from acquiring information which would affect his judgment of a transaction; or (iii) failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or (iv) failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events; or (v) failing to disclose a lien, adverse claim or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record; or (vi) using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (A) where such instrument has been stolen, forged, revoked or cancelled, or where for any other reason its use by the actor is unauthorized, and (B) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or (vii) any other schemeto defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group;

(b) "deprive" means: (i) to withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated; or (ii) to withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or (iii) to dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.

(c) "fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary;

(d) "financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

(e) "obtain" means: (i) in relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another; or (ii) in relation to services, to secure performance thereof;

(f) "property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, close-in-action, interest in or claim to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property;

(g) "property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned;

(h) "receiving" means acquiring possession, control or title, or lending on the security of the property;

(i) "services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants or elsewhere, admission to exhibitions, and use of vehicles or other property;

(j) "stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of section 1736;

(k) "threat" means an expressed purpose, however communicated, to (i) cause bodily injury in the future to the person threatened or to any other person; or (ii) cause damage to property; or (iii) subject the person threatened or any other person to physical confinement or restraint; or (iv) engage in other conduct constituting a crime; or (v) accuse anyone of a crime; (vi) expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute; or (vii) reveal any information sought to be concealed by the person threatened; or (viii) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or (ix) take or withhold official action as a public servant, or cause a public servant to take or withhold official action; or (x) bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent; or (xi) cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or (xii) do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship. Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

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FORGERY AND OTHER FRAUDS

§ 1751. Forgery or Counterfeiting.

(1) Offense. A person is guilty of forgery or counterfeiting if, with intent to decide or harm the government or another person, or with knowledge that he is facilitating such deception or harm by another person, he:

(a) knowingly and falsely makes, completes or alters any writing; or

(b) knowingly utters or possesses a forged or counterfeited writing.

(2) Grading. Forgery or counterfeiting is:

(a) a Class B felony if:

(i) the actor forges or counterfeits an obligation or other security of the United States; or

(ii) the offense is committed pursuant to a scheme to defraud another of money or property of a value in excess of $100,000;

(b) a Class C felony if:

(i) the actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by his office;

(ii) the actor forges or counterfeits foreign money or other legal tender, or utters or possesses any forged or counterfeited obligation or security of the United States or foreign money or legal tender;

(iii) the actor forges or counterfeits any writing from plates, dies, molds, photographs or other similar instruments designed for multiple reproduction;

(iv) the actor forges or counterfeits a writing which purports to have been made by the government;

(v) the actor utters a forged or counterfeited United States passport or certificate of United States naturalization or citizenship; or

(vi) the offense is committed pursuant to a scheme to defraud another of money or property of a value in excess of $500;

(c) a Class A misdemeanor in all other cases.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under any of the following circumstances:

(a) Common Bases—under paragraphs (a) or (b) of section 201;

(b) Nature of the Writing—when the writing which is the subject of the offense (i) has been or purports to have been made by or on behalf of, or issued under the authority of, the United States, a national credit institution (as defined in section 219), or a foreign government or bank or (ii) is an endorsement of or otherwise a part of such writing;

(c) Misconduct by Bank Employee—when the offense is committed by an officer, director, agent, trustee, or employee, acting under color of office, of a national credit institution (as defined in section 219);

(d) Deception of Government or National

Credit Institution—when the offense is committed pursuant to a scheme to deceive or injure the United States or a national credit institution (as defined in secion 219);

(e) Interstate or Foreign Commerce—when the writing which is the subject of the offense is or purports to be a security or a tax stamp or part thereof which is in interstate or foreign commerce.

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§ 1752. Facilitation of Counterfeiting.

(1) Counterfeiting Implements. A person is guilty of an offense if, except as authorized by statute or by regulation, he knowingly makes, executes, sells, buys, imports, possesses or otherwise has within his control any plate, stone, paper, tool, die, mold or other implement or thing uniquely associated with or fitted for the preparation of any forged or counterfeited security or tax stamp or any writing which purports to be made by the United States or any foreign government.

(2) Counterfeiting Impressions. A person is guilty of an offense if, except as authorized by statute or by regulation, he:

(a) knowingly photographs or otherwise makes a copy of:

(i) money or other obligation or security of the United States or a foreign government, or any part thereof; or

(ii) any plate, stone, tool, die, mold or other implement or thing uniquely associated with or fitted for the preparation of any writing described in subsection (1); or

(b) knowingly sells, buys, imports, possesses or otherwise has within his control any photograph or copy the making of which is prohibited by subsection (2)(a).

(3) Authorization as Defense. In a prosecution under this section authorization by statute or by regulation is a defense.

(4) Grading. An offense defined in this section is a Class B felony if the implement or the impression relates to the forging or counterfeiting of money or other obligation or security of the United States. Otherwise it is a Class C felony.

(5) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b) or (j) of section 201 or when the offense involves a writing made by the United States or any foreign government.

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§ 1753. Deceptive Writings.

(1) Offense. A person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that he is facilitating such a deception or harm by another person, he knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing.

(2) Grading. The offense is a Class B felony if it is committed pursuant to a scheme to defraud another of money or property of a value in excess of $100,000. The offense is a Class C felony if (a) the actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by his office; or (b) the offense is committed pursuant to a scheme to defraud another of money or property of a value in excess of $500. Otherwise it is a Class A misdemeanor.

(3) Jurisdiction. Federal jurisdiction over an offense defined in this section is the same as that prescribed for forgery or counterfeiting in section 1751.

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§ 1754. Definitions for Sections 1751 to 1754.

In sections 1751 to 1754:

(a) the definitions prescribed in section 1741 apply;

(b) "writing" means (i) any paper, document or other instrument containing written or printed matter or its equivalent, including money, a money order, bond, public record, affidavit, certificate, passport, visa, contract, security, or obligation, and (ii) any coin or any gold or silver bar coined or stamped at a mint or assay office of the United States or any signature, certification, credit card, token, stamp, seal, badge, decoration, medal, trademark or other symbol or evidence of value, right, privilege, or identification which is capable of being used to the advantage or disadvantage of the government or any person;

(c) "without authority" includes conduct that, on the specific occasion called into question, is beyond any general authority given by statute, regulation or agreement;

(d) "falsely makes" means to make a writing which purports to be made by the government or another person, or a copy thereof, but which is not because the apparent maker is fictitious or because the writing was made without authority;

(e) "falsely completes" means to make an addition to or an insertion in a writing, without authority, such that the writing appears to have been made by, or fully authorized by, its apparent maker;

(f) "falsely alters" means to make a change in a writing without authority, such that the writing appears to have been made by, or fully authorized by, its apparent maker;

(g) to "forge" or to "counterfeit" a writing means to falsely make, complete, or alter the writing, and a "forged" or "counterfeited" writing is a writing which has been falsely made, completed or altered. The terms "forgery" and "counterfeiting" and their variants are intended to be synonymous in legal effect;

(h) "utter' means to issue, authenticate, transfer, publish, sell, transmit, present, use or otherwise give currency to;

(i) "possess" means to receive, conceal or otherwise exercise control over;

(j) the term "obligation or other security of the United States" means a bond, certificate of indebtedness, national bank currency, Federal Reserve note, Federal Reserve bank note, coupon, United States note, Treasury note, gold certificate, silver certificate, fractional note, certificate of deposit, a stamp, a postage meter stamp or other representative of value of whatever denomination, issued pursuant to a federal statute, and a canceled United States stamp;

(k) "security" other than as provided in paragraph (j) includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of interest in tangible or intangible propery, instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, uncanceled stamp issued by a foreign government (whether or not demonetized); or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant or right to subscribe to or purchase any of the foregoing;

(l) "tax stamp" includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a state, or evidence of the discharge thereof;

(m) a "deceptive writing" is a writing which (i) has been procured by deception, or (ii) has been issued without authority.

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§ 1755. Making or Uttering Slugs.

(1) Offense. A person is guilty of an offense if he makes or utters a slug with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.

(2) Grading. The offense is a Class A misdemeanor if it involves slugs which exceed $50 in value. Otherwise it is a Class B misdemeanor.

(3) Definitions. In this section:

(a) "slug" means a metal, paper, or other object which by virtue of its size, shape or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill or token;

(b) "coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed:

(i) to receive a coin or bill of a certain denomination or a token made for the purpose; and

(ii) in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition of property or a public or private service;

(c) "value" of the slugs means the value of the coins, bills or tokens for which they are capable of being substituted.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraph (a) of section 201 or when the offense involves a coin machine designed to receive currency of the United States.

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§ 1756. Bankruptcy Fraud.

(1) Offense. A person is guilty of a Class C felony if, with intent to deceive a court or its officers or to harm creditors of a bankrupt, he knowingly:

(a) transfers or conceals any property belonging to the estate of a bankrupt;

(b) receives any material amount of property from a bankrupt after the filing of a bankruptcy proceeding;

(c) transfers or conceals, in contemplation of a bankruptcy proceeding, his own property or the property of another;

(d) conceals, destroys, mutilates, alters or makes a false entry in any document affecting or relating to the property or affairs of a bankrupt, or withholds any such document from the receiver, trustee or other officer of the court entitled to its possession; or

(e) gives, obtains or receives a thing of value for acting or forbearing to act in any bankruptcy proceeding.

(2) Duration of Offense. The concealment of a bankrupt is a continuing offense and the period of limitations shall not begin to run until the bankrupt shall have been finally discharged from bankruptcy or a discharge from bankruptcy finally denied.

(3) Definitions. In this section "bankrupt" means a debtor by or against whom a petition has been filed under Title 11 of the United States Code, and "bankruptcy proceeding" includes any proceeding, arrangement or plan pursuant to Title 11.

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§ 1757. Rigging a Sporting Contest.

(1) Interference With a Sporting Contest. A person is guilty of a Class C felony if, with intent to prevent a publicly-exhibited sporting contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(a) confers or offers or agrees to confer any benefit upon, or threatens any harm to, a participant, official or other person associated with the contest; or

(b) tampers with any person, animal or thing.

(2) Soliciting or Accepting Benefits. A person is guity of a Class C felony if he knowingly solicits, accepts or agrees to accept any benefit the giving of which is prohibited under subsection (1).

(3). Definition. A "publicly-exhibited sporting contest" is any contest in any sport,

between individual contestants or teams of contestants, the occurrence of which is publicly announced in advance of the event.

(4) Status of Contestant. The status of the contestant as amateur or professional is not material to the commission of the offense described in this section.

(5) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (b), (e) or (h) of section 201.

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§ 1758. Commercial Bribery.

(1) Giving Bribe. A person is guilty of a Class A misdemeanor if he:

(a) confers or agrees or offers to confer any benefit upon an employee or agent without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs; or

(b) confers or agrees or offers to confer any benefit upon any fiduciary without the consent of the beneficiary, with intent to influence the fiduciary to act or conduct himself contrary to his fiduciary obligation.

(2) Receiving Bribe. A person is guilty of a Class A misdemeanor if he knowingly solicits, accepts or agrees to accept any benefit the giving of which is prohibited under subsection (1).

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under any of the following circumstances:

(a) Common Bases—under paragraphs (a) or (b) of section 201;

(b) National Credit Institutions—when the person committing the offense or the person who is the subject of the offense is an agent, fiduciary or employee of a national credit institution (as defined in section 219) or of a small business investment company (as defined in 15 U.S.C. § 662), and the offense is committed in connection with his duties;

(c) Employee Welfare or Pension Plan—when the person committing the offense or the person who is the subject of the offense is an agent, fiduciary or employee of an employee welfare benefit plan or employee pension benefit plan subject to 29 U.S.C., Ch. 10; or is an employer any of whose employees are covered by such plan; or is an agent, fiduciary or employee of an employer any of whose employees are covered by such plan; or is an agent, fiduciary or employee of an employee organization any of whose members are covered by such plan; or is a person who, or an agent, fiduciary or employee of an organization which, provides benefit plan services to such plan; and the offense is committed in connection with his duties;

(d) Interstate Facilities—when the person committing the offense or the person who is the subject of the offense is an agent, fiduciary or employee of any interstate facility and the offense is committed in the course of his duties;

(e) Military Service Clubs—when the person committing the offense or the person who is the subject of the offense is an agent, fiduciary or employee of a military officers' or servicemen's club for personnel on active duty, or of a military post exchange, and the offense is committed in connection with his duties.

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§ 1759. Unlawful Trafficking in Food Stamp Coupons.

(1) Offense. A person is guilty of an offense if he knowingly traffices in food stamp coupons in violation of the regulatory law.

(2) Definitions. In this section:

(a) "traffics" means:

(i) transfers or otherwise disposes of the coupons to another;

(ii) possesses the coupons with intent to transfer or otherwise dispose of them to another; or

(iii) obtains or receives the coupons;

(b) "regulatory law" means Chapter 51 of Title 7, United States Code, and regulations issued pursuant thereto.

(3) Grading. The offense is a Class C felony if the value of the coupons exceeds $500 and the trafficking was engaged in with intent that the coupons be used by a person not authorized to use them or that the coupons be used to purchase a thing other than food, as defined in the regulatory law. Otherwise the offense is a Class A misdemeanor.

(4) Valuation. For purposes of grading, the value of the coupons shall be the face value. Trafficking committed pursuant to one scheme or course of conduct may be charged as one offense and the value of the coupons involved may be aggregated in determining the grade of the offense.

* * * * *

ECONOMIC REGULATION

§ 1771. Engaging in or Financing Criminal Usury Business.

(1) Offense. A person is guilty of a Class C felony if he knowingly engages in, or directly or indirectly provides financing for, the business of making extensions of credit at such a rate of interest that repayment or performance of any promise given in consideration thereof is unenforceable through civil judicial process (a) in the jurisdiction where the debtor, if a natural person, resided at the time credit was extended or (b) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business at the time credit was extended.

(2) Presumptions. Knowledge of unenforceability shall be presumed, in the case of a person engaging in the business, if any of the following exist, and in the case of a person directly or indirectly providing financing, if he knew any of the following:

(a) it is an offense in the relevant jurisdiction described in subsection (1) to charge, take or receive interest at the rate involved;

(b) the rate of interest charged, taken or received is 50 or more percentum greater than the maximum enforceable rate of interest in the relevant jurisdiction described in subsection (1); or

(c) the rate of interest involved exceeds 45 percentum per annum or the equivalent rate for a longer or shorter period.

(3) Rate of Interest. Unless otherwise provided by the law of the relevant jurisdiction described in subsection (1), the rate of interest is to be calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(4) Defense. It is a defense to a prosecution under this section that the defendant was licensed or otherwise authorized by the United States or a state government to engage in the business of making extensions of credit.

(5) Definitions. In this section:

(a) an "extension of credit" means any loan, or any agreement tacit or express whereby the repayment or satisfaction of any debt, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred;

(b) "debtor" means any person to whom an extension of credit is made, or who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same;

(c) the repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(6) Judicial Notice of State Law. For the purposes of this section, relevant state law, including conflicts of laws rules, governing the enforceability through civil judicial processes of repayment of any extension of credit or the performance of any promise given in consideration thereof shall be judicially noticed. This subsection does not impair any authority which any court would otherwise have to take judicial notice of any matter of state law.

(7) Jurisdiction. Federal jurisdiction over an offense defined in this section extends to any such offense committed anywhere within the United States, pursuant to the powers of Congress to regulate commerce and to establish uniform and effective laws on the subject of bankruptcy, and under the findings of Congress expressed in section 201 of the Consumer Credit Protection Act (Public Law 90–321), and to any such offense committed within the special maritime and territorial jurisdiction of the United States, as defined in section 210.

* * * * *

§ 1772. Securities Violations.

A person is guilty of a Class C felony if he:

(a) knowingly does anything declared to be unlawful in 15 U.S.C. §§ 77e, 77q, 77w, 77fff, 77xxx, 78i(a)(1)–(5) or [Rule 10b–5]; or

(b) in a registration statement filed under subchapter I of 15 U.S.C., Ch. 2A, or in an application, report or document filed under subchapter III of 15 U.S.C., Ch. 2A or any rule, regulation, or order issued pursuant thereto, knowingly makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

* * * * *

§ 1773. Banking Violations.

A person is guilty of a Class C felony if he engages in conduct prohibited or declared to be unlawful by 12 U.S.C. § 95 (relating to emergency restrictions on members of federal reserve system), with intent to conceal a transaction from a government agency authorized to administer the statute or with knowledge that his unlawful conduct substantially obstructs, impairs or perverts the administration of the statute or any government function.

* * * * *

Chapter 18. Offenses Against Public Order, Health, Safety and Sensibilities

RIOT AND MUTINY

§ 1801. Inciting Riot.

(1) Offense. A person is guilty of an offense if he:

(a) incites or urges five or more persons to create or engage in a riot; or

(b) gives commands, instructions, or directions to five or more persons in furtherance of a riot.

"Riot" means a public disturbance involving an assemblage of five [ten] or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.

(2) Attempt, Solicitation and Conspiracy. A person shall be convicted under sections 1001, 1003 or 1004 of attempt, solicitation or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section.

(3) Grading. The offense is a Class C felony if it is under subsection (1)(b) and

the riot involves 100 or more persons. Otherwise it is a Class A misdemeanor.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (e) or (h) of section 201; but no prosecution shall be instituted under paragraphs (e) or (h) unless the Attorney General certifies that a federal interest exists by reason of the fact the circumstances under which the offense occurred manifestly portended involvement of 100 or more persons or the riot involved 100 or more persons and its occurrence was or was being substantially furthered from outside the state where the riot occurred or would have occurred.

* * * * *

§ 1802. Arming Rioters.

(1) Offense. A person is guilty of a Class C felony if he:

(a) knowingly supplies a firearm or destructive device for use in a riot;

(b) teaches another to prepare or use a firearm or destructive device with intent that any such thing be used in a riot; or

(c) while engaging in a riot, is knowingly armed with a firearm or destructive device.

"Riot" has the meaning prescribed in section 1801.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (e) or (h) of section 201 and, with respect to offenses under subsection (1)(a), also under paragraph (j).

* * * * *

§ 1803. Engaging in a Riot.

(1) Offense. A person is guilty of a Class B misdemeanor if he engages in a riot, as defined in section 1801.

(2) Attempt, Solicitation and Conspiracy; Presence. The provisions of section 1801(2) are applicable to attempt, solicitation and conspiracy to commit an offense under this section. Mere presence at a riot is not an offense under this section.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraph (a) of section 201.

* * * * *

§ 1804. Disobedience of Public Safety Orders Under Riot Conditions.

(1) Offense. A person is guilty of an infraction if during a riot, as defined in section 1801, or when one is immediately impending, he disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by an official having supervisory authority over at least ten persons in the police, fire, military or other forces concerned with the riot.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraph (a) of section 201.

* * * * *

§ 1805. Mutiny on a Vessel.

(1) Offense. A person is guilty of an offense if by force, threat of force or deception, he usurps command of a vessel. The offense or attempt to commit the offense is a Class B felony if the vessel is on the high seas, and otherwise is a Class C felony.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a) or (*l*) of section 201.

* * * * *

FIREARMS AND EXPLOSIVES

(1) ban the production and possession of, and trafficking in, handguns, with exceptions only for military, police and similar official activities; and

(2) require registration of all firearms.

A substantial body of opinion in the Commission: opposes any federal involvement in firearms control beyond that embodied in existing legislation.

* * * * *

§ 1811. Supplying Firearms, Ammunition, Destructive Devices or Explosives for Criminal Activity.

(1) Offense. A person is guilty of a Class C felony if he:

(a) knowingly supplies a firearm, ammunition therefor, destructive device or explosive to a person who intends to commit a crime of violence or intimidation with the aid thereof or while armed therewith; or

(b) procures or receives the same with like intent.

(2) Definition. In this section "crime of violence or intimidation" means such a crime defined in sections 1501 to 1521, and such a crime defined in Chapters 16 and 17 of this Code when the offense is a felony.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a) or (j) of section 201. Commission of an offense defined in this section shall not be a basis for application of section 201(b) to confer federal jurisdiction over commission of another offense except wheere the offense defined in this section involves a destructive device or explosive and the other offense is one defined in sections 1601 to 1603, 1611 and 1612.

* * * * *

§ 1812. Illegal Firearms, Ammunition or Explosive Materials Business.

(1) Offense. A person is guilty of an offense if he knowingly supplies a firearm, ammunition or explosive material to, or procures or receives a firearm, ammunition or explosive material for, a person prohibited by the regulatory law from receiving it.

(2) Definitions. In this section:

(a) "firearms" has the meaning prescribed in section—of the regulatory law;

(b) "explosive material" has the meaning prescribed in section—of the regulatory law;

(c) "ammunition" has the meaning prescribed in section—of the regulatory law; and

(d) "regulatory law" means Chapter—of this Code and any rules or regulatory issued pursuant thereto.

(3) Grading. The offense is a Class C felony if the actor:

(a) was not licensed or otherwise authorized by law to handle, transfer or engage in transactions with respect to the firearm, destructive device or explosive material; or

(b) engaged in the forbidden transaction under circumstances manifesting his readiness to supply or procure on other occasions in disregard of lawful restrictions.

Otherwise the offense is a Class A misdemeanor.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (g) or (j) of section 201, or when a licensee under the regulatory law engages in the conduct. Commission of an offense defined in this section shall not be a basis for application of section 201(b) to confer federal jurisdiction over commission of another offense.

* * * * *

§ 1813. Trafficking In and Receiving Limited-Use Firearms.

(1) Offense. A person is guilty of a Class C felony if he:

(a) traffics in limited-use firearms in violation of the regulatory law; or

(b) receives a limited-use firearm with knowledge that it is being transferred to him in violation of the regulatory law.

(2) Definitions. In this section:

(a) "traffics" means:

(i) transfers to another person;

(ii) possesses with intent to transfer to another person;

(iii) makes or manufactures; or

(iv) imports or exports;

(b) "limited-use firearm" has the meaning prescribed for "firearm" in the regulatory law; and

(c) "regulatory law" means Chapter 53 of Title 26, United States Code, Chapter—of this Code and any rules and regulations issued pursuant thereto.

(3) Jurisdiction. Commission of an offense defined in this section shall not be a basis for application of section 201(b) to confer federal jurisdiction over the commission of another offense.

* * * * *

§ 1814. Possession of Explosives and Destructive Devices in Buildings.

A person is guilty of a Class A misdemeanor if he possesses an explosive or destructive device in a federal government building without the written consent of the government agency or person responsible for the management of such building. "Federal government building" means a building which is owned, possessed, or used by or leased to the United States.

* * * * *

§ 1821. Classification of Drugs.

For purposes of sections 1821 to 1829 and unless modified by the Attorney General in accordance with this section, "dangerous drug," "abusable drug," and "restricted drug" have the meanings prescribed in section 1829. The Attorney General is authorized to classify and reclassify any "controlled substance" as defined in section 102 of the regulatory law within one of these three classifications, in accordance with the factors set forth in section 201 of the regulatory law. In making such classifications and reclassifications, the Attorney General shall follow the procedure prescribed in section 201 of the regulatory law. Culpability with respect to classification is not required.

* * * * *

§ 1822. Trafficking in Dangerous and Abusable Drugs.

(1) Class B Felony Trafficking. A person is guilty of a Class B felony if, except as authorized by the regulatory law, he knowingly sells a dangerous drug for resale or traffics in a dangerous drug in a quantity in excess of that established from time to time by the Attorney General, in accordance with the procedure prescribed in section 201 of the regulatory law, as indicative of trafficking for resale.

(2) Class C Felony Trafficking. A person is guilty of an offense if, except as authorized by the regulatory law, he knowingly traffics in a dangerous or abusable drug. The offense is a Class C felony unless subsection (3) applies.

(3) Misdemeanor Trafficking. Trafficking in a dangerous or abusable drug shall be a Class A misdemeanor if:

(a) the defendant did not act for profit or to further commercial distribution; and

(b) the defendant did not transfer or otherwise dispose of a dangerous or abusable drug to a child under eighteen or facilitate such transfer or other disposition, or, if the defendant did engage in such conduct, he was less than five years older than the child.

The special classification provided in this subsection shall apply if the defendant is charged with trafficking under this subsection or if, at sentencing, the required factors are established by a preponderance of the evidence.

* * * * *

§ 1823. Trafficking in Restricted Drugs.

(1) Class A Misdemeanor Trafficking. A person is guilty of an offense if, except as authorized by the regulatory law, he knowingly traffics in a restricted drug. The offense

is a Class A misdemeanor unless subsection (2) applies.

(2) Class B Misdemeanor Trafficking. Trafficking in a restricted drug shall be a Class B misdemeanor if the defendant did not act for profit or to further commercial distribution. The special classification provided in this subsection shall apply if the defendant is charged with trafficking under this subsection or if, at sentencing, the required factors are established by a preponderance of the evidence.

(3) Trafficking For Own Use. It is an affirmative defense to a prosecution under this section that the defendant did not transfer or intend to transfer or otherwise dispose of the drug to another person.

* * * * *

§ 1824. Possession Offenses.

A person is guilty of an offense if, except as authorized by the regulatory law, he knowingly possesses a usable quantity of a dangerous or abusable drug. If the drug is a dangerous drug, the offense is a Class A misdemeanor. If the drug is an abusable drug other than marihuana, the offense is an infraction upon a first offense, a Class B misdemeanor if it is the second conviction of the defendant for trafficking in or possessing a dangerous or abusable drug, and a Class A misdemeanor if it is the third or subsequent conviction of the defendant for such trafficking or possessing. If the drug is marihuana, the offense is an infraction.

[A person is guilty of a Class A misdemeanor if, except as authorized by the regulatory law, he knowingly possesses a usable quantity of a dangerous or abusable drug.]

* * * * *

§ 1825. Authorization a Defense Under Sections 1822 to 1824.

In a prosecution under sections 1822 to 1824 authorization, in fact, by the regulatory law is a defense.

* * * * *

§ 1826. Federal Jurisdiction Over Drug Offenses.

Federal jurisdiction over an offense defined in sections 1822 to 1824 extends to any such offense committed anywhere within the United States or the special maritime or territorial jurisdiction, as defined in section 210, pursuant to the powers of Congress to regulate commerce and under the findings of Congress expressed in section 101 of the regulatory law.

* * * * *

§ 1827. Suspended Entry of Judgment.

(1) Authority of the Court. Except as provided in subsection (3), whenever a court is authorized to enter a conviction for an offense under sections 1822 to 1824 which is not a felony, it may, without entering a judgment of guilty and with the consent of the defendant, defer further proceedings and place the defendant on probation in accordance with Chapter 31. Upon violation of a condition of probation, the court shall discharge the defendant and proceed as provided in section 3103(4). Upon satisfactory completion of the term of probation, the court shall discharge the defendant and dismiss the procedings against him.

(2) Consequences of Discharge. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction of an offense for any purpose.

(3) Exclusions. This section does not apply to any person who has previously been convicted of a drug crime or who has previously had a judgment against him suspended under this section.

* * * * *

§ 1829. Definition for Sections 1821 to 1829.

In sections 1821 to 1829:

(a) "traffics" means:

(1) (A) transfers or otherwise disposes of a drug to another person;

(B) prescribes a drug not in the course of professional practice;

(C) possesses a drug with intent to transfer or otherwise dispose of it to another person;

(ii) manufactures a drug; or

(iii) imports a usable quantity of a drug into the United States, or exports a usable quantity of a drug from the United States. "Imports" includes landing in the United States or receiving at the place where it was landed in the United States or from a person who brought it from the place where it was landed in the United States a usable quantity of a drug imported into the United States and landed in the United States;

(b) unless modified by the Attorney General in accordance with section 1821, "dangerous drug" means:

(i) any substance classified as a Schedule I or Schedule II controlled substance under section 202 of the regulatory law except a material, compound, or preparation which contains any quantity of marihuana or peyote and does not contain a dangerous drug;

(ii) any material, compound, or preparation in a form not primarily adapted for oral use which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(A) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) phenmetrazine and its salts;

(C) any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(D) methylphenidate;

(iii) any cannabis preparation;

(c) unless modified by the Attorney General in accordance with section 1821, "abusable drug" means:

(i) any substance classified as a Schedule III or Schedule IV controlled substance under section 202 of the regulatory law except as provided in paragraph (b)(ii) of this section;

(ii) marihuana;

(iii) peyote;

(d) unless modified by the Attorney General in accordance with section 1821, "restricted drug" means any substance classified as a Schedule V controlled substance under section 202 of the regulatory law;

(e) "cannabis preparation" means the separated resin, whether crude or purified, obtained from marihuana or from the mature stalks of any plant of the genus cannabis; any preparation, compound, or derivative of the resin; or any tincture of marihuana; but it does not include fiber produced from the mature stalks of any plant of the genus cannabis, oil or cake made from the seeds of the plant, or any other preparation, compound, or derivative of the mature stalks (except the separated resin) or of the fiber, oil, or cake;

(f) "marihuana" means all parts, including the seeds, of any plant of the genus cannabis, whether growing or not; but does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any preparation, compound, or derivative of the stalks, fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination;

(g) "regulatory law" means the Comprehensive Drug Abuse Prevention and Control Act of 1970.

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GAMBLING

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§ 1831. Illegal Gambling Business.

(1) Offense. A person is guilty of an offense if he engages or participates in the business of gambling, unless, as provided in subsection (2), it was legal in all places in which it was carried on. Without limitation, a person shall be deemed to be engaged in the business of gambling if he:

(a) conducts a wagering pool or lottery;

(b) receives wagers for or on behalf of another person;

(c) alone or with others, owns, controls, manages or finances a gambling business;

(d) knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business;

(e) maintains for use on any place or premises occupied by him a coin-operated gaming device, as defined in 26 U.S.C. § 4462; or

(f) is a public servant who shares in the proceeds of a gambling business whether by way of a bribe or otherwise.

(2) Defense. It is a defense to a prosecution under this section that the gambling business was legal in all places in which it was carried on. The place in which a gambling business is carried on includes any place from which a customer places a wager with or otherwise patronizes the gambling business, as well as the place in which the wager is received.

(3) Grading. The offense is a Class C felony if:

(a) the defendant employed or utilized three or more persons to carry on the gambling business;

(b) the defendant, or the gambling business or part thereof which he owned, controlled, managed or financed, accepted wagers in excess of $2,000 in a single day;

(c) the defendant received lay-off wagers or otherwise provided reinsurance or wholesaling functions in relation to persons engaged in a gambling business; or

(d) a public servant was bribed in connection with the gambling enterprise.

Otherwise the offense is a Class A misdemeanor.

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (e) or (h) of section 201, or when any gambling device, as defined in section 1832, used in the commission of the offense, moves across a state boundary.

* * * * *

§ 1832. Protecting State Antigambling Policies.

(1) Offense. A person is guilty of a Class A misdemeanor if he knowingly carries or sends any gambling device into a state from any place outside such state.

(2) Defenses. This section shall not apply to:

(a) a gambling device carried or sent into a state, or any part thereof, where such gambling was legal, or en route to such place;

(b) any carriage in the usual course of business by a common or public contract carrier;

(c) any newspaper or similar publication; or

(d) any ticket or other embodiment of the claim of a player or bettor which was carried or sent by him.

Inapplicability under this subsection is a defense.

(3) Definition of "Gambling Device". In this section "gambling device" means:

(a) any device covered by 15 U.S.C. § 1171 and not excluded by subsections (2) and (3) of 15 U.S.C. § 1178; or

(b) any record paraphernalia, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, bolita or similar game.

* * * * *

PROSTITUTION AND RELATED OFFENSES

§ 1841. Promoting Prostitution.

(1) Offense. A person is guilty of an offense if he:

(a) operates a prostitution business or a house of prostitution;

(b) induces or otherwise intentionally

causes another to become engaged in sexual activity as a business; or

(c) knowingly procures a prostitute for a prostitution business or a house of prostitution.

(2) Grading. The offense is a Class C felony if it is under paragraphs (b) or (c) of subsection (1), or if it is under paragraph (a) and the actor owns, controls, manages or otherwise supervises the prostitution business or house of prostitution. Otherwise the offense is a Class A misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (e) or (h) of section 201.

§ 1842. Facilitating Prostitution.

(1) Offense. A person is guilty of an offense if he:

(a) knowingly solicits a person to patronize a prostitute;

(b) knowingly procures a prostitute for a patron;

(c) knowingly leases or otherwise permits a place controlled by the actor, alone or in association with others, to be regularly used for prostitution, promoting prostitution, or facilitating prostitution, or fails to make reasonable effort to abate such use by ejecting, the tenant, notifying law enforcement authorities, or other legally available means;

(d) knowingly induces or otherwise intentionally causes another to remain a prostitute. A person who is supported in whole or substantial part by the proceeds of prostitution, other than the prostitute or the prostitute's minor child or a person whom the prostitute is required by law to support, is presumed to be knowingly inducing or intentionally causing another to remain a prostitute.

(2) Grading. The offense is a Class C felony if the actor intentionally causes another to remain a prostitute by force or threat, or the prostitute is the actor's wife, child or ward or a person for whose care, protection or support he is responsible, or the prostitute is, in fact, less than sixteen years old. Otherwise it is a Class A misdemeanor.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraph (a) of section 201 or when the offense occurs within such reasonable distance of any military or naval camp, station, fort, post, yard, base cantonment, training or mobilization place as the Secretary of Defense shall determine to be needful to the efficiency, health, and welfare of the Army, the Navy, or the Air Force, and shall designate and publish in general orders or bulletins.

* * * * *

§ 1843. Prostitution.

(1) Offense. A person is guilty of prostitution, a Class B misdemeanor, if he or she:

(a) is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; or

(b) solicits another person with the intention of being hired to engage in sexual activity.

(2) Jurisdiction. Federal jurisdiction over an offense defined in this section is the same as prescribed for section 1842.

* * * * *

§ 1848. Testimony of Spouse in Prostitution Offenses.

Testimony of a person against his or her spouse shall be admissible to prove offenses under sections 1841 to 1843 involving that person's prostitution.

* * * * *

§ 1849. Definitions for Sections 1841 to 1849.

In sections 1841 to 1849:

(a) "sexual activity" means sexual intercourse, deviate sexual intercourse, or sexual contact as defined in section 1649;

(b) a "prostitution business" is any business which derives funds from prostitution regularly carried on by a person under the control, management or supervision of another;

(c) a "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management or supervision of another;

(d) a "prostitute" is a person who engages in sexual activity for hire;

(e) an "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.

* * * * *

OBSCENITY AND LEWDNESS

§ 1851. Disseminating Obscene Material.

(1) Offense. A person is guilty of an offense if he disseminates obscene material, or if he produces, transports, or sends obscene material with intent that it be disseminated. "Disseminate" means sell, lease, advertise, broadcast, exhibit, or distribute.

(2) Defenses. It is a defense to a prosecution under this section that dissemination was restricted to:

(a) institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or

(b) noncommercial dissemination to personal associates of the actor [; or

(c) dissemination carried on in such a manner as, in fact, to minimize risk of exposure to children under eighteen or to persons who had no effective opportunity to choose not to be so exposed].

(3) Grading. The offense is a Class C felony if dissemination is carried on in reckless disregard of risk of exposure to children under eighteen or to persons who had no effective opportunity to choose not to be so exposed. Otherwise the offense is a Class A misdemeanor. [The offense is a Class A misdemeanor.]

(4) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraphs (a), (e) or (f) of section 201.

* * * * *

§ 1852. Indecent Exposure.

(1) Offense. A person is guilty of a Class A misdemeanor if, with intent to arouse or gratify the sexual desire of any person, including the actor, he exposes his genitals or performs any other lewd act under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed.

(2) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraph (a) of section 201.

* * * * *

DISORDERLY CONDUCT

§ 1861. Disorderly Conduct.

(1) Offense. A person is guilty of an offense if, with intent to harass, annoy or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed or alarmed by his behavior, he:

(a) engages in fighting, or in violent, tumultuous or threatening behavior;

(b) makes unreasonable noise;

(c) in a public place, uses abusive or obscene language, or makes an obscene gesture;

(d) obstructs vehicular or pedestrian traffic, or the use of a public facility;

(e) persistently follows a person in or about a public place or places;

(f) while loitering in a public place for the purpose of soliciting sexual contact, he solicits such contact or

(g) creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose.

(2) Grading. The offense is a Class B misdemeanor if the defendant's conduct violates subsection (1)(f). Otherwise it is an infraction.

(3) Jurisdiction. There is federal jurisdiction over an offense defined in this section under paragraph (a) of section 201.

(4) Complaint by Member of the Public Required. Prosecution under paragraphs (c), (e) and (f) of subsection (1) shall be instituted only upon complaint to a law enforcement officer by someone other than a law enforcement officer.

* * * * *

Part C. The Sentencing System

Chapter 30. General Sentencing Provisions

§ 3001. Authorized Sentences.

(1) In General. Every person convicted of an offense against the United States shall be sentenced in accordance with the provisions of this Chapter. The term "court", as used in Part C of this Code, includes magistrates to the extent of their powers as provided elsewhere by law.

(2) Felonies and Misdemeanors. Every person convicted of a felony or a misdemeanor shall be sentenced to one of the following alternatives:

(a) probation, a split sentence or unconditional discharge as authorized by Chapter 31;

(b) a term of imprisonment as authorized by Chapter 32; or

(c) a fine as authorized by Chapter 33. A fine authorized by Chapter 33 may be imposed in addition to a sentence to probation or to a term of imprisonment.

(3) Infractions. Every person convicted of an infraction shall be sentenced to one of the following alternatives:

(a) probation or unconditional discharge as authorized by Chapter 31; or

(b) a fine as authorized by Chapter 33. A fine authorized by Chapter 33 may be imposed in addition to a sentence to probation.

(4) Organizations. Every organization convicted of an offense against the United States shall be sentenced to one of the following alternatives:

(a) probation or unconditional discharge as authorized by Chapter 31;

(b) a fine as authorized by Chapter 33; or

(c) the special sanction authorized by section 3007. A fine authorized by Chapter 33 or the special sanction authorized by section 3007 or both may be imposed in addition to a sentence to probation.

(5) Civil Penalties. This Chapter shall not be construed to deprive the courts of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, require forfeiture of or disqualification from office or position or impose any other civil penalty. An appropropriate order exercising such authority may be included as part of the judgment of conviction.

[(6) Reduction in Class. If the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, concludes that it would be unduly harsh to enter a judgment of conviction for that class of offense, the court may enter a judgment of conviction for the next lower class of offense and impose sentence accordingly.]

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§ 3002. Classification of Offenses.

(1) Felonies. Felonies are classified for the purpose of sentence into the following three categories:

(a) Class A felonies;

(b) Class B felonies; and

(c) Class C felonies.

(2) Misdemeanors. Misdemeanors are classified for the purpose of sentence into the following two categories:

(a) Class A misdemeanors; and

(b) Class B misdemeanors.

(3) Infractions. Infractions are not further classified.

* * * * *

§ 3003. Persistent Misdemeanants.

(1) Criterion. A defendant convicted of a Class A misdemeanor may be sentenced as though convicted of a Class C felony if the court is satisfied that there is an exceptional need for rehabilitative or incapacitative measures for the protection of the public, in view of the fact that this is the third conviction against the defendant within five years for Class A misdemeanors or more serious crimes.

(2) Computation of Prior Crimes. The second crime to be counted must have been committed after defendant was sentenced for the first crime to be counted and the misdemeanor for which defendant is being sentenced under this section must have been committed after defendant was sentenced for the second crime to be counted.

(3) Reasons. The court shall set forth in detail the reasons for its action whenever the sentence authorized in subsection (1) is imposed.

* * * * *

§ 3004. Presentence Commitment for Study.

In cases where a term of imprisonment of more than one year is authorized and the court is of the opinion that imprisonment presently appears to be warranted but desires more detailed information as a basis for determining the appropriate sentence than has been provided by the presentence report, the court may commit a convicted defendant to the custody of the Bureau of Corrections for a period not exceeding 90 days. The Bureau shall conduct a complete study of the defendant during that time, inquiring into such matters as the defendant's previous delinquency or criminal experience, his social background, his capabilities, his mental, emotional and physical health, and the rehabilitative resources or programs which may be available to suit his needs. By the expiration of the period of commitment, or by the expiration of such additional time as the court shall grant, not exceeding a further period of 90 days, the defendant shall be returned to the court for final sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the Bureau believes will be helpful to a proper resolution of the case. An order committing a defendant under this section shall be a provisional sentence to imprisonment for the maximum term authorized by Chapter 32. After receiving the report and the recommendations, the court shall proceed finally to sentence the defendant in accordance with the sentencing alternatives available under section 3001.

* * * * *

§ 3005. Resentences.

(1) Increased Sentences. Where a conviction has been set aside on direct review or collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously satisfied, unless the court concludes that a more severe sentence is warranted by conduct of the defendant occurring subsequent to the prior sentence.

(2) Reasons. The court shall set forth in detail the reasons for its action whenever a more severe sentence is imposed on resentencing.

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§ 3006. Classification of Crimes Outside This Code.

If the maximum imprisonment authorized for a federal offense defined outside this Code exceeds 30 days, the offense shall be a Class A misdemeanor; if such imprisonment is 30 days or less, a Class B misdemeanor; if there is no such imprisonment, an infraction. Notwithstanding the classification provided in this section, the term of imprisonment imposed shall not exceed the maximum authorized by the statute defining the offense, and the offense shall not be deemed a crime if the statute defining the offense provides that it is not a crime.

* * * * *

§ 3007. Special Sanction for Organizations.

When an organization is convicted of an offense, the court may require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

[§ 3007. Special Sanction for Organizations.

When an organization is convicted of an offense, the court may require the organization to give appropriate publicity to the conviction by notice to the class or classes of persons or sector of the public interested in or affected by the conviction, by advertising in designated areas or by designated media or otherwise.]

* * * * *

Chapter 31. Probation and Unconditional Discharge

§ 3101. Criteria for Utilizing Chapter.

(1) Eligibility. A person who has been convicted of a federal offense may be sentenced to probation or unconditional discharge as provided in this Chapter.

(2) Criteria. The court shall not impose a sentence of imprisonment upon a person unless, having regard to the nature and circumstances of the offense and to the history and character of the defendant, it is satisfied that imprisonment is the more appropriate sentence for the protection of the public because:

(a) there is undue risk that during a period of probation the defendant will commit another crime;

(b) the defendant is in need of correctional treatment that can most effectively be provided by a sentence to imprisonment under Chapter 32; or

(c) a sentence to probation or unconditional discharge will unduly depreciate the seriousness of the defendant's crime, or undermine respect for law.

(3) Factors to be Considered. The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations called for by subsection (2):

(a) the defendant's criminal conduct neither caused nor threatened serious harm to another person or his property;

(b) the defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property;

(c) the defendant acted under strong provocation;

(d) there were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct;

(e) the victim of the defendant's conduct induced or facilitated its commission;

(f) the defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained;

(g) the defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense;

(h) the defendant's conduct was the result of circumstances unlikely to recur;

(i) the character, history and attitudes of the defendant indicate that he is unlikely to commit another crime;

(j) the defendant is particularly likely to respond affirmatively to probationary treatment;

(k) the imprisonment of the defendant would entail undue hardship to himself or his dependents;

(l) the defendant is elderly or in poor health;

(m) the defendant did not abuse a public position of responsibility or trust; and

(n) the defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

* * * * * *

§ 3102. Incidents of Probation.

(1) Periods. Unless terminated as provided in subsection (2), the periods during which a sentence to probation shall remain conditional and be subject to revocation are:

(a) for a felony, 5 years;

(b) for a misdemeanor, 2 years;

(c) for an infraction, 1 year.

(2) Early Termination. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection (1) if warranted by the conduct of the defendant and the ends of justice.

(3) Final Judgment. Notwithstanding the fact that a sentence to probation can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for all other purposes.

* * * * *

§ 3103. Conditions of Probation; Revocation.

(1) In General. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(2) Appropriate Conditions. When imposing a sentence to probation, the court may, as a condition of the sentence, require that the defendant:

(a) work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

(b) undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;

(c) attend or reside in a facility established for the instruction, recreation or residence of persons on probation;

(d) support his dependents and meet other family responsibilities;

(e) make restitution or reparation to the victim of his conduct for the damage or injury which was sustained. When restitution or reparation is a condition of the sentence, the court shall fix the amount thereof, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance;

(f) pay a fine authorized by Chapter 33;

(g) refrain from possessing a firearm, destructive device or other dangerous weapon unless granted written permission by the court or probation officer;

(h) refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;

(i) report to a probation officer at reasonable times as directed by the court or the probation officer;

(j) permit the probation officer to visit him at reasonable times at his home or elsewhere;

(k) remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer;

(l) answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;

(m) satisfy any other conditions reasonably related to his rehabilitation.

(3) Certificate. When a defendant is sentenced to probation, he shall be given a certificate explicitly setting forth the conditions on which he is being released.

(4) Modification; Revocation. The court may modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence remains conditional. If the defendant violates a condition at any time prior to the expiration or termination of the period, the court may continue him on the existing sentence, with or without modifying or enlarging the conditions, or, if such continuation, modification or enlargement is not appropriate, may impose any other sentence that was available under section 3001 at the time of initial sentencing.

(5) Transfer to Another District. Jurisdiction over a probationer may be transferred from the court which imposed the sentence to the court for any other district, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to exercise all powers permissible under this Chapter over the defendant.

* * * * *

§ 3104. Duration of Probation.

(1) Commencement; Multiple Sentences. A period of probation commences on the day it is imposed. Multiple periods, whether imposed at the same time or at different times, shall run concurrently. Periods of probation shall also run concurrently with any federal, state or local jail, prison or parole term for another offense to which the defendant is or becomes subject during the period.

(2) Delayed Adjudication. The power of the court to revoke a sentence to probation for violation of a condition shall extend for the duration of the period provided in section 3102 and for any further period which is reasonably necessary for the adjudication of matters arising before its expiration, provided that some affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the period and that every reasonable effort is made to notify the probationer and to conduct the hearing prior to the expiration of the period.

* * * * *

§ 3105. Unconditional Discharge.

The court may sentence a person convicted of an offense other than a Class A or B felony to an unconditional discharge without imprisonment, fine, conditions or probationary supervision if it is of the opinion that imposition of conditions upon the defendant's release would not be useful. If a sentence of unconditional discharge is imposed for a crime, the court shall set forth in detail the reasons for its action.

* * * * *

§ 3106. Split Sentence.

When imposing a sentence to probation for a felony or a Class A misdeameanor, the court, in addition to imposing conditions under section 3103, may as part of the sentence commit the defendant to the custody of the Bureau of Corrections at whatever time or for such intervals within the period of probation as the court shall determine. The period of commitment shall not exceed six months. Interval commitments shall not be required unless the Bureau of Corrections has certified that appropriate facilities are available. That the defendant submit to commitment imposed under this section shall be deemed a condition of probation for the purposes of section 3103(4).

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Chapter 32. Imprisonment

§ 3201. Sentence of Imprisonment: Incidents.

(1) Authorized Terms. The authorized terms of imprisonment are:

(a) for a Class A felony, no more than 30 years;

(b) for a Class B felony, no more than 15 years;

(c) for a Class C felony, no more than 7 years;

(d) for a Class A misdemeanor, no more than 1 year [6 months];

(e) for a Class B misdemeanor, no more than 30 days.

Such terms shall be administered as provided in Part C of this Code.

(2) Components of Maximum Term for Indefinite Sentence. A sentence of imprisonment of more than six months shall be an indefinite sentence. The maximum term of every indefinite sentence imposed by the court shall include a prison component and a parole component. The parole component of such maximum term shall be (i) one-third for terms of nine years or less; (ii) three years for terms between nine and fifteen years, and (iii) five years for terms more than fifteen years; and the prison component shall be the remainder of such maximum term. If, however, the parole component so computed is less than three years, the court may increase it up to three years.

(3) Minimum Term. An indefinite sentence for a Class A or B felony shall have no minimum term unless by the affirmative action of the court a term is set at no more than one-third of the prison component actually imposed. No other indefinite sentence shall have a minimum term. The court shall not impose a minimum term unless, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that such a term is required because of the exceptional features of the case, such as warrant imposition of a term in the upper range under section 3202. The court shall set forth its reasons in detail. Except in the most extraordinary cases, the court shall obtain both a presentence report and a report from the Bureau of Corrections under section 3004 before imposing a minimum term.

(4) Minimum Term; Alternative; Further Powers. In lieu of imposing a minimum term, the court may make a recommendation to the Board of Parole as to when the defendant should first be considered for parole. The court shall not recommend a parole eligibility date which is beyond the time when the court could have fixed a minimum term under subsection (3). The court shall have the authority to reduce an imposed minimum term to time served upon motion of the Bureau of Corrections made at any time, upon notice to the United States Attorney.

* * * * *

§ 3202. Upper-Range Imprisonment for Dangerous Felons.

(1) Authorization. The maximum term of a felony shall not be set at more than 20 years for a Class A felony, 10 years for a Class B felony or 5 years for a Class C felony unless, having regard to the nature and circumstances of the offense and the history and character of the defendant as it relates to that offense, the court is of the opinion that a term in excess of these limits is required for the protection of the public from further criminal conduct by the defendant because the defendant is a dangerous special offender.

(2) Definitions. A defendant is a dangerous special offender for purposes of this section if:

(a) he has previously been convicted of two or more felonies committed on occasions different from one another and from such felony and for one or more of such convictions he has been imprisoned prior to the commission of such felony, and less than five years have elapsed between the commission of such felony and either his release, on parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous felony; or

(b) he committed such felony as part of a pattern of criminal conduct which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

(c) his mental condition is abnormal, and makes him a serious danger to the safety of others, and he committed such felony as an instance of aggressive behavior with heedless indifference to the consequences of such behavior. An offender shall not be found to be a dangerous special offender under this paragraph unless the court has obtained a report from the Bureau of Corrections under section 3004 which includes the results of a comprehensive psychiatric examination;

(d) such felony was, or he committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of criminal conduct and he did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct; or

(e) he manifested his special dangerousness by using a firearm or destructive device in the commission of the offense or flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (a). In support of findings under paragraph (b), it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such conduct. For purposes of paragraph (b), a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1602, as amended 80 Stat. 838), and as hereafter amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Act of 1954 (68A Stat. 17, as amended 83 Stat. 655), and as hereafter amended. For purposes of paragraph (b), special skill or or expertise in criminal conduct includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of criminal conduct, the enlistment of accomplices in such conduct, the escape from detection or apprehension of such conduct, or the disposition of the fruits or proceeds of such conduct. For purposes of paragraphs (b) and (c), criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

(3) Notice. Whenever an attorney charged with the prosecution of a defendant in a court of the United States for an alleged felony committed when the defendant was over the age of twenty-one years has reason to believe that the defendant is a dangerous special offender such attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may

sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender who upon conviction for such felony is subject to the imposition of a sentence under subsection (1), and setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special offender. In no case shall the fact that the defendant is alleged to be a dangerous special offender be an issue upon the trial of such felony, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender and his counsel.

(4) Hearing. Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felony, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain both a presentence report and a report from the Bureau of Corrections under section 3004 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term as specified in subsection (1). The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

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§ 3203. Commitment to Bureau of Corrections.

(1) In General. A person sentenced to imprisonment for a felony or a misdemeanor under this Chapter or for nonpayment of a fine under Chapter 33 shall be committed for the term designated by the court to the custody of the Bureau of Corrections, which shall specify the place of confinement where the sentence shall be served.

(2) Youth Offenders. If an offender is under the age of 22 years at the time of conviction, the court as part of its sentence may recommend that he be confined and treated in facilities established under Chapter — for the rehabilitation of youth offenders.

(3) Narcotics Addicts. If the court determines after a study by the Bureau of Corrections under section 3004 that an offender is a narcotics addict and that he can be treated, the court as part of its sentence may recommend that he be confined and treated in facilities established under Chapter — for the rehabilitation of narcotics addicts.

* * * * *

§ 3204. Concurrent and Consecutive Terms of Imprisonment.

(1) Authority of Court. When multiple sentences of imprisonment are imposed on a person at the same time or when a term of imprisonment is imposed on a person who is already subject to an undischarged term of imprisonment, the sentences shall run concurrently or consecutively as determined by the court. Sentences shall run concurrently unless otherwise specified by the court.

(2) Multiple Sentences. A defendant may not be sentenced consecutively for more than one offense to the extent:

(a) one offense is an included offense of the other;

(b) one offense consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other; or

(c) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct.

(3) Maximum Limits Where Felony Involved. The aggregate maximum of consecutive sentences to which a defendant may be subject shall not exceed the maximum term authorized by section 3201(1) for the most serious felony involved, except that a defendant being sentenced for two or more Class C felonies may be subject to an aggregate maximum not exceeding that authorized by section 3201(1) for a Class B felony if each Class C felony was committed as part of a different course of conduct or each involved a substantially different criminal objective [and a defendant being sentenced for two or more Class B felonies may be subject to an aggregate maximum not exceeding that authorized by section 3201(1) for a Class A felony if each Class B felony was committed as part of a different course of conduct or each involved a substantially different criminal objective].

(4) Maximum Limits for Misdemeanors. When sentenced only for misdemeanors, a defendant may not be consecutively sentenced to more than one year, except that a defendant being sentenced for two or more Class A misdemeanors may be subject to an aggregate maximum not exceeding that authorized by section 3201(1) for a Class C felony if each Class A misdemeanor was committed as part of a different course of conduct or each involved a substantially different criminal objective.

(5) Criteria and Reasons. The court shall not impose a consecutive sentence unless, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that such a term is required because of the exceptional features of the case, for reasons which the court shall set forth in detail.

(6) Application to Multiple Proceedings. The limitations provided in this section shall apply not only when a defendant is sentenced at one time for multiple offenses but also when a defendant is sentenced at different times for multiple offenses all of which were committed prior to the imposition of any sentence for any of them. Sentences imposed both by other federal courts and by any state or local courts shall be counted in applying these limitations.

(7) Effect of Consecutive Terms. In determining the effect of consecutive sentences and the manner in which they will be served, the Board of Parole shall treat the defendant as though he has been committed for a single term which is the aggregate of the maximum terms validly imposed. Any such term longer than six months shall have the following incidents:

(a) the parole component of such single term shall be: (i) one-third for terms of nine years or less, except that, if one-third of such single term is less than three years, the parole component shall be the aggregate of the parole components of the terms imposed, but no more than three years; (ii) three years for terms between nine and fifteen years, and (iii) five years for terms more than fifteen years;

(b) the minimum term, if any, shall constitute the aggregate of all validly imposed minimum terms.

(8) Effect of State Sentences. Subject to any permissible cumulation of sentences explicitly authorized by this section, the Bureau of Corrections shall automatically award credit against the maximum term and any minimum term of any federal sentence for all time served in a state or local institution since the commission of the federal offense or offenses.

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§ 3205. Calculation of Terms of Imprisonment.

(1) Commencement of Sentence. The sentence of imprisonment of any person convicted of a federal offense shall commence to run from the date on which such person is received at the institution at which the sentence is to be served.

(2) Credit. The Bureau of Corrections shall give credit toward service of the maximum term and any minimum term of a sentence to imprisonment for all time spent in custody as a result of the offense or acts for which the sentence was imposed.

(3) Other Charges. If a defendant is arrested on one charge and later prosecuted on another charge growing out of conduct which occurred prior to his arrest, the Bureau of Corrections shall give credit toward service of the maximum term and any minimum term of any sentence to imprisonment resulting from such prosecution for all time spent in custody under the former charge which has not been credited against another sentence.

* * * * *

Chapter 33. Fines

§ 3301. Authorized Fines.

(1) Dollar Limits. Except as otherwise provided for an offense defined outside this Code, a person who has been convicted of an offense may be sentenced to pay a fine which does not exceed:

(a) for a Class A or Class B felony, $10,000;

(b) for a Class C felony, $5,000;

(c) for a Class A misdemeanor, $1,000;

(d) for a Class B misdemeanor or an infraction, $500.

(2) Alternative Measure. In lieu of a fine imposed under subsection (1), a person who has been convicted of an offense through which he derived pecuniary gain or by which he caused personal injury or property damage or loss may be sentenced to a fine which does not exceed twice the gain so derived or twice the loss caused to the victim.

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§ 3302. Imposition of Fines.

(1) Criteria. In determining the amount and the method of payment of a fine, the court shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of the defendant. The court shall not sentence a defendant to pay a fine in any amount which will prevent him from making restitution or reparation to the victim of the offense, or which the court is not satisfied that the defendant can pay in full within a reasonable time. The court shall

not sentence the defendant to pay a fine unless:

(a) he has derived a pecuniary gain from the offense;

(b) he has caused an economic loss to the victim; or

(c) the court is of the opinion that a fine is uniquely adapted to deterrence of the type of offense involved or to the correction of the defendant.

(2) Installment or Delayed Payments. When a defendant is sentence to pay a fine, the court may provide for the payment to be made within a specified period of time or in specified installments. If no such provision is made a part of the sentence, the fine shall be payable forthwith.

(3) Nonpayment. When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid. The response of the court to nonpayment shall be determined only after the fine has not been paid, as provided in section 3304.

* * * * *

§ 3303. Remission of Fine.

A defendant who has been sentenced to pay a fine and who has paid any part thereof may at any time petition the sentencing court for a remission of the unpaid portion. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine in the amount imposed no longer exist or that it would otherwise be unjust to require payment of the fine in full, the court may remit the unpaid portion in whole or in part or may modify the method of payment.

* * * * *

§ 3304. Response to Nonpayment.

(1) Response to Default. When an individual sentenced to pay a fine defaults in the payment of the fine or in any installment, the court upon the motion of the United States Attorney or upon its own motion may require him to show cause why he should not be imprisoned for nonpayment. The court may issue a warrant of arrest or a summons for his appearance.

(2) Imprisonment; Criteria. Following an order to show cause under subsection (1), unless the defendant shows that his default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, the court may order the defendant imprisoned for a term not to exceed six months if the fine was imposed for conviction of a felony or 30 days if the fine was imposed for conviction of a misdemeanor or an infraction. The court may provide in its order that payment or satisfaction of the fine at any time will entitle the defendant to his release from such imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.

(3) Modification of Sentence. If it appears that the default in the payment of a fine is excusable under the standards set forth in subsection (2), the court may enter an order allowing the defendant additional time for payment, reducing the amount of the fine or of each installment, or remitting the unpaid portion in whole or in part.

(4) Organizations. When a fine is imposed on an organization, it is the duty of the person or persons authorized to make disbursement of the assets of the organization, and their superiors, to pay the fine from assets of the organization. The failure of such persons to do so shall render them subject to imprisonment under subsections (1) and (2).

(5) Civil Process. Nothing in this section shall be deemed to alter or interfere with employment for collection of fines of any means authorized for the enforcement of money judgments rendered in favor of the United States.

* * * * *

Chapter 34. Parole

§ 3401. Parole Eligibility; Consideration.

(1) Eligibility. Every prisoner sentenced to an indefinite term of imprisonment shall be eligible for release on parole upon completion of the service of any minimum term or, if there is no minimum, at any time.

(2) Consideration for Parole. The Board of Parole shall consider the desirability of parole for each prisoner at least 60 days prior to the expiration of any minimum term or, if there is no minimum, at least 60 days prior to the expiration of the first year of the sentence. Following such consideration, the Board shall issue a formal order granting or denying parole. If parole is denied, the Board shall reconsider its decision at least once a year thereafter until parole is granted and shall, if parole is denied, issue a formal order at least once a year.

* * * * *

§ 3402. Timing of Parole; Criteria.

(1) In General. Except in the most extraordinary circumstances, a prisoner sentenced to a term of imprisonment, the prison component of which is three years or more, shall not be released on parole during the first year of his imprisonment. Thereafter, whenever the Board of Parole considers the parole of a prisoner who is or soon will be eligible for parole, he shall be released on parole, unless the Board is of the opinion that his release should be deferred because:

(a) there is undue risk that he will not conform to reasonable conditions of parole;

(b) his release at that time would unduly depreciate the seriousness of his crime or undermine respect for law;

(c) his release would have a substantially adverse effect on institutional discipline; or

(d) his continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date.

(2) Long Sentences. Whenever the Board of Parole considers the release on parole of a prisoner who has actually served the longer of five years or two-thirds of the prison component of his sentence, he shall be released on parole, unless the Board is of the opinion that his release should be deferred because there is a high likelihood that he would engage in further criminal conduct.

(3) Mandatory Parole. A prisoner who has not been paroled prior to the expiration of the entire prison component of his sentence shall then be released on parole.

* * * * *

§ 3403. Incidents of Parole.

(1) Period of Parole. The period during which a parole shall remain conditional and be subject to revocation is the parole component of the sentence which has been imposed.

(2) Early Discharge from Supervision or Release from Conditions. The Board of Parole may discharge the parolee from supervision or release him from one or more of the conditions of parole prescribed in section 3404(2) at any time after the expiration of one year of successful parole if warranted by the conduct of the parolee and the ends of justice.

(3) Conditions; Modifications; Revocation. Conditions of parole shall be determined as provided in section 3404. The Board of Parole may modify or enlarge the conditions of parole at any time prior to the expiration of the period for which the parole remains conditional. If the parolee violates a condition at any time prior to the expiration of the period, the Board may continue him on the existing parole, with or without modifying or enlarging the conditions, or, if such continuation, modification or enlargement is not appropriate, may revoke the parole and reimprison the parolee for a term computed in the following manner:

(a) the recommitment shall be for that portion of the maximum term which had not been served at the time of parole, less the time elapsed between the parole of the prisoner and the commission of the violation for which parole was revoked; and

(b) the prisoner shall be given credit against the term of reimprisonment for all time spent in custody since he was paroled which has not been credited against another sentence.

(4) Re-parole. A prisoner who has been reimprisoned following parole may be reparoled by the Board of Parole subject to the same provisions of the statute which governed his initial parole. The total time during which the prisoner can remain subject to the jurisdiction of the Bureau of Corrections and the Board of Parole can in no event exceed the maximum term imposed by the court.

* * * * *

§ 3404. Conditions of Parole.

(1) In General. The conditions of parole shall be such as the Board of Parole in its discretion deems reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Board shall provide as an explicit condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation.

(2) Appropriate Conditions. As conditions of parole, the Board may require that the parolee:

(a) work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

(b) undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;

(c) attend or reside in a facility established for the instruction, recreation or residence of persons on probation or parole;

(d) support his dependents and meet other family responsibilities;

(e) refrain from possessing a firearm, destructive device or other dangerous weapon unless granted written permission by the Board or the parole officer;

(f) refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription;

(g) report to a parole officer at reasonable times as directed by the Board or the parole officer;

(h) permit the parole officer to visit him at reasonable times at his home or elsewhere;

(i) remain within the geographic limits fixed by the Board, unless granted written permission to leave by the Board or the parole officer;

(j) answer all reasonable inquiries by the parole officer and promptly notify the parole officer of any change in address or employment;

(k) satisfy other conditions reasonably related to his rehabilitation.

(3) Certificate. When a prisoner is paroled, he shall be given a certificate explicitly setting forth the conditions on which he is being released.

* * * * *

§ 3405. Duration of Parole.

(1) Commencement; Multiple Sentences. A period of parole commences on the day the prisoner is released from imprisonment. Periods of parole shall run concurrently with any federal, state or local jail, prison or parole term for another offense to which the defendant is or becomes subject during the period.

(2) Delayed Adjudication. The power of the Board of Parole to revoke parole for violation of a condition shall extend for the duration of the period provided in section 3403(1) and for any further period which is reasonably necessary for the adjudication of matters arising before its expiration, provided that some affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the period and that every reasonable effort is made to notify the parolee and to conduct the hearing prior to the expiration of the period.

* * * * *

§ 3406. Finality of Parole Determinations.

The federal courts shall not have jurisdiction to review or set aside, except for the denial or constitutional rights or procedural rights conferred by statute, regulation or rule, the discretionary action of the Board of Parole regarding but not limited to the release or deferment of release of a prisoner whose maximum term has not expired, the imposition or modification of conditions of a first or subsequent parole, and the reimprisonment of a parolee for violation of parole conditions during the parole period.

* * * * *

Chapter 35. Disqualification From Office and Other Collateral Consequences of Conviction

§ 3501. Disqualification From and Forfeiture of Federal Office.

(1) Disqualification. A person convicted of a crime listed below may, as part of the sentence, be disqualified from any, or a specified, federal position or category thereof for such period as the court may determine, but no longer than five years following completion of any other sentence imposed:

(a) treason (section 1101) and the crimes affecting national security defined in sections 1102 to 1105, 1107 and 1111 to 1117;

(b) bribery and other crimes of unlawful influence upon public affairs and betrayal of public office defined in sections 1356, 1361 to 1367, 1371 and 1372;

(c) unlawful acts under color of law (section 1521);

(d) felonious theft under sections 1732 to 1735 or felonious fraud under sections 1751 to 1753 and 1756, when the subject of the offense was deposited with, entrusted to or otherwise under the control of the defendant, in his capacity as a public servant or officer of a national credit institution; or

(e) a crime expressly made subject to this section by statute.

(2) Forfeiture. A person convicted of a crime listed in subsection (1)(a) or of bribery (section 1361) shall forfeit any federal position he then holds, and a person convicted of any other crime listed in subsection (1) may, as part of the sentence, be required to forfeit such position.

(3) "Federal Position" Defined. In this section "federal position" does not include any position for which qualifications or provisions with respect to length of term or procedures for removal are prescribed by the Constitution.

* * * * *

§ 3502. Disqualification From Exercising Organization Functions.

An executive officer or other manager of an organization convicted of an offense committed in furtherance of the affairs of the organization may, as part of the sentence, be disqualified from exercising similar functions in the same or other organizations for a period not exceeding five years, if the court finds the scope or willfulness of his illegal actions make it dangerous for such functions to be entrusted to him.

* * * * *

§ 3503. Order Removing Disqualification or Disability.

The court may, in an order entered as provided in this section, relieve the defendant of any or all disqualifications and disabilities imposed by law as a consequence of conviction. The order may be made at the time of sentencing:

(a) to be effective at a specified time within five years if the sentence is unconditional discharge;

(b) to be effective otherwise upon the certification, or appropriate combination of certifications, of (i) the clerk of the court that a fine has been paid, (ii) the Probation Office that the defendant has satisfactorily completed his term of probation, (iii) the Board of Parole that the defendant has satisfactorily completed his parole, or (iv) the Bureau of Corrections that the defendant satisfactorily completed a term in prison on conviction of a misdemeanor for which parole is not authorized.

The order may be made at any time after sentence if the court is satisfied that the defendant has satisfactorily completed his sentence.

§ 3504. Termination of Disqualification After Five Years.

Any disqualification or disability imposed by law as a consequence of conviction terminates at the end of the first five-year period, commencing after completion of sentence, during which the defendant has not been convicted of another crime committed subsequent to the disqualifying or disabling conviction.

§ 3505. Effect of Removal of Disqualification.

Removal of a disqualification or disability under sections 3503 and 3504:

(a) has only prospective operation and does not require the restoration of the defendant to any office, employment or position forfeited or lost as a consequence of his conviction;

(b) does not preclude proof of the conviction as evidence of the commission of the offense, whenever the fact of its commission is relevant to the determination of an issue involving the rights or liabilities of someone other than the defendant;

(c) does not preclude consideration of the conviction for purposes of sentence if the defendant subsequently is convicted of another offense;

(d) does not preclude proof of the conviction as evidence of the commission of the offense, whenever the fact of its commission is relevant to the exercise of the discretion of a court, agency or public servant authorized to pass upon the competency of the defendant to perform a function or to exercise a right or privilege which such court, agency or public servant is empowered to deny, but in such case the court, agency or public servant shall also give due weight to the issuance of the order under section 3503 or the applicability of section 3504, as the case may be;

(e) does not preclude proof of the conviction as evidence of the commission of the offense, whenever the fact of its commission is relevant for the purpose of impeaching the defendant as a witness, but the issuance of the order under section 3503 or the applicability of section 3504, as the case may be, may be adduced for the purpose of his rehabilitation.

(f) does not apply to the federal disqualification, if any, to receive, possess or supply a firearm, destructive device or ammunition.

* * * * *

CHAPTER 36. LIFE IMPRISONMENT

§ 3601. Life Imprisonment Authorized for Certain Offenses.

Notwithstanding the provisions of sections 3001, 3201 and 3202, the court may impose a sentence of life imprisonment or a sentence up to the maximum term authorized under section 3201 for a Class A felony in the following cases:

(i) where the defendant has been convicted of treason;

(ii) where the defendant has been convicted of murder and the court is satisfied that the defendant intended to cause the death of another human being.

A sentence to life imprisonment shall have a minimum term of 10 years unless the court sets a longer minimum up to 25 years. The period of parole under a life sentence, for the purposes of section 3403(1), shall be the balance of the parolee's life or any lesser period fixed by the court at sentencing.

* * * * *

[PROVISIONAL CHAPTER 36. SENTENCE OF DEATH OR LIFE IMPRISONMENT]

[§ 3601. Death or Life Imprisonment Authorized for Certain Offenses.

Notwithstanding the provisions of sections 3001, 3201 and 3202, if the defendant is convicted of intentional murder or treason, a sentence of death or of life imprisonment may be imposed in accordance with the provisions of this Chapter. If the sentence is life imprisonment, the court may set a minimum term up to 15 years. The period of parole under a life sentence, for the purposes of section 3403(1), shall be the balance of the parolee's life or any lesser period fixed by the court at sentencing.]

* * * * *

[§ 3602. Separate Proceeding to Determine Sentence.

(1) Court or Jury. Unless the court imposes sentence under section 3603, it shall conduct a separate proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding shall be conducted before a jury unless the defendant, with the approval of the court, waives it. If a jury determined the defendant's guilt and it is not discharged by the court for good cause, the proceeding shall be conducted with that jury. Otherwise it shall be conducted with a jury empaneled for that purpose.

(2) Evidence and Instructions. In the proceeding, evidence may be presented by either party as to any matter relevant to sentence, including the nature and circumstances of the crime, defendant's character, background, history, mental and physical condition, and any aggravating or mitigating circumstances. Any such evidence, not legally privileged, which the court deems to have probative force, may be received, regardless of its admissibility under the exclusionary rules of evidence, provided that the defendant and the prosecution are accorded a fair opportunity to rebut such evidence.

(3) Verdict and Sentence. The determination whether a sentence of death shall be imposed shall be in the discretion of the court, except that when the proceeding is conducted before the court sitting with a jury, the court shall not impose a sentence of death unless it submits to the jury the issue whether the defendant should be sentenced to death or life imprisonment and the jury returns a verdict that the sentence should be death. If the jury is unable to reach a unanimous verdict, the court shall impose a sentence of life imprisonment.]

* * * * *

[§ 3603. Death Sentence Excluded.

The court shall impose a sentence of life imprisonment if it is satisfied that:

(a) the defendant was less than eighteen years old at the time of the commission of the crime;

(b) the defendant's physical or mental condition calls for leniency;

(c) although the evidence suffices to sustain the verdict, it does not foreclose all doubt respecting the defendant's guilt; or

(d) there are other substantial mitigating circumstances which render sentence of death unwarranted.]

* * * * *

[§ 3604. Criteria for Determination.

(1) Consideration of Aggravating and Mitigating Circumstances. In deciding whether

a sentence of death should be imposed, the court and the jury, if any, may consider the mitigating and aggravating circumstances set forth in the subsections below.

(2) Mitigating Circumstances. In the cases of both treason and murder the following shall be mitigating circumstances:

(a) the crime was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(b) the defendant acted under unusual pressures or influences or under the domination of another person.

(c) at the time of the offense, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication.

(d) the defendant was young at the time of the offense.

(e) the defendant was an accomplice in the offense committed by another person and his participation was relatively minor.

(f) the offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation, plausible, in fact, by ordinary standards of morality, for his conduct.

(g) the defendant has no significant history of prior criminal activity.

(3) Aggravating Circumstances (Treason). In the case of treason, the following shall be aggravating circumstances:

(a) the defendant knowingly created a great risk of death to another person or a great risk of substantial impairment of national security.

(b) the defendant violated a legal duty concerning protection of the national security.

(c) the defendant committed treason for pecuniary gain.

(4) Aggravating Circumstances (Murder). In the case of murder, the following shall be aggravating circumstances:

(a) the defendant was previously convicted of another murder or a felony involving the use or threat of violence to the person, or has a substantial history of serious assaultive or terrorizing criminal activity.

(b) at the time the murder was committed the defendant also committed another murder.

(c) the defendant knowingly created a great risk of death to at least several persons.

(d) the murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping, usurping control of an aircraft, espionage or sabotage.

(e) the murder was committed for pecuniary gain.

(f) the murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(g) the murder was of a law enforcement officer, or a public servant having custody of the defendant or another, to prevent or on account of the performance of his official duties.

(h) the murder was of the President, Vice President, President-elect or Vice President-elect of the United States.

* * * * *

Appellate Review of Sentence

Title 28, United States Code

§ 1291. Final Decisions of District Courts.

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United tSates District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where direct review may be had in the Supreme Court. *Such review shall in criminal cases include the power to review the sentence and to modify or set it aside for further proceedings.*

PROBLEMS OF DAIRY FARMERS

Mr. HARRIS. Mr. President, I have noted with concern the increasing problems confronting America's dairy farmers. The income realized by this vital segment of our agricultural industry has not kept pace with the rest of our economy.

Several administrative decisions can be made by the Secretary of Agriculture which can help alleviate the squeeze on the dairy farmer caused by rising costs. One decision is the establishment of price supports for the marketing year beginning April 1, 1971, at 90 percent of parity. Last year's support level was set at 85 percent of parity; however, increasing costs within the dairy industry have reduced the parity ratio to only 81 percent of parity.

In light of my concern, on February 26, I contacted Secretary of Agriculture Hardin, urging that he act to protect the dairy industry His actions can insure that Americans will have adequate supplies of the nutritional dairy products, which could be threatened by an economically weakened dairy industry. His actions will also provide a fairer return for the dairy farmer, who is being left behind in the present agricultural marketplace.

I ask unanimous consent that my letter of February 26, to Secretary Hardin be printed in the RECORD.

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

FEBRUARY 26, 1971.

Hon. CLIFFORD M. HARDIN,
Secretary of Agriculture,
Washington, D.C.

DEAR MR. SECRETARY: I am writing to urge your immediate action to protect the legitimate needs of American dairy farmers. Income for dairy farmers is not keeping pace with other sectors of the economy, and your exercise of authority presently vested in you by law would do much to improve the situation of this important industry.

First, I strongly urge that you establish dairy price supports for the marketing year beginning April 1, 1971, at 90% of parity. The support level of 85% last year was impaired by increasing dairy costs, which reduced the parity ratio to 81%. This has caused dairy income to fall behind the remainder of the economy. Adequate supplies of dairy products so essential to our nation's nutrition can be insured only if the dairy industry achieves economic stability.

Second, I would request that the Department of Agriculture exercise its authority to buy increased amounts of cheese for the school lunch program. By purchasing approximately 80 million pounds of cheese annually, the 24.6 million children covered by the school lunch program could be provided about ⅓ pound of cheese each month. This would add valuable protein to the content of school lunches, while also providing increased markets for dairy products.

Lastly, I would recommend your serious consideration of the problems being created within the dairy industry by the increasing import quantities of cheese selling above the price of 47c per pound. At present, cheeses in this category are exempt from the quota provisions covering lower priced cheese. I have been advised that a flood of imports in this exempt category is causing disruption of the price support system. Upon a finding of such disruption, I would urge that you recommend to the President that he place all quota-type cheese under the import program.

I know that you share my concern as to the necessity for a strong American dairy industry. I would appreciate hearing from you on these matters as soon as possible.

Sincerely yours,

FRED R. HARRIS,
U.S. Senate.

APPOINTMENT OF SENATOR SCOTT TO BOARD OF VISITORS OF UNIVERSITY OF VIRGINIA

Mr. PEARSON. Mr. President, the other day one of this Chamber's distinguished leaders was recognized by the University of Virginia and appointed by Governor Holton to the Board of Visitors of the University of Virgina for the next 4 years.

A graduate of the Law School of the University of Virginia, our colleague has received an honor that only but a few achieve. As an alumnus of this outstanding law school, I consider it a privilege to advise Members of the Senate that the distinguished minority leader, Senator HUGH SCOTT, of Pennsylvania, is the newest member of the University of Virginia Board of Visitors.

Mr. President, to show his sincere interest in his school, the distinguished minority leader is planning to attend and participate in his first meeting next month and will again be at the university founded by Thomas Jefferson on Law Day, May 1. On behalf of other University of Virginia Law School alumni, Senators SPONG, KENNEDY, STENNIS, and WEICKER, I am pleased to make this announcement.

NEED FOR MEANINGFUL REFORM OF PRESENT WELFARE SYSTEM

Mr. HARRIS. Mr. President, one primary responsibility and duty of the 92d Congress is meaningful reform of our present welfare system. Meaningful in the sense that some of the old myths of welfare are not the underlying principles of what we enact, and meaningful in the sense that we provide adequate levels of payment for those unable to work, and for those who can work, or who are working at inadequate levels, that we provide a realistic means of escaping poverty.

During the 91st Congress I expressed my concern over whether the administration's family assistance plan represented true reform of our welfare system. Some of the concerns that I had, inadequate levels of payment, forcing people to take jobs at less than the minimum wage, and others, were excellently stated by Mr. Bert Seidman, director of the AFL–CIO's Department of Social Security, in a public affairs interview carried by the Mutual Broadcasting System on February 2, 1971. Because of the importance of this issue and the need for all views to be understood and fully presented, I ask unanimous consent that the interview of Mr. Seidman be printed in the RECORD.

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

WELFARE REFORM

HARDEN. Labor News Conference. Welcome to another edition of Labor News Conference, a public affairs program brought to you by the AFL–CIO. Labor News Conference brings together leading AFL–CIO representatives and ranking members of the press. Today's guest is Bert Seidman, director of the AFL–CIO's Department of Social Security.

The AFL–CIO has long shared that view that comprehensive reform of the nation's welfare system is essential, if the system is to meet realistic needs. Welfare reform was a major issue in the last Congress, and is sure to be a major issue in the new Congress, which is just now getting under way. Here to question Mr. Seidman about the welfare reform legislation the AFL–CIO believes is needed and chances for its adoption in the 92nd Congress, are Tom Joyce, economic correspondent for Newsweek magazine, and James Welsh, of the Washington Evening Star. Your moderator, Frank Harden.

And now, Mr. Joyce, I believe you have the first question?

JOYCE. Mr. Seidman, the Nixon Administration, after a bitter defeat last year, is again proposing its Family Assistance Plan. Can you give us the AFL–CIO's view of this proposal, especially on the $1600 floor?

SEIDMAN. We think, Mr. Joyce, that the $1600 floor is entirely inadequate.

That is what would be paid to a family of four. It is far below the poverty level for a family of four, which, in 1969, was $3700. It is considerably higher today, in view of the rapid rise of prices since 1969. We think that the floor, at the start, should be at least $2000, and that it should rise, as rapidly as possible after that, to no less than the poverty level.

JOYCE. In the past, the AFL–CIO has expressed the fear that the work provision would allow some people to work at substandard wages, even below the minimum wage. Do you still have this fear?

SEIDMAN. Yes, we are very concerned about that aspect of the Family Assistance proposal.

The proposal provides no protection whatsoever, with respect to the wages that must be paid those people who are required to take jobs in order to receive family assistance payments.

We think that people who are required to take jobs should not be forced into jobs that pay less than the minimum wage set by federal law.

WELSH. Mr. Seidman, let me turn the questioning here to the motives of the Nixon Administration, as you see them. For a year and one-half now, the President has been talking—sometimes in terms of eliminating poverty—of putting an income floor under every family with children—and at other times more harshly, of getting people off welfare and making sure that everybody in this country works. What do you think he really means? Why do you think he is for this plan?

SEIDMAN. Well, it's very hard for me to read the President's mind, Mr. Welsh.

I think that he is probably thinking about both objectives. But the trouble is, I don't think that the plan is cut out to achieve either of these objectives.

Just before President Nixon made his State of the Union address, Daniel Moynihan, who had been one of his principal advisors, particularly on this Family Assistance Plan, talked about the Family Assistance Plan as if it would abolish poverty in this country.

Well, $1600 for a family of four is not going to abolish poverty.

It isn't even going to come within 50 percent of the level necessary to eliminate poverty.

On the employment aspect, you have the same problem. Most of the people who are now on welfare just can't work—they're children, or they're old people, or they're disabled, or they are mothers who should be home taking care of their children.

To put the whole emphasis on giving the impression that there are a lot of people on welfare who could be out working, but aren't is wrong. That, it seems to us, is entirely the wrong slant.

We want to see people who can work—and who—can obtain decent jobs—have every opportunity to do so.

But, we don't think that if you put the emphasis on taking mothers, who should be taking care of their children out of the home, into jobs—most of which jobs don't even exist at the present time, with the current six percent unemployment—we think that the emphasis of the plan, along those lines, is completely wrong.

WELSH. Well, let's just take one side of that—the people who are on welfare. We now have about 13 million people on welfare, and the number is rising at a very phenomenal rate. The rate is now rising at about 2½ million a year—a couple of hundred thousand a month. How do you stop this kind of thing?

SEIDMAN. Well, I think that you stop this kind of thing by making it possible for people—in the first place—to obtain decent jobs, so that there will be, for example, no incentive for family break-up, which is part of the problem that we have had.

I think that we have to face the fact that for some time to come, we will have a considerable number of people who will be dependent. But, if we get decent employment programs—if we bring our Social Security, and unemployment insurance, and workmen's compensation payments up to where they ought to be—if we do those things, then, I think, we will begin to turn back this tide.

But, we will always have a large number of people who, for one reason or another, will be dependent on welfare.

JOYCE. Going to the heart of Mr. Welsh's question, the critics of the Administration proposal say that it would actually double the number of those on welfare—bring it up, immediately, to something like 26 million people. Do you agree with those figures?

SEIDMAN. I can't tell you whether or not those figures are entirely accurate, Mr. Joyce.

They are based on population and income statistics, and so on, but, they are also based on the assumption that every family which is entitled to even $1 under this program will seek to collect it. That has not been our experience in the past.

Many people who have been eligible to receive public assistance have not chosen to do so—for various reasons, they have not wanted to go through the necessary redtape and so on.

I would anticipate the same would happen under this program. But, I would expect, certainly in the early period, if this program were to be adopted, we would get an increase, not a decrease in the number of people who would be covered.

JOYCE. The same critics argue that the program would remove the incentive to work. How do you view this criticism?

SEIDMAN. I don't agree with that criticism at all.

I think that the idea that there are many people in this country who are willing to exist at very low levels of living and are refusing to take jobs—decent jobs—that are available to them, is completely false.

In the first place, experience has shown, over and over again—and many studies have been made of this—that when decent jobs are offered—even to mothers with children at home, provided they can get any kind of decent day-care for their children—the overwhelming majority will take those jobs.

Second, I think there is no question but what the payments themselves are not going to result in people refusing to take jobs, as long as they know that by taking the jobs—either to begin with, or, even potentially—they are going to have higher incomes for their families.

The question of the potential is very important. If people know that they are not going into dead-end jobs—that they are going into jobs which have real possibilities of advancement and increases of income for themselves and their families—they're not going to refuse those jobs.

JOYCE. You seem to be saying that you do indeed agree with the basic, underlying principle of the Nixon program, which is to provide incentives to work.

SEIDMAN. Yes, we favor the underlying principle of the program, but, we think that certain aspects of it are wrong.

First of all, the level of payments, and secondly, the failure to protect people in the jobs to which they would be assigned.

WELSH. Well, let's get back to the level of payments. We're on this figure of $1600 for a family of four. Isn't it true that toward the end of the last session, nobody had any real hope of getting that figure up, because of the extra billions of dollars it would cost? And, isn't it true that this figure is not what we're asking anybody to live on, except in those states where people are now getting less than that? And, isn't it true that in states were people are now on welfare at higher than that, they will continue to get payments higher than $1600, plus the food stamps on top of that? Isn't it true that the $1600—to argue that $1600 is inadequate is a kind of artificial thing?

SEIDMAN. I don't regard it as artificial at all, Mr. Welsh.

In January 1970, when the bill was first introduced in Congress with the level set at $1600, it was already inadequate. The law would not take effect until July 1973—three and one-half years after the bill was first introduced. There will have been by then, an increase of approximately 25 percent in the cost of living.

So, if $1600 was inadequate in January 1970, it will be much more inadequate in July 1973.

In January 1970, in terms of the people now receiving public assistance payments, it would have increased those payments in only seven or eight states. By July 1973, there will probably be only two or three states where it will have any impact at all, in improving the very, very low payments to the people now on public assistance.

WELSH. Well, where would you put this minimum floor? And, how do you get around the fact that even raising it $100—let's say, to $1700, or $200—to $1800—by formula, wouldn't it necessitate spending several billion dollars more? How would you get around that problem?

SEIDMAN. Let me mention just a couple of points, Mr. Welsh.

As I said before, in 1969—according to the government's figures—the poverty level for a family of four was $3700. That's $2100 more than $1600, and that $3700 figure, according to the government itself, is based on an economy food budget, which is designed by the United States Department of Agriculture for—and I am quoting now—"emergency or temporary use."

We're now talking about a level $2100 under that $3700.

Now, let's talk about what we are spending.

Yes, we are spending a lot—billions. But, in the year ending June 1970, we spent $6.75 billion dollars in this country on public assistance. That was approximately 0.7 percent of our gross national product.

Now, you might say that we have to think of this in terms of the billions of dollars. But, the fact is, anybody who depends on public

assistance lives at an extremely low—in most cases, at a sub-standard level of living.

And, millions of children in this country are being brought up under such circumstances, and this will have an impact on them for the rest of their lives.

JOYCE. Mr. Seidman, one of the aspects of the Administration bill is called "vanishing earnings." In other words, the floor is cut, as a person earns more and more money, up to a certain level—I think it's $3900 a year. Do you agree with this formula? Do you think this is a realistic formula?

SEIDMAN. Well, I don't agree with the level of $3900 as a maximum.

But, I do agree with the basic idea that as people are able to obtain income from work, the payments are gradually reduced, so that the higher the income they can achieve from work, the more the payments are reduced, and, eventually, payments are eliminated.

JOYCE. Where would you set the cut-off point?

SEIDMAN. Well, this is a problem that in some respects, can be considered technical.

In the Administration bill, 50 percent of the earnings are subtracted from the benefit. There is a question as to whether or not this should be a graduated percentage, starting out with cutting off less of the payment at lower levels, but cutting off a very much higher proportion of the payments at higher levels.

If you agree that as long as people see the potential for higher incomes from decent jobs—if they are the kind of people who can work—who are not disabled, or elderly, or taking care of children—it seems to me that as long as they see that incentive, they will take advantage of it.

JOYCE. It was the working-poor aspect that so many members of the Senate Finance Committee objected to. Do you see any change of heart among members of that committee this time around?

SEIDMAN. Well, of course, I think that they had very conflicting views on that. They weren't very consistent.

On the one hand they were concerned about the fact that you would have to give money to people who were already working, even though they had very low levels of income.

On the other hand, they were concerned about some incentive for people who were on public assistance to seek employment.

It seems to me that if you remove the monetary incentive altogether, it's going to be more difficult to do this. We already recognize this in our present Public Assistance Program. The formula is different, but the principal is recognized—people do not lose their entire payment until they reach a certain level of income.

WELSH. To the point that Mr. Joyce raised, the conservatives are asking, in effect, look you want to reform welfare. Why is it necessary to add these millions of people, who, in effect, represent the working poor? Why is it necessary to pay them? Can't you reform welfare and make it a viable system, without paying millions more people?

Do you think it is possible?

SEIDMAN. I think the basic reason for the feeling that the people who are working should be included in the program is that so many are working full-time and still earning very low incomes.

For example, according to the same government figures I was talking about a moment ago, more than 5½ million people were "poor" in 1969, despite the fact that the employable person in that family was working full-time and all year.

Now, it's because of that kind of situation that the feeling was these people are entitled to some supplement of their very low incomes. This is a particular problem for people with large families, who are working at very low wages.

WELSH. Do you think that the program will pass this year?

SEIDMAN. I think there is a very good chance that some kind of program will pass this year. Whether it will be the program as introduced, I don't know. I would hope that if it does pass, it will have the kind of improvements I've been talking about.

JOYCE. Much of the strong objection has come from the South. Do you see this as an extension of racial attitudes in the South, or, is there another factor involved?

SEIDMAN. I think, Mr. Joyce, that the point you raise is probably one in the picture.

There are people in the South who feel that to provide any kind of decent level of living for poor people—and particularly, for poor black people—is wrong.

It would have an impact on what they have considered to be a "desirable social and economic structure."

On the other hand, I think that we have to bring the South, as quickly as possible, up to the level of the rest of the country. I think that from the point of view, the principle in this program, of establishing national standards—which standards ought to be better than they are—but nevertheless, establishing national standards—minimum standards—which would apply all over the country, is good, in terms of bringing about unity and a greater degree of equity among the people of this country in the future.

JOYCE. When this concept was first worked out in the White House, as you know, there was a good deal of internal bickering. Apparently, George Shultz stepped in and resolved the dispute. Do you think that the Administration is now doing all it can to see that this bill is passed?

SEIDMAN. It's always hard to say, Mr. Joyce, whether the Administration is doing all that it can.

I think that the Administration wants to get some kind of family assistance program on the books.

On the other hand, the Administration has thus far resisted the kind of changes we have been proposing. And, I think, the Administration has been subjected to too much pressure and influence from people who want to make the program even harsher than it is in the form it has been proposed.

WELSH. What is your order of priority? It is really a campaign to get the payments up, or, is it to concentrate, as you did last year, on making the work-requirements what the AFL–CIO would like to have?

SEIDMAN. We would like to do both of those things.

We're not thinking in terms of one issue having a higher priority than the other.

We do think that people ought not to be exploited by being assigned to sub-standard jobs. We think that payments ought to be at the highest possible levels, so that people have a decent standard of living.

Labor wants to achieve both of those objectives in the legislation.

Labor worked for both of those objectives in the last session of Congress. We will do so again. Both are absolutely essential in a bill that is equitable—a bill which will really make an impact on poverty in this country.

HARDEN. Thank you, gentleman. Today's Labor News Conference guest was Bert Seidman, director of the AFL–CIO's Department of Social Security. Representing the press were James Welsh, of the Washington Evening Star, and Tom Joyce, economic correspondent for Newsweek magazine. This is your moderator, Frank Harden, inviting you to listen again next week. Labor News Conference is a public affairs production of the AFL–CIO, produced in cooperation with the Mutual Broadcasting System.

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THE NATIONAL AIR AND SPACE MUSEUM WILL EXTEND AMERICA'S EXPLORING SPIRIT

Mr. GOLDWATER. Mr. President, it was my pleasure in January to serve as moderator of a symposium on the National Air and Space Museum which was sponsored by the Smithsonian Institution. The very fact that the meeting was held indicates a renewed interest in the future of this important museum and inspired all of us who have some experience in aviation to hope a permanent building for the museum will at last become a reality.

There were many eminent individuals present, including Dr. Wernher von Braun, Representative FRANK T. BOW, Representative JAMES G. FULTON, and Dr. S. Dillon Ripley. All of the participants earnestly agree the new museum facility is needed, and there should be a firm deadline set for its completion prior to the Nation's bicentennial celebration on July 4, 1976.

Probably the best exposition of the real reason why a national museum of flight is needed was given by Dr. Daniel J. Boorstin, the eminent historian who is director of the National Museum of History and Technology. The theme of Dr. Boorstin's scholarly and philosophical talk was that the Air and Space Museum is a channel through which our people can view their future.

For we will not merely be looking at man's achievements in flight as a finished project beyond which our Nation stopped and began sliding backward, but as an ever-stimulating impetus which moves us forward. In the Air and Space Museum, displays of man's courage and skill at breaking new frontiers by past aviation and space feats will serve as self-renewing encouragements for comparable explorations and risk-taking in the future.

Furthermore, the exhibits at the national museum will be ever changing, offering some tangible examples by which the average citizen can actually see for himself what is the latest development in flight and what might be expected beyond that. As well, of course, he will have the opportunity to view a few grand aircraft or space objects of eternal nostalgic interest.

But, in addition, the Museum of Air and Space may serve its primary role by exciting and pointing to new adventures of American exploration and growth. With this country expanded almost to the limits of its explorable land, we must find new ways by which our national energies can be recharged and refreshed. We are once again in need of the inspirational lift which comes from experiencing the unknown and from embarking on this venture in community with our fellow people.

As Dr. Boorstin so brilliantly points out, these are the very qualities which the exploration of space hold out to us. And therein lies the meaning of the story of space pioneering, as it will be told and explained at the National Air and Space Museum.

In order that this thoughtful and honest statement may be circulated among a wider audience than the few

who were fortunate enough to hear it, I ask unanimous consent that the text of the address by Dr. Daniel Boorstin, entitled "How Exploring Space Helps Us To Discover America," be printed in the RECORD.

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

HOW EXPLORING SPACE HELPS US TO DISCOVER AMERICA, ADDRESS BY DR. DANIEL J. BOORSTIN BEFORE SYMPOSIUM ON NATIONAL AIR AND SPACE MUSEUM, JANUARY 18, 1971

Mr. Secretary, Senator Goldwater.

My presence here I think requires some explanation. I am here in my role as historian and can hardly add anything to the knowledge of space or the understanding of the special history of our space enterprises which is here in this room. But there is a special reason this afternoon to consider the place of the space effort in history. For we are tempted to see space exploration only in a framework of newspapers, magazines, television programs or in the bureaucratic world of legislation and government procedures. I would like for a few minutes to remind us of the meaning of space exploration in the larger frame of our history. I will try to suggest the grand and peculiar significance of space exploration for Americans and therefore to offer some of the special reasons why a National Air and Space Museum is needed and some of the meanings it should have for Americans and for the world.

First, I will note how the exploring of space fits into the historic American opportunities and traditions. Then I will suggest why today especially we need the intellectual and spiritual lift which comes from exploring space and therefore why we need the National Air and Space Museum.

We can characterize much of the American past as the fulfillment of the exploring spirit. It is a mistake to think of the exploring of space as an appendage to our past. In a sense not true of any other modern nation we have been an exploring nation. In America, exploration and growth have been synonymous. The settlement of our nation, unlike others, has been contemporaneous with the exploring of our land. The frontier which many have used as a hallmark of our history has been simply another name for the boundaries of the unknown. Much of the greatness, the optimism, the energy and the boldness of our country has come from this peculiar way of growing. In fact, the people who built America were not afraid to plunge into the unknown, to live on the edge of the unknown. They delighted and prospered in exploring the unknown.

We are prone to forget some of the special characteristics of this experience. First, the uncertainty and the willingness to take risks. This was a meaning of the New World. When the Puritans came here from England and from Holland they moved to the edge of mystery. When people moved westward in the wagon trains in the 19th century, they moved across the unknown. When immigrants came from the countries of Europe in the 19th century, they moved into a world they did not know. The great seal of the United States contains the words "Novus Ordo Seclorum," a new order of the centuries.

The exploration of this unknown was undertaken in community. From Columbus in the late 15th century, who came with his scores of fellows, down to the westward-moving wagon trains in the mid-19th century, people organized themselves together to move more swiftly and more safely. The same was true of those who built the fur trade and their many followers who developed American enterprise. All these pioneers helped make it socially and spiritually possible for us to undertake our space explorations. Our classic American enterprises have been undertaken by large numbers of people organized and effective together.

The exploring spirit has expressed faith in the unpredicted and the unpredictable. Its theological form was a belief in divine providence expressed by George Washington and by many of his successors in his office. It was once said that the best evidence that a divine providence watched over the American people was the Presidents whom the American people have survived. This was said, by the way, at the time of the election of Abraham Lincoln. The secular form of this faith in the unpredicted and the unpredictable was the booster spirit. Americans have been willing to buy stock in the future and to postpone benefits—partly because our American future has always seems to merge so conveniently into our American present. An optimistic 19th century writer expressed our common view of the future when he said that we should not be afraid to assert the facts of the grand American future simply because they have not yet "gone through the formality of taking place."

The American nation has grown not by conquest but by exploration. The modern nations which built empires in the recent centuries based them, for the most part, on conqeust. The Spanish, the Portuguese, the French, the British and the German empires were efforts to grow and become powerful by adding areas of known value which would produce known commodities. In England, for example, at the end of the French and Indian War in 1763, there was a large party which preferred to take the two tiny islands of Guadeloupe from the French in place of Canada because Guadeloupe was a known quantity producing valuable tropical goods and Canada was a massive unknown. The United States, however, has grown by exploring, by discovering the values in a new world and in unknown areas.

Much of the vitality of American civilization in our century will depend on our ability to translate this exploring spirit, this enthusiasm for the unknown into later 20th century terms. This is not easy to do. We see some evidences of it in the spectacular recent growth of "Research and Development." Now "R & D," which has become a major enterprise of American business, is really a symbol in the world of industry of our quest for the unknown and the unpredicted.

But at the same time many of the peculiar influences in American civilization in our day have tended—in fact the very successes of American civilization in the 20th century have tended—to dampen or dilute the exploring spirit, the spirit which would be celebrated in a National Air and Space Museum. The fantastic and unpredictable successes of our civilization have, among other effects, produced the following consequences in our daily lives.

First, there has been what I would call the neutralization of risks. Some of the more obvious factors in this have been the growth of welfare government and the improvement of medicine and public health. A symbol of the neutralization of risks which has not been sufficiently noted has been the rise of insurance. Unemployment insurance, health insurance and (less noticed although psychologically of equal importance) casualty insurance. The history of American casualty insurance, the means by which Americans protect themselves from the risks of their daily lives, begins as recently as 1864 when the Travelers Insurance Company was formed to issue travel accident policies. When, in 1868, a casualty insurance company began to inspect steam boilers, they pioneered modern techniques of loss prevention and helped develop new ways of indemnifying industrial enterprises for accidents. By 1898 there were 14 companies sharing casualty premiums of less than 11 million dollars; by 1960 there were thirty-five hundred companies with total premiums of over 9 billion dollars a year. The effect of all this was to encourage Americans to think that they could remove or at least reduce most of the risks of daily life.

At the same time the triumphs of American industry have led to what I would call the decline of the miraculous. We have seen the erasing of regions in food, the erasing of seasons in our diet by the rise of canning, refrigeration, and deep freezing. Then, too, the erasing of seasonal climates by central heating, which European travelers noted even in the middle of the 19th century, and in our time by air conditioning, which makes it possible for us to be warmer in winter than we would be in summer and cooler in summer than we would be in winter. Finally, the erasing of space itself by air transport and radio and television has further eroded our sense of the miraculous. Now with television, it is possible for us to be more there when we are here than when we are there.

An additional development of our industrial world has been the rise of what I would call the repeatable experience. This is the new and ever-increasing opportunity to replay all the events of the past. It had its beginning with photography in the middle of the 19th cenutry, advanced with the development of the phonograph and the motion picture, and has climaxed with kinescoping and instant replay which has done much to remove the spontaneity even of sports experiences.

Finally, as a result of these and other factors there has been the crowding of the continent. The global view closes in. We must go in search of wilderness, which is another name for the unpredicted and the uncontrollable. A consequence of all this in our time has been a certain flattening of experience—a dilution of the sense of spontaneous adventure. Even words lose their exciting old meanings. When we are told that a new real estate development will be "An Adventure in Suburban Living" that means it will have everything we already expect it to have. Is this—the fulfillment of advertised expectations—what we mean by "adventure" today?

We note everywhere a decline of the risky, a decline of the unpredicted, a decline of the unknown. But space exploring will keep alive and stimulate the traditional American exploring spirit. A National Air and Space Museum can help remind us Americans of this spirit and can develop our pride in that spirit. By helping us depict and dramatize the uncertainties, the risks and the hopes of space exploring, it can help us keep alive some of our oldest traditions, the traditions of community, the tradition of risk-taking, of unknown-seeking. It can dramatize all our community efforts, for our moon-shots are, of course, the greatest collaborative exploring efforts in history.

In our paradoxical Nation no paradox is more intriguing than the combination of our pragmatic practical spirit with our love affair with the unknown. It is appropriate that our new world should be the point of take-off for newer worlds. By moving into outer space we can effect a change in mankind's point of view, we can lift man above the petrified world he knows, much as did Copernicus and his followers and the explorers to America in shifting from the geocentric of the heliocentric point of view. Now we direct man's view towards the new continents of outer space in the discovery of new Americas.

Just as the shift which came with the discovery and settlement of America changed Old World thinking about the world and at the same time provided a new locus of experience, so will space exploring. It will keep alive and vigorous, dramatically and symbolically clear, the exploring spirit which is the American mission. I will close with some words of T. S. Eliot, whom we have a right

to claim as an American, although he was in a sense refugee from American civilization. He said:

We shall not cease from exploration
And the end of all our exploring
Will be to arrive where we started
And know the place of the first time.

FORMER JUSTICE ARTHUR J. GOLDBERG TESTIFIES IN FAVOR OF GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, yesterday the ad hoc subcommittee of the Foreign Relations Committee heard testimony in favor of ratification of the Genocide Convention from the very distinguished Arthur J. Goldberg. As a former Supreme Court Justice and U.S. Ambassador to the United Nations, Mr. Goldberg is extremely competent to comment on the Genocide Convention.

In his testimony, the former ambassador urged the Senate to act favorably on the convention and end "an unnecessary diplomatic embarrassment to the United States." He declared that it is "inconceivable that we should hesitate any longer in making an international commitment against mass murder."

As U.S. Ambassador to the United Nations, he was often asked to explain the failure of the United States to ratify the convention.

He told the subcommittee—

Frankly, I never found a convincing answer. I doubt anyone can.

Mr. Goldberg pointed out that constitutional and legal arguments against ratification are "lacking in substance." He further stated that in his opinion "there were no constitutional obstacles to ratification."

The former Justice further stated that—

The time has come to devote more of our energies and resources to the long-term task of constructing some kind of decent world order. Ratification of a convention outlawing the most blatant crime against humanity will not by itself provide the answer. But it is surely a good place to begin.

We who have consistently supported the Genocide Convention can be encouraged by the testimony of Mr. Goldberg and the report of the Foreign Relations Committee of December 8, 1970. Both are convincing proof that the time is long past for the Senate to take action on this important human rights convenant. Both are convincing evidence that the legal and constitutional arguments against this convention are groundless.

I ask unanimous consent that the testimony of former Justice Arthur J. Goldberg be printed in the RECORD.

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

STATEMENT OF HON. ARTHUR J. GOLDBERG ON BEHALF OF THE AD HOC COMMITTEE ON THE HUMAN RIGHTS AND GENOCIDE TREATIES BEFORE THE SENATE FOREIGN RELATIONS SUBCOMMITTEE ON THE GENOCIDE CONVENTION

I am grateful for the opportunity to testify before this Subcommittee on behalf of the Genocide Convention. I am appearing on behalf of the Ad Hoc Committee on Human Rights and Genocide Treaties, a committee of 52 national organizations whose total membership is in the millions. The purpose of the Ad Hoc Committee is to strengthen international law in the field of human rights by encouraging U.S. ratification of appropriate United Nations conventions, including in particular the Genocide Convention. A list of the organizations comprising the Ad Hoc Committee is contained at the end of my testimony.

I am accompanied today by Professor Richard N. Gardner of Columbia Law School, who appeared for the Ad Hoc Committee in your hearings on the Genocide Convention last year.

I do not wish to repeat today all the arguments this Committee has already heard on behalf of the Genocide Convention. But permit me to state briefly my own answer to the frequently asked question: "Why should we act favorably on the Genocide Convention now?"

The answer, it seems to me, has three parts:

First, the Genocide Convention outlaws action that is repugnant to the American people. We should not decline to affirm our support for principles of international law and morality which we believe in. Our country was founded out of a passionate concern for human liberty reflected by the Bill of Rights and the Constitution. I believe that concern is very much alive today, as is reflected by the report of the Foreign Relations Committee supporting this Convention at the last session of Congress. It is inconceivable that we should hesitate any longer in making an international commitment against mass murder.

Second, our failure to adhere to this Convention is an unnecessary diplomatic embarrassment. Seventy-five countries have now ratified the Convention. We are the most prominent United Nations member that has not. When I was United States Ambassador to the United Nations, I was often asked to explain our failure to ratify the Genocide Convention. Frankly, I never found a convincing answer. I doubt that anyone can. At a time when our commitment to human rights is being questioned by some of our own people and by others overseas, it is particularly important that we ratify a treaty so thoroughly consistent with our national purpose. A continuing dedication and reaffirmation of the humane principles of our Bill of Rights and Constitution is very much in order.

Third, our adherence to the Genocide Convention can make a practical contribution to the long and difficult process of building a structure of international law based on principles of human dignity. It will put us in a better position to protest acts of Genocide in other parts of the world and will enhance our influence in United Nations efforts to draft satisfactory human rights principles. I do not say that our adherence to this Convention will work miracles. It may not bring very dramatic benefits in the short run. Let us remember, however, that none of the great documents of human civilization produced instant morality—not even Magna Carta or our own Bill of Rights. The point is that they did shape history in the long run. I believe the same may be true of the Genocide Convention, if we only give it a chance.

A number of arguments, many of them of a constitutional or legal nature, have been advanced against ratification. I believe they are lacking in substance. As the Secretary of State and the Attorney-General have declared, there are no constitutional obstacles to United States ratification. I find fully convincing the reasoning of the report of the Foreign Relations Committee of December 8, 1970, which painstakingly examines and then rejects each of the constitutional and other arguments against the Convention.

It is true, as this Subcommittee is well aware, that the House of Delegates of the American Bar Assoication recommended against ratification of the Genocide Convention in 1949. But in the last two years every section of the ABA having specialized competence in the subject matter has come out in support of ratification of the Genocide Convention: the Section of Individual Rights and Responsibilities, the Section of International and Comparative Law, the Section of Criminal Law, the Section of Judicial Administration, the Section of Family Law, and the ABA Standing Committee on World Order Under Law. A motion to reverse the ABA's 1949 position failed in the House of Delegates by only four votes in the Atlanta meeting in February 1970.

It is clear from the recent record that the House of Delegates is closely divided on this issue, but that sentiment in recent years has moved dramatically in favor of ratification. It is also clear that those sections and committees of the ABA with special interest in international law and constitutional questions are overwhelmingly in favor of ratification. It is also significant that many prominent leaders of the ABA, including past presidents, Bernard G. Segal, Whitney North Seymour, William T. Gossett, Charles S. Rhyne, and Solicitor General Erwin N. Griswold endorse ratification. Many other distinguished members of the bar, including Attorney General Mitchell and Secretary of State Rogers, have likewise endorsed ratification, as have several other state and local bar associations.

The ABA, as we are all aware, is a very different organization than it was twenty-two years ago. Its membership has changed its views on many questions, domestic and international. I believe the Subcommittee may wish to bear these considerations in mind as it evaluates the testimony of those who appear on behalf of the ABA today.

Let me comment on the arguments that have been given particular prominence by the opponents of ratification:

1. *The contention that the Constitution prevents ratification of the Genocide Convention because Genocide is a "domestic" matter is without foundation.*

It would be a curious result if the United States were constitutionally barred from ratifying a Convention already ratified by 75 other countries, including such friends and democracies as the United Kingdom, Canada, France, Mexico, the Scandinavian Countries and Israel. Fortunately, there is nothing in our Constitution that imposes such a unique disability upon us.

By any objective standard, Genocide is a matter of international concern and is, therefore, an appropriate subject for the destruction of a racial, religious or national group in one country has its impact on members of this group in other countries, stimulates demands for intervention, and inevitably troubles international relations. The fact the United Nations General Assembly unanimously declared Genocide to be a crime under international law in 1949 and that 75 members of the United Nations are parties to the Genocide Convention is further evidence that Genocide can no longer be considered a matter wholly within domestic jurisdiction.

The protection of human rights is a matter of international concern. The United States has shown that it agrees with this view by ratifying the World War II peace treaties, the United Nations Charter, the Slavery Convention of 1926, and more recently the Supplementary Convention on Slavery (1967) and the Supplementary Convention on Refugees (1968). In the words of the Special Committee of Lawyers of the President's Commission for the Observance of Human Rights Year, chaired by retired Supreme Court Justice Tom C. Clark: "Treaties which deal with the rights of individuals within their own countries as a matter of international concern may be a

proper exercise of the treaty making power of the United States . . . It may seem almost anachronistic that this question continues to be raised." I agree with my former colleague, Justice Clark, that there is no real basis for challenging the authority of our country under our Constitution to enter into the Genocide Convention. The constitutional arguments against the Convention are indeed, as the Committee said, anachronistic and without foundation in law.

2. *The contention that the Genocide Convention would alter the balance of authority between the States and the Federal Government is unfounded.*

The Constitution specifically gives Congress the power to "define and punish . . . offenses against the law of Nations." Genocide is an offense against the law of nations and is thus within the power of Congress to outlaw. Moreover, as the ABA's Section on Individual Rights and Responsibilities said in its report:

"Ratification of the Convention will add no powers to those the Federal Government already possesses."

3. *The contention that ratification of the Genocide Convention would subject American citizens to trial in foreign countries like North Viet Nam on trumped-up charges of Genocide is wholly false.*

There is nothing in the Genocide Convention that would provide warrant for charges by North Viet Nam that our prisoners of war, being held under conditions in violation of the Geneva Convention, are guilty of Genocide. As the Foreign Relations Committee pointed out in its report, Hanoi can make trumped-up charges of Genocide against our servicemen, with or without reference to the Genocide Convention. In the words of the Committee:

"Their peril will not be increased by approval of this convention while peril may be avoided for tens of millions by ratification of the convention."

Moreover, under the Genocide Convention, extradition would only take place in accordance with laws and treaties in force, and we have no extradition treaties with North Viet Nam. Nor do we make such treaties with countries whose legal systems do not afford basic procedural safeguards. Moreover, we do not grant extradition in any event unless a *prima facie* case is established against the accused and unless the accused will be afforded by the requesting state the due process provided by our own law.

In reading the testimony of the prior hearings I have noted the discussion of concurrent jurisdiction under the Convention—jurisdiction of the state of which the offender is a national as well as the state in which the offense of Genocide occurs. I noted the concern expressed on this matter by the senior Senator from Kentucky, Senator Cooper. Any expression from Senator Cooper deserves serious attention, and I have given it the serious attention that it warrants. I found in my own review of the legislative history that there was an agreed interpretation by the Legal Committee of the United Nations General Assembly that nothing in article VI shall affect the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside the state. The Foreign Relations Committee reached the same conclusion in its report. Nevertheless, I commend the Committee for meeting this concern by recommending an appropriate understanding on this point. I note further from the testimony of Administration witnesses that the Government could refuse to extradite where an accused American was standing trial in the United States or where the U.S. Government elected to try him here.

4. *The argument that ratification of the Genocide Convention would subject the United States Government to irresponsible charges of Genocide arising out of Viet Nam or our treatment of American Negroes is without foundation.*

Here again, ratification of the Genocide Convention does not alter the present situation to our disadvantage. Even without ratification, there is nothing to prevent a country from making baseless charges of genocide against this country in the U.N. If anything, ratification would improve our position, because the Convention requires an "intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such." The tragic events in Viet Nam and the terrible loss of life, both military and civilian, that has occurred there do not meet the treaty definition. Charges of Genocide in relation to the treatment of the Negro community in the United States, which admittedly has suffered widespread discrimination for many years, also are not within the scope of the Treaty. Ratification of the Convention would, if anything, help us rebut such charges by subjecting our behavior to a precise legal definition of Genocide.

5. *The argument that provision for the settlement of disputes by the International Court of Justice would override the Connally Amendment and unreasonably limit our sovereignty is without substance.*

This charge also lacks substance. The Connally Amendment applies only to our acceptance of Article 36(2) of the Court's Statute, the so-called "optional clause" providing for compulsory jurisdiction across-the-board. Cases arising as a result of our adherence to the Genocide Convention would come under Article 36(1) of the Court's Statute, which covers the Court's jurisdiction as provided for in specific treaties. The United States has ratified many treaties containing the same type of provision for the settlement of disputes by the International Court as is contained in the Genocide Convention. Among such treaties are the Supplementary Convention on Slavery, the Antarctic Treaty, the Statute of the International Atomic Energy, and the Convention on the Privileges and Immunities of the United Nations ratified just last year. A list of these treaties is contained on page 215 of this Subcommittee's 1970 hearings. Indeed, our country in the ratification of many treaties has proposed that the International Court have jurisdiction over disputes. Interestingly enough, our efforts in this direction have frequently been frustrated by the Soviet Union, not Congress, whose members on numerous occasions have advocated increasing resort to the International Court.

This provision for the settlement of disputes over the interpretation of the Genocide Convention does not unreasonably limit our sovereignty. Our interests are better served by having any charges of Genocide against us considered in a judicial forum like the International Court, rather than more politically-motivated forums. Of course, by this provision we do undertake a commitment limiting our freedom of action in a limited sphere, as do the other parties to the Convention. This exchange of commitment is inherent in any treaty to which we become a party. Where the exchange of commitments serves our national interest, as it does here, it provides no valid basis for objecting to the treaty.

6. *The argument that various provisions in the Convention—"in whole or in part", "mental harm," "direct and public incitement to commit Genocide"—are loosely drafted and potentially harmful to our interests is without foundation.*

Words in a statute or treaty are not self-interpreting. They must be read in the context of other provisions and in the light of the legislative or drafting history. The hypothetical interpretations of the Genocide Convention advanced by the critics are invalidated by the language of the Convention itself and by the records of the negotiation.

Thus "in whole or in part" does not mean that the killing of a single individual becomes Genocide. As the negotiating history makes clear, substantial numbers must be involved, and the acts of homicide must be joined by a common intent to destroy the group, for the definition of Genocide to be satisfied. The understanding recommended by the Foreign Relations Committee to confirm this point is wholly consistent with the drafting history.

"Mental harm," in turn, would not support propaganda charges of harassment of minority groups, as charged by some critics, because mental harm becomes an element of Genocide only when done with an intent to destroy a group. Moreover, as the negotiating history shows, it was inserted for the narrow purpose of prohibiting the permanent impairment of mental facilities, as from the forcible application of narcotic drugs.

"Direct and public incitement to commit Genocide" does not cover constitutionally-protected speech. It covers speech which calls for the commission of mass murder, which is actionable under our Constitution as in other countries. As the Supreme Court declared in *Brandenburg* v. *Ohio*, 395 U.S. 444, "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation *except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.*" (emphasis added). In any case, no treaty can override a provision of the Constitution, and there is no doubt that the legislation passed in implementing the Genocide Convention will be interpreted in accordance with the First Amendment.

In conclusion, I find the objections to ratification of the Genocide Convention without substance. The reasons for ratification, as I suggested earlier, seem to me compelling. Some cynics doubt that the Genocide Convention really "matters." Some say it ranks at the bottom of our foreign policy priorities. Some even say it is "an exercise in futility."

I do not agree. We have heard this argument now for over twenty years. I believe the time has come to devote more of our energies and resources to the long-term task of constructing some kind of decent world order. Ratification of a convention outlawing the most blatant crime against humanity will not by itself provide the answer. But it is surely a good place to begin. It should be one of the foundations of the rule of law among nations—a rule of law which, in the long run, is the only assurance of lasting peace.

AD HOC COMMITTEE ON THE HUMAN RIGHTS AND GENOCIDE TREATIES

Member Organizations

American Baptist Convention; American Civil Liberties Union; American Ethical Union; American Federation of State, County and Municipal Employees, AFL–CIO; American Federation of Teachers, AFL–CIO; American Friends Service Committee; American Humanist Association; American Jewish Committee; American Jewish Congress.

American Romanians National Committee; American Veterans Committee; Americans for Democratic Action; B'nai B'rith; Brotherhood of Sleeping Car Porters, AFL–CIO; Episcopal Church; Farband, Labor Zionist Order; Friends Committee on National Legislation; Hadassah, the Women's Zionist Organization of America.

Industrial Union Department, AFL–CIO; International Ladies' Garment Workers' Union, AFL–CIO; International Rescue Committee; International Union of Electrical Workers, AFL–CIO; Jewish Labor Commit-

tee; Jewish War Veterans; League or Industrial Democracy; Methodist Church, General Board of Christian Social Concerns; National Association of Negro Business & Professional Women's Clubs; National Association for the Advancement of Colored People.

National Board, YWCA; National Catholic Conference for Interracial Justice; National Jewish Community Relations Advisory Council; National Conference of Christians and Jews; National Council of Jewish Women; National Spiritual Assembly of the Baha'is of the U.S.; Poale Zion, United Labor Zionist Organization of America; Quaker, U.N. Office; Retail, Wholesale & Department Store Union, AFL–CIO; Textile Workers Union of America, AFL–CIO.

Ukrainian Congress Committee of America; Ukrainian National Association; Union of American Hebrew Congregations; Unitarian-Universalist Association; United Automobile Workers of America; United Church of Christ; Women United for the United Nations; Women's International League for Peace and Freedom; Workers Defense League Workmen's Circle; World Federalists, USA; World Jewish Congress, American Section.

Advisory Members

Conference of U.N. Representatives of the Council of Organizations, UNA–USA; National Council of the Churches of Christ in the U.S.A.

ORGANIZATION AND MANAGEMENT IN DEPARTMENT OF DEFENSE

Mr. SCOTT. Mr. President, on Tuesday, the Secretary of Defense released the Department of Defense report on President Nixon's strategy for peace. I ask unanimous consent that title I of that report, entitled "Organization and Management in the Department of Defense," be printed in the RECORD.

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

I. ORGANIZATION AND MANAGEMENT IN THE DEPARTMENT OF DEFENSE

During the past year we have given considerable attention to the improvement of organization and management in the Department. The actions we have taken represent both a continuation of the efforts we began shortly after taking office in early 1969 and the initiation of new proposals drawn from our own subsequent experience and the work of the Blue Ribbon Defense Panel. The following discussion of our management and organization efforts addresses three major areas:

Our general approach to organization and management, including continuing actions to improve the overall effectiveness of the Department.

Improvements in the management of military operations.

Improvements in the process for developing and acquiring new weapons systems.

A. THE APPROACH

We have adopted, as I said a year ago, a concept of management that is based on participatory decision-making, defined decentralization and delegation of authority under specific guidance. Our aim is to improve both the decision-making process and also other management activities by placing more emphasis on people and less emphasis on elaborate procedures. When the people who will be responsible for implementing a decision have the opportunity to participate in making it, the decision is likely to be better, and the people in the organization will probably have a greater incentive for successful implementation.

1. The importance of people in management

One key facet of our concept of management is emphasis on individual responsibility and action. We know that one way to improve management is to improve motivation and morale—and thereby performance—of the people in the Department. We have taken a number of steps in this direction. The Statement on Human Goals, promulgated by me, Deputy Secretary Packard, and the Secretaries of the Military Departments and the Chiefs of the Services in October 1969 highlighted our concern for the people of the Department. In keeping with that statement, equal opportunity actions have had a high priority in our efforts. Moreover, each of the Services is doing a number of things designed to make a military career more attractive for young people in the future than it has been in the past. These actions are motivated by our desire to improve morale and performance and to move toward an all-volunteer force in the future. I will have more to say in the next chapter about our efforts to reduce drafts calls and to progress toward an all-volunteer force.

2. Decentralization

We firmly believe that management will be improved by selective decentralization. An essential part of this process is to give the Military Departments a larger role in making the decisions that affect them. We have already moved in that direction and intend to continue to allow and to encourage the Services to make their own decisions whenever appropriate.

There are, however, some decisions that the Military Departments find it difficult or impossible to make. There is, understandably, continual competition among the Services and while it generates a high level of motivation and performance, this competitive attitude makes it virtually impossible for the Services themselves to make basic decisions on the allocation of resources and responsibility between and among themselves. The Joint Chiefs of Staff can and do resolve some of these matters, but there are clearly a number of areas in which the final decisions can be made only at the Secretary of Defense level. Decentralization must, then, be limited to giving the Services the responsibility for those things which they are best able to do themselves. Not every management decision can be decentralized, and in fact some matters require more centralization than existed in the past.

The decisions we face in the Defense Department concern important and complex matters involving large sums of federal funds. The essential inputs to effective decision-making on these matters are knowledge, experience, and analysis.

In the previous Administration, the decision-making process was centrally controlled, with the Systems Analysis office giving independent support to the Secretary of Defense by identifying issues, providing analyses, and recommending decisions. In this Administration, we have encouraged greater participation by all parties concerned. At the same time, we have sought to identify more precisely the areas of responsibility of the participants. This participatory-management approach results in a more effective interplay of experience and analysis, and in a more effective use of the Systems Analysis office. Within this framework, the role of Systems Analysis is to stimulate and develop the uses of analytic techniques throughout the Department and to encourage the development for me of clear analyses of issues and clear delineations of alternative courses of action on them. In this manner the issues and alternatives are clarified not only by analysis but also by the judgment and recommendations of the military services and of the JCS.

3. Delegation of authority

One important ingredient of good management is the proper delegation of authority. We have found some serious past shortcomings in the Department in this regard—in the OSD offices, between OSD and the Military Departments and within the Departments themselves.

Issues addressed almost always are complex, requiring many parties to be involved, but a Department cannot be effective when everyone gets into everything.

We have taken steps to define responsibilities more precisely, and we believe that this step alone will contribute to better management. This has been done in the planning, programming and budgeting system (PPBS), where we have given the Military Departments more responsibility and, at the same time, provided a clearer definition of Service and OSD responsibilities. We have gone through the same process in establishing procedures to be used in the development and acquisition of new weapons.

There is much more than can be done to improve delegation of authority, particularly in the Military Departments. A lack of proper designation of responsibility has in large part caused the past layering of staff reviews of new weapons programs. We expect further improvements in this important aspect of good management during the coming year.

4. Changes in organization and management and the blue ribbon panel

In implementing our new management concepts we have deliberately chosen to use an orderly, sequential, step-by-step approach instead of attempting to make comprehensive adjustments all at once.

A measured rather than precipitous pace seems most wise to us. We intend to avoid unnecessary disruptions in defense capabilities while we make the transition from wartime to peacetime forces, incorporating the changes in force structure necessary to implement the Nixon Doctrine and the Strategy of Realistic Deterrence, and also needed to complement our transition toward an all-volunteer force.

We have taken this measured course in considering the report of the Blue Ribbon Defense Panel which we received last July. That Panel recommended major changes in the organization of the Department with a separation of activities into the three areas of Operations, Management of Resources, and Evaluation, with a Deputy Secretary designated to have responsibility for each area. A number of other recommendations for management improvement were made, for example, in the development and procurement of new weapons. We concur in general with the Panel's objectives; however, we are seeking to avoid the tendencies toward increased staffing and overhead which we believe to be inherent in many of the specific Panel recommendations. Some of the Panel's recommendations already have been approved; others still are under consideration.

5. A second deputy secretary of defense

One major change in the organization of the Department which I have concluded is necessary is the establishment of an additional position at the Deputy Secretary of Defense level. My objective in recommending the creation of a second Deputy Secretary of Defense is to enhance civilian supervisory management.

The time of the senior Department officials is the most limiting factor in their management capability. Many developments in recent years have placed increasing demands on the time of the Secretary and Deputy Secretary. While selective decentralization is often the preferable alternative in alleviating this problem, there are both legal

and practical limitations on the extent to which high-level responsibility can be delegated to officials in functionally oriented positions.

The Secretary of Defense is authorized to delegate the full scope of his authority to the Deputy Secretary of Defense, and the practice has been for the Secretary to do so. It is my view that the additional Deputy Secretary, if approved by Congress, should also be authorized to receive a full delegation of authority. My intention would be to make a full delegation to both Deputy Secretaries, although it would probably be desirable to assign primary areas of concentration to each Deputy Secretary. I do not believe it would be appropriate to limit flexibility by designating specific areas of such concentration and responsibility in legislation, but I would envision an agreement between the Secretary and the two deputies on their respective areas of responsibility based on the wishes of the Secretary and the particular expertise of individual deputies. This would preserve flexibility for future Secretaries of Defense to make those adjustments best suited to their policies and to the talents of their deputies.

I will not permit this new position to limit access directly to me by the Military Chiefs or by the Secretaries of the Military Departments. As a matter of fact, I believe that this change will actually afford the JCS and the Secretaries of the Military Departments an increased opportunity to present their views and their problems directly to the Secretary of Defense. I feel that creation of an additional Deputy Secretary of Defense will directly support our principle of participatory management.

My proposal differs significantly from the specific recommendations of the Blue Ribbon Defense Panel. That Panel correctly identified the magnitude of the management task and responsibility placed upon the Secretary and the Deputy Secretary of Defense, and I fully support their conclusions about this workload. However, I am not now recommending and do not intend to recommend that the Office of the Secretary of Defense be functionally organized exactly as outlined in the detailed recommendations of the Blue Ribbon Defense Panel.

The creation of this new Deputy Secretary position will require Congressional action, and that should be done by an amendment to Chapter 4 of Title 10, United States Code. I will submit to the Congress the legislation necessary to accomplish this in the near future.

In that connection, the Blue Ribbon Defense Panel also recommended that five new Assistant Secretaries of Defense be established. Because of the modified approach we are pursuing to several of the Panel's recommendations, it is currently my intention to request legislative authority to create two additional Assistant Secretaries of Defense in contrast to the five recommended by the Panel.

I will have more to say about a few of the other important recommendations of the Blue Ribbon Panel later in this chapter, but let me turn now to some of the specific applications of our approach to management and organization.

6. The planning-programing-budgeting system (PPBS)

As I noted a year ago, one area in which we saw a particular need to decentralize responsibility and to delegate more to the Services is the PPBS. As I described it last year, in our revised system I issue detailed strategy and fiscal guidance based on guidance from the President. The JCS and the Military Departments then proceed with force planning based on this guidance. We place much greater reliance on the Military Departments and JCS than was the case in the previous Administration, and this year's work in preparing the FY 1972–76 Program and the FY 1972 Budget is an example of that reliance.

Uncertainties about the fiscal situation, however, caused us to deviate somewhat from the exact programming process planned a year ago. A further review and revision of our fiscal guidance by the National Security Council was necessary during last summer. For that reason, it was not feasible for me to issue the program decision memoranda that are planned as the final stage of the PPBS cycle within the Department. We have, however, developed a sound budget and five-year program based on revised fiscal guidance and the force planning of the Military Departments. We are confident that next year the new PPBS will function fully in accordance with our plans. This year's experience has illustrated one of the strengths of the system: its adaptability, or flexibility to accommodate change when necessary or advisable.

7. Other changes to improve efficiency

While we have proceeded with efforts to improve the motivation and performance of defense personnel, we also have made a number of management changes to increase efficiency, some of them in response to Blue Ribbon Panel recommendations. One example is our review of Defense Directives and Instructions. The objective of this review is the elimination and consolidation of as much as possible of the voluminous body of policy guidance, procedures and reporting requirements imposed in the past by the Office of the Secretary of Defense. By adhering to the principles of defined decentralization and delegation of authority under specific guidance, we have been able to reduce substantially Defense Directives and Instructions and simplify them.

We have found that, of the some 1,227 DoD Directives examined, 435 of them could be cancelled because they generate work that is unnecessary. Another 354 directives are being simplified and modified, and only 438, or 35% of all the directives, were found to be in satisfactory shape. Each of the Assistant Secretaries of Defense has been directed to take action to correct the deficiencies existing in his area of responsibility.

Our effort to reduce and consolidate Defense Directives was designed to reduce unnecessary work. These actions already have resulted in a substantial reduction in the number of reports required by the OSD from the Services. We also have directed the Services to give priority attention to the reduction of their own reports and paperwork, and they have undertaken to do so.

As a result of decentralization and management improvements, it has been possible to make significant reductions in Headquarters staffs. By the end of FY 1971, we expect to have made reductions in the overhead personnel in the Washington, D.C. area and other major Headquarters amounting to 15% of the end FY 1969 strength. This means a reduction of about 13,000 in the number of military and civilian personnel assigned to headquarters activities worldwide. We hope to make further reductions in FY 1972.

One area where both we and the Blue Ribbon Defense Panel saw a need for improvement was in the performance of our logistics system. The Panel recommended that we establish a unified Logistics Command within the Department to improve performance while at the same time achieving greater economy and efficiency. While we have decided not to create a monolithic logistics organization, we are moving to consolidate some logistics activities.

For example, in the field of transportation, we have announced plans to consolidate certain activities of the Navy's Military Sealift Command into the Army's Military Traffic Management and Terminal Services (MTMTS). After this consolidation is completed, MTMTS will be the single agency manager for all traffic management and procurement of surface transportation worldwide, except for intra-theater transportation in overseas areas. Deputy Secretary Packard has directed the Secretaries of the Army and Navy to submit a joint plan by late March to effect this consolidation. Reductions in operational costs will include establishment of a single computer system for all surface movements, and consolidation of industrial funds with consequent reduction in overhead and simplification of billing to military shippers. The Navy will retain responsibility for operating government-owned and certain chartered vessels; operation of vessels used for non-transportation purposes such as oceanography; and maintenance, operation and alteration of government-owned and certain chartered vessels. In addition, the Navy will continue to prepare recommendations for design, specifications and equipment of ocean-going vessels.

Another example of the type of management improvements we are undertaking is establishment of a separate program budget element for all public affairs activities in the Department. This management tool will provide us with better management of an activity that is of considerable importance to the Congress, the news media, and the public.

8. Environmental quality

With the continuing need for increased emphasis on environmental quality, we studied alternate means of managing the Department of Defense aspects of this program. I decided to combine all Department of Defense environmental quality matters with the Defense medical program under the Assistant Secretary of Defense (Health and Environment). This was accomplished last June. We believe we have made substantial progress in the environmental area, and I expect further progress during the coming year.

9. Non-appropriated fund activities

One final example of an extremely difficult problem we are seeking to resolve concerns the management of non-appropriated fund activities. Last year, we instituted a new and comprehensive audit system for the Post Exchange and Commissary systems and Open Messes and Clubs. We are only now beginning to get results from this change. The indications at this point are that additional management and possibly organizational changes are needed. I have directed that a comprehensive management review be made of non-appropriated fund activities. There clearly have been abuses in the past and under past management systems. In addition, we are reviewing the inspection and criminal investigative organizations of the Services to determine what further changes are necessary to improve their effectiveness. We will continue to work closely with Congressional committees concerned about this area.

Experience has demonstrated to me that there is no alternative to the Secretary of Defense taking a much stronger hand in connection with non-appropriated fund activities.

B. IMPROVING MANAGEMENT OF MILITARY OPERATIONS

During the last two years we have given considerable attention to managing military operations. The Blue Ribbon Defense Panel Report placed great emphasis on the need to improve management of military operations, in particular recommending establishment of stronger civilian control. The Panel made a number of specific recommendations on how the Department might be restructured for improvements in this area, including creation of a Deputy Secretary for Military Operations, and a change in the military command structure.

We recognized the existence of many of

the problems discussed in the Blue Ribbon Defense Panel Report. We have done a number of things in attempting to solve them, but we do not believe that changes as substantial as they recommend are required or wise in all cases.

1. Intelligence

In my Defense Report of last year I advised you that I had appointed the Assistant Secretary of Defense (Administration) as my special assistant for intelligence, and that I charged him with the responsibility for reviewing the Department's intelligence programs. During the year he has worked very closely with those responsible for the numerous intelligence activities in the Department. In doing this, he has been able to improve the coordination and communication among the various intelligence activities. He has been able to bring together at one point a picture of the overall resources allocated to the intelligence function. This process has made it possible to get a better picture of the funds being spent throughout the Department on Intelligence, and to evaluate the budgetary decisions with a better understanding of their impact on the quality, as well as the level, of these intelligence activities.

This move has enabled us to focus better on the performance of the specific intelligence organizations, DIA, NSA, and some of the in-service activities, and we believe that significant improvements have been made in the management of the intelligence activities of the Department. I am not satisfied, however, that we have, by any means, done everything that needs to be done in this area, and during the coming year I will be looking not only for a continuation of the effort which we now have underway, but also for ways to make further improvements in the management of Department of Defense Intelligence programs.

During the year it has become evident that there has been considerable confusion between military intelligence activities and organization on the one hand and investigative and related counter-intelligence activities on the other. Accordingly in February of this year, we made a new delegation of responsibility which we believe will bring these investigative and related counter-intelligence activities under better control.

I have delegated to the Assistant Secretary of Defense (Administration) the authority and responsibility to direct and manage for me investigative and related counter-intelligence activities in all of the Services. To assist him, I have created a Defense Investigative Review Council of which the Assistant Secretary of Defense (Administration) is Chairman. Other members are the General Counsel of the Department of Defense, the Under Secretaries of the Military Departments, and the Director of the Defense Intelligence Agency. At the same time, we have formulated and promulgated a comprehensive policy for all Department of Defense investigative and related counter-intelligence activities. This represents a centralization of high-level civilian authority over such activities—a centralization of supervision which experience has demonstrated was needed.

There is a second area related to intelligence in which we will shortly make additional changes.

As a consequence of currently-exercised compartmentalization of intelligence activities, it too often is very difficult to obtain net assessments of our relative military posture, particularly in technical areas. This deficiency seriously detracts from our long-range planning capabilities.

To partially correct this situation, I have established a net technical assessment group. This group is located in the Office of the Director, Defense Research and Engineering, and it has the responsibility for bringing together both intelligence and research and development specialists from within the Department and as needed for special expertise, from outside the Department. The first assignment of this new net technical assessment group was to assess the characteristics and capabilities of one of the Soviet surface-to-air missiles. The first assignment to this group resulted in one of the best products I have seen. I am confident that the work of this new group will put our long-range planning for new weapons and new tactics on a much improved foundation.

It is my present intention to create a special long-range planning group, reporting directly to me, to make long-range studies based as a beginning point on the assessment which I receive from the net assessment group.

The establishment of both the net assessment group and the long-range planning group was recommended by the Blue Ribbon Defense Panel.

In creating these groups, it is not my intention to supplant previously existing assessment and planning capabilities. On the contrary, these new groups will provide an additional tool, enabling me to utilize more effectively the institutional assessments and planning which I receive.

2. Telecommunications

Telecommunications is another area where we have generally followed the Blue Ribbon Panel's recommendations. We have appointed an Assistant to the Secretary for Telecommunications, who is responsible for establishing Department of Defense-wide (DoD-wide) communications policy and for coordination of DoD-wide communications effort. This already has improved our ability to bring the far-reaching communications problems of the Department under better management and control, and we look forward to getting further benefits in the future.

3. The unified command structure

The Blue Ribbon Panel specifically recommended changes to the Unified Command Structure. These include creating three new commands, and abolishing and merging some of the others.

There have been no changes in the Unified Command Structure since 1963. Meanwhile, there have been major changes in the specific missions of our combatant forces, as dictated by changes in national policy and our world-wide commitments. The implementation of the Nixon Doctrine will further modify the peacetime responsibilities of our combatant forces.

We have concluded that the present Unified Command Structure, together with the distribution of responsibilities among the various commands, does not represent the most effective organization of U.S. combatant forces in support of national policies, nor is it the most effective arrangement for the deployment of U.S. forces to meet likely contingencies. We plan to make recommendations to the President regarding some modifications to the Unified Command Structure. These modifications would alter the assignment of responsibilities to the various commands, and bring these responsibilities more in line with the requirements imposed by our national policies and commitments. In the process, we expect to achieve greater efficiency through reductions in the number of headquarters, in the size of Headquarters staffs and in costs.

4. Military assistance

As I explained earlier, the Nixon Doctrine and the Strategy of Realistic Deterrence place significantly increased importance on our International Security Assistance Programs and also necessitate a closer integration of U.S. force planning with the Security Assistance program. At present, Defense Department participation in the Security Assistance program is somewhat fragmented.

In recognition of the increased importance of Security Assistance programs, we are conducting within the Administration a comprehensive study of the procedures and organization for the planning and administration of the military assistance and foreign military sales programs—including military assistance which is Service funded for three Southeast Asian countries.

Based on the results of this study and on our concurrent review within the Department of Defense, we expect to be able to revamp thoroughly our procedures, and thereby improve substantially the management effectiveness with respect to these programs.

C. IMPROVING THE DEVELOPMENT AND ACQUISITION OF NEW SYSTEMS

Developing and procuring of new weapon systems always has been an area of considerable interest and concern to those who manage the Department of Defense.

When we assumed office in 1969, we had to face up to a number of problems and breakdowns in the weapons acquisition process that had developed over the years. Nearly every new weapons system was turning out to be substantially more costly than estimated when the system was first authorized. Furthermore, a great many of the new weapons did not work as well as predicted, reliability too often was poor, and maintenance costs were excessive. Improvements were required in two general areas, the organization and management of Research and Development (R&D) and the overall acquisition process. Let me cover each in turn.

1. The organization and management of research and development

In the area of Research and Development (R&D), the Blue Ribbon Defense Panel recommended a number of changes to DoD management. These include abolishing the position of Director, Defense Research and Engineering (DDR&E) and reallocating his functions to two new Assistant Secretaries of Defense (ASDs), ASD—Research and Technology, and ASD—Engineering Development; making the Advanced Research Projects Agency (ARPA) which is now directly under DDR&E, into a Defense Agency; and establishing both a new ASD for Test and Evaluation and a new Defense Test Agency. The thrust of these recommendations was to separate the three related functions, Research and Advanced Technology; Engineering Development; and Test and Evaluation, and in doing so to give each area special and increased attention at the OSD level.

Instead of establishing three new Assistant Secretaries for these three functions, we believe the same thing can be accomplished by designating three deputies within DDR&E, each with the responsibility for one of these functions.

Research and advanced technology will be given increased emphasis in the Office of the Director of Defense Research and Engineering, and new procedures will be established to insure that all areas of new technology applicable to national defense are being addressed. In the area of Engineering Development, although the Military Departments will assume full responsibility for the conduct of weapon system development, the Deputy Director of Defense Research and Engineering will be assigned coordinating responsibility and will concentrate on the policy and managerial aspects.

In order to upgrade and expand our attention to the test and evaluation of our defense systems and equipment, we are establishing within the Office of the Director of Defense Research and Engineering (ODDR&E) an office under a Deputy Director for Test and Evaluation with full responsibility to coordinate and establish policy for all test and evaluation matters. We also plan to keep ARPA within DDR&E for the time being since we see no compelling reason to make it a Defense Agency. We also intend to retain the Defense Communications Planning Group (DCPG) as an action agency under DDR&E but we will retitle it the Defense

Special Projects Group and expand its role to encompass a wide range of new projects.

2. The acquisition process

It is not easy to identify all of the reasons for the difficulties now being encountered in the development and procurement of new weapon systems. Some of the reasons for the troubles we are having in the development and procurement area are described below, along with new procedures we intend to use in order to help alleviate some of them. Deputy Secretary Packard will go into greater detail in subsequent testimony. There are no simple solutions to these problems, but we are convinced that a better approach than was used in the past must be developed and followed.

Many programs have had problems because they were poorly defined from the beginning. Frequently more performance was requested than was really needed in a new weapon. This tendency too often was encouraged by over-optimism in evaluation of the technical difficulties involved in achieving desired performance and also was encouraged by under-estimation of the time and cost that would be required for development. At the outset, too much emphasis frequently was placed on evaluating difficult technical areas by making paper studies rather than by actually developing some working hardware.

In order to help solve these problems, we are insisting that better decisions be made on specifications and schedules at the beginning of a program. We must ensure that specifications are reasonable and a system can be obtained in a realistic time frame.

Key problems also have arisen when programs have been too rigidly structured. Inadequate allowance too often has been made for trading off some system capabilities or characteristics in order to meet cost targets. Furthermore, the date for a new weapon to go into the inventory was in the past usually set earlier than was really necessary. This tended to create unnecessary concurrence between development and production, and to force a program into production before development was really finished.

Finding solutions to these problems is quite difficult. Our approach includes structuring development contracts to provide for tradeoffs between performance, time schedules and cost throughout the development program until the weapon is approved for production. In addition, we are encouraging the use of new, less structured approaches to the entire development and procurement process.

Finally, and most important, to be sure that the necessary work is properly completed before going to the next step of any program, we have requested that all new programs have proper milestones. These milestone checkpoints will be set up at least at the following stages: the beginning of major effort in advanced development; the start of full-scale development; and the time when production of the system is authorized. Projects will not proceed beyond these milestones until they are fully ready to do so.

A very crucial problem area in the past has been that project officers were not doing an adequate job. This resulted from many factors, including assignment of managers who were poorly selected or who lacked proper training for the job, inflexible service rotation policies which made it impossible for a manager to stay with a program long enough to be effective, and the effects of permitting too many people to get in on what the program manager should have been doing himself.

Solution of this problem requires that we select more capable project managers and staffs and leave them on the job long enough for them to be effective. We also must give project managers the special training in development and procurement they need in order to do their job properly. We are revamping and improving our Defense Weapons Systems Management Center to add this special training. The Center is being relocated from Wright-Patterson AFB to Fort Belvoir, effective July 1971. Finally, we must clarify the project managers' responsibility so they are not just errand boys for already over-burdened higher staff echelons.

The final major problem area of the past involves contract types. We have come to the conclusion that total package procurement contracts are simply not a practical way to handle important new weapons system development and acquisition programs. We are proposing that primary development reliance be placed on cost-incentive contracts. This will enable us to base development schedules on development milestones rather than on specific points in time. We believe that once development programs have been completed in a satisfactory way, fixed price contracting should normally be used for production contracts. After the parameters of a product have been carefully established and demonstrated in the development stage, contract negotiations to establish a fixed price production contract can be conducted on a sound basis.

I want to stress that under our participatory approach to management, the responsibility for managing a program rests with one of the Services; nevertheless, the Office of the Secretary of Defense (OSD) will remain responsible for seeing that a project is administered in accordance with established policy guidelines. Using this approach, we will continue to seek improvements in service management procedures, and in all aspects of the weapons acquisition process.

Deputy Secretary Packard will describe our approach in greater detail in his testimony to the Congress, and will explain the specific management procedures we will be using in order to improve Department of Defense performance in this area.

NUTRITION PROGRAM FOR THE ELDERLY

Mr. HARRIS. Mr. President, recently in Ada, Okla., I held a very valuable hearing on the problems confronting our older Americans. During the day of testimony, nutritional problems relating to older persons were stressed by several witnesses. The difficulties of maintaining a properly balanced diet on limited income; the problems of cooking meals alone for one person; the loneliness of eating by oneself—all these were brought out in the testimony.

For this reason, I am joining with the distinguished Senator from Massachusetts (Mr. KENNEDY) in cosponsoring a bill which would help solve some of the nutritional problems of the elderly.

The Nutrition Program for the Elderly Act would authorize a program whereby elderly Americans could receive one well-balanced, hot meal each day, in an easily accessible location.

Centers for provision of meals would be established in community facilities, senior citizen centers, schools, and other private or nonprofit locations. The Federal Government would provide 90 percent of the costs for the program, with 10 percent to be paid by the various States. The bill would authorize $50 million for the first year, and would increase to $150 million in the third year.

By providing meals in a central location, the loneliness and isolation of the older citizen would also be alleviated. The contact with other persons would provide many elderly Americans with an emotion benefit, as well as a nutritional plus.

I hope that the bill will receive prompt attention by Congress and that the older citizen can look forward to hot meals in companionable circumstances before long.

KANSAS LEGISLATURE CONDEMNS ENEMY TREATMENT OF AMERICAN POW/MIA'S IN INDOCHINA

Mr. PEARSON. Mr. President, civilized men and women everywhere deplore the callous disregard which the enemy has shown for the rights of American POW's, and those who are missing in action in the Indochina war. The Government of North Vietnam signed the Geneva Convention relating to the treatment of prisoners as long ago as 1957, thereby joining with 119 other national governments in a common pledge to insure the welfare and humane treatment of prisoners of war. Perhaps no obligation in all of international law has been so widely recognized as morally binding than the proper treatment of prisoners.

Tragically the North Vietnamese, Vietcong, and Pathet-Lao have brought the bamboo curtain down on nearly 500 known American prisoners, and more than 1,100 American servicemen listed as missing in action. North Vietnam and her allies have refused to permit neutral inspection of POW camps, provide identification of those prisoners held, or release those prisoners who are seriously wounded or ill.

The enemy does not permit a proper and uninterrupted flow of mail to and from the prisoners. American servicemen held in captivity have been subjected to abuse, to cruel mistreatment and torture, and have been exploited for propaganda purposes. All these despicable acts are in violation of international law and are an affront to the dignity of mankind. Though millions of humanitarians have expressed outrage directly to the North Vietnamese Government, Hanoi has remained insensitive to the most elementary requirements of civilized conduct.

Mr. President, I am proud and honored to have this opportunity to announce formally to the Senate the adoption of a resolution by the Kansas Legislature which reflects the most solemn judgment of all the people of Kansas. The resolution condemns the illegal and inhuman acts of the Government of North Vietnam and its allies. The legislature has authorized and requested the Governor to proclaim the period beginning March 21, 1971, as "Kansas Week of Concern for POW's/MIA's." All the people of Kansas are urged to honor those brave servicemen who have sacrificed their freedom in our country's defense in ways appropriate to the occasion.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of the resolution which was adopted by the Kansas House of Representatives on March 2, 1971, and by the Kansas Senate on that same date.

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

HOUSE RESOLUTION 1036

A resolution condemning the illegal and inhumane acts of the government of North Vietnam, National Liberation Front and Lao Patriotic Front with respect to American prisoners of war/missing in action; calling on other governments and the United Nations to bring pressures upon the aforementioned governments to comply with the Geneva Convention; requesting the governor of Kansas to declare a "Kansas week of concern for prisoners of war/missing in action"

Whereas, in 1957 the government of North Vietnam signed the appropriate documents of the Geneva Convention of August 12, 1949, relating to treatment of prisoners of war, and did thereby solemly promise to adhere and abide by the covenants of that Convention, thereby joining in a common pledge with one hundred nineteen other national governments to insure the welfare and humane treatment of prisoners of war; and

Whereas, Article 2 of the Geneva Convention specifically provides that the Convention shall apply to all cases of armed conflict which shall arise between contracting parties whether or not a state of war has been recognized or declared; and

Whereas, The government of North Vietnam and her allies, the shadow-governments of the National Liberation Front and the Lao Patriotic Front, have willfully and continuously violated the covenants of the Geneva Convention and have maliciously ignored the provisions of said Convention requiring humane treatment of prisoners of war. Maintaining falsely, in contravention of Article 2 of said Convention, that American captives are not prisoners of war but war criminals. North Vietnam and her puppet allies have refused to:

Permit neutral inspections of prisoner of war camps;

Provide identification of all prisoners held;

Release those prisoners who are seriously wounded or ill;

Allow a proper and constant flow of mail to and from the prisoners;

Provide an adequate and nutritious diet; and

Provide adequate medical and pharmaceutical care; and

Whereas, In addition to the foregoing, the government of North Vietnam and her puppet allies have:

Subjected prisoners of war to public abuse;

Subjected prisoners of war to cruel mistreatment and torture; and

Exploited prisoners of war for propaganda purposes;

all of which acts are in direct violation of the Geneva Convention and the humanitarian principles of civilized society; and

Whereas, Citizens of the state of Kansas serving on active duty in the armed forces of the United States, in Southeast Asia, have been declared to be missing in action and are known or believed to be held prisoners by North Vietnam, the Viet Cong and the Pathet Lao: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That the people of the state of Kansas condemn these inhumane and illegal acts of the government of North Vietnam and of the National Liberation Front and Lao Patriotic Front and call upon them to cease their deliberate and contumacious violation of the provisions of the Geneva Convention.

Be it further resolved: That the people of the state of Kansas call upon the government of the United States, the governments of all nations who are signatory to the Geneva Convention, and the Secretary General of the United Nations to bring such pressures as are necessary upon the government of North Vietnam, the National Liberation Front and the Lao Patriotic Front to insure immediate, full and complete compliance with the provisions of the Geneva Convention.

Be it further resolved: That the governor of the state of Kansas be authorized and requested to proclaim the period beginning March 21, 1971, as "Kansas week of concern for prisoners of war/missing in action," to honor those brave citizens of Kansas who have sacrificed their freedom in defense of freedom for all and that all municipalities, civic groups, fraternal organizations and like entities in the state of Kansas be informed of this resolution and requested to support its intent by every feasible means available.

Be it further resolved: That the chief clerk of the house transmit duly attested copies of this resolution to the secretary of the senate of the United States, to the clerk of the house of Representatives of the United States, to each member of the congress from this state, to the government of North Vietnam and to the Secretary General of the United Nations.

THE MILITARY JUNTA IN GREECE

Mr. PELL. Mr. President, last week the Committee on Foreign Relations made public a report prepared by its staff, based on a visit to Greece by two staff members. That report reaffirms my own conviction that our Government has utterly failed to convey effectively to the military junta in Greece the concern of the United States for a return to constitutional government in Greece, and for restoration of basic individual liberties.

It is quite clear that the military junta did not believe the United States to be seriously concerned about these matters. Regrettably, it would appear the Greek colonels were quite right in their assessment. I would add that, unfortunately, we in the Senate share some of the responsibility for that conclusion. When the Foreign Relations Committee in 1969 approved my amendment to the Foreign Assistance Act eliminating new authorizations of military aid to Greece, the Senate voted by a narrow margin to restore that authorization. And last year the Senate took a similar action.

In fairness to Members of the Senate, I believe it should be said that many of them acted on the basis of assurances from the executive branch that the Greek Government was moving smoothly toward constitutional government and restoration of individual liberties. I do not question the good faith of the State Department in giving those assurances; but events have proven how poor were the judgments behind those assurances.

Mr. President, the Providence Journal of Tuesday, March 9, 1971, published an excellent editorial on U.S. relations with the Greek junta. I ask unanimous consent that the editorial be printed in the RECORD.

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

A NEW LOOK

A staff report filed with the Senate Foreign Relations Committee casts long shadows over U.S. policy toward the ruling military junta in Greece. It criticizes both the U.S. State Department and the U.S. embassy in Athens for accepting on faith assurances that constitutional government would be restored by the end of 1970 and for prematurely lifting the embargo on military aid.

Instead of applying continuing pressure on the Greek regime for a return to democratic freedoms, the report maintained, the United States got into the position of seeming to support the junta. Instead of holding the junta to its own deadline, both the embassy and Department of State issued supportive statements about the progress being made, statements that the two staff members, former Foreign Service officers, said were misleading.

Americans have been divided over this country's posture during the years of Greece's turmoil. While that country is of major strategic importance in the Western alliance, many Americans consider support for a military dictatorship to be an unacceptable contradiction of democratic principles.

While the United States maintained an embargo on arms, it retained a measure of diplomatic influence in behalf of free elections and the restoration of individual liberty. By lifting the embargo last year, the United States sacrificed the one element of persuasion remaining.

The embassy in Athens, said the report, "appears to have operated on the assumption that the regime was sincere in its declared intention to return to parliamentary government" by the end of 1970. In point of fact, it said, "the Constitution is by no means yet in effect; elections have not been scheduled or even promised and martial law is still in effect, superseding the guarantees of due process for which the Constitution provides."

In this report, which may be subject to varying interpretations depending on one's point of view, there seems ample justification for a thorough review of U.S. policy by the foreign relations committee.

The Greek regime has not demonstrated its serious intention to restore constitutional government. In spite of assurances last April to the contrary, *habeas corpus* provisions of the law have not been observed. The United States has made broad concessions and it has extended its patience beyond limits that are reasonable.

It is time to take a new look at an ugly situation.

DEPARTMENT OF DEFENSE 1972 REPORT ON MODERNIZING MANPOWER POLICIES

Mr. GOLDWATER. Mr. President, this week Secretary of Defense Melvin Laird issued a major policy document spelling out a 5-year defense program for meeting the national security needs of the United States. This report describes in careful detail, covering some 191 pages, a new active strategy for the prevention of armed conflict and protection of the American people and our way of life.

In reading through the report, I am particularly interested and pleased to observe how truly far the administration has traveled along the road toward a fully voluntary military. The Department of Defense paper leaves no question about its emphatic endorsement of the goal of creating an all-volunteer force. What is more, the Pentagon is foursquare behind changes aimed at improving the conditions of military service. Of course, these same basic purposes are the foundation of my own voluntary military legislation, and I am confident the acceptance of this cause in principle by the military community itself will guarantee the adoption of the volunteer concept sooner than most observers think.

Mr. President, the points endorsed by the Department of Defense in its comprehensive report parallel the bill introduced by myself and the Senator from Oregon (Mr. HATFIELD) in numerous

areas. The Defense report clearly recognizes the ending of the draft as a desirable and feasible goal, proposes specific improvements in the quality of military life, such as expanded housing and educational opportunities, and seeks to upgrade the general public awareness of a military career as an honorable and dignified profession. Each of these points is an essential feature of the voluntary military bill drafted by the Senator from Oregon and myself.

The Defense report also calls for increases in the number of ROTC scholarships, a boost in military medical scholarships given in return for obligated service, substantial pay raises for servicemen at the entry level, earlier voluntary separations, a standby call-up system once the draft ends, and a stronger Reserve force. Again, each of these points would be implemented by the legislation which I have introduced.

Therefore, in reviewing the Defense Department's position, I have been struck by many similarities between its manpower objectives and my own. The single important difference relates to timing. It is my sincere belief, formed from a background of 37 years spent as a Reserve officer, including 8 on active duty, that a voluntary military can be established promptly, before the close of 1971. The Pentagon, on the other hand, holds to July of 1973 as its target date, though Assistant Secretary Kelley is reported to have promised the Department will try its very best to beat that goal.

Mr. President, even if I might wish the Defense Department would escalate its timetable for the implementation of an all-volunteer system, its 1972 report, in general, puts the Department squarely behind a positive and realistic approach to transforming military service into a rewarding, dignified, and important profession. Because this statement represents a new and fundamental expression of the Department's philosophy toward its role and toward the individual persons who comprise its military components, it should be read and studied by as many citizens as possible. To this end, I ask unanimous consent that the section in the 1972 Department of Defense report headed "Manpower Objectives" be printed in the RECORD.

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

1972 DEPARTMENT OF DEFENSE REPORT TO CONGRESS AND THE AMERICAN PEOPLE

Of all the challenges facing the Department of Defense, none is more important than modernizing manpower policies. Nothing can have higher priority than our people—military and civilian and their families.

In this section, I discuss major steps already taken to improve manpower policy, including some gains in equal opportunity, our plans for the future, and the problems that must be met.

Three important changes in manpower policy, already underway, are among our major current objectives:

Improvement of military life in accordance with the 1969 statement of our Human Goals—reproduced on the back cover of this Report.

Reduction of draft calls to zero by July 1, 1973, as we move toward an all-volunteer force.

Completion of the transition to peacetime manpower levels from the high peaks of the past with minimum personal hardship.

Between the time I assumed the Office of Secretary of Defense and the end of FY 1972, we will have reduced the personnel strength of the Armed Forces by approximately one million men and women. This major reduction in military manpower, made possible largely because of our Vietnamization program, must be offset by improvements in the quality of our smaller forces. This is precisely what we intend to do, with the help of Congress and the American people.

No one should make the mistake of believing that attainment of our manpower goals will be easy. But we are determined to pursue these programs with complete dedication, and we will make maximum efforts to obtain the assistance of both Congress and the American people in taking the actions needed to achieve our goals.

We must never lose sight of the fact that the size of the Department of Defense depends on what capabilities the military forces, both active and reserve, need in order to support national security strategy. The defense forces must always be large enough and powerful enough to do the job expected of them.

A. ASSUMPTIONS

In the belief that we gain nothing by failing to face realities in our planning, let me summarize some major assumptions about the future on which our estimates of the nature, size, and structure of the military establishment are based.

1. Congress will extend the current draft authority which expires 30 June 1971 and will support programs to modernize military manpower and to enhance the attractiveness of a military career.

2. The National Guard and Reserve will take on increasing responsibilities and will be used initially to augment active forces should the need arise, reversing the past policy of relying primarily on the draft. Activation of standby draft authority will follow Guard and Reserve call-ups, if necessary.

3. The Vietnamization program, the first step in implementing these new concepts, will be completed successfully.

4. Under our new concepts for force planning, which are discussed in Section I, Chapter II, our friends and allies will assume a greater share of the responsibility for international security in conformity with President Nixon's policy of partnership.

5. The United States will provide assistance to some of these nations in order to help them assume increased responsibility for their defense.

6. There will be no major armed conflict or greatly increased unforeseen threat affecting the vital interests of our country during the five-year period.

If any of these assumptions proves to be faulty (and not all are within our power to control), the attainment of the goals of substantially reduced forces, of zero draft calls, and of the all-volunteer military force would, of course, be jeopardized.

B. PROGRESS TOWARD THE GOALS

In a number of areas—such as reductions in military and civilian manpower, lowering of draft calls, improvements in Service life—we have made significant progress.

The manpower reductions exceed any in our nation's history except those associated with demobilization after the two world wars. Planned manpower strengths, including active and reserve military as well as direct-hire civilians, are shown on Table 11. Between the end of FY 1968 and the end of FY 1970, active military personnel strength was reduced by 481,000. During FY 1971, a further cut of 367,000 is being made. This cut exceeds by 114,000 the reduction originally planned in the FY 1971 Budget and was made possible because of progress in Vietnamization. From the beginning of FY 1969 to the end of FY 1972, the total reduction in active military personnel will be 1,042,000 or about 30 percent. The number of men and women in the active forces at the end of FY 1972—2,505,000—will be well below the pre-Vietnam figure of 2,687,000 at the end of FY 1964 and below any year-end strength level since FY 1961. In short, we face the task of doing a better job with fewer people and that is why we are going to give a new accent to quality both in the active, National Guard and Reserve Forces instead of relying on quantity.

Direct-hire civilian personnel (including the National Guard technicians who became federal civilian employees in FY 1969) was cut by 126,000 between 1968 and 1970 and is scheduled for a further reduction of 79,000 by the end of FY 1972. We are hopeful that reductions in FY 1972 largely will be made by attrition and that reduction-in-force actions will be held to a minimum. These reductions, over the four-year period 1968–72, amount to 16 percent of the civilian force at the end of the last full fiscal year of the preceding Administration.

Much progress has been made in reducing draft calls, as we move to the goal of zero draft by July 1, 1973. From the peak Vietnam draft call year of 1966 when 365,000 men were inducted, draft calls have gone down to 163,502 in 1970. They are expected to decline further in 1971. The following table shows draft calls since FY 1964.

Calendar year draft calls

1964	107,500
1965	233,250
1966	364,680
1967	218,700
1968	299,000
1969	289,900
1970	163,500

Steps have already been taken to make service life more attractive and to achieve our Human Goals. These include increased construction of family housing, the introduction of improvements into barracks life, relief from onerous and irritating tasks and restrictions, and new measures to give effect to the policy of equal opportunity. We also recognize our responsibility to ease the serviceman's transition to a civilian career and have strengthened programs to help in this transition.

C. SOME PROBLEMS OF FORCE REDUCTION

Cutbacks in personnel inevitably involve some painful turbulence. The magnitude of the manpower reductions in Fiscal Year 1970 and 1971 has created hardships on many thousands of dedicated people—both military and civilian. We will do everything we can to minimize personal hardships as we complete the transition from wartime to peacetime conditions.

In achieving the planned reduction of 22,000 direct-hire personnel during FY 1972, the Services may find it necessary to separate involuntarily some career employees. To minimize involuntary separations of civilian career employees, we have taken a number of actions. We have imposed limitations on filling most continuing job vacancies so that priority can be given to displaced careerists through a defense-wide computerized Priority Placement Program. We are also seeking legislation to allow earlier retirement to reduce the number of involuntary separations. Deputy Secretary Packard and I have charged the Assistant Secretary of Defense (Manpower and Reserve Affairs) to monitor this matter closely so that we can minimize disruption in the lives of people who have served the Department of Defense well over the years, including the period when we were enlarging our forces.

The planned reduction of active duty military personnel can be achieved largely through voluntary means. A substantial portion of that reduction will result from lower accessions. The remaining reductions can be achieved by permitting many officer's and men to terminate their active duty service before their normal separation date.

As to military career advancement, plans for Fiscal Year 1972 provide motivating career opportunities for those who have recently joined, but in some career grades we must expect, of course, that advancements will be slower than in the recent years of the buildup of forces for deployment in Vietnam. We intend to keep the promotion picture under close and continuing scrutiny to insure equity for our career men and women in unform.

It cannot be emphasized too strongly that in the preparation of our budget program for 1972 we have kept constantly in mind the fact that competent and dedicated people constitute the single most valuable asset of the defense establishment. I believe we are reducing the size of the Armed Forces at a rate which is consistent with good personnel management. Should we be forced to reduce at a greater rate, we would not only fail to meet our defense requirements, we would also greatly increase the hardships for our military and civilian personnel and for their families.

D. ZERO DRAFT—GOALS, PLANS, AND PROBLEMS

I have set July 1, 1973 as the target date for reaching zero draft calls.

At the end of FY 1972, as I noted, our military strength will be down to the level of the early 1960's, when it was necessary to draft 60,000–160,000 men per year.

The transition to zero draft calls will not be easy. Nor can it be instantaneous. The number of voluntary accessions to the Armed Forces in recent years clearly has been substantially higher than the number of volunteers that could be expected in the absence of the draft. Many who have volunteered have done so because of the expectation that they would otherwise be drafted. The draft has been a decisive inducement to service for approximately half of the first-term enlistees, about two-thirds of the Army's combat soldiers, about three-fourths of the Reserve enlistees, and the vast majority of young doctors.

In FY 1972, the military accession requirement will be about 528,000 enlisted personnel and nearly 44,000 officers for the Active Forces; this is equal to about one-fourth of the total of young men reaching age 19 that year. Total accession needs should become smaller in FY 1974 and beyond because of an anticipated increase in voluntary enlistments for periods of service for three years and more. But, this is dependent upon the enactment of pay raises at the entry level this year as well as prompt action on other proposals designed to increase retention rates in the services.

In FY 1970, about 388,000 males volunteered for Armed Forces enlisted service. Our studies suggest that about one-half of this number were "true" volunteers—entrants who would have enlisted in the absence of the draft. Thus, if we assume that the same number of "true" volunteers could be expected in FY 1972 as in FY 1970, the Armed Forces under present circumstances and conditions of service—notably pay—would fall well short of the accessions needed.

There are other problems as well in moving toward zero draft calls. The personnel loss rate will be high as previous year draftees and draft-induced volunteers leave military service, many of them with high technical skill levels. Furthermore, there are problems in acquiring officers.

The most serious obstacle to achieving zero draft is pay. Military pay is much too low, and is scandalously low for men in the entering enlisted grades with less than two years service. I want to bring to an end the injustice in the fact that thousands of our military families today are eligible for relief because of low pay.

The basic pay of a private graduating from basic training in the armed forces today is approximately $1,800 a year. Add to this quarters, subsistence, and his tax advantage and the total comes to $2,700. Measured by any standard, military entry pay is much too low—so low, in fact, that present pay levels probably keep people from enlisting in the armed forces who would otherwise volunteer. Compare with this private's pay, for example, the $1.60 an hour federal minimum wage, or $3,300 per year; or the annual pay of a Job Corps graduate at $3,900; the common beginner's pay for unskilled blue collar work of $6,000; or the starting salary of a New York City policeman, which is $9,500.

Our programs this year are designed among other things to solve the basic problem of entry-level pay. We are proposing an average basic pay increase of 36 percent for enlisted people with less than two years of service. New entrant's base pay would be increased by 50 percent.

The Department of Defense has submitted proposed legislation to the Congress to authorize an enlistment bonus. Initially it would be applied in the Army combat arms.

In addition, our programs provide an appropriate increase in Dependents Assistance Act allowances for personnel in pay grades E–4 with less than four years of service and below. The new levels will provide increases of up to $45 per month for approximately 270,000 junior enlisted personnel.

Turning now to another way in which we can increase voluntary enlistments, there is evidence that the present recruiting effort falls short of the mark. We are therefore planning to increase the number of recruiters and recruiting stations. In order to stimulate more aggressive efforts, the monetary needs of the recruiters will be met by incentive pay and housing allowances and, if authorized by Congress, by reimbursement of out-of-pocket expenses. There is no reason why a recruiting sergeant, if he provides a cup of coffee and possibly a doughnut or two to a young man and his parents visiting a recruiting station should find it necessary to pay for the coffee and doughnuts himself. In addition, modern equipment will be provided for the operation of our recruiting station, and we will take a new look at recruiting advertising.

Two additional issues that bear upon the problems of voluntary accessions are the quality of military life, and the need to strengthen the stature and dignity of military service. We cannot reasonably expect to attract enough qualified people to a military life that not only pays less than the private sector but lacks adequate recognition in many segments of our society.

There is no doubt that further elimination of "make-work" and modification of unnecessary rules and restrictions will enhance the attractiveness of service life. Experimental programs suggest that the elimination of unnecessary irritants is reflected in higher first-term reenlistments. Improving barracks life by providing more privacy and additional living comforts is another step toward increasing volunteers. We have a specific program in this area concentrated in the Army and Marine Corps, that would refurbish barracks, partition them into two or four man cubicles, and provide such furnishings as desks, chairs, lamps, and rugs. It is the first phase of a three-year program designed to provide a measure of privacy and better living quarters for 450,000 enlisted personnel.

Our efforts to make military service more attractive and rewarding, however essential on their own merits, will be inadequate if they are not accompanied by public recognition that military service is a worthy career. The abusive defamation of the military that circulates in many quarters of our society is increasingly an obstacle to recruitment and retention of personnel by the armed forces. It is unjust, and it is dangerous to our security. If the military profession is not accorded the respect it deserves, no amount of money, no improvement in the conditions of service life, no recruitment campaign, will attract enough qualified volunteers to maintain an adequate military force.

Zero draft calls will affect the National Guard and Reserves as well as the Active Forces.

The problem of maintaining the strength of the Reserves and the National Guard will grow during the transition period to an all-volunteer force. The present officer force in the Guard and Reserves, with the exception of medical personnel, is adequate. Enlisted force levels, however, will be harder to maintain as the drawing power of the draft declines. A year hence, the draft will have little impact to stimulate enlistments of 17- and 18-year-olds. By January 1973, the draft will have ceased to swell enlistments in the Reserve forces. Recruiting problems can become serious if steps are not taken to increase voluntary accessions of the Guard and Reserves.

Another problem facing us in the transition to an all-volunteer force is the potential difficulty in obtaining officers in the quantity and quality we need. Of immediate concern is the ROTC—our primary source of officers. The decline in enrollment in this program, which currently furnishes six times as many new officers as the service academies, is shown below:

ROTC enrollment

Academic year:	
1968–69	218,466
1969–70	161,507
1970–71	114,590

Declining enrollments stem largely from two causes—a reduction in the number of compulsory ROTC units and a wait-and-see attitude on the part of students stemming from the withdrawal of our forces from Vietnam, the draft lottery, and the movement toward a zero draft. Although our declining military strengths reduce our requirements for officers, a continuation of the current declining trend in ROTC enrollments will create serious shortages of officers starting in 1974. Since ROTC is a long-lead time program, corrective action is needed now to ensure that future officer requirements will be met.

There are a number of programs we are recommending that will help alleviate, but not eliminate, the problem of officer accessions. We are asking for an increase of ROTC subsistence allowance from $50 to $100 a month. This would restore the relationship between subsistence payments and the Consumer Price Index which existed in 1946; the year it was established. We also propose to increase the number of ROTC scholarships from 5,500, the current statutory ceiling for each service, to an amount equal to 10% of the total officer forces for each service; we additionally propose that up to 50% of the scholarships may be used in the two year program at the discretion of the Military Departments. The table on the next page depicts the projected effect these proposals on ROTC subsistence allowance and scholarships should have on ROTC officer production. They should enable us to meet ROTC officer production requirements, however, they will not solve our overall officer accession problem.

ROTC PROGRAM TABLE

Commissionings

Fiscal year	With no change in the program	With increased subsistence and scholarships	Added cost (millions)
1972	14,504	14,687	$32.1
1973	11,087	14,337	39.1
1974	8,950	15,481	47.7
1975	7,800	15,828	52.7
1976	7,100	16,927	58.2

We have also submitted legislation to provide additional compensation for officer candidates in the Marine Corps primary officer procurement program.

In the future, additional incentives may be necessary to ensure a supply of officers adequate to meet our needs.

There is one final aspect to be considered in the overall problem of achieving zero draft and an all-volunteer force, and that is meeting our requirement for physicians. Last year's announcement that there would be no doctor draft in FY 70 caused a sharp reduction in the number of Berry Plan applicants. As a result it has been necessary to resume the doctor draft in FY 71.

In order to meet the need of the military services for medical personnel, we recommend increasing our support of medical school students, through medical scholarships. We would, in effect, exchange subsidy of the individual's education in medical school for a specified period of military service. While we hope to retain many physicians and dentists for continued military service, we recognize that many of these personnel will not remain in military service indefinitely. The sponsored physicians who do not choose a military career will, after their period of service in the Armed Forces, help to reduce the nationwide shortage of medical personnel.

E. EXTENSION AND REFORM OF THE DRAFT

Faced with these problems it is not difficult to see that the draft cannot be ended abruptly. Until actual experience gives good reason to believe that we have devised a program which will attract an adequate number of volunteers to the Armed Forces, we dare not dispense with the draft.

The President has asked Congress to extend induction under Selective Service to July 1, 1973. This is an absolute necessity. By July 1, 1973 we are hopeful that draft calls can be ended as we stabilize at peacetime force levels and as our programs for attracting volunteers take hold.

If the Congress authorizes us to carry out the Project Volunteer Program and provides adequate funding, the induction authority could expire on July 1, 1973, although standby draft machinery should be retained to permit speedy increase in the size of the military forces in the event of an emergency.

The Administration is also reviewing its request for authority to institute several draft reforms. As long as the draft is needed, it should be made as fair as possible. These reforms, some of which were introduced in the 91st Congress but not acted upon, relate primarily to the phasing out of undergraduate student deferments, other than for ROTC and other officer programs, and the placing of direct national calls by random sequence numbers.

ACHIEVING OUR HUMAN GOALS

When I became Secretary of Defense two years ago, I formulated a declaration called the "Human Goals" of the Department of Defense. Because we wish to move toward an all-volunteer force, the implementation of the principles of this declaration designed to increase the attractiveness of a career in defense becomes of even greater importance and urgency.

In the years ahead we shall continue to improve and expand many ongoing programs aimed at making service life more inviting and to seek new initiatives toward this end.

The military housing program is a case in point. I am convinced that a continuing program of building military family housing is vital for morale, career motivation, and retention of trained military personnel. We have substantially increased the number of family housing units on military bases. The FY 1969 Budget provided for the construction of 2,000 units; the figures rose to 4,800 in the 1970 program and 8,000 in the 1971 program. This year we are asking for the construction of 9,684 family housing units, almost five times as many as three years ago.

In addition to the on-base military family housing construction program, we are making progress in seeking community housing for military families in low income housing projects under subsidy from FHA. Recent legislation contained in the Housing and Urban Development Act permits preferential treatment to military families by sponsors who build low income housing. We have developed with FHA an initial 5,000 unit program, which will be available to low income military families.

Changes are being introduced in service life to eliminate unnecessary demeaning, irritating, and onerous practices. For example, to reduce long periods of separation from family, the Navy this year has cut the time of deployment of carriers in the Atlantic Fleet to a maximum of 6 months in place of the 8 or 9 months, which was normal heretofore. Scheduling of training and work is being revised in all services to avoid unnecessary periods of duty and allow more free time. A less rigid regulation of things that are matters of personal taste has been introduced. The military services will continue their efforts to eliminate unnecessary regulations without loss of the discipline which is essential to the effective functioning of the armed forces.

Because of the importance of broadened opportunities for self-development and advancement, the Armed Forces will continue to improve their educational programs. Several studies have shown that educational opportunities can be a major incentive for enlistment and retention of service personnel.

Last year almost 100,000 enlisted men took necessary instruction and completed the examinations to secure their high school equivalency certificates. Over 200,000 college courses were completed by officers and enlisted men. Tuition Assistance payments were made for 160,000 courses taken by officers and enlisted men. Veterans' Administration figures indicate that they had approximately 87,000 servicemen taking courses.

We are beginning to put to good use two pieces of legislation passed by Congress last year. One, Public Law 91–219 was the so-called Predischarge Education Program (PREP) legislation making it possible for servicemen to obtain an educational assistance allowance to pursue a course or courses required to receive a secondary school diploma or deficiency, remedial or refresher courses to prepare them to pursue an appropriate course or training program at an approved institution. The Armed Services have made extensive plans to develop PREP programs at overseas bases largely through the use of Dependents Schools and at CONUS bases through the use of local high schools and junior colleges. The other piece of legislation, Public Law 91–584, made it possible for servicemen to use Veterans Assistance payments for education at the completion of 180 days of service.

The Department of Defense is committed to the goal of making military and civilian service in the Department a model of equal opportunity for all, regardless of race, creed or national origin. A major equal opportunity goal of the Department of Defense is to assure that minority group personnel are accorded equal treatment in promotions and assignments.

Effort is being made to increase the participation of minority groups in the officer corps. In Fiscal Year 1970, black attendance at the Service Academies rose sharply. The United States Military Academy, as of July 1, 1970, had 93 black cadets, 40 of whom entered last year as Plebes in the Class of 1974. At the United States Naval Academy there were 53 black midshipmen, 20 of whom were admitted in the Class of 1974. The United States Air Force Academy had 75 black cadets, 28 of whom are members of the Class of 1974. In addition, steps are being taken to increase the proportion of minority group members in ROTC.

There has also been progress in securing the right of all military personnel to available off-base housing in the United States. When the off-base housing program was initially implemented in 1967, a nationwide canvass of militarily significant housing found that of 1,120,000 rental units surveyed, only 246,000, representing 22 percent, expressed a willingness to comply with DoD's policy of nondiscrimination. As of December 31, 1970, the owners and managers of rental units, representing 98.2 percent of those surveyed, were pledged to a policy of nondiscrimination.

DoD has also made progress in insuring that 53,000 contractor establishmnets are equal opportunity employers. During FY 1971, we shall continue monitoring the performance of our contractors in regard to equal opportunity in hiring, upgrading, and promoting of their work force. Significant breakthroughs have been achieved in several industrial fields. Substantial gains were made in minority group employment in the textile, paper, and aerospace industries.

Projects TRANSITION and REFERRAL are both ongoing programs designed to ease the serviceman's transition to a civilian career. Hundreds of thousands of young men are returning to civilian pursuits each year, and they fully deserve all the help we can give them in preparing for a productive life as soon after separation as possible.

In the case of the transition program, which provides vocational counseling, job training and job referral assistance just prior to separation from the service, we have put special emphasis on providing manpower for critically important national needs In FY 1970 we trained approximately 5,900 in law enforcement pursuits; 12,000 in the construction trades, and 9,000 in postal work. We have begun special training for water pollution control technicians. The training costs in all these programs are borne by American industry and the Department of Labor.

A second program designed to make a service career more attractive is the referral program for retiring military personnel. It was placed in full operation in August 1970, and provides for counseling and voluntary registration into a computerized man-job matching system into which employers may submit job requirements. After 6 months operation, more than 15,000 military personnel have registered, over 68,000 job vacancies have been reported and 100,000 resumes have been provided employers. Data on placement are not yet available.

We are also cooperating with the Department of Labor, Department of Commerce, and the Veterans Administration in the support of the Jobs for Veterans Program. The Department of Defense will provide information to departing servicemen on how best to utilize the services of this new program in their home towns.

One of the Defense Department's Human Goals is to contribute to the improvement of our society by securing double duty from our resources when we can do so without impairment of effectiveness in performing the primary mission of providing for the nation's security. The transition and referral programs both serve this purpose as do many other activities of the Department.

During the past year, two new programs were initiated with this aim in mind—MAST and MEDIHC.

The MAST program (Military Assistance to Safety and Traffic) is a joint project of the Departments of Defense, Transportation, and HEW to assist civil agencies in providing faster medical attention to those who need immediate care. Military helicopters are used to transport victims of highway accidents and others in need of emergency care to hospitals and other medical installations.

A test program, first instituted at Fort Sam Houston, Texas, has been expanded to include Fort Lewis, Washington; Fort Carson, Colorado; Luke Air Force Base, Arizona; and Mountain Home Air Force Base, Idaho. Rescue missions are being flown as training missions for the crews, including the paramedical personnel, and costs are included by the military in their training programs. As of February 7, 1971 a total of 214 MAST missions had been flown, 287 patients were evacuated, and more than 60 lives were saved by prompt evacuation and treatment. About 65% of the emergencies occurred on highways. The test period for MAST will run to March 31, 1971 to provide a broader range of experience, particularly during the winter months. At that time it will be determined whether a national medical airlift program for accident victims should be recommended.

The MEDIHC program (Military Experience Directed Into Health Careers), a joint Defense-HEW effort, is designed to attract more of the 30,000 medically trained servicemen, who leave military service each year, into critically needed civilian health occupations. Approximately 600 service personnel each month are applying for civilian positions under this program. Initial reports indicate an employment rate of 70% among the first applicants.

G. SPECIAL PROBLEM AREAS

There are two special problem areas in the manpower field in which intensified efforts are needed—drug abuse and race relations.

We in the Department of Defense are keenly aware of the problems associated with drug abuse in the armed forces and in the nation. We are resolved that the man in uniform shall have an intelligent, informed understanding of the dangers of drug abuse. We are committed to strict enforcement of the prohibitions against the sale, use or possession of marijuana, narcotics and dangerous drugs.

The drug problem has increased and is increasing in our country and likewise has grown and continues to grow in the Armed Forces.

The Department of Defense has taken a number of steps designed to cope with this very serious problem. We have developed informational materials on improper drug use, and procedures for the prevention of illegal drug traffic. We have also developed programs designed to restore members of the Armed Forces who are drug abusers or drug addicts to useful functions. We have authorized, on a trial basis, amnesty programs for drug abusers who voluntarily step forward before being apprehended.

We are, of course, concerned about the potential danger of drug abuse among United States personnel in Vietnam. We have launched a number of programs to suppress and eliminate illegal drug usage by U.S. military forces in Southeast Asia.

Special Vietnamese-U.S. marijuana/narcotics investigation teams to investigate sources of supply and apprehend offenders.

Special teams are available to instruct commanders and troops in identification and detection of marijuana.

Orientation classes are conducted for all new arrivals to stress the moral, medical, and social aspects as well as the legal penalties associated with the possession or use of marijuana.

Turning now to another problem area, despite the progress made in achieving equal opportunity and improving race relations, more must be done. In all my trips to military installations in the U.S. and overseas, I have made it a point to talk with thousands of our enlisted men and women. I have sought particularly to get their views and the views of their commanders on what more needs to be done to improve equal opportunity in the Armed Forces. In late 1969, and more recently in late 1970 my staff visited bases in Southeast Asia and Europe. Data gathered during the visits evaluated the implementation of DoD policies and programs on equal opportunity and treatment. Interracial tension and conflict were also studied on these visits. These visits resulted in a changed DoD policy in regard to equal opportunity and race relations.

I have authorized base commanders to declare off limits any establishment which discriminates against any member of the Armed Forces. Heretofore commanders have had to refer these cases to the office of their Service Secretary before taking action.

I have also determined that leadership in conducting successful Equal Opportunity Programs should be one criterion in the evaluation of military and civilian officials for promotion to positions of increased responsibility.

Another program designed to ease racial tensions in the Armed Forces is our new race relations education project. An Inter-Service Task Force on Education in Race Relations was established in January 1970 for the purpose of developing an educational program for all military personnel in the area of race relations. Extensive progress toward the accomplishment of their mission was made by the Task Force. The curriculum will be finalized, field-tested, and ready for implementation by early 1971. The Department of Defense will require the military services to implement the Department of Defense Race Relations Education Program at all levels of education and training for military personnel.

These two problems are problems of our society—not just problems of the Armed Forces. We shall continue to work toward effective resolution of them within the Armed Forces. To deal with them adequatley, however, our effort must be part of a broader campaign in which the resources of the civilian sector are brought to bear to eliminate these evils.

CLEANUP MOOD SWEEPS NATION

Mr. ALLOTT. Mr. President, government is being increasingly called upon to remedy the ills of our society, from environmental to social, from health to housing. I have long believed that although there is much that government can do to stimulate, coordinate and innovate, more emphasis needs to come from the citizenry. For example, the March 5 issue of Life magazine touches upon the clean-up mood that is sweeping the Nation. Individual citizens are volunteering their time to improve their local environment. Without dedication of individuals in private life, efforts by government often prove futile.

I am referring to the need for "Partnership Problem Solving." National and local government working with private business and local government working with private business and local citizenry as partners in problem solving.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the views of Mr. David Rockefeller on the extent of such cooperation needed, in his judgment, to effect meaningful development of new towns and satellite cities.

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

ADDRESS BY DAVID ROCKEFELLER

I appreciate enormously the generous recognition that has been given this evening to the things I've tried to do toward improving this city that we all love so much, even though it causes us anxiety.

To be singled out for acclaim by the Regional Plan Association is a heartening tribute, indeed, and I am most grateful to you, Rusty Crawford, and all your fine associates.

I should warn you, though, that you may be establishing a dangerous precedent at these annual dinners. My brother Nelson was the speaker at last year's affair, and I myself have that honor tonight. I just wonder whether you are aware that there are three more Rockefeller brothers!

Actually, father was a strong supporter of this association. At one time, he stipulated that funds be provided for land acquisition and an extension of the Palisades Interstate Park System, in the area north of the George Washington Bridge, be used in accordance with the First Regional Plan of 1929.

When Nelson originally ran for governor, I suspect he had occasion to feel sorry that father was so self-effacing. He found to his dismay that the name most frequently associated with Palisades Park was Harriman!

Seeing David Frost here this evening as master-of-ceremonies reminds me that my place on the program had improved considerably since we last met. On that occasion, David invited me to appear on his TV show, and of course I was happy to accept. I didn't mind so much waiting in the wings while he interviewed two famous Hollywood actors—but I did think David carried the "upstaging" bit a little too far when he then brought on the Prime Minister of Sweden!

As Rusty Crawford can testify, it is particularly reassuring these days for a banker to hear anybody say nice things about him because, frankly, in these inflationary times, we have been getting far more brickbats than bouquets.

From time to time, I am asked what I think about inflation, and I've never been able to improve upon Milton Berle's definition. Inflation, he said, is when people's money won't buy what it did during the depression when they didn't have much of it anyway!

Bankers have been forcefully reminded of inflation's impact by several recent developments, including the soaring cost of building and outfitting new branches—and you know how many of those are opening up all the time. One survey showed recently that our Avenue of the Americas now has more banks than bars!

Some people, I'm afraid, would not look upon that as a forward step in regional planning!

Some friends and I were discussing urban planning recently while watching the television coverage of Apollo 14. One of the group raised the question why, since we can put men on the moon, we cannot solve our urban problems which are so much closer at hand.

"The explanation is simple," said another. "We know where the moon is!"

In reflecting on this comment, I couldn't help feeling that it pretty well summed up the difficulty we have in coming to grips with that tangled complex of problems we call "The Urban Crisis."

As the Regional Plan Association found out early in its very useful life, the urban crisis is not just a single problem. Rather it is a kind of witches' brew blended from all the major ills of our time—inadequate educational systems, hard-core unemploy-

ment, poverty in the midst of plenty, antiquated transportation, shameful housing, insufficient public facilities, and all the rest.

This evening I'd like to touch briefly on some of the problems we face—problems that have been starkly delineated in the Association's recent and comprehensive second regional plan. Then I'd like to explore a concept of development and financing that seems to me to have application not only to our urban areas but also to the exciting development of "new towns" and "satellite cities."

I should tell you at the outset that I personally am not a devotee of the new fashion of urban pessimism. This is the dispirited and disillusioned cult that never ceases to predict an early end to all our cities. Such an attitude, in my judgment, does much less than justice to the thousands of dedicated civil servants, determined businessmen and concerned citizens who have opted for enterprise and ingenuity as their response to a troubled era. To me, it would be both impractical and unthinkable to surrender to frustration at a time when there is so much constructive work to be done.

I spoke earlier of how difficult it is for the average citizen to see the urban crisis in perspective. Perhaps it helps if we think of the United States as two broad geographical areas.

One is rural America, a region so huge that, if it were a separate country, it would rank in area as the world's ninth largest. Yet, at the same time, a region so low in income that, by itself, it would be the world's sixth largest underdeveloped nation.

This rural America contains the highest proportion of our poverty, the lowest average per capita income, the most inequitable distribution of educational opportunity, and the bulk of America's inadequate housing.

The second geographical element consists of six large urban-and-suburban sprawls: The Boston-Washington corridor down the Atlantic seaboard; from Buffalo along the Great Lakes beyond Chicago; the spill-out of Los Angeles engulfing over half the California Pacific; the Florida spread; the Atlantic-Piedmont crescent; and the Fort Worth-Dallas-Houston complex.

Statistics confirm the pattern that the nation's urban areas accommodate 70% of all Americans on about 10% of the land.

Thus, in our rural areas, we have more room than people—more than enough space to expand, together with a need for the advantages that business and industry can provide.

On the other hand, we have the urban areas with far more people than room. In these areas, we have seen haphazard growth in which social ills tend to multiply.

Given these disparities, it is only natural to ask: why don't we get people to move from congested metropolitan centers to sparsely settled rural areas?

In a regimented society that might be a good way to do it, but it is hardly the American way.

Though romantics may still dream of the glories of small-town life, thousands of Americans continue by preference to pour into our great urban regions to take advantage of the unparalleled opportunities they do, in fact, offer. To the country lover, it may seem surprising that nearly all the increase in our national population, over the past decade, took place in metropolitan areas—in some central cities and especially in the suburbs.

In view of this trend and because of the huge investment we have in our existing cities, it is the height of folly to think—as some do—that we can ignore the refurbishing of our present metropolitan areas in favor of creating new cities away from the congested corridors. Realistically, we have no choice but to do both.

Today we have a population of some 206 million. Projections show that we are likely to add as many as 75 million more people by the end of this century—less than 30 years away. While this represents a lower rate of population growth for the United States than in the past—and is substantially lower than that of the developing nations—it still means that we must assimilate vast additional numbers of people in our country. In short, our urban problems will grow, not diminish, in the remaining decades of the 20th century.

Seldom does a day pass that we don't hear the question "What's the solution?"

But I wonder if a more realistic query wouldn't be: "What's the best approach to these problems?"

Experiences I have had in relation to Morningside Heights, Lower Manhattan and urban activities of our own bank in recent years suggest that the right approach is all-important.

I might add, parenthetically, that this lesson on the proper approach was reinforced, at least in my own mind, when I tried to convince some of my associates, at our friendly little loan company, to decorate their offices with contemporary art! That's a job that definitely calls for the right approach!

At any rate, in approaching urban problems, it is absolutely vital to gain the cooperation of three elements: private business, government, and the local citizenry. Unless these three can reach a broad consensus, even the finest plan will become nothing more than a blueprint for failure.

I believe that the basic task of urban rehabilitation is one for private enterprise. But it must be a cooperative venture. Government must lend support through zoning, through supplying essential services, and through tax incentives. Furthermore, the good will of the local residents and their concurrence in the program is an indispensable ingredient.

Clearly, the business and financial community has a growing stake in the economic health of our cities. Good zoning, traffic control and adequate water supply are essential to the entire community but they also bear directly on the success of businesses located there. To attract and retain top talent willing to live and work in our cities, business needs progressive community leadership that is alert to the problems which exist and is prepared to do something about them.

Conversely, cities need the help of business if they are to expand job opportunities and generate an adequate tax base. During this decade of the Seventies, we must create jobs in the United States for about a million-and-a-half men and women who will be entering the labor force every year. Since most of these jobs must be in metropolitan areas, where the population is concentrated, a basic function of any city must be to encourage and support the business and commercial activities that provide its economic base.

It goes without saying that in performing its primary role of producing goods and services efficiently, business is accomplishing a vital function of great public importance. Beyond this, however, more and more businesses are coming to recognize that they have a responsibility to assume a larger share of the social burden, as well, hand-in-hand with government. A notable recent example of business initiative, which went beyond the conventional role of a strictly profit-oriented project, was the case of nine commercial banks which are cooperating with the City in providing nearly $75 million for the construction of the Waterside housing development, to accommodate some 1,500 low and moderate-income families, on a novel six-acre platform over the East River.

This is just one example of an expanding corporate trend toward direct participation in community improvement that is becoming nationwide in scope. I am not suggesting, of course, that business singlehandedly—without government assistance—can solve the problems of our cities. However, it can take—and is taking—a livelier interest and is playing a larger role. And I believe it will do even more as it becomes convinced that its efforts will receive encouragement and support from government and the community.

One promising area for future collaboration between public and private sectors is in the exciting planning and development of "new towns" and "satellite cities."

I say exciting because this represents a dramatically new concept of urban building. Look at any of our present towns and cities and you can see unmistakable reflections of the way they were built—piecemeal.

How much better it would be to have an overall concept of the community which can shape the development right from the outset. That, in essence, is the new town idea. An imaginative builder comes in with a comprehensive plan and works out the details in cooperation with local government.

The location of the community center is carefully selected. You don't have the situation many of us are familiar with today where one municipality waits for its neighbor to provide the shopping and community facilities for both. Housing is planned to meet the needs of all those who will be working in the community. You don't run into situations where one municipality drags its feet, hoping the next town will provide the low- and middle-income housing, while it accommodates only the well-to-do.

In recent years, there have been about a dozen communities started which can be classified as "new towns"—that is, politically new and independent units with a wide range of options for housing, employment, worship, education and recreation. Perhaps the outstanding example of a new town in this country is Columbia, Maryland, halfway between Baltimore and Washington. Because Chase Manhattan participated in its construction financing, I have followed this particular "new town" with special interest.

Columbia was started in 1963 and is expected to be completed by 1980. By that time the population—now about 10,000—should reach 110,000. Of its 14,000 acres, about half are for residential use. A quarter of the land is for open space, while another quarter is for commercial and industrial purposes.

A core community is surrounded by what ultimately will be a dozen tree-shaded villages. Each village has been subdivided into racially integrated neighborhoods of about 1,000 families, with homes in a variety of styles and prices, clustered around churches, shops and schools. There are transportation loops around the villages that connect with Columbia's central core. Industrial sites are situated on the outskirts but with easy access routes to residential and shopping areas. The city is designed to be a balanced community with recreational and social facilities to satisfy the human needs of urban living, in addition to the businesses which provide employment and the economic base.

Seeing Columbia evolve, one can readily understand the growing support for new towns which is springing up all across the country.

As an example, the National Committee on Urban Growth Policy has recommended the creation of 100 new communities the size of Columbia and, in addition, ten new cities of at least one million people each.

The Housing and Urban Development Act of 1970 set up a Community Development Corporation to handle the financing of new communities and provided some of the funds to get them started. These steps are very

much in the right direction, but the funding presently available is still far below the waterline of adequacy to get the job done.

I have been giving considerable thought as to how the process of promoting new towns can be expedited. I have come to the conclusion that additional legislation will be required as well as added financial support. Specifically, it seems to me that two steps are needed.

One is a mechanism to help in acquiring land so that sufficiently large and contiguous tracts can be put together. In the case of Columbia, a few parcels could not be acquired and in the end the planners just had to design the city around them. If more parcels had been held out, or if they had been in more critical locations, this could have undercut the whole project. The chanciness related to land acquisition is much too great as things now stand.

The other need is for new sources of financing to provide the enormous sums required before new towns get underway and begin collecting revenue on their own.

To take care of both these needs, I would suggest the creation of two corporations nationwide in scope: one public, the other private or quasi-public.

To deal with the problem of land acquisition—and perhaps provide guidance in terms of national land-use planning—we need either a new Federal agency or an existing agency supplied with special additional powers for planning and obtaining sites for new towns.

Such an agency might well require the power of eminent domain. But sufficient flexibility and safeguards should be built in so that the rights and desires of those already living in proposed sites would be protected, and so that there would be no improper infringement on states' rights. Whether it be an Executive branch mechanism or a creation of Congress should be a matter for sober reflection. But the plan would call for a federal agency with the ability to determine sites and projects in a manner consistent with the economic needs and goals of the communities involved as well as those of the nation. Thus, a single agency would handle land acquisition and site location.

The second agency, either private or quasi-public, would be organized on a non-profit basis, to provide the predevelopment financing. Possibly a new kind of bank could be devised which would seek its capital from commercial banks, insurance companies, industry and other sources. To do so, the new bank would need to offer long-term debentures with a modest interest return that would make possible full development of a new town, and yet be sufficiently remunerative so as to assure a continuing flow of capital for other new towns. If the new communities are well conceived, there is every reason why the bulk of the capital could come from private sources.

The two agencies would need to work in close cooperation to see that the site locations of new towns not only meet the public standards desired for national growth but also to make sure that they would be attractive to residents and to industry.

Working together, these two agencies could create a whole series of new independent communities, providing adequate housing at reasonable cost and bringing together both the white and blue-collar work force required for industrial expansion.

Aside from the building of new towns, the plan I have outlined could readily direct investment into existing core cities where our national growth policy determined that programs of redevelopment or rehabilitation were desirable.

Perhaps the greatest benefit would be the harnessing of private financing sources, which up to now have not been attracted by urban investment, and directing them into responsible urban developments that are not only profitable but that enhance the environment as well.

Obviously, the building of new towns is an expensive venture. One recent study estimates that a community the size of Columbia might cost as much as $50 million in predevelopment charges alone—in land acquisition, planning and management, and infrastructure such as streets and utilities.

These start-up costs are the very ones that the developer finds so burdensome under present conditions, and the ones that the proposed new financing agency would be designed to handle. As a new town project moves ahead, it can obtain funds in the conventional money market or—in the case of lower income housing—from various government programs or the new National Corporation for Housing Partnerships. But the predevelopment costs are the big roadblock.

If we use this $50 million as a base figure, then the recommendation of the National Committee on Urban Growth Policy for 100 communities of Columbia's size, and ten of one million people each, could cost in the neighborhood of $10 billion.

Standing by itself, this is an imposing figure, indeed. Yet it is less than half of what we have already spent on the man-in-space program. And as great as the benefits from that program have been, I believe that the advantages of new town development—certainly in human terms—could be incalculably greater.

In conclusion, I would like to suggest that in tackling urban problems, we should keep five points in mind:

First, that because these problems are so closely interrelated, they call for the establishment of overall national goals and guidance.

Second, that federal and state assistance must be closely coordinated to stimulate responsible local action and serve the best longrun interests of the overall community.

Third, that the amount of state and local building and rebuilding required is so vast that it will make necessary the expenditure of a steadily increasing share of our total national income. Both private and public funds will be needed. Since states and municipalities are already straining their taxing powers, I believe the Federal Government will have to bear a larger share than in the past. That is why I personally applaud President Nixon's proposal for what he calls "general revenue sharing." The idea of giving local governments greater flexibility in spending a larger portion of federal tax revenues on urban development is eminently sound, and I would hope that the President's approach would eventually find the broadly-based support it deserves on Capitol Hill.

Fourth, that it is imperative for any new town or redevelopment project to include enough profitable activities, whether in housing, commercial development or industry to generate tax revenues sufficient to make the project viable with a minimum of public subsidy.

Fifth and finally, that the task of refurbishing our existing core cities and building new towns can best be accomplished if public and private efforts are creatively combined in such a way as to win the support of the community.

In shaping our cities of the future, we are limited only by the intensity of our concern, the reach of our inquiring minds, and the strength of our determination to provide a better life for all our citizens.

Mr. ALLOTT. Mr. President, so that Senators may have the benefit of some editorial reflection on Mr. Rockefeller's speech, I ask unanimous consent that editorials from the Evening Star and the Christian Science Monitor be printed in the RECORD at this point.

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

NEW-CITIES PROPOSITION

People who ponder the country's ballooning population have been saying for several years that a bevy of new cities must be developed, if the old ones are to be saved from suffocation. Two years ago the National Committee on Urban Growth proposed that the federal government build 110 new cities—100 with populations of 100,000 each and 10 designed for a million people each. No one questioned the need, but the scope of the idea rendered everyone speechless for many months. At last someone has spoken, offering a plan for implementation that should be taken seriously.

David Rockefeller accepts the figures on building needs produced by the urban growth panel, but he believes private enterprise is adequate for the task. He proposes the formation of a private or quasi-public corporation to raise $10 billion in private investments for the program. This entity would work with a new federal agency to acquire vast rural acreages as city sites, and would loan money to developers.

Rockefeller realizes that leisurely talk about population dispersal must give way to practical action if any substantial remedies are to come soon enough. He cites projections "that we are likely to add as many as 75 million more people by the end of this century" and predicts in a good banker-type understatement that as a result "our urban problems will grow, not diminish." They will in fact become hideous if there isn't some national distribution planning, and grand-scale consummation along the lines he recommends. The projections also are that the growth will be mainly in urban sectors, and that immigration into existing cities will continue. There is a limit to the number of people who can be crammed into them without critical degradation of the quality of living, and that limit already has been exceeded in some areas.

New cities won't solve urban problems or assure proper population balance, but at least they can reduce the pressures on old metropolises and the burgeoning suburbs. They can prevent the worst that is possible in congestion, pollution and strain upon public services as population climbs up toward 300 million in the next 30 years. Many can be located in regions from which throngs of rural and small-town job-seekers have traditionally emigrated, and the new cities certainly must include industrial parks and provision for a sizable number of working people. They can be designed to maximize both efficiency and enjoyment.

But this is a long-time venture, and government involvement will be required. Rockefeller said that if his proposals are deemed to have merit, he hopes "the government will institute a study of them." The government should do that, as quickly as possible.

THE BUSINESS OF BUILDING CITIES

At long last American private enterprise is beginning to talk in realistic dollar terms about its responsibilities and commitment to solving the nation's snowballing urban crisis. David Rockefeller, chairman of the Chase Manhattan Bank and as close to being "the" voice of American business as any single man can claim, has called for a $10 billion corporation to start building 110 new cities.

The figure of 110 new cities comes from a report made by the bipartisan National Committee on Urban Growth back in 1969.

A proposal was drawn up in legislative form, but it never got into the congressional hopper because President Nixon opposed it for cost reasons.

Mr. Rockefeller proposes now that a private or quasi-public corporation take on the job. It would be capitalized by banks, insurance companies, pension funds and similar insti-

tutions seeking long-term investment opportunities.

Alongside the private corporation, Mr. Rockefeller proposes a national public corporation, with powers of land acquisition similar to New York's State Urban Development Corporation.

There is no reason why a national urban development corporation should not be set up to do a similar job.

We would caution, however, that such an agency be subject to the control of a national planning body. President Nixon has already indicated his interest in national land use planning.

New towns and cities cannot be made arbitrarily to grow out in the grassy plains or on the sides of mountains, any more than tulips can be grown on the tundra or edelweiss in the desert.

Probably most new towns and cities should be located on the edges of existing metropolitan areas, close by transportation and communication networks, and close in to where most of the 75 million new Americans expected by the year 2000 will want to live.

Many of these new towns and cities would probably most naturally form around existing nuclei—such as small towns or regional subcenters.

These are problems for a competent national planning agency to decide. They are too important to be left to the speculative ventures of profit-oriented developers. Down that road, as American urban history dismally shows, lies formlessness, sprawl, and uglification of the countryside.

CHILD DEVELOPMENT PROGRAMS

Mr. HARRIS. Mr. President, the Washington Post of Sunday, March 7, carried the first in a series of articles which points up the need for a coordinated community effort in the field of day care and child development. The sharp contrast in the services available in custodial centers, which provide little intellectual stimulation for the children enrolled, with the more challenging programs available in preschools emphasizes the need to improve childhood programs for all young children.

S. 706, the Comprehensive Community Child Development Act of 1971, which the distinguished Senator from New York (Mr. JAVITS) and I and others are cosponsoring, would make a significant effort in improving facilities for young children. It would allow overall planning at the community level, provide for training of child care personnel, and work for the goal of having all children attain their full potential. I hope that this bill, together with other bills directed toward child development programs will receive careful consideration in the 92d Congress. The assessment in the Post article is "Almost nothing is actually happening." We can and must change that situation. I ask unanimous consent that "Childcare is Chaotic" be printed in the RECORD.

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

SOME LEARN, MOST DO NOT: CHILD CARE IS CHAOTIC

(By Gayle Tunnell)

It is 9:30 a.m. at Bible Way Nursery School.

In one corner of the large, neat and very bare room 21 children, 3 to 6 years old, and two adults sit, watching "Captain Kangaroo" on a small-screen black-and-white television perched far above their heads on a room divider.

About half the children seem attentive, a handful are squinting or glassy-eyed and five have their heads down on the table either resting or sleeping.

According to Bible Way's mimeographed schedule, which is given to parents, the children are watching "Sesame Street" on Channel 26. In fact, the television is not equipped to get Channel 26, although the Bible Way director says a set that can is expected soon.

There is no talk, either during commercials or after the program ends. The images flitting across the small screen are the only movement, their mechanically jolly banter the only sound.

This is early childhood education in Washington, D.C., in 1971. Not all of it, and certainly not the best of it. But some of it, and not the worst.

The idea that the period from birth to five years is a Very Important Time in a child's life, a time that holds the key to all he will ever know or do later on, is now widely accepted.

President Nixon believes it. In February, 1969, he committed his administration "To providing all American children an opportunity for healthful and stimulating development during the first five years of life." In April, 1969, he repeated that commitment.

Congressmen on both sides of the aisle believe it. There is an aura of political one-upmanship about the plateful of child care proposals now being passed around Capitol Hill.

Rotary Club speakers, public school officials, cocktail party goers—they all believe it, too.

And certainly the social scientists do. University presses in recent years have spewed forth conclusions ranging from Benjamin Bloom's at the University of Chicago, that children develop 50 per cent of their capacity to learn by age 4, to Jerome Kagan's, at Harvard, that class and skill differences can be spotted readily in babies as young as 8 months old.

But the rhetoric and research obscure the central fact:

Almost nothing is actually happening.

TWO MARKETS

As in the past, most programs for very young children are not operated at public expense but by private individuals and groups aiming at two quite separate class parents, buying the stimulation of nursery school, and the low-income parent, buying inexpensive custodial care that allows him or her to work.

The commitment of public money to early childhood education, never overwhelming, is at best no greater than and at worst considerably less than it was three and four years ago.

That is the pattern nationally, and the District of Columbia is no exception.

There are 75,000 children under age 5 in the city today. There are about 9,500 places in licensed day care centers and nursery schools and in the school system's prekindergarten program for 4-year-olds.

Some of the spaces are taken up by middle class youngsters. Many of the rest of the spaces are custodial, some of them mind-dulling, rather than educational.

Child care in the District is a jigsaw puzzle with many pieces missing and most of the rest not fitting right.

NOBODY IN CHARGE

Nobody is in charge—no individual or agency, no one in the school system or in the mayor's office. It is nobody's job to know what is being done, what isn't and what could be.

Programs and center vacancies are not matched with needs and children. There are no cooperative training programs or faculty exchanges. There is little college or university involvement.

One inspector from the department of public health is charged with visiting more than 200 group child care sites in the course of the year. Inspections must be cursory and infrequent, but maybe it doesn't make much difference: The standards the inspector is trying to enforce date from the 1920's.

Much more public money for early childhood education has been promised by the federal government, at least for day care services that would permit welfare parents to work.

HOPES AND PROBLEMS

The promise has kindled old hopes and raised new problems.

Big business, sensing a blue chip future in day care, is waiting on the sidelines. It wants to move in with franchising, mass buying, and cost-efficiency studies, much as it moved into the nursing home business after the passage of Medicare and Medicaid.

The prospect of more money also has intensified inflighting between public and private agencies over who will be doing what, how and for whom. The jurisdictional dispute is matched by a theoretical dispute over how it should be done.

Some research says that waiting until a child is 3 or 4 to dose him with early education is waiting too long. Other research dismisses as inefficient programs that aim at developing the "whole child," rather than concentrating on academics. Both findings are largely ignored in practice.

While there are indications that children from federally funded Head Start programs lose their competitive edge soon after entering public school, there are arguments over whether this is an indictment of Head Start or of public school.

An occasional voice warns that early education is being oversold and asks if the care and rearing of small children really should be turned over to Big Government or Big Business, at the expense of the family.

In the meantime, most of the 14,000 6-year-olds and 10,000 5-year-olds entering District first grades and kindergartens each year face a bleak future: By third grade, only one in four will be reading and doing arithmetic as well as the average child nationally.

Most of the District's early education programs are private—profit or non-profit, with the distinction often a hairline one.

For example, the 5,500 District children 5 years old or younger enrolled in licensed, full-day programs, 4,800 are in private centers. Of the 2,000 children in licensed part-day programs, all but 360 are in private nurseries and preschools.

With few exceptions, private centers aim at one or the other of two quite different markets.

One is the low-income family. Mother is forced to work either to supplement father's salary, or often to support the family herself. She needs a safe, inexpensive place to leave her child during working hours.

The other is the middle- to upper-middle-class family, willing and able to buy "the best" for its children at a very early age. This group buys nursery school for its supposed intellectual and social benefits, much as it will later search out music lessons and summer camp.

CLASS IN MANSION

Shortly before 9 a.m., cars begin pulling up in front of National Child Research Center, a rambling, porched brick mansion at 3209 Highland in Cleveland Park. Bought with an acre of land for $21,500 in 1930, the school dominates a neighborhood where a smaller house some doors away sold recently for $180,000.

A staff member standing on the sidewalk opens the car door, greets the parent, and helps out a pint-sized boy in a John-John Kennedy haircut and a college sweatshirt.

He walks up the path, says good morning to the school's director, Barbara Jeanne Seabury, on the porch, then disappears inside.

His parents are paying $750 ($680 if he attends the afternoon session) for 2½ hours a day, five days a week, nine months a year of creative play for him under optimum conditions.

ONE HUNDRED AND FIFTY STUDENTS

His class—one of four in the morning and four in the afternoon, adding up to 150 3-to-6-year-olds in all—includes 18 children, two degree holding teachers, and equipment ranging from gerbils and rabbits to paint and clay to books and educational toys.

Each classroom is equipped with a one-way-glass booth, wired for sound, so teachers can observe and evaluate their charges and each other and so parents can watch their offspring in action.

The school serves a snack each day, but shuns the traditional milk-or-juice-plus-cookies fare for a varied menu intended to develop young palates—chili, buttered rice with cinnamon, French toast, potato chips and dip.

The children are frighteningly competent and verbal, with the older ones adept at concentrating on something for an hour or more and at picking up where they left off after an interruption.

Most of the 4-year-olds who want to play house just start playing house. They rough out the game verbally in advance, settling everybody's role and much of the plot. ("No, you be the mother. I'm littler, so I should be the baby." "But you were the baby, now I should be the baby." And so forth.)

Despite a tuition that puts it well out of reach for the $10,000-a-year family, the non profit school expects to run $12,000 in the red this year, about 10 per cent of its operating budget. Tuition will go up in September, probably to $825 for both morning and afternoon sessions.

Parents also are expected "if at all possible" to contribute an additional 10 per cent of what they pay for their own child to the school's scholarship fund. Seven of the 150 pupils are on scholarship this year.

EARLY CALLS

Miss Seabury, who is now accepting applications for 1973, says some mothers call from the maternity ward to enroll their child and that the school probably could be filled at twice or three times the present tuition: "Some parents would even like it better if it were more expensive."

But, she says, she and the board of directors are shaken by the prospect of a school more and more limited primarily to children of the white wealthy, interspersed with a few black children on scholarship. The school is considering partial scholarships to bring back some middle income youngsters, and hopes government interest in early education may result in a voucher system that would pay part of the cost for low and middle income children.

Miss Seabury agrees that most of the children her school now serves would do fine without it, and explains that their parents are really buying "insurance." At the same time, the school enriches these children—as it would any child—and while these may need it least, their parents can afford it best.

MORNING DEVOTION

In the basement of Bible Way Church, 1130 New Jersey Ave. N.W., the children and adults have sat through their daily hour of TV. Now it is 10 a.m., time for morning devotions—prayer, songs and flag salute.

The children perk up some with the singing—there are a few giggles and some jockeying for position in the rows—then a lapse into near-silence as the daily schedule's one hour of "activities and class" begins.

The 4-and-5-years olds sit around a circular table with an adult who hands out crayons and mimeographed drawings to color in one Sunday-school alcove.

The 3-year-olds sit at a table in another alcove. Their teacher goes around the circle asking each child his name. Three do not know.

NOBODY TALKS

The striking thing about Bible Way Nursery School is that nobody—adult or child—talks. In three hours of observation, the noise level never rose above a subdued and sporadic hum and, with 21 preschoolers present it was more often nearly silent.

The room in which 32 children (11 were absent) spend up to 11 hours a day is sparsely equipped. There is a rack—beyond the reach of most of the children—holding perhaps two dozen books, most of them of the cheap drugstore variety; some women's magazines; and some encyclopedia brochures.

A play stove, sink and ironing board, with two tin pans, stand against one wall—but there are no empty grocery cans and boxes, let alone dishes, to use in playing with them. A battered rocking swan is the closest thing to a muscle-developing toy; a bead-counting rack is the closest thing to an educational toy

There are also 15 or so simple band instruments (sticks, bells), two small trucks, two small tractors, two boats, two grimy stuffed animals, two plastic telephones, and a three-cage circus pull-toy. There is a piano, although no one plays it during singing.

The morning schedule calls for breakfast, morning devotion, the hour of TV and an hour of "class" after lunch comes mid-day devotions, and then three hours of naptime. From 3:15 p.m. to 4:30 p.m. is set aside for getting ready to go home ("Put each child's street clothes on to go home"), and from 4:30 to 6 p.m. for going home.

Bible Way charges $15 a week, $19 if the parent wants the child picked up in the morning and taken home at night. District welfare pays $3 a day for five children to attend this center, one of 63 in the District with which welfare contracts in paying all or part of the costs for 882 children.

Not counting transportation, that works out to $780 a year, $30 more than what National Child Research Center charges for its morning program. The difference of course, is that Bible Way is providing all-day, all-year custodial care. Per hour, Bible Way costs less than a fifth as much as National Child Research.

Pearlie Brown, Bible Way's director, got her job in September after seven months of teaching in another District day care center "like this one except for devotions." She says that she and the three teachers under her have high school educations and that they earn about the minimum wage.

PROFIT POSSIBLE

Mrs. Brown says it is possible to make some profits, even at $15 to $19 a week per child for all-day care. Her ambition is to start up a day care center of her own soon.

Virgina Williams, who inspects all of the District's 200-plus licensed, group day care centers each year—describes Bible Way as "fairly typical, unfortunately" and "not one of the worst." Both Mrs. Williams and Evelyn Shidler, head of welfare's child care division, emphasize that it is much better today than it was one or two years ago. Then, they say, it had even less equipment.

When the two distinct courses in outside-the-home child care began, there were some practical justifications for the differences between them.

The well-to-do mother, who wanted and could afford stimulation for her child, did not work and did not need day care.

The low-income mother who had to work needed day care, could not afford the "etxras" of stimulation, had no reason to believe anyone else would afford them for her, and was largely unaware of their importance anyway.

All this has changed now—but the two traditions remain.

RESOLUTION ADOPTED BY ASSOCIATION OF STATE AND INTERSTATE WATER POLLUTION CONTROL ADMINISTRATORS

Mr. THURMOND. Mr. President, at its 1970 annual meeting, the Association of State and Interstate Water Pollution Control Administrators unanimously adopted a 10-point resolution. The members of this fine association are the chief administrators of the 50-State water pollution control agencies.

Water is one of our most important resources and its protection must be of top priority if we are to maintain and advance the quality of life in America. Reports indicate that we do not have an abundance of water, especially in many areas of our country, and it is therefore imperative that we take the necessary steps to protect and improve our existing water supply.

Mr. President, this resolution deserves the consideration of Congress. I ask unanimous consent that it be printed in the RECORD.

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

RESOLUTION ADOPTED BY THE ASSOCIATION OF STATE AND INTERSTATE WATER POLLUTION CONTROL ADMINISTRATORS

Be it resolved by the Association of State and Interstate Water Pollution Control Administrators at its annual meeting in Portland, Oregon, October 25–27, 1970, that:

1. The Federal Water Quality Administration be commended for its present efforts to improve cooperation with the state and interstate agencies and for its accomplishments in the advancement of water quality management.

2. The administartion of all Federal financial assistance programs relating to water pollution control be consolidated to the maximum extent possible in the Environmental Protection Agency.

3. The availability of construction grant monies under section 8 of the Federal Water Pollution Control Act be extended 6 months beyond the end of the fiscal year.

4. State and interstate program grant funds under section 7 of the Federal Water Pollution Control Act be increased from $10 million to $30 million each year to assist the state and interstate water pollution control agencies to meet demands imposed on them by Federal legislation.

5. Adequate funding be provided under Section 3(c) of the Federal Water Pollution Control Act to implement the essential planning required in 18 CFR 601.32 and 601.33.

6. The administration of the Refuse Act of 1899 with respect to water quality should be seriously studied by congress to determine whether it is basically incompatible with desirable state water pollution control programs.

7. Officials of the Federal Environmental Protection Agency be offered the assistance of the Association.

8. The Association expresses itself squarely in favor of aggressive and vigorous enforcement of all applicable laws by state and interstate water pollution control agencies.

9. The Association restates its fundamental belief that water pollution should be the primary responsibility of the states, as expressed by the Congress in sections 1 (b) and 1 (c) of the Federal Water Pollution

Control Act, and by the President in his concept of a new Federalism.

10. Copies of this resolution be forwarded to Congress, the Commissioner of the Federal Water Quality Administration, the Director of the Federal Environmental Protection Agency, the Environmental Quality Council, the Citizens Advisory Committee on Environmental Quality, and the Federal Water Pollution Control Advisory Board.

POLITICAL DEVELOPMENTS IN CHILE

Mr. ALLOTT. Mr. President, it is both very difficult and very necessary for us all to understand the course of political developments in Chile under the leadership of President Salvador Allende.

Recently, William F. Buckley, Jr., one of our most perceptive and widely read journalists visited Chile. His reports from there shed much light on the probable future of that nation.

So that all Senators may profit from his reports, I ask unanimous consent that four of his columns and an interesting report on Chile that was published in the Sunday edition of the Washington Post be printed in the RECORD.

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

CLOSING THE CURTAIN

(By William F. Buckley, Jr.)

SANTIAGO, CHILE, February 2—The brand-new hotel here, in mid-season, has 23 guests today, which means that five hundred beds are empty. Tomorrow, sixty of them will be occupied by a Cuban delegation. "And they probably won't pay their bill," a young Chilean businessman busily engaged in disengaging from Chile, remarked in his emptying office, the files packed up, phonograph records in cartons, as he mused on how he will raise the money to pay his debts—he has sold everything except his little beach cottage in the ten weeks since Salvador Allende was inaugurated as President, but there are no buyers There are lots of beach cottages, and very little cash.

A professor, himself a Socialist, explained that for reasons he could not put his finger on, he had found himself early that morning pecking away at his own typewriter, instead of relying on his perfectly competent secretary, who would be at his service a few minutes later. Somehow he did not want to share what he had to say in that letter with someone whose sympathies were, in all matters, with the Allende government.

Another scholar is trying very hard to master the art of intrigue. He could write you a book tomorrow about some of the great intrigues in European history, but he never knew such a one as his department is engaged in. You see, the balance of power is in the hands of the cook. I kid you not. The university system in Chile has for years and years been dominated by a senate of sorts in which everyone is represented, professors, assistant professors, students, maintenance men; and yes cooks. The difference is that under Allende the politicization of everything is such that great consequences ensue on the littlest vote. In this case, the question is whether the department will more or less formally establish itself as a revolutionary arm of the Communist-Socialist-radical coalition that rules Chile. The cook is in favor of it. The professor in charge is against it, pleading that any such marriage must be at the expense of the integrity of the department's scholarly calling. He was supposed to have finished a book months ago, but he has not begun it. How can he, when he needs to spend the time to muster a majority sufficient to overcome the political dedication of his cook?

Another professor, young, soft-spoken, freshly returned from several years in Germany where he did his doctoral dissertation on the artist's idea of the New World during the sixteenth and seventeenth centuries, looks you straight in the eye and tells you ——— it is a bloody slander to allege that the Allende government is engaged in persecuting *El Mercurio*, the leading opposition daily. You are told the same thing by government functionaries, who include lawyers, ideologues and playboys and you pay them little heed, even as, a world and a half away, you would pay little heed to a representative of the Rockefeller administration who insisted, say, that he had no difference whatever with Mayor Lindsay.

But the professor is something else, because he genuinely believes it to be so that the Allende government is innocent. It goes as follows: *El Mercurio* (government spokesmen will tell you) is simply one enterprise in a complex of enterprises dominated by a single family, and over the years the business fell into lax habits. Good government (of the Allende type) is charged with enforcing the laws. One such law holds that the Edwards Bank, an arm of the enterprise, had no business underwriting a particular transaction without sufficient collateral. As for *El Mercurio*—why, all the government is attempting to insure is that, like other enterprises, it has paid its taxes. All of this against a background of: a) frozen credit; b) price control; c) wage increases by government decree; d) the flight of capital; e) the withdrawal by the government of official advertising in the newspaper; f) harassment by a union controlled by the Communist Party; g) the arrest of a prominent executive through the resuscitation of an old dormant law. There is no question in the minds of the managers of the Edwards enterprises that eventually they will all be exonerated of any substantive wrong doing. There is considerable question whether, by that time, *El Mercurio* will still be publishing. Exit the axis of opposition to the Allende government.

What is interesting—mark this well—is that the young professor, and so many other idealists like him who support so avidly the revolutionary government, will not admit to any knowledge of what, in fact, is taking place in Chile. *They don't believe it.* What they believe is the purity of the government's purpose. You sit and listen, and a great literature of the past generation runs through your mind. The excuses made by the professors who, early in the Thirties, backed Hitler. The solitary ruminations of Nikolai Rubashov, who decided to submit to the fictions of Stalin's prosecutors rather than unsettle the Communist balloon by tying it to the earth with a strand of truth. Allende isn't Hitler, or Stalin. But his supporters are of the breed of the supporters of Hitler and Stalin. They will not credit the evidence which every day accumulates before their eyes. There are reasons historical, cultural, ideological and even moral, which account for their blindness. Meanwhile one begins to understand what Albert Jay Nock meant when he wrote in his journal that he thought someday to address himself to the question: How do you establish that you are slipping into a dark age?

CHILEAN BREAKDOWN

SANTIAGO, February 3.—We have climbed to almost five thousand feet, rising rung by rung up the thermals that shoot up fitfully from the foothills of the lower Andes that peter down to the outskirts of Santiago, making it a joy for those who love to glide. The pilot behind is unconcerned with the violent wrenchings of the little sailplane that spurts up while he banks it over sharply, to stay in the upstream. He is constantly talking, while he maneuvers to stay in the geyser. "When Allende was voted in," he says, "I decided to split. So I called my accountant and I said to him, tell me exactly how much money I am worth. A few days later he told me, you are worth, he said, one hundred and fifty thousand dollars."

"Well," he said, diving down now to escape the spiral, and beginning a long glide toward Los Curros, where the national observatory is, and Allende's private residence (we must turn away, by regulation, before reaching a bomb-dropping relationship to it), "I sat down and asked myself a few questions. I said, Look: I own a membership in this gliding club, where I am a parttime instructor. I have my little business. I have a small airplane. I go fifteen times a year to ski at Portillo, with my wife and son. I have a sailboat at the lake. We have two cars, a swimming pool and a house. Where else can you have all of that with capital of only one hundred and fifty thousand dollars? So—I decided—I'll repose my faith in the army."

Chile, by the way, is not the ideal incubator of Marxist revolution. There is spectacular poverty, but among a very small percentage of a population, which, by the way, is almost wholly literate. The more general poverty is urban, not rural. Only 20 per cent of Chile's nine million people work the land. As one historian has noted, if you need to draw a picture of the quintessential victim of Chilean economic torpor, it wouldn't be the landserf, struggling to make do with a few cents per day; or the miner out of a novel by Emile Zola, exhausted and dehumanized by the demands of an encroaching industrialization. Rather it is the shop clerk, poorly paid, bored, apparently immobilized, suffering from inflation, high overhead, a politicalized environment within which his enumerated rights (and, oh, how they love to enumerate the rights of the people. Our Bill of Rights would serve only as a cheese tidbit introducing the soup dish of the Rights of the Chilean People) are meaningless, unless he happens to know somebody who knows somebody who is a judge, or a member of parliament.

This is not to say that the situation is frozen for the sales clerk. The last three presidents of Chile came from utterly humble backgrounds, as incidentally did Pablo Neruda, revered in Chile as a combination of Voltaire, William Shakespeare and Frank Sinatra, whose amorous verse is overpoweringly beautiful, and whose tendentious verse (Neruda is a lifelong Communist) is as fulminatory and galvanizing as *La Marseillaise*. The thing of it is, not enough Chileans conceive of rising up the ladder—except through politics. "Thus politics becomes the substitute, for the young Chileno, for almost every avenue of social or material advancement a young American might consider: a substitute for the professions, for industry, for the army, the arts; even the Church."

The Chile of this moment, halfway between Allende's inauguration and the municipal elections of April, is composed of roughly three lots of people. The first are those who are wildly excited by the revolution. "They speak and write like John Reed fifty years ago, talking about the Ten Dayes in Russia that Shook the World": and it is important to remember that revolutions *can* be fun, particularly for those for whom the alternative is merely another day in the shop. Second, there are those—like the glider-sportsman—who feel that they have few practical alternatives, and just enough of a stake in the country, whether material or romantic, to edge them over toward a decision to stay—and to hope that the legalistic tradition of Chile, or if not that the army, "or if not that the Catholic Church, or the anti-Communist tradition of the people," will singly or together restrain the Allende government.

And then there are those who are in the active opposition. They are, technically, a

majority of the parliament, and a majority of the voters, though the April municipal plebiscite may change the latter datum. They want to stay and fight. But the odds in their favor diminish. There is the persecution of the principal opposition newspaper, *El Mercurio*, and of the publishing house, Zig Zag. The blackout of opposition on television, which is owned either by the government, or by government-oriented universities. There are 29 radio channels, of which only three are antigovernment, and there is a question how long they can hold out. Allende swears there will be elections (parliamentary) in 1973, and (presidential) in 1976. By that time, however, elections may prove to be as significant as Mexico's where the embarrassed party in power, as secure as Queen Elizabeth on the throne, practically has to subsidize the opposition, in order to put on the periodic charade. The differences however are considerable, because the economic program of Mr. Allende, unlike that of Mexico's PRI, is based on chimera. And when that happens, it eventually transpires that you cannot eat chimera. And when *that* happens, the government is either overthrown, or else it rules by the lash.

THE PROGRAM IN CHILE

SANTIAGO, February 4.—A few rules of the game. 1) In Chile, the word "Marxist" is used with extraordinary latitude, primarily because it isn't a term of abuse, so that people don't mind if, by mistake, you called them "Marxist." A Marxist in Chile can be anyone ranging from Norman Thomas to Leon Trotsky. 2) Allende is a Marxist, but not a "Communist," if by Communist you mean, on top of the obvious things, someone who believes a) in subservience in international affairs to the Soviet Union; and b) the elimination of the private sector. Recently Allende repeated, for the tenth time, that he will not subordinate his foreign policy to any other country's (and I believe that those are his intentions); and, in an interview with a left-wing Peruvian paper, that he seeks to nationalize only 120 out of the 35,000 business enterprises in Chile (in contrast, say, with Castro, who eighteen months ago nationalized even the kiosks).

Now that is a little disingenuous, because in Chile, the 121st largest company is probably engaged in selling goldfish. Still, the attitude is revealing, but the crunch comes by considering what in fact the Allende government intends to do.

It should be recalled that even before Allende, the government was "socialist" by any common understanding. The government, pre-Allende, owned major companies, and controlled a number of others; controlled prices; set wages; restricted the movement of capital; and dominated all the most active labor unions.

The Allende enterprise is described by students of the subject in Santiago as a venture in "post-Keynesian structural economic rearrangement." The idea is this: If you have a country which is under-industrialized, you need to do two things simultaneously. 1) You need to provide the capital with which to industrialize. 2) You need to create a consumer demand (a "felt" demand, they call it) for the production of the new industrial plant.

Now—the reasoning goes—if you simultaneously control a) credit, and b) the labor unions, why can't you simulaneously a) lend to industry (which of course has been nationalized) the money it needs to expand its capital plant; while b) stuffing money into the hands of the workers, so as to leave them with a surplus which can be used to buy up the production of your new industrial plant? To be sure, there is the time lag. Ah-hah. The time lag is coped with by virtue of two assets. The first is the splendid surplus the government now has (over $350 million U.S.), which is the result of the high price of copper over recent years, plus U.S. aid; and second, the powers the government enjoys to keep the national currency (the escudo) protected against disdainful handling by the hard currencies. If the government says: the escudo shall trade at fifteen to one dollar, and anyone who trades it higher will be sent to jail, you have a potent instrument. Today you can buy escudos at 30-1—so much for the market's confidence in Mr. Allende.

An economist-journalist, mediating on the Allende plan, commented: Well, maybe it will work. If it does, all we'll have to do is tear up every economics textbook ever written.

The trouble of course is that notwithstanding that the Allende government enjoys certain important, and altogether adventitious advantages (for every cent that the price of copper rises, Chile benefits by $23 million per year), inflation is going to take over internally. And the trade unions will be the first to see through the chimera—by demanding wages that stay ahead of inflation.

But insofar as they succeed in getting them the felt demand for the products of the new industrial plant wastes away, because the workers are left, substantially, with only living wages. It is at this point that the government will need to act: to repress the demands of the workers, to devise the means of importing what the manufacturers need in order to increase production; to look beyond the resources they now enjoy on account of their diminishing trade surplus: and to wonder where, where, will they get the hard currency.

By ecnomic inducements? Impossible. The essential commitment of the country is against privately owned capital, and anyone investing in Chile today is better off buying the Brooklyn Bridge. Therefore? Political inducements? The United States is not likely to be interested. Europe and Japan, eschewing ideology, and essentially unaffected by what has gone by, are keeping their eyes open for economic opportunities. But Chile isn't likely to offer many, in its tatterdemalon state, except such receivership as Chileans, whether for or against Allende, would not accept. Russia? There is the possibility, and notwithstanding Allende's nationalsm. But Russia would only be interested in Chile if it proved that to rescue Chile would be grievously to hurt the United States: and it is this relationshp that now concerns us.

U.S. DILEMMA

SANTIAGO, February 8.—What can the United States "do" about Chile? On the one hand it would be pointless to look out for, let alone to manufacture, reasons for a confrontation—nothing would more quickly serve the purposes of the Allende government, which can count on Chilean nationalism above all things. On the other hand, it would be foolish to subsidize in any way Chile's venture into a kind of autarkic socialism. In Lima, a calm observer of the Chilean situation remarked that if Chile succeeds, you can forget about the rest of South America—every country there will take the Chilean road.

Now this doesn't, unfortunately, mean that the reverse is true—that if Chile fails, so also will socialism fail as a lure for other countries. Even as Castro is thought to have done it wrong in Cuba, others will come up in the years ahead with careful studies showing how Allende went wrong, busting to try it themselves. There are no permanent victories, Burke said; even as there are no permanent defeats.

But such is the general demoralization that some Americans are actually asking, "What interest does the United States have in Latin America? Why should we be concerned? Why should we do anything at all?"

Ten years ago John F. Kennedy's Inaugural Address, promising that Americans would endure any sacrifice to contain the enemies of freedom, was toasted from the *Washington Post* to the *New Yorker*, and back, as the essence of the American chivalry. On the tenth anniversary of that address, references to it are almost uniformly embarrassed: America has gone out of the business of defending other countries to defend themselves against totalitarianism, certainly if it is home-grown, and not impossibly if it is imported: Vietnam was our last, embittered, Hurrah.

But it pays to dwell on what are the consequences of a nationalistic, exploitative, tortured Allendeism, spread throughout Latin America. If we intrude in Latin America, we will make enemies. If we hold ourselves aloof from Latin America, we will make enemies: very simply because we coexist with countries that haven't made it. It is the application of the national code to international affairs. The very few wealthy people in Chile (and in Peru) are the lightest of burdens on these countries. Take away everything they have, give it away to the people, and you get one Roman candle each for the objects of Chilean compassion. A young lawyer was present when Adlai Stevenson, touring Latin America a few years ago, said to President Alessandri that, really, he thought it only right to take the land owned and worked by Chilean *hacendados*, and turn it over to the people. To which President Alessandri is said to have replied, "Mr. Stevenson, before I would be inclined to take from Chileans what they own, and earned, I would find it more reasonable to take from Americans what they own, and earned."

Now that has been done, and the question is whether the passion for redistribution will be confined within the political boundaries of individual nations. President Allende says that he will not "export" his revolution, but President Allende is already disdained by his left-wing as a compromiser who does not understand the nature of the grand international undertakings of which he is purely a temporary useful instrument. He is the wave of the immediate, not the strategic future. And although it is comfortable to suppose that the United States can graze contentedly in its own pastures on through the years ahead, without regard to what happens elsewhere, the dynamics of world politics are against it. We will earn the respect of the rest of the world either because it admires us or because it fears us: or, the rest of the world will show us what happens to great powers that are captured by solipsistic reveries.

The safest thing to do is also the generous thing to do. It is to try to help those nations that are skeptical about the Chilean way. Not—needless to say—by sending down the Marines. But by encouraging the leaders of the resistance to Allendeism. By giving them the information and technical advice they need. By inviting them to the United States, to examine the other way. By publicizing the failures of Chile, and of Castro: and for that matter of China, and the Soviet Union. This is not a pentecostal solution, shining with flame and fire and baptismal conversions. It is a way; an approach, requiring patience, ingenuity, self-confidence. An American graduate student, doing his dissertation in Santiago, after two years in the Peace Corps, tells me he wishes that those students in America who want to politicize the universities might spend a few weeks at the University of Chile. He reflects that the Peace Corps was good for him, even though it didn't accompish very much for the Latin Americans he was supposed to help. There being no other silver lining around, one wonders whether the Chilean experience mightn't, at least, be helpful to America?

[From the Washington Post, Mar. 6, 1971]

PRESS, COURTS BECOME ISSUES ON CHILE'S ROAD TO SOCIALISM

(By Lewis H. Diuguid)

SANTIAGO, CHILE.—Peaches are as big as melons on the street vendors' wagons, and the late-summer sun is hot here as usual, but this year there was no vacation for Chile's politicians.

In the Congress, key initiatives are blocked by the opposition parties that form a majority when they work together. To overcome that, President Salvador Allende's Popular Unity coalition is taking the issues to the voters in municipal elections scheduled for April 4.

The press and Chile's nearly sacrosanct judiciary have become political issues, and a recent event touching both institutions helps define the new atmosphere in Chile as it travels the road to socialism.

When the Communist Party's new girlie-scandal daily newspaper, Puro Chile, accused three conservative senators of plotting against the government, the senators took the paper to court, and the courts ordered a three-day shutdown of the paper. Papers shut down in the past took such court orders seriously—but not this paper, owned by the largest party in Allende's ruling coalition.

It appeared intact the next day, under the name Dulce Patria—"Sweet Fatherland" like "Pure Chile" a phrase from the national anthem. The banner headline said "Puro Chile" in large letters—and "did not come out today" in wee ones. A photo showed the editors convulsed in laughter; below it was a story listing the senators of Popular Unity affirming their solidarity with Puro Chile.

Puro Chile is itself a clear copy of an independent paper called Clarin, which won relatively high circulation with its naughty style. Clarin's editors are mostly far to the left of the Communists.

PUBLISHERS' WOES

Clarin is one of two publishing houses whose unions, controlled by the Communists or other Popular Unity parties, are demanding wage increases that management—and disinterested observers—say would mean bankruptcy.

The other publisher is Zig-Zag, owned by Christian Democratic leaders ousted from government by Allende's electoral victory. When this conflict went to a government arbitrator, he sided with the workers; later, the government announced that it had bought the Zig-Zag plant and presses.

The announcement said the old owners could contract with the government to keep printing. But while politically unimportant publications might thus survive, Chile's only serious news weekly, Ercilla, will almost certainly disappear, come under government control, or be forced to seek other presses.

Shakeout and shakedown of the press is a traditional post-electoral happening in Chile, but with the government and labor working in tandem the effort this year is more rigorous.

"There is a very serious and strong intent to monopolize the media in the hands of the government parties," said Senate President Patricio Aylwin, a Christian Democrat. But he said that specific abuses of power, with the methods being used it was impossible to point to and he acknowledged that the daily brought out recently by his own party has suffered no restraint of press freedom.

The case with international repercussions, the plight of the Mercurio newspaper chain, is also the most closely watched here.

Mercurio is owned by the Edwards family, Chile's most successful practitioners of private enterprise. The paper reflects that view and, thus, conflicts absolutely with the socialist Allende.

But Mercurio board president Fernando Lenis showed dismay at statements by Inter-American Press Association members suggesting that the paper was under government attack. Lenis denied any government campaign against the paper, though he did say he felt the Communist Party was determined to destroy Mercurio.

The distinction between activities of the Communist Party and those of the Allende government is a subtle one that only the more careful critics make.

Communist labor and youth organs—the sole effectively controlled force of slogan painters and leaflet passers—came out in force against the Supreme Court after it refused to lift the immunity of a senator called to testify in connection with the killing last October of armed forces commander Rene Schneider.

COURT PROPOSAL

Coincident with the Communists' attack on the Supreme Court was Allende's publication of proposed legislation to create neighborhood tribunals, as promised in the Popular Unity electoral platform. The fate of this proposal illustrates Allende's weakness in Congress.

While opposition leaders agree that Chile's lower courts are overburdened, they say that Allende's proposal for courts independent of the judicial heirarchy would lead to political abuse. Under the proposed system, two of the three "judges" of a neighborhood court would be elected in the jurisdiction and the third would be named by the area's governor. They would deal with misdemeanors only.

To pass the legislation, Allende needed the support of the Christian Democrats, the largest minority in Congress. In caucus, the Christian Democrats voted not to support the proposal, and Sen. Aylwin said he is certain of party discipline on the issue.

On Thursday, Allende withdrew the bill. But Aylwin and many others assume that Allende will attempt to use the results of April's municipal elections as a mandate to Congress to pass such legislation.

MUNICIPAL ELECTIONS

Ordinarily, the municipal elections would be seen as an inconclusive indicator of party popularity, since they involve local issues. But this time the results will be read strictly according to party performance. At the same time, the Christian Democrats and the Marxist-populist coalition will be competing for the senatorial seat vacated by Allende.

If the Allende coalition exceeds the 36 per cent of the vote it received in its September presidential victory, as it is widely expected to do, and if Congress still rejects such bills as the court revision, Allende will call for a plebiscite.

Aylwin predicted as much, and said: "If he proposes a plebiscite on the courts issue he will lose it."

Allende said he would quit if voted down on a plebiscite.

If the matter should come to a plebiscite, the neighborhood courts question might be combined with a proposal to dissolve the two-house Congress and replace it with a "People's Assembly"—which would also take over the powers of the Supreme Court.

While the Congress has been confined to passing issues that find some favor outside the Popular Unity, Allende's Communist-led economic team has been using its considerable powers to change structures without legislation.

For instance, legislation to buy out the private banks may be unnecessary, since the state is offering such favorable prices for shares that the owners are selling voluntarily—influenced, to be sure, by the awareness that sales later will be at lower prices, paid more in bonds than in cash.

Santiago's generally small-scale, high-profit industries are being squeezed between fixed prices and increasing wages, while their all-important credit sources are drying up. The process is one that most non-Marxist economists always felt was necessary, though brutal, but politically unacceptable.

Among the bases of the Popular Unity coalition, even complete squeezing out of the business class would be a political asset. The businesses that survive this process will be beholden to the government, and in most cases they will be fully in government hands.

ECONOMY'S OUTLOOK

But unless the government can rapidly replace private investment with its own—an effort at which past governments were never very successful—the economy can be expected to stagnate for months or even years.

With the government forcing a holdown on prices, and with new investment limited, the quality and variety of goods available is already diminishing. Variety always was limited—two grades of milk, two styles of bread. Now there is only one style of each of these staples, a change billed as eliminating the privilege of those who bought the more costly bread and milk.

Whether, in the long run, the government can increase the supply of acceptable goods may turn out to be a major test of the Allende coalition's enduring popularity.

In the short run, the problem is a high and growing rate of unemployment. There are also some indications that members of the managerial class will leave Chile for better pay elsewhere. As a result, a measure that would have drastically limited the top permitted salary has quietly been dropped.

Perhaps in anticipation of a clearer mandate following the April elections, the Marxist economists have concentrated on domestic rather than international aspects of their program.

NATIONALIZATION PROGRAM

General outlines of the nationalization of American copper holdings have been announced. Allende rejected the expedient approach of legislation in favor of a more time-consuming amendment of the constitution.

One close observer thinks that Anaconda, with millions at stake, is being allowed to take de facto compensation for property by holding back on what it pays the state for sales of its copper on the international market.

By this route, when the actual takeover comes Allende could avoid the unpopular act of paying Anaconda out of Chile's reserves.

These reserves—close to half a billion dollars, thanks to copper profits—form a cushion for what could be a difficult economic period.

For many Chileans questioned, the test of Allende's performance is in the social field rather than the economy.

RULE OF LAW

A socialist professor who has opposed Allende in the past declared that the president is exceeding all hopes in making necessary changes within a democratic framework—and that he will control the Communists rather than being controlled by them.

Others see in such incidentals as the Puro Chile case a deference to the realities of political power at the cost of the country's dedication to the rule of law.

The depth of that dedication may have been reflected the other day on the main street when national policemen accosted one of the peach vendors pushing his cart along in traffic.

A recent ordnance bans the wagons from principal arteries, but the enraged vendor's protests drew a sympathetic nod or two from the crowd.

Then a worker, standing stiff in a cheap suit, and obviously no more than a generation removed from the Mapuche Indian reserves in the south, summed up the matter and dispersed the crowd:

"The law is the law, and it must be obeyed."

President Allende has said pretty much the same thing, and so has the Supreme Court. Chileans of differing stations are watching each other uneasily to see just what is meant by "the law."

REVENUE SHARING

Mr. SCOTT. Mr. President, yesterday President Nixon submitted to Congress his revenue-sharing program for Rural Community Development.

This is the fourth such special revenue sharing proposal from the President this month. Each has been accompanied by a fact sheet, and a breakdown as to what each State's share would be under each program.

The chronology of these special revenue sharing messages is as follows:

March 2, Crime Control and Improvement of Criminal Justice.

March 4, Manpower.

March 5, Urban Community Development.

March 10, Rural Community Development.

Mr. President, these are extraordinarily important proposals, intended to revitalize the American federal system of government.

They represent a genuine attempt to challenge the trend toward an overcentralized bureaucracy, which traditionally is the bane of all forms of representative government.

I would hope that Congress will respond in a constructive manner to this challenge.

RAILROADS IN CRISIS—A CRITIQUE BY SENATOR HARTKE

Mr. CANNON. Mr. President, the Senator from Indiana (Mr. HARTKE) recently delivered an excellent critique of the congressional attitude toward the problems of railroads. The occasion was a briefing conference entitled "Railroads in Crisis," and was sponsored by the Federal Bar Association and the Foundation of the Federal Bar Association in cooperation with the Bureau of National Affairs, Inc. Senator HARTKE, as chairman of the Senate Subcommittee on Surface Transportation, has conducted numerous hearings, led committee discussions, and floor-managed several bills affecting the railroads. He is uniquely qualified to discuss the subject. I commend his statement to the Senate for review and ask unanimous consent that it be printed in the RECORD.

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

RAILROADS IN CRISIS

(Speech by Senator VANCE HARTKE, Mar. 8, 1971)

It is with great pleasure that I join you in this timely and important briefing conference on "Railroads in Crisis." At the outset, I should like to pay my respects to the host organization—the Federal Bar Association. Now entering the second half of a century of service to the Federal legal profession, the Federal Bar Association has a commendable record of assisting in the development of the substantive law, while at the same time according deserved recognition to the practitioners in Government. Anyone who has been on the Washington scene any length of time cannot help but be impressed by its endeavors and its accomplishments.

Similarly, anyone who has been on the Washington scene any length of time cannot but have developed admiration and respect for the Conference Chairman, Mr. Joseph Borkin. A New Dealer who has continued to be in the swing of things into these turbulent '70's, Mr. Borkin long has enlivened this city with his wit and erudition. I am pleased to share this platform with this urbane man, and to note that his absorbing book on Joseph R. Young would serve as an apt introduction to today's discussion.

The topic before you, "Railroads in Crisis," as I have said, is a timely and important one. I am not given to being an alarmist, and yet I feel that the words employed are no more extreme than the situation in which we find ourselves requires. And I am heartened that as large and as knowledgeable a group as this should be devoting two days of analysis to the problems besetting the railroad industry.

Certainly, at a time when the nation's largest railroad is in bankruptcy, and when other significant lines are on the verge of bankruptcy because of recurring and staggering losses, it is no exaggeration to say that the railroads are in crisis.

Certainly at a time when prominent railroad officials and directors are disclosed as having used their positions for individual gain and others are acknowledged to be fleeing the industry to find better and more attractive investment opportunities in other and unrelated businesses, it is no exaggeration to say that the railroads are in crisis.

Certainly at a time when the shippers of this Nation are confronted by deplorable and deteriorating services on the rails, when they cannot get cars as they need them and when the cars they do load are delayed or altogether lost in transit, and when they nevertheless must pay ever-increasing charges for such services, charges so exorbitant that they are being driven to other modes of carriage, it is no exaggeration to say that the railroads are in crisis.

Congress is aware of the industry's situation and has attempted to provide solutions to some of the rail industry's problems that most directly touch the public interest. The 91st Congress was a landmark in transportation legislative activity, and let me add somewhat immodestly, that much of it originated in the Surface Transportation Subcommittee. But, Congress' work only *began* last Congress; I expect much more to be done in the coming years.

Perhaps, the most significant transportation achievement of last Congress was the Rail Passenger Service Act of 1970. The Act created a quasi-public corporation to take over operation of most of the passenger service in the nation. The Corporation's directors were confirmed on December 30 and are now working to commence operation before the statutory deadline of May 1. At that time the Corporation will have contracted with certain carriers to perform passenger service and those carriers will be free to terminate their other passenger operations.

The National Rail Passenger Service Corporation was born of a crisis of the most advanced stage. The 20,000 passenger trains of 1929 have dwindled to today's 400. Abetted by Government preoccupation with help to highways and aviation and the tremendous popularity of these modes, changing public demand for rail passenger service convinced the railroads that passenger service was no longer profitable. As they sought to discontinue one train after another, they chanted the litany that passenger service was bankrupting the industry. And there was a measure of truth to their refrain.

Congress, recognizing that the automobile and the airplane have created problems of an economic and ecological character, believed that rail passenger service had to be preserved in order to help develop a balanced transportation system. And it further concluded that the Government would have to step in if even a small portion of the rail passenger system were to be preserved.

Thus the passenger service crisis produced a new element in the rail industry—a quasi-public Corporation dedicated to providing service. The new Corporation also provides the opportunity to make a fresh start at rational, modern service, unencumbered by the industry's dated practices. If the Corporation proves successful, it could provide the basis for confronting other industry problems.

Another very significant piece of legislation was the comprehensive rail safety legislation. Throughout the history of railroad and Government regulation of railroads, there have been attempts to develop a comprehensive rail safety program. None had been successful. Previous safety legislation had been directed at specific hazards and was chiefly designed to protect those who operated the trains. Meanwhile, technology proliferated the ranks of hazardous substances. Biological weapons, nerve gas and other chemical warfare materials of industry are now transported through our nation's cities and countrysides. Too often, set off by accidents, they have a destructive potential far exceeding the capability of local authorities to deal with them.

Deteriorating financial strength and lagging initiative have meant that a large segment of the rail industry has not improved, or even maintained its facilities at a time when failure of those facilities might bring disaster to entire communities. In recent years, rail accidents have increased at an alarming rate—up to 92% since 1961.

Last year we finally succeeded in a first step to reverse this dangerous trend. Authority over all matters affecting safety in the nation's rail was given to DOT. Further, in recognition of the immediate concern of rail safety to the states, the Act permits them to participate in rail safety regulation. We expect to receive from the Department of Transportation a set of national rail safety standards about eight months from now.

We naturally hope that these two pieces of legislation will contribute to rebuilding a sound rail industry. But the crisis in the industry has forced Congress to further action.

Virtually the last act of the 91st Congress was passage of the Emergency Rail Service Act. Very reluctant—as debate in the Senate indicates—to come to the financial assistance of railroads, Congress acted only when it became apparent that the Penn Central would cease operation before Congress could reconvene. In the end it passed an acknowledged emergency measure. Evidence had been submitted showing that shutdown of the Penn Central would result in a 3% decline in the National GNP and a 3% increase in national unemployment within 8 weeks. In the eastern district the impact would be doubled. Not only would there be severe economic repercussions, but health would be endangered because food and fuel could not be supplied to large eastern metropolitan areas.

Enough assistance was provided by the Act to stave off this result for a few months. Some self-help measures by the railroad and a strengthened economy could postpone the "judgment day." But the present Congress was left to devise a more nearly permanent solution for the Penn Central and the rest of the industry.

The Penn Central debacle has brought the sickness of the rail industry to the fore. We suspect that the Penn Central is not an isolated instance. Although it has its peculiar

problems, to be sure, I believe that what we learn in unraveling the story of its collapse and by watching the trustees' attempt to reassemble the railroad will throw light on approaches to solution of industry-wide problems.

A few observations can now be drawn from the Penn Central example. First, Congress is not eager to put up money for the railroads. The Administration's attempt to obtain permanent authority to guarantee $750 million in loans in order to keep railroads out of bankruptcy went nowhere last June and, despite the industry's continuing ills, has not demonstrated a flicker of revival.

The measure that Congress finally passed is quite different from the Administration's proposal: it is intended to prevent cessation of essential rail service, not to prevent railroad bankruptcies. It does not protect and preserve existing management as the Administration's bill would. Where the Administration's bill gave almost unrestricted authority to guarantee loans, the Emergency Rail Services Act is very restricted in scope and requires findings demonstrating the pendency of a railroad's last rites before a loan guarantee can be given. Finally, the amount of money was trimmed down to $125 million—about 15% of the Administration's figure. Nonetheless, and even in the face of a very real threat to the nation, this greatly limited measure faced strong opposition.

The lesson is clear that, despite the industry's continuing financial problems, the public treasury is not going to be its salvation—at least not as the industry is now constituted. Public funds will be made available only as part of a substantial overhaul—as with the Rail Passenger Service Corporation.

It is also clear that industry dogma must be reexamined. The Penn Central's collapse throws into serious question the idea that mergers between railroads are the answer for sick roads. Further, evidence uncovered to date indicates that conglomerate mergers were not the remedy for the Penn Central's low earnings. Penn Central's diversification program appears to have had the following effects: management's time was diverted from solving the hard problems of the railroad business to buying easy profits—and short-lived, paper profits, at that—in other companies. Cash that the railroad desperately needed was drained off in two ways: high dividends were paid to keep the Penn Central's stockprice high and to make it an attractive merger partner. In addition, cash was funneled downstream to the conglomerate's subsidiaries. When the real cash pinch came, the subsidiaries were as short of cash as the parent railroad and could not give it the help it needed.

I imagine Congress will look at conglomerate mergers in the transportation industry with a deeply suspicious eye. The ICC in the last Congress asked for new statutory authority to require reporting by conglomerates. But the answer may lie more with prohibiting such mergers than with reporting their transactions. Measures to force railroaders to turn their attention back to railroading may well become popular.

Another example of changes in industry practice is in the area of equipment and, specifically, freight cars. The weak financial condition of some carriers and high interest rates have limited railroad investment in new or rebuilt equipment. The ICC reported in 1969 that the average freight car carried a revenue-producing load only 6% of its time and travelled only 32 miles a day. Thus, the car shortage problem has expanded from being a seasonal concern of Western grain farmers to a year-round affliction of most industries in every part of the country.

Freight car problems are not new. The industry has fought over them for years. The battle has spanned 17 years to date and ranged from the ICC to the Supreme Court to Congress. Meanwhile, the shippers suffered. Congress will undoubtedly renew its efforts to solve this perennial problem.

Along with questioning of industry practices, the crisis in railroads also opens the door to questioning the government's role. The ICC—charged with responsibility for regulating the industry so as to insure its well being in the public interest—comes quickly under suspicion as the industry weakens. Senator Mansfield has introduced a bill for abolition of the Commission. The Council of Economic Advisors and the Antitrust Division of the Justice Department have called for reduction of the Commission's regulatory powers and for increased reliance on competition to protect shippers and public alike.

These proposals raise important issues and their supporting arguments are persuasive. They cannot be dismissed as reckless extremism. As Chairman of the Surface Transportation Subcommittee, I intend to see that they receive the careful consideration they merit. However, I am not yet convinced that as drastic a remedy as the ICC's abolishment is warranted.

Regulation, perhaps up-dated to account for modern circumstances, may well be necessary to protect the interests of shippers and consumers. The clash of countervailing forces between carrier and shipper may not adequately serve the public interest. And competition between carriers not channeled by regulation might well be insufficient to protect the interests of smaller shippers.

If unregulated competition may not work, we cannot realistically expect Congress to be able to pick up the burden of legislative decisions that are now made by the ICC. Congress is already overburdened with responsibilities it cannot avoid. And for Congress to assign such regulatory tasks to the Executive Branch of the Government would result in a distortion of the function performed by the Executive and Legislative Branches. Moreover, I for one, am not willing to hand over the tasks of decision making in this important area of the economy to what necessarily must be a politically attuned Administration.

Thus, unless it can be shown that competition can do the job, we may be forced to rely on some form of regulation, and that probably means retaining, in one form or another, some kind of regulatory agency.

Let me end today with the observation that nationalization has appeared to some to be a simple answer to the railroad's crisis. And, because of frustration with the industry's complex problems and prolonged crisis, it is no longer a nasty word on the Hill. But its implications and costs have not been explored and I think that they will prove prohibitive. Even assuming Congress were willing to appropriate enough funds for initial acquisition, I am not convinced that Congress would be willing to appropriate the funds which might be necessary to keep the nationalized railroads in operation. But, as I indicated earlier, a thorough examination of the prospects for nationalization or partial nationalization have not yet been made. And response to a crisis could result in drastic action.

Short of nationalization, Congress might consider purchasing the railroads' track and roadbed and maintaining those facilities through user charges. I suggested this in hearings some two years ago, and while the response generally has not been unfavorable, here again we must consider the willingness of the government to bear the costs.

There are other possibilities. It has been suggested that the railroads be allowed to abandon more speedily unprofitable and unnecessary lines. While this solution might arguably be in the best interests of the railroad industry, it may not serve the interest of the shipping public—these interests must be balanced. I am of the belief that the community affected should have some control over its own destiny and so should the local businesses most directly affected by track abandonment. We recognized this interest in drafting the Rail Passenger Service Act. In that act we provided the community with an opportunity to retain or obtain service if the community (state, local, or regional agency) were willing to share the costs, up to two-thirds of the total. Certain practices of the electrical utility industry may provide help in fashioning a suitable answer. We are at the present time exploring this avenue.

I am hopeful that we will have the time and support of public-spirited citizens needed to work out and implement the preferable alternatives of reform of industry and governmental institutions.

UTAH'S BRIGHAM CITY LEADS THE WAY IN BEAUTIFICATION

Mr. BENNETT. Mr. President, since the early years of its pioneer history, Utah has shown exemplary civic pride that consistently has resulted in clean, healthy towns and cities.

This tradition, I am pleased to report, is just as much alive today as it was more than a century ago when the early settlers pooled their efforts "to make the desert blossom as the rose."

Nowhere can the fruits of civic pride and concerned leadership be better demonstrated than in the northern Utah town of Brigham City. This lovely town of 14,000 persons has won 6 national beautification awards in as many years, including a 1971 Distinguished Achievement Award.

The philosophy of community involvement that has resulted in this outstanding record is well illustrated in the work of Brigham's mayor, Olof Zundel. A newspaper article details Mayor Zundel's outstanding leadership, and the fine work of the citizens of Brigham City in making their town a genuine showplace.

In hereby congratulating and honoring Brigham City, I likewise pay tribute to the 11 other Utah towns which have shown similar pride and which also have been honored this year with national beautification awards. They include: Distinguished Achievement Award—American Fork, Fielding, Henefer, Huntington, Hyrum, Lehi, Mona and Vernal. Honorable mention—Orem, Roy, and Santaquin.

Mr. President, I ask unanimous consent that the article published in the February 20 Deseret News be printed in the RECORD.

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

MAYOR ZUNDEL: PROUD OF HIS BEAUTY QUEEN

(By Harry Jones)

BRIGHAM CITY.—Olof is head over heels in love with a beauty contest winner. And he likes to talk about her—five minutes or the whole day if the listener has the time.

Olof is Olof E. Zundel. His love story is the story of the town of peach fame—Brigham City—winner of six national beautification awards in as many years.

Olof just happens to be the mayor of the city. He is one politician who is really cleaning up—with the aid of 14,000 other civic minded ctizens of the town. He is in his second year of his second four-year term.

And while Olof may be cleaning up making Brigham City one of beauty, he's in the hole a bit financially. He is a Main Street merchant operating "His" and "Hers" apparel shops.

He figures that the time spent being mayor and away from his business has cost him in the neighborhood of $10,000—and that is an expensive neighborhood.

"Any love worth anything at all costs money," says Olof philosophically.

As mayor, Olof makes $2,100 a year. He and the other members of the city council have the power to raise the salaries of elected officias. Olof frowns upon the practice.

"It irritates me to see Congressmen, state, county or city officials raise their own salaries," said Olof.

He did suggest some sort of legislation making it illegal for an elected official to raise his own salary unless the same official faces an election before the raise becomes effective.

"It's a civic responsibility to become involved in government. If you feel you have a service to offer, then you owe it to your community," he said.

After his first term as mayor, Olof decided not to run. He felt that there would be other men who should have the chance.

His announcement wasn't understood.

"Who do you think you are—not wanting to run?" his supporters asked.

There were many things still undone so Olof's hat was in the ring again. When the votes were counted, Olof was back at the same old stand.

Olof didn't do it alone, and he is the first to point it out. The secret of Brigham City's success story is citizen involvement. Olof points with pride that there are about 150 citizens of Brigham City serving on various committees—working hard and without pay. It is citizenship at its best, instilled by Olof, his enthusiasm, his confidence in the future.

He would be the last to claim the leadership.

Olof can't walk down the street without calling someone's attention to the many litter cans along the street. They were painted by a youth organization as their part of the beautification program. The kids painted and trimmed the cans to suit themselves—polka-dot and psychedelic—each different.

It gave the youngsters a chance to be part of a city program. They had pride.

It wasn't all a bright picture with Brigham's youth. The city had its share of drug problems. Citizens tackled the problem with the same enthusiasm as they did in beautifying the city.

Under Olof's guidance the community, the school, parents, and religious groups became involved with the orientation and education about the drug problem.

It was a widespread program. Police officers report that the use of drugs is down about 60 per cent since the organization of the committee.

Youth of Brigham also have a large part in governing themselves. The mayor and the council made space in the new community center available for club rooms. The young people have their own committee to run the club.

It was through Olof's leadership that public enemy number one was banished from Brigham City. The parking meter is no longer found on Brigham City streets. The city has purchased off street parking property. It's part of the beautification program.

New parks, a terrific senior citizens program, a beautiful new museum and art gallery, a program to sell homes left vacant by a reduction in force at Thiokol, plus a program that filled 10 of 13 vacant business buildings in the area have helped Brigham City pull itself up by the bootstraps.

And Olof did a lot of the pulling.

To walk down the street with Olof is to be greeted by about everyone coming in the opposite direction. How Brighamites feel about Olof was indicated as he posed for the picture by the "Welcome to Brigham City" sign.

A group of high school students driving by yelled "Hi Mayor Zundel". The words were spoken with affection. It seemed to wrap it all up just how the majority of all Brigham City people feel about their mayor!

RULES OF COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Mr. McGEE. Mr. President, I submit for printing in the RECORD a copy of the rules adopted by the Committee on Post Office and Civil Service. Under the provisions of the Congressional Reorganization Act of 1970, the rules of each standing committee must be printed not later than March 1. Three members of our committee were absent from the Senate on official business from January 25 until February 26 and our first meeting was not held until today. I ask unanimous consent that our delay be pardoned and that the rules be published in the RECORD, as required by law.

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

RULES FOR COMMITTEE PROCEDURE, SENATE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Rule 1. Five members of the Committee shall constitute a quorum for the transaction of such business as may be considered at any regular or special meeting of the Committee, except that, for the sole purpose of taking testimony, sworn to or otherwise, a quorum of the Committee, or a subcommittee thereof, shall be one or more Senators. No members of the Committee shall, for the purpose of determining the existence of a quorum of the Committee, be deemed to be present unless he be personally present.

Rule 2. Unless otherwise ordered and notice given, the Committee shall meet for the transaction of its business while the Congress is in session as follows: The second and fourth Tuesdays of the month at 10:00 a.m. Additional meetings may be called by the Chairman as he may deem necessary.

Rule 3. The Committe shall keep a complete record of all Committee actions. Such record shall include a record of the votes on any question on which a record vote is demanded.

Rule 4. No vote cast in the Committee or any subcommittee by proxy shall be counted; but a written communication from an absent member, giving a clear statement of position on the specific subject, shall be counted as a vote.

Rule 5. It shall be the duty of the Chairman to report or cause to be reported promptly to the Senate any measure or recommendation approved by the Committee and to take or cause to be taken necessary steps to bring the matter to a vote.

Rule 6. The Committee shall, as far as praticable, require all witnesses appearing before it to file in advance written statements of their proposed testimony at least 24 hours before hearing, and to limit their oral presentations to brief summaries of their argument. The Committee staff shall prepare digests of such statements for the use of Committee members.

Rule 7. All hearings conducted by the Committee, or its subcommittees, shall be open to the public, except (1) executive sessions for marking up bills, or (2) for voting, or (3) where the Committee, by a majority vote, orders an executive session.

Rule 8. When a nomination for an appointment is referred to the Committee, the name of the nominee shall be referred to both Senators from the State in which the nominee resides. If no objection is made by either Senator within 30 days of the date of referral or if no response is received during that period, the nomination shall be considered as not having been contested.

Rule 9. Whenever a bill or joint resolution repealing or amending any statute or part thereof shall be reported to the whole Committee by a subcommittee, there shall be placed before the whole Committee a print of the statute to be amended or the part thereof to be repealed (together with the citation thereof), showing by stricken-through type the portion or parts to be omitted, and in italics the matter proposed to be added.

Rule 10. The Chairman may name standing or special subcommittees to which a bill, resolution, or nomination may be referred, which subcommittee shall consist of not less than three members, one of whom shall be of the minority; if the subcommittee consists of five members, two shall be of the minority; if the subcommittee consists of seven members, three shall be of the minority.

Rule 11. Whenever a subcommittee delays in reporting more than 30 days (except when time is extended by the Committee), the matter may be withdrawn by the Chairman and submitted to another subcommittee, or considered by the whole Committee.

Rule 12. Subject to statutory requirements imposed on the Committee with respect to its procedure, the Rules of the Committee may be changed or suspended at any time; provided, however, that not less than two-thirds of the entire membership so determine, at a regular meeting with notice of the nature of the change proposed or meeting called for that purpose.

Rule 13. The Chairman of the Committee and the ranking minority member shall be ex officio members of all subcommittees with full right to participate in all proceedings thereof, and shall be allowed to vote as members of any subcommittee.

Rule 14. The Chairman shall be given authority to appoint the staff members and clerical assistants to assist the Committee in its work; provided, that the ranking minority member of the Committee shall be given authority to select one professional staff member and one clerical assistant. The Chairman shall select the official reporter or reporters to serve the Committee.

Rule 15. Meetings of the Committee shall be open to the press except (1) executive meetings to consider nominations for public office, or (2) when otherwise directed by the Chairman or majority vote of members present. The Chairman may grant or deny the privilege of broadcasting meetings of the full Committee. The Chairman of any subcommittee shall have the same power with respect to such subcommittee.

Rule 16. Proceedings in executive sessions of subcommittees may be released to the press and other interested parties unless the subcommittee chairman or a majority of members present otherwise direct.

UNCONVINCING NONPARTISAN IMAGE OF "COMMON CAUSE"

Mr. ALLOTT. Mr. President, I assume it has not escaped the attention of the Senate that Common Cause, the supposedly "totally nonpartisan" citizen's group headed by John Gardner, has recently seen fit to share some of its mailing lists with the Democratic National Committee.

The Democratic National Committee used the mailing lists in a fund raising effort.

Unfortunately for Common Cause, and for its vanishing image as a truly non-

partisan operation, the Democratic fund raising appeal arrived at many homes in the same mail which delivered a Common Cause mailing attacking the President's policy for ending the war.

Mr. Gardner is said to be very much upset about the damage this incident has done to his organization's image, but I do not think he should worry about it. The "nonpartisan" image of Common Cause is as convincing today as it has ever been.

REGULATION OF SURFACE MINING

Mr. BAKER. Mr. President, one of the President's domestic proposals that should be given priority consideration by this Congress is his suggested regulation of surface mining. The recently expanded demand for coal has greatly exceeded the readily available supply, and one result of this fact is a significant increase in strip mining.

Although it is virtually impossible to restore strip mined land to its original state, I have been encouraged by recent efforts of the Tennessee Valley Authority to develop effective restoration techniques. The Knoxville New-Sentinel of March 7 contained an article by Carson Brewer describing some of the TVA reclamation programs. 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:

THIS IS YOUR COMMUNITY

(By Carson Brewer)

Nobody has found to way to make instant rose gardens out of strip-mined land, but TVA is getting almost-instant grass and using some other wrinkles that lessen the bludgeoning effects of strip-mining on the land.

It is a little ironic that three national organizations interested in furthering quality environment have sued TVA in connection with strip-mine operations.

If their intent is to try to stop strip-mining, maybe they've picked on the right agency as a starter. For TVA uses more strip-mined coal than any other utility in the country. But if their intent is to minimize the bad effects of strip-mining through improved mining techniques and reclamation measures, TVA was an unusual target for the first lawsuit. For it is the outstanding leader in those improvements in this region.

Strip-miners gash the mountainsides with cuts sometimes more than 150 feet deep on the uphill side—the "high wall." If a mountain contains several layers of coal, it will have several strip-mine gashes. If a coal seam lies near the top of the mountain, miners will rip up the entire mountaintop to get it.

HERE ARE SOME OF THE EVILS

Among the evils of stripping are:

1. Erosion of the bared and loosened earth, washing down the mountains and silting streams.

2. Uglification of the land.

3. Leaving land unfit for any other use for a half-century or more.

4. Combining of oxygen and water with exposed material to form sulfuric acid, which makes the land too acid for most plants and which gets into streams and kills the small creatures fish must have for food.

Have you caught any bass in Coal Creek lately? Not likely. The 10 miles of Coal Creek are among 135 miles in 29 streams in the Clinch River drainage which the State Game and Fish Commission says have been ruined or badly damaged by acid from coal mines. Not just strip mines. Deep mines produce even more acid.

But all this doesn't have to be. Or it doesn't have to be nearly as bad. A mine operator can take many precautions to avert erosion, to stop formation of acid, and to make the land green again and put it back into productivity almost immediately.

All these precautions cost money, though. And most miners won't bother with them unless a law or a contract requires it.

CONSERVATION CAN BE A SLOW PROCESS

One day last fall, I visited two mining areas with a group of conservationists. Our first stop was the top of Patterson Mountain, a knob of the Cumberlands rising 3170 feet above sea level behind Oliver Springs. The mountaintop couldn't have been more torn up if all the bombers in Indochina had unloaded on it.

To the untrained eye, the only visible reclamation evidence was a scattering of pine seedlings less than a foot high, each several feet from its closest neighbor. Expecting those lonesome little pines to halt erosion when storms lash the strip-mined mountaintop is like expecting aspirin to cure cancer. They'll help in a dozen years, after their roots have spread and deepened, after their crowns shelter more of the land, after their shed needles provide some cover for the soil. But lots of soil can wash away before a dozen years elapse.

Fred Wyatt, head of the Knoxville office of the State Division of Strip Mine Reclamation, fielded the questions on conservation.

He said state law requires 600 living tree seedlings per acre a year after the operator leaves the area. They usually plant up to 900 or 1000, hoping 600 will survive.

They do not have to plant the seedlings until the winter following the mining. If they'd rather, they may seed it to grass, of which at least a 70 per cent cover is required.

But Tennessee law permits a mine operator to make one cut along a mountain side during one year, come back and make a deeper cut along the same coal vein the second year, and then remove more coal from the same vein the third year with augers. And he doesn't have to plant trees or seed grass until all this is finished. However, he is supposed to control water runoff so as to minimize acid and silt.

CONTRACTORS REQUIRED BY TVA TO SEED LAND

Our strip-mine tour ended that afternoon with a visit to the Koppers Co. land above LaFollette. TVA bought the coal in this land several years ago and now is hiring contractors to mine it.

There was lots more green on the stripped land of the Koppers area than we'd seen on Patterson Mountain. This is because TVA requires the contractor to seed, mulch and fertilize all critical areas within a week after its final placement. But grass is not all. The operator plants trees and shrubs during the winter.

J. A. (Al) Curry, supervisor of TVA's Forest & Habitat Revegetation Section, formed for the specific purpose of figuring out ways of minimizing the evils of strip-mining, answered the questions on this part of the tour.

Al said TVA was testing new measures on the Koppers land. Pretty soon, he showed us some of them. They included some of the smallest, crudest dams TVA ever built. Al displayed little rock-and-earth dams across branches which have water only during wet weather. He showed us bigger dams in Ollis Creek, the major stream in the area.

Every dam is a silt trap. If soil escapes from the grass and tree roots on the spoil bank, the water carries it down the little hollows. Maybe the small dams will stop all of it. But if these overflow, carrying silt into Ollis Creek, the silt is supposed to settle to the bottom of the small lakes behind the dams on the creek.

Still another precaution against silting, Al said, is a regulation against any mining within 100 feet of a stream.

Two other precautions are aimed at preventing landslides off the spoil banks.

PRECAUTIONS CAN AVOID SLIPPAGE

The top of the ground is "scalped" before any cuts are made. That is, leaves humus and the like are separated from mineral soil and winrowed below the calcuated toe of fill material. This leaves only mineral soil piled on mineral soil in fills—nothing in between to cause slippage. The other precaution bars stripping any slope with a grade greater than 28 degrees and limits the width of the "bench" according to the degree of grade under 28.

Al said these precautions—or something better—must work if strip-mining was to continue in the Ollis Creek watershed. For the creek is the source of LaFollette's water.

Al also said that afternoon that if these regulations proved to be worthwhile, TVA would include them in all its coal-purchase contracts.

Since this was in the fall, all those little silt-trap dams had not been tested by heavy winter rains.

But now after the winter rains have come, Al says his silt traps are still doing the job. And TVA has started including them, along with the other regulation tested on the Koppers land, in its new coal contracts. They have been included in contracts just awarded for more mining on Koppers land. Some other recent contracts do not include them because most of the provisions were negotiated before the new rules became effective, TVA says.

STATE REGULATIONS LOWER THAN TVA'S

TVA negotiated at least one contract last year which has about four years to run. This means some TVA coal will be mined for a long time without the stringent new provisions.

Generally, however, it isn't the mining of TVA-contract coal that is likely to do the most damage to Tennessee lands. TVA buys about half the coal mined in the state. State regulations governing the rest of the mining are far less stringent than those in the new TVA contracts.

Even if this session of the State Legislature should impose exactly the same regulations on all strip-mining that are in new TVA contracts, it still wouldn't be enough. Still lacking would be funds to finance inspections to see that the law is enforced. Only three men inspect all the surface mining in East Tennessee except for TVA-contracted coal. They must inspect shale, sand and gravel, clay and barite mining, as well as coal. They do well to see each operation once a month. They think inspections should be made once a week.

HEALTH MAINTENANCE ORGANIZATION ASSISTANCE ACT OF 1971

Mr. DOLE. Mr. President, I was pleased to join the Senator from New York (Mr. JAVITS) and other distinguished Senators in sponsoring the Health Maintenance Organization Assistance Act of 1971, a bill which is a critical and integral element of the President's programs for health partnership. The bill will provide grants, direct Federal loans, and loan guarantees for the planning, establishment, and operation of heath maintenance organizations, particularly in medically underserved areas of our Nation. These health maintenance organizations, or HMO's, are organized systems of health care providing compre-

hensive services to a voluntarily enrolled population for a fixed prepaid fee.

The establishment of these community level organizations, consistent with existing health planning activities, will rationalize our limited health care resources, deal with problems of maldistribution of these limited health care resources, make provision for a comprehensive range of health services, and equally significant, attack the problem of rising health care costs by, among other measures, providing these services on a prepaid basis.

The health maintenance organizations as defined by this bill have great potential for several reasons. First, depending upon the form and purpose of the assistance, the bill either provides a priority for medically underserved areas, or limits the assistance to medically underserved areas. Also, the HMO's to be assisted, organize health care services under one comprehensive system, with strong functional ties among the general practitioners, specialists, hospitals, ambulatory care facilities, and extended care facilities in the community. They have built-in incentives for controlling costs, for making efficient use of resources and the potential for self regulation, rather than more direct Federal involvement.

Finally, their organizational flexibility provides the ideal vehicle for responding to unique health problems of communities, as well as responding to improvements in health care organization, delivery, and new forms of health manpower. Equally significant, the ongoing financing of HMO-based health services will in large measure be supported from HMO options under medicare, medicaid, the family health insurance program, and the Health Standards Act.

Mr. President, the concept of health maintenance organizations is relatively new to my State of Kansas. Presently, there are no fully developed HMO's in my State; however, a number of my constituents, health professionals and consumers alike, have expressed to me their interest in experimentation with group practice medicine or HMO's as one possible option for improving and reforming of our present health delivery system. Mr. President, this administration bill will give Kansas and the rest of the Nation that opportunity.

At the present time, I have certain reservations with regard to HMO's because they have not been established and proven on a wide-scale basis in the United States. However, the experiences of the Kaiser permanente plan in California, and other group plans and foundation programs similar to the HMO's as outlined by this bill, demonstrate that HMO's contain the potential for a significant contribution to a more efficient and more effective health delivery system. This bill is especially appealing to my home State because of its focus on development of HMO's in medically undeserved areas such as are so often found in rural America.

I believe this bill offers a stimulating and progressive approach to the health-care needs of all Americans, and I am pleased to join in sponsoring it.

OUTLOOK FOR U.S. TRADE AND INVESTMENT IN EASTERN EUROPE

Mr. HARRIS. Mr. President, in June 1970, the Department of Commerce performed a major service for U.S. business. Deputy Assistant Secretary for Domestic and International Business Harold B. Scott led a mission of Department of Commerce experts to Eastern Europe. Their purpose was to explore attitudes there toward East-West trade in light of the December 1969 Export Administration Act.

Mr. Scott summarized his findings in a speech before the International Center of New England on February 4, 1971. I believe these will be of interest to Members of this body.

First, Mr. Scott calls attention to a factor often lost in discussions of East-West trade—the mounting interest of U.S. businessmen in this subject. Our businessmen are anxious to learn whether this new market has long-run potential. They have no desire to trade in commodities that would affect the security of the United States. But they have sensed, perhaps more quickly than governments, that trends toward economic interchange in the world are greater than those in the opposite direction.

Second, Mr. Scott notes that lack of most-favored-nation treatment for all Eastern European countries except Poland and Yugoslavia is currently the most discussed major problem. He predicts that our trade relations will not grow rapidly until the MFN problem is resolved.

I have introduced a trade bill which inter alia would provide the President with authority to grant MFN treatment to nations not now enjoying that right. The United States would request in return comparable commercial advantages. There are many areas where Communist governments could ease the task of Western businessmen.

Finally, Mr. Scott's speech underscores the disadvantage imposed on our businessmen by the inability to obtain Ex-Im Bank financing for East-West trade. All Western European countries provide such financing. And in mid-1970, credits extended to Bulgaria, Czechoslovakia, Hungary, Poland, and Romania totaled $2.5 billion. This is another area where we must provide our businessmen with competitive strength.

Mr. Scott's speech also contains a valuable summary of current administration attempts to encourage East-West trade-efforts to locate import markets for the East Europeans, agreement of the East Europeans to provide U.S. businessmen for the first time with reliable guides to their import needs over the next 5 years, joint programs to scale down the administrative barriers to trade.

I believe our trade policy must take into account the realities described by Mr. Scott. It should also take into account the evolving nature of the modern firm. Many of these firms are international giants which, if blocked in the United States from trading with socialist countries, can simply shift the focus of this trade to Western European affiliates.

Some Communist officials contend that for this reason U.S. trade policy is no longer of great interest. I do not believe this to be the case. There will always remain a broad array of products uniquely United States in origin. But more important, the benefits of trade are not limited to the economic sphere. There are attendant benefits in other areas, political and cultural. We should not encourage our firms to trade their foreign affiliates so that these benefits devolve to others. It is neither in our interest, nor I believe is it in the interests of East Europeans for this to happen.

I ask unanimous consent that Mr. Scott's speech be printed in the RECORD.

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

THE OUTLOOK FOR U.S. TRADE AND INVESTMENT IN EASTERN EUROPE

(Address by Harold B. Scott)

INTRODUCTION

It is particularly timely to be speaking on the subject of East-West commercial relations to the Boston community which offers such a unique combination of highly specialized businessmen and thought-provoking academicians. The 1970's are expected to usher in new five year plans in Eastern Europe (excluding the U.S.S.R.) calling for some $25 billion worth of purchases from industrialized western countries over the next five years. The growing appeal of this relatively unexplored market place to the U.S. businessman, plus an increased government interest in encouraging the development of economic relations with this area, have produced record U.S.-Eastern Europe trade and licensing levels in 1969 and again in 1970. I am somewhat nervously aware as I address this group that your past experience in Eastern Europe, particularly in the area of sophisticated electronic equipment, leaves you collectively with considerably more expertise than me on this subject. While putting me on my mettle, it does make it easier to discuss with you some of the findings and follow-up activities to our trade survey mission that visited Eastern Europe last June.

BUSINESS INTEREST

While a small group of U.S. individual companies have maintained a continuing interest in East/West trade over a period of years, and very few companies are relatively well established in this area, general business interest in Eastern Europe is of fairly recent origin. Also, I believe it is fair to state that present business interest, while strong, remains cautious. Only a handful of new-to-the-area companies have thoroughly investigated the market opportunities for their products and, resulting from such investigation, reached specific conclusions as to whether this market has potential and how such potential specifically will be exploited. To most executives, on the marketing map, this area still shows white—"unexplored territory"—intriguing, baffling, and therefore to a degree romantic.

Resulting from the broadening interest in expanded trade with Eastern Europe as particularly evidenced by the debate at the time the Export Control Act was up for renewal, and in conformance with the spirit of the present Export Administration Act, it seemed timely and desirable for your Government to obtain firsthand information as to the possibilities for expanded trade. Accordingly, last June, accompanied by three trade specialists from the Department of Commerce, I visited the Bloc countries (except Russia, East Germany and Albania) and talked extensively with business and government

people. I would like to share with you this afternoon some of my impressions resulting from this trip and some of Commerce's follow-up activities.

STATISTICAL BACKGROUND

While the relative background figures of East-West trade are generally well known, it might be useful to repeat them very briefly so that we all have a good awareness of the distance the United States has to travel before it can claim a meaningful share of this intriguing market. In 1969, Eastern Europe, excluding Russia, purchased $3.9 billion from the West.[1] Of this only $144 million or about 4% was of U.S. origin. On the other side of the trade account, these COMECON countries sold $3.2 billion to Western countries and only $144 million or 4.5% to the United States. To give perspective to the rate of growth, this trade over the past five years has grown at an average annual rate of 15%.

The 1970 U.S./Eastern Europe trade of $579 million was 30% higher than the 1969 trade level. It is also interesting to note that over $60 million of technical data, which does not appear in the trade figures, was licensed to Eastern Europe in 1970. This represented better than a 2-fold increase over 1969.

LEGISLATION

No background discussion could be complete without at least an allusion to the politics of East/West trade. This group is well informed of the progress through the Congress last year of the Export Administration Act (then called the Export Control Act). Many in Government were genuinely surprised and pleased at that time to observe the breadth of interest in East/West trade and the more relaxed attitude of the Congress toward liberalized regulations. Today there are few in or out of Government who can deny that the Export Administration Act as it finally was signed by the President is an improvement over earlier regulations—an improvement in terms of positive language, a fresh approach, and a clear sense of Congress calling for a liberalization of controls.

With the passage into law of the Export Administration Act, the Office of Export Control promptly intensified the review of the controlled commodities as called for under the Act and, secondly, began a review of the licensing procedures not just in conformance with the law but more importantly in conformance with the expressed needs of the business community. In 1970, the Department reduced restrictions on exports of over 1300 commodities, including more than 350 types of electronic instruments, machinery, and transportation equipment; 300 classes of metal and metal products; and 470 chemicals. The first phase of the list review is about 70% completed. Emphasis has been placed on reviewing first those commodities of most immediate benefit to export.

As with any new act, a judgment as to exactly how far we have moved towards liberalization can best be determined by a study of individual cases. While it is too early to make precise judgments, we believe that based upon the cases reported to date, there have indeed been significant changes. (See charts attached.)

TRIP SPECIFICATIONS

It was against this background that our Mission set out to collect facts. We visited Bulgaria, Czechoslovakia, Hungary, Poland, Romania, and very briefly Yugoslavia. It was decided on this first trip not to include Russia because the task thus became too large for our trip. Also, we wished to make the first official government post-war mission a relatively low-key adventure. As a fact-finding group, we emphasized to our hosts that we did not wish to enter into negotiations; we sought to avoid dialectics and to the greatest degree possible we hoped to concentrate on identifying areas where positive improvement of trade relations under existing circumstances were feasible and in such areas to discuss specific plans of action. This meant that while we were anxious to assess the impact of the Export Administration Act and the lack of MFN (Most-Favored Nation tariff treatment), or Eximbank financing, we were not willing to either defend their presence or speculate as to the terms under which improvements might be negotiated. Similarly, for our part we avoided any discussion of COMECON trade or political policies as a deterrent to expanded East/West trade. It is interesting to note that our hosts not only scrupulously adhered to these requests, but also seemed relieved not to be burdened with these time-consuming rituals. There were indeed exceptions, which provided interesting and tedium-relieving pyrotechnics, but these cases generally originated with lower level officials.

FINDINGS

In discussing the findings of our Mission, I group them into two broad categories: (1) those general to the countries visited and (2) specifics that apply to certain countries and not to others. In this discussion, I exclude entirely Yugoslavia because, for trade purposes, it virtually enjoys parity with Western European nations. Its problems while complex are therefore quite different. Also, for such an informed group I didn't plan to spend time discussing the "how to" aspects of East/West trade.

As to the generalities, first, let's list the deterrents to expanded United States/Eastern Europe trade in order of magnitude as we assessed them:

1. Psychological barrier

U.S. business leaders have explored trade opportunities in Socialist countries with extreme caution and in many instances have refused any contact because they were aware of the real danger of reprisal in the U.S. market and also because they were not sure in their mind of the morality of a trade relationship. The geographic distance, and the lack of any strong trading infrastructure also strongly influenced the psychological barrier. From the viewpoint of the Socialist countries, there is a comparable psychological barrier so deeply rooted in the different political philosophies, for as you know East Europeans are extraordinarily pragmatic. Their hangups are more in the area of distrust of the American businessman as an known quantity and an exaggerated concept of his negotiating ability. Many of the specific deterrents we discussed dissolve under close scrutiny into this vague area of what for a lack of a better word we call the "psychological barrier."

2. The lack of MFN treatment

The lack of MFN treatment to all East European countries except Poland is the most discussed major problem. To a degree, this deterrent while real also is partly psychological. There is a strong feeling among East Europeans that the lack of MFN is a form of punishment. Importers not only pay a higher duty but view such treatment as a symbol of the "unwelcome mat." One of the major purposes of our Mission was an examination, product by product and country by country, of export potential to the United States. Indeed there were many specific product areas where the lack of MFN removed all possibilities. There were, however, many of their products with some U.S. potential, despite the lack of MFN, that had not been aggressively promoted. One can speculate that occasionally the lack of MFN represents a warm security blanket under which Eastern European export enterprises can quite easily hide their lethargy. It is safe and practical to conclude that trade relations will not grow rapidly until the MFN problem is resolved. It is equally sound to conclude that East European countries have specific trade opportunities in the United States today with the existing tariff structure that they are not exploiting to maximum potential. We in Commerce hope to be helpful in this area in the months ahead, for we believe that political awareness of the MFN problem can be heightened by trading actively with consequent agitation by the business community for even broader trade which would result with MFN.

3. East Europe/U.S. export potential

Before moving on, it is appropriate to mention that in general the East European product line in its present form does not have major potential in the United States with or without MFN. Furthermore, as you know, the decision to export is not made with complete freedom. There are strong conflicting demands on available production not only by the domestic market but also from other members of the COMECON group to which there are heavy contractural obligations. Soft currency markets, sloped to the Socialist concept, such as Egypt, Iraq, and Cuba, also have prior call on a significant amount of production. Finally hard currency markets of Western Europe, where the trade infrastructure is well established, figure importantly in Eastern European export decisions. Thus, the average enterprise views the U.S. market not only with the realization that it is difficult and time consuming to develop but also with the awareness that serving it can strain commitments elsewhere. In many instances, these considerations alone lead to meaningful negative decisions.

4. Eximbank financing

Of equal or even greater importance than the lack of MFN as a trade deterrent is the lack of credit—short, medium or long-term. Western Europe's trade relationship with the Bloc has been built on credit. It started some years ago averaging at 3-year term, stabilized briefly at 5-years by the Berne "Gentlemen's Agreement," (which has steadily become less and less gentlemanly) and now runs from 8 to 10 years. Western European money costs today average the usual 6%. While there are not really reliable figures as to the hard currency indebtedness of the East European countries, you might be interested in some rough estimates that we have developed as follows. These are expressed both in terms of dollars and as a function of each country's rate of hard currency export. Even taking into consideration the tentative nature of these figures, it can be seen that the Bloc countries have managed their hard currency debt quite well.

	Mid-1970 debts	1969 exports to industrial West	Months of hard currency export[1]
Bulgaria	$250	$261	12
Czechoslovakia	400	829	6
Hungary	350	577	7
Poland	600	892	8
Romania	700	530	16

[1] At 1969 export levels.

We all recognize that settlements in the great majority of cases are via clearing accounts and that the above figures therefore to a degree represent only currency imbalances in the clearing account. Notwithstanding, given this competitive structure, the almost total lack of commercial credit from U.S. sources, the high cost of what is available, plus the lack of Eximbank financing adds up to a major problem. In discussing this subject during our trip, we often questioned whether the lack of credit might be offset by a greater interest by U.S. firms in barter, switch deals, clearing accounts or even bilateral trade agreements. To our surprise

[1] West = Industrial West.

there was little or no enthusiasm for this concept. The underlying reasons seem to be that the Bloc countries' experience with such deals, particularly in the COMECON area but also in Western Europe, leads to their disenchantment. In their opinion such trade has become incredibly complicated, unrealistic and therefore unduly sluggish. The Socialists, at least when talking expanded U.S. trade, seem to prefer straight money deals with adequate credit at competitive rates. Certainly there will be no great surge in American exports until we are able to provide adequate amounts of 5-year, 6% money.

5. Effect of export controls

Of great interest to us was the degree to which the export control regulations inhibited trade. It is fair, of course, to speculate that, as members of the Administration and as guests of polite and hospitable hosts, we received courteously weighted opinions as to the problems posed by export controls. Whatever the circumstances, we were quite surprised to find that the Socialists as a group were not so much concerned with export controls as by the lack of MFN and Eximbank financing. In their pragmatic way they seemed to accept the necessity for controls. They recognized the objectives and, except for isolated cases, they did not seem frustrated either by the controls or the bureaucratic administration of them. As an aside, I should report that in a meeting in Vienna with a representative group of U.S. businessmen having responsibility for their company's East/West trade, we were heavily sandpapered on this subject of export controls, and from this comparison, one might draw the conclusion that export controls are a real deterrent to U.S. initiatives in Eastern Europe, but not of equal concern to our potential customers in the area.

Before leaving controls I would emphasize that there were significant exceptions to this attitude in certain countries and certain technologies. There remain big problems, but these are of a specialized nature.

6. Lack of Interest

Probably as the summation of the above five deterrents, the sixth could be called lack of interest. Given the lack of detailed knowledge and given the very low level of existing trade, a surprising number of enterprise managers and Government officials, while expressing interest and a willingness to enter upon careful theoretical discussion, conveyed the feeling that they had better ways to use their time. From this attitude I conclude that the major initiatives for expanded East/West trade will have to be taken by the U.S. business community. We in Government can serve a useful function by creating an awareness in Eastern Europe of the great potential of the U.S. market, of our interests in removing deterrents, and of our willingness to act as "expeditors." The East Europeans' lack of interest or initiative should be qualified by recognition that all the Bloc countries have a deep respect for American technology. Given the heightened world competition and the worldwide assumption that the United States is losing its technological edge, it is refreshing to find that the U.S. businessman comes to this particular market with a preestablished respect for his product and a corresponding recognition that in all probability U.S. goods will cost more than alternative sources.

EAST EUROPEAN COUNTRY DIFFERENTIATION

As is well recognized, particularly by this group, there are startling differences between the Bloc countries. Particularly there is varying recognition as to the degree of importance Western technology plays in each country's planned economic growth. One or two countries are quite content to remain almost entirely dependent on Russia for their technology; others lean heavily on the West (at present Europe) either openly or quietly, and there is increasing recognition of the role Japan can play.

JOINT VENTURES

Some countries have thought deeply and practically about the desirability of joint ventures as a device to acquire Western technology and management at relatively lower cost. They have devised ways to harmonize the concept of state ownership of property with the Capitalist concept of equity ownership and access to profits. While it is true that there already exist many joint ventures, particularly with West European firms, such today depend on the substitution of product for profit. I believe that in certain countries our Mission explored more deeply and received a more positive response to the true profit oriented joint venture concept than had previously been expressed. We believe that in this area there are immediate and important opportunities for selected U.S. companies. Obviously, the negotiation of such joint venture will be difficult, for much new ground will have to be explored. What is cost of goods? What are selling expenses? What will be the management structure? What markets in addition to the home market are to be served? What are appropriate profit margins and perhaps above all, what rate of currency conversion shall be applied? The negotiation here of the true joint venture is really an agreement on basic capitalist economics. I firmly believe, however, that at this point in time, an exploration by business of the opportunity we exposed is worth effort for these reasons:

1. It is doubtful that even if all the mentioned trade problems could be removed, we could catch up in trade with the Europeans in the foreseeable future. Meaningful two-way trade will take time to develop.

2. The rate of projected economic growth within the Bloc countries is such that unless our systems are installed in the near future we face the possibility of virtual exclusion in major areas.

3. In the joint venture concept the United States has a flexibility and a competence based on worldwide experience superior to our West European and Japanese competition. It should be exploited.

4. While in the Commerce Department it is not our mission to dream of bridgebuilding, the temptation persists, and the joint venture makes even better bridges than does the exchange of goods.

POSITIVE ACCOMPLISHMENTS

While I have dealt at length with the problems of building a meaningful United States/East European commercial relationship, I do not wish to leave you with the feeling that the outlook is bleak, and that there were not some important positive results from our Mission. Generally, we established the Commerce Department as a communication point for relaying mutual business interests between the Socialist countries' governments and the U.S. counterparts. Given the lack of commercial infrastructure (no commercial attaches in U.S. embassies, few local agents or distributors, and little published market data, etc.), this communication factor alone should be useful.

More specifically, we in Commerce have analyzed the major product lines produced in Eastern Europe to determine their U.S. potential. For those that show promise we are assisting the producers in locating qualified distributors or co-venture partners. Also, we are making available to them U.S. market data that we collect in Commerce. On the other side of the coin, from several countries visited, we obtained so-called shopping lists consisting of major technology or plants which each country is interested in buying or co-venturing. Using these shopping lists we are working with the East European Embassies and their foreign trade officials to identify qualified American companies, determine their interest and arrange introductions. We are trying hard to be an effective broker.

Finally, we are undertaking a major effort to normalize our usual commercial intelligence services so that we can give to the U.S. business community the same type of information on Eastern Europe as is available about other major markets. While this seems a minor step, it will take time and persuasion before we receive a meaningful flow of information because of the difficulty of obtaining this information and the reluctance of the Bloc to reveal significant market data.

SUMMARY

To summarize, the major problems limiting the expansion of two-way trade are lack of MFN and export credit. Should these be removed the rate of growth of trade still will be relatively slow due to (a) the inappropriate product line of East European countries, (b) Eastern Europe's lack of hard currency reserves, (c) West European and to an increasing degree Japanese competition, and (d) U.S. inexperience in the area.

There is rapid economic growth in the Bloc. It has a sophisticated and technically-oriented citizenry and a yearning for a better standard of living. The political and psychological problems of the past are waning, and there exist today real opportunities both for expanded two-way trade and other forms of collaboration in certain countries. These opportunities should be carefully explored by the business community. Obviously the ultimate potential of the area relative to other world markets has to be kept in perspective. Our competitors in Europe and to an increasing degree Japan considers it fertile ground—so do we.

ENVIRONMENTAL CONTROL AND THE INTERNATIONAL ECONOMY

Mr. ALLOTT. Mr. President, earlier this year the Atlantic Council of the United States held a Battelle Memorial Institute International Conference on "Goals and Strategy for Environmental Quality Improvement in the Seventies."

The purpose of the conference was "to assist in the formulation of standards and goals which are substantially acceptable, economically practicable, and internationally comparable—and of recommendations for achieving them." The conference also included "consideration of the optimum mix between regulation and incentives and practicable measures in both categories."

Distinguished participants in this conference included Harald B. Malmgren, senior fellow of the Overseas Development Corporation, who delivered a paper on "Environment Control and the International Economy."

Mr. Malmgren is concerned about the many possible domestic and international economic effects of various approaches to correcting environment problems. His thesis is this:

As a matter of basic philosophy about the problems in this area, we must recognize that the problem is not one of getting all nations to behave in the same way scientifically, but rather of providing a framework for guidelines and obligations which help to harmonize the various national approaches which will be the consequence of the national differences.

Mr. Malmgren's essay contains a number of important insights, such as the following:

The capital-short developing nations face a far more complex set of choices than the richer countries. Capital investments in clean-up for developing nations involves a direct trade-off with increased employment opportunities or increased exports or other economic growth objectives, which are necessary simply to sustain life.

In general the relative competitive positions of industries, and of countries, can be markedly altered by differences in requirements from country to country whenever heavy investment or altered operating costs are involved in the effort to clean up.

Tough pollution controls can result in the building of plants abroad, this in a sense exporting the pollution, but also exporting long-term capital and jobs.

Mr. President, so that all Senators can profit from Mr. Malmgren's thoughtful essay, I ask unanimous consent that it be printed in the RECORD.

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

ENVIRONMENT CONTROL AND THE INTERNATIONAL ECONOMY

(By Harald B. Malmgren)

INTRODUCTION

The growing pressures from citizens, Parliaments, and scientists for tighter control of effluence, of product composition, of product use, and of resource exploitation will inevitably bring about a rapidly increasing number of new laws, administrative regulations and procedures, and new economic devices designed to bring about fundamental change. Different methods of controlling environmental factors will have different domestic and international economic effects. The particular mix of policies and measures chosen by a national government can have a major impact on the interests of industry in other countries, as well as on its own industry. Thus there are many policy issues which require urgent examination, by industries themselves as well as by governments.

Because so little is known about environment control, and about methods for achieving the objectives of nations in this area, it is likely that governments will continue for some time to intervene selectively, using different methods for different kinds of problems; and it is likely that industries themselves will follow an experimental approach, exploring different avenues in the search for a better balance between economics and social objectives.

It is very unlikely that common international scientific standards could be agreed upon in many areas. Partly, scientists themselves do not easily reach agreement on what are the appropriate standards. Moreover, the problems of emission or effluence depend on the local environment and the local tastes and preferences of people. A plant on an island with its emissions going out to sea is not under exactly the same conditions as a similar plant in a high density population area on the Eastern Seaboard of the United States or in Western Europe. The capital-short developing nations face a far more complex set of choices than the richer countries. Capital investments in clean-up for developing nations involves a direct trade-off with increased employment opportunities or increased exports or other economic growth objectives, which are necessary simply to sustain life. The "quality of life" issues for the nonaffluent countries will inevitably take lower priority than issues of economic survival. This will be true politically, whether or not one believes that in the long run such a ranking of priorities will prove economically and socially harmful.

The consequence of selectivity in national policies, and of differing policies from one country to another, can be significant shifts in production, investment, and trade incentives and opportunities. Conflicts can arise from different technical standards, safety regulations, economic incentives and penalties, and so on.

Consider the use of national standards and regulations. Where one country's standards differ from another's, imports may be substantially reduced by technical restrictions, or the prices of such imports may have to be raised to cover the costs of adapting these products to the different national standard. This kind of problem arises where a product is a potential pollutant (e.g., insecticides) or where the product must meet consumption or safety standards (e.g., automotive standards).

Another type of problem, of potentially major international importance, is the cost impact on industry arising from new environmental controls and pollution limits. If the steel industry in the United States is forced to spend large sums on cleaning up and eliminating effluence, its cost position will obviously alter vis-a-vis competitive imports from countries where no such expenditures are required. Perhaps all of what would have been capital expenditures on productivity improvement instead goes into reducing undesirable effluence—in this case, the air and water are cleaner but the company can fall behind relatively in its competitive position. In general the relative competitive positions of industries, and of countries, can be markedly altered by differences in requirements from country to country whenever heavy investment or altered operating costs are involved in the effort to clean up.

One country may require heavy investment, and increased operating expenditures for more detailed inspection and testing. Another country may provide tax incentives, leaving industry free to choose its own approach, while being subsidized through the tax incentives. Still another country may require nothing, leaving industry free to choose the lowest cost method of production regardless of effluence or product content. The amounts of money involved in cleaning up are large, so that these relative shifts can dramatically alter the incentives to invest in one country as compared with another, in addition to altering trade possibilities. Tough pollution controls can result in the building of plants abroad, thus in a sense exporting the pollution, but also exporting long-term capital and jobs.

It is also probable that multinational companies will find their internal operations adversely affected by differing national product and process requirements. Such adverse effects can be especially severe in those cases where the international business operation has been built upon transfers of components and intermediates from the home country. This is particularly relevant to U.S. companies abroad in certain industries.

ALTERNATIVE MEASURES FOR ENVIRONMENTAL CONTROL

Governments may use many different kinds of instruments for controlling the environment. Specific standards for product composition, product design, and product use, and specific regulations on production methods and emissions can be provided. The more specific and the more highly defined technically a standard or regulation is, the more likely there will be differences in method of control among products, industries, and countries. In pharmaceuticals, for example, standards are policed in some countries by inspection during the process of production, rather than of the final packaged product. This method of consumer protection in France, for example, has meant a virtual embargo on the importation of pharmaceuticals into France, and a strong incentive for overseas producers to establish production facilities in France. Controls administered in the form of inspection of production itself thus can prevent trade, and create incentives to move production facilities.

Another method of control is through design requirements and quality requirements. We have already seen that U.S. automotive design requirements are having a significant impact on the outlook for automobile producers in other countries, most of whom have significant exports to the U.S. These same design requirements also raise the relative cost of U.S. production, weakening the U.S. competitive position on exports to other countries. This type of problem has so far been rather exceptional. Looking to the future, it is likely to become a fairly widespread type of problem. Hand in hand with design and quality standards go specific, detailed marking or labeling requirements. Such requirements are among the Nontariff Trade Barriers (NTB's) most complained about internationally, particularly by other governments concerning the problems their nationals face in exporting to the U.S.

Another method of control is through the use of tax incentives and government subsidies to industry. This can ease the cost of transition from one product line to another, or from one mode of production to another. It is not likely to be very effective unless used in conjunction with specific standards or regulations, but in that case the aids to industry become a form of adjustment assistance to moderate the effects of governmental decisions made on behalf of national welfare. A particularly useful area for special aids or incentives would be encouragement of research and development of new technology better adapted to social objectives. Various international problems can arise as a consequence of aids, however. As already noted, if an industry is assisted in one country by government aids, while the same industry in another country carries its burden of adjustment alone, their relative competitive positions will be altered. Assistance to research and development may tend to discriminate in unusual ways. Thus, European governments would probably have considerable difficulty in granting the same form of assistance to American-owned corporations operating in Europe as they would provide for European-owned entities.

A different approach could be through extensive use of penalties, whether in the form of fines, in the form of user charges, or in the form of taxes on pollutant products or on polluters themselves. The use of penalties on businesses for failure to meet technical requirements creates, if the penalties are big enough, an incentive to step up capital expenditure for cleaner methods of production, or for processes which produce cleaner products. This again hurts the relative position in the world market of these companies, in cases where they might face foreign competitors under no such penalty systems.

In the case of special taxes, there have been many proposals. One recent proposal in the United States has been the suggestion that each automobile sold in the U.S. bear a special $25 tax to offset the government, or social costs of disposing of that automobile when it has reached the end of its useful life. A tax on leaded gasoline has also been proposed. These *ad hoc* taxation suggestions can be generalized, in the sense of applying taxes to specific products, as opposed to taxation of the company income of pollutant-producing companies. Environmental control taxes should not be levied on company incomes. Most companies that produce undesirable products or effluence also produce desirable products. The incentives must be shifted within companies more specifically. A tax placed directly on the product itself serves this end. Such product taxes tend to force up the price of pollutant products, as the tax tends to be passed on to the consumer; and to the extent that the price is not raised, but the tax is partially ab-

sorbed by the producer, this reduces product profits. In either case there is a shift in incentives. For the consumer, the product becomes relatively less attractive. For the producer, the absorption of the tax cost or the reduction in demand for the product provides an incentive to clean up that product or drop it from the company's product line.

At the national border, such taxes can be treated in the same way that all countries treat their consumption taxes and other indirect taxes: Upon exportation, we might grant a remission of tax, and on imports, we would impose the same tax as that applied to comparable domestic products. This is simply following present practice throughout the world regarding treatment of sales taxes. What this would mean for automobiles in the U.S. is simple: Japanese or German cars entering the American market would bear the clean-up or disposal tax. However, American cars exported to Japan or Germany would be exempt from American tax. Disposal would be taken care of in those cases by the country of destination. Japan or Germany could of course impose their own indirect tax.

This device thus has the advantage of international neutrality. It provides both incentives and penalties, as well as a source of revenue, without altering the international trade and investment incentives in a discriminatory fashion. The international balance can, of course, be shifted because of other reasons. The indirect tax does not neutralize other factors, but it does neutralize itself.

The taxation method of control cannot be used to cope with every kind of problem, however. The array of technical complexities and optional solutions in this field are such that firm technical standards will often be preferable to tax penalties or tax incentives which leave wide discretion to producers. A tax penalty would have to be related to some objective standard of what is publicly desirable, and be adjustable in relation to the extent to which the objective standards are satisfied. It would be extremely difficult to stipulate in legislation the appropriate standards and tax levels product by product. In the U.S. case, for example, the Congress would in legislation have to pass considerable discretion to the Executive on the application and size of product taxes. The degree of discretion might be enormous, if the only method of control was through indirect taxes. Congress would be unlikely to grant open-ended taxation powers to the Executive. Consequently, the tax approach would in practice be more difficult than it appears in theory. In practice, some mix of firm federal regulations and standards, and variable indirect taxes where appropriate, would probably work out to be more practicable and more effective than reliance on taxes alone.

In contrast to the impact on particular industries or firms, the question can also be raised as to whether a nation's overall trade and income position can be disadvantaged by its own environment control decisions, or by the decisions of other governments. Dr. Kneese's paper addresses itself to this question.* His observations suggest that the overall economic adjustment problem for some countries could be fairly significant regarding trade and the balance of payments; but that in the case of the U.S. the plausible hypotheses about general costs do not suggest a major trade or payments impact. Dr. Kneese's paper does not deal with the kinds of problems regarding individual industries and products discussed earlier in this paper. The question also remains open as to how strong the incentive to export pollution through movement of capital investment will be. Clearly, the larger the capital outflow for the U.S. the more trouble for the balance of payments.

There can be positive gains for those countries which are at the forefront of research and development of new products and methods of production. Such countries have the opportunity of expanding their sales and licenses of new products and techniques. The U.S. in particular may be able to take some advantage from its lead in research and development, especially if this is combined with tougher product standards in the U.S. which in effect discriminate against the products of other countries.

The general balance of payments effects would in any event depend in part on the international adjustment process. A significant general cost and price shift for one country can, for example, easily be counterbalanced by inflationary adjustments in another.

In my view, then, the key questions lie in specific product and production problems, and it is at this level where serious economic problems can easily become a source of conflict between the interests of various nations.

In choosing among the different types of control measures, governments must weigh a combination of local political, economic, and environmental circumstances. Taking the wide range of possible variations into account, it should be clear that the choice of control measures and their form will vary from one local situation to another. The international trade and investment implications will often be incidental to the decisions reached, yet these global market implications may be extremely important to the prospects for individual businesses in various countries.

This raises a fundamental social, political, and economic problem: *Who should decide for whom*, what the standards and the control measures are to be? A decision by a government of one nation may have a direct bearing on the fortunes of private businesses in other nations. In turn, if those businesses adapt their product in a particular direction, to suit the market requirements of the first nation, then the consumers in these other nations also find themselves subjugated to the decisions made unilaterally by the first nation.

This problem of who decides for whom can come up in many forms. Countries may feel unable to act unless several countries simultaneously coordinate their actions. For example, the Finns have said that major capital expenditure to clean up the Finnish paper and pulp industry would only be possible if paper and pulp industries in other countries undertook the same capital expenditures for clean-up at the same time. Since paper and pulp is such a significant portion of Finland's total economic position, the problem for that country is readily understandable. Similarly, the question of pollution of each other's national waters and environment generally can only really be dealt with by coordinated, harmonized decisions.

More broadly, countries can easily be restrained from taking socially desirable actions by the fear of the economic effects on their international competitive position. Conversely, where a country cleans up its steel industry while another country does not, it can be reasonably assumed that the imports of steel products into the first country will be subject to increased protectionist pressure, and therefore new nontariff restrictions to trade.

THE NEED FOR INTERNATIONAL COORDINATION OF POLICIES

The international problems have not yet reached major proportions, primarily because governments are only now beginning to move on broad new approaches to environment control. This makes it all the more urgent to develop a framework for dealing with actual and potential problems—before the various national methods become set in concrete, before heavy investments are undertaken, and before vested interests have settled in to defend any protectionist effects which may arise.

Reducing the conflicts in national policies will require improved international consultative procedures and new international guidelines under which national actions might be taken.

Various international institutions are already at work in exploring the problems of harmonizing national policies. The U.N. Economic Commission for Europe (ECE) has a useful record in developing certain specific types of international standards. Since it remains the principal East/West coordination body on economic and scientific questions, it can perform a useful role in the next few years. Other U.N. organizations also have played a role in technical areas: Land use and conservation of natural resources (FAO); atmospheric monitoring, disaster prediction, and weather information (WMO); international health problems (WHO); oil pollution on the high seas (IMCO); noise (ICAO); and monitoring of radioactive pollution (IAEA).

In 1972 in Stockholm there will be a major U.N. Conference on the Human Environment. This will bring together many of the issues which have been touched on in the work of the various organs of the U.N. It will be the only conference on international pollution control problems where developing nations will be active participants. However, precisely because of this, and the fears of the developing nation that rich country standards will be imposed upon them, it is unlikely that a significant common ground for agreement can be found on international priorities for the future, or on international guidelines for national policies and actions. As already observed, environment control measures will, for economic reasons, assume relatively low priority on the government agendas of most devloping nations. Moreover, these countries are already tending to fear the use of international rules as devices for further exploitation of their already weak competitive positions. A new organization for monitoring the international aspects of environment control may nonetheless emerge from the Conference.

NATO, through its Committee on the Challenges of Modern Society (CCMS) has also recently undertaken work on certain environmental problems. NATO, by its inherent nature, is a scientific, "hardware" type of organization, and is unlikely to provide a suitable forum for consultation and harmonization of policies in terms of the economic side of these issues. It can be useful for the transfer of technology in complex problem areas, because of its experience in technological transfer.

The most promising recent development is the establishment of the new Environment Committee in the OECD. Here all the major non-Communist industrial powers are members, and there has been a long history of consultation and policy coordination in various economic policy matters. The Environment Committee can look directly at the international economic questions, with a view to finding means for close cooperation among the developed countries, while mitigating the potential conflicts of interest which will likely arise between them. Ideally, the Environment Committee will treat specific issues, such as pesticides, or automobile design, in terms of their precedent-setting aspects for the handling of other problems. In this way a record of effective consultation and adjustment of national programs could

* Part VIII: "International Trade Effects of Environmental Quality Controls."

be built up. Purely scientific issues of standards should not be addressed unless doing so helps clear away ground on which general policy guidelines might be built. The OECD is ideally suited to such exploratory work aimed at general principles, and the harmonization of national policy measures, particularly in the light of its excellent work in the economic policy field.

Since, as already noted, pragmatic selectivity and experimentation will be necessary in each country, and since conditions vary so much between different countries, the pursuit of common scientific standards will be a most difficult pursuit. Alternatively, international cooperation might increasingly focus on methods for harmonizing national practices, and for moderating the effects of unilateral natural decisions on the interests of other countries.

As a beginning, there should be development of international consultative procedures on new forms of regulation which may affect international trade and investment. For example, provision should be made for advance notice to other countries, and for reasonable delay in implementation of new national standards so as to allow time for other businesses in countries to adjust their production. More important than procedures would be the development of general principles or guidelines which governments might follow in complementing their national control measures.

Such principles should cover administrative procedures, such as public hearings and advance public notice, and they should cover methods of enforcement. Enforcement is particularly important. Regulations may set recommended standards, or they may be mandatory. Where mandatory, they may be enforceable by taxes, fines, or confiscation of product or of property in general. In the cases where recommended standards are utilized, governments may prefer to use tax incentives and other special incentive devices to encourage industry to seek remedies in its own way. Providing some basis for comparable treatment of domestic and foreign products in relation to enforcement procedures is necessary in each country. Acceptance of a general comparability-of-treatment principle by governments would provide a useful point of departure. Where national standards and testing or control methods differ from one country to another, a significant effort should be made to accept *similar* standards and control methods as a valid basis for accepting an import, and not insist on precisely the same standards and control methods for foreign goods. It is also desirable to develop an agreement which would bar discriminatory treatment among producers, whether foreign or domestic, whether private or state enterprises. Discriminatory taxes or tax incentives should be specifically ruled out.

More generally, what is needed is an intensive search for general principles, codes of conduct, and consultative procedures which aim at reducing the international economic distortions which can easily arise out of differences in national measures for environment control, consumer safety, health, etc. Discussions and negotiations leading in this direction would be an evolutionary process. Given the complexity of the problems and of the various social objectives, a framework of rules, if negotiable at all, could only work in the context of on-going consultative procedures.

This kind of approach has already been followed with great success for twenty-five years in the General Agreement on Tariffs and Trade (GATT). GATT is a set of principles, and an institution which provides flexible consultative procedures. Specific negotiations are held from time to time resulting in liberalization of national measures which restrict trade. Sometimes negotiations lead to new codes of practice, or new interpretive notes clarifying the positions of governments regarding the language of the GATT agreement itself. The agreement as a whole stipulates rules and obligations, and procedures for the bringing of complaints, as well as providing for compensatory actions when one nation injures the interests of another nation.

Thus this kind of system, based on an interaction between principles and consultative procedures, can work in the economic area. A similar effort in this area to comprehend and channel national decisions multilaterally would be a wise and practicable course for governments to follow in the next few years. This should be done quite apart from whatever work is carried out in the pursuit of international technical standards, and in the various multilateral efforts to assist in the transfer of technology internationally.

RECOMMENDATIONS

Close coordination of national efforts to control environment is necessary in many industrial sectors, in order that nations might avoid damaging each other's interests. This coordination should initially take the form of consultations on certain types of problems, control methods, and sectors, with a view to generalizing the results of consultations into a basis for new international guidelines and consultative procedures. This can best be carried out in the OECD Environmental Committee, at least initially.

Coordination should also include industry cooperation internationally. It would often be possible to work out reasonable and nonconflicting international solutions to industrial environment control problems if industries were allowed to coordinate their efforts internationally. At the present time, the U.S. government and U.S. law frustrates any sensible effort along these lines, and our antitrust policies should be modernized in this direction. In the future, there will have to be much more government-industry collaboration in the U.S. to meet that type of cooperation in international competition which exists in other countries. Finally, there is a special need to provde more room for industry-to-industry, and industry-government cooperation internationally if real progress is to be made in this area without continuous resistance of industries in some countries, because of the favored position of industries in other countries. A new industry advisory committee might be formed as an adjunct to the OECD Environment Committee, or the present Business Industry Advisory Committee (BIAC) to the OECD might perform this function as its major order of business. The issues here, involving as they do both the social welfare of nations and the fortunes of large firms and their workers, are far too important to leave in the present state of disarray as regards national decision-making procedures.

Looking to the future we should recognize that national decisions do affect the interests of other nations, and the private businesses of other nations. The question of who decides for whom what the standards and methods of control shall be, and how international economic adjustment shall take place, should be a major policy question continuously addressed by governments. Where the decisions of one government result in the passing of costs onto other nations, procedures must be established to moderate the impact of these costs, in order to avoid continuous conflict and competitive protectionist measures.

We must also figure into the social calculus of environment control the fact that exporting pollution by pushing investment into other countries also costs jobs.

The appropriate mix of standards, administrative procedures, incentives, and penalties will vary from country to country by necessity. As a matter of basic philosophy about the problems in this area, we must recognize that the problem is not one of getting all nations to behave in the same way scientifically, but rather of providing a framework of guidelines and obligations which help to harmonize the various national approaches and moderate the economic disturbances which will be the consequence of the national differences. This is work for diplomats, negotiators, economists, and businessmen more than it is work for scientists. If this Conference can recognize the problems in this way, it will have helped start a new approach to the global environment control problems ahead, and paved the way for more rapid progress, with less resistance from special interests, and less overall economic cost.

TRIBUTE TO SENATOR RICHARD B. RUSSELL

Mr. COOK. Mr. President, the Nation, the Senate, and every person who knew Richard Brevard Russell has felt a great loss since his unfortunate passing. He unselfishly contributed 38 years of service, motivated only by love of his country and devotion to its principles.

Richard Russell's career in government began 1 year after his graduation from law school, when he was elected to the Georgia House of Representatives at the age of 22. Six years later he became house speaker and served in that capacity until in 1930, when he became the youngest Governor of the State of Georgia. In 1933 he came to the U.S. Senate, where he served in its greatest tradition until his unfortunate death.

Dick Russell's character and personality, coupled with his early experience in government, allowed him to develop those qualities which elevated him to the leadership position which he held in the Senate. His forthrightness, honesty, and dignity were admired by all of his colleagues. He was above petty politics: He was a statesman. He strongly believed in the American governmental system and its institutions, and he was always the first to defend its traditions and precedents.

Richard Russell was a man driven by charity, compassion, and an outright love for people. He was one of those few men who seemed to have been destined for a life of public service. Indeed, it would have been difficult to imagine Dick Russell in any other field of endeavor. The Nation, the Congress, and the American people, while mourning his death, should be eternally grateful that Richard Russell lived, and that he dedicated his life to his country.

HEALTH MANPOWER ASSISTANCE ACT OF 1971

Mr. DOLE. Mr. President, I am pleased to join the Senator from New York (Mr. JAVITS) and others in sponsoring the administration's Health Manpower Assistance Act of 1971. The bill would extend for 3 years the existing health professions and nurse education assistance authorities. But equally significant, the bill would expand and reform these authorities. This expansion and reform would enhance the financial security of the Nation's medical schools and would allow

these and other health education schools to increase their production of physicians and other medical personnel.

I am pleased to see that the bill, along with the President's budgetary proposals for health manpower educational support, offers a number of opportunities which should assist the University of Kansas Medical Center in Kansas City, Kans., in its endeavors to improve the health of the citizens of my State.

The proposed $6,000 capitation grant should provide approximately $771,000 to the school of medicine; a significant increase above the current level of formula support of $269,000. This flexible capitation formula and its funding would improve the medical school's advance knowledge of the basic level of Federal support it could count on, and enable it to plan accordingly.

In July 1970, Kansas University Medical Center instituted an accelerated 3-year curriculum. With its implementation, the university would be able to take early advantage of the $500 per student annual incentive for having a 3-year curriculum under the capitation formula. Hopefully, these increased funds could eventually more than offset the additional costs of converting to maintaining the 3-year curriculum.

Kansas University Medical Center, in coordination with hospitals and professionals of the regional medical program have shown that the university can effectively utilize its specialists in linking health manpower production functions to the health delivery system. Under the Area Initiative Awards, the bill would allow continuing expansion and new opportunities for this beneficial linkage of the teaching and practice of medicine. One potentially useful aspect would be the development of health education centers. These are community facilities generally affiliated with medical or dental schools in areas deficient in the supply of doctors, dentists and other health personnel. Already there has been substantial interest expressed in my State for the expansion of medical education to either Wichita or Topeka. Perhaps the Area Initiative Awards could enhance the movement for health professional education in these or other Kansas vicinities.

I am pleased to see a provision in the bill to enable medical schools to develop and conduct education programing related to health maintenance organizations.

At this time the university medical center is undertaking the development of a family practice clinic which should serve the unmet needs for primary and continuing care of people in the immediate vicinity of the center. Provisions for support of primary care training could be utilized to increase the use of this setting for educational purposes, and perhaps it could be the nucleus of a health maintenance organization.

The university is planning for continued expansion of its enrollment in a number of the health professional areas, and it will need additional facilities to house this increased enrollment. Although each individual institution and State would like to have outright grants for construction, I recognize that the total facility needs exceed any realistic immediate outlay of Federal funds: Therefore, I am pleased that the President's program, in addition to providing direct construction grants, would provide new financial support to public institutions which relate their educational activities to the implementation of new health delivery systems, such as the health maintenance organization.

There are several scholarship features in the bill that should be of interest to the medical students. The scholarship program for disadvantaged students would be increased from $2,500 to $3,000 per year. Although these scholarships would be limited to students in the first 2 years, the President's budget would allow a sizable overall increase in the amount of the funds awarded.

Also, the maximum insured loan provisions would be expanded from $1,500 to $5,000 annually for medical students, or $2,500 for nursing students. These insured loans would be available to any student and should substantially enhance the opportunities of these students to obtain a medical education.

Two new loan forgiveness features are particularly appealing. The first would forgive $5,000 per year, plus accrued interest on the total loan, for each medical student who served in an area designated to be medically underserved by the Secretary of Health, Education, and Welfare.

Kansas has many rural areas and small towns which have diffculty attracting physicians, and this incentive could materially improve health manpower distribution.

The second forgiveness feature would allow the Federal Government to forgive an entire loan to students who are from low-income or disadvantaged families and who fail to complete their health studies. This provision could substantially reduce the hesitation of disadvantaged students to incur the heavy expenses of a medical education for fear they would be unable to graduate.

Although it is difficult to anticipate the specific amounts which might be realized by Kansas institutions for support of nursing and allied health education, the bill contains provisions for both of these programs which offer significant potential for increasing the supply of teachers and for improving the educational methods for health-care professionals.

The bill contains a number of innovative and far-reaching provisions. Their enactment could substantially help in reducing or eliminating the serious health manpower shortage and maldistribution problem now faced by Kansas and the entire Nation. I am pleased to cosponsor the proposed legislation.

TRIBUTE TO THE LIFE AND WORK OF THE LATE SENATOR RICHARD B. RUSSELL

Mr. CURTIS. Mr. President, political trends come and go. That which is popular today may be forgotten tomorrow. Often the headlines of yesteryear prove to be of little importance. There are some things that abide.

In the field of politics and government, when I think of those things that really abide. I think of a man like the late Richard B. Russell. First of all, he was a patriot. Senator Russell loved his country and he was concerned about its survival. He cast his vote in the U.S. Senate for those things that would make our Nation strong financially, morally, industrially, and militarily. Senator Russell realized that our generation was blessed with a great country, and he wanted to hand it on to future generations as a strong and great country.

In the competitive field of politics and government, agreement is not always possible or desirable. By the very nature of free government, there is bound to be disagreement upon issues. It is through disagreement and debate that public issues are fully explored. It is through disagreement and debate that the wheat is separated from the chaff. It is folly, therefore, for one to strive to have all men agree with him or try to agree with all men. The wise course is to strive for the respect of all men.

It can be said of Senator Richard B. Russell that while many of his colleagues agreed with him on most, or perhaps all, issues, many may have disagreed with him on some very important issues. The fact remains that every other Member of the Senate respected Senator Richard B. Russell. This is one of the finest compliments that can be paid to any man in public life.

For a long time, the historians of our country, and particularly the historians of the State of Georgia that Senator Russell loved, will be writing volumes about the long and distinguished career of our departed friend, Richard B. Russell. At this brief time, I cannot add to the account of the life and works of this great man. Rather, I can merely raise my voice in respect for one of the great U.S. Senators of all time.

SENATOR RICHARD RUSSELL

Mr. BENTSEN. Mr. President, it has been said of Richard B. Russell that the accident of his birth in the South prevented him from becoming President of the United States. That may or may not be true, but one absolute truth is that Senator Russell's enormous influence on Presidents had lasting influence on this country's policies and our future.

No one man in recent history had the respect of his colleagues, the confidence of Presidents of both parties and the prestige of the performance of Dick Russell.

Dick Russell was a man of the South, but more than that, he was a man of the country, a man totally dedicated to his country, a man for his country and a man beloved by all who love their country.

His wisdom was universally recognized. His understanding of human strengths and human frailties was unparalleled. His convictions were strong and his power was wisely used.

I am very proud to have known Dick Russell as a friend. I knew him from my days as a Representative, and serving in the U.S. Senate with this great and

good man was one of my strong anticipations. That death claimed him before that joint service was barely realized is one of my sadder experiences.

The loss of Dick Russell to the Senate and to the United States is keenly felt. The loss of a friend is just as keenly felt. His memorial will be his uncounted contributions to this Nation.

PRESIDENT NIXON SALUTES HOUSING INDUSTRY LEADERSHIP

Mr. HATFIELD. Mr. President, in 1970 the Nation focused increased attention to the need to provide more housing. The National Association of Home Builders, under the direction of its able president, Louis Barba, provided responsible industry leadership and President Nixon recognized housing as "a top national priority." Mr. Barba recently completed his tenure as president of the National Association of Home Builders. I ask unanimous consent that a letter from Mr. Barba to the President, together with the President's reply, be printed in the RECORD.

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

NATIONAL ASSOCIATION OF HOME BUILDERS,
Washington, D.C., January 12, 1971.

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

DEAR MR. PRESIDENT: It has been a year since our historic meeting with you, Mr. President, on the housing crisis which resulted in a statement by you citing housing "a top National priority." Since that meeting when housing starts were at a depressed 1,100,000 annual rate, the industry has responded by climbing to an anticipated annual rate of 1,800,000 in December 1970. This turnabout, I am convinced, is largely due to your concern, recognition of, and immediate attention to the issues that brought about the catastrophic downturn. That meeting set the stage for a spectacular turnaround in meeting the critical housing needs of the nation.

In addition to the administration's policies which permitted FHA, FNMA, HLBB and GNMA to aid in financing better than 50% of the mortgage credit needs of the industry, its monetary and fiscal policies have seen an easing of the FHA and VA interest levels from 8½% to 7½%. It is well to note these achievements since that meeting last January.

We have been encouraged by the legislation achieved through the cooperation of the Congress and your administration. The Emergency Mortgage Credit bill and the Housing Act of 1970 when fully implemented will be extremely useful in meeting the housing goals.

We are optimistic that 1971 will be a good year for housing. As President of NAHB, I want to express our appreciation for your efforts in advancing the housing needs of the nation, and for your continued success.

Respectfully,

LOUIS R. BARBA.

JANUARY 15, 1971.

Mr. LOUIS R. BARBA,
President, National Association of Home Builders, Washington, D.C.

DEAR LOU: Your very thoughtful letter was on my desk on our return to Washington, and I want to take this occasion to congratulate you on the completion of your highly successful tenure as President of the National Association of Home Builders.

It is encouraging to all of us that this past year has seen so much progress in this industry so vital to our Nation's economy. I greatly appreciate your generous remarks about the Administration's efforts, but I know also that the improved conditions would not have been possible without the skilled, vigorous leadership you have provided on behalf of the industry. I am deeply grateful for the support and the cooperation you have contributed to this endeavor. It represents a vivid example of the ways in which Government and industry can work together to make the best possible housing available to every American.

With best wishes,

Sincerely,

RICHARD NIXON.

CASE FOR THE CARGO SUBMARINE

Mr. RIBICOFF. Mr. President, Aubrey H. Whitelaw, a constituent of mine from North Stonington, Conn., is an independent freelance writer who has brought to my attention material he has prepared for a book. He proposes developing giant cargo submarines for peacetime uses under the arctic ice. Mr. Whitelaw's thoughts may be of interest to others and I, therefore, ask unanimous consent that his comments be reprinted in the RECORD.

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

CASE FOR THE CARGO SUBMARINE

(By Aubrey H. Whitelaw)

There are three major reasons why giant cargo submarines must be designed and built for a variety of purposes:

1. To open Arctic routes to international commerce;

2. To transport oil and other natural resources from Arctic regions;

3. To supplement our merchant fleet with relatively invulnerable carriers.

For centuries the advantages of Arctic passage have been envisaged by sea captains, but not until the recent advent of nuclear power and electronic navigation systems has it been possible to schedule under-ice operations on a year-round basis. During the past ten years submarines of the U.S. Navy have operated beneath the Arctic ice at will. There is no reason to believe that commercial types cannot be used to open Arctic routes between markets of the Far East, Western Europe and our own East Coast.

Since the recent discovery of oil and mineral resources in Arctic regions including Alaska's North Slope, the major problem has been to get the products to markets. Conventional surface transport is ruled out on a year-round basis due to Arctic ice, insurmountable for surface ships. The proposed pipeline across Alaska from Prudhoe Bay to Valdez (800 miles) would transport oil only and has many opponents for ecological and other reasons. And this "solution" ignores the larger objective of opening the Arctic to year-round shipping. A submarine shuttle service with open water terminals at selected Atlantic and Pacific trans-shipping points could solve the problem for domestic and foreign interests alike.

International trade has long been the crux of mutual cooperation and security. Shorter trade routes should cut shipping costs as well as nautical mileage. Current feasibility studies show that 170,000-ton submarine tankers can travel beneath the ice for extended periods of time at 18-knot speeds . . . economically, efficiently, safely. Apart from using giant cargo submarines for under-ice operations, such submarines could supplement surface merchant fleets by adding a new and relatively invulnerable reliability factor, by adding a new credibility factor regarding deliveries to allies in time of crisis. A host of other strategic advantages should accrue to nations possessing giant cargo submarines. It has even been suggested that such submarines could be converted to ICBM carriers to bolster deterrent effectiveness, if need be.

Now, it will be asked, how do we organize the consortium of financial interests in establishing the open-water terminals to service the under-ice shuttles? In the past, profit has been a mighty powerful incentive. It is today. But as a world power, there may be even more powerful incentives—such as preventing suicidal wars by providing goods required for physical survival. The gap between "have" and "havenot" nations, between rich and poor, has been widening. It may be to the advantage of international traders at this stage of the game to close the gap. Suez and Panama canals were far from altruistic. The opening of the Arctic routes need not be either!

It seems obvious that we must in this instance utilize modern technology to benefit mankind. Those enterprising souls who do so are entitled to their profits. Here may be a service, unprecedented, which brings hope in terms of goods and services. Not only the untapped resources of the Arctic but the undeveloped means of transportation are at stake here. To open the Arctic regions to year-round transport may become one of the greatest achievements of this century. The instrument is the giant cargo submarine.

LT. COMDR. WILLIAM TSCHUDY—PRISONER OF WAR

Mr. TOWER. Mr. President, the February issue of the TI DallaSite, an employee publication of Texas Instruments in the Dallas area, contains an article on Lt. Comdr. William Tschudy. Commander Tschudy is a prisoner of war and has been held captive since 1965. Mrs. Tschudy and their 6-year-old son, Michael, now live in Virginia Beach. Michael cannot remember his father. He was less than a year old when his father was taken captive.

Mrs. Tschudy has been active in efforts on behalf of POW's and MIA's. She feels that there are indications that treatment of POW's has improved as a result of the pressure of public opinion which has been applied to the North Vietnamese Government. She says:

I think treatment has improved and we are getting more mail. Up until December, 1969 we could send a package only when the North Vietnamese allowed us to, and usually it would be once a year. We can now send one every other month. Obviously, public pressure has had an effect.

This is indeed heartening and all the more reason to rededicate ourselves to our efforts in behalf of prisoners of war. Mr. President, I ask unanimous consent that the article on Commander Tschudy be printed in the RECORD.

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

TI-ER IS POW OVER 5½ YEARS

For most of us the war in Vietnam is something far removed. We've read a lot about it and heard a lot, but it hasn't touched us with personal hardship. It's something we've almost learned to live with. But for TIer Bill Tschudy and his wife Janie, a former TIer, the war has meant more than five-and-a-half years of separation.

On July 18, 1965, a Navy A-6 Intruder piloted by Cmdr. Jeremiah Denton, with Lt. Cmdr. William Tschudy serving as flight of-

ficer, was shot down. The two men were able to get out of their aircraft, but were captured by the enemy. Their pictures were released by Hanoi five days later. Now, after more than five-and-a-half years. Jerry Denton and Bill Tschudy are still Prisoners of War.

Janie, who met Bill when both were TIers, now lives in Virginia Beach with their six-year-old son Michael. She keeps busy making speeches on behalf of the POWs and doing whatever she can to make more people aware of the plight of the prisoners, while at the same time hoping that soon the North Vietnamese will release her husband.

For her the years have been a constant struggle against loneliness and the fear for Bill's safety. She feels that she is more fortunate than the wives of husbands who are listed as Missing in Action, for at least she knows that Bill is alive, but still there is the uncertainty of when and in what condition he will return. And she wonders what their life will be like when he does return after so many years away.

His letters to her are always general, never mentioning his situation. He writes about their son having grown so much. Janie has a Polaroid camera and regularly sends him pictures. She's not even certain he gets her letters, so she often writes the same information in different letters to make sure he gets it. It's a consolation to her that his handwriting looks strong and has improved since last spring.

"Reading and rereading his letters is a nightly thing," she says. "New ones come in and I read them over and over again, reading between the lines to see if there's something I've overlooked."

In the five-and-a-half years since Bill's capture, Janie has had about 19 letters from him. During the first four years there were just seven letters, and one time a span of 14 months elapsed before she heard from him. In the first two years of his capture Bill's letters were as long as three pages, then in 1967 the length of his letters was reduced to seven lines.

"Just before Christmas I received two more letters and a card from him," she relates. "That was just like a haul. I've never had so much mail come in at one time. Then just a few weeks ago two more letters came in—one was a full page long.

"I know he's all right because he's able to write a letter. But he tells me nothing about his situation. I knew in his first letter that he did have a roommate, but he's never mentioned one since."

"You and Michael are constantly in my thoughts and prayers . . . please don't worry about me or try to imagine what I am doing. Think of me only as being with you in whatever you are doing. My heart is filled with joy in knowing you are all well . . . I am glad that Michael knows that I am his daddy, but sad he doesn't know what a daddy is. God bless you and keep you, my darlings. I love you, Bill"—Former TI-er Janie Hammerstrom Tschudy still reads the letter written more than four years ago from a prison in North Vietnam by her husband Lt. Cmdr. William Tschudy, a TI-er on Military Leave of Absence.

Janie is encouraged by her belief that the effort to get better treatment for the POWs is paying off. "Last year I received ten letters which I think is a direct result of the publicity and pressure being put on the North Vietnamese. I think all of this, more letters, the releasing of more names of prisoners, is a definite response to public pressure. And, I think it's the public that's done it, not the wives.

"I think their treatment has improved and we are getting more mail. Up until December, 1969 we could send a package only when the North Vietnamese allowed us to, and usually it would be once a year. We can now send one every other month. Obviously, public pressure has had an effect. There's been more mail, more packages, more names. Now, getting the men out of there is something else."

Born and raised in Highland, Illinois, Bill attended the University of Illinois for two years before transferring to SMU in Dallas. He received a degree in business in 1957 and then enlisted in the Marines for six months active duty and three years in the reserves. In 1959, Bill came to work at TI-Dallas in the Germanium Consumer Department as a customer representative.

Fred Mann of Technical Publications, Components Market Communications, and George Berryman, manager of manufacturing for the mechanical polish operation in CMD-Dallas, knew Bill well. Fred recalls that he and Bill were both members of the now-defunct Sports Car Association of TI. "We worked together in setting up sports car rallies," Fred relates "Whenever I needed any help I knew I could ask Bill."

George expresses his recollections of Bill, "He was the kind of guy who's enthusiastic and really enjoys life."

Musingly George relates, "Bill figured the Navy offered him the kind of future he wanted," and Fred recalls, "I served as a reference for him when he decided to go back into the service. I thought he'd make a good naval officer."

Bill's supervisor during much of the time he was with TI was J. C. Bearden, now manager of Assembly Planning for Digital Circuits in Houston. "He wanted to fly about as much as anyone I had ever known," J. C. observes. He adds, "Bill was an excellent worker. I remember that every Thursday we had to work until late at night preparing marketing forecasts. Bill was always ready to work well into the night."

Born in Dallas, Janie moved away from "Big D" when she was three and grew up in Michigan and Ohio. She later returned to her native town and started at TI in 1957 as an order editor in the Resistor Department. Remaining with TI until the spring of 1961, Janie left the company to fly with American Airlines. In the fall of that same year Bill too left to take up flying as a Navy officer. He and Janie were married the following year.

"Bill had tried to become a pilot when he was in the Marines," Janie states, "but his eyesight prevented him. When he went into the Navy, though, his eyesight was fine. I guess that many years away from the books and a little easier life on his eyes improved his sight. He first went to pre-flight in the Navy to become either a pilot or a flight officer, but his age kept him from becoming a pilot. As a flight officer, he did all the navigational work in the airplane. He was a flight officer on an A–6 Intruder when he was shot down."

Bill left Norfolk on the U.S.S. Independence for deployment in May of 1965 and two months later was a Prisoner of War.

Janie spends a lot of time working for increased public support for Americans who are Prisoners of War or listed as Missing in Action. The Virginia State Chapter of the National League of Families of American Prisoners in Southeast Asia is located in Virginia Beach, and Janie is actively engaged in the organization. She's given speeches and appeared on television, once on the Mike Douglas Show with Ross Perot, whom she says has done more for the cause of the prisoners than any other person.

"The two things we are stressing," she says, "are that people write to the Chief Negotiator for the North Vietnamese Delegation in Paris, Xuan Thuy, and, secondly, that people write to their congressmen."

Janie talks of Bill as being an outgoing person, but unhesitantly adds that he could also be a loner. "Bill liked the discipline of military life, and that's why he decided to go back into the service. He really wasn't what you would call the 'happy hour' type officer who every Friday had to go to the club and be with the boys," she says of him. "He enjoyed people, but he loved his home. He liked to fool around in the garage and make things, a handyman type. He's religious. I think he has a strong faith, and this has come forth in his letters. In the three years of marriage we were together I did not realize the depth of Bill's faith. It's always predominant in his letters, and he gets a lot of strength from this."

She paused. "It's awful that I have to rely on memory to think of what Bill is like. I don't even know him as a father. Michael was born in December, 1964, and Bill was gone a lot of the time on shakedown cruises before he was deployed.

"Michael has a pretty good grasp about what has happened to Bill. He's optimistic. We'll often talk about when Daddy comes home—it's not if Daddy comes home. We did go through a period when Michael was about two when he questioned whether his Daddy was really alive. It was only natural—he couldn't remember him. Then he went through a stage when he thought since his Daddy is a prisoner he had been bad. To him a prisoner is someone who had done something wrong and is in jail.

"Michael really doesn't talk about Bill very much—he has no reason to since he doesn't know him. But he's happy when we hear from him. About three months ago Bill wrote Michael a letter. I think it meant a lot to Michael, but it will mean more to him later on. It was a letter just to Michael from his Daddy, but it meant a lot to me."

Last spring Janie sold her home in Virginia Beach and moved into an apartment. However, she plans to continue living in Virginia Beach because, "It's a big comfort to me here with the other wives of prisoners."

She's been reluctant in the past to get a job, feeling that it was more important to stay home with her son. "Now," she says, "Michael's in kindergarten and I may go back to school if Bill isn't home soon. I've had a year of college and have thought of becoming a medical technician."

Definite strides have been made in gaining more humane treatment for the POWs, but more has to be done, and it appears that an aroused public can help. Their release, of course, is the ultimate goal.

"I think Bill's chances of release have certainly improved," Janie says with dampened hope, "but after this length of time, I've built up a sort of insulation against feeling that something is imminent. Is there any hope he'll be released soon? I wish I could say yes.

"When it's over and Bill comes home—and I have no doubts that he will—I know our love will be stronger for it all."

BILL TSCHUDY ONE OF MANY

More than 1500 Americans are listed as Prisoners of War or Missing in Action in Southeast Asia. TIer Bill Tschudy is one of more than 300 men officially listed as a POW. Some of the 1500 Americans have been captive or missing longer than any U.S. serviceman was held prisoner during all of World War II.

The Geneva Convention code on treatment of prisoners of war requires the immediate identification of prisoners, impartial inspection of the prison facilities, the release of prisoners who are seriously sick, and regular correspondence between the prisoners and their families. The North Vietnamese have refused to comply with this code.

The plight of the prisoners has reached the hearts of Americans who in turn have expressed their concern for the humane treatment of those held captive.

Although the treatment of the prisoners may be improving, it will not have improved enough until these men are properly cared for, or better yet, released.

DEPARTMENT OF JUSTICE CRACKDOWN ON LOANS FROM NATIONAL BANKS FOR POLITICAL PURPOSES

Mr. CANNON. Mr. President, I invite the attention of the Senate, and particularly to those who will be actively campaigning for election in 1972, to a new and critical threat to candidates, political parties, and committees.

The Department of Justice, for the first time in the 45-year history of the Corrupt Practices Act, is moving in various States to obtain indictments against national banks for making loans for political purposes.

The Corrupt Practices Act defines political contributions and expenditures to include loans. National banks are prohibited from making political contributions or expenditures.

Until now, it has been uniformly understood that a bona fide loan, repayable on a day certain with interest, is not a contribution or expenditure.

For reasons known only to the Department of Justice, a new twist has been given to the meaning of the statute, and a bona fide loan, even a secured loan, is suddenly no longer a proper banking transaction, but has been transformed into a political contribution.

According to a news item published in the American Banker newspaper on Monday, March 8, 1971, the Justice Department intends to proceed not only against loans made to political organizations, but also against personal loans to individuals for use in their own campaigns, and loans to individuals for the purpose of making contributions or loans in aid of political campaigns.

Election law reforms are now under study in the Senate, and this subject of loans will be fully reviewed. But, in the meantime, I caution Senators to avoid this latest trap set for the unwary campaigner by the Department of Justice.

Mr. President, I ask unanimous consent to have printed in the RECORD the complete article from the American Banker.

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

JUSTICE DEPARTMENT TO QUESTION ALL POLITICAL LOANS

(By James Byrne)

NEW YORK.—The Federal criminal indictments returned Feb. 24 against four national banks in Ohio, charging that they had made illegal loans to political campaign organizations in state election races, could bring a drastic change in campaign financing and could well bring on a credit crunch for individual politicians each election year.

The burden of the Justice Department action falls most heavily on politicians. Thus far, it does not appear that the banking industry is being taken to task for systematically making what the Justice Department considers illegal loans. Though at least a dozen indictments eventually will be brought by Justice, probably including some in New York, indications are that most of the alleged violations occurred because of ignorance on the part of the bankers involved. The real threat from the government crackdown is against individual politicians who may find it difficult to borrow in an election year.

The four Ohio banks, which will enter pleas in their cases at 9 a.m. Friday in U.S. District Court in Columbus, are charged with making loans to political campaign organizations in contravention of Federal law. This is the first time the law has ever been invoked against national banks. But the Justice Department philosophy goes even further than moving against loans to political organizations.

After interviews with officials of the office of the Comptroller of the Currency and the Justice Department, the American Banker has determined that the Federal government has every intention of moving against two other types of loans vital to politicians: personal loans to individuals which are used in their own political campaigns and loans to individuals which are used for contributions or loans to aid political campaigns.

Justice makes it clear that a bank is not likely to be accused of wrongdoing in the latter two cases since they could well have been misled as to the purposes of loans they might have extended to customers of long standing.

Justice readily concedes that gathering evidence will not be easy, particularly when an important bank customer borrows money for "general expenses" and then uses it to make a contribution to the party of his choice.

But the knowledge that, at the request of the Justice Department the Comptroller is now forwarding to Justice any information about loans it finds at all questionable in regard to political campaigns is bound to make banks uncomfortable about lending to persons who happen to be politicians. None of the banks contacted by American Banker said they would refuse a loan merely because the applicant was a political candidate. On the other hand, some banks were not aware before that there was any problem about loans to individuals who are running for office.

Indeed, ignorance of the law appears to be what got the Ohio banks into trouble. Justice does not charge that the loans were willful—a condition that carries a much greater penalty under the criminal code.

If and when Justice charges in subsequent suits that national banks—or state banks in Federal elections—made illegal loans to individuals, the open-door policy bankers insist is the rule of the day for politicians as well as other customers could be changed overnight.

Loans to political figures, even before the current Justice Department push, were often looked upon by banks as more trouble than they were worth. They are referred to as "peanut" loans by one banker.

Even now, Chase Manhattan Bank NA, New York, with deposits of $21.2 billion, knows of no loans outstanding to any elected official, Federal, state or local. The bank insists that it treats politicians as it does any potential loan customers. Asked if this was merely a coincidence, a spokesman replied: "I suppose that's it." He said there have been loans to politicians in the past and he assumed there would be in the future.

But some politicians have said they will not accept without a fight the drying up of such a vital source of campaign funds, particularly at the crucial early stages when money demands are high but contributions have not begun to come in. One of these is Emanuel Celler, D., N.Y., chairman of the House Judiciary Committee and the only man remaining in Congress who was on the scene when the Corrupt Practices Act, forerunner of the present law, was passed in 1925.

"I don't think it would be right for the Attorney General to bring action against a bank which made a legitimate loan to a candidate for use in his campaign," declared Mr. Celler.

"Only the very wealthy could run campaigns if this were forbidden," he added. "I can't conceive of how Congress would ever have intended to prohibit bona fide loans to individuals for use in their campaigns.

"I certainly can't believe a jury would convict under those circumstances."

Mr. Celler and several other people who have had experience in the financing of political campaigns suggested that the matter probbaly would come down to the constitutionality of such a law and they were confident the law would be thrown out.

The statute under which the four Ohio cases are being brought has had a somewhat muddled history. The 45-year-old Corrupt Practices Act applied only to general elections. When the Taft-Hartley Act to regulate labor unions and their political activities was being debated in 1947, the statute was broadened to include primaries, political conventions and caucuses at which candidates for Federal office were chosen.

The section of the Corrupt Practices Act which made it "unlawful for any national bank or any corporation organized by authority of any law of Congress to make a political contribution or expenditure in connection with any election to political office" or for "any corporation whatever" to make an expenditure or contribution in connection with any election to a Federal office was expanded to include primary elections, political conventions or party caucuses at which candidates were to be selected. The entire section was moved to Title 18 of the U.S. Code, the criminal code, where it now is Section 610.

Kept in the Corrupt Practices Act but also inserted in the criminal code as "Section" and "expenditure" to mean, among other things, loans. Both sections are reprinted as Comptroller's Ruling 7440 with the notation: "Attention is called to the fact that under the statutes quoted above, loans as well as gifts are prohibited."

The only banks not covered by the law are state banks in state elections and the various state laws differ widely.

Penalties for willful violations can reach a maximum of a $10,000 fine or two years in prison or both. If the violation is not willful, the penalty is a maximum fine of $1,000 and one year in prison.

In Ohio, the Justice Department was able to obtain indictments on the following charges:

A single count against the $711.3 million-deposit Ohio National Bank, Columbus, for a loan of $3,603 in connection with the primary and general elections. The loan reportedly went to the campaign committee backing John D. Herbert, the unsuccessful Republican candidate for state auditor. The loan reportedly was used for the purchase of an automobile.

Four counts of Section 610 violations against the $674 million-deposit First National Bank of Cincinnati for four loans totaling $60,000. The loans were understood to have gone to the Citizens for Gilligan Committee, a group backing the successful Nov. 3 election of Gov. John J. Gilligan, a Democrat.

A single count against the $36.1 million-deposit First-Knox National Bank, Mount Vernon, for a loan of $2,000 in connection with the primary and general elections. The recipient of the loan was understood to have been the Knox County Republican Finance Committee.

Four counts of Section 610 violations against the $14.5 million-deposit Bellefontaine National Bank, for four loans totaling $20,000. These were understood to have gone to the Cloud for Governor Committee, a group backing the unsuccessful candidacy

of Ohio's former state auditor, a Republican, who ran against Mr. Gilligan in November. The loans took place during Mr. Cloud's successful primary election campaign and were backed by a $50,000 certificate of deposit at the bank of which Mr. Cloud is a director.

None of the candidates or campaign committee officials were indicted. Justice said it doubted that it could prove the candidates could have known about the loans and that they would not be targets "the first time around."

Neither Ohio National nor First National would comment on the charges. William A. Stroud, president of First-Knox, said the loan was made after the election to help the GOP Finance Committee pay off some bills to local merchants who needed their money. "We do not believe it violated the intent of the law," he said.

Robert Dunlap, a Bellefontaine attorney representing the bank, declined detailed comment but noted that the four loans totaling $20,000, were backed by a $50,000 CD, hardly a bad loan for a bank to accept. Though the loans technically were made to a campaign organization, the bank appears to have looked upon them as personal loans to Mr. Cloud.

The indictments are by no means the first under the law. In fact, state banks in North Dakota and Louisiana were indicted in 1970 for political contributions—not loans—in Federal campaigns. The $95.8 million-deposit Guaranty Bank & Trust Co., Alexandria, La., pleaded guilty and was fined $15,000.

Still pending are indictments against the $14 million-deposit First Western State Bank, Minot, N.D., and some of its officers and shareholders for allegedly using bank funds for political purposes. The case is not expected to come to trial until the fall of 1971.

The law is frequently used against nonbanking corporations and labor unions and just last week, W. A. Boyle, president of the United Mine Workers of America, was indicted for making illegal political contributions. Again, the alleged recipients were not indicted.

Justice officials say the department began its thrust against campaign spending abuses as a result of Internal Revenue Service cases developed in late 1968 which found corporations charging off to advertising expenses on their tax returns what in fact were political contributions. The cases were turned over to Justice and the string got longer and longer until it reached the banks.

Justice will not comment on why Ohio was picked as the scene of the first indictments but two factors appear to have had a bearing.

For one thing, the Republican ticket suffered greatly from bad publicity resulting from a loan scandal that involved illegal contributions but not the bank loans cited in the indictments. In addition, last October during the Congressional campaign, Wright Patman, D., Tex., chairman of the House Banking and Currency Committee, called for a probe by the Justice Department of alleged illegal loans and contributions by banks. Ohio was among the states in which he said banks were carrying on illegal political activities.

The reaction of politicians to the Justice Department move against loans generally was one of surprise that the law would be interpreted to prohibit personal loans to candidates. Most of those banks which would comment indicated they knew of the prohibition and regularly warned loan officers to be wary during a political campaign.

"I was surprised Justice hadn't moved into this before now," observed Robert H. Fabian, counsel for Bank of America NT&SA, San Francisco.

Mr. Fabian said his bank, the world's largest with deposits of $25.6 billion, regularly sends out during election years a reminder to loan officers of the prohibitions against any loans in connection with political campaigns.

He said policing personal loans is not easy and that it is almost impossible to catch a customer who states he is borrowing for a legitimate purpose but then uses the funds for political contributions or loans.

Banks, he added, probably would not be hurt by an outright prohibition on loans to politicians. "They usually are a peanut operation," he said. But Mr. Fabian emphasized that such a prohibition would not be fair to citizens who happen to be in political life.

A major Chicago bank which requested that it not be identified by name also has a written policy statement that circulates during election years to warn loan officers about the law.

Several large national and state banks declined to comment.

First National City Bank, New York, was among the banks that did not reply to a request for comment. One source at the bank, however, said it was unlikely that the $21 billion-deposit institution would do anything careless in lending to politicians in light of the embarrassment that it suffered in the summer of 1969, when it was revealed that the bank had made a personal loan to a politician which appeared to give him favorable treatment.

The $40,000 unsecured loan at the prime rate, a price usually not available to individuals, was made to Seymour Halpern, R., N.Y., a member of the House Banking and Currency Committee, who was heavily in debt to a number of banks. No charges of any kind were ever filed against Mr. Halpern or FNCB.

The Federal bank regulatory agencies have been aware of the law but the combination of the relatively small denominations of the loans and the previous disinclination of the Justice Department to prosecute caused the agencies to let banks off with warnings and orders to get the illegal loans paid off immediately.

C. Westbrook Murphy, deputy chief counsel for the office of the Comptroller, said, the Comptroller's examiners have cooperated fully with the Justice Department in its investigations of political lending.

Mr. Murphy said Justice requested that all cases of loans that might possibly be for political purposes be sent over for consideration and about three dozen were forwarded during the last campaign season. Those included some that probably will not result in indictments, Justice officials said.

Banking organizations generally had little to say about the indictments, though the executive manager of the Ohio Bankers Association expressed strong reservations about the results of the Justice Department efforts in this area.

"This appears to place in jeopardy the credit of every single candidate for whatever office," asserted O. E. Anderson. "I'm positive this was never the intent of the Congress but this will be the result."

Clifford C. Sommer, president of the American Bankers Association, said that even if the allegations against the Ohio banks are substantiated, "I am certain that the actions were inadvertent and not intentional."

Mr. Sommer, who also is president of the $29.1 million-deposit Security Bank & Trust Co., Owatonna, Minn., has been active in state politics, both as a State Senator and as chairman of other people's campaigns. He said he knew of no problem relating to bank borrowing. In fact, he said, "the occasion never had arisen to make us think of borrowing to finance a campaign."

Everett D. Reese, who is chairman of the ABA's committee on banking policies and practices, said he had no comment on the Ohio indictments. Mr. Reese, who is chairman of First Bank Group of Ohio, the largest bank of which is the $413 million-deposit City National Bank & Trust Co., Columbus, said the rules regarding political lending are part of the law and his committee has no intention of commenting on statutes which already are in effect.

Lewis K. McKee, chairman of the Bankers Political Action Committee, also declined to comment. Mr. McKee also is chairman of the $253.8 million-deposit National Bank of Commerce, Memphis.

There is little question that politicians have counted on bank loans and loans and donations from supporters who may themselves have borrowed from banks.

"I'll bet you that Justice could go out and get 100 indictments if they want to look at things that way," asserted Lyn Nofziger, who recently switched over from the White House to head public relations for the Republican National Committee.

Though neither he nor the officials of the Democratic National Committee would comment on the implications of the loan, it seems clear the two top party groups are well aware of the prohibition on their own borrowing from banks.

Robert L. Short, Minneapolis businessman and finance chairman for the Democrats during the last national election campaign, said he knew he had to borrow from individuals and he presumed some of them got their funds from banks.

"I felt that, if someone came in and wanted to make a contribution, I was under no obligation to inquire whether he got the money from a bank," explained Mr. Short, who also is president of the Washington Senators, a team in the Eastern Division of the American League of Baseball.

As for individual candidates, said Mr. Short, "the smaller they are the more, they go into hock themselves. I would assume this means they go to banks."

Mr. Short said he criticized during the campaign the election financing laws of the country which, he said, make campaign financing "a sham."

Mr. Short, who is also a lawyer, said he thinks any law forbidding loans to individuals for campaign funds could probably be attacked on the ground that it is unconstitutional.

"If we are going to have a democratic society," he said, "we must allow candidates to take advantage of the institutions of that society. Banking is one of those institutions."

MORTGAGE CREDIT INSTITUTIONS

Mr. SPARKMAN. Mr. President, one of the important factors which has enabled housing to survive as a viable industry during the recent critical credit crunch period has been the great reform legislation by Congress involving mortgage credit institutions.

Particularly important to the industry and the homebuyer has been the privatization of the Federal National Mortgage Association, which was permitted to become a private corporation with a public purpose in the Housing Act of 1968.

Fannie Mae's president and chairman during the important transition period from Government-owned to private status was Raymond H. Lapin, who is now President of R. H. Lapin & Co., Inc., a San Francisco mortgage banking firm.

Mr. Lapin's efforts during this period were enormously beneficial to the home mortgage market. He initiated innovative plans and programs that effectively

held up the FHA and VA mortgage market as well as the many important subsidy programs enacted by the Congress.

It is fitting that the industry he served, housing and home finance, should pay him tribute. Four major national trade associations in this field have expressed their appreciation for Mr. Lapin's work. I ask unanimous consent that the texts of these resolutions be printed in the RECORD.

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

RESOLUTION

Whereas, Raymond H. Lapin, during his term of office as President and Chairman of the Board of the Federal National Mortgage Association, guided the corporation during a most critical and historic time for the home finance market, and

Whereas, Raymond H. Lapin, as President and Chairman of Fannie Mae, was instrumental in establishing new programs and policies that greatly aided the home mortgage market, and

Whereas, Raymond H. Lapin, throughout his leadership of Fannie Mae, pursued a course which enhanced the savings and loan industry, and

Whereas, the programs introduced for the home mortgage market as a result of Mr. Lapin's initiative and imagination are fast becoming an integral part of mortgage finance, including the new secondary market for conventional mortgages—which has long been sought by the National League, the FNMA auction; mortgage backed securities, which has opened up vast new sources of mortgage money; and the increased efficiency and capability of FNMA to help home financing institutions during tight money periods;

Now, therefore, be it resolved that the National League of Insured Savings Associations does hereby commend Raymond H. Lapin for his great efforts and outstanding achievements as President and Chairman of the Federal National Mortgage Association.

RESOLUTION COMMENDING RAYMOND H. LAPIN

(Resolution unanimously adopted by MBA's Board of Governors on October 28, 1970)

As President and Chairman of the Board of the Federal National Mortgage Association (FNMA), from July 1967 to December 1969, Raymond H. Lapin guided FNMA through a most critical and historic time for the home mortgage market.

Whereas, Mr. Lapin was instrumental in establishing new programs and policies that greatly aided the home mortgage market, and

Whereas, Raymond H. Lapin, throughout his leadership of FNMA pursued a course which stressed the responsibilities and enhanced the professionalism and the dignity of the mortgage banking industry, and

Whereas, the programs introduced for the home mortgage market at FNMA during Mr. Lapin's leadership have become an integral part of mortgage banking, including the FNMA auction, rather than arbitrarily set Government prices; the mortgage-backed securities plan, which has opened up vast new sources of mortgage money; the tandem plan, which has enabled the Federal Treasury to allot far fewer dollars to produce far more housing for low-income families, and perhaps most important, the "privatization" of FNMA, which has already proved its worth by its ability to increase FHA and VA housing starts during what was otherwise an adverse period for housing, and which has resulted in greatly increased efficiency of the corporation via the private enterprise route that has always been the backbone of our nation;

Be it resolved that the Mortgage Bankers Association of America does hereby commend Raymond H. Lapin for his outstanding achievements as President and Chairman of the Board of the Federal National Mortgage Association.

RESOLUTION COMMENDING RAYMOND H. LAPIN

Whereas, Raymond H. Lapin, as President and Chairman of the Federal National Mortgage Association, was instrumental in establishing the free market system in his operation of a secondary market for FHA-insured and VA-guaranteed mortgages; and

Whereas, Raymond H. Lapin, while President of FNMA, encouraged and guided the agency on a course which led ultimately to its transfer to private ownership; and

Whereas, Raymond H. Lapin, throughout his leadership of FNMA, encouraged and guided the National Association of Real Estate Boards, and other private industry groups, on a course which led to the enactment by Congress of a change in FNMA's charter authorizing the creation of a secondary market for conventional loans, a proposal which NAREB had urged upon the Congress for many years; and

Whereas, Raymond H. Lapin contributed materially to the establishment of the Government National Mortgage Association and the introduction of the mortgage-backed security plan, as well as the tandem plan for diverting money to housing for low income families; and

Whereas, his leadership of FNMA during the housing industry's greatest crisis in this generation enabled the FHA and VA sectors of the market to increase their housing starts; now therefore

Be it resolved by the National Association of Real Estate Boards that Raymond H. Lapin be and he is hereby commended by the nation's Realtors for his outstanding achievements during his tenure as President of the Federal National Mortgage Association.

PROPOSED BY THE NAHB MORTGAGE FINANCE COMMITTEE AND ADOPTED UNANIMOUSLY BY THE NAHB BOARD OF DIRECTORS, HOUSTON, TEX., JANUARY 18, 1971

The Mortgage Finance Committee asks that the Board of Directors of NAHB express the home building industry's deep appreciation for the efforts of the Federal National Mortgage Association in keeping a steady flow of money to the housing market during the tight money period of the past several years.

FNMA's efforts, made possible by its new concept of being a private corporation with a public purpose, have gone far to aid home builders. This is so in many respects—including the commitment auction, which has given new construction a high priority; the tandem plan, which has aided low and moderate income subsidy housing programs; and the new conventional mortgage secondary market, for which NAHB was a vigorous supporter.

These, and other innovations at FNMA, have made that corporation important to the home builder. It is recommended that the appreciation of the NAHB be expressed for the innovative work of the first president of the new FNMA, Raymond H. Lapin, who brought the agency through the critical transition phase and introduced many of the concepts mentioned above, and to the current president, Oakley Hunter, for his continuing leadership and innovation, and to the Board members who have served so diligently and skillfully with both presidents.

UNCOMMON NEUTRALITY

Mr. DOLE. Mr. President, I wish to talk again today about an organization called Common Cause which was organized and is run by John Gardner, a Secretary of Health, Education, and Welfare in the Johnson-Humphrey administration and a nominal Republican.

Because of this dual identity, Mr. Gardner has been able to claim for himself the respect and confidence of leaders in both political parties.

Now, however, I believe it is time for the leaders of those parties to take a hard look and see if Mr. Gardner and Common Cause are what they claim to be or if, in fact, they are something entirely different.

Mr. Gardner disavows any political ambitions. At the same time, he tells us Common Cause is a nonpartisan citizens' lobbying group aimed only at building a better America.

Believing these things, many Americans of both parties have contributed to Common Cause.

Some of the rest of us who also want the things Mr. Gardner professes to want—peace, a liveable environment, effective government within the democratic process—question, however, whether Mr. Gardner is being entirely forthright or completely nonpartisan.

The latest cause for common concern is Mr. Gardner's admission that he has allowed the Democratic National Committee to use his mailing list for fundraising purposes.

I know that Mr. Gardner has proclaimed public embarrassment over the list swap, and he claims it will not happen again. But the question remains, Is he embarrassed because he goofed or because he was caught? Is it hard to say.

But the fact is that John Gardner is taking Common Cause on a hard left road. In Vietnam he is traveling with those who demand a date certain for surrender even though President Nixon is clearly and surely winding down that war in a manner that will allow the South Vietnamese to defend their own independence.

Domestically he sides not with those who seek to work out the compromises over policy and with tradition, but with those who take all or nothing approaches that are so divisive to our society.

It is clear to me, Mr. President, that Common Cause is surely and not very slowly becoming the lobbying arm of the leftward movement in these United States.

Of course, Mr. Gardner has the right to adopt any point of view he chooses and to lobby for any cause he prefers. However, I believe that many persons may have contributed to Common Cause before they knew specifically what Mr. Gardner had in mind. I believe also that many persons are on Mr. Gardner's list of names who may not wish to be there any longer.

In fairness to those people, I call on Mr. Gardner to make his list available also to the Republican Party so that we, too, can solicit the people on that list.

Surely, in the interests of fair play, Mr. Gardner cannot object to making his list available.

As a citizen concerned with making democracy work, he has a chance now to help make it work; he has a chance to let the Republican Party present its

views, as he has let the Democrats do, to the members of Common Cause.

Truly this would be a bipartisan action. Surely it would give those on the list the opportunity to see whom they want to make common cause with—the Democrats or the Republicans. And that is how it should be.

As a Senator and as a concerned Republican, I will be waiting to hear from John Gardner.

SUPPORT OF CRANSTON AMENDMENT TO S. 31

Mr. WILLIAMS. Mr. President, during the past 2 years our unemployment rate has risen precipitously from 3.4 to 5.8 percent, adding more than 2 million persons to the jobless rolls. Since January 1969, unemployment has increased by a staggering 82 percent.

All sectors of our economy and all age groups have been affected in one way or another, whether in the form of large-scale unemployment, mass layoffs, shorter workweeks, salary cuts, or just slow business. But older workers and their families have been especially hard pressed. Today nearly 1.1 million individuals 45 and older have lost their jobs. Approximately 365,000 have been looking for work for at least 15 weeks.

In recent months, alarmingly large numbers have given up the search for jobs, after prolonged periods of unemployment.

For many of these individuals, the Emergency Employment Act can provide a new and effective way to get off the unemployment rolls and back on to the payrolls.

Particularly important for these so-called older workers, the Cranston amendment will assure that they will have an equal opportunity to participate in the public service employment programs established under this bill.

Once unemployed, the middle aged and older worker runs the greatest risk of being without work for comparatively long periods of time. With the tight job market now, many are finding it impossible to locate suitable employment.

Yet, there is an urgent need for expanding community services in virtually every locality in this Nation. And public service employment can provide meaningful jobs for these individuals, as well as an effective means for communities to serve their citizens more efficiently.

With unemployment reaching critical proportions, prompt enactment of the Cranston amendment to the Emergency Employment Act is urgently needed now.

For these reasons, I urge the approval of this measure by the Subcommittee on Employment, Manpower and Poverty of the Committee on Labor and Public Welfare.

RURAL DEVELOPMENT—A GENUINE COMMITMENT?

Mr. HUMPHREY. Mr. President, I commend the President's message on rural community development for its frank acknowledgment of the profound "loss in human resources" affecting rural America and the "vital stake" of our cities in the development of our non-metropolitan areas. With 20 million Americans leaving farms over the past 30 years, and with almost two-thirds of America's substandard housing and one-half of its poverty located in rural areas, there can be no further delay in establishing a national commitment to the rebuilding of rural America.

The President has said that the Federal Government must "rededicate itself to providing the resources and the creative leadership" that America's rural development needs demand. I applaud the spirit of this message, but I strongly question whether the measures it proposes can even begin to do the job.

I am concerned that while the President states that "rural Americans deserve a full share in the Nation's prosperity and growth," they are still not being accorded a rightful share of Federal assistance allocated for essential public services and the protection of human and economic resources. For instance, while the Federal Budget proposes a modest increase in the total funding of U.S. Department of Agriculture programs, there is a sharp decrease in projected expenditures for commodity programs, even though the parity ratio decline has had a major adverse impact upon our agricultural economy. Yet the President contends that agriculture "remains one of the keystones of our national economy."

The task of comparing fiscal 1971 authorizations and appropriations for rural programs against revenue-sharing funds proposed for the 11 programs in the President's message, is complicated by an inadequacy of specific details. But it is clear that substantially reduced funding is being requested for such programs as rural water and waste disposal facilities grants and the rural environmental assistance program.

We can hardly be encouraged by an administration commitment to rural community development of $1.1 billion, along with remaining grant-in-aid programs and such funds as the States may allocate under general revenue sharing, when we look at a fiscal 1972 budget outlay projection of over $229 billion.

But beyond this, we ought to question sharply the relaxation of State responsibilities under this special revenue-sharing proposal. True, a statewide development plan is called for, and the Secretary of Agriculture is to make a general audit each year, while shared funds are to benefit rural people, and an allocation formula, related to rural population and per capita income, is mentioned in the President's message. But that is about the extent of Federal oversight in assuring that our taxpayer dollars are well spent and are spent on rural development priorities.

Even more disturbing is the explicit withdrawal of a State maintenance of effort requirement. In fact, there is a full swing in the pendulum, away from the alleged limitations imposed by State matching fund requirements, and toward the explicit suggestion that all Federal funds for these 11 vital programs may be used by the States to meet matching share requirements of remaining Federal programs that contribute to rural development. So much for the Appalachian regional development program, the cooperative agricultural extension service, rural water and sewer grants, and the agricultural and Great Plains conservation programs—to name a few of the programs that could be emasculated in the name of promoting State responsibility for rural development.

And it is quite clear that this message constitutes a regression from the clear recognition that the needs of rural America are basically regional in nature. The President proposes to replace what he regards as Federal fences blocking the path to rural development, with State fences. Yet our States have long recognized that such problems as endemic poverty, water resource protection, pollution, and metropolitan sprawl know no State boundaries, and that the essential requirement in America is the planning of our national growth, under a balanced urban and rural development policy.

Finally, I would point out that this message must be read in the context of the President's proposals for the reorganization of the executive branch. The message states that rural community development would eventually be combined with the urban community development program under the proposed Department of Community Development. I can only see a diffusion of rural America's priorities under this plan, following upon the heels of a relaxation of requirements for a maintenance of State effort in the revitalization of our rural areas.

Mr. President, I strongly believe the Senate must give the most searching examination to the administration's actual commitment to rural development. As chairman of the Agriculture Subcommittee on Rural Development I intend to give the fullest attention to these proposals and to their credibility on the basis of the present record of Federal rural assistance program operations. I am hopeful that through projected regional and Washington hearings by the Rural Development Subcommittee, we can develop a legislative program that establishes an imaginative and effective forward thrust in national policy that will, in fact, meet the critical needs of our rural families and their communities. I intend to initiate this program in the near future with the introduction of legislation providing for the major financial commitment required for a nationwide program of domestic development.

GNMA HOUSING PROGRAM CELEBRATES SUCCESSFUL YEAR

Mr. SPARKMAN. Mr. President, "Ginny Mae" has completed its first full year of operation, and it is appropriate that recognition be given to this important event.

The "Government National Mortgage Association" is the more formal name for this corporation, which was created

by the 1968 Housing Act to bring additional capital into the financing of homes by the use of mortgage-backed securities. On February 19, 1970, GNMA transacted its first financing business. I am pleased to report that the infant is healthy and growing.

In terms of volume, GNMA has sold $1.3 billion in bonds and $600 million of the "pass-through" type of securities. It now has an additional $1.4 billion in commitments. The program, therefore, accounts for about $3.3 billion in the financing of new housing for the people of this country.

It is estimated by the President of GNMA, that this has attracted more than $1 billion to the housing field which would not otherwise have been so invested. This would account for the building of about 180,000 dwelling units which would not otherwise have been built.

I understand that brokerage houses are finding considerable demand for GNMA securities on the part of institutional purchasers, so that we may be seeing the beginnings of a sound national secondary market for housing capital as a result of the GNMA program.

It is gratifying to us in the Congress that this program is fulfilling the hopes we envisioned for it in formulating the 1968 Housing Act. I believe that the work of Mr. Woodward Kingman, President of GNMA, and his able General Counsel Austin Frum, in skillfully implementing this program merits the commendation of all concerned.

Our wish is that the benefits of GNMA securities will continue to be spread to all parts of the country and to an increasing number of independent and small builders, so that all of our citizens may benefit from an increasing supply of homes at more reasonable cost.

Based on GNMA's first year of performance we appear to be heading in that direction, and I am glad to offer my birthday congratulations.

I ask unanimous consent that a release describing the details of this program and its accomplishments be printed in the RECORD for the information of those having an interest in the housing field.

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

PENSION FUNDS ACTIVE IN HUD–GNMA MORTGAGE-BACKED SECURITIES PROGRAM

During its first year of operation, sales of "Ginnie Mae" mortgage-backed securities provided $1.9 billion of new financing for housing, it was reported by the Government National Mortgage Association of the U.S. Department of Housing and Urban Development.

An additional $1.4 billion in applications and commitments to guarantee the securities means that a total of $3.3 billion financing for 190,000 units of new construction will have resulted from the program's activities since the first issue of securities a year ago.

Woodward Kingman, President of GNMA, which administers the program, said that a wide spectrum of investors have purchased the securities. These include many who have not been active in mortgage investment, such as State, municipal, union and corporate pension funds, as well as credit unions, insurance companies, private trusts and foundations, individuals and even a perpetual care fund for a cemetery. Over a third of the total sales of the GNMA securities have been to these new sources of financing for housing.

The program, designed to channel new funds into mortgage financing, was launched February 19, 1970, with a $2 million sale of securities.

Involved in the program are the pooling of mortgages by private lenders and the selling of GNMA-guaranteed securities against them.

Of the total amount of securities sold and delivered in the first year, Mr. Kingman said, $1.3 billion were of the bond type, and $600 million were of the "pass-through" type. The additional $1.4 billion in applications and commitments is for the guaranty of "pass-through" securities backed by pools of mortgages which are still in process of origination by private lenders.

"Pass-through" securities are those which provide for payment of monthly principal and interest from pooled mortgages to investors. Bonds are similar to other bonds, with interest paid semi-annually and principal repaid at maturity.

"The volume of the first year's operation of this brand new program," Mr. Kingman said, "indicates the very valuable function it is playing in support of housing. This program is certain to become a major source of regular financing assistance to housing, which will supplement existing funds.

"This operation, a fine demonstration of the effect of good cooperation of the private sector and Government, is especially valuable in a period of credit stringency such as has just been experienced."

A number of features of the securities make them attractive to investors, Mr. Kingman said.

The securities are competitive in yield with high grade corporate bonds.

They are absolutely safe, carrying the GNMA guaranty with the full faith and credit of the United States.

They enable pension funds and others to place their funds in housing without the paper work and documentation involved in straight mortgage investment.

They present an excellent opportunity for pension funds to invest in housing voluntarily and not involuntarily as has been suggested in some Congressional proposals.

The securities relieve the investor of any problems which can arise in the case of mortgage payment delinquencies, since the Government guaranty assures the investor of the regular return of principal and interest, whether or not collected from the mortgagors (borrowers).

They enable an investor to designate, in the case of the "pass-through" security, the area or State from which the pooled mortgages are to be drawn.

Mr. Kingman said that another recent development has further enhanced the attractiveness of these securities. This is the existence of a secondary, or resale, market for the instruments, thus providing a growing amount of liquidity for them.

PEACETIME TRANSITION ACT

Mr. HUGHES. Mr. President, it is a pleasure to join with the distinguished Senator from South Dakota (Mr. McGOVERN) and the distinguished Senator from Maryland (Mr. MATHIAS) in sponsoring the Peacetime Transition Act.

This legislation is long overdue. Our whole society has suffered because action was not taken on earlier versions of this same bill, which I was privileged to cosponsor.

We all recognize that troop levels are being reduced in Indochina and some phases of our industrial production for military purposes here at home have been cut back. For these actions, the President deserves the commendation of all Americans.

While I do not believe that our present military policies are leading to total disengagement, I am convinced that total disengagement will come in the not-too-distant future—for the simple reason that American public opinion will compel it.

In any event, the time has long since passed that we should have begun preparing in a massive way for conversion to a peacetime economy.

Since President Nixon assumed office, over 1,300,000 workers whose jobs were attributable to defense spending have been thrown out of work. Despite the clear evidence of growing unemployment, the administration shrugged the problem off as inevitable in the transition to peacetime.

I reject that assumption. A society rich enough to lure thousands of able men and women into defense and aerospace production is surely rich enough to see that their talents and training are not wasted when we no longer need their current outputs.

I reject the notion that we can bail out giant firms and inefficient railroads with Federal revenues but that we cannot help the workers whose jobs have been eliminated by public policy decisions.

If the administration is serious about creating a peacetime economy, it must face squarely the problems caused by the transition to lower defense budgets. We must never forget that the invisible hand of government indifference is squeezing and crushing workers, their families, and their communities.

So far the only action has been in the unemployment lines. What we need is retraining and reemployment.

Workers have been the forgotten men of this so-called transition to a peacetime economy. The present bill will insure that they will not be forgotten in the future.

Peace is not merely the absence of war; it is also the presence of abundance and opportunity to rebuild and renew the neglected corners of our society. Planning for peace should now be as energetic as our planning for war was in the past.

I do not claim—nor do the chief sponsors of this bill claim—that this one act is sufficient to meet the many facets of this problem. We also need emergency retraining and job creation legislation. We need immediate and adequate assistance to those who have already lost their jobs.

When we look to the future, however we see the need to begin now to plan for the conversion of war production to peace production.

We may be Vietnamizing the warfare in Indochina; we may be Vietnamizing the defense budget. But we must Americanize the transition to peace. This bill relies upon the profit motive—the desire to earn the 12½ percent of pretax profits from defense contracts which would be set aside in a conversion fund—to encourage planning and conversion for peacetime. In this way we are using the

free enterprise system to combat the problems of that system.

This bill is a first but necessary step in the process of reordering our national priorities. As time goes on and as we reduce defense spending to the minimum required for national security, we will have to devote increasing resources to our urgent domestic problems.

The shopping list is ready. Our States need help to solve their problems. Our cities and towns need the means to renew and regenerate themselves. Our air, our land, and our waters need protection. And most important of all, our people need the means to overcome hunger, poverty, discrimination, and growing lack of confidence in their institutions, governmental, and corporate.

I earnestly hope that Congress will act soon on this important and far-reaching measure, the Peactime Transition Act, so that we can move with increasing momentum to build a successfully functioning society at peace.

THE 40TH ANNUAL CONFERENCE OF NATIONAL HOUSING CONFERENCE

Mr. SPARKMAN. Mr. President, in the early part of this week, the National Housing Conference held its 40th annual conference here in Washington, D.C.

The National Housing Conference is one of the most outstanding and effective public interest organizations for housing in our Nation. Founded in 1931, it was the earliest organized national group in support of Federal assistance for the elimination of slums and the provision for decent housing for all of our people. Over the years, it has been a consistent and forceful promoter of the public interest in housing and urban development programs.

I have always welcomed the advice and counsel from this group in relation to housing for the poor and lower-income families. I attended the NHC meeting this year and spoke at the opening session as I have done every year for as far back as I can remember.

One of the outstanding speakers was one of our most famous colleagues, the junior Senator from Minnesota and former Vice President, HUBERT H. HUMPHREY. I ask unanimous consent to have Senator HUMPHREY's speech before the National Housing Conference printed in the RECORD.

Another very fine speech was given at the opening session by the conference director, Mr. Milton Semer, a former staff member of the Senate Banking and Currency Committee and formerly General Counsel of the Department of Housing and Urban Development. I ask unanimous consent to have Mr. Semer's speech printed in the RECORD.

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

REMARKS BY SENATOR HUBERT H. HUMPHREY

"A decent home in a good neighborhood for every American should become a reality." I strongly believe this policy statement by the National Housing Conference must be an absolute commitment by the United States government as well.

What deeply concerns me is the stark reality of a degrading and seemingly hopeless living environment that confronts millions upon millions of our people today. Right now, by very conservative estimates, there are almost 7 million substandard housing units in America—one-tenth of all our housing. For millions of American families this means broken plumbing, crumbling walls and rotting floorboards, little or no heat in winter, squalor, personal danger, and infants attacked by rats or dying from eating lead paint chips from cracked walls.

And much of what is labelled "standard" housing falls far short of the mark. We know, for example, that some four million standard housing units are overcrowded.

Too often, the assumption is made that when we talk about miserable living conditions we really mean simply the urban ghetto. Certainly, there is a direct and vicious equation here. But it must never be forgotten that two-thirds of America's inadequate housing is in rural areas, where almost half the Nation's poor people are also to be found.

We as a Nation should be charged with criminal neglect for permitting so many of our people to be trapped in this dungeon of hopelessness. They are imprisoned as much by their consignment to a drab, decaying, constantly threatened, and isolated "condition of living," as by their inability to obtain an adequate income, necessary food, decent health care, essential educational opportunities, and the other basic rights of humanity that have perhaps been more readily identified. Living in isolation cells, learning only the harsh rules of the cell block, chained by despair, they struggle to exist behind walls made higher each year. For too long, our Nation's actual creed has been "out of sight, out of mind"—a policy set aside only by riots in the urban penitentiary or by revelations of extreme deprivation in the "outland" compounds of America.

Yes, America is on trial for what is literally a denial of life. We have been indicted for a failure to respond with the full measure of our resources and abilities to those who need our help if they are to stand up and breathe free and live a decent and meaningful life.

It took us almost twenty years to put flesh on the bones of a national policy to utilize these public and private resources. In 1949, we said that every American family should have a decent home, and in 1968 we spelled out the ten-year production and rehabilitation requirement of 26 million housing units. This conservative estimate included six million dwellings for low and moderate income families to which, let it be remembered, we gave the highest priority. That meant we would at least have to double the on-going total production rate.

How has that policy been implemented over the past two years? First, it was announced that a more "realistic"—meaning lower—level of annual housing starts would be the target. Then, in 1969, with a national housing shortage of over 2 million units—the worst shortage since World War II—only 1.4 million new units were started. Last year, the story was repeated.

And we must face the simple fact that the increase in housing starts expected this year will be primarily the result of a reversal of the Administration's across-the-board tight money policy whose major impact was absorbed by the housing industry, while mortgage interest rates skyrocketed.

Recognizing the imperatives of creating a suitable living environment for America's families, Congress has enacted historic legislation over the past several years. In 1966 in the Model Cities Act, it spread before the Nation the battle plan for a comprehensive attack upon the critical housing, education, health, unemployment, public facilities, and redevelopment problems confronting our cities. In 1968 it launched what has been called "the most decisive advance" to date for achieving the expansion of the housing supply for low and moderate income families. Authorizing almost one-and-a-half million housing units over three years under the Section 235 home ownership and Section 236 rental housing programs, it later addressed financing problems through the Tandem Program of GNMA mortgage purchases. Responding directly to the "credit-crunch" of the past two years, Congress substantially increased the borrowing authority of the Federal Home Loan Bank Board, mandated selective and flexible monetary and credit controls; and passed the Emergency Home Finance Act.

Lastly, and of particular importance at this time, the Legislative branch has continuously pressed the Executive branch to fund housing and urban development programs at their authorized levels. This is where the battle is now joined. Congress has had to confront a Budget that defies true comparative analysis. But it has ferreted out the simple fact that promises are not being kept and Executive responsibilities are not being fulfilled. Our cities are in desperate need right *now* of funds already appropriated but impounded by the Administration—to be specific, $1.5 billion for public housing, urban renewal, Model Cities, water and sewer programs, and mass transit. And Fiscal 1971 "outlays" are further reduced by non-utilized contract authorities totalling $244 million for assisted housing, rent supplements, neighborhood facilities, and comprehensive planning. Yet the backlog of demand for urban renewal assistance alone is nearly $3 billion, and a similar need is estimated for the upgrading and construction of water and sewer systems. And we can expect no improvement in the totally inadequate level of 90,000 public housing starts if this Budget hold-back goes unchallenged.

Apparently, the only certainty is that these Budget outlay figures remain subject to change. The recent restoration of the $1.47 billion ceiling in the rural housing program under the Farmers Home Administration, after an outpouring of strongly justified public protest, is a case in point.

You can also be certain that Congress will give the most intensive scrutiny to the President's "community development" revenue-sharing proposal. It has to be said that the track record for this entry is not very inspiring. Promises for future help cannot be believed by our cities if rightful demands for help *today* go unmet because funds have been frozen by the Administration. And our mayors are rightly disturbed by the fact that while the Congress has authorized $3.75 billion for the five basic community development programs, less than half of that is provided in the Fiscal 1972 budget. A "reverse" revenue sharing has also been spotted in this Budget—for example, in the Community Action and Summer Youth programs, where actual cutbacks will be coupled with a requirement that local governments bear an increased share of the cost. I cannot but conclude that a wrong turn has been taken on the road to strengthening state and local governments.

Let it be clear, however, that I favor the concept of revenue sharing, coupled with an equitable federalization of public assistance programs. But I believe that the bill I have introduced jointly with Representatives Reuss offers a better approach than that of the Administration because it *supplements* ongoing housing and urban assistance programs, commits specific funds, presses local government to adopt modernized and efficient procedures, and guarantees the pass through of funds to the cities.

But the hard fact remains that we still have no leadership toward the establishment of a national urban strategy to define basic social, economic, demographic, and environmental objectives to guide our urban, suburban, and rural growth. And at root, this demands political will and action. Only a program of great scope and vision can gen-

erate the comprehensive support which is essential to the solution of the housing and urban dilemma. This will not happen without political action by our elected leaders and representatives on a scale that reflects the magnitude of the crisis.

Hard cash is an immediate, essential requirement. In a time of fiscal crisis, our states, cities, and towns desperately need help, not promises; effective delivery of Federal services, not their repeated reorganization. I contend, therefore, that the full funding of Federal housing and urban development programs must be the first priority. At the same time, we must examine the need for further improvements in these programs—for example, cutting red tape and disparate reviewing processes in the channeling of Model Cities applications rather than terminating the program itself; and deepening subsidies and reducing financing costs in low and moderate income housing as the most effective means of helping these families achieve a decent living environment.

But we must also be molding new concepts to achieve an effective partnership of public and private resources in the financing of our housing and community needs. I have proposed the creation of a National Domestic Development Bank financed through the subscription of public and private funds. The bank would underwrite the special risks attendant upon solving our most critical urban and rural problems—low-cost housing, for example. Securities sold by the Bank would also attract private investment capital for the revitalization of our cities, the economic development of non-metropolitan communities, and the creation of carefully planned new communities. Regional banks would be established to put decision-making and expertise at the local level, applying first-hand knowledge to the defining of priorities and the generation of resources. Community participation would be encouraged through board representation and direct equity investment of the people.

We must also address the central problem of land costs confronting lower income housing construction and community redevelopment. I believe we must develop Federal financing and assistance program incentives directed at controlling the cost and planning the most beneficial use of land, which is rapidly becoming our most vital resource in an "urbanizing" Nation. It is certain that Federal incentives, as well as assistance to vital community services, such as education, must be employed to bring high and fundamentally regressive property taxes under control.

Nor can we be satisfied any longer with simply explaining the many reasons why low income housing starts remain at a depressed level. It is high time that we implemented new initiatives through promoting scattered and multiple-income-level housing developments, allied with supportive services and needed community facilities, as well as accessible job opportunities. And in addressing the broader problem of living in a decent environment, I believe that metropolitan housing development contracts should now properly include satellite city centers, good schools, health clinics, and cultural and self-development opportunities, as well as the central location of shopping centers, parklands, and recreation areas and facilities.

These are some of the concepts on which I shall be working over the coming months. They are not visionary, for the demands of tomorrow are already upon us. But they do demand vision and a heavy financial investment, both public and private, commensurate with the need. This is a job for all of us and it is an urgent job. If our cities and towns fail, so in the end will our Nation.

And yet, to return to my opening remarks, what is at stake today is not just our housing and our urban condition—but the *human* condition. And it is the personal investment of each of us that will in large part determine whether America continues to deny the richness of human existence to so many people, or at last offers the opportunity to hope and to dream to *all* its citizens.

KEYNOTE ADDRESS BY MILTON P. SEMER

Mr. Chairman, Senator Sparkman, Mayor Washington, and members and friends of the National Housing Conference:

We are gathered here today, in our fortieth year, in circumstances which permit of a rare choice of moods.

For instance, if your temperament inclines toward euphoria, the President's Message on Special Revenue Sharing for Community Development says that in due course you will get more, better, faster, and cheaper. If so, don't knock it. There is little enough joy in this world, and you should not too readily cut back that which comes your way.

On the other hand, if you are inclined toward gloom, the President's Message is a sufficient launching pad for as much gloom as you would care to entertain over this weekend. For the Presidents' proposals are mysterious, even inscrutible.

But, the one thing of substance that we can disentangle from his Message is that he doesn't really propose to do anything more about the problems that confront us in the troubled field of urban difficulties than we have been doing before.

If you feel the need for a position lying somewhere between these poles, go to a position of your choice; and you will be able to find a plausible basis for it in official Administration pronouncements.

Unhappily, as we meet, we have been privileged to examine only the Message, which declares the mood; but we do not yet have the bill, which one assumes will declare the means. Never mind. We should at least reflect about the Message which is now at the printer in the process of becoming a House document.

As promised, the President has proposed a revenue-sharing plan, the objective of which is to redress the balance between the fund-raising capacity of the national government and that of a chaotic variety of local jurisdictions. Specifically—and of special interest to this assembly—he recommended the day before yesterday a *special* revenue-sharing plan for community development. The substance of this special plan will not be fully revealed until at least next Wednesday, when the technical details will be unveiled. But a few tentative observations are warranted on the basis of what has been said up to now.

First of all, the Administration appears to be drawing distinctions in the general philosophy of revenue sharing which are not altogether self-explanatory. Some broad areas of public concern are deemed to be within the sphere of national interest and policy: For example, health and welfare. Others are considered to be matters primarily of local concern: For example, urban community development.

Official philosophy so far has not explained why an individual's blood cholesterol level is a matter of national concern, while his opportunity to live in a suitable environment and his capacity to reach his place of employment by tolerable means are not national, but local concerns.

But, let that pass for the moment. Perhaps we can get enlightened by inspecting the difference between *general* revenue sharing and *special* revenue sharing. Since very few who are here had the opportunity to participate in the press conference disclosure of these matters last Friday, I have taken the liberty of constructing a hypothetical question-and-answer format dealing with this question. In it, the questions can be assumed to be propounded by any of us. It would be presumptuous and unfair to declare that the Secretary is Mr. Romney—a conscientious public servant for whom we all have the highest regard. Therefore, for purposes of this hypothetical question-and-answer exchange, the Secretary should be assumed to be an appropriate Secretary, or even the Secretary's secretary. Working from the text of the President's Message, therefore, it could go something like this:

Q. Mr. Secretary, what is the difference between general revenue-sharing funds and special revenue-sharing funds?

A. General revenue-sharing funds are simply added to the total revenues of the local government and can be used for any purposes for which the local government is authorized to spend money. Special revenue-sharing funds can be used only for the particular purposes for which they are made available—in this case, for urban community development programs.

Q. For what purposes, then, can special revenue-sharing funds for urban community development be used?

A. They can be used, as the President's Message makes eminently clear, for any activity authorized under the four urban community development programs covered by the urban community development proposal.

Q. That includes model cities?

A. Certainly.

Q. For what purposes can model cities funds be spent under existing law?

A. Under existing law, model cities funds can be spent for any purposes within the powers of the local government involved, provided that they are part of a model cities plan proposed by the community and approved by the Secretary of HUD.

Q. How would the urban community development proposal change this?

A. The local community is the best judge of its own needs. Therefore, it would no longer be required to submit a detailed plan, and the requirement of the Secretary's approval would be eliminated.

Q. So, assuming that the city government wanted to take a model cities approach, for what purposes could urban community development revenue-sharing grants be spent?

A. For any activities which the local community determines are most appropriate to its circumstances and needs.

Q. In that case, what is the difference between the general revenue-sharing and special revenue-sharing funds?

A. Well, that is a technical question.

And, indeed, it is a technical question, but it's one with which we might well concern ourselves. Now that this proposal has been formally laid before the Congress, one way of looking at it is that this proposal would reverse the history of the last half century. It would declare that the general character of urban growth, and the health and viability of our urban communities, has ceased to be a matter of national concern and is to be considered in the future as a matter solely for random local decision. Perhaps this is a wise departure in public policy, although the last seventeen Congresses have thought otherwise.

However, what we are talking about is obviously a major Presidential decision and for that reason alone cannot be taken lightly. For example, it is too fundamental to be based on such considerations as "cutting red tape," which is one of the simple objectives on which everyone can agree with enthusiasm so long as he is not responsible either for the administration of a program or for declaring specifically what red tape he proposes to cut.

In fairness—and pending the availability of the draft bill—we ought to look at what we are told are the broad objectives of the Special Revenue Sharing Proposal for Community Development. I take them from what appears to be the official listing:

First: "Stable Annual Funding." No group could be assembled which would applaud this idea with more heartfelt emotion than

this convention. Alas, the small print makes it clear that these funds would be annually authorized and appropriated, unlike the General Revenue Sharing feed-back. So, experience forces us to conclude that "annual" the funding might be, but "stable" it assuredly is not. At least, no more stable than these funds have been up to now, which is not very stable.

Second: "Broadened Local Authority for Community Development Activities." This has a splendid ring. However, there is a catch to it. The powers of local governments, with very rare exceptions, stem from State enabling legislation. So far as we can determine from what we have been told, the enactment of the Administration's plan would neither broaden nor narrow the authority of any local governing body to undertake community development activities. Conceivably, this whole exercise might tend to discourage the Federal bureaucracy from injecting itself into local problems where it has no real standing under existing law or common sense, and that would be a net gain. But the proposition that this approach will "broaden local authority" doesn't have a ring of reality, if you say it out loud.

Third: The plan would "Hold Harmless" communities with existing programs. This admirable idea is a bit too nebulous at this stage to say much about. Probably we just cross our fingers and wait.

Fourth: "Strengthen the Capacity of Elected Officials". Unless this is a re-statement of the second objective, which is Broadened Local Authority for Community Development, it is pretty mysterious. Whether we imagine that it refers to their legal powers, their innate capabilities as individuals, or their motivations toward the public interest, it is very hard to imagine how Special Revenue Sharing funds would affect their capacity. Perhaps the most charitable interpretation is that it sounds good and couldn't do any harm to say it. No one here, I think, would be displeased if elected officials had greater capacity. Whether this can be accomplished by purely rhetorical means is debatable.

Fifth: "Encourage Area-Wide Coordination." Nothing could be finer. Here I return to our mythical press conference:

Q. How exactly are you going to encourage area-wide coordination?

A. By continuing the policies which have been written into housing and urban development legislation since 1954, which, incidentally, was a Republican year.

Q. Except that the Federal Government will no longer insist on such coordination as a condition of Federal assistance?

A. Well, you might say that.

Sixth: "Cut Red Tape". Fine, who's against that? And, for that matter, what's stopping the Executive Branch right now?

Seventh: "Added Funds for Innovation and Performance." On the face of it, this would seem to mean that the federal government will reward those jurisdictions which handle their affairs in a fashion which the Feds approve. It is hard to reconcile this, however, with the underlying proposition that the federal government has no business making value judgments on these local matters at all.

One of the big problems in trying to understand what the Administration has in mind is to determine exactly what is being consolidated with what. Obviously, the two big programs involved are urban renewal and model cities. But the urban renewal programs are going on into more than 1800 communities, while model cities programs have only been launched in 150 and a few of those have fallen by the wayside. So that would be, to put it as kindly as possible, a merger without a match.

The Message also talks about a number of subsidiary programs such as code enforcement, demolition, interim assistance, and the like. But these are special aspects of urban renewal, and not really separate activities at all.

Also included are water and sewer grants. Historically and typically, however, these grants have served different kinds of communities from those mainly concerned with urban renewal and model cities projects. About three-fourths of the projects assisted under this program have been in communities with a population under 50,000, and about one-third in communities with a population under 10,000. Again, here is a merger without a match.

The fourth category identified for inclusion is rehabilitation, which presumably refers not to activity in the private sector backed by FHA insurance but to rehabilitation loans under the special authority of the 1964 Housing Act. However, in the six years since these loans have been authorized, total approvals have been less than $100 million, so the order of magnitude involved is hardly comparable to urban renewal and model cities.

So we face a rather puzzling question: What exactly does this merger merge? If you merge 1800 urban renewal apples with 147 model city oranges, with 450 water and sewer kumquats in a wide variety of localities, in many instances not the same, what do you have? Some people are already wondering whether a proposal involving so much trouble and disruption, and so little identifiable benefit, may not be the result of an unannounced wish to turn these programs off—or, failing that, to bring them to a virtual halt through a procedural breakdown of unpredictable length.

This is not an idle question. It seems reasonable to conclude from what has been disclosed that the Administration's recommendations would involve not only a sweeping revision of existing federal legislation, but also—equally essential—corresponding revisions in the enabling legislation now on the books in the states participating in these programs. Optimistically, this process would take from two to four years at a minimum. We should ponder whether the result warrants the effort—and, we are justified, I think, in worrying about what really happens to these programs in the meantime.

There are other aspects to this puzzle. For example, if in fact the federal government is only to grant funds to be spent in the discretion of local officials subject only to a general sort of post-audit concerning the legality of their use, the federal role would seem to be relatively modest. There is no big process involved in determining who gets how much money: As the plan is explained, the computer will do that, in accordance with a formula programmed into it. The facilities of the Treasury Department are ample to write the checks to the grantees. The GAO could perform the post-audit without difficulty. Why then does the President feel that the federal government should have a Cabinet department of community development? Perhaps, too, that's a technical question to be answered later.

But this thought gives rise to a legitimate concern. Does the Administration really mean to say that there should no longer be a national involvement in policies for urban growth and development. If so, it is fair to ask if the proposal is not in essence an abdication of Executive responsibility toward some of our most urgent and difficult problems. On its face, the proposal can be read as saying, in essence, "let someone else do it. Let the Congress worry about the funding. Let the States and local communities worry about the programs. But don't bother the Executive Branch of the national government, least of all the President of these United States, with your problems." From the standpoint of national policy, such a stance would take us back about half a century. It cannot fairly be said from what we have been told that this is the intent. However, it can be said nothing we read in the Message on Special Revenue Sharing for Community Development makes it clear that this is not the intent.

NEA DESEGREGATION REPORT

Mr. MONDALE. Mr. President, last fall the National Education Association established a task force to review school desegregation in Louisiana and Mississippi. Its report is a combination of encouraging and discouraging findings—a report of "major strides toward acceptance of integration" in some districts and discriminatory treatment of students, displacement of black teachers, and misuse of Federal funds in other districts.

Since these findings are relevant to the school integration legislation being considered by both the House of Representatives and the Senate, I ask unanimous consent that the report be printed in the RECORD.

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

REPORT OF THE NEA TASK FORCE ON SCHOOL DESEGREGATION: LOUISIANA AND MISSISSIPPI

INTRODUCTION

This Task Force was established by the Executive Secretary of the National Education Association in late August 1970, at the request of the NEA's two recognized state affiliates in Louisiana and Mississippi: The Louisiana Education Association and the Mississippi Teachers Association. Its charge was to continue the work of the two earlier NEA Task Forces, which conducted surveys in a total of 75 school districts in the two states during January and February 1970, in order to assess the progress and problems of desegregation, the pace of which was sharply—and in many instances, chaotically—increased by the October 1969 ruling of the U.S. Supreme Court, calling for an immediate end to dual school systems in the South. The earlier Task Force studies were also initiated at the request of the two state associations, and by a similar request from the NEA Commission on Professional Rights and Responsibilities.

This report and its recommendations are based on the same principles that motivated the earlier Task Force studies in Louisiana and Mississippi:

1. The rights of educators whose jobs are jeopardized by the desegregation of public schools must be protected.

2. The establishment of private schools to circumvent the integration of public schools is ethically and educationally reprehensible.

3. NEA resources must be made available to assist the effort in local education associations to bring about meaningful integration.

In undertaking the three Task Force studies at a time when, under federal pressure, the dual system of public education is finally being eliminated in the Deep South, the purpose of the NEA is to observe the process of desegregation as it occurs and to be ready with immediate remedial assistance where the rights of teachers and students are found to be threatened or abridged.

Scope and procedures of study

During a two-week period, from September 14–26, 1970, the NEA Task Force, divided into two-member teams, visited a total of 70 school districts in Mississippi and Louisiana. Team members met with teachers, principals, parents, lay citizens, civil rights and other community groups and, wherever possible, they visited schools and conferred also with school officials. Due to the injunctions and

threatened injunctions against NEA personnel involved in observing the desegregation process in Mississippi, some of the Task Force teams in this state did not enter onto school property. However, this did not prove to be an insuperable barrier to the gathering of reliable and extensive information; the method of study was simply altered to provide for meetings with educators after school hours and away from school property.

It must be acknowledged, however, that much of the information collected is secondary information. It could hardly be otherwise, for even in districts where team members were able to visit schools and meet with school authorities, those authorities would not be likely to report their own discriminatory treatment of teachers and students. The report that follows includes only that information which appeared to be substantial, rather than rumor, and which was received from persons whom the Task Force believed to be directly knowledgeable about the experiences they reported. Many accounts of discrimination, as related by educators and others, were not recorded, simply because Task Force teams had questions as to the accuracy of the information or the authority of the persons interviewed.

It should be emphasized that the specific instances of discriminatory activity cited in this report are by no means inclusive; they are mentioned only as examples of a widespread pattern of discrimination. In citing these particular examples, school districts are identified except where such identification might jeopardize the informant.

BACKGROUND

"For all practical purposes, the dual school system as it has existed in the South will be eliminated by September 7."—Jerris Leonard, Assistant Attorney General for Civil Rights, June 9, 1970.

Elimination of the legal structure of dualism was indeed being accomplished as southern schools opened in September 1970. But the tenuous beginnings of a "unitary school system" in the South are affecting the education of black youth, the professional expectations of black educators, and the economic and political aspirations of southern black communities in a way that could not have been anticipated during the long struggle for integrated education.

This report deals specifically with the results of desegregation in the two states of Louisiana and Mississippi; however, the members of this NEA Task Force have sufficient familiarity with the desegregation process in other states to conclude that the desperately serious problems they have encountered during this two-week survey are by no means unique to Louisiana and Mississippi, nor even to the South. White racism is not peculiarly southern; it is a *national* illness. Zealously guarded white control over economic resources, political resources, and public-serving institutions is a *national* reality.

Prevailing patterns of desegregation

"For those of us who saw school integration as a process that would humanize an institution that had been dehumanized by segregation, recent events have been extremely frustrating. We had hoped to see black and white brought together in an arena where both could interact in tension and freedom. *But desegregation is being implemented under the almost complete control of the same people who enforced segregation.* After a court or the Department of Health, Education and Welfare acts, black people are no longer heard. They are left to be shuffled, cut, and stacked at the whim of The Man. This process is called implementation, and it is through implementation that the plaintiffs who have just won a judgment in favor of their civil rights can lose their human rights. (Emphasis added.)

"Black teachers are being emasculated and stripped of their standing before their own communities. Teachers with years of experience are being assigned as teacher aides or assistants to white teachers. New job categories are being created; black Mississippians will explain to you that 'Co-principal is short for colored principal.' " [1]

The author of the above words, Rims Barber, a Delta Ministry Staff member, recites in the same article a shocking catalogue of the injustices laid upon black people as white-controlled school systems move to implement court-and-HEW-approved desegregation plans. In addition to the massive displacement of black educators (with all that this implies for the economic level of black communities and the aspiration levels of black youth), he speaks of the isolation of the desegregated school from the black community; the emptiness for black children of school curricula that fail to recognize the beauty (or existence) of black culture or the Afro-American contribution to American Society; he describes the various devices used to maintain in-school segregation; he mentions the continuing white exodus from the public schools, the lowering of school tax rates; and finally, he speaks of the $78 million federal funding recently made available to facilitate desegregation in southern school districts:

"Existing OEO and HEW programs designed to help the poor (and offering a modicum of control to the poor) are losing their money to southern school districts that have not desegregated after 16 years of enforcement. . . . The money will go to teach white teachers how to act around black people, to make black schools fit for white children, and for sundry other programs designed to 'ease the burden' of desegregation.

"Nothing is allocated to ease the burden that must be borne by every black child who must attend schools in Mississippi and in other southern states, some of which are distinguished from Mississippi only by better manners and subtler tactics." [2]

The observations of this Task Force in Mississippi and Louisiana indicate that in neither state are the tactics of racial discrimination subtle enough to hide the malignancy of its continued existence as school systems move into their first and second year of desegregation. The findings of the Task Force fully support the conclusions of the article quoted above. Not far beneath the facade of law and order that prevails in most desegregating districts of Louisiana and Mississippi, the problems remain much the same as those described by the earlier NEA Task Forces of January and February 1970. In the remaining sections of this report, the Task Force records its specific findings concerning both the progress and problems of desegregation in September 1970.

FINDINGS

Hopeful aspects of desegregation

It is important to give a balanced view of the desegregation process, as the NEA Task Force has observed it in Louisiana and Mississippi during the early weeks of school—from September 14 through 26, 1970. A balanced view, however, does not result in a balanced picture; for, the bad news of desegregation in these states tragically outweighs the good. In brief—and a recital of the favorable aspects of desegregation in these states cannot be otherwise—the NEA Task Force can submit the following as the most encouraging of its observations in the school districts visited:

For the most part, Mississippi and Louisiana schools opened peacefully in September 1970. There were some scattered outbreaks of violence, boycotts, demonstrations by both blacks and whites in protest against student assignments, busing, use of school buildings, and segregation by sex; but in the great majority of school districts, law and order were maintained.

There was less observable in-school segregation of students during September 1970 than during January and February 1970, when the earlier Task Force surveys were conducted.

In some districts, Task Force members reported, "major strides have been made toward acceptance of integration." Court orders have resulted in an improved racial balance of staff and students. Human relations workshops in some districts, according to black teachers interviewed, have resulted in some improvement of teacher attitude toward students and other teachers of the opposite race.

In several school districts (Monroe City, Lincoln Parish, Red River Parish, and Concordia Parish, Louisiana; and Columbus and Starkville, Mississippi), successful court actions, supported by NEA and the affiliated state associations, have resulted in the reinstatement of black teachers who had been arbitrarily dismissed or downgraded during the desegregation process.

In several districts now in their second year of desegregation, it was reported that white students have begun to return to the public schools from the privately established segregation academies to which they had fled during the first year.

In at least two Louisiana districts, the use of the National Teacher Examination as a means of screening out black teachers has been tried and abandoned; in one of these districts, after the blacks had been tested and had shown a consistently high score, they heard no more about NTE; in another district, many of the white teachers had exceedingly low scores, and its use was discontinued.

In some districts, where blacks have demonstrated their voting strength and have organized themselves into an effective political force through such pressure devices as economic boycotts and carefully directed demonstrations, they have won some concessions from white school officials; for example, the retention of the names of former black schools that were converted into desegregated schools. But of greater long-range significance, such efforts have achieved a new level of visibility for blacks as a force that must be recognized, that must be considered, and a force that demands participation in public school and political decision-making.

Where there is effective school leadership with demonstrated commitment to successful desegregation of the schools, the problems of desegregation are clearly minimized. Even when the school board and central school administration are reluctant or openly hostile to desegregation, the skillful leadership of a building principal can create a climate favorable to integration within a given school. Task Force members did observe such schools or were told of their existence. For example, in the southern section of La Fourche Parish, Louisiana, black teachers reported that in one school, particularly, the principal (white) is a fair-minded person, believes that desegregation can work, and is making it work within that school by his leadership.

The major problems of desegregation

I. Displacement of Black Educators in Status Positions

The findings of this Task Force lead its members to the conclusion that what is happening in Louisiana and Mississippi schools is not *integration*; rather, it is *disintegration*—the near total disintegration of black authority in every area of the system of public education.

Black principals continue to be reduced in status and authority by the following methods:

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[1] Harvard Center for Law and Education, *Inequality in Education*, "From Intransigence to Compliance Is Two Steps Forward and Two Steps Back." Barber, Rims. The Center: Cambridge, Massachusetts, June 30, 1970. p. 13.

[2] *Ibid*

1. *Outright Demotion*—To teaching posts, to assistant and co-principalships, often with heavy teaching schedules and with little or no defined administrative responsibilities. In most instances, the reductions in status do not carry a reduction in pay; however, an emerging trend noted was demotion the first year of desegregation and reduction in pay the second year to conform to reduced responsibilities. A few examples indicate the overriding trend of demotion:

Rankin County, Mississippi—The principal of a formerly all-black school (grades 1–12) was demoted to administrative assistant to the white principal at the same school (now desegregated and reduced to grades 1–6). In the same county, a black principal had been replaced by a white former coach, with no administrative experience.

St. James Parish, Louisiana—The principal of a formerly all-black high school has been made "assistant visiting teacher." His former high school is now a desegregated boys' high school, its name changed, and under the principalship of a white. The displaced principal has a master's degree and 25 years tenure with the district.

Hinds County, Mississippi—A black principal, with 20 years' tenure, has been demoted to a classroom teaching post.

Claiborne Parish, Louisiana—The principal of the formerly all-black school (grades 1–12, enrollment 912) was demoted to the post of assistant principal when the school was desegregated. Although the demoted principal had been in his post for five years, he was replaced as principal by a white, who had served as principal for only three years in a school enrolling only 99 students.

Okolona, Chickasaw County, Mississippi—It is reported that the black co-principal at Okolona High School is co-principal in name only, disciplining only black students and keeping records of books, repairs, and buses (but not making bus assignments). This educator was called vice-principal last year until blacks complained and his title was changed. A white counselor was promoted to principal over the black principal, who has an M.A. and has been a principal in the system for fifteen years. The white principal earned the M.A. after the appointment. The black "co-principal" occupied last year a small office behind the storage room; this year he moved to the former counselor's office, which had previously been a ladies' room. The white principal allegedly told him that he, the white, was the principal, that he would be willing to confer with the "co-principal," but that he would have the final word.

Winston County (Louisville Municipal Separate School District), Mississippi—No blacks hold any leadership positions in the system including principalships. The one black principal before this year died, and was replaced by a white. There are black assistant principals, but in name only with no authority. The white head coach of the Louisville District left to be principal of a private school; the black head coach was then appointed assistant principal, so that a white could take the open coaching position. In at least one school (serving 1–3), the assistant principal has not even been given acknowledgement that this is her title, although required by the court order.

2. *"Phasing Down" of the Black Principals' Schools*—Task Force members found few instances where principals of formerly all-black high schools are retained as principals of desegregated high schools. Where they do retain the post, it is, with few exceptions (see 3 below) to a school that has been reduced in grade level to a junior high, middle, elementary, primary, or special education school. Not only does this mean a reduction in status and sometimes in salary, but it also means for the black principal, the teachers, students, and parents, the loss of an institution over which blacks had some control, in which they could take justifiable pride, and which in many areas has been a community center, as well as a center of learning. In a number of districts visited, there are now no black principals at the secondary level. In many instances, the white person who is named principal of the desegregated high school is less qualified through experience and academic credential than the black, whose assignment is to a junior high or elementary school.

St. Mary's Parish, Louisiana—Task Force members met with two principals of former all-black schools, grades 1–12. One of these schools, when desegregated, was reduced to a primary grade school and the principal's salary was cut by $685 per year; the other was reduced to grades 6–8, the principal receiving a pay cut of $800. The latter principal retired early in preference to accepting the reduced status and salary. Both of these principals shortly before the Task Force visit, had been promised full restitution of the year's pay reduction (for 1969–70), and the still employed principal had been told that his salary for the current year will be restored to its former level. But for their loss of status and for the loss of the two high schools, there could be no compensation for the principals, the teachers, or the students. In this same parish, Task Force members interviewed the principal of a formerly all-black high school. This black educator had six years' tenure as principal in the district and had his master's degree; the principal named to the desegregated high school was a white former coach, with no administrative experience.

A Mississippi School District—The principal of a formerly all-black junior high school reportedly was offered a position as principal at a formerly all-white elementary school. He refused the assignment on learning that the office would be in the basement and he would be in charge of buses (not routes), "finances", and student tardiness.

Iberville Parish, Louisiana—Prior to desegregation, the system had eight black secondary principals; it now employs no black principals at the secondary level.

Lincoln Parish, Louisiana—There is reportedly no black principal above the sixth grade level.

3. *Retention of Title with Diminution of Authority*—By the assignment to the desegregated school of a white assistant principal, or curriculum supervisor, who is regarded by blacks and whites alike as the individual who possesses the real managerial authority for that school. In a number of districts visited, according to Task Force reports, various new positions, held by whites, have been created since desegregation. These positions held such titles as "area principal", "supervising principal", and "curriculum coordinator". It is widely believed by blacks that these newly titled whites constitute the real authority behind the black principals, who have been reduced to mere figurehead status. Task Force members found no dearth of evidence to support this conclusion.

A Mississippi District—Is one of the few districts where the black high school has been retained as the desegregated high school and where the black principal has retained his title. It is very clear, however, that the title is all he has retained. The black principal does not run the school. The system has created a new post of assistant superintendent; the primary duties of the assistant superintendent appear to be to run the "integrated" high school, since he has no regular responsibility for any other school in the system. The black high school principal meets each morning with the assistant superintendent (who occupies the principal's former office), and receives his directions for the day. The principal's office is a remodeled former girls' lavatory. The assistant principal of the high school is white; and the white school secretary is the wife of the assistant superintendent. It is clear that this principal has no opportunity to exercise the responsibilities of that office, surrounded as he is by a white assistant, the former white high school principal as the assistant superintendent, and the assistant superintendent's wife as secretary of the school.

Jefferson Parish, Louisiana—The system employs no assistant principal black or white—in any elementary school employing a white principal; nor, *with one exception*, have assistant principals—black or white—been assigned to any elementary school that is still all black. However, in every *desegregated* elementary school with a black principal, there is a white assistant. The exception to this pattern is an elementary school, headed by a black principal, which was desegregated in 1969–70, with approximately 70 white students. At that time a white assistant principal was assigned to the school. Administrative rezoning resulted in the school's becoming all black again in 1970–71, but the white assistant principal was retained. She has a direct telephone line to the central office that the school secretary cannot cut in on; the black principal has no such line.

Union Parish, Louisiana—A formerly all-black high school, now a desegregated middle school (grades 4–8), still retains the black high school principal; however, the school also employs a white supervising principal whose statements led the visiting Task Force members to believe that he considers himself the sole authority for the operation of the school.

The patterns of discrimination shift: In some districts, Task Force members found two high schools or junior high schools, desegregated by race, but segregated by sex, with a black coordinating principal supposedly in charge of both, but with white building principals actually in authority at each school; in other districts, white area principals have been named in charge of separate junior and senior high schools, with a black serving as junior high and a white as senior high principal. The prevailing belief among black teachers—and the evidence justifies this belief—is that whatever administrative device is used, the objective, and the accomplished fact, is the retention of white control over every desegregated school.

4. *Paper Promotion*—Two token positions at the central office, without any clear delineation of responsibilities and without authority. Such token titles include the following: supervisor of child welfare and attendance, instructional materials supervisor, assistant director of federal programs, and community relations advisor. In a Louisiana district, for example, a black former principal was appointed to the central office post of instructional materials supervisor and was assigned janitorial duties.

Once in a central office position, testimony indicated, blacks find themselves blocked from any decision-making authority or even from knowing what the decisions are until they have been publicly announced. The testimony from black teachers further indicated that there is a widespread mistrust on the part of teachers of blacks who do obtain such "promotions", for it is felt that the only way such posts can be retained is by assuming an attitude of subservience to white school officials. This is not to say that there are no effective black administrators in central office positions. If such administrators are able to function effectively, however, it is by dint of their own persistence and strength against overwhelming odds. Testimony indicated, in fact, that the selection of blacks for promotion to central office posts is commonly based on two apparently opposing criteria:

(1) On their qualifications as "safe Negroes," who will cause no trouble; and

(2) On their reputations as "militants,"

whose aggressiveness may be stifled by co-optation into a position of pseudo authority.

It should be noted further that, aside from the few token black positions, the complexion of central office staffs in Louisiana and Mississippi—from administrative to secretarial and clerical—continues to be overwhelmingly white.

Coaches

The second major casualty of school desegregation is the black head coach. Although many districts were found where the black coaches had obviously superior credentials in terms of training, experience, and team records, Task Force members found no district in either Mississippi or Louisiana where a black is employed as the head coach of a desegregated high school. A possible exception should be noted: In Marion County, Mississippi, a black coach, who had been demoted, had been promised that he would be assigned to the position of head coach at the desegregated high school. In this instance, the white head coach had resigned following the adoption of a policy that would lead to the equalization of salary differentials to black and white teachers who also are assigned coaching duties.

As Mississippi and Louisiana schools desegregate, black coaches are made assistant coaches, often of second-string teams, assistant principals, physical education teachers; and in some districts they have been made head coach at the junior high level. In North Panola, Mississippi, the black head coach was made assistant coach at the desegregated high school and was promised by his principal that next head coach position would be his. However, when the white head coach resigned, the superintendent imported a white coach from out of state, who brought his own assistant. The black assistant was then demoted to number three in rank; rather than accept this triple demotion, he resigned. The earlier NEA Task Force reported the case of a black head coach in Thibbodaux, Louisiana, who, when his school was desegregated, was demoted to assistant coach of the B team, despite the outstanding record of his team and despite the lesser qualifications of the white who had replaced him as head coach. Since the first Task Force visit, the white head coach has been assigned to the post of head basketball coach; instead of promoting the highly qualified black to the top post, another white, far less qualified, has been appointed head coach.

Like the deposed black principals, the coaches are not concerned solely with their own loss of position; they express deep concern about the effects on the black students. Task Force members heard many reports that black students are not going out for football or other varsity sports as they did before desegregation, that they are no longer getting the quality of coaching that they once had, and that athletic scholarships are not being awarded to them as in the past.

Band directors

Band directors also are among the most consistently demoted of black professionals. They, too, are commonly relegated to the post of "assistant," regardless of how their qualifications compare to the white directors; they may be made assistant choral director, music teacher, or, as is so often the case with classroom teachers, assigned to some subject that is entirely outside their field of specialty. Task Force members did, however, find one exception to this pattern: In one district (East Tallahatchie, Mississippi), it was reported that during the first semester, emphasis would be placed on the marching band and a white would serve as band director; during the next semester, it is anticipated that emphasis will be placed on the concert band, with the black as leader and the white as assistant.

II. Continuing Displacement of Black Teachers

The federal court of appeals with jurisdiction over the six-state region that includes Mississippi and Lousiana has issued guidelines, in the "*Singleton* decree," expressly providing that in the desegregation process staff members who work directly with children and professional staff on the administrative level shall be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

The *Singleton* decree provides that when there is a necessary reduction-in-force due to desegregation:

The staff members to be dismissed or demoted must be selected on the "basis of objective and reasonable nondiscriminatory standards from all the staff of the school district."

The necessary reduction-in-force must be made in a manner which would not change the ratio of black and white teachers in the system.

Any vacancies which occur subsequent to such reduction may not be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Under the Singleton decree, "demotion" includes "any reassignment—

(1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously;

(2) which requires a lesser degree of skill than did the assignment he held previously; or

(3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period." (The court cited five years as such a reasonable period.)

The guidelines stated in the *Singleton* decree generally are incorporated in school desegregation decrees issued by federal district judges in Mississippi and Louisiana. Nevertheless, the findings of the Task Force indicate that these guidelines are widely misinterpreted, misapplied, or simply ignored in the Mississippi and Louisiana districts visited. The discriminatory treatment of black educators in administrative and supervisory positions has been described above; for the most part the patterns are repetitious of those reported by the earlier NEA Task Forces in January and February 1970. The displacement of teachers also follows similar patterns to those reported earlier. Testimony received by this Task Force indicated that black teachers continue to be displaced by the following methods:

1. *Outright Dismissals and Nonrenewals of Contract*—ostensibly because of reduced attendance due to desegregation, although white teachers continue to be employed; or because the black teachers are "not qualified", although they were sufficiently qualified to be employed and to serve for many years under the dual system. There appears to be a near total absence of specific personnel policies, providing "objective and reasonable nondiscriminatory standards" on which to base desegregation-related dismissals, demotion, or promotion. Even in isolated instances where written policies were found, they were extremely broad.

As blacks resign and are dismissed, they are commonly replaced by whites. Moreover, misinterpretation of the black-white faculty ratio requirement of the *Singleton* decree—whether through ignorance or purposeful subversion of its meaning—is further reducing the ranks of black teachers: In those districts that have experienced a massive exodus of white teachers to the privately established "segregation academies", many instances were found where black teachers have been dismissed, and white employed, in order to maintain the black-white ratio that was obtained at the time the district was placed under court order. It would appear that this is a misapplication of the *Singleton* ruling, which requires that when teachers are *dismissed* due to desegregation, subsequent vacancies may not be filled through recruitment of a person of a race different from that of the individual dismissed, "until each displaced staff member who is qualified to do so has had opportunity to fill the vacancy and has failed to accept an offer to do so." *Singleton* makes no requirement concerning the race of the person employed to a position vacated by a teacher who has *voluntarily resigned*. Nevertheless, *Singleton* is being locally interpreted to apply in cases of white resignations: as a result, ironically, the flight of white teachers in many districts leads to the dismissal of blacks.

Lafayette County, Mississippi—Teachers assert that there were 59 black teachers in 1968 and there are only 30 employed in the district in 1970. Each time a black teacher leaves, the replacement is white. It was estimated that 20 teachers were hired by the system this year, only two of whom are black.

Noxubee County, Mississippi—Under the court order, each school was required to maintain a black-white faculty ratio of 2:1 to conform to the systemwide ratio *that existed at the time the order was issued*. At this time, however, the systemwide ratio of black to white teachers is 3:1, due to the flight of white teachers to private segregated schools. Although only about 100 white pupils remain and over 3,000 black, only white teachers are being hired in an effort to regain what local school officials interpret as a court requirement for a 2:1 black-white staff ratio.

Marshall County, Mississippi—The private segregation academies have attracted from the public schools of this district large numbers of white students and teachers, thus altering the systemwide black-white faculty ratio from the time of the *Singleton* decree. The *Singleton* ratio was supposed to have been set at 64% white to 36% black, but when white teachers and white students left the school system, it was reported, the black principals of two elementary schools retained their black teachers and thus were able to keep faculty ratio closer to the student ratio. Both of these principals, reportedly, feel that they are in violation of the court order for not firing black teachers. The white principals did fire black teachers to conform to their interpretation of the *Singleton* ratio.

La Fourche Parish, Louisiana—From 1965 to 1969, it was reported, there was a net gain of four black teachers and a net gain of 163 white teachers. It was stated that black teachers with master's degrees have applied for jobs in the parish and have been informed by school officials that there are no openings, even before the applicants are asked about their qualifications or field of specialty. At the same time, however, school officials have continued to employ new white teachers.

Meridian, Mississippi—There has been a reduction of 17 black teachers this year, and a gain of five whites.

Richland Parish, Louisiana—Twenty black teachers and three whites were dismissed at the close of school year 1969–70. The letters of dismissal, reportedly, were sent during the last two days of school. This year, the school system employed 37 whites and six blacks to replace last year's dismissals.

Also in Richland Parish, Task Force members met with a dismissed black teacher, with 16 years' tenure, although with only one year of service in the school from which he was dismissed. His assigned subjects had been agriculture and biology; he was certified to teach both of these subject, having a mas-

ter's degree in science and 62 hours in agriculture. His letter of dismissal cited the following "reasons":

"Your teaching skills are below an acceptable standard required to provide a good learning environment for children.

"Lack of preparation and organization for daily classroom instruction.

"Your inability to maintain order and control of your students.

"Your lack of subject matter knowledge in your certified teaching areas."

This teacher's principal had questioned him, stating that he was not following the biology textbook. The teacher had explained that the biology textbook he was using was ten years old and that he had been coordinating some of the material from the new textbook used by white teachers with his old material. The principal's reply had been, "You are to stick to your textbook and stop using those big words".

The superintendent of this parish was quoted as saying that he only wanted "a speck of black teachers, as few as the law allows".

2. *Discriminatory Assignment and Transfer Practices*—Black teachers continue to be assigned to subject areas for which they are uncertified. Task Force members met with foreign language, English, Social Studies, and Home Economics secondary teachers, fully certified, and with high academic credentials, who have been assigned to teach elementary, primary, and special education classes. In many of the districts visited, out-of-field assignment of black teachers seems to follow a consistent pattern; that is, black high school and junior high school teachers are commonly reassigned to teach primary and elementary grades, remedial classes, and physical education without regard for their field of specialty, while white teachers are shifted into junior high and senior high levels. With respect to particular subject areas at the secondary level, strange variations occur in the assignment of black teachers; in some districts, it was reported, black teachers are assigned to such subjects as Physical Education, Social Studies, Home Economics, and Shop, while white teachers are assigned Language, Arts, Math, and Science. In some districts, blacks are assigned to Math, but not to Language Arts; in one southern Louisiana high school, testimony indicated, no black is permitted to teach American History. Apparently, the subject assignment of black teachers is based less upon their qualifications than upon the particular racial taboo of each white community. It is also noted by black teachers—and by the Task Force—that such out-of-field assignment greatly facilitates the dismissal of black teachers for "incompetence", and "lack of preparation in assigned field". Understandably, there is much concern on the part of the black teachers that even greater numbers of dismissals will take place next year; and the concern is deepened by the fact that, for the most part, the evaluation of teachers, black and white, is performed by whites. A Mississippi Task Force team reported, "A new titled person is in evidence—Supervisor of Instruction (white). This person with more authority than the black principal, is evaluating teachers. This may be the prelude for gathering evidence for wholesale dismissal. We must prepare these black teachers for fighting these slanted evaluations".

The transfer of teachers to achieve desegregation follows a clearly observable pattern in many districts: Consistently, school officials transfer the most highly qualified blacks to formerly all-white schools, while replacing them in the formerly all-black schools with the least qualified whites in training and experience. In some districts, it was reported, white teachers are *asked* to transfer and are given the option to refuse, whereas black teachers are *told;* their alternative is dismissal. White teachers are informed in advance of the year's assignment; black teachers are given minimal notice and may not know during the entire summer where, or whether, they are to be employed for the next school year.

3. *Use of Newly Devised "Qualification Standards"*—The National Teacher Examination (NTE), the Graduate Record Examination, and other such tests, such as the Iowa Test of Basic Skills, are being used in increasing numbers of Mississippi and Louisiana districts as a means of screening out blacks. Some districts have dismissed teachers who fail to make the required score or have used the tests as the basis for salary increments; in other districts, the tests are used as a screening device only in the employment of teachers. It should be noted that NEA-supported litigation has successfully challenged discriminatory use of such tests in Columbus (National Teacher Examination) and Starkville (Graduate Record Examination), Mississippi. In a similar court suit, supported by the Northern Mississippi Rural Legal Services, discriminatory use of NTE is being challenged in Okolona, Mississippi. A subsistence grant from the NEA DuShane Emergency Fund for Teacher Rights has been awarded to the teacher-plaintiffs in this suit.

III. Discriminatory treatment of students

"Although people don't say anything about the schools here or you read anything in the papers, I can truly tell you that the schools here are supposed to be black and white together, but the white people act as though it is all theirs. The white teachers only stand on one side of the classroom (the white side because that is the way they have it, the white on one side, the Negro on the other, or rather that it is the way we sit). The Negro teachers are all smiles around the white kids and when the blacks ask them to repeat something that has been said they won't even do it. The majority of whites are riding on buses to themselves . . . Before school started they had chosen the whites to head the clubs and everything else. Most of the people here have tried to speak up, but it would always get back around to the whites, and someone would get a phone call or get beat up. We are not a part of anything but the football team.

. . . I have been trying to talk to different students about it, but their attitude is that they will soon be leaving or graduating and they don't care what these people do. I think that it is time that we do something because I have some sisters and brothers and I want them to get a good education."—A letter from a black student in Mississippi

Instead of a "good education", this student and her brothers and sisters are confronting a new kind of learning experience, and a bitter one. They are learning that desegregation, as it is practiced in their Mississippi school, has not freed them from the separate and unequal status of dualism. Since the usual pattern of high school desegregation makes the former white school the new high school (regardless of which school has the best physical plant), the school colors, mascot, name, athletic trophies, and other such symbols of the white school are retained; the emblems of black school identity are obliterated. The black students are thus submerged, rather than merged with the former all-white student body. In Granada County, Mississippi, at the first football game of the 1970 season "Dixie" was played at half time by the high school band, and rebel flags were passed out in the stands by the all-white cheerleading squad. This kind of "desegregation" has made the blacks' sense of separateness and inequality perhaps even more difficult to bear than under the previously dual system. For, in the desegregated school their exposure to racial slights and exclusions is unremitting and inescapable, whereas, within the walls of the all-black school, they could for a time shut out the sickness of racism.

As noted earlier in this report, the NEA Task Force seriously looked for schools where a climate favorable to integrated education appears to be developing where real learning is possible, not only in academic subjects, but in the areas of human interaction and understanding. The testimony of teachers suggested that this kind of climate is beginning to grow in some individual schools, due in large measure to the effective and committed leadership of some building principals.

But in most school districts visited, even those where surface appearances indicated that desegregation is proceeding well, more probing inquiry revealed the existence of practices obviously designed to circumvent desegregation, which were at the same time totally destructive of good education. These practices, summarized below, in subverting the letter and spirit of desegregation laws, subvert also the educational objectives of the public school institution.

1. *Segregation of Classes:* As noted earlier, the in-school segregation of students was not so obvious in September 1970 as it was in January and February, during the earlier Task Force surveys. With scattered exceptions, the segregation that now occurs is largely the result of student tracking or ability grouping, which has been widely instituted in both Louisiana and Mississippi. In some districts, it was reported that this practice was in effect before the advent of desegregation, but there can be little doubt that many more districts are using the tracking system as a device for student resegregation. Black teachers are usually found teaching lower track classes, which are all or predominantly black; conversely, white teachers and white students comprise the upper track groups, with classes in the middle range approaching some degree of racial balance. In numerous districts, tracking is more complicated, categorizing students into A, B, C, D, and E groups. In Okolona, Mississippi, this method of student grouping, reportedly based on California Achievement Test scores, has resulted in the following assignment at the sixth grade level of one school:

A—all white.
B—5 black of 22 in the class.
C—approximately 50–50 black-white ratio.
D—7 white of 32 in the class.
E—29 black students, no whites.

Testing and grouping of the students at this school, reportedly, are performed only by white teachers. It is also reported that no black teacher has an A or B class, while there is no white teaching a D or E. There is near unanimity among education authorities concerning the educationally harmful effects of such rigid compartmentalization of children.

Student selection of teachers is another device by which classes are segregated. In East Tallahatchie, Mississippi, for example, white students registered first and chose their white teachers. Some classes were later reshuffled, but all black classes remain.

2. *Segregation of Schools*: In addition to the *de facto* segregation of the larger urban centers, some predominantly or all-black and white schools remain in the rural and small town areas of both Louisiana and Mississippi. In some cases, this is the result of gerrymandering; but in a number of instances, it is the product of "boundary-jumping," the ostensibly forbidden, but frequently winked-upon practice of student attendance at schools outside their assigned attendance area in order to avoid desegregation. In Jefferson Parish, Louisiana, a white parent told Task Force members that at the all-white elementary school in her area, a school "safely" surrounded by a white suburban housing development, it had been

necessary to erect portable classrooms to house the 150 white students who had fled from their assigned predominantly black attendance center.

In predominantly black school districts of Mississippi, the "freedom-of-choice" plan has a 1970 court-approved counterpart called the "freedom-of-transfer" plan. The court order governing West Tallahatchie, for example, permits students of the racial minority group within a given school to transfer to another school where they will be members of a larger minority. The "freedom-of-transfer" policy in this district has resulted in three of the four elementary schools having an all-black enrollment.

3. *Segregation on uses:* Segregated busing continues in many districts. Responding to Task Force inquiries, several school officials referred to this as *de facto* segregation, a consequence of neighborhood racial patterns. However, testimony from teachers and bus drivers indicated that in some districts, separate school buses carry black and white students over identical or closely similar routes. This was observed by Task Force members in South Panola, Mississippi. In West Tallahatchee, Mississippi, busing is completely segregated.

Racial segregation within buses was also observed. In Lauderdale County, Mississippi, it was reported, the buses have assigned seating sections by race, with part of the buses reserved for white and the other for black students. A white mother has obtained seating reservation for her children. On three occasions, black children have sat in these reserved seats because the black section was full; and on each occasion, the blacks have been suspended for three days for thus violating the racial seating arrangement.

4. *Segregation of Sexes:* As schools have desegregated racially, the practice of segregation by sex has been revived and has spread to many districts in Mississippi and Louisiana. This form of segregation, introduced in Yalabusha County, Mississippi, at all grade levels prompted black student boycotts and protest marches at the beginning of the school year, resulting in the arrest of some students on the charge of "walking on the grass". The patterns of sexual segregation vary; in southern Louisiana, a number of districts have segregated all high schools and have instituted split shifts to permit a kind of sexual segregation within middle schools; in some northern Louisiana districts, the junior high and middle schools are segregated by sex. Reportedly, there is much dissatisfaction with this type of segregation on the part of both black and white students, particularly at the high school level where it could be described as having a chilling effect on extracurricular activities.

5. *School Organization and Use:* Under the pressure of court orders, there is increasing use of formerly all-black schools by the desegregated systems of Louisiana and Mississippi. A fortunate result, regarded by black students with some cynicism, has been the renovation and remodeling of the black schools to make them fit for white students. As noted by the earlier Task Forces, great emphasis is placed on repainting of restrooms and locker rooms, replacing commodes, and on obliterating all emblems of school and racial identity. There remains, however, a marked under-utilization of formerly black schools, and in many districts, a consequent overcrowding of the schools that were all white. Because so many black schools were built during the late fifties and early sixties in the hope of persuading black students and parents and the courts that separate really could be equal, many of these schools are newer and structurally superior to the white schools. But even some of the most modern and spacious black schools have been closed, reserved for remedial classes using only a small portion of the available space, converted into vocational schools, or phased down from high school to junior high and lower grades. The prevalence of this pattern is indicated by the report of the Louisiana Education Association that since 1968, a total of 108 previously all-black high schools have been closed, "phased down," or converted to some special use. For the black student, transfer to the formerly all-white high school means forfeiture of athletic trophies and symbols of black school achievement; in only one district, Jefferson Davis County, Mississippi, it was reported that school officials had promised the students that their athletic trophies would be transported to the newly desegregated high school. This had not been accomplished at the time of the Task Force visit.

The consequence of the under-utilization of former black schools was vividly illustrated to one Task Force team in Simpson County, Mississippi. New Hymn School, housing grades 1–12, new and in good condition, was converted into a desegregated elementary school for the current school year. The school now enrolls 229 students, compared to an enrollment of 350 last year. Pinola, the formerly white twelfth grade school, on the other hand, appears to be at least 40 years old and in notably poor repair. Pinola, despite its condition has been converted into the senior high school. Before going to Pinola High School, the Task Force team was informed by the New Hymn principal (black) that Pinola was extremely overcrowded, with a current enrollment of over 600 compared to 350 last year. It was reported by teachers at New Hymn School that Pinola had a 10th grade class with 85 students, and that the school auditorium was being used for a number of classes in simultaneous session. Just prior to their visit to the high school, a white teacher telephoned the school's principal (white) and told him to expect the Task Force members. Upon being escorted through Pinola High School by the assistant principal (white), the team was surprised to note no visible signs of extreme overcrowding. Over a period of about one hour, there was no classroom use of the auditorium; and no classes with as many as 85 students were observed. It was not until the conclusion of the field visitations that the team learned that immediately prior to their arrival at Pinola High, a large number of students were taken out of the school and seated in the bleachers of the school gymnasium, where they waited until the Task Force visit was over.

There are countless examples of the gross waste of school building space and facilities: In Raleigh, Mississippi, the school system has purchased 16 mobile units to house the students; the two black schools in this district, both in excellent condition are closed. In Columbus, Mississippi, the previously all-black high school (grades 8–12) has been converted to house only seventh grades; with a building capacity of 1,500, the school enrolls only about 800 students. In this same school, girls are not assigned physical education, although excellent facilities exist and are unused. Two previously white schools, on opposite sides of town, are housing the senior high school grades; the senior high building on the far side of town is in poor condition, overcrowded, and has had to erect portables to accommodate the enrollment. Only the formerly black high school (now seventh grade) has shop facilities. In Ascension Parish, Louisiana, the majority of black students have been moved into previously all-white schools, which are so overcrowded that rooms in these schools, have been divided by constructing a wall to make two rooms, half the size of normal classrooms. At the same time, several previously all-black schools are almost empty, with two or three kindergarten classes. Reports indicated that many whites are dissatisfied with the situation, but are afraid to articulate their feelings publicly. In a least one Louisiana parish (Claiborne), there is another type of under-utilization of schools; this system schedules a shortened school day, dismissing at 1:00 P.M. Team member reporting from several other school districts stated that they had observed little or no after-school activities on the school grounds, suggesting that the prevailing white attitude toward desegregation may have curtailed the accessibility of the public schools both to the students and the community.

The above summary merely exemplifies instances of school nonuse, misuse, and underuse observed by Task Force members in most districts visited; it does not begin to measure the tremendous cost of the taxpayer in terms of wasted school buildings and facilities, nor the immeasurable educational losses incurred through overcrowding and inefficient use of schools.

6. *Departmentalization:* Similar in educational unsoundness to the patchwork of grade levels assigned to schools is the excessive departmentalization of elementary grade levels and the irrational scheduling of classes in the desegregated schools. One Task Force team commented, "Departmentalization is another tool to appease white parents, who are thus guaranteed that their children will not be with a black teacher all day. Some children have four to six teachers in a single day. White teachers, as well as black, are disturbed about this. Some of them have approached the black teachers, suggesting that they bypass the superintendent's directives by remaining with their children two to three periods at a time."

In one middle school in Richland Parish, Louisiana, all classes, except Language Arts, are 40 minutes in length. The Language Arts classes, taught only by white teachers, are two hours in length. One black teacher in this parish has an assignment of eight periods per day; another has four periods of sixth grade Physical Education (class size 48, 38, 38, and 36), plus two periods of Social Studies, and a long lunch room monitor's duty. Elementary students in East Tallahatchie Parish are bused to different schools for their classes at two-hour periods throughout each school day; secondary students are bused between two schools for different subjects. This busing plan was devised by the board of education and approved by the court—an altogether strange phenomenon in a region so anti-pathetic to busing.

7. *Curtailment of Extracurricular Activities:* The curtailment and, in some instances, virtual elimination of extracurricular activities has not changed since the date of the initial Task Force reports. Social events, such as school proms, are no longer held in high schools; such festivities take place now in white students' homes or in other places where blacks are excluded. In some districts, it was reported, black girls have been elected cheerleaders, but more often, cheerleading teams and all school clubs, including the student government (where it is still maintained) are all white. Reports from several districts in both states indicated that new qualifications have been established for participation in various groups. In Tupelo, Mississippi, for example, there is a recently formulated requirement that to be a majorette a girl must have played an instrument in the band for the last two years and must be selected by the bandmaster. In Jefferson Parish, Louisiana, to become a member of the dance team, there is a requirement that students must be attending dancing school. In order to become majorettes in the Okolona (Mississippi) High School band, students were told that they would be required to attend summer music school at a cost of $65, prohibitive for most black students in that poor area.

Generally, in both curricular and extracurricular activities, the desegregated schools

of Mississippi and Louisiana are operated on the terms and conditions set by whites, governed by white rules, and committed to the transmittal and perpetuation of white values, attitudes, and traditions. It is not surprising, since so many of those values, attitudes, and traditions are preoccupied with the myth of white supremacy, that the black students feel that they, like their black teachers, have experienced displacement, rather than desegregation.

IV. Continuing Growth of Private School Movement

"The President's chief spokesman on integration says it will be up to the Southern-(er)s to prove that tax-exempt private academies are discriminating against Negroes.

"Elliot L. Richardson, Secretary of Health, Education, and Welfare, disavowed responsibility for monitoring the academies which have been springing up in the South as public schools moved toward desegregation.

" 'I don't think we want to ask for or employ a large force of investigators to send to the South for this,' Richardson said. 'I think we have to rely on the people of the South.' "[3]

And the white people of the South, in increasing numbers, are relying on a spreading network of private academies as a means of maintaining for their children a racially segregated system of education. The Southern Regional Council of Atlanta, Georgia, has estimated a fall 1970 private school enrollment of 400,000 students in the eleven Southern states. In Mississippi alone, the Council has reported, there were 209 private schools of all types as of the 1969–70 school year; nine more were scheduled to open for the 1970–71 school year. Of the 421 private schools in Louisiana, 32 have been accredited by the Southern Association of Colleges and Schools; 106 have been approved by the state; and 222 are operating without any form of accreditation. The effect of desegregation on the private school movement is reflected in the fact that during 1968–69, three new private schools were reported as being established in Louisiana, whereas, during the 1969–70 session, 38 such schools were officially established.

In most of the Louisiana and Mississippi districts visited by the NEA Task Force, one or more private segregation academies have been established since the start of the 1969–70 school year. The greatest exodus of white students and teachers, predictably, has occurred in those districts with majority or near majority black populations. One of the most serious threats to public education, Task Force members reported, is the lowering of school tax rates that has accompanied school desegregation and the establishment of private academies in some districts. This was not a major area of investigation; however, reports were received of several Mississippi districts where millages have been lowered within the past year. In Hollandale, Mississippi, for example, where the school system has become all black since desegregation, school taxes have been lowered by 1.5 mills this year; and in Greenwood, Mississippi, the City Council has reduced the annual school tax by one-half mill, claiming loss of teacher units funded by the state.

In many of the districts visited, there was evidence that private school students are being transported in public school buses, are using instructional materials and facilities loaned or donated from the public school, and are being housed in buildings that were formerly public schools, leased or sold to private individuals and ultimately conveyed to private school groups. In South Panola, Mississippi, a public school, reported as having been sold for $100, is allegedly now being used for a private segregated academy. Although the building is dilapidated, the property includes 5.2 acres, making the sale price far below market value. In North Panola, an elementary school, sold for $5,001.00 is now an all-white private high school. In Claiborne Parish, Louisiana, it was reported that the public school stadium has been leased to a private academy, which also receives not only textbooks (allowed by state law), but desks and other school equipment funded by public money.

The siphoning off of public moneys to segregated private school education is not only a local matter; the states of Mississippi and Louisiana are in the private school business too. At its 1970 session, the Louisiana State Legislature appropriated $10 million for paying private and parochial school teachers' salaries. An estimated 4,000 private and parochial school teachers are said to be eligible for the payments. As this report is being written, litigation challenging the 1970 law is in progress.

According to a May 1970 report in *South Today*, published by the Southern Regional Council, the State of Louisiana, under a 1938 State Supreme Court ruling, has been providing money to bus all students, public and private alike. The Mississippi legislature has passed a bill which puts private schools on the same footing as public schools in the purchase of bus tags, the report states. Thus, private schools in Mississippi are no longer required to purchase expensive commercial licenses in order to operate buses.[4]

There was, however, one note of encouragement in Task Force reports concerning private segregation academies: Some of them at least have a low student retention rate. In several districts now entering their second year of desegregation, school officials reported a return of white students who had originally fled to the private academies to avoid desegregation.

V. Misuse of Federal Funds

The misuse of federal funds for education, although not the subject of intensive Task Force study, was revealed as a serious problem in a number of the school districts visited. NEA Task Force members found evidence strongly supporting earlier reports by other organizations that Title I funds are being widely misused, to supplant rather than supplement district and state funds. For example, in Amory City, Mississippi, eight teachers paid with Title I funds are assigned to regular classes, through the device of assigning them to teach the lowest levels in the A–B–C–D–E ability grouping program, thereby filling what would otherwise be regular assignments. Similar reports were received from Louisiana parishes. According to information reported by the Lawyers Constitutional Defense Committee, New Orleans, Louisiana, to the U.S. Secretary of Health, Education and Welfare, and made available to Task Force members, Title I moneys are being used to pay the salaries of regular classroom teachers, who perform only regular classroom duties and who offer nothing compensatory or unique; they are being used for construction of portable classrooms housing all black students in "desegregated" schools; they are being used for driver's education and business education programs, for physical education and recreation programs that are not compensatory in nature; and, overwhelmingly, they are being used to enforce racial isolation in the schools. Districts mentioned in the report included Claiborne, Madison, Washington, East Feliciano, Concordia, Caddo, and Orleans Parishes.

In Okolona, Mississippi, it was reported, portable units purchased with Title I funds in 1966 are used for classes in home economics, math, band and physical education. Also, in Okolona, four of fourteen black teachers who were fired this year (because of failure to make the required minimum NTE score, set at 800, *after the tests were taken*) were offered reemployment under Title I. The Task Force team that visited this district stated, "This suggests the possibility that Title I offers a unique opportunity for districts to get teachers off the regular payroll and back into the sytsem under a federal subsidy and without normal continuing employment rights."

In at least two Louisiana parishes—Evangeline and Richland—the media centers, where the school administrative offices are located, were constructed with Title I funds. A number of Task Force reports indicated that federally funded Title I programs are operating with all-white staffs and without the involvement of black teachers or citizens, even on a consultative basis.

Discriminatory activity in other federally funded areas was also reported by Task Force members. According to information made available to the Task Force, vocational education centers and programs in Mississippi are in many ways continuing the familiar patterns of segregation and discrimination of the regular public schools across the state.

Of 26 regular secondary vocational complexes and two in correctional institutions, not one is headed or directed by a black man.

Of 22 post-secondary regular and one correctional vocational complex, the only ones headed by blacks (reportedly not more than four or five) are those in which the student body is black.

A total of $50,000,000 in state and federal moneys is reportedly being spent on these 51 vocational complexes.

It is alleged that of 1,860 full-time teachers in 457 vocational centers, only a small percent are black, and this number is being reduced.

No black on the staff of the Division of Vocational Education in the State Department of Education has been involved in the planning and development of new vocational complexes, for which $20,500,000 has been budgeted.

Information in this area was not obtained with respect to Louisiana vocational programs. Task Force members felt, however, that the information outlined above, although incomplete, was of such significance that it should be included in this report.

VI. Lack of Black Representation on Boards of Education

Basic to the major problem of school desegregation in Mississippi and Louisiana (and in other states as well) is the fact mentioned earlier in this report—that control of the desegregation process is vested in the same individuals and groups who controlled, and struggled to retain the segregated system of public education. Black representation on boards of education is as scarce as it is in the administrative offices of Mississippi and Louisiana school districts. In the districts visited, where blacks are on local school boards, they do not have a majority voice, even when blacks comprise a majority of the population.

As emphasized in earlier reports of the National Education Association, political organization of black communities—and of teachers as active, politically aware members of these communities—is of vital importance if meaningful school integration, or quality education for black students and equitable treatment for black educators, are ever to be achieved.

"The blight of racial discrimination has infected this nation from its beginning; there are no quick and easy methods of cure. And the short history of school desegregation in

[3] "Won't Monitor Academies, HEW Says," *The Atlanta Journal*, Friday, August 7, 1970.

[4] "The Busing Myth: Seg. Academies Bus More Children, and Further," Levine, Leonard and Griffith, Kitty, *South Today*, Southern Regional Council, Atlanta, Georgia, May 1970, p. 7.

the South has made it plainly evident that externally applied pressures—whether from the federal Executive or Judicial branch or from national organizations—will not alone alter the patterns of white resistance to social change. The pressures must come from the black community—from the parents, from the students, from the educators, and from existing black community institutions organized into a strong collective of aggrieved individuals exercising the initiative to influence the public school system to serve them properly."[5]

It is clear to this Task Force that the National Education Association, through its recognized state affiliates in Louisiana and Mississippi and through their local affiliates, is in a position to aid in the effective organization of black teachers, in alliance with their communities into a cohesive educational and political force through which legitimate representation of their mutual interests can be achieved. The Task Force urges that the Association continue and strengthen the efforts that it has already undertaken in this direction.

HIGHER EDUCATION OPPORTUNITY ACT OF 1971

Mr. HRUSKA. Mr. President, on March 4, the Senator from Vermont (Mr. PROUTY) and other Senators introduced S. 1123, a bill to extend and amend the Higher Education Act of 1965. This bill, known as the Higher Education Opportunity Act of 1971, was developed by Mr. Nixon's administration and forecast in his message on higher education, February 22. Its enactment into law will make it national policy that every qualified person has a right to be educated to the limit of his ability and desire. The bill will help to eliminate the cruel discrimination against those of our young people whose parents cannot afford to pay the ever-increasing costs of college.

It is my hope, that the bill will be given the priority it deserves. It is critical that we put a bill on the President's desk for signature before the existing law expires on June 30 of this year.

In our deliberations on this measure, we should insure that all the components of our higher education system are considered. We need graduate programs and we need junior colleges. We need institutions that emphasize the scientific disciplines and those which concentrate on the liberal arts. We need public institutions and we need those fine, private colleges and universities which have carried such a large burden of the national educational requirement for so many years.

In this connection, I invite the Senate's attention to the special problems faced by private colleges today. Many of them do not participate fully in the largesse of the Federal Government—not because they provide an inferior education, but simply because they do not qualify for many of the narrowly described categorical grant programs currently authorized. Their costs have increased astronomically over the past few years while their income has not begun to keep pace. The competition from heavily subsidized public systems of higher education becomes more fierce by the day.

Faced with ever-increasing costs, private colleges have no alternative except to raise tuitions. The resulting combination of higher costs to the students, and the availability of low-priced alternatives in public colleges has caused a drop in enrollments in many private institutions. The inability of the private schools to make optimum use of faculty and facilities completes the vicious circle by increasing per-student costs, raising tuitions, and so on.

The presidents of 10 private colleges in Nebraska recently visited Washington. Their sole purpose was to lay before the Nebraska delegation a description of the situation in which they find themselves. Mr. President, it is a sorrowful story. It is a tale which should concern every one of us, and impel us to appropriate action. I am certain that the situation they face is not uique to Nebraska. The presidents provided the Nebraska delegation with hard facts and statistics, demonstrating that a terrible situation is getting worse. I ask unanimous consent that data provided by the Nebraska college presidents be printed in the RECORD.

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

NEBRASKA ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES,

March 9, 1971.

To the Honorable Members of the United States Congress from Nebraska:

The state of Nebraska is served by ten independent, fully accredited colleges and universities. This service extends back almost one hundred years. The presidents of all ten institutions appreciate the opportunity of meeting with our representatives in Congress. We express gratitude to the Congress for past acts and policies that have provided support for students and programs in the private sector.

We wish to call attention to the present state of independent higher education, both in Nebraska and across the nation. Trends that have been twenty years on the march now brings us to a critical present. Nonpublic education is entering a decade of decision, in fact survival. We point with pride to the vigor and quality of higher education in the United States, created in a large part by the existence of a dual system. Any study of higher education in other lands quickly indicates that the absence of a private sector has produced a monolithic system that does not serve its nation well.

It appears probable that the best efforts of the independent colleges will not be enough, if unaided. We, therefore, acknowledge the important role of federal programs over the past thirty years. Wise attention must be given to the present. If revenue sharing with the states is substituted for any part of federal assistance, appropriate safeguards must be introduced to make support available for both public and independent institutions. Absence of such safeguards could further restrict the flow of funds to the independent colleges. Recent decisions to terminate construction grants leaves many colleges with aging and incomplete facilities. The shrinkage of funds for libraries, equipment and general science purposes throws responsibility back on general budgets already pinched between the rising costs of operation and the lessening ability of the public to pay charges close to cost.

We hereby declare our desire to provide high quality, exercising the flexibility that the independent sector enjoys, being innovative and providing Nebraska with centers of initiative. We offer our services in whatever ways appropriate in support of proposals made in Congress, in the providing of information and in the education of constituencies.

How big is independent education in Nebraska? and how has it grown?

Plant value—10 independent colleges

[In millions]

1960	$25.5
1961	29.3
1962	35.0
1963	37.5
1964	42.3
1965	51.7
1966	59.0
1967	65.7
1968	76.0
1969	82.4

Enrollment, 10 independent colleges

1955	6,016
1960	8,585
1961 (est.)	9,200
1962 (est.)	9,500
1963 (est.)	9,800
1964 (est.)	10,700
1965 (est.)	11,700
1966 (est.)	11,800
1967 (est.)	12,000
1968 (top)	12,582
1969	12,425
1970	12,237

Surplus/deficit, 10 independent colleges

1960	$271,000
1961	442,000
1962	413,000
1963	697,000
1964	888,000
1965	462,000
1966	523,000
1967	486,000
1968	460,000
1969	—812,000

Deficits are increasing in number and level.

In 1960–61 there were no colleges experiencing deficits.

In 1967–68 one college experienced a deficit of $50,710.

In 1968–69 two colleges had deficits averaging $46,771.

In 1969–70 seven colleges had deficits averaging $116,000.

In 1970–71 none of the ten independent colleges in Nebraska can presently anticipate operating in the black.

The change has been rapid. In 1968–69 the "average" Nebraska institution had an average *surplus* of $46,093, which changed into an average deficit one year later of $81,217.00.

FEDERAL ASSISTANCE TO HIGHER EDUCATION AND THE 10 INDEPENDENT COLLEGES OF NEBRASKA

The independent colleges and universities of Nebraska have responded to the stimulus of federal programs and utilized every form of assistance made available.

A. Capital Expenditures:

Under the encouragement of favorable legislation for construction loans and grants, the independent colleges of Nebraska added $60,379,987 over the past decade. Of this amount—

$4,167,755 (6.9%) came from direct federal grants.

$24,566,307 (40.7%) was borrowed.

$18,607,507 (30.81%) of borrowed funds was borrowed from federal funds.

$5,612,917 (9.30%) was absorbed from operating budgets.

$26,033,008 (43.11%) came from private gifts.

[5] National Education Association Commission on Professional Rights and Responsibilities, *Beyond Desegregation: The Problem of Power*. The Association: Washington, D.C., February 1970, p. 57.

B. STUDENT AID

	Number of students assisted by NDSL	Percent of student body assisted by NDSL	Total financial Federal aid provided to students
1960	561	6.5	$286,502
1961	653	7.1	308,911
1962	869	8.9	415,486
1963	953	9.4	433,020
1964	1,298	11.8	649,843
1965	1,609	13.57	904,361
1966	2,090	17.2	1,334,370
1967	2,186	17.6	1,719,932
1968	2,530	20.1	2,043,662
1969[1]	2,437	[1] 19.6	2,024,530

[1] Note the 1st year of decline in the decade.

CAPACITY

Obviously a connection exists between deficit operation and vacancies on the campus of the independent college. The largest single source of revenue is the student tuition and fees. The development of vacancies across the nation is alarming.

In Minnesota, there are 2,000 vacancies.

In Missouri, there are 7,500 vacancies.

In Indiana, there are 8,000 vacancies.

With a little work, the capacity and utilization of the ten independent colleges of Nebraska can be refined into three categories for the current year:

Number of additional students that could be housed in residence—1380.

Number of students served with present staff—1880.

Number of students served by maximum use of academic facilities—3720 (obviously requiring more staff).

Or, to put it more succinctly, we now operate:

1380 under *bed* capacity

1880 under *staff* capacity

3720 under *plant* capacity

WHY THE PROPORTION IN PUBLIC HIGHER EDUCATION IS GROWING—A COMPARISON OF STUDENT COSTS SELECTED YEARS

	20 large public universities			14 medium-sized private universities			Difference in total cost
	Tuition and fees	Room and board	Total	Tuition and fees	Room and board	Total	
1931–32	$90	$344	$436	$261	$345	$606	$230
1947–48	130	495	625	415	488	903	278
1959–60	248	742	990	935	704	1,639	649
1967–68	363	886	1,249	1,685	913	2,593	1,349
1970–71	458	948	1,406	2,109	1,056	3,165	2,056

Source: From American Council on Education, A Fact Book on Higher Education, 1970.

DR. HADDON'S TESTIMONY ON AUTOMOBILE BUMPERS

Mr. BENTSEN. Mr. President, yesterday the Committee on Commerce received some extraordinarily provocative testimony from Dr. William Haddon, president of the Insurance Institute for Highway Safety, on the subject of the weak and ineffective automobile bumpers that are currently featured on the popular models of American and foreign cars.

In the course of his testimony, Dr. Haddon effectively demolished the arguments advanced from certain quarters that strong and durable auto bumpers are neither technologically nor economically feasible.

Dr. Haddon told the committee:

Although the techniques for solving the problem have been available for years . . . they continue to be ignored in the design and manufacture of new cars being sold to the consumer today.

He went on to say that designing effective bumpers which could withstand crashes at speeds up to 10 miles per hour could be achieved without increasing the cost of the automobile.

Mr. President, it is imperative that the Secretary of Transportation be directed to establish standards for automobile bumpers which will enable them to withstand collisions—front and rear—with a fixed impact barrier at speeds up to 10 miles per hour without sustaining any property damage or causing injury to the inhabitants of the vehicle.

S. 949, which I introduced earlier in the session, is directed to that end.

Congress should act promptly on this or similar legislation so that we can halt the accelerating costs of auto repair and the corresponding rise in auto insurance rates.

Dr. Haddon's organization, after conducting extensive tests, found that the average cost of repairs to bumpers colliding with a fixed impact barrier at a speed of only 5 miles per hour is $331.69 for front end repairs and $329.28 for the rear.

These astronomical repair costs make a mockery of the claim that we cannot afford to build bumpers which are resistant to property damage. Indeed, we can no longer afford not to build them.

Dr. Haddon said:

There is no question that bumpers able to manage energy without damage to vehicle structures at barrier crash speeds up to and above ten miles per hour are now and for some time have been well within the state of the art.

Mr. President, I believe that the American public is entitled to the protection afforded by bumpers which can withstand collisions at these speeds without sustaining any property damage whatsoever.

I ask unanimous consent that a partial text of Dr. Haddon's remarks be printed in the RECORD.

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

TESTIMONY OF WILLIAM HADDON, JR., M.D., PRESIDENT, INSURANCE INSTITUTE FOR HIGHWAY SAFETY BEFORE THE SENATE COMMITTEE ON COMMERCE MARCH 10, 1971

Mr. Chairman and members of the Committee, in response to your invitation I am here today to present the results of the present series of low speed crash tests conducted by the Insurance Institute for Highway Safety. Before doing so, however, a few words of background:

The Institute began low speed crash tests of new-model automobiles in 1969. Until then, there had been virtually no recognition of the relationship between high automobile repair costs and the designed-in delicateness of the automobiles themselves.

Three basic questions needed answering. First, we wanted to know how much delicateness was being designed and built into new model cars. To answer this we crashed four of the most popular 1969 sedan models into a standard test barrier at five (5) miles per hour front and rear, ten (10) miles per hour front-to-barrier, ten (10) miles per hour in two-car configurations, front-to-rear and front-to-side, and fifteen (15) miles per hour front into barrier. The results were illuminating; for example, in the five (5) mile per hour front-into-barrier crashes, the four cars averaged two hundred dollars ($200.00) in estimated repair costs per car.

Then we asked how large a proportion of the total vehicular crash damage low speed crashes might account for. Working with data provided by a major automobile insurance company encompassing a sample of thousands of auto property damage claim closures during a six-month period of 1968–69, we discovered that 94 per cent were for five hundred dollars ($500.00) or less.

The third question was whether such low speed crash damage could be eliminated by alterations in vehicular design. In fact, one of the many available on-the-shelf solutions was presented to the Senate Antitrust and Monopoly Subcommittee at the same time by an independent aerospace manufacturer. Some members of this committee may have since seen demonstrations of one or more of the several other energy-absorbing front and rear end design options available to eliminate low speed crash damage.

With the introduction of 1970-model automobiles we expanded our crash tests to include 12 popular models—the four sedans, four so-called "pony cars," and four small cars. The filmed results of both the 1969-model and 1970-model cars were presented at hearings of the Senate Subcommittee on Antitrust and Monopoly. The results of the 1969 and 1970 model low speed crash tests are shown in Appendix A.

As our test results have become known, public and private concern about the problem of needless delicateness in auto exteriors has surfaced. The bills you are considering today reflect that concern. Also a number of state legislatures are actively considering legislation to require that automobiles withstand low speed crashes without damage; one state, Florida, enacted such a law last year. Further, a number of insurance companies have announced premium reductions to encourage the offering in the marketplace of automobiles that are not susceptible to low-speed crash damage. Finally, there appears to have been an increase in efforts by independent designers and developers to apply long- and well-known energy absorbing principles as a means of providing crashworthy automobile bumpers, and a steady increase in editorial and public demand for solutions to the automobile fragility problem.

Unfortunately, although the techniques for solving the problem have been available for years, the results of our most recently completed series of tests—involving 1971 model automobiles—show that they continue to be ignored in the design and manufacture of new cars being sold to consumers today. The technological remedies remain on the shelf, where they have gathered dust for costly years.

The base line of low speed crash damage reflected in estimated repair costs generated in our 1971 model tests on balance appears to have worsened. For example, for the four (4) sedans, the only like models crashed both last year and this year, the average estimated repair costs compare as follows:

When crashed front end into the test barrier at five (5) miles per hour, $215.64 for 1970 models, $331.69 for 1971 models;

When crashed rear end into the barrier at five (5) miles per hour, $218.66 for 1970 models, $329.28 for 1971 models;

When crashed into like models front-into-rear at ten (10) miles per hour, $558.04 for 1970 models, $516.40 for 1971 models;

And when crashed into like models front-into-side at ten (10) miles per hour, $499.36 for 1970 models, $637.76 for 1971 models.

The largely cosmetic, egg-shell front and rear ends of new automobiles remain with us in showrooms and on the streets, insuring, for some time to come, the continued operation of a highly remunerative market in replacement parts sales, most of which automobile design has made certain will be made by the maker of the automobile itself.

Many of you may have noticed the new attention that is being paid in some media advertising of new model automobiles to the issues of occupant safety and protection from vehicle damage. In promotions for some of the 1971 models, we have noted claims—albeit sometimes veiled and couched in careful innuendo—of improved crashworthiness of bumpers. As you watch the film of our 1971 model crash tests, you will want to pay particular attention to at least three of these:

1. The Pontiac Firebird, which has for the last few years featured what is referred to as the "Endura" front end. A company promotional booklet on 1971 Pontiac models calls the Endura "amazing." An automotive magazine has described the front end design as "energy absorbing."

2. The 1971 Buick Skylark's bumper, of which a company official said during a press conference last autumn, ". . . (I)t will withstand about four times as much force from any intruding or any impacting object than the 1970 bumpers. So we made a very dramatic improvement in our bumper protection."

3. The 1971 Plymouth Satellite, which features what one automotive magazine called a "heavy loop bumper (which) provides complete protection for recessed headlights and black-out grille," and which a promotional brochure described as a "massive front bumper."

Before showing the film, a word about the test procedures used in this series: Our tests are now being conducted by EG&G, Incorporated, an established leader in the development and use of advanced technology instrumentation and data gathering systems, lighting products and photographic systems. They were conducted at a specially designed and constructed indoor testing facility. Whereas in the past the test vehicles were towed in neutral into the obstacle—the barrier or second car—by another vehicle, this year's models were actually "driven" into the crash under their own power from a remote control console, thus more closely simulating real world conditions.

Since each vehicle being tested was driven into the test barrier or stationary target car under its own power, in some of the tests, notably the sedans test-crashed into the barrier at five (5) miles per hour, the cars were not braked immediately following the first impact. These cars rebounded from the barrier and, since they were still in forward gear, impacted the barrier again—a phenomenon not unknown in real-world low speed crashes, incidentally, as when a motorist is unable in a crash to apply the brakes or, in a standard transmission car, disengage the clutch soon enough to avoid successive collisions. These secondary taps will be clearly visible on the screen as you view the film of the tests.

As with our 1969-model and 1970-model tests, estimating of repair costs following each crash was done by a panel of three automobile damage appraisers. The cost estimates also reflect inflation's toll on crash-car owners, both in terms of labor costs and replacement parts prices. In previous years' crash tests, we used the rate—modest even then by national standards—of seven dollars ($7.00) per hour for labor. This year we have raised this to eight dollars ($8.00) per hour, a rate still considerably below that charged in many parts of the United States today.

The total estimated repair cost after each test crash is shown in a chart included in this testimony at the end of the film. In the film you will see tests involving four (4) series of crashes—front-into-barrier at five (5) miles per hour, rear-into-barrier at five (5) miles per hour, and intervehicular tests of identical vehicles front-into-rear and front-into-side, both at ten (10) miles per hour. The tests involve twelve (12) models of automobiles: four (4) sedans, four (4) small cars including three (3) new domestic competitors to the imports, and four (4) intermediate-sized cars. Now, the film of the 1971 model low speed crash tests. As you view these crashes, it is easy to see why these automobile designs guarantee huge sales in crash replacement parts that are available only from those who possess the specially designed equipment which fabricated the costly, delicate, original-equipment parts in the first place.

1971 LOW SPEED CRASH TEST RESULTS: INSURANCE INSTITUTE FOR HIGHWAY SAFETY

	5 miles per hour		10 miles per hour			
	Front	Rear	Front	Front/rear [1]	Front/side [2]	15 mile per hour front
Sedans:						
Chevrolet Impala	367.90	447.00		280.50	328.85	
				221.05	375.30	
Ford Galaxie	341.20	318.55		248.15	241.00	
				469.60	439.35	
Plymouth Fury	202.25	266.35		201.85	247.10	
				246.80	306.55	
AMC Ambassador	415.40	285.20		256.30	233.25	
				141.35	379.65	
Small cars:						
Volkswagen	130.75	59.05		81.10	126.35	
				181.75	227.45	
Chevrolet Vega	181.30	228.45		276.55	191.05	
				244.60	195.90	
Ford Pinto	164.20	210.00		183.35	151.90	
				196.10	244.15	
AMC Gremlin	121.30	286.90		253.95	172.00	
				137.65	329.65	
Intermediates:						
Pontiac Firebird	229.00	262.60		77.00	55.40	
				385.60	458.70	
Buick Skylark	427.10	226.85		305.75	354.00	
				190.70	174.50	
Mercury Montego	402.11	267.35		171.50	98.85	
				469.13	729.50	
Plymouth Satellite	98.45	256.35		161.35	120.95	
				241.65	523.25	

[1] In the front-to-rear crashes, the price listed first for each car model is the estimated repair cost for the striking car (front-end damage); listed second is the estimated repair cost for the struck car (rear-end damage).

[2] In the front-to-side crashes, the price listed first for each model is the estimated repair cost for the striking car (front-end damage); listed second is the estimated repair cost for the struck car (side damage).

The high base line of damage reflected in these test results is attributable to more than the performance of the clearly inadequate bumpers with which the cars were equipped. It is a product of the overall design of the automobiles, particularly their front and rear ends. The question that should concern us is that which examines the use made of the space occupied by the vehicle and its components—whether, for example, the car is heavily laden as its prow and stern with expensive-to-replace cosmetic fringes—costume jewelry—and is adorned with protruding nose cones and upper lip snouts which perform all of the functions of battering rams, or instead is relieved of this pocket-picking ornamentation and, at the same time, equipped with self-restoring, energy absorbing structures.

A few slides will illustrate in detail how the designs of current model vehicles guarantee crash damage. First, some slides detailing what you have already seen in the film—how the bumpers themselves perform by rolling and twisting on their mounts, away from their normal positions, to mangle sheet metal which has been needlessly extended to embrace the outermost extremities of each car, even the bumper mounts themselves—with the public warranted to lose:

American Ambassador, Front/Barrier, 5 MPH.

American Ambassador, Front/Side, 10 MPH.

American Motors Gremlin, Front/Side, 10 MPH.

Chevrolet Impala, Rear/Barrier, 5 MPH.

Chevrolet Vega, Rear/Barrier, 5 MPH.

Plymouth Fury, Front/Rear, 10 MPH.

Buick Skylark, Rear/Barrier, 5 MPH.

Now, some illustrations of how the designs of the front and rear ends, including bumpers, acted to produce damage to side quarter panels of the cars:

Pontiac Firebird, Rear/Barrier, 5 MPH. As I noted during the film, the damage done to rear quarter panels on either side of this car by the five (5) mile per hour rear-into-barrier crash was strikingly symmetrical. I might add, the estimated cost for straightening each of these rear quarter panels was the same.

Plymouth Satellite, Rear/Barrier, 5 MPH.

Ford Pinto, Front/Rear, 10 MPH.

Incidentally, you may be curious as to the cause of the dramatic radiator breakage and leakage in the American Ambassador's five (5) mile per hour front-into-barrier crash test. In this slide you can see how the design allowed the radiator to be pushed backward into the fan blades, which, because the car was running, chewed into the radiator core, causing the escape of steam and antifreeze you saw early in the film.

Perhaps the most dramatic proof of the function regularly served by contemporary automobile design is in the fanciful—and dangerous—front end snouts, spearheads and jutting lips styled into today's cars. The following slides illustrate dramatically what caused the massive damage in some of the intervehicular test crashes you saw in the film.

Chevrolet Impala, Front/Side, 10 MPH.

Fort Galaxie, Front/Side, 10 MPH.

Chevrolet Vega, Front/Side, 10 MPH.

Ford Pinto, Front/Side, 10 MPH.

Buick Skylark, Front/Rear, 10 MPH.

Pontiac Firebird, Front/Barrier, 5 MPH.

Mercury Montego, Front/Side, 10 MPH Pre-crash.

Mercury Montego, Front/Side, 10 MPH, After Impact.

We have noted that, in the course of the rising publicity over improved automobile crashworthiness, some are claiming that it would be impractical now to set even so low as a five (5) mile per hour no-damage floor for both front and read ends of cars, and suggesting even that a two and a half (2.5) mile per hour no-damage floor be set for automobile rear ends. Gentlemen, a man jumping only two and a half (2.5) inches off the floor lands at two and a half (2.5) miles per hour. It seems reasonable that automobiles should sustain damage-free rear end crashes into a barrier at somewhat greater speed—and yet we have seen, in the film of our test crashes, the amounts of damage that those same automobiles sustain at five (5) miles per hour. To cite two other examples, a man landing from a jump of just over ten (10) inches—less than the distance involved in jumping off a high step—would land on the floor at five (5) miles per hour; one landing from slightly over three and a third (3⅓) feet would land at ten (10) miles per hour.

To this point, Mr. Chairman, I want to comment more specifically on widespread claims that an adequate solution to the problem so dramatically illustrated in these films is a front-end energy absorbing bumper capable of withstanding a five (5) mile per hour barrier crash with little or no damage. There is no question that bumpers able to manage energy without damage to vehicle structures at barrier crash speeds up to and above ten (10) miles per hour are now and for some time have been well within the state of the art. But at least according to one car maker, there seems to be a question whether rear-end property damage in low-speed crashes is of sufficient magnitude to justify even a five (5) mile per hour damage-free *rear* end bumper system.

I refer to General Motors Corporation, which has circulated an analysis claiming to justify its conclusion that "a separate speed range should be selected for the front and rear bumper systems"—with the rear system set at a much lower range than the front—because "front end collisions occur two and a half (2½) times as frequently as rear end collisions," according to GM.

If GM's data were representative of the real world, its conclusion might be sound. Based on thirteen thousand (13,000) cases under collision coverage written by Motors Insurance Co., its subsidiary, the data say that fifty-eight (58) per cent of collisions involved front damage, while only thirty (30) per cent involved rear damage. (The rest presumably involved neither front nor rear end damage.) This, GM suggests, means that rear-end damage is much less of a problem than front-end damage.

But it turns out that GM's data, based as they are on collision coverage only, are limited almost entirely to damage to cars that struck something else—another vehicle or a fixed object. Not included is damage to cars *struck by* other vehicles, such as those hit by others through absolutely no fault of their own.

We looked at the damage to these struck cars by examining a national sample of approximately thirteen thousand (13,000) closed property damage liability claims from one of the country's largest auto insurance companies. The results were quite different from GM's data involving striking vehicles. In our examination forty-six (46) per cent involved damage to the rear of the car, and only twenty-nine (29) per cent involved damage to the front of the car.

Since a figure more nearly reflecting the true role of rear damage in all crashes would include the damage experience both of struck cars and striking cars, we also combined our data with a representative set of closed collision claims from the same company. In result, we found that for every one and twenty-six hundredths (1.26) collisions involving front damage, one collision involves rear damage—the latter frequently caused to the vehicle of an innocent driver hit by another from behind.

The pacifying assurance that good rear-end bumper systems would not be—to use GM's term—"cost effective" might be rather vigorously challenged by the countless car owners whose vehicles each year are mashed from behind.

I also note public claims by some to the effect that providing significant bumper protection front and rear on automobiles would require both considerable extension of vehicle length and vehicle cost. These and other arguments against improved vehicle crashworthiness are specious on their face. A policy that provides a safe, damage resistant vehicle would require that snout configurations and fancy tinsel cosmetics be eliminated and their space utilized instead for proper energy management structures, thus both reducing vehicle cost and eliminating low speed crash repair costs. It is a question of how the space occupied by the structure of the vehicle, of whatever length, is to be utilized—by proper energy absorbing structure which is self-restoring, or by costly, fragile and damage-prone cosmetics. By choosing the former option, manufacturers could reduce the initial price of the vehicle or, at worst, maintain it at present levels by elimination of the costly delicacies.

Another aspect of the exterior designs of several of these vehicles flies in the face of the best interests of men, women and children not only in the United States, but everywhere in the world where these and similar vehicles are used.

Man discovered thousands of years ago that the likelihood and severity of damage to people, as well as to their property, could be greatly decreased if the impacting parts of objects that hit them are designed to guarantee that the forces are spread out rather than localized.

In practice, this health principle is deliberately ignored in design intended to produce impact surfaces that are hard, pointed, rigid, sharp, edged, jagged, or otherwise hurtful on contact with people. Military hardware from all parts of the world, through all the eras of man, illustrates this—witness the edges of swords, the points of spears, warclubs, tomahawks, battering rams, the prows of triremes, and more recently, those pointed shafts of bamboo found along warzone jungle trails.

In view of this, it can hardly be maintained that using the same lethal shapes for the surfaces of vehicles that can and regularly do impact pedestrians, bicyclists and other defenseless road users may be excused as an act in ignorance.

Let me note that the record of this Committee served public notice in 1968 that these designs were producing needless spearing and lacerating of Americans—incidentally, with results medically comparable to those produced by devices of warfare.

Eliminating such expensive and needless costume jewelry and substituting design and executive decisions that reflect concern for people will reduce needless human and social, as well as property, damage.

In the April 25, 1968, hearings of the Committee: I discussed with the Committee these pedestrian-be-damned designs, provided medical case studies and photographs showing the unnecessary penetration into bodies of such pointed metal junk sculpture, and placed in the record my letter of December 21, 1967, to auto and truck manufacturers. This letter included the following:

". . . I am writing concerning the difficult and serious problem of injuries to pedestrians, bicyclists and others who are hit by, or who themselves hit, exterior vehicle structures—and the fact that the contour and structure of exterior portions of vehicles often unnecessarily increase the likelihood both of injury and its severity.

"As you know, for decades we have been aware medically and from a safety standpoint that structures which localize the forces of impact on the bodies of men, women and children can needlessly contribute to injury, disability, and death. Some 9,300 pedestrians, not to mention bicyclists and others, are killed in the United States each year, and an estimated one-third of a million injured.

"Attention to means for reducing pedestrian and related injuries, and to reducing severity of those that occur, should have just as high priority as accomplishing the same objective for drivers and passengers. I know you are giving attention to accomplishing this, especially through the elimination of vertical and horizontal external ridges and protrusions. . . .

"With the increasing interest of physicians and the general public in this entire problem we expect that many examples of structure-injury relationships, useful to all of us attempting to reduce injury and death on our highways will come to our attention and yours. I am passing along two such examples I hope you will find helpful.

". . . Not all pedestrian injuries can be minimized or eliminated through cleaning up the exteriors of vehicles, either in contour or in hardness of structure in impact areas, but gains can be achieved. For this latter reason, I hope you will find these examples—that I am sending to other companies as well—helpful as you work on the ways in which you should approach this area in the future. If we can be of any help in this respect, I hope you will let me know."

Yet another point is often misunderstood. This is the belief that the safety of occupants demands the crushing of vehicular metal. It has been said that occupants of automobiles equipped with undamageable front and rear ends would be exposed to greater crash forces since the vehicles would have to be rigid enough to crash without damage. If this were so, jet airliners would be unable to land without sustaining damage both to themselves and to passengers from the jolt of touchdown. There are about as many other examples of impact-energy management that effectively and repeatedly keep damage from occurring at low and moderate impact speeds without providing rigid structure that causes damage to humans—modern railroad draft gear that absorbs the shock of coupling freight cars, for instance.

Dr. Patrick M. Miller, head of the Structural Dynamics Section of Cornell Aeronautical Laboratory, Inc., has also forcefully disposed of this point. As you may know, Cornell Aeronautical Laboratory has conducted much of the crash testing and research in this field for the Department of Transportation. Dr. Miller said, and I quote, ". . . (W)e do not see any basic incompatibility between designing vehicle structures for occupant safety and also for property damage reduction.

'The contention has been made that the vehicle structure should be weakened so that it will collapse and assist in cushioning the occupants during high speed impacts, where occupant injuries and fatalities generally occur. On the other hand, most people agree that the structure must be strengthened to provide for reduction in vehicle damage. The contention related to the vehicle strength as it affects occupant safety is, I believe, erroneous. Indeed, our work indicates that by strengthening the vehicle structure, both occupant safety and vehicle damage aspects of the problem would be improved.

"Even though the vehicle damage problem is associated with low speed, 5 and 10 MPH collision, while occupant safety is generally concerned with 20 to 60 MPH impact velocity ranges, it may be helpful to briefly review some of the results of the higher speed collisions . . .

"Thus, increasing front structural strength to improve occupant safety at higher speed collision is consistent with a strength increased to reduce vehicle damage in low speed collisions."

A great deal more is involved than simply mounting an improved bumper a few inches in front of the present day vehicle, although even this first practical step is decades overdue. What we must also be concerned with is a change in the basic concept of vehicle design to serve the *public* interest and to remove much of the lethality from the crashes of passenger automobiles on our highways—and much of the dollar cost of their impacts as well.

The Insurance Institute for Highway Safety will continue its testing during the coming months. The Committee has asked that we return when we have collected further data from our tests. We will be pleased to comply.

INSURANCE INSTITUTE FOR HIGHWAY SAFETY CRASH TEST RESULTS—1970

	5 miles per hour		10 miles per hour				
	Front	Rear	Front	Front/ rear [1]	Front/ side [1]	Front/ pole	15 m.p.h. front
Sedans:							
Chevrolet Impala	$196.20	$247.30	$491.40	$421.30	$481.80	(2)	$740.40
Ford Galaxie	185.80	325.25	459.05	513.45	478.35	(2)	703.10
Plymouth Fury	171.30	202.05	600.05	483.60	515.75	(2)	652.30
AMC Ambassador	309.25	100.05	615.75	813.80	521.55	(2)	819.50
Pony cars:							
Ford Mustang	160.30	147.05	400.70	615.65	402.35	(2)	661.35
Plymouth Barracuda	176.60	197.10	332.90	379.75	409.70	(2)	876.05
AMC Javelin	$262.67	$132.40	$618.85	$550.59	$502.05	(2)	$686.60
Chevrolet Camaro	130.10	174.00	599.35	465.60	437.90	(2)	1,052.60
Small cars:							
Volkswagen	120.25	64.45	322.35	228.20	381.55	$335.75	518.70
Toyota	133.70	69.30	410.94	305.57	316.34	370.03	486.86
Maverick	153.10	204.75	427.35	449.80	423.30	400.55	590.55
Hornet	204.50	193.85	508.40	590.20	591.75	474.60	636.75

[1] In the intervehicular crash tests front-to-rear and front-to-side, the figures are the cost estimates for both cars combined.
[2] Not tested.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

QUORUM CALL

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

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

APPALACHIAN REGIONAL DEVELOPMENT ACT AMENDMENTS OF 1971

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the unfinished business, which will be stated by title.

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

A bill (S. 575) to authorize funds to carry out the purposes of the Appalachian Regional Development Act of 1965, as amended.

The Senate resumed the consideration of the bill.

Mr. MONTOYA. Mr. President, the Senate today is considering legislation to continue what is considered by many to be one of the most unique and innovative programs in the history of American government.

Since its inception in 1965, the Appalachian regional development program has blazed new trails in securing cooperative action among various levels of government. It has seen the establishment of a new partnership between the Federal Government and the States that is consistent with our desires to return many public decisions from Washington to the State level.

While the Appalachian effort has been a success in terms of structural promise, it has also greatly facilitated the delivery of vital services to the people. Through one of its programs alone, the Appalachian Regional Commission has participated in the development of 233 health facilities, 260 vocational and technical schools, 157 higher education facilities, 85 libraries, 49 airports, 37 purchases of school equipment, and 71 other public improvements.

The legislation we consider today, S. 575, would continue the general Appalachian program for 4 years, through 1975. It would also extend the time for completion of the key Appalachian highway program for another 5 years, through 1978. Additional authorizations for the general program are provided in biennial amounts of $277 million for fiscal years 1972 and 1973; and $294 million for fiscal years 1974 and 1975. New authorizations for the 5-year extension of the highway program are $925 million dollars.

When Congress enacted the Appalachian regional development program in 1965, it responded in a special way to the special needs of this 13-State area. For a variety of reasons, including virtual reliance on a one-industry economy and the difficult topographical conditions that exist in the region, Appalachia consistently lagged behind the rest of the United States in providing both the social services and economic opportunities that were available elsewhere. The Appalachian program has been an attempt to remedy this situation by assisting these States and communities in providing their citizens with basic public facilities and services.

The need for intensive remedial activity in the Appalachian region was evident. Incomes lagged far behind the national average. Educational opportunities were substandard. Efficient transportation was difficult and costly to provide in areas of rough terrain and in communities with low tax bases. Unemployment continued to rise as mechanization spread throughout the coal industry.

As a result, many of Appalachia's people moved from the area, usually to large metropolitan centers where they frequently were bewildered by a new and strange way of life and were unable to improve their condition.

At the outset, certain goals were established for the Appalachian Development program. While there has been considerable progress in many areas, these goals have not been achieved. Out-migration has slowed. Unemployment has decreased. Substantial improvements have been made in public service facilities. All indicating that we are on the right track.

Mr. President, the legislation we consider today is designed to build upon the firm base already established so that the goals we set in 1965 can be reached in Appalachia.

This bill, in addition to extending the life of this program, makes several modifications of it consistent with our experience in the past 6 years and with the changing requirements of the region. Many of the provisions of this bill are drawn from the recommendations received in testimony before the Subcommittee on Economic Development last month. The committee heard 16 witnesses, all of them closely involved with economic development and the operation of the Appalachia program. In addition, statements were received from all Governors of Appalachian States and many other interested citizens and organizations.

Except for highways and airport safety, authorizations in this bill are not provided by specific activity categories. The committee felt that the Governors and the Federal cochairman who are the Appalachian Regional Development Commission should have maximum flexibility in determining priorities for the investment of these funds. The bill, therefore, was amended to authorize funds in a block for the nontransportation programs. In many respects, the "simple" change may be the most significant change contained in S. 575.

The additional authorizations for the Appalachian Development Highway System and local access road program are based on new estimates of the cost of completing a total system of 2,571.7 miles. The added cost is the result of inflation, implementation of new Federal highway safety standards, and new Federal relocation assistance requirements.

Provisions of the Appalachian Act relating to health and child care programs are broadened in the bill so that Appalachian funds can be used in combination with other Federal grant programs such as those of the Social Security Act.

One of the most persistent environmental programs in the Appalachian area results form the severe damage caused by surface mining operations. This was recognized in the inclusion in the Appalachian program of the mine area restoration program. States, however, have not fully implemented this section because present law requires that mined areas to be reclaimed must be owned by a governmental entity before Appalachian assistance is available. The fact that only 4 percent of the strip mined land in Appalachia is publically owned obviously impedes this program. In addition, existing statutes prohibit use of Federal funds for land acquisition. This bill includes language to correct both of these defects so that greater progress can be made in restoring the scarred hills of Appalachia.

Housing provisions of the Appalachian Act were designed to overcome one of the region's most serious shortcoming by facilitating the construction of new homes for thousands of families who now live in substandard dwellings. Provisions of the measure before us today would make this task easier by authorizing the Secretary of Housing and Urban Development to make grants to public bodies and nonprofit organizations for site development costs and improvements when these are necessary to make housing projects economically feasible.

Here again is another situation in which the unique circumstances of Appalachia require special attention. Housing programs have been difficult to mount because of the relatively low level of family incomes, the high cost of land development, and the inaccessibility of building sites to sewage and water facilities.

One of the most encouraging developments in Appalachia is the creation of health programs on an area basis covering several counties and crossing State lines. The feasibility of this approach has been proven, and thousands of people who otherwise would have been denied adequate medical care have been served, many of them for the first time in their lives. S. 575 extends the authority for similar multijurisdictional programs in education. I emphasize this change since it will enable the States and communities to make full use of the educational facilities built under this program in the past 5 years.

The shortage of public capital in Appalachia has made it difficult for local government units to participate in Federal grant-in-aid programs. In most of these, local matching money is required, and if there is no local matching money, the communities are shut off from Federal assistance. The act remedied this situation in 1965 by authorizing grants to supplement existing categorical aid programs. S. 575 amends this authority to allow such funds to be used as initial matching, or first-dollar, money. This will permit many communities to take advantage of the opportunities afforded by regular grant-in-aid programs which for budgetary reasons are underfunded. The ceiling on total Federal contributions to any project would remain at 80 percent.

The only totally new activity added by this bill to the Appalachian program is the one to upgrade safety facilities at existing airports in the region. The need for such action was brought dramatically and tragically to our attention last November when 75 people died in a crash near Huntington, W. Va.

The persistent Appalachian problems of rugged terrain and the shortage of money made assistance to upgrade airport safety essential. The committee, therefore, authorized a special 4-year program to accelerate safety improvements at existing airports in Appalachia. Activities contemplated include the removal of airport hazards, the acquisition of safety equipment and navigational aids, and the acquisition of land, easements or air-space rights necessary for any project.

Testimony before the Subcommittee by officials of the Federal Aviation Administration revealed that funds available to the region under the Airport and Airways Development Act of 1970 would be inadequate to accomplish the necessary safety improvements.

Federal participation under this program would not exceed 90 percent of a project cost except for navigation aids, which are eligible for 100-percent assistance. To implement this program, a total of $40 million is authorized.

Many of the things I have discussed as the problems of Appalachia are the problems of the rest of the country. In many respects, when reviewing the shortcomings of transportation, education, and housing in Appalachia I could just as easily be talking about my own Four Corners region in the Southwest.

Many helpful lessons have been learned while dealing with Appalachia that can add substantially to our ability to amend and modify other economic development programs so that they, too, can respond effectively to the needs of the whole country.

It is for this reason that, while we were considering this legislation, the Subcommittee on Economic Development began a series of field hearings to provide a base for the development of a comprehensive national economic development program. We recognize that such a program is necessary for application throughout the country so that long-term development plans can be formulated and executed. Field hearings are scheduled through April, and we anticipate additional hearings in Washington on legislative proposals to implement a wide-ranging national program.

I am aware that proposals are expected from the administration to establish a national program of revenue sharing to ease the heavy financial burdens of the States and communities. There are recommendations that the Appalachia program as such be merged into the revenue-sharing package. We do not feel, however, that the structure and operation of Appalachia is inconsistent with the aims of revenue sharing. We believe, too, that activities already begun under the Appalachian program would be seriously disrupted or irreparably damaged if we were to delay action until congressional consideration of revenue sharing is complete.

I am indebted to the inspiration and continuing leadership of Senator JENNINGS RANDOLPH, the chairman of the Committee on Public Works and to Senator JOHN SHERMAN COOPER, ranking minority member. These two distinguished Senators are both residents of Appalachia and were the main sponsors of the legislation that created the Appalachia regional development program in 1965.

Their unique experience and great knowledge not only as Appalachia residents, but as Senators, has been invaluable in the development of this program. The ranking minority member of the Subcommittee on Economic Development, Senator HOWARD BAKER, of Tennessee, has likewise contributed substantially to the refinement of Appalachian legislation.

Each member of the Committee on Public Works has been equally involved with Appalachia, though some of them may be Senators from States far removed from the region. Their aid and encouragement is appreciated, and we could not have brought this program to its present level of achievement without them.

At the same time, our task has been greatly facilitated by the competent and loyal work of the staff of the Committee on Public Works who have been concerned with this legislation. I must give particular notice to the contributions of Staff Director Richard B. Royce, Minority Staff Director Bailey Guard, Counsel M. Barry Meyer, Professional Staff Members John W. Yago, Philip T. Cummings, Judy Parente, and Richard Herod. In addition, Pauline Medlin, Peggy Nagle, LaVerne Douglas, Veronica Holland, Birdie Kyle, Ann Brown, and Hester Dungan have given the members and staff the support needed to carry out our duties.

I also wish to acknowledge the great help given to me by my legislative assistant, Karl Braithwaite.

Mr. President, the Appalachian regional development program has addressed itself to aiding the people of a region of our country in improving their lives and their communities. It has been a successful experiment and it must be continued to full fruition. I ask the Senate to give this bill careful consideration, and I strongly recommend its passage.

Mr. BAKER. Mr. President, I commend our colleague for his substantial effort in seeing a very good piece of legislation shepherded through the subcommittee and the committee, and

brought to the floor in this form. I fully support it.

Mr. President, I should like to speak in favor of the bill to extend the Appalachian Redevelopment Act as reported out by the Committee on Public Works. This past week I attended field hearings held by the Subcommittee on Economic Development of that committee in Memphis, Tenn. The testimony of the witnesses at that hearing convinced me, if I was not already convinced, that the regional economic development approach to rural improvement as manifest in the Appalachian program is an eminently feasible and effective answer to the problems of the 13-State region within the jurisdiction of the Appalachian Regional Commission. The partnership between State, local, and Federal governments under the program has performed efficiently and with harmony, producing consistent and demonstrable progress throughout the region. A great litany about the accomplishments of the Commission has grown up since the program was created in 1965.

While I join those who praise the program for its many successes, I want to address myself at this juncture to the relationship between the pending bill and President Nixon's special revenue sharing proposal for rural economic development, the details of which have just only become known. The New York Times reported on March 3, the day after this bill was reported by the Committee on Public Works, that the President's revenue sharing plan had "suffered its first major setback" when the bill to extend the Appalachian Regional Development Act was ordered favorably reported. I disagree.

There have been many efforts to analyze the program, to learn why it has worked so well when other similar programs have not. It is almost universally agreed that the Appalachian program has worked because of the freedom it has given Appalachian Governors to design programs that are responsive to the particular needs of communities within their States. The Governors, together with highly effective multicounty economic development districts, which bring together key public and private leaders in communities with common problems, have effectively been given a carte blanche to apply Federal, State, and local funds to local problems that demand locally tailored solutions. Because funds for the program are appropriated directly to the office of the President and not to a line department or agency, where bureaucracy can smother any meaningful local initiative, the Appalachian Governors have enjoyed an extraordinary freedom in their use of program funds.

While it is true that Appalachian program funds have been and will continue to be subject to Federal guidelines and agency approval, the program has been given its remarkable flexibility through the device of so-called section 214, or supplemental funds, which enables the Commission to pay out of Federal moneys a part of the local matching share for a given categorical grant-in-aid program where a locality would otherwise be too poor to take advantage of the Federal carrot.

I submit to my distinguished colleagues that the Appalachian Regional Commission is really a form of revenue sharing and has been all along. I further submit that the success of the program—which virtually all familiar with it acknowledge—is directly attributable to those elements that the program and revenue sharing have in common; that is, greatly expanded State and local discretion over the expenditure of Federal funds in a program area of national concern.

Although it is true that the Federal cochairman of the Commission has, in effect, a veto over any proposal by a Governor for the expenditure of funds in his State, the veto has never once been exercised in the history of the program. Anyone familiar with the actual operation of the Commission is well aware that when the program's funds are allocated among each of the 13 States, the Governor of that State decides how and where those moneys are to be spent. This is, I reiterate, revenue sharing in all but name.

When the Committee on Public Works, or more specifically, the Subcommittee on Economic Development, of which I am the ranking minority member, undertook consideration of the pending bill, the details of the President's rural development revenue sharing proposal were unknown. To assert that by reporting this bill the committee was dealing a major setback to the President's program is inaccurate.

The subcommittee and the full committee will now turn its attention to the details of the President's rural development proposal. I fully suspect that we will find many areas of compatibility between his proposal and existing economic development programs and mechanisms. For example, there is nothing in the President's proposal that would in any way preclude the continuation of the Commission mechanism as a voluntary association of governors. There is nothing in the President's proposal that would discourage the continued formation and operation of local development districts. There is nothing in the President's proposal that would prohibit or discourage States from using revenue sharing allocations for supplementing the non-Federal share required by remaining categorical grant-in-aid programs. And the President's proposal specifically assures each State in the Appalachian region and throughout the country that it will receive no less in the way of Federal funds for rural economic development than it does under the existing patchwork system of categorical grants-in-aid.

Mr. President, the reporting and anticipated enactment by the Senate of this bill in no way represents a rejection or "setback" to the President's special revenue-sharing proposal. As I have tried to indicate, this bill represents an acknowledgment by the committee and by the Senate that the Appalachian program has worked because it has given State and local officials the kind of discretion over the expenditure of Federal funds that is at the heart of the President's revenue sharing program.

As the Congress proceeds with its consideration of the rural development proposal, it may well be that we will determine to include within the rural development block grant some of the Appalachian programs and some of the Economic Development Administration programs. It is a very fluid situation, and I firmly suggest that anyone who infers from action on this bill that the President's revenue-sharing program is in big trouble is grasping at straws.

Mr. President, I want to take this opportunity to commend to Senators early and favorable action on this bill and to commend to them further favorable action on the range of revenue-sharing proposals that the President has or will shortly offer. I find no paradox nor inconsistency in those recommendations.

I wish to express my deep gratitude and appreciation to our distinguished subcommittee chairman, the Senator from New Mexico (Mr. MONTOYA), who has labored diligently and effectively in this field for so long. It can honestly be said that he, probably more than any other, in the field of the Title V Commission, as distinguished from the Appalachian Commission, has been in the forefront and the vanguard of their development and elaboration.

I wish to give credit to the Senator from West Virginia (Mr. RANDOLPH), the chairman of the Committee on Public Works, and the Senator from Kentucky (Mr. COOPER), the ranking minority member, for their long and diligent efforts not only in the formulation and development of this program—which was first advocated by these two distinguished colleagues before President Kennedy offered it in his first year of office—but also for their continuing diligence in the oversight of the operations of the Appalachian Regional Commission.

I also wish to give credit to the staff of the committee, the professional staff, and the personal staff of the members of the committee for their help, in a unified and nonpartisan way, to develop the best program, under the best circumstances, in reporting to the Senate, for its consideration, proposed legislation that is superior and with few peers and equals in its technical quality.

In conclusion, may I confess to a parochial point of view. I come from the area which benefits from the operations of the Appalachian Regional Commission. Tennessee has many counties within the scope and jurisdiction of this program. The immediate past Federal cochairman of the Appalachian Regional Commission was a Tennessean, Mr. John B. Waters, Jr., who served with great distinction, and left Federal service to attend to private business matters.

I think that the Appalachian Regional Commission is just now coming to its full maturity and effectiveness. I think that examples of its farsighted planning and implementation of those programs are only just now becoming manifest and apparent to the people of the area it serves—such as the Children's Hospital at Knoxville, the Appalachian corridors

and access roads throughout the region, airport extensions and expansions, health demonstration projects, strip mine reclamation projects, and public health systems.

I can say firsthand, from this parochial point of view, that the people of my area know of the great benefit the program has been to a 13-State region of the United States.

Mr. President, while this may not be directly relevant to the consideration of the Senate in the passage of this bill to extend the Appalachian Regional Commission, I think it is relevant enough to say that I feel that other Members of the Senate who have worked so hard and diligently to expand the Applachian format into other areas of the country can be heartened by the success of this program. Senators such as Senator COTTON, Senator MONTOYA, and others, who deal primarily, from their parochial point of view, with programs and commissions other than the Appalachian Regional Commission, have the assurance of this Senator, and I believe of all other Senators on the Public Works Committee, that we intend to try to do for those commissions what has been done for Appalachia. The Appalachian program is not a local effort on some special geographic basis but, rather, a demonstration project which has now demonstrated the virtues of regionalism. We want to see, and particularly I want to see, the benefits extended to the other commissions as well.

The PRESIDING OFFICER (Mr. CHILES). The clerk will report the committee amendments individually.

The legislative clerk read as follows:

On page 2, after line 24, insert a new section, as follows:

SEC. 105. There is inserted after section 201 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 201) a new section as follows:

"APPALACHIAN AIRPORT SAFETY IMPROVEMENTS

"SEC. 201A. (a) In order to provide a system of airports in the appalachian region which can accommodate a greater number of passengers in safety and thereby increase commerce and communication in areas with developmental potential, the Secretary of Transportation (hereafter in this section referred to as the "Secretary") is authorized to make grants to existing airports for the purpose of enhancing the safety of aviation and airport operations.

"(b) Such airport safety improvement projects may include (A) approach clearance, the removal, lowering, relocation, and marking and lighting of airport hazards, navigation aids, site preparation for navigation aids, and the acquisition of adequate safety equipment (including fire-fighting and rescue equipment), and (B) any acquisition of land or of any interest therein, or of any easement through or other interest in airspace which is necessary for such projects or to remove or mitigate or prevent or limit the establishment of, airport hazards.

"(c) Grants under this section shall be made solely from funds specifically made available to the President for the purpose of carrying out this Act in accordance with the provisions of this Act, and shall not be taken into account in the computation of the allotments among the States made pursuant to any other provisions of law.

"(d) Except as context otherwise indicates, words and phrases used in this section shall have the same meaning as in the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958, as amended.

"(e) Federal assistance to any project under this section shall not exceed 90 per centum of the costs of the project, except for assistance for navigation aids which may be 100 per centum.

"(f) The Secretary is authorized to incur obligations to make grants for airport safety improvement projects, in a total amount not to exceed $40,000,000 during the period ending June 30, 1975. There are authorized to be appropriated to the President such sums as may be required for liquidation of the obligations incurred under this section."

The amendment was agreed to.

The legislative clerk read as follows:

On page 4, after line 16, insert a new section, as follows:

SEC. 106. (a) The third sentence of subsection (c) of section 202 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 202) is amended by striking out "health services" and inserting in lieu thereof the following: "health and child development services, including title IV, parts A and B, of the Social Security Act. Notwithstanding any provisions of law requiring assistance or services on a statewide basis, if a State provides assistance or services under such a program in any area of the region approved by the Commission, such State shall be considered as meeting such requirement".

(b) Subsection (d) of such section is amended by adding at the end the following: "The Federal contribution to such expenses of planning may be provided entirely from funds authorized under this section or in combination with funds provided under other Federal or Federal grant-in-aid programs. Notwithstanding any provision of law limiting the Federal share in any such other program, funds appropriated to carry out this section may be used to increase such Federal share to the maximum percentage cost thereof authorized by this subsection."

The amendment was agreed to.

The legislative clerk read as follows:

On page 5, after line 12, insert a new section, as follows:

SEC. 107. (a) The first sentence of subsection (a) (1) of section 205 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 205) is amended by inserting before the period at the end: "; and to control or abate mine drainage pollution."

(b) Subsection (b) of such section is amended to read as follows:

"(b) Notwithstanding any other provision of law, the Federal share of mining area restoration project costs, including reasonable planning, engineering, and costs of land acquisition (limited to the reasonable value of the land in its unreclaimed state as determined by the Commission), carried out under subsection (a) of this section and conducted on lands other than federally owned lands, shall not exceed 75 per centum of the total cost thereof."

(c) Subsection (d) of such section is amended to read as follows:

"(d) No moneys authorized by this Act shall be expended for the purposes of reclaiming, improving, grading, seeding, or reforestation of strip-mined areas (except on lands owned by Federal, State, or local government bodies or by private nonprofit entities organized under State law for public recreation, conservation, or economic development purposes, including the construction of low- or moderate-income housing) until authorized by law. As a condition of any grant made pursuant to this section, provision shall be made for the recovery of such grant from the proceeds of the sale or lease for private purposes of lands reclaimed with such a grant, for the purpose of further reclamation projects:"

The amendment was agreed to.

The legislative clerk read as follows:

On page 6, after line 16, insert a new section, as follows:

SEC. 108. (a) The catchline for section 207 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 207) is amended to read: "ASSISTANCE FOR PLANNING AND OTHER PRELIMINARY EXPENSES OF PROPOSED LOW- AND MODERATE-INCOME HOUSING PROJECTS".

(b) Subsections (a), (b), and (c) of such section are amended to read as follows:

"(a) In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of low- and moderate-income families and individuals, the Secretary of Housing and Urban Development (hereafter in this section referred to as the "Secretary") is authorized to make grants and loans from the Appalachian Housing Fund established by this section, under such terms and conditions as he may prescribe, for necessary expenses of nonprofit, limited dividend, or cooperative organizations, or of public bodies, in planning and obtaining federally insured mortgage financing for housing construction or rehabilitation projects for low- and moderate-income families and individuals, under section 221, 235, or 236 of the National Housing Act or any other Federal law, in any area of the Appalachian region determined by the Commission.

"(b) No loan under subsection (a) of this section shall exceed 80 per centum of the cost of planning and obtaining financing for a project, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site options, application and mortgage commitment fees, legal fees, and construction loan fees and discounts. Such loans shall be made without interest, except that any loan made to an organization established for profit shall bear interest at the prevailing market rate authorized for an insured or guaranteed loan for such project. The Secretary shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner and except in the case of a loan to an organization established for profit, may cancel any part or all of such a loan, if he determines that a permanent loan to finance such project cannot be obtained in an amount adequate for repayment of such loan under this section.

"(c) (1) Except as provided in paragraph (2) of this subsection, no grant under this section shall exceed 80 per centum of those expenses, incident to planning and obtaining financing for a project, which the Secretary considers not to be recoverable from the proceeds of any permanent loan made to finance such project, and no such grant shall be made to an organization established for profit.

"(2) The Secretary is authorized to make grants and commitments for grants, and may advance funds under such terms and conditions as he may require, to nonprofit organizations and public bodies for reasonable site development costs and necessary off-site improvements, such as sewer and water line extensions, whenever such a grant, commitment, or advance is essential to the economic feasibility of any housing construction or rehabilitation project for low- and moderate-income families and individuals which otherwise meets the requirements for assistance under this section, except that no such grant shall exceed 10 per centum of the cost of such project."

(c) Subsection (e) of such section is amended by striking out "The Secretary is further authorized to" and inserting in lieu thereof "The Secretary or the Commission may".

The amendment was agreed to.

The legislative clerk read as follows:

On page 9, after line 3, insert a new section, as follows:

SEC. 109. (a) The catchline for section 211 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 211) is amended by adding at the end "AND EDUCATION DEMONSTRATION PROJECTS".

(b) The first sentence of subsection (a) of such section is amended by inserting "or operation" after "equipment".

(c) Subsection (b) of such section is amended to read as follows:

"(b)(1) In order to assist in the expansion and improvement of educational opportunities and services for the people of the region, the Secretary of the Department of Health, Education, and Welfare is authorized to make grants for planning, construction, equipping, and operating educational projects which will serve to demonstrate area-wide educational planning, services, and programs. Grants under this section shall be made solely out of funds specifically appropriated for the purposes of this Act and shall not be taken into account in any computation of allotments among the States pursuant to any other law.

"(2) No grant for the construction or equipment of any component of an education demonstration project shall exceed 80 per centum of its cost.

"(3) Grants under this section for operation of components of education demonstration projects, whether or not constructed by funds authorized by this Act, may be made for up to 100 per centum of the costs thereof for the two-year period beginning on the first day that such component is in operation as a part of the project. For the next three years of operation, such grants shall not exceed 75 per centum of such costs. No grants for operation of demonstration education projects shall be made after five years following the commencement of the initial grant for operation of the project. Notwithstanding section 104 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3134), an education-related facility constructed under title I of that Act may be a component of a demonstration education project eligible for operating grant assistance under this section.

"(4) No grant for expenses of planning necessary for the development and operation of an education demonstration project shall exceed 75 per centum of such expenses.

"(5) No grant for planning, construction, operation, or equipment of a demonstration education project shall be made unless the facility is publicly owned, or owned by a public or private nonprofit organization, and is not operation for profit.

"(6) Any Federal contribution referred to in this section may be provided entirely from funds appropriated to carry out this section, or in combination with funds available under other Federal grant-in-aid programs providing assistance for education-related facilities or services. Notwithstanding any provision of law limiting the Federal share in such programs, funds appropriated to carry out this section may be used to increase such Federal share to the maximum percentage cost thereof authorized by the applicable paragraph of this subsection."

The amendment was agreed to.

The legislative clerk read as follows:

On page 11, at the beginning of line 9, change the section number from "105" to "110".

The amendment was agreed to.

The legislative clerk read as follows:

On page 13, after line 6, insert a new section, as follows:

SEC. 111. Section 224(b) of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 224) is amended by striking out "or" immediately preceding "(4)", and inserting before the period at the end of such subsection: "or (5) for any land reclamation, water resource, or other environmental project under section 203, 204, 205, 212, or 214, except in furtherance of a comprehensive environmental improvement plan for an area of the region to be served by such a project, which is approved in the manner provided for programs or projects under sections 233 and 303."

The amendment was agreed to.

The legislative clerk read as follows:

On page 13, after line 16, insert a new section, as follows:

SEC. 112. Subsection (a)(2) of section 302 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 302) is amended to read as follows:

"(a)(2) to make grants to the Commission for investigation, research, studies, evaluations, and assessments of needs, potentials, or attainments of the people of the region, technical assistance, training programs, demonstrations, and the construction of necessary facilities incident to such activities, which will further the purposes of this Act. Grant funds may be provided entirely from appropriations to carry out this section or in combination with funds available under other Federal or Federal grant-in-aid programs or from any other source. Notwithstanding any provision of law limiting the Federal share in any such other program, funds appropriated to carry out this section may be used to increase such Federal share, as the Commission determines appropriate."

The amendment was agreed to.

The legislative clerk read as follows:

On page 14, at the beginning of line 8, change the section number from "106" to "113"; in line 12, after the word "expenses", strike out "and"; in line 14, after the word "Roads", insert a comma and "and in section 201A for Appalachian Airport Safety Improvements,"; in line 20, after "June 30,", strike out "1975, of which amounts so authorized for such periods ending June 30, 1973, and June 30, 1975, not to exceed $155,000,000 is authorized for the two-fiscal-year period ending June 30, 1973, and not to exceed $170,000,000 is authorized for the two-fiscal-year period ending June 30, 1975, to carry out sections 202 and 211; not to exceed $15,000,000 is authorized for the two-fiscal-year period ending June 30, 1973, and not to exceed $15,000,000 is authorized for the two-fiscal-year period ending June 30, 1975, to carry out sections 203, 204, 205, 206, and 212; not to exceed $4,000,000 is authorized for the two-fiscal-year period ending June 30, 1973, and not to exceed $6,000,000 is authorized for the two-fiscal-year period ending June 30, 1975, to carry out section 207; not to exceed $90,000,000 is authorized for the two-fiscal-year period ending June 30, 1973, and not to exceed $90,000,000 is authorized for the two-fiscal-year period ending June 30, 1975, to carry out section 214; and not to exceed $13,000,000 is authorized for the two-fiscal-year period ending June 30, 1973, and not to exceed $13,000,000 is authorized for the two-fiscal-year period ending June 30, 1975, to carry out section 302." and insert "1975"; and, on page 15, at the beginning of line 17, change the section number from "107" to "114".

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

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

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

The bill is open to further amendment.

Mr. STENNIS. Mr. President, I desire to be recognized to discuss the bill for a brief time.

The PRESIDING OFFICER. The Senator from Mississippi may proceed.

Mr. STENNIS. Mr. President, before I get into the body of my remarks, I note the presence here in the Chamber of the distinguished Senator from Kentucky (Mr. COOPER). I remember his very fine work in the Public Works Committee on this whole Appalachian concept, as well as other members of the committee, but for that part of my State, the Yellow Creek Watershed, the Senator took a special interest in it.

No part of my State was in the Appalachian program when it was first enacted. The Senator from Kentucky took a special interest in it, and I want again publicly to thank him and say to him now that after these few years of operation, we have never had a finer program that is doing more good at the place where it needs most to be done, than this one. I think it is the best program of its kind we have ever had, and I am most grateful to him.

I am also very grateful to the distinguished Senator from West Virginia (Mr. RANDOLPH), who has just come into the Chamber, for what he did in the committee on behalf of my State. Nothing has worked finer.

I think this program is a true expression of the right kind of Federal, State, local government and the people cooperation at the grassroots level. It is splendid and fine.

So, Mr. President, I would be and I am strongly opposed to any move now, however much good faith there may be behind it, to stop this program and not let it continue and work its splendid way into the communities and special needs of areas for this kind of regional legislation. I hope that today we will have a solid and substantial vote to renew the program, which is relatively new.

Mr. President, I have the privilege of serving on the Appropriations Committee and find that improving out the program when it comes up for the money, they are able to make an excellent showing year after year. Thus, the solidarity of the operation, its fruits and benefits, have already been well proved.

As I say, it is not a great area, only 20 counties out of 82 in Mississippi are in the program and they have been in it since 1967. But the effect of it has been tremendous. The benefits are far-reaching. It is really just getting started.

I refer here to some of the projects, the kind that they represent, where the difference in the sum of money provided by the program made the difference in being able to get the project at all. Here is one, the Yellow Creek Water Associa-

tion which is the program that carried with it extension of water and sewage services to the rural communities that are thickly populated enough to justify that program. That program is largely a repayment program. It pays back the money. However, there have to be some grants to make this available to these areas.

Another is the vocational education program which made the difference.

Another is a vocational education training center which reaches thousands of people that could not have otherwise had a chance to receive this special training.

I mention just a few in my State. After all, we know more about its operation in our State than anywhere else. I know from my experience on the Appropriations Committee that this is regionwide and that it has proven to be highly successful.

I say again with emphasis that it is the best illustration that I have seen of a proper basis for effective and constructive cooperation and coordination by the Federal Government, the State governments, and the local units of government that bring about steady and needed constructive improvements and that bring immediate returns. As the years come and go, those returns would be more and more and greater and greater.

If any other area of the country is interested and can prove its own case here and prove the facts and justify the need, I would be glad to support the projects that our committee might recommend. I hope, though, that we can have a disposition of the pending bill today so that it may continue and so that this program can continue.

I am interested in the other regions with like situations and would certainly support in our committee the future recommendations.

Therefore, I wish to express my support for extending the authorization of the Appalachian regional development program, and for continuing the operations of the Appalachian Regional Commission.

It is my understanding that the administration has proposed that the program be funded for fiscal year 1972, but that, beginning about January 1, 1972, the Commission operations would begin to be phased out. Thereafter, the funds normally provided for Appalachian projects and programs presumably would be channeled into the large system of block grants that the administration also has proposed.

I am strongly opposed to such a proposal. I think it would be a serious mistake for this fine regional program to lose its identity as a special endeavor working toward the economic development of the Appalachian area.

This is a relatively new program, taking its authority from the Appalachian Regional Development Act of 1965, covering parts or the whole of 11 States. In 1967, Mississippi and New York were added to the program. Thus, there have been only 6 years, as a maximum, for this unique and challenging endeavor to take shape and produce results. It is far too soon to terminate it, before it has even had a chance to develop its potential.

The northeastern 20 counties of Mississippi have participated in the program only since 1967. Nevertheless, the accomplishments are very significant, and have had a tremendous impact on that area, which badly needs economic stimulation. The potential of the program is just achieving full growth and recognition. As yet, since Mississippi was late in entering the operation, there has been no work within the State on the Appalachian corridor highway system. For this, we have high hopes for the future, and would be extremely disappointed to see them disappear so unnecessarily. We have, however, been able to do about $8.4 million worth of work under the Appalachian access highway program.

The other, nonhighway, programs have been even more productive, totaling $29.6 million worth of badly needed projects. They include health projects, educational facilities, water resources projects, airfields, public utilities, and other works designed to stimulate economic growth and community prosperity.

To have this fine effort terminate, and be absorbed, without identity, into an $11 billion block-grant system is unacceptable. Further, it is not necessary. There is no inconsistency between the principle of revenue sharing and the Appalachian program in its present form. This program is managed by the 13 Governors involved, with the aid of a Federal cochairman, and the flexibility afforded Governors by revenue sharing is already present.

The Governors of the Appalachian States expressed their views, after an emergency meeting on this matter on February 5, 1971. They stated that the Appalachian program is "one of the finest demonstrations of how States and communities can make more effective use of shared Federal revenues through block grants rather than categorical grants." The Governors are also completely opposed to abolishing the program.

I strongly endorse extending the Appalachian program for at least 4 years. This endeavor has been in existence for long enough to prove its worth. It has not yet had long enough to prove its full potential, which is still developing. Much has been done by the Appalachian program that is good, in a short length of time. It will do a great deal more in the coming years. We need only give it the opportunity to do so.

I thank the Senator for yielding to me. Mr. President, I yield the floor.

Mr. MONTOYA. Mr. President, I thank the Senator from Mississippi.

Mr. President, I yield the floor.

Mr. RANDOLPH. Mr. President, the chairman of our Subcommittee on Economic Development, the Senator from New Mexico (Mr. MONTOYA), has given the general purpose of the pending legislation and has spoken with clarity and understanding not only of the provisions but of the purposes to be achieved by the continuation and broadening and bettering of the program which has been in existence for 6 years.

The able Senator from Tennessee (Mr. BAKER) has discussed the matter from the standpoint of whether there is possible coexistence with the broad concepts of the administration on revenue sharing and the experience within the Appalachian region.

We have appreciated the comments of the Senator from Mississippi (Mr. STENNIS) today. I well recall his interest in 1965 when there was a background, not of misunderstanding so much, but of a need for clarity within a State of the application of a regional commission in Appalachia to the ongoing need for programs in a State. That view was shared by his colleague, Senator EASTLAND.

There has been this interest from the beginning. With additional States involved, we have continued to keep the program within the thrust of the Appalachian region, that great region that extends from parts of New York through to Alabama, Georgia, and South Carolina. There is a common cause, as it were, and an understanding of the mutual problems and the desire to keep strong and vital the underpinnings and the wellsprings of this Republic from the standpoint of the local political subdivisions and the thinking of the people in the areas there.

The people there are not provincial. They understand the problems, but they are not provincial in that they do not want a program at this time to be adaptable only to their region but want it to apply to other sections of the country as well.

We know that the Senator from Mississippi expressed a feeling that when a valid case is made for a particular region, a new region could be brought into existence. I think it is good for the record to reflect that the Senator from Kentucky (Mr. COOPER) and I were especially gratified that there were Governors from an area of the country who recently came to the Subcommittee on Economic Development and set forth the reasons why they felt that the Missouri region should have a program similar to that which we believe has been effective in the State of West Virginia and in parts of 12 other States. So, we are talking about a particular region today, a very important region, a region where the benefits which accrue to it and to its people are benefits which flow from all parts of the United States and to the people residing in other areas of the country. How fortunate we are that we can lay emphasis upon a region and its problems at a specific period in our history and have attention expanded at an appropriate date to another region or regions in this country.

It will be recalled that, as the manager of the Appalachian bill in 1965, questions were asked of me on the floor by interested Senators indicating that they were not attempting to thwart the thrust of the Appalachian effort. They asked me, quite understandably, the question: "There will be other regions of the coun-

try that have problems that are peculiar to certain areas. These areas must have attention as well as the Appalachian region."

I expressed agreement with them and explained that over a period of time prior to the legislation being brought to the floor for the Appalachian Regional Development Act, at least 2 years of study had gone into the problems of the area, with projects being given consideration so that they could be cranked into a program, as it were, more quickly than in other sections of the country.

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

Mr. RANDOLPH. I am delighted to yield to my able colleague, the Senator from New Hampshire.

Mr. COTTON. I thought I heard the Senator indicate that the other regions were peculiarly fortunate in the plan to focus attention on their problems at some later date.

Mr. RANDOLPH. That was indicated in 1965 at the time of the passage of the original legislation. I gave a promise, not eagerly and not reluctantly, that it would be the intent of the Committee on Public Works to think in terms of moving into other regions of the country. The Senator from New Hamphire will recall our many conversations about the importance of the New England area and the type of Federal cochairman he felt could best do the job in conjunction with the Governor of his State, and other Governors in New England in connection with this State and Federal partnership—not a partnership of junior and senior partners, but a partnership of understanding. I was grateful for the Senator's desire to think in terms of a man who had the qualifications to come to grips with the problems in the New England area.

Mr. COTTON. I am perfectly aware of what the Senator is saying, and that he was kind enough to endorse my candidate for the Federal chairman of the New England region. For that I am grateful.

But my gratitude does not go to unlimited bounds. I want to say that when the Senator from West Virginia, the chairman of the committee, indicates that he intends later to hold hearings and take action with respect to the other regions no one need tell me that he does not mean it because he is completely and utterly sincere. There is not a Member of this body whose word I would not take greater confidence. I know he means what he says.

I merely want to interpolate this statement, and I am sure he knows it is not any reflection upon either the distinguished Senator or his committee, or the distinguished Senator who is in charge of the bill.

New England, like a certain other region that we do not mention on the floor, has long suffered from good intentions. In order to make it crystal clear that I am not speaking from a partisan sense I cannot help but contrast the so-called Southern strategy, of the present administration—although I am not sure what that is—with the New England strategy. If there has been one opportunity in the last 2 years to give New England a "good rooking," as we say up there, this administration, like some of the previous administrations, has not missed that opportunity in this bill.

I mention that now because I am going to offer an amendment.

Mr. RANDOLPH. I hope the Senator will not offer that amendment after we have continued the colloquy.

Mr. COTTON. I am going to be compelled to offer an amendment because I have been kicking around this Senate for enough years to know not to defer legitimate claims of the people I represent on somebody's sincere promise that they will be attended to later. We might get into a crowded docket and all kinds of legislative tangles. Then, the weeks go by and the weeks go by.

No matter how hard the Senator from West Virginia may try, with all his power, and it is no mean power, I have learned from bitter and sad experience never to willingly defer what I think is just and right today, relying on its happening at some other time.

Northern New England is just as needful of this kind of assistance as Appalachia. Our greatest problem is the absolute lack of any air transportation or air service.

Mr. RANDOLPH. I know that.

Mr. COTTON. The CAB Commissioners have shed great crocodile tears about our States. Commissioner Murphy made a wonderful speech about the sad plight of northern New England. Incidentally, I believe Maine and Vermont are the only two States in the Union which have not one red cent of subsidy; and New Hampshire has a pittance which is only a teaspoonful. After Commissioner Murphy made speeches in Boston and said that we were in dire straits and that he was going to do something for us, what did he do? He cast his vote against the merger of Northeast Airlines and Northwest Airlines, which as far as I know was the last chance for having service.

In this bill, if I read it correctly, there is $40 million—and I do not begrudge a nickel of it—for air safety improvements in Appalachia. It is on a 90–10 basis. I think it is partly the result of a tragedy that took place down there. I do not oppose that. However, we had an air tragedy in New England in which everyone on the plane was killed.

It is amazing how the northern part of New England is similar in many instances with Appalachia. For example, we have an unemployment rate of as much as 20 percent in a town where one industry has had to shut down. We have pleaded with the administration to do something to protect our textiles, shoes, and electronics. We have a lack of access. Even the interstate highway has been held up by the Secretary of Transportation because some very ardent people dedicated to the environment did not want it to go through the notch where the "old man of the mountain" is. So they stopped it and substituted a small highway that means death to people traveling on it.

In other words, the Secretary of Transportation and the CAB—and they are a part of this administration—have united in denying us any justice whatever.

In the matter of the interstate highway, incidentally, they overruled the Governor, the legislature, both Senators—Senator McINTYRE and myself—both Congressmen, the commissioner of highways, and a majority vote on two occasions of the State legislature.

When it comes to oil, the distinguished Senator from West Virginia has heard on the floor of the Senate what happened. We heard of the fact that the President overruled his own committee to see to it that northern New England had a cold winter.

I am not speaking from a partisan standpoint. I am saying very frankly, and I hope they read it downtown, that they can talk about a Southern strategy, but I know what their New England strategy is. It is not worth a damn.

The Senator knows very well that these regions were created as part of the first bill. They were created to give encouragement to Senators from other sections who were a little restive about the fact that Appalachia was getting this special treatment, much as it deserves it, and who were aware of the fact that they had areas that were equally in need. In the title V commissions we have the Coastal Plains Region, consisting of North Carolina, South Carolina, and Georgia; that would be six votes in the Senate; the Four Corners Region, consisting of Arizona, Colorado, New Mexico, and Utah, eight votes; the Ozarks Region, consisting of Arkansas, Kansas, Missouri, and Oklahoma, that is eight votes more; the Upper Great Lakes Region, consisting of Michigan, Minnesota, and Wisconsin, six more votes; and the New England Region, consisting of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, a total of 12 votes.

Of course, I am not suggesting that we voted for it just because we were bribed. We did not sit supinely and let one section of the country be taken care of so magnificently, without at least obtaining a gesture for ourselves.

There are two more regions that have applied for commissions. One is the Upper Missouri, consisting of the States of Montana, Wyoming, North Dakota, South Dakota, and Nebraska. I do not know how they feel about it. The distinguished majority leader lives in that area.

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

Mr. COTTON. The Senator from West Virginia has the floor.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. MANSFIELD. Will the Senator allow me to answer the Senator, as long as the question was raised?

Mr. RANDOLPH. Mr. President, I yield.

Mr. MANSFIELD. I do not feel very happy, because there we have 10 votes, we have a $300,000 appropriation to get started, and the Secretary of Commerce,

Mr. Stans, will not release the money. I am unhappy.

Mr. COTTON. I do not blame the distinguished majority leader for being unhappy, and I am equally unhappy with the administration on this.

Finally, there is the mid-South region, consisting of Arkansas, Louisiana, Mississippi, and Tennessee, which has also asked for a commission, and like the Upper Missouri, the Congress funded, but the administration has not allowed to be established.

I appreciate the patience of the Senator from West Virginia. He has always been most considerate, and I am most grateful to him for all the kind things he has done. I know he understands what I am saying is no reflection on him. In fact, I have made it pretty plain that it is mostly a reflection on some people I am supposed to be carrying the ball for.

Two years ago the committee came forward with a bill that renewed both the Appalachian and the title V commissions together. Now the Senator comes on the floor with a bill, and the title V regions are left out. As I said before, I have learned from sad experience what happens when one sits by and does not assert himself for the people he represents. In this I am parochial, as I think it is the duty of any representative in Congress to be parochial for his own people. We know what happens when we let it go by and depend on later in the session, when the legislative business gets more crowded. Again, I am not suggesting that the Senator from West Virginia does not have a complete intention to consider us. I want the people downtown to know how the Congress of the United States feels about it.

The President can stop it tomorrow. He can impound the funds for all these regions, just as he did on two of them. But I want the people downtown and the people in my own New England to know—and I would almost think some of the Senators from the other title V areas would want their people to know as well—that the Congress of the United States, at the same time it declared as its policy the continuation and the expansion of the very fine program for Appalachia—and I want to vote for it—that the Congress simultaneously declared as its policy that these other regional commissions will be continued.

That is why I am going to be compelled to offer an amendment. The amount of money is, oh, so much less. The authorization is less, and I believe in 4 years the appropriation for New England has been $22 million. But the moral effect of keeping the bill as it was 2 years ago is tremendously important. I just cannot vote for the bill unless title V is in there. I could not go back to my people and give them a reason why I voted for it.

When I offer an amendment simply to write it into the bill, it can still be reviewed. It can still be taken away from the Commerce Department. The action the Senator has in mind can still be taken. But in the meantime it is a declaration of policy and an authorization for continued appropriations. In the meantime I just hope the Senate will give us that encouragement.

I thank the Senator for being so patient. I shall discuss this matter further when I offer my amendment. It has been suggested that I have a half-hour on the amendment. I have never engaged in a filibuster, and I cannot run one all alone, but I am going to be compelled to discuss this matter at length. Speaking as one Senator, I shall be compelled to vote against the bill if it is going to leave us in the cold and let us take a chance, in the crowded days ahead, of getting justice.

Mr. RANDOLPH. Mr. President, I am conscious of the commitment of the Senator from New Hampshire to his constituency and of the magnitude of the many problems with which that region of the United States is faced today.

I must, for the RECORD, make a minor correction. It would be that I promised, during the consideration of the Appalachian Act in 1965, prompt attention to the matter of the other regions, now five in all. But the regions were not created in the 1965 act. They were not included. This is not a matter of too much importance except to indicate that my promise was important, and it was that this situation would be given prompt attention.

I made a firm pledge, as did the Senator from Kentucky (Mr. COOPER) and other Senators, that we would move into the other regions of the country just as expeditiously as possible. We did that. This is not a critical comment, but sometimes the delay was not a delay in the Capitol, but, frankly, a delay in another part of the city, from the standpoint of one nomination or another coming for a Federal cochairman for a regional commission. This is not done to draw attention to a conflict between the Congress and the administration. Often months went by when there was no action in connection with the Federal cochairmanship. Again, I am not partisan, but we have had that difficulty in connection with the appointment of a Director of the Bureau of Mines, while appeals were being made by the Senator from West Virginia and Senators from other States where the problems of the production of bituminous coal were very many. We were pleading for the appointment of a Director of the Bureau of Mines.

The Senator from Kentucky, I know, will not feel it is partisan when I say that in that area of leadership, the Bureau, no mater how dedicated it was to carrying out the provisions of the Coal Mine Health and Safety Act, really needed a Director to spark that effort and to make it viable. Yet months and months ensued, and nothing was done.

These are problems that I mention only because of the criticism which has been expressed by the able Senator from New Hampshire. He will decide his own course of action during the progress of this debate, but I am sure he would like to know that already we have held hearings on this very subject matter. We have other hearings scheduled by our Economic Subcommittee under the able chairmanship of the Senator from New Mexico, which will be held in April.

We are giving attention to this matter now, not next year, the matter so ably discussed here this afternoon.

I think that the result of what we are now doing and will do in the coming months, will, in the final analysis, be pleasing to the Senator from New Hampshire.

As to the commitment which we as members of that committee share with him, it is not in any way provincial, as he has said, but in full recognition of some degree of deterioration which has taken place economically in New England, the section of the country which he represents, often due to unfair competitive practices, not only within this country, but in the other nations of the world, as far as the manufacturing and marketing of products are concerned.

But even if there has been deterioration in the economy of New England, there has been no deterioration in the character of the people who live in that area, even though there is a lesser number of them.

I shall not attempt to make my assurance sound as if a miracle can happen overnight. But I can address myself to the fact, and it is a fact, that we will not neglect coming to grips with the problem which is of such moment to the Senator from New Hampshire.

Senator COOPER, Senator BAKER, Senator MONTOYA, and others who are on this subcommittee and the full committee know that we have not only the problem of the title V commissions, but we have the national economic development program as a whole to think of. As the House of Representatives moves forward with its hearings on this subject, we are going to come to an understanding, and not defuse the situation, but bring it into cohesive understanding. That, I assure the Senator, will be done.

I am only speaking now—because I was not apprised in advance, and certainly I have no reason to believe I should have been advised—of the amendment, its actual offering.

Mr. COTTON. Mr. President, will the Senator yield for one moment on that point?

Mr. RANDOLPH. I do.

Mr. COTTON. I shall certainly inform my friend. First of all I could not see, and I have not heard yet, the reason why these regions should be divorced from this bill, when they were included 2 years ago. Second, when I found that they were so divorced, I anticipated that someone would be raising a question and offering an amendment; and, frankly, to be practical, I had hoped it would be someone on the majority side of the aisle. You have more luck in getting amendments through than we downtrodden people in the minority.

But when I found, as late as this morning, that there was no intention of bringing this matter up, and it would just simply go by default, then I got busy drafting an amendment; and I assure

my friend I would have given him the courtesy of notice had I realized that I was going to be compelled to do this.

Mr. RANDOLPH. Mr. President, the explanation is certainly received by me in an understanding way, and there was certainly no intention of criticism. I was just saying I had no knowledge of the situation developing.

But this is a good discussion, and others will perhaps take place this afternoon.

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

Mr. RANDOLPH. I yield to the chairman of the subcommittee.

Mr. MONTOYA. I should like to answer my good friend from New Hampshire with respect to the point to which he has alluded, that involved in the other package, if one wishes to call it that, is not only the future of the regional commission, but also the Economic Development Act, which is a very important and integral part in economic development. It is really the main thrust behind Appalachia and behind the regional commissions, because much of the funding comes under the Economic Development Act.

We have had a series of hearings that started in North Carolina. We went to Memphis, we are going to Los Angeles and to New Mexico, and we are going to go to other parts of the country, in the hope that we can develop new concepts in economic development, in view of the high unemployment rate, in view of the economic conditions which exist in many of our cities, and in view of the fact that the educational process in this country may need some kind of an uplift which will be oriented toward economic development.

We also are very mindful of the complaints by the various Governors with respect to the authority exercised by the Secretary of Commerce in trying to overrule or reject the applications of some of those who have organized themselves into commissions under title V of the act. Two, so far, have been rejected: the Upper Missouri Commission and the mid-South Commission. Congress appropriated $300,000 for organizational purposes for each. Those funds were reserved by the administration, and the applications have not been approved. We of the committee expressed great concern that approval was not forthcoming. We intend to deliberate very seriously with respect to these applications and try to come up with some solution and some approach which will guarantee these commissions organizational status, so that they can launch an economic development plan.

We have new innovations to be considered because of the hearings and because of the experience that we have had with the regional commissions. They are, in effect, going through the same infant or experimental period that Appalachia went through in the first 2 or 3 years of its existence. We are now ready, I believe, to infuse some new, meaningful hardware into the program, so that they can reach the mature status that Appalachia enjoys today.

But a simple extension here, may I say to my good friend, the Senator from New Hampshire, may hamper the effort we have launched and which we see as a result of our hearings. We want very much to give to the regional commissions some authority and more entity and to try to get them away from the authoritarian powers of the Secretary of Commerce. Personally, I would like to see these commissions operate under the authority of the President directly, so that they will not be subjected, as they have been in the past, to a veto by the Secretary of Commerce.

I think the Senator from New Hampshire is arguing this case very eloquently. I think that the dialog he has brought forth on the floor of the Senate is a healthy dialog, and it is in the direction in which we have been going, and I commend him for it. I think the wonderful chairman of the Committee on Public Works and the Republican membership on the committee are sympathetic to the problems that the Senator from New Hampshire has been discussing, and to the objectives that I have in mind as we formulate the new legislation.

So I would hope that the distinguished Senator from New Hampshire would withhold his amendment, because he would be asking for only a small share of what I envision is necessary in order to promote meaningful economic development in the entire country.

Mr. COTTON. Mr. President, will the Senator yield to me for 1 minute on the point raised by the Senator from New Mexico?

Mr. RANDOLPH. I yield.

Mr. COTTON. Everything that the Senator from New Mexico has said is good, and I appreciate it. But, if I am correct, the bill before the Senate today carries authorizations. Appropriations must be made. Am I correct?

Mr. MONTOYA. The Senator is correct.

Mr. COTTON. That is true with Appalachia.

Mr. MONTOYA. Yes.

Mr. COTTON. We are now in March, and the Appropriations Committee is posting hearings and trying to avoid the delays of last year. The Senator from New Mexico is on that committee. The Senator from West Virginia, the assistant majority leader, is on that committee. When we get down to the nitty-gritty, what we need in these areas is some money. What we are going to face, I fear, as a result of not keeping these regional organizations and commissions alive by not authorizing some money now, is that the Appropriations Committee will be able to appropriate for Appalachia but they will not be able to appropriate for New England and some of the others. We cannot operate until we get the authorization, and this bill would go through today with no authorization for the other regions. The Senator from New Mexico, as a member of that committee, and the Senator from West Virginia, as a member of that committee, know that we may be out in the cold.

I thank the Senator from New Mexico for saying that he wants to give us more and that we have not had enough. But if ever there was an example of a bird in the hand—I am not joking about the distinguished Senator from West Virginia—but if ever there was an example of the old adage that a bird in the hand is worth not two but four or five in the bush, it is right here today, as I face the situation in New England.

The Senator from West Virginia (Mr. BYRD) knows very well that our Appropriations Committee has been most responsive, as he has been in there fighting for necessary things for his people.

All I am saying is this: You can change it all you want. You can revise it all you want. You can take it away from the Department of Commerce. But please do not leave us hanging fire with no authorization, no continuation whatsoever.

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

Mr. RANDOLPH. I yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, may I say that I honor the Senator from New Hampshire for making this plea for his State and for his region. I think all of us know that New England has had a difficult time because of the lack of transportation—railroad transportation, air transportation—and the textile situation. I think we are sympathetic with it.

I should like to give the Senator from New Hampshire (Mr. COTTON) my reason as to why I believe the Committee has omitted the title V regional commissions from this bill. It is simply because—and I only state my own view—that I think title V is ineffective. I will not say it is valueless, but it is an ineffective piece of legislation. To illustrate this, I will draw some comparisons between the Appalachian program and the title V program.

Before the Appalachian Development Act was passed in 1965, 5 States had been working on the plan for at least 5 years. These States were Kentucky, West Virginia, Pennsylvania, Virginia, and Tennessee. The Governors and their staffs had worked out a program for road development, vocational education, and health programs. When Congress passed the Appalachia Development Act in 1965 the States were ready to begin the implementation of the plan which their Governors had agreed upon. I think it has been very successful for that reason. Also it was easy to define the region. It was mountainous and isolated. Many of the States were mining States. The problems of unemployment, health, education, and so forth, were very similar.

I must say that Congress was very generous to the Appalachian States.

They gave to our States advantages which they did not insist on for their own. My judgment for their doing this is that the States had a plan ready. Also, during the consideration of this legislation in 1964, the poverty of the States was very much on the minds of the people and they were sympathetic to us. I want to praise all the members of the Senate for their generosity and their

continued support. Our program has been demonstrated and accepted as a good one and that is the reason I ask for an extension to complete its work.

I do not believe that the money for the Appalachian Development Act provided in this bill, will complete all the programs authorized but I believe it will complete them to the extent that perhaps we will not have to come back and ask for additional money, and further extension of the program.

I compare that now with the problem of the title V commissions. Unlike the Appalachia States which prepared their development plans, and had them ready years before this program became law, the States in the title V commissions had not done this. When title V was enacted a year after the Appalachia Development Act, some States formed into commissions and were approved; and they began to prepare their plans for development. These plans have to be approved by the Department of Commerce. It is my judgment, based upon listening to the testimony of some of these regions, that their plans for development have not really yet been accomplished. That is one reason they have not been able to get more money.

Senator MONTOYA and Senator RANDOLPH have made the point, which is the reason and the best reason we did not include the title V's in the bill that, as written at present, title V is simply an ineffective section. If we are going to keep these commissions, and I think we will, we should organize them somewhat along the line of the Appalachian Regional Commission. Under the Appalachian legislation, money is appropriated for the programs of the Appalachian Regional Commission and it goes to those programs without any intervention. Under title V, the funds are appropriated to the Department of Commerce, the commissions compete with the other programs in the Department. I reiterate that the committee did not include the title V commissions in the bill because we did want to make the program more effective before we go through this annual process of appropriating money and then it being withheld.

I think we can do that. I want to be honest. Let me say that we have a problem relating to the title V program, as we do for the Appalachian Regional Commission, the program of the President for special rural revenue sharing. At this point, we are not certain whether the programs would be phased out under this proposal. We do not believe that they will be, for a certain time—perhaps a year or 2 years—and then Congress will have to pass upon it. The Appalachian Development Act has the opportunity to be extended because the plans have been made and they are in part completed. It is a living and going entity. Unfortunately, title V is chiefly on paper. There is a danger the administration might attempt and succeed in phasing it out. If the chairman of the committee, Senator Randolph, and the Senator from New Mexico (Mr. MONTOYA) who is the chairman of the subcommittee, and the Senator from Tennessee (Mr. BAKER), the ranking minority member of the subcommittee, would be willing, I would be willing and do propose that the title V program be extended for 1 year to see if, in that time, we can reorganize title V legislatively to give it some substance, so that we will have an opportunity actually to justify the requests for appropriations.

I must say, that I do not think the present program has enough substance in its organization actually to justify large appropriations for its operation.

I would merely suggest this to Mr. RANDOLPH and Mr. MONTOYA, and I think that they would assure the Senator from New Hampshire that the committee is earnestly wanting to help.

I am sorry that New Hampshire and Vermont did not join in the Appalachian Regional Development Act. They are part of the spine of the Appalachian Mountains, but in their own generosity to the other States in New England, their Governors decided they would remain in the New England regional group. But I would be very happy to see the 2 States join in the Appalachian regional group. I made this proposition to the chairman.

Mr. BAKER. Mr. President, will the Senator from West Virginia yield to me, so that I may comment on the remarks of the Senator from Kentucky?

Mr. RANDOLPH. I am happy to yield.

Mr. BAKER. Mr. President, the Senator from Kentucky (Mr. COOPER) in his usual way, has presented an alternative eminently practical, in my judgment, and highly desirable. It directs itself to the distinguished Senator from New Mexico (Mr. MONTOYA). To restate it for the sake of my own understanding, it is to the effect that we might authorize the continuation of the title V commissions and of the whole Public Works and Economic Development Act for 1 year. In the meantime, we will take a careful look at what we will do, either put meat on the bones with the commissions, or have something that will have an equivalent purpose; if that understanding is correct.

I can say, speaking only for myself, that I would certainly not object to acceptance of an amendment to the bill to include title V commissions and the remainder of the authority of the Public Works and Economic Development Act for 1 year—with that caveat and with that understanding.

Mr. COTTON. Mr. President, will the Senator from West Virginia yield to me briefly?

Mr. RANDOLPH. I yield.

Mr. COTTON. I merely want to say that the Senator from Kentucky, as usual, is very fair and very sympathetic as he always is, but it is not quite true that the regional commissions have not done anything. As a matter of fact, our regional commission has been very effective. It has been effective in the sense that it has gotten the Governors and the legislatures actually to produce some State money to go ahead with some of the programs instead of waiting to get it all out of the Federal Treasury.

May I say that what the Senator from New Hampshire was desirous of accomplishing was to keep these commissions alive and not have it go out that this Chamber today turned our backs, at least temporarily, or that we have broken the continuity of the regional commissions.

Of course, I am particularly interested in New England. I wish we could put an amendment on the bill to change the geography, because when I was a young fellow in school and studied geography, the Appalachian Mountains went clear up into New England, but by act of Congress we have been cut off.

I think the thing that troubled me most was the situation of going into the Appropriations Committee with authorizations for Appalachia but none for the regional commissions.

If the distinguished chairman of the Public Works Committee and the distinguished manager of the bill, both of whom have always been fair with me, would care to accept the compromise of amending the bill so as to extend these regional commissions for 1 year, I would be glad to refrain from causing any more difficulty.

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

Mr. COTTON. I do not have the floor.

Mr. MONTOYA. Mr. President, I realize it is a little cumbersome. However, I realize that we must follow the rules of the Senate.

The PRESIDING OFFICER. The Chair recognizes the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I yield to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. MONTOYA. Mr. President, I thank the Senator from West Virginia. As I stated before, I was in total agreement with the Senator from West Virginia in what he was trying to accomplish with respect to the regional commissions. Before I would give my approval to a 1-year simple extension, I would want to develop a dialog here on the floor with my colleagues on the committee and with others who might be interested with respect to the need for innovations in the legislation in the interim.

I think it is sorely needed, and I think by our discussion we could create a record for introducing new fiber and new meaning in the legislation and parallel the thrust of the legislation with that provided in Appalachia in many instances.

I certainly would like to hear from my good friend, the Senator from West Virginia, in this respect, as well as from my good friend, the Senator from Kentucky. I feel that the rest of the country would be lagging behind as an orphan child unless we did this.

That would be my intention as chairman of the subcommittee. I would like to also have the views of the Senator from New Hampshire as to whether he agrees with my position.

Mr. RANDOLPH. Mr. President, I am not necessarily breaking up the continuity of this colloquy, because we will continue with it.

Mr. President, I had promised to yield

to the able Senator from North Carolina, and now do so.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, I thank the distinguished Senator for yielding. I think that the Appalachian program is most significant for two reasons.

In the first place, in our judgment it is a very fine example of federalism in action. It is a program which was devised by the States which lie in Appalachia and by the Federal Government looking to the economic rehabilitation of a depressed area.

As the distinguished Senator from New Mexico and the distinguished Senator from Kentucky have just pointed out, Appalachia has been a successful program because it was so long in the making. It was a product of a number of years of study both at the Federal level and at the State level.

The second significant thing about the Appalachian program, Mr. President, as I see it, is that as a result of this careful study the programs which have been initiated under the original bill and the various amendments have been programs of permanent value. There has been no waste of funds. The funds have been expended for most worthwhile purposes and for purposes which will produce a lasting economic impact upon all of the States lying within Appalachia.

I take this occasion to express to the able Senator from West Virginia, the chairman of the committee, and to the able and distinguished Senator from New Mexico, the chairman of the subcommittee, my deep appreciation for the magnificent job which they have done in supporting and advocating and bringing to pass this great program. I have often taken occasion in my own State to tell the people of North Carolina what a great debt of gratitude they owe to these two distinguished Senators as well as to the other Senators who have supported this Appalachian program.

I want to thank my good friend, the Senator from West Virginia, for yielding this time to me. I want to express to him my admiration for the magnificent job he is doing at this time and which he has been doing in behalf of this program ever since its inception. I thank the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I am of course appreciative of what the Senator from North Carolina has just said about the interest that I have had along with other Senators in the Appalachian program.

I think, as the Senator very appropriately speaks of the achievements of the Appalachian effort in his and the other 12 States, that although he has not given the figures, he is really thinking in terms of the 233 health facilities that have been established and are operating effectively and helping people.

This is just one of many programs. This is not a matter of statistics, but a matter of the strengthening the health of people in the area.

I think the Senator is also saying, in effect, that we have developed 260 vocational technical schools already so that youth with skills and talents and adults who are able to adapt themselves, let us say, from coal mining in the past to new types of endeavors, can be given an opportunity to do so.

I have visited many of these installations and facilities, including facilities on the college and university level. Here we have been able to work with at least 157 such units. I know that he and other Senators appreciate that from the standpoint of culture and heritage and understanding and enlightenment, some 85 libraries have been aided in the strengthening of Appalachia.

Since there has been emphasis expressed by the able Senator from New Hampshire on the inadequate air facilities from the standpoint of scheduled operations in New England, I might say that we do know that in the Appalachian region we have, because of the terrain, had a problem not just of navigational facilities that must be strengthened, but also of construction and enlargement of our airports which are just as important as the development and access roads in some areas of Appalachia.

As I recall, some 50 airports have been aided under these programs. Equipment at schools has improved, and all types of public improvements have been brought into being in the Appalachian region.

I am underscoring what the Senator from North Carolina said. This has been a program which has reached out to help people. People have taken advantage of it in most instances, and the Nation, not just Appalachia, is better for it. To strengthen one area, whether it be Appalachia or New England, is to strengthen this country and to put meat on the sinews of our society.

I yield to the Senator from New Hampshire.

Mr. COTTON. I thank the Senator. I will be brief.

First, I express my appreciation to the Senator from New Mexico and to the Senator from West Virginia for what they have just said. I also express my appreciation to the Senator from Kentucky, the Senator from Tennessee, and all members of the committee.

I did not intend to be unreasonable but I did intend to be as determined as possible. I just wanted the RECORD to show that over 4 fiscal years from 1967 to 1971, under these regional setups, 20 States have received $98 million. Under the Appalachia setup, excluding highways, which is also included in this bill, 13 States have had $528.2 million or a half billion dollars. I do not begrudge a penny of that.

However, I want to say that I am encouraged by the words of the Senator from New Mexico, particularly, in the matter of air transportation alone. I hope and pray that this great Committee on Public Works will do something that I confess I have tried and tried for years to do, working on the Committee on Commerce.

The committee amendment provides $40 million for airports on a basis of 90 percent Federal moneys and 10 percent local moneys. The Senator from West Virginia has just mentioned aid for some 50 airports.

I wish to show how little we want but how badly we need it. We have an airport on the borderline of Vermont and New Hampshire, about two-thirds of the way up the border. We have maintained that airport for years by contributions from towns ranging in population from 1,000 to 1,500 up to from 7,000 and 10,000 persons. They have made annual appropriations out of their own treasuries. In that way they have kept alive and paid for maintaining that airport. Now, they have come to the end of their rope. One by one they have found themselves unable to support it further. This has happened just at the time I was able—after we passed the airport-airways bill—in cooperation with the FAA, to obtain for that airport the first ILS, or instrument landing system assistance. I was able to get a grant for the ILS, but we are getting no service now because Northeast turned its back upon us and has not given service to us—they tried to throw the ball to Mohawk and Mohawk was doing it before they went on strike. We have only an unsophisticated small airline with planes that are extremely small. Many people will not fly in them. I will not fly in them myself. I do not know how many Members of the Senate cannot get into their own towns, but I have to fly to Boston and go to my home by automobile and it takes an hour and a half to Boston and 3½ hours by automobile to my home. I claim that is discrimination.

The point is that $3 million or perhaps even $2.5 million would enable us to put that airport into shape and we would not lose, as we are about to lose, that ILS that I obtained, because the CAB will do nothing for us.

We have only one in the State of New Hampshire and I think one in the State of Vermont, down in the heavily settled part. We had an accident of a regularly scheduled airline in which every one was killed going into that airport.

I am going to take the liberty of opposing every single one of them when they come up for reconfirmation. I hope the President will not dare send one of them up here for reconfirmation. I have come to the end of my rope.

I want to thank the Senator from New Mexico and the members of the Committee on Public Works for their suggestion that if we can keep this alive for a year the organization is going to put a little blood into it. We do not ask for a 90–10 ratio. We do not ask for $40 million. We are not faced with 50 airports. We have three, possibly four regional airports. The absence of air service is killing our State. No small business will come into this entire northern area because executives cannot fly from Boston or New York where the trade is situated. Our towns are going down and they are being deserted. People are moving out and relief roles are increasing in those northern sections.

If you gentlemen, after giving us a 1-year extension of the Regional Commission, which is doing effective work, will put just a little flesh on the bones you will be our benefactors, and I hope some day I will be able to show my appreciation to all of you, Democrats and Republicans, liberals and conservatives, bonded and free—to every one of you I will be grateful. I am sure my colleague from New Hampshire and the two Senators from Vermont will be grateful to you.

I would almost vote for Senator MUSKIE for President if I could only get some air service—almost.

Mr. RANDOLPH. Mr. President, it is a delight to have the Senator from New Hampshire speak in this body and especially to find him so adroit at going so far and no farther.

I think that is the classic way in which he so often speaks, but his intent is well understood.

I yield to my able colleague from Michigan (Mr. HART). He has been very patient, and I know of his intense interest in this subject matter.

Mr. HART. I thank the Senator for yielding.

Mr. President, the Senator from New Hampshire, I think, has voiced eloquently the concern which those of us who ought to speak for others of these regions share. I accept the statement of the Senator from New Hampshire and the judgment of the Senator from West Virginia that there are areas wherein the legislation could be improved, areas which would, if corrected, permit these regional commissions to perform more effectively.

I am delighted that the Senator intends to hold hearings across the country in order to develop that kind of record, but the grim fact of life is that death shall overtake these commissions at the end of June. It would be a very dramatic experience in the Congress if between now and the end of June field hearings could be completed and legislative reform could be adopted and in the meantime appropriations could be made available for the five other commissions.

For this reason, grateful as we are to the Senator from West Virginia for the help he has given us in the Upper Great Lakes Basin Commission, bespeaking the interest of that region of the country, I hope very much that he and the Senator from New Mexico might persuade the Senator from New Hampshire that he ought to go all the way with MUSKIE.

At any rate, Mr. President, we might accept the suggestion so gracefully stated by the Senator from New Hampshire. He does speak for many Members of the Senate here who have responsibilities to others of these regions.

Unless we do something other than pass the bill for Appalachia and put these others on the back burners, the inevitable implication will be that, if they are not dead now, they will be by the end of June. That is what we very much hope we can avoid.

Mr. RANDOLPH. Mr. President, I recall that the Senator from Michigan engaged with me in colloquy in 1969 on this very subject matter. He will recall my assurance, which was kept, in reference to action taken in certain matters that were of concern to him.

Earlier this afternoon I discussed with him the possible extension which is being mentioned here. I underscore his desire to be reasonable and yet represent, as he does represent, the interest and constituency of his State, and the region, that there be no bypassing or slowing down of our effort. I appreciate the attitude of the Senator from Michigan.

I am delighted now to yield to my able colleague from West Virginia (Mr. BYRD), who has worked from the beginning, in 1965, with us on this legislation. He has been attentive to persons who have counseled with him. Particularly in the present extension of the act, which we hope will pass this afternoon unanimously, he has been very constructive concerning the development of facilities which would add strength to scheduled air commerce and all types of aircraft movements in the State of West Virginia. I am very happy to yield to him at this time.

Mr. BYRD of West Virginia. I thank my senior colleague. He is overly gracious and more than charitable in his remarks.

Mr. President, I commend my senior colleague who, as chairman of the Committee on Public Works, has worked so diligently in bringing to the floor, along with the support of the able manager of the bill, the Senator from New Mexico (Mr. MONTOYA), and other Senators on both sides of the aisle, a bill which will extend the Appalachian Regional Development Act of 1965.

I am particularly grateful for the action that was taken by the committee in writing into the bill new language in the form of section 201A. This has to do with Appalachian airport safety improvements.

My senior colleague and I joined in sponsoring an amendment which would provide 100 percent Federal funding for those projects that, in the judgment of the Secretary of Transportation, would enhance the safety of air passengers. Of course, the navigational aids themselves already carry 100 percent Federal funding, but we had in mind those airports in Appalachia which, like the Tri-State Airport at Huntington, need further adjustment of the physical terrain before a glide slope system would be workable.

Of course, we need not mention the horrible tragedy that occurred recently there, wherein most of the Marshall University football team lost their lives, together with most of the coaching staff, and, of course, all the members of the crew on that ill-fated plane.

It is thought that had Huntington possessed a glide slope instrument it would at least have been an additional safety factor which would have given aid and support to the pilots of that plane in their effort to bring it in under adverse weather conditions. But because of the undulating terrain, there is a necessity—before an ILS system would function properly—to extend the airport runway or build a landfill, either of which is going to be a costly proposition.

As is the case throughout much of Appalachia, there are so many competing needs for whatever limited revenues the people can raise, that it makes it difficult to provide these necessary adjustments to an airport like Huntington which will make it possible to use the ILS system.

It was for this reason that my colleague and I thought we ought at least to try to get 100 percent Federal funding for airport projects that would enhance safety.

I compliment the committee on the action it took. My colleague and I had several consultations from time to time, during which he kept me informed as to the progress being made in the committee in connection with the overall piece of legislation, and particularly with reference to this section, in which I was most interested. He indicated to me some of the problems and some of the factors that had to be taken into consideration in increasing the Federal funding share.

I think the committee did exceedingly well, and I am sure it had justification for not allowing 100 percent Federal funding in these various projects, even though they would enhance safety.

My feeling about the matter is simply this: If we are going to fund interstate highway programs on a 90–10 basis, then we have an even greater justification, in my judgment, for funding airport safety projects at least on a 90–10 basis.

I do not think air passengers who engage in interstate travel from other parts of the country should have the safety of their lives depend upon the capability of local interests—say, in Huntington, W. Va.—to raise 20 percent local funds in order to match the maximum of 80 percent Federal funding under all programs. As I say, this is interstate travel, and lives of people are involved.

It was because of these various considerations that my colleagues and I joined in the effort to try to bring about an increased and more reasonable Federal share of the overall funding for airport safety, so that air safety would not depend so heavily on the capability of people at the local level, to come up with 20 percent, when there are so many competing needs for the few dollars they can raise through their limited resources.

So, I compliment my colleagues—those on the committee, the chairman, the manager of the bill, and others—who have cooperated in adding this section to the bill. It will provide a system of airports throughout the Appalachian region, which will accommodate and enhance the safety of a greater number of air passengers, and thereby it will increase commerce and communication which will be so valuable to those areas, which do indeed have great economic and developmental potential. I think it was a necessity, and it is an accomplishment that is long past due.

I can appreciate the concern of the distinguished Senator from New Hampshire (Mr. COTTON). I know that the ter-

rain in his part of the country is just as treacherous and just as dangerous under some conditions as is the terrain in West Virginia; and I can appreciate his desire to have the benefits for his State that would accrue to Appalachia from section 201(a). I hope that the day will come when not only the Appalachian area, but also areas in other parts of the country, can take advantage of what I consider to be the wisest kind of Federal revenue sharing, because when the Federal Government assists local communities in providing the kind of safety to air passengers that air passengers ought to have, I feel that is the very best kind of Federal revenue sharing.

I compliment the committee again on the good work that it has done, and I am especially grateful to the committee for the consideration that it gave to this particular matter. I know that the people in Appalachia, if this bill becomes law with section 201(a) therein, are going to be indeed very grateful to the committee and to Congress, and I think the people all over the country will salute the Federal Legislature for its coming to grips with this necessity, and providing the same kind of Federal matching with respect to airport safety as it now provides with regard to the Interstate Highway System.

Mr. RANDOLPH. Mr. President, the comment of my colleague from West Virginia is factual, and that is the important part of such discussion, when we attempt to cope with the problems of the expeditious and safe movement of people and products in commerce by air.

I think it is important for the record to reflect that we had appear before the Public Works Committee the Administrator of the Federal Aviation Agency, John Shaffer. We questioned Mr. Shaffer very carefully about his thinking on the matter of the current needs, sometimes the urgent needs, for strengthening the airports of this country, particularly in certain sections where problems of topography are involved.

As my colleague from West Virginia has said, out of all of these discussions and considerations, there came an understanding of the problem. We clarified many points, and what we are doing here, as has been said, is taking care of a situation that we believe must be met in the Appalachian States.

We must soon, and I hope very soon, move into aid for actual construction or development in areas like Vermont, New Hampshire, and other sections of the country, even parts of the Rocky Mountain region and other areas of the United States.

So, with no intent to invade at all the jurisdiction of the Committee on Commerce in matters of airports and airways development, we felt that we could make a contribution at this time.

Mr. President, I had thought to speak on the provisions of the legislation as presented. That, of course, has been done by others; but I wanted to mention certain matters. But I think I can review those thoughts so that we may move ahead to perhaps the consideration of the specifics of an amendment which I believe the Senator from New Hampshire will shortly bring to our attention.

Before he does that, however, I would want to use perhaps 3 or 4 minutes to stress that I like the attitude in the Senate, as we think in terms of the administration's program for revenue sharing, and particularly discussion of the continuance of the Appalachian program and the strengthening of the programs in other regions of the country.

I know that we are going to be concerned in the Senate with the efforts of the President to initiate revenue sharing under which the States would be given a considerable responsibility, as they should, in developing their own programs. I do not understand, of course, the proposals in depth which the President is proposing but frankly, as the Senator from Tennessee has said, there can be a coexistence; the one can complement the other.

So there is no conflict here today, the Senator from Kentucky and I have talked this through many times—no conflict between what we are doing and revenue sharing, because I am not against revenue sharing. I want to hear the subject developed, as it will be developed. The two programs are interrelated, as I understand them, but while they have an interrelationship we must consider them separately, even though they have aspects that are as one.

So when these definite proposals on revenue sharing are brought up, we are going to give them careful consideration. We have not been involved here today with a problem which some thought might be inherent in bringing this legislation to the floor. As I have said on several occasions in past weeks, the Appalachian program and revenue sharing are not incompatible. On the contrary, I believe that the Appalachian experience has broken new ground in the very area that the President of the United States seeks to explore for nationwide application.

Since 1965, many people have considered the Appalachian program a model for creating new government relationships, the establishment of the new mechanisms for making effective use of Federal funds to solve local problems, interrelated problems which stretch across States and into a region.

So we are following today the basic legislation as presented in 1965, although, as we extend it, we recognize that challenge and change are inherent, and we have attempted to do just that in connection with the fashioning of the bill before the Senate.

The bill we consider today is basically a measure to continue the Appalachian program in order to fulfill its original objectives. The committee, however, recommends some modifications to make certain aspects of the program more compatible with the needs and conditions in Appalachia.

Only one totally new program is added, and I consider it to be of extreme importance in furthering the development of Appalachia. Aviation must meet a critical transportation need in Appalachia. While the Appalachian highway program is now beginning to greatly improve the surface transportation of the region, a system of reliable airports is indispensable.

As you know, the same topographical situation that makes highway construction expensive in Appalachia increases the cost of building airports in the region. The difficulties in raising scarce public funds in Appalachian communities affect airport construction just as they do other local government activities.

The nature of the terrain makes it doubly important that Appalachian airports be equipped with the best safety devices we can secure. The Committee on Public Works has responded to this need by including in the bill provision for a special airport-safety-improvement program.

The crash of a chartered airliner at Huntington, W. Va., last November emphasizes the need for improved airport safety facilities. I subsequently requested and received from the Federal Aviation Administration a report on the airport safety and navigational aids recommended for the Appalachian region. Improvements recommended by the FAA to landing areas and navigational aids for commercial airports in Appalachia were estimated to cost more than $117.5 million. Those for general aviation were estimated at more than $43 million.

Even the greatly expanded Federal program under the Airport/Airways Development Act of 1970 will not be able to meet the needs of Appalachian airports. The special program recommended in S. 575 would place emphasis on instrument landing systems for smaller airports in the region.

The airports of the Appalachian region must be improved as an integral part of our total effort to improve the economy of these States.

The $40 million airport safety improvement program could prove helpful to a number of West Virginia airports in need of safety upgrading in various degrees, possibly including such facilities as Tri-State, Huntington; Benedum, Clarksburg-Fairmont; Morgantown; Elkins; Parkersburg; Wheeling; Greenbrier Valley; Beckley; Mercer County; Pineville; Williamson; Summersville; and the Keyser-Cumberland Airport. Kanawha Airport, Charleston, is meeting most of its safety requirements in current improvements under existing FAA and Appalachian programs, but may need some further safety program assistance in the future.

I am gratified at the acceleration of highway construction under the Appalachian program. At the same time I recognize that higher costs and other factors have made it necessary to increase the authorization for this essential segment of our total effort.

The nature of mounting any highway program is such that there was a time lag before actual construction of the Appalachian system got underway. It is encouraging, however, that the pace has accelerated to the point where the States are now utilizing all of their allocated Appalachian highway funds and in some

cases are even using their own money to prefinance construction so that the program will not lag.

The Appalachian highway program is now moving at a pace which I believe will permit its completion in the extended period provided by this bill.

The effects of the highway program are becoming increasingly visible throughout Appalachia. The location of new industry in the Appalachian corridors is one tangible benefit, as is the improved access of the people to the new health, educational, and other facilities being developed. It would be extremely regrettable if the Appalachian highway network was not completed, and the total effort would be seriously undermined.

Educational development has been one of the most successful aspects of the Appalachian program, particularly the improvement of vocational education to provide the trained manpower for new and expanded industry in the region.

This bill provides for improvement of the educational program so that their benefits can be more widely and intensively applied.

Existing Appalachian law allows health programs to be mounted on a multijurisdictional basis covering a large area. There is one outstanding example of such a regional health program in southern West Virginia that has achieved marked success.

The committee recommends in this bill that educational agencies be given this same authority to organize programs that cross county boundaries. This would be, I believe, another way for the Appalachian program to encourage local governments to coordinate their efforts and pool their resources for maximum efficiency.

Coal mining has traditionally been a mainstay of the Appalachian economy. This has been especially true in West Virginia, the Nation's largest producer of coal.

Consequently, the problems brought on by the mining of coal create widespread concern throughout Appalachia. This was recognized in earlier Appalachian legislation when the Congress provided for participation in the restoration of areas damaged by strip mining.

This aspect of the Appalachian program has been moderately successful so far, but it is hampered by difficulties we are attempting to overcome in the bill being considered today.

I hope Senators will give favorable consideration to these provisions which will permit the States to make full use of the Appalachian program to help reclaim the large areas that have been severely damaged by strip mining.

Mr. President, one of the most successful programs under the Appalachian Act has been the Appalachian housing fund. The seed money grants and loans made under this program have greatly expanded the amount of low- and moderate-income housing constructed in the Appalachian region in the last 4 years. There has been, however, one remaining major obstacle to low-income housing construction in Appalachia. Due to the rough terrain, basic site development costs and the cost of offsite improvements such as water and sewer lines are so high as to make otherwise reasonable projects infeasible for low-income renters.

At the present time, offsite costs and basic site development costs for 12 proposed housing projects in West Virginia are so great as to make them infeasible under current FHA requirements.

Mr. President, I ask unanimous consent that a table be included in the RECORD indicating these projects and the amount of additional offsite costs necessary to make them feasible.

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

OFFSITE COST—MULTIFAMILY PROJECT LOANS

Case number and location	Type sponsor	Amount	Nature
1. 045-35003—Martinsburg	LDC	$20,000	Street paving, utilities.
2. 045-35016—Charleston	NP	141,516	Roads, paving, manholes, curbs, gutters.
3. 045-35017—Huntington	BS/NP	1,200	Paving.
4. 045-35019—Logan	BS/NP	10,375	Sewer, water.
5. 045-35022—Parkersburg	NP	6,305	Sewer, paving.
6. 045-35054—Salem	NP	13,425	Paving, sewer.
7. 045-35050—Charleston	BS/NP	2,597	Paving, water, sewer.
8. 045-44002—Charleston	LDP	1,625	Sewer.
9. 045-44004—Charleston	NP	2,900	Do.
10. 045-44005—Bridgeport	LDC	3,450	Do.
11. 045-44010—Fairmont	NP	6,000	Sewer, water.
12. 045-44008—Martinsburg	LDP	8,000	Paving.
Total		217,438	

Source: HDF via FHA Charleston insuring office. Feb. 11, 1971.

Mr. RANDOLPH. Mr. President, the bill we consider today contains an amendment providing for a subsidy to low- and moderate-income housing projects in Appalachia, for basic site development and offsite improvements of up to 10 percent of the total project cost. This amendment will allow now-stymied projects to go forward, and even more expansion of Appalachia's supply of low- and moderate-income housing will result.

Mr. President, the Appalachian Regional Development Act Amendments of 1971 is comprehensive legislation. It is the culmination of 6 years of experience in actual operation of the program and of a similar period of involvement by the Committee on Public Works in the legislative refinement of a program that is unique in American history.

While the bill we consider effects only the Appalachian regional development program, the committee is not ignoring other similar programs concerning the rest of the United States. The Subcommitte on Economic Development is currently conducting field hearings as the basis for the development of a national economic development program. I acknowledge the need for such a program and support the adoption of necessary legislation. As I said earlier this year, legislation to provide the basis for healthy economic growth throughout the Nation will be presented to the Senate during the first session of the 92d Congress.

I think of the contributions of all the members of the Committee on Public Works. I think of the efforts of the Senator from Kentucky (Mr. COOPER), who is the ranking minority member of our committee. He joined me in 1965, when together we introduced the original act. There has been no wavering on his part during the years since that time. He has had an unswerving devotion to the efforts to continue and strengthen the Appalachian program. I am gratified that he is the principal cosponsor of S. 575 that we are considering this afternoon.

These are not pleasantries I make. I know the work done by these men, such as the Senator from Tennessee (Mr. BAKER), the ranking minority member of the Subcommittee on Economic Development.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield, so that we might ask for the yeas and nays on final passage of the bill?

Mr. RANDOLPH. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. RANDOLPH. Not only is Senator BAKER a member of the subcommittee and the committee, but he is a resident of the Appalachian region, as is the Senator from Kentucky. He has brought his talents to bear in the fashioning of this legislation.

I regret that the Senator from North Carolina (Mr. JORDAN), a valued senior member who has helped us so much, is not present because of illness. Yet, he has sent word to me and to other members of the committee of his strong support for this legislation.

The committee has had the valued advice and efforts of Senators MUSKIE, BOGGS, and BAYH. We have had the involvement of Senators GRAVEL and BENTSEN, a new member of the committee. The Senator from Kansas (Mr. DOLE) has worked on this legislation, as has a new member of the committee from the Appalachian region, the Senator from Maryland (Mr. BEALL).

We have also had the support of other new Members. Senator Tunney, although he comes from the Far West, in California, has not thought of his efforts to help Appalachia as mitigating in any degree his attention to the problems of his own section, problems which were accentuated by the recent earthquake.

We have had the aid, of course, of the Senator from Missouri (Mr. EAGLETON),

and a new Member, the Senator from Connecticut (Mr. WEICKER).

All of these have made valuable contributions.

I have waited until the last to mention a new Member, the Senator from New York (Mr. BUCKLEY), because he is presiding over the Senate at this time. He has been an active participant in the hearings and in the discussions in the full committee. Although he has not joined in the 4-year extension request embodied in this bill, he has given his separate view that perhaps it would be the better part of his support of the administration viewpoint to think in terms of a 1-year extension.

I have mentioned the members of the committee, and I have not done that just because I wanted to mention names. I mentioned these Senators because within the Committee on Public Works they give attention to these matters. Our attendance in that committee, as the Senator from Kentucky knows, is something that gives joy to the hearts of those of us who carry the burden of chairmanship or of the ranking minority responsibility.

We have had men who have joined with us and have made our lot easier. Senator MONTOYA, as I have indicated earlier, is thinking in terms not only of the bill which we consider this afternoon but of the task of holding field hearings in many States. Those field hearings already are in progress and will continue in March and April, as we attempt to formalize the extension of programs that are broader in nature.

Mr. President, I do believe—and I do not want to overstate the case—that, although no miracles have been wrought, a few may actually have been approached. I have felt them once or twice as I listened to Dr. Daniel Hale tell us what has been done through the Southern West Virginia Regional Health Council which operates within Appalachia, how thousands of persons have better health today because of the Appalachian program. So some miracles may have been wrought, but we did not expect miracles to happen.

We never indicated at any time—I did not in 1965, when the original act was before us—that this was the final answer, that this was an overall panacea. But I felt that here we could begin to write a story that would be effective, a story that would mean that we were attempting, perhaps through a unique and exceptional effort, to bring the Appalachian region and its people into the mainstream of American life.

I feel that, as we come now to the consideration of a specific amendment, we have not been adamant in our position. Neither, of course, has the Senator from New Hampshire; nor have others, such as Senator HART, been adamant in their contentions. We have come to grips with the problem. Often they can arise on the floor, even though we have not anticipated them, and they can be settled satisfactorily.

Mr. President, I am going to yield the floor, with the feeling that the Senate, which has given almost unanimous approval to this legislation from its beginning, will welcome the opportunity once again to say that this effort is worthwhile.

Mr. COTTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. COTTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. BUCKLEY). Without objection, further reading of the amendment will be dispensed with; and the amendment will be printed in the RECORD as requested.

The text of the amendment is as follows:

At the end of the bill, add the following new section:

SEC. 115. (a) Section 105 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3135) is amended by striking out "June 30, 1971" and inserting in lieu thereof "June 30, 1972".

(b) Subsection (c) of section 201 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141(c)) is amended by striking out "June 30, 1971" and inserting in lieu thereof "June 30, 1972".

(c) Section 302 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3152) is amended by striking out "and June 30, 1971" and inserting in lieu thereof "June 30, 1971, and June 30, 1972".

(d) Subsection (g) of section 403 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3171(g)) is amended by striking out "June 30, 1971" and inserting in lieu thereof "June 30, 1972".

(e) Subsection (d) of section 509 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3188(d)) is amended by inserting before the period in the first sentence the following: ", and for the fiscal year ending June 30, 1972, to be available until expended, not to exceed $127,500,000".

(f) Section 512 of the Public Works and Economic Development Act of 1965 is amended by striking "June 30, 1971" and inserting "June 30, 1972".

Mr. COTTON. Mr. President, this amendment simply extends the authorization for the several regional commissions 1 year instead of 2 years, which was the amendment that the Senator from New Hampshire intended to offer, and authorizes one-half of the proportionate amount, one-half of what the authorization for the appropriations has been. This will mean that the Appropriations Committee will not be precluded from giving reasonable support of these regional commissions, when the time comes, because without this, we might be faced with no power to do anything to keep these alive.

Mr. MANSFIELD. Mr. President, will the distinguished Senator from New Hampshire yield?

Mr. COTTON. I yield.

Mr. MANSFIELD. If I may have the attention of the sponsor of the amendment and the manager of the bill, I assume that the amendment of the distinguished Senator from New Hampshire refers to the regional commissions such as New England, the Coastal Plains, the Upper Great Lakes, the Ozarks, and the Four Corners.

Mr. MONTOYA. Mr. President, the amendment covers all of five titles of the act, which include the title with respect to the organization of the regional commissions. The authorization is for $127,500,000 in the proposed amendment.

Mr. MANSFIELD. I understand that. That leads me to the next point, not on the matter covering the $127 million but on a matter covering the $300,000, which has already been appropriated, to the Upper Missouri Regional Development Commission, which is now in its planning stage and money which, by the way, I must repeat, Secretary of Commerce Stans seems very, very loath to allow the Commission to have, even though the five Governors of those States; namely, Nebraska, North and South Dakota, Wyoming, and Montana, and the 10 Senators representing those States, have sent letters to Mr. Stans, and to the White House, in an effort to get this money released so that that huge area can, in an organizational sense, get started. Does this include the Upper Missouri Regional Development Commission?

Mr. COTTON. It does.

Mr. MONTOYA. It could very well include the Upper Missouri Development Commission. I might say to the distinguished floor leader that I conducted the hearings and listened to the Governors from this particular region, and other members of the committee did likewise. I might say that the matter keeping this thing pending is the fact that Secretary of Commerce Stans has not approved the application which has been submitted. I think it was submitted in 1967 or 1968.

Mr. RANDOLPH. Over a year and a half ago.

Mr. MONTOYA. It is still pending. I might say to the distinguished floor leader that, on the basis of the hearings and the testimony adduced therein, I do not see any reason why the Secretary of Commerce should not approve the application and why the administration would not release the $300,000 earmarked for the organization of the commission.

Mr. MANSFIELD. I thank the distinguished manager of the bill, the Senator from New Mexico (Mr. MONTOYA), and the sponsor of the amendment, the distinguished Senator from New Hampshire (Mr. COTTON). I am glad to note, for the record, that the answer to my question, even though the Upper Missouri Regional Development Commission is in the planning stage, is in the affirmative. To put it, in short, yes. I thank both Senators.

Mr. COTTON. May I say, Mr. President, and add to what has been said by the Senator from New Mexico as a member of the Appropriations Committee. The distinguished majority leader is a member of the Appropriations Committee, and the distinguished Senator from New Mexico is a member of the Appropriations Committee, so that we know that by no stretch of the imagination will the Appropriations Committee allocate the $127 million to the existing regions. So there is ample money in there to renew the $300,000, or whatever the Appropriations Committee deems necessary, to get the Upper Missouri Regional Development Commission organized. As a

member of the Appropriations Committee, I can assure the distinguished majority leader that I shall favor it and work for it.

I have not minced words in this debate. I have the highest regard for Secretary of Commerce Stans personally and politically, but I think he has never been very enthusiastic about this program. If the Committee on Public Works finds some way to take it away from the Department, here is one Republican you will get no opposition from whatsoever.

I want to express by appreciation to the chairman of the committee and the manager of the bill, and to the majority staff—who put this amendment into shape, this amendment—after we came to general agreement on the 1-year extension, which I understand will be accepted——

Mr. MONTOYA. May I do so now, Mr. President?

Mr. COTTON. Yes.

Mr. MONTOYA. If the Senator will yield to me for that purpose.

Mr. COTTON. I am glad to yield to the Senator from New Mexico.

Mr. MONTOYA. Mr. President, on behalf of the committee, I would accept the amendment offered by the Senator from New Hampshire.

The PRESIDING OFFICER (Mr. BUCKLEY). The question is on agreeing to the amendment of the Senator from New Hampshire.

Mr. RANDOLPH. Mr. President, before we agree to the amendment, I want to check. Was the amendment read?

Mr. COTTON. Mr. President, no, it was not read. I asked unanimous consent to dispense with reading of the amendment because it is long and complicated; but it has been carefully scrutinized. It was drafted by the majority staff of the committee.

Mr. RANDOLPH. I have seen the amendment. I am in agreement with the amendment. I want to check the RECORD, to indicate whether the amendment had been read, because I was diverted for a moment from the discussion. I thought, before we voted, that it would be approprite to say there have been efforts to determine whether the administration would have problems with such an amendment. I have no right, of course, to speak about the administration, except to say that the Senator from Kentucky (Mr. COOPER) and I have looked into this matter, because the administration does have some situations that developed with the general economic development program and the extension of title V. I am advised that there is no problem with the administration with reference to the amendment. I am not saying that that would cause the Senator from New Hampshire to feel one way or the other about his amendment, but I wanted to make that statement.

Mr. COOPER. Mr. President, may I say a word, before we vote on the amendment. After this amendment was proposed by the Senator from New Hampshire, I contacted representatives of the White House, together with the Senator from Tennessee (Mr. BAKER), and we have been informed by these representatives that they have no objection to this amendment. I say that because I hope it will mean that if the amendment is agreed to, that it will become the law.

Mr. COTTON. May I say that I have been informed by a message from the White House which has been received to the effect that if my extension of these regional commissions for 1 year is adopted, it would not cause a veto of the bill.

I have no fear that the bill will be vetoed anyway. Having reviewed some of the problems in New England, I reiterate that the Senate has the task of treating every section of the country fairly as the Senate sees it. If the President does not like it, I do not care whether he is President Nixon or some other President, it will not cause me to change my vote.

It is comforting to know that the administration has decided to be so sweet and kind as to let us have these commissions for 1 year. This will give the Appropriations Committee a chance to keep them alive.

I hope that milk of human kindness will extend to the commission that they did not allow to be funded. I hope at the end of that year the Senate will act with or without the permission of the President.

Mr. MANSFIELD. Mr. President, there is no question that this applies to the Upper Missouri Regional Development Commission, even though it is in the planning stage.

Mr. COTTON. Not the slightest question. It applied before, but they held up the funding.

Mr. RANDOLPH. Mr. President, will the Senator yield further?

Mr. COTTON. I yield.

Mr. RANDOLPH. Mr. President, I did what I did in connection with this matter because I think the President is very encouraged by what has been done in the Appalachian program. I think he approves the purposes of the legislation which brought this program into being. I think that regardless of certain reports from time to time, he would like to see this effort continued. I do not want to go into a discussion of the matter except to say that I think some of the comments that have been made were not so much the viewpoint of the President himself as of some of those who work for and with him in the administration.

I believe he wants this legislation to move forward and pass. I think that in no way is he an obstructionist, regardless of the programs that might later be sent to the Hill.

Mr. COTTON. I thank the Senator. I would only amend what he said to this extent. The Senator said that it was not the fault of the President but was the fault of some of those who work for him and with him. I would say they work with him. However, I am not so sure they are always working for him. At any rate, I am grateful to the committee. I am glad that the White House is apparently willing to do this.

Mr. MONTOYA. Mr. President, I just want to say to my good friend, the Senator from New Hampshire, that he has been most persuasive in this effort. He has persuaded his colleague on his side of the aisle and also on the Democratic side of the aisle. His resounding voice of persuasion has been heard also in the White House.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Hampshire.

The amendment was agreed to.

Mr. COTTON. Mr. President, I move to reconsider the vote by which the Cotton amendment was agreed to.

Mr. MONTOYA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

Mr. COOPER. Mr. President, I am not going to make a speech and I only want to speak for about 3 minutes. However, I will ask that my prepared statement be printed in the RECORD at the end of my remarks.

I think this program has been successful.

As I said earlier to the Senator from New Hampshire, we owe the adoption and the continuation of the program to the generosity of other Members of the Senate whose States do not share in this favored position.

I believe on the whole that the Appalachia program has benefited the Nation not only in the improvement of this section of the country, but also in its demonstration project which can be applied throughout the country.

I call attention in my statement to the plans to construct a road through the Cumberland Gap where Kentucky, Tennessee, and Virginia meet. It is a historic gap through which thousands of pioneers from the eastern seaboard entered the Middle States and the South. There were 300,000 of them before 1800.

I hope very much that the Appalachian Commission, with the Federal Highway Administrator and the State highway administrators, will work out a program which will not destroy this historic gap. If they are not able to do so and present a plan which will destroy this gap, I shall do all I can to oppose it.

I thank Senator RANDOLPH for his generosity in mentioning all of those on the minority side as well as those on the majority side for their support.

I would like also to thank all of the new members of the committee who are present. Although we did not all agree on everything, we did agree generally that this was a good program.

I compliment the Presiding Officer, the junior Senator from New York (Mr. BUCKLEY), for supporting in principle our program although he felt he could only support the 1-year extension because he wanted to be in a position to

support the President's revenue sharing if that becomes an issue. I hope that it will not become an issue.

I consider that this is an example of the objectives the President seeks in his revenue-sharing program. I do not see anything contrary in the adoption of the revenue-sharing program and the addition of another stage, if it is necessary, to say that States with common interests may join together and make decisions as to their priorities. I shall press that, and I believe we will be successful in that effort.

I told the Senator from New Hampshire that I would support the amendment that has been agreed to and will do what I can to see that it is funded. However, I believe, with the Senator from New Mexico that this program will never be effective until changes are made so that these regional commissions may have some autonomy so that funds will be directed toward them instead of through another agency in the Department of Commerce.

The Governors of these States should make every effort themselves to find an identity of projects within the region and develop plans for them so that funds can be made available operationally. Otherwise I fear that these programs will end the device of securing better sharing arrangements between the Federal Government and the States.

I must say this because I did object in the committee to the adoption, as it was originally presented, of the airport program. I recognize the need for improvement of our airports, certainly with respect to the safety measures and I would have no question at all about supporting funds for the safety measures which are especially necessary in the mountainous areas of the Appalachian region. However, I did believe that some of the problems to be covered by this measure were inherent in our airports and common to all sections throughout the country. I did not feel that we should extend assistance on a 90–10 percent basis for one section of the country. That perhaps can be worked out in conference. I hope that it may be.

We do not want to see the Appalachia program burdened to the point where it will lose its significance and the region will face dissolution.

Mr. President, I am proud of the program. It has established priorities in our States and it has reduced duplication. Its cost may have been balanced by savings made in the wasteful programs that are carried on in the States—some 350 social programs and a total of 650 programs. I am particularly proud because it has meant human progress in these isolated and poor areas. We have those areas in my State which I have known all of my life. I say that with great affection and pride in the people and the simple dignity they have. Somehow I am afraid it is being lost through some types of so-called advancement.

I am happy to be able to say that in our committee we have worked in harmony. I say that in all fairness to the chairman of our committee and the members of the committee.

I asked unanimous consent that my prepared statement be printed in the RECORD at this point.

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

FLOOR STATEMENT OF SENATOR JOHN SHERMAN COOPER ON MARCH 11, 1971, ON THE AMENDMENTS TO THE APPALACHIAN REGIONAL DEVELOPMENT ACT

Mr. President, on February 3 I joined Senator Randolph of West Virginia in introducing the 1971 Amendments to the Appalachian Regional Development Act of 1965. Following the introduction of this bill, S. 575, the Public Works Subcommittee on Economic Development held three days of hearings to review the entire Appalachian program and to discuss amendments proposed to the bill. I am pleased that the full Senate Committee on Public Works has recommended the passage of this bill and the continuation of the Appalachia program.

There have been several additions to the bill as first proposed as a result of these hearings and further study. Senator Montoya and Senator Randolph have discussed the provisions of the bill in detail but I would like to mention several of the new provisions of the bill which I believe to be important to the continued work of the Commission.

The bill would extend the non-transportation programs of the Appalachian Development Act for four years and would authorize for them a total of $571 million. While this sum is based upon the estimated needs of the various Appalachia programs—health, housing, education, environment—these monies will be authorized in block sums which will give the States, working with the Appalachian Commission, greater flexibility in determining how these funds will be spent over the next four years.

The bill would extend the Appalachian Development Highway Program for five years through fiscal year 1978. A total of $925 million is provided over the next five years which, it is hoped, will enable the Commission to complete the 2,571 miles of highway proposed. I doubt that it will be sufficient. The Commission has expended $820 million for the system to date.

I am very much interested and also concerned in a proposal before the Commission to construct as a part of one segment of the Appalachian Highway system, a corridor through the Cumberland Gap National Historic Park at the junction of Kentucky, Tennessee, and Virginia. There is a need to provide adequate traffic capacity at some location near the juncture of these three States but serious questions have not been resolved involving the impact upon the Park, upon environmental values and, very important, the preservation, in its original state of the Cumberland Gap—the historic gap through which three hundred thousand pioneers from the original Colonies had moved to the west and south before 1800.

The Committee urges the Commission to exercise its leadership, working with the National Park Service, the Federal Highway Administration, the States of Kentucky, Tennessee and Virginia, and interested local and conservation groups to develop alternative plans and their estimated cost, compared to usual construction methods, to conserve and protect the historic Gap and its environment.

I believe this can be done by combining the means of the Appalachian Development Act and the Federal-Aid Highway program and that adequate funds can be provided for this purpose. I would oppose strongly any plan which would not preserve Cumberland Gap and its environment.

The bill, as reported by the Committee, includes three new provisions which broaden the Commission's authority under section 205 of the Act, the Mine Restoration Program.

The first provision clarifies the Congressional intent that financial assistance be given for the control or abatement of the mine drainage pollution in the region.

The second new section allows Federal participation in the land acquisition costs of mine area restoration projects.

The third amendment would permit the reclamation of strip mined lands owned by private non-profit entities organized for public purposes—recreation, conservation, economic development and low- or moderate-income housing. Under the present law reclamation is limited to publicly owned lands and, as only about 4 percent of strip mined lands in Appalachia are publicly owned, the use of this program has been very limited.

Section 108 of S. 575 would amend the Appalachia Housing Program in an effort to stimulate construction in the area. The main obstacle to housing development has been the high construction costs brought on, in part, by the rugged topography and isolation of the area. Under this new authority the Commission can make grants for site development and off site improvement costs such as grading, drainage, and water and sewer extensions when this assistance is necessary to bring the cost of the project within the income limitations of the people of the area. These grants will be limited to non-profit housing sponsors and can not exceed 10 percent of the total cost of the project.

Over the past three years the Appalachian Program has directed a larger part of its resources into human development programs. The bill would continue this emphasis by creating an education demonstration program modeled after the apparently innovative and successful health demonstration program. Funds would be authorized for planning, construction, equipping and operation of demonstration educational projects to carry out area wide educational programs. I believe that this new program has the potential to upgrade the quality of education in Appalachia.

Through the strong efforts of the Appalachian States, the construction of comprehensive vocational education facilities is almost complete. A new amendment to this program will permit the use of funds for the operation of these facilities as well as for construction. This amendment will allow the operation of the entire system, continued upgrading of the quality of the programs offered and a gradual, less burdensome transition to full State support over the next four years.

During the Committee discussion of this bill Senator Randolph introduced the Appalachian Airport Improvement amendment on behalf of himself and Senator Byrd of West Virginia. This amendment would authorize a new Appalachian Airport Safety Improvements Program and would provide $40 million for this program over the next four years. These funds would be limited to upgrading safety facilities at existing public airports. Safety improvements, which could be funded, include removal of airport hazards, acquisition of safety equipment, the purchase of navigation aids, site preparation for navigation aids and the acquisition of land easements.

I have flown into many of the Appalachian airports and I am aware of the hazards which exist. We all remember with sadness the terrible crash at the Huntington, West Virginia airport, which took the lives of seventy-five people last year. I also know that many of the communities do not have the financial capability to finance these needed improvements.

However, I must oppose the inclusion of this program as reported in the Appalachian Development Act because I do not believe

we can over extend the Appalachian program at this time.

I have outlined the major additions to this bill. I have not discussed in detail the justification for these amendments as they are fully explained in the Committee report, which each Senator has at his desk, and in the Committee hearing record. I believe that the work and progress of the program have been documented.

I do want to discuss an issue which has been raised during the entire consideration of this bill—the relation of a four year extension of the Appalachia Regional Development Program to the President's reorganization and revenue sharing proposals. Before going further I want to make it clear that I support the President in these recommendations and that I joined as a cosponsor with Senator Baker when he introduced the President's general revenue sharing program.

As I have stated on previous occasions, there are several elements, which seem to be not only harmonious with the President's purpose in proposing revenue sharing and reorganization, but in fact are elements which have already been applied and demonstrated, of course in a more limited area—through the Appalachian Regional Development Program.

An ordering of priorities in the application of Federal programs and grant funds, with determination by the States and greater exercise of responsibility by the Governors.

A Federal-State-local partnership in decision-making, with a stronger role by the States, and much closer coordination between a central coordinating office directly under the Governor and the multi-county local development districts.

Greater flexibility in the use of Federal grant funds, through which States may exchange with other States their categorical grant allocations to meet their first priorities.

Similarly, the flexibility in the use of supplemental grant funds to provide "seed money", not only to help meet the local share in local income areas but to put together packages of assistance which will provide area-wide benefits.

A structural or organizational relationship which enables the States to draw on an independent agency for technical assistance, and which in turn enables the States to provide technical assistance to the multi-county local development districts—bringing together the multifarious Federal programs and state agencies in a logical and constructive way.

The ability of the Regional Commission, as an independent agency, to serve as a coordinating link between Federal agencies to help existing programs meet a common purpose.

All these functions, it seems to me, are to some extent separable from the regional planning approach, but are harmonious with, and in fact in this case have preceded, the similar purposes now being proposed by the President on a much broader scale across nearly all Federal programs and agencies.

I serve on the Economic Development Subcommittee which will study the President's revenue sharing bill when it comes before our Committee. We will have the opportunity to reassess the Appalachian program with respect to its relation to the national program. But until we have established such a program for the entire country, I believe that the Congress can and must continue the Appalachia experiment.

I am glad to join with the distinguished Senator from West Virginia, the Chairman of our Committee, in the introduction of the bill, as we did with the original bill in 1965. He has been a great leader in the effort to advance the opportunities, not alone for his own State West Virginia, for which he strives so hard, but also for all the people of Appalachia and of our country.

It has meant much to my State, Kentucky, to all the Appalachian Region States, and in demonstration projects to other areas of the United States.

We are grateful to all those who have joined as cosponsors and for their generous support.

Mr. MONTOYA. Mr. President, I thank my distinguished colleague from Kentucky for the assurances he has given to us here today. He has been a most valuable member and a guiding light in solving not only the Appalachian legislation, but also the Regional Commission legislation and the Economic Development Act. His advice and counsel and his steadfastness certainly guided us in trying to provide legislation in this particular field.

This concept in economic development which we are trying to solve has already been demonstrated to all of us as one of the best approaches ever evolved in the Senate or in Congress with respect to economic development.

The most important feature of this approach, in my estimation, is the fact that these programs have served as catalysts to bring States together, as well as counties within States; and by virtue of this kind of regional planning and approach, the States have been able to attack problems common to all within the region.

The counties within the States have been able to do similarly.

Infused into this type of economic development is the economic development district approach which EDA finances within a State or among adjoining States. Because of this they have been able to build hospitals for several different counties, and they have been able to construct vocational schools. In one or two instances, two States have combined to build an area vocational and technical school.

As I stated initially as part of my remarks, the Appalachian Act has been instrumental in the construction of 260 vocational schools. Many years ago when we would try to propose vocational school instruction, the educators would say to us, "Why should we try to train young people in new skills if they are not going to find jobs in the locality where they are trained?" That was the argument against vocational and technical education on the part of conventional educators.

Then, we began to gnaw at that argument through public hearings which we conducted throughout the country. This year we developed a record which is ample and replete with testimony offered by different Governors and educators where the experiment has been tried. There is unanimity in the testimony indicating that where vocational and technical schools were located and instruction and training provided, industry sought out these areas and went there to locate. In the State of North Carolina, because of vocational training, as was testified to by the Governor and others, over 200,000 jobs were made available. In the State of South Carolina the same thing is true.

By way of commendation. I want to say that those two States, in my opinion, led the Nation in the construction of vocational schools and in economic development efforts through the honing of skills and human resources that exist in those States.

Without this act, we would not be able to set in motion in this country the construction of vocational schools which are sorely needed. More than 60 percent of the students who started in high school do not finish college. They drop out in later years of high school or in early years of college. So without any new skills these young people are relegated to the poverty cycle. That is why we are having trouble there and that is why our welfare rolls are swelling all over the country. Young people who received no training in vocational and technical education are now roaming the streets, and those who might not be are in substandard employment receiving substandard wages.

Unless we gear our system to the point where our human resources at the high school level might be honed by providing these young people with vocational training and vocational and technical education we will continue with this cycle.

The Federal effort that was initiated by EDA has been a great catalyst in enlisting local schools to dedicate some of their funding to the construction of vocational facilities. We see this all over Appalachia and all over the country, where the Economic Development Administration made grants of 50 percent, requiring 50 percent State or local matching, or, in other instances, in economically depressed counties with more than 7 percent unemployment. In these areas, they were able to provide grants of 80 percent with only 20 percent matching.

This has been done all over the country, and I would say that is the most important function of the Economic Development Administration, because it has finally provided for all to see on this American landscape, vocational, and technical education. That is going to be our salvation in this country.

As I have stated before, we have an obligation to perform in the Congress, and I think the Congress has furnished this leadership by creating the Economic Development Administration and by creating the criteria under which that Administration can make grants to local school districts for the construction of vocational schools. This is only one facet of the thrust that we have to make in economic development.

Health care is most important. Why in America should we tolerate a life expectancy for the American Indian that is 20 years under that of the white population? Why should we in America not provide health care to the rural area of this Nation? Why should we in America not provide hosiptals in the rural areas of this Nation?

I think we have come of age. I think we have to face the challenge to do something for deprived and forgotten people across the vast expanse of our land.

The legislation which we have passed today is not the beginning; it is just one of many steps that we have taken in the effort to make America the land of opportunity, a land where all Americans are treated equally with respect to health care, education, and economic opportunity.

So I want to thank the members of the Public Works Committee. I want to thank all the governors who appeared in connection with the Economic Development Act for telling of their wisdom and telling of the aspirations which they hold for their States and their people. All that testimony brought together represents the thinking of America, and the thinking of America is that the challenge is before us. Let us face it. Let us do something for these people. This legislation will set things in motion, things which will be productive toward the objectives about which I speak.

Mr. President, I yield the floor.

Mr. RANDOLPH. Mr. President, I spoke earlier of the Senators on the Public Works Committee who have given so much attention to the overall aspects of the bill and to the effort to improve the economy throughout the country.

The Senator from Maine (Mr. MUSKIE), who is the ranking majority member of the committee, is not able to be present this afternoon, but he left with me a statement, and I ask unanimous consent at this time for the privilege of having it inserted in the RECORD at this point of my remarks.

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

STATEMENT BY SENATOR MUSKIE

Mr. President, I support with enthusiasm the pending legislation, S 575, to extend the Appalachian Regional Development Act. And I want to commend Senators Randolph, Montoya, and Cooper, of the Public Works Committee, for their efforts and leadership in strengthening and extending this legislation.

The Appalachian Regional Commission, established in 1965, was a landmark experiment in regional development.

Today, five years later, the Commission has not solved all the problems set before it. Yet it has made significant strides toward improving the economic outlook of the Appalachian states.

The successes of the Appalachian Regional Commission are evidence that regional cooperation in administering categorical grants can have a substantial impact on economic development.

Its failures are witness only to the enormity of the difficulties in stimulating economic growth.

We know that the time has come for the formulation of growth policies which transcend state and local political boundaries and look beyond isolated economic problems of a single locale—policies which are broad in scope and oriented toward the realities of regional economic independence.

The Appalachian program is a model of such an approach. I hope that we will put to good use the lessons learned from this experiment and strengthen other regional efforts at economic development.

Mr. RANDOLPH. Mr. President, I want to quote from his statement very briefly. He said:

The Appalachian Regional Commission, established in 1965, was a landmark experiment in regional development.

I underscore what the Senator from Maine said. He also continued by saying:

The successes of the Appalachian Regional Commission are evidence that regional cooperation in administering categorical grants can have a substantial impact on economic development.

I would underscore also his words that:

The Appalachian program is a model of such an approach—

Which goes beyond political boundaries and looks beyond the isolated economic problems of a single locale.

He speaks of orientation toward the realities of regional economic independence.

Another diligent member of our committee in the past—he is not a member of the committee in the 92d Congress—is the Senator from Virginia (Mr. SPONG), who also asked, if he were not present during the debate, that his statement be inserted in the RECORD. I ask unanimous consent that I be privileged to include it in these remarks.

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

STATEMENT BY SENATOR SPONG

Mr. President, I wish to commend the Public Works Committee for the expeditious consideration given this bill.

The Appalachian development effort is one of the most successful of our federal programs. It has provided in excess of $68 million in Virginia for much-needed technical and higher education facilities, medical treatment centers, highways and sewage treatment facilities.

The assistance provided under the program has helped the Appalachian region of Virginia to participate more fully in the growth of our national economy. Significantly, the success of the program is largely the result of local initiative.

Virginia residents of the Appalachian region have been disturbed over reports that the Administration intended to terminate the program. They justifiably felt it would be unwise to curtail the program when some of its long-range objectives are just beginning to be fulfilled.

They will be gratified that legislation to extend the program has been approved by the Senate just 36 days after it was introduced. Mr. President, on their behalf, I thank the Senator from West Virginia (Mr. RANDOLPH), the distinguished Chairman of the Committee; the Senator from Kentucky (Mr. COOPER), the able ranking minority member, and the other Senators who participated in the development of this measure.

Mr. RANDOLPH. Mr. President, the Senator from Virginia said:

The Appalachian development effort is one of the most successful of our Federal programs. It has provided in excess of $68 million in Virginia for much-needed technical and higher education facilities, medical treatment centers, highways and sewage treatment facilities.

Of course, he could go on and on about programs that have aided counties within the Commonwealth of Virginia.

Mr. BEALL. Mr. President, just at this time exactly 2 years ago I was testifying in public hearings for the first time as a freshman Member of the other body. As a Congressman of some 60 days, I testified for the 2-year completion of of the 6-year Appalachian regional development program.

Today as a freshman Senator of some 48 days, I rise in support of a 4-year renewal of a program that has done so much to aid in the development and in the revitalization of an economically deprived area.

A most commendable start has been made. We must see it to a commendable conclusion.

The distinguished chairman of the Public Works Committee, Senator RANDOLPH, and I live in neighboring States.

Senator RANDOLPH deserves the highest praise for his dedication to this program which has been so effective in upgrading the region with which it deals. His leadership has provided the legislative spark necessary to ignite the fuse leading to approval and he should have our thanks.

Senator RANDOLPH's State is all-Appalachian. Mine is partly Appalachian. No State has fewer counties in the Appalachian region than does Maryland, but I think my Appalachian colleagues will agree, Maryland has played an important role in the development of this unique undertaking.

It will be remembered, it was a Maryland Governor, who in 1960 first called together his fellow Appalachian Governors to discuss the idea of a multistate regional attack on the problems of the region.

All of Maryland's Governors since the inception of the program in 1965 have played an active role in the life of the Appalachian Regional Commission—one of them serving as States cochairman. They have played an active role for a very basic, yet profound, reason:

With this program they have had a "piece of the action."

They are part of the planning process, indeed, under the act, the chief planner.

They are the project initiator—by law.

Most importantly, they make that most meaningful of governmental decisions: Where and how the money is going to be spent. They play a significant role in the allocation of funds. In the categorical grants scheme of things, States and localities receive whatever Washington disgorges, in whatever form it disgorges. Not here. Here the States stand as full partners with the Federal Government. Here we have a model of federalism that has proved itself for 6 years.

The President has recognized this. In his rural revenue sharing message of yesterday, the President paid tribute to the "grassroots planning process" that has been a staple of the Appalachian program. The President also remarked on the success of the Appalachian Commission's "coordinated development approach." It has been a success. We all recognize that.

In my view it has been a success for a rather elementary reason: It has proved the worth of an uncomplicated, non-

restrictive, noncategorical grant program. What we really have in Appalachia is a "modified block grant" program. It has cut across the binding categories of our existing programs to "make projects go" where they could not have, had only the categorical programs been available. It has served as a "packager" of programs, a "broker," a "consolidator," and "coordinator." It has done things in and for Appalachia that I think this Congress should consider doing for all our States.

Besides being a giant scissors cutting through categorical programs, the Appalachian Commission has done something else that I think may be even more important than making sense of the funding schemes.

The other thing is less tangible, less heralded. This program has demonstrated the ability of local and State governments to get the job done. For the past 6 years there has been a fantastic job of institution building going on. Planning capability and professional administration has come to the Appalachian region. The institutions of local government, of State government, have been strengthened manyfold in the last 6 years with the money and technical assistance of the Appalachian Regional Commission. It's almost like an old-fashioned barn raising to me how these 13 States, 397 counties, and the Commission have pulled together.

I am witness to the impact on the region the Appalachian Commission has made—in the development of its economy and its resources. I live in the region. I have seen it.

Under the Appalachian Regional Commission program Maryland has:

First. Identified the basic problems which serve to inhibit economic development of the Appalachian counties;

Second. Designated areas of relatively high growth potential; and

Third. Developed a strategy for stimulating growth and development in these areas and has made important progress in the implementation of its strategy and achieving improvements in the region.

There have been three main themes in Maryland's Appalachian program.

The first of these has focused on the lack of an adequate system of transportation in this area. This deficiency has had two major effects: It has discouraged the location of industry in Appalachian Maryland due to its inaccessibility to major market areas; it has resulted in the isolation of the local communities and the inability of the local labor force to commute to nearby areas of potential employment.

In an attempt to overcome this isolation, a modern high-speed highway is being built which will link the three Appalachian counties of Maryland to the major metropolitan markets of Baltimore and Washington and the rich industrial heart of the Ohio River Valley, making the area more attractive to industry and increasing the mobility of the local labor force. Obligations to Appalachian Maryland under developmental highway program as of January 31, 1971, totaled approximately $24 million.

The second major theme of the program has been to concentrate investment in the designated growth areas of Hagerstown, Cumberland, and Oakland. Appalachian investments have been made in Hagerstown in vocational education and other educational facilities, sewage treatment, housing, and airport projects; in Cumberland, in health and education, vocational education and recreation; and in Oakland, in water resources and the environment, vocational education, other education facilities, and health. All of these projects have contributed to the attractiveness of these areas to industry.

Visible evidence of the success of the Appalachian program in aiding community development can be seen in Oakland. The funds made available through the Appalachian Regional Development Act made it possible for this community to build an access road and a new water system that were critical in enabling it to attract a new optical instruments plant into the town. Appalachian program investments are not the only reasons for this plant location, but I feel sure that it would not have been possible without them.

The third theme of the Appalachian program in Maryland has focused on the need for improvement in the skills and qualifications of the labor force. Under the Appalachian program, it has been possible for the three counties to build a major area-serving complex of vocational/technical schools. Over $3½ million have been made available to the State of Maryland for this purpose.

Another important area of investment which has served to improve the quality of the labor force has been in the provision of improved health facilities and services. A comprehensive health center is presently being built in Cumberland. When completed, this center will provide a broad range of health care and services to the area.

The Appalachian Regional Commission's activities in Maryland serve to illustrate the validity and the significant impact of this kind of program. Investments are concentrated in areas of relative growth potential in an effort to build up the local economy to the point where it is self-sustaining and capable of providing a satisfactory standard of living to the area's population. At the same time, efforts are made to develop the human resources in the area to enable individuals who would not otherwise be able to do so, participate in the process of economic growth.

I emphasize in closing that the Commission program deals with a broad range of community facility, health, and education programs. This has made it possible for the State of Maryland to "tailor" a development program to meet the specific needs of this portion of the State.

I urge the passage of this bill.

Mr. BYRD of West Virginia. Mr. President, from the earliest days of the Republic, development in the Appalachian region has been of great concern to the National Government. Thomas Jefferson's Secretary of the Treasury, Albert Gallatin, in a report to Congress, described the need for a system of interior transportation improvements to penetrate the mountains of Appalachia and connect the Atlantic seaboard with the continental interior.

In the mid-1800's, these same transportation conditions in parts of Appalachia generated debates between Henry Clay and Daniel Webster.

In the early years of the present century, there was national concern over devastation caused in Appalachia by overlogging. This concern resulted in the laws authorizing the creation of national forests in the Eastern United States.

Numerous reports and programs dealing with Appalachian problems were prepared in the early depression years of the 1930's.

Benton McKaye, one of the founders of regional planning in this Nation, proposed a special Appalachian program that would concentrate on the construction of development highways, new towns, and water resource developments.

The most recent national concern over the problems of Appalachia developed in the latter 1950's and early 1960's, primarily because of the economic crisis caused by mechanization of the extractive industries, particularly coal mining, the decline in agricultural employment, and the vulnerability of the region as a supplier of basic goods to a national economy which was experiencing recession.

In May 1960, the Governors of 10 Appalachian States met at the call of then Gov. Millard Tawes of Maryland, to lay the groundwork for proposing a common, coordinated, interstate approach to the development of the Appalachian region.

In April 1963, after a number of investigative studies, the Governors met with President John F. Kennedy to discuss their recommended program, in response to which the President established the President's Appalachian Regional Commission, a body most unique in American politics, combining the resources of 10 Appalachian States and 10 Federal agencies.

PARC prepared and submitted a report 1 year later to President Lyndon B. Johnson. The President reviewed the the study and passed its recommendations on to Congress proposing a bold and ambitious program of regional development to initiate a process of self-sustaining growth to Appalachia. Four priorities were identified:

Immediate improvement in human resources.

Elimination of the region's isolation from the surrounding national economy.

Development of public facilities and services needed to support the growing economy.

Conservation and efficient utilization of the region's natural, timber, land, and water resources.

In 1965, Congress authorized the establishment of the Appalachian Regional Commission through the enactment of

the Appalachian Regional Development Act of 1965. It was a response to the severe economic and social conditions which existed in large sections of the region. Barely more than a subsistence economy had existed from the earliest days of settlement in many counties of the rural, isolated heartland of Appalachia.

The fundamental assumption behind the Appalachian program has been that a "strategy for growth" must be developed democratically through cooperative action. It cannot be conceived by one agency of government nor even one level of government. It can grow only out of the consensus of all the public and private interests involved.

The Appalachian Act has provided for the first time in the history of our Nation a total framework of coordinated, cooperative, comprehensive action.

Through partnership administration, new approaches to making systematic improvements in health, education, transportation, the environment, resource utilization, and the operations of governments at all levels have been tried. By no means is the job complete, nor does universal consensus prevail concerning the goals of development. But a substantial beginning has been made.

President Richard M. Nixon has said in his state of the Union address:

> We must deal with the quality of life in America on the farm as well as the suburb; in the village as well as the city.

In the eyes of the Governors, the Appalachian Act was a pioneering experiment to test whether the Federal Government and a group of States could devise a strategy for rural and urban growth. I believe that challenge is being met in Appalachia.

On July 14, 1970, 11 of the Appalachian Governors met with President Nixon and in answer to his questions, enthusiastically endorsed the program and the concept made possible by the Appalachian Regional Development Act.

A brief review of progress made during the Appalachian Regional Commission's existence since 1965 is in order.

Let us consider the most tragic problems that has faced Appalachia.

Each year great numbers of young people leave the region because of the lack of opportunity for jobs and the isolation. This outmigration not only reduces the potential labor pool, but tends to leave behind barren ground for development. This exodus of our people, often those who are better educated denies the region the essential element for future growth.

I am happy to report that this outmigration has slowed. Some counties in southern Appalachia which were centers of outmigration in the 1950's have turned around and have become centers of inmigration. Appalachia Georgia has been experiencing inmigration. Net outmigration has slowed in the Appalachian areas of Alabama, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, Pennsylvania, and my own State of West Virginia.

I believe that the Appalachian development program has played a major part in reducing the exodus of young people. Since 1965, the Commission has placed special emphasis on assistance for education, particularly on vocational-technical education. After considerable study, the objective has been to construct facilities to train at least 50 percent of its high school students in vocational-technical occupations. By the end of the past fiscal year, 260 facilities had been approved by the Commission for such purposes. Forty additional projects were approved during the last 6 months in 1970.

Under this impetus, vocational technical high school enrollments in Appalachia increased by 34 percent while overall high school enrollments increased by 13 percent. As recently as 1967, enrollments in vocational-technical education in the region lagged behind the rest of the Nation. By 1969 this pattern had been changed and the region is on par with the Nation.

In post-high school vocational and technical education the rates on the region have far exceeded those of the Nation.

One of the objectives of the Appalachian Regional Commission has been to reduce high school dropout rates by making technical and vocational education really relevant to the job market into which students were entering.

In 1966, about 62 percent of the Appalachian vocational-education courses were for occupations which make up only 5 percent of the projected 1975 national job market. Under the impetus of the Appalachian Regional Commission program, this deficiency in education is being corrected.

The number of students taking job-relevant training has increased from 38 percent in 1966 to 44 percent 3 years later. Moreover, in the schools built and equipped with Appalachian assistance 80 percent of the students are in job-relevant curricula. These students account for the 58 percent of increased enrollment in health occupations; 52 percent in technical education and 52 percent in trades and industry in the region.

It takes a long time from the day a school board decides to establish a new vocational school until the day the construction is completed, faculty and equipment are obtained and the first class graduated. I feel that much has been accomplished in this field in the relatively short life of the Appalachian program. Much more remains to be done, and can only be accomplished by congressional authorization for extension of the Appalachian Regional Commission program.

The economy of Appalachia is progressing. Since 1965 close to a half million new jobs have been added to the Appalachian economy.

True, the rate of job growth in Appalachia has not matched the United States as a whole, but the gap is narrowing—and during the fiscal year 1970, the rate of employment growth in Appalachia slightly exceeded that of the United States.

In 1962, the unemployment rate for th region was 8.7 percent; for the Nation i was 5.5 percent. During fiscal year 197(the unemployment rate for Appalachi was 3.8 percent, compared to 3.5 percen for the Nation.

The Appalachian development pro gram, by helping to prepare people fo productive lives, by helping to build th foundation of essential roads and othe public facilities, and by giving the peopl of the region positive support to achiev their full potential, has contributed t the improvement in the job picture.

The region has been blighted by a hig note of substandard housing. In 1968, th Appalachian Regional Commission es tablished a revolving fund in housing Since that time, 59 organizations hav received Appalachian Regional Com mission assistance with loans totalin $2.5 million. These loans have been use to plan 7,093 housing units estimated t cost $97.7 million. The ARC housing fun has increased use of the basic Federa housing program for low- and moderate income families by over 600 percent sinc its inception.

Mr. President, I spoke earlier abou the emphasis placed on education by th Appalachian program. These response were to increasing opportunities at th high school and post-high school years But, Mr. President, there are far too many youngsters in the region who cannot take advantage of those expanding opportunities because they have grown up without early health and educational advantages. In Appalachia, there are some 2 million children under the age of 6—half of them in families with very low incomes. These years are the most critical in the physical and intellectual development of a child. Yet far too many of the region's children are without the services essential to the development of strong minds and bodies. In 1969, the Congress directed the Appalachian Regional Commission to undertake a child development program to demonstrate how this problem could be effectively overcome. Most of the Appalachian States are moving ahead to plan for child development; in the next few months the first active services will begin. All of this important work is just beginning and on a very limited basis. If it is curtailed, the children of Appalachia will be the most immediate losers, but the entire region will lose a large part of its most precious resource.

The entire country, Mr. President, is concerned about the crisis in health care.

With support from the Appalachian Regional Commission, systems are being developed in Appalachia to demonstrate effective ways to provide health services and to reach people in rural areas. Considerable attention is being given to planning and the involvement of local people in the setting of priorities for the use of Appalachian funds. In nine southern West Virginia counties, the Appalachian demonstration program is beginning to evidence techniques for getting care to the people who need it even though they live in remote sections. But I emphasize that this is a beginning. The health program aided by the Commission provided

the first grants in 1968. These grants are going to demonstration projects which cover one-fourth of the region's counties in which approximately one-fifth of the Appalachian population resides. The important thing is that these demonstration projects are started under the explicit provision that annual grants for their operations could be made for up to 5 years. It would be unreasonable to encourage areas to begin these demonstrations and then terminate them in midstream and before the objectives of each demonstration were achieved.

I have dwelled on education and health because these elements are absolutely fundamental to the forward progress of the region. Those involved in the region's development also recognize that good roads are vital, too. Without modern highways, many people will not be able to avail themselves of new hospitals and schools and community colleges.

Since 1965, 314 miles of Appalachian development highways have been completed; over 484 miles are under construction; and more than 1,000 miles right-of-way and engineering is in progress. With Appalachian Regional Commission support many access roads have been constructed to industrial areas, recreational facilities and other activities germane to the economic development of the region. It is felt that the completion of the development highway system will open up the area even more to the location of new industry. Markets will be brought closer, new supply routes will be opened, and workers will find it easier to get to jobs. New developments—industrial and commercial as well as recreational and educational—will be stimulated in the region.

But more time is required to fully construct the network of Appalachian highway corridors to reap the full benefit from the public's investment to date.

Mr. President, I support extension of the Appalachian program for one basic reason: the job is not done. We are a lot closer than we were in 1965. In some aspects of the program, we have virtually accomplished the mission. But the people of this region were made a promise, given a commitment in 1965. We cannot break faith with them.

Mr. HANSEN. Mr. President, one aspect of the Appalachian legislation with which I have had an opportunity to become very familiar is the authority which that legislation grants to the U.S. Bureau of Mines to make grants to the Appalachian area to seal and fill voids in abandoned coal mines and abandoned oil and gas wells, and to reclaim and rehabilitate land affected by the strip and surface mining and processing of coal and other minerals.

We are all familiar with the great problems which have been created in Appalachia as a result of mining in that area. But mining is the very foundation of much of the economy of Appalachia and a great effort was made to seek solutions to these problems so that the quality of life of the area could be improved and at the same time the economic contribution to the area from mining could continue.

Subsidence problems resulting from the location of abandoned mines in populated areas were perhaps some of the most heart-rending experiences which took place in the Appalachian area. The Nation watched as cities such as Scranton, Pa., struggled to save buildings and homes which were breaking apart as the ground subsided beneath them.

Under the Appalachian Act, the people of the United States expressed their sympathy for this problem and gave aid to Appalachia. For there is perhaps nothing quite so tragic as to see a person who has worked hard all of his life to provide a home for himself, his wife, and his family lose his home as the ground gives way beneath it. The aid of the people of the United States took the form of action by the U.S. Bureau of Mines. The Bureau spent millions of dollars on projects which were financed up to 75 percent by the Federal Government. These projects placed backfill material beneath the ground by traditional methods which were very expensive considering the surface support provided. They required the drilling of thousands of holes and it was difficult to backfill under existing buildings.

While all of this was going on and our attention was directed toward Appalachia, similar subsidence problems were taking their toll in other parts of the Nation where mining plays an important role. But because the problem was most obvious in the more heavily populated and mined Appalachian area, the authority for Federal assistance was limited to that region. This did not mean that the man in another part of the Nation who lost his home to subsidence suffered any less than his Appalachian brother. It means only that his situation was a little more isolated. In both cases a man was left without a home which in many cases represented his life's savings and work.

Perhaps, at the time of the enactment of the Appalachian legislation, the Congress was willing to limit Federal assistance to Appalachia and ignore the similar needs of the remainder of the Nation because help to meet subsidence problems through the backfilling of abandoned mines in potential subsidence areas was so expensive. But that is no longer true today. Events in the past year have convinced me that it is now economically feasible for the Government of the United States to make its assistance available to all citizens of this Nation who live with subsidence problems and not limit that assistance to the citizens of one particular region of the Nation. Indeed, in fairness, justice, and equity, it is the responsibility of the Congress to extend this one small segment of the Appalachian legislation to the country as a whole.

Mr. President, the events to which I refer and which I believe justify action by the Congress, centered around the city of Rock Springs, Wyo., and the subsidence problem which that city of approximately 10,000 persons in southern Wyoming has lived with 4 years. Two years ago, one section of the city began experiencing subsidence in a greater degree than the city had previously known. Several families were forced to abandon their homes for safety reasons. Others remained, but watched openings appear in their walls, floors sag, and so forth. Indeed, at night, they listen from their beds as the entire house creaks.

At first the Bureau of Mines said there was nothing that it could do to help. The problem was that the known techniques for backfilling abandoned mines in subsidence areas were so expensive as compared to the surface support provided that they were not economically feasible especially since the Bureau of Mines was not authorized to assist the city of Rock Springs although it was authorized to assist in the Appalachian States.

But Rock Springs did not give up. The subject was pursued with the Bureau of Mines. In the midst of this activity, the Dowell Division of the Dow Chemical Co. came forward with a new technique it had developed for backfilling mine voids. This technique was a new application of equipment which had been developed for use in the oil and gas fields. It involved the pumping of slurry into the voids and depositing the backfill material throughout the void by means of controlling the velocity of the slurry.

In theory the technique was feasible. A model was developed by Dowell and the Bureau of Mines was quite impressed. Because the Bureau of Mines had a responsibility in the Appalachian region and the Dowell technique, if workable, offered to provide much greater surface support at less cost and without the disturbance to the community caused by other techniques, the Bureau offered to spend $55,000 on a demonstration of the Dowell technique. Because the Dowell technique offered a possible solution to the Rock Springs problem, the city, the State of Wyoming, and the congressional delegation from Wyoming pursued the effort to fund a demonstration. A demonstration grant from the Department of Housing and Urban Development provided $170,000 to finance the demonstration of the Dowell technique in Rock Springs. A non-Federal local share was provided in the amount of $20,000, and the demonstration project was underway.

Last October, Dowell began to pump 20,000 cubic yards of backfill into mine voids under Rock Springs. On December 9, 1970, following completion of the demonstration project, I hosted a meeting in Washington which was attended by representatives from Dowell, the Bureau of Mines, and HUD. The purpose of the meeting was to provide a preliminary analysis of the demonstration project. At this time, every indication is that the demonstration of the Dowell technique was totally successful.

I ask unanimous consent to insert in the RECORD at this point a letter which I have received from the Director of the Bureau of Mines expressing the preliminary findings of the Federal agency which is so very qualified to judge the results of the demonstration.

There being no objection, the letter

was ordered to be printed in the RECORD, as follows:

BUREAU OF MINES,
Washington, D.C., January 27, 1971.

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HANSEN: This responds to your request, directed to Mr. Joseph A. Corgan at a meeting in your office on December 18, 1970, for an opinion concerning the feasibility of supporting the surface in Rock Springs, Wyoming, by a large-scale application of the recently demonstrated Dowell Division technique of backfilling inundated mine voids.

Recapping the program to date, the Bureau of Mines became involved with others in the Dowell demonstration project because we felt that the hydraulic principles in a single borehole injection system (as proposed by Dowell were sound, and if an actual demonstration of the technique proved to be successful we knew that such a system could have wide application in the filling and sealing of inundated mine voids, particularly where subsidence was an urgent problem.

Our engineers were present throughout the entire demonstration period which extended from 12:30 p.m., October 26 to 11:30 p.m., November 4, 1970, a total elapsed work time of 227 hours. This period included non-operating time of about 65 hours due to a power failure, a breakdown of auxiliary equipment, oversized flushing material, and other problems considered normal for an initial experimental project. During the 162 hours of effective operations, 19,500 cubic yards of sand was transferred from the surface through the closed system which consisted of a blender, a slurry pump, a pipeline, and a cased borehole to the inundated mine voids located approximtaely 120 feet below the surface. An average injection rate of 120 cubic yards of sand per hour was achieved during the demonstration.

While it was apparent (on November 5) that the injection phase of the demonstration proved to be successful, the use of the system, however, in terms of the pattern and depth of sand deposition that would provide support to the surface had not, at that time, been conclusively demonstrated. The Bureau, therefore, during the period of December 16, 1970, through January 15, 1971, conducted a 36-borehole drilling and sand deposit evaluation program in the mine voids of the demonstration area within a radius of 360 feet from the injection borehole to determine the location of the sand. The information obtained was correlated with similar data obtained earlier by Dowell from the injection well, two water supply wells, and four caliper survey boreholes.

Data obtained from the Bureau's drilling program were evaluated by Johnson-Fermelia & Crank, Incorporated, Consulting Engineers & Land Surveyors of Rock Springs, Wyoming; by Mr. Frank Morgando, principal engineering geologist from the Wyoming Highway Department; and by Bureau of Mines engineers. It was the consensus that the pattern of sand-filled voids in the mine did not form a circular shape around the injection well; that most of the sand flowed northeast, east, and southeast from the injection well apparently following paths of least resistance; and that heavily caved strata encountered in the mine voids below the intersection of Connecticut Avenue and D Street effectively impeded the flow of sand into that area. It was also agreed that none of the sand penetrated west of the entry and airway which are situated 40 and 80 feet west of the injection borehole. Obstruction to the flow of sand in these passageways is attributed to man-engineered drainage and ventilation control measures developed during past mining operations. The line drawn in red on the attached map outlines the area in the mine where it was agreed the vast bulk of the sand had been deposited.

It is the considered judgment of Bureau engineers that the Dowell process is feasible as a means of providing surface support above inundated mine workings. Experience gained from this experiment, however, indicates that adequate control measures would have to be incorporated in a large-scale subsidence control project to assure that the fill material is deposited in the mine voids where it is needed. Adequate monitoring of the sand flow at the planned limits of a project area would, in our opinion, help to accomplish this. Also, since maps of abandoned underground mines do not always reflect the actual conditions, it would be well to consider that multiple injection wells would be necessary to circumvent major obstructions such as the man-made barrier encountered at the Rock Springs demonstration project site.

Although there is some evidence to indicate that the process might be equally effective in filling abandoned workings that are not inundated, we cannot be certain of this until a demonstration under non-inundated conditions is conducted.

We appreciate the great interest you have demonstrated in the overall conduct of this successful mine backfilling project, particularly your efforts in coordinating the activities of local, State, and Federal agencies involved in the project work. Please be assured that the data obtained from the experiment will be of great assistance to us in our on-going subsidence prevention program.

Mr. HANSEN. Mr. President, in the next 2 to 6 weeks, both the Bureau of Mines and the Department of Housing and Urban Development should make available their final reports of the demonstration which took place in Rock Springs. Both the Bureau and the Department monitored the demonstration closely and have analyzed all of the factors involved from the technical and human point of view. I know that these reports will be of great interest to my colleagues. There is every reason to believe that the reports will underline the success of the Dowell technique as expressed in the preliminary reports.

It is impossible to appreciate at this time the full impact which the success of this demonstration will have on the parts of the Nation which face subsidence problems. Perhaps for the first time we can contemplate a complete and permanent solution to the subsidence problems throughout the Nation. But it would be grossly unfair to deny the opportunity for a solution to all the areas of the United States outside of Appalachia. I perhaps am most sensitive to this point because it was the persistence of a Wyoming community that led to the successful demonstration of the Dowell technique which now offers such great hope to Appalachia and the entire country. It would be the extreme irony if Rock Springs, Wyo., were now denied Federal assistance to apply the Dowell technique to its subsidence problem and all Federal effort was concentrated in one region of the Nation.

And there is no need to ignore the subsidence problem in the remainder of the country. Because the Dowell technique will provide more surface support for less money, the Federal Government can undertake assistance to more areas without increasing its total expenditure. And such an effort by the Bureau of Mines can have an impact of the success of HUD projects throughout the country. For these historic mining towns are obvious locations for the application of HUD programs. But it is essential that surface support be provided and guaranteed before large amounts are spent on surface renewal.

Mr. President, on March 9, 1971, I introduced S. 1160, a bill which would authorize the Secretary of the Interior through the Bureau of Mines to make grants to the several States to seal and fill voids in abandoned coal mines and abandoned oil and gas wells, and to reclaim and rehabilitate lands affected by the strip and surface mining and process of coal and other minerals. This is the same authority which the Bureau of Mines now has in Appalachia. Of course the Appalachian legislation grants assistance to the region in many other ways as well, and I do not propose that such assistance should be extended nationwide. My legislation extends only one small part of the Federal assistance to Appalachia to the Nation as a whole.

At first, it was my intention to offer S. 1160 as an amendment to the legislation now before the Senate which extends the life of the Appalachian Regional Development Act. I do believe that it is important for the Senate to recognize at this time that certain problems are not those of Appalachia alone and to offer assistance where appropriate to all of our citizens and not just those of Appalachia. However, I have decided not to offer the amendment today for two reasons. First, the report from the Bureau of Mines and the Department of Housing and Urban Development which will be available in the next several weeks will provide vital information on which the Members of the Congress will be able to base their judgments. These reports will provide a much better understanding of the problem and the Dowell technique which is now available. In addition, the President has sent to the Congress the proposed Mining Protection Act of 1971, and both Senator JACKSON and Senator NELSON has introduced legislation relating to this general subject.

The distinguished chairman of the Senate Committee on Interior and Insular Affairs and I have discussed this subject. That committee of which I am a member, will hold hearings this spring on the President's bill and the other bills on this subject. The chairman is most knowledgeable on this subject and has devoted much of his time to seeking solutions to the problems related to mining. He has assured me that S. 1160 will be subject of hearings this spring along with the other pending legislation on this subject. For this reason, I will not ask that S. 1160 be considered by the Senate at this time as an amendment to S. 575.

But I ask all of my colleagues to be aware of S. 1160 and the situation to which it addresses itself as they consider S. 575 at this time. As they make their commitments and vote on this legislation, they must realize that they cannot turn their backs on those in similar cir-

cumstances throughout the country. This is especially true in light of the fact that the technical means for providing help for all of our citizens have been developed and proven within the last year. Suffering is the same everywhere. A man who has lost his home in Wyoming experiences the same hurt as a man who has lost his home in Appalachia. Let us remember this fact and act accordingly.

As the Committee on Interior and Insular Affairs schedules hearings on the mining legislation pending before it, I earnestly suggest that the committee consider scheduling a field hearing in Rock Springs, Wyo. There it could view firsthand the destruction which has resulted from subsidence. It could also view the effect of this problem on a community which is a leading economic center of the State and which will continue to grow and prosper as the center of one of our richest natural resource areas. The committee might then realize the importance of providing a permanent solution to this problem. In addition, the committee could acquaint itself with the new and innovative technique which offers such great hope to the entire country and view the demonstration area in Rock Springs which was used to prove the application and feasibility of the technique.

Mr. President, I thank my colleagues for their attention. I ask their commitment to action to relieve the burdens faced by our citizens living in mining communities. These communities and their citizens have contributed greatly to the development of this Nation as a leading power. If we wish to continue to maintain our preeminence and high standard of living we will continue to rely on these people to meet the energy needs of the Nation. I know we can count on them. I hope they can count on us when they need help. I urge early hearings on S. 1160 and similar legislation, and hope that the Congress will act in a minimum amount of time. The assurances given me by the distinguished chairman of the Interior Committee lead me to believe that my hopes are not misplaced.

Mr. RANDOLPH. Mr. President, I yield 5 minutes to the able Senator from Georgia (Mr. TALMADGE).

Mr. TALMADGE. Mr. President, I thank my colleague from West Virginia for yielding to me.

I am proud to be a cosponsor of S. 575, to extend the life of the Appalachian Regional Development Act of 1965 as amended. I compliment my able and distinguished friend the Senator from West Virginia, as chief sponsor of this legislation, and his Committee on Public Works, which held hearings and reported the bill.

A good part of north Georgia is encompassed in the area of Appalachia. It is perhaps the most beautiful area of my State from a scenic standpoint, and is, in fact, one of the most beautiful areas in the world. Unfortunately, the per capita income there has not been nearly up to the national average. The same is true of the other areas of Appalachia. The people have been limited in job opportunities; the area is primarily rural. Its people have worked with the Appalachian Commission in order to obtain better job opportunities and better living conditions in that area of my State.

The Commission has done an outstanding job. The health of the people has been improved through hospitals and health centers. Access to that beautiful area of our State has been improved by new highways and new roads. Job opportunities have been enhanced by industrial expansion. Vocational and technical training schools have been built in that area, in order to better train the people there.

So, all in all, I think this has been a wise investment in the future of America. It has benefited my State. I urge the Senate to continue this legislation.

Again I pay my compliments to the principal author of the measure, the Senator from West Virginia. I thank the Senator for yielding to me.

Mr. RANDOLPH. Mr. President, the Senator from Georgia has been cognizant of the needs of the area in his State covered by the Appalachian program. I know of his personal interest in the projects themselves. He has attempted successfully to understand just what these projects were in reference to aiding people who wish to aid themselves. I am grateful for his comments.

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

Mr. RANDOLPH. I yield 5 minutes to the able Senator from Minnesota (Mr. HUMPHREY).

Mr. HUMPHREY. May I first say to the distinguished Senator from West Virginia how very pleased I am to see him once again on the floor of the Senate advocating the continuity and, indeed, the development and expansion of the Appalachian regional development program.

I recall that when I had the privilege of serving as the presiding officer of this body, the Senator was initiating legislation along the lines of the Appalachian program, and I sent him a little note complimenting him upon his splendid leadership, and thanking him for what he was doing for so many deserving people in our country.

Mr. RANDOLPH. Mr. President, will the Senator yield at that point?

Mr. HUMPHREY. I yield.

Mr. RANDOLPH. When the Senator was presiding over this body during the consideration of this legislation, I further recall that he was in the chair at the time the rollcall on the original measure was taken in 1965.

The people of West Virginia have, I would say, an appreciation for the Senator from Minnesota, who has served so capably as Vice President. Earlier in this body he gave attention to the problems of West Virginia and Appalachia. He helped to open the doors of our State, that we might mingle with other people and they with us on a basis of increasing not just economic strength, not just stabilization of our population, but outlook and uplift. For that we are very grateful.

The PRESIDING OFFICER. The bill has been read the third time. The question is on final passage.

Mr. DOMINICK. Mr. President, will the Senator from West Virginia yield for one comment?

Mr. RANDOLPH. I am delighted to yield.

Mr. DOMINICK. Do I understand correctly that the manager of the bill has accepted the Cotton amendment?

Mr. RANDOLPH. That is correct.

Mr. DOMINICK. And that the Cotton amendment would extend the other commissions for a period of 1 year, which would include the Four Corners Commission?

Mr. RANDOLPH. That is correct.

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

I have noted the comments that were made in the minority views of the distinguished Presiding Officer, the Senator from New York (Mr. BUCKLEY), who suggested that this bill itself be only for 1 year. I think it is too bad that he was not able to make that motion because of the fact that he is presiding at this time.

So I will support the bill on this vote, keeping in mind that, personally, I would like to see us evaluate this further, if, as, and when the revenue sharing and the variety of other presidential programs come along, so that in the process of appropriation hearings we can determine the proper level of funding.

Mr. RANDOLPH. Mr. President, I think the observations of the able Senator are appropriate. I know that he has had other commitments that have necessarily kept him from the floor during the 4 hours of debate on this measure. But these matters have been thoroughly discussed—the revenue-sharing aspects; the problems of the Appalachian Commission in attacking regional problems; the need to strengthen the five title V commissions that are already in being.

I appreciate the Senator's observations and his support of the bill.

Mr. DOMINICK. I thank the Senator.

The PRESIDING OFFICER (Mr. BUCKLEY). 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 Indiana (Mr. BAYH), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), and the Senator from Wisconsin (Mr. NELSON) are necessarily absent.

I also announce that the Senator from North Carolina (Mr. JORDAN) is absent because of illness.

I further announce that, if present and voting, the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wisconsin (Mr. NELSON), the Senator from Alaska (Mr. GRAVEL), the Senator from

North Carolina (Mr. JORDAN), the Senator from Maine (Mr. MUSKIE), and the Senator from New Hampshire (Mr. McINTYRE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Vermont (Mr. PROUTY), the Senator from Ohio (Mr. SAXBE), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from Nebraska (Mr. HRUSKA) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Illinois (Mr. PERCY) is detained on official business.

If present and voting, the Senator from Nebraska (Mr. HRUSKA), the Senator from South Dakota (Mr. MUNDT), the Senator from Ohio (Mr. SAXBE), and the Senator from Alaska (Mr. STEVENS) would each vote "yea."

The result was announced—yeas 77, nays 3, as follows:

[No. 19 Leg.]

YEAS—77

Aiken	Dominick	Mondale
Allen	Eagleton	Montoya
Allott	Eastland	Moss
Anderson	Ervin	Pastore
Baker	Fannin	Pearson
Beall	Fong	Pell
Bellmon	Fulbright	Proxmire
Bennett	Gambrell	Randolph
Bentsen	Griffin	Ribicoff
Bible	Gurney	Schweiker
Boggs	Hansen	Scott
Brock	Harris	Smith
Brooke	Hart	Sparkman
Burdick	Hatfield	Spong
Byrd, Va.	Hughes	Stennis
Byrd, W. Va.	Humphrey	Stevenson
Cannon	Inouye	Symington
Case	Jackson	Taft
Chiles	Javits	Talmadge
Church	Jordan, Idaho	Thurmond
Cook	Magnuson	Tower
Cooper	Mansfield	Tunney
Cotton	Mathias	Weicker
Cranston	McGee	Williams
Curtis	McGovern	Young
Dole	Miller	

NAYS—3

Buckley	Ellender	Roth

NOT VOTING—20

Bayh	Kennedy	Nelson
Goldwater	Long	Packwood
Gravel	McClellan	Percy
Hartke	McIntyre	Prouty
Hollings	Metcalf	Saxbe
Hruska	Mundt	Stevens
Jordan, N.C.	Muskie	

So the bill (S. 575) was passed, as follows:

S. 575

An Act to authorize funds to carry out the purposes of the Appalachian Regional Development Act of 1965, as amended

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 "Appalachian Regional Development Act Amendments of 1971".

SEC. 102. Subsection (b) of section 105 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 105) is amended to read as follows:

"(b) To carry out this section, there is hereby authorized to be appropriated to the Commission, to be available until expended, such sums as may be necessary."

SEC. 103. Section 106(7) of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 106(7)) is amended by striking out "June 30, 1971" and inserting in lieu thereof "June 30, 1975".

SEC. 104. Section (g) of section 201 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 201) is amended to read as follows:

"(g) To carry out this section, there is hereby authorized to be appropriated to the President, to be available until expended, $175,000,000 for the fiscal year ending June 30, 1971; $175,000,000 for the fiscal year ending June 30, 1972; $180,000,000 for the fiscal year ending June 30, 1973; $180,000,000 for the fiscal year ending June 30, 1974; $185,000,000 for the fiscal year ending June 30, 1975; $185,000,000 for the fiscal year ending June 30, 1976; $185,000,000 for the fiscal year ending June 30, 1977; and $180,000,000 for the fiscal year ending June 30, 1978."

SEC. 105. There is inserted after section 201 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 201) a new section as follows:

"APPALACHIAN AIRPORT SAFETY IMPROVEMENTS

"SEC. 201A. (a) In order to provide a system of airports in the Appalachian region which can accommodate a greater number of passengers in safety and thereby increase commerce and communication in areas with developmental potential, the Secretary of Transportation (hereafter in this section referred to as the "Secretary") is authorized to make grants to existing airports for the purpose of enhancing the safety of aviation and airport operations.

"(b) Such airport safety improvement projects may include (A) approach clearance, the removal, lowering, relocation, and marking and lighting of airport hazards, navigation aids, site preparation for navigation aids, and the acquisition of adequate safety equipment (including fire-fighting and rescue equipment), and (B) any acquisition of land or of any interest therein, or of any easement through or other interest in airspace which is necessary for such projects or to remove or mitigate or prevent or limit the establishment of, airport hazards.

"(c) Grants under this section shall be made solely from funds specifically made available to the President for the purpose of carrying out this Act in accordance with the provisions of this Act, and shall not be taken into account in the computation of the allotments among the States made pursuant to any other provisions of law.

"(d) Except as context otherwise indicates, words and phrases used in this section shall have the same meaning as in the Airport and Airway Development Act of 1970 and the Federal Aviation Act of 1958, as amended.

"(e) Federal assistance to any project under this section shall not exceed 90 per centum of the costs of the project, except for assistance for navigation aids which may be 100 per centum.

"(f) The Secretary is authorized to incur obligations to make grants for airport safety improvement projects in a total amount not to exceed $40,000,000 during the period ending June 30, 1975. There are authorized to be appropriated to the President such sums as may be required for liquidation of the obligations incurred under this section."

SEC. 106. (a) The third sentence of subsection (c) of section 202 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 202) is amended by striking out "health services" and inserting in lieu thereof the following: "health and child development services, including title IV, parts A and B, of the Social Security Act. Notwithstanding any provision of law requiring assistance or services on a statewide basis, if a State provides assistance or services under such a program in any area of the region approved by the Commission, such State shall be considered as meeting such requirement".

(b) Subsection (d) of such section is amended by adding at the end the following: "The Federal contribution to such expenses of planning may be provided entirely from funds authorized under this section or in combination with funds provided under other Federal or Federal grant-in-aid programs. Notwithstanding any provision of law limiting the Federal share in any such other program, funds appropriated to carry out this section may be used to increase such Federal share to the maximum percentage cost thereof authorized by this subsection."

SEC. 107. (a) The first sentence of subsection (a) (1) of section 205 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 205) is amended by inserting before the period at the end: "; and to control or abate mine drainage pollution."

(b) Subsection (b) of such section is amended to read as follows:

"(b) Notwithstanding any other provision of law, the Federal share of mining area restoration project costs, including reasonable planning, engineering, and costs of land acquisition (limited to the reasonable value of the land in its unreclaimed state as determined by the Commission), carried out under subsection (a) of this section and conducted on lands other than federally owned lands, shall not exceed 75 per centum of the total cost thereof."

(c) Subsection (d) of such section is amended to read as follows:

"(d) No moneys authorized by this Act shall be expended for the purposes of reclaiming, improving, grading, seeding, or reforestation of strip-mined areas (except on lands owned by Federal, State, or local government bodies or by private nonprofit entities organized under State law for public recreation, conservation, or economic development purposes, including the construction of low- or moderate-income housing) until authorized by law. As a condition of any grant made pursuant to this section, provision shall be made for the recovery of such grant from the proceeds of the sale or lease for private purposes of lands reclaimed with such a grant, for the purpose of further reclamation projects."

SEC. 108. (a) The catchline for section 207 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 207) is amended to read: "ASSISTANCE FOR PLANNING AND OTHER PRELIMINARY EXPENSES OF PROPOSED LOW- AND MODERATE-INCOME HOUSING PROJECTS".

(b) Subsections (a), (b), and (c) of such section are amended to read as follows:

"(a) In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of low- and moderate-income families and individuals, the Secretary of Housing and Urban Development (hereafter in this section referred to as the "Secretary") is authorized to make grants and loans from the Appalachian Housing Fund established by this section, under such terms and conditions as he may prescribe, for necessary expenses of nonprofit, limited dividend, or cooperative organizations, or of public bodies, in planning and obtaining federally insured mortgage financing for housing construction or rehabilitation projects for low- and moderate-income families and individuals, under section 221, 235, or 236 of the National Housing Act or any other Federal law, in any area of the Appalachian region determined by the Commission.

"(b) No loan under subsection (a) of this section shall exceed 80 per centum of the cost of planning and obtaining financing for a project, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site options, application and mortgage commitment fees, legal fees, and construction loan fees and discounts. Such loans shall be made without interest, except that any loan made to an organization established for profit shall bear interest at the prevailing market rate authorized for an insured or guaranteed loan for such project. The Secretary shall require repayment of loans made under this section, under such

terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of such a loan, if he determines that a permanent loan to finance such project cannot be obtained in an amount adequate for repaymet of such loan under this section.

"(c)(1) Except as provided in paragraph (2) of this subsection, no grant under this section shall exceed 80 per centum of those expenses, incident to planning and obtaining financing for a project, which the Secretary considers not to be recoverable from the proceeds of any permanent loan made to finance such project, and no such grant shall be made to an organization established for profit.

"(2) The Secretary is authorized to make grants and commitments for grants, and may advance funds under such terms and conditions as he may require, to nonprofit organizations and public bodies for reasonable site development costs and necesssary off-site improvements, such as sewer and water line extensions, whenever such a grant, commitment, or advance is essential to the economic feasibility of any housing construction or rehabilitation project for low- and moderate-income families and individuals which otherwise meets the requirements for assistance under this section, except that no such grant shall exceed 10 per centum of the cost of such project."

(c) Subsection (e) of such section is amended by striking out "The Secretary is further authorized to" and inserting in lieu thereof "The Secretary or the Commission may".

SEC. 109. (a) The catchline for section 211 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 211) is amended by adding at the end "AND EDUCATION DEMONSTRATION PROJECTS".

(b) The first sentence of subsection (a) of such section is amended by inserting "or operation" after "equipment".

(c) Subsection (b) of such section is amended to read as follows:

"(b)(1) In order to assist in the expansion and improvement of educational opportunities and services for the people of the region, the Secretary of the Department of Health, Education, and Welfare is authorized to make grants for planning, construction, equipping, and operating educational projects which will serve to demonstrate areawide educational planning, services, and programs. Grants under this section shall be made solely out of funds specifically appropriated for the purposes of this Act and shall not be taken into account in any computation of allotments among the States pursuant to any other law.

"(2) No grant for the construction or equipment of any component of an education demonstration project shall exceed 80 per centum of its costs.

"(3) Grants under this section for operation of components of education demonstration projects, whether or not constructed by funds authorized by this Act, may be made for up to 100 per centum of the costs thereof for two-year period beginning on the first day that such component is in operation as a part of the project. For the next three years of operation, such grants shall not exceed 75 per centum of such costs. No grants for operation of demonstration education projects shall be made after five years following the commencement of the initial grant for operation of the project. Notwithstanding section 104 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3134), an education-related facility constructed under title I of that Act may be a component of a demonstration education project eligible for operating grant assistance under this section.

"(4) No grant for expenses of planning necessary for the development and operation of an education demonstration project shall exceed 75 per centum of such expenses.

"(5) No grant for planning, construction, operation, or equipment of a demonstration education project shall be made unless the facility is publicly owner, or owned by a public or private, nonprofit organization, and is not operated for profit.

"(6) Any Federal contribution referred to in this section may be provided entirely from funds appropriated to carry out this section, or in combination with funds available under other Federal grant-in-aid programs providing assistance for education-related facilities or services. Notwithstanding any provision of law limiting the Federal share in such programs, funds appropriated to carry out this section may be used to increase such Federal share to the maximum percentage cost thereof authorized by the applicable paragraph of this subsection."

SEC. 110. (a) Section 214(a) of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 214) is amended to read as follows:

"SEC. 214. (a) In order to enable the people, States, and local communities of the region, including local development districts, to take maximum advantage of Federal grant-in-aid programs (as hereinafter defined) for which they are eligible but for which, because of their economic situation, they cannot supply the required matching share, or for which there are insufficient funds available under the Federal grant-in-aid Act authorizing such programs to meet pressing needs of the region, the President is authorized to provide funds to the Federal Cochairman to be used for all or any portion of the basic Federal contribution to projects under such Federal grant-in-aid programs authorized by Federal grant-in-aid Acts, and for the purpose of increasing the Federal contribution to projects under such programs, as hereafter defined, above the fixed maximum portion of the cost of such projects otherwise authorized by the applicable law. In the case of any program or project for which all or any portion of the basic Federal contribution to the project under a Federal grant-in-aid program is proposed to be made under this subsection no such Federal contribution shall be made until the responsible Federal official administering the Federal grant-in-aid Act authorizing such contribution certifies that such program or project meets the applicable requirements of such Federal grant-in-aid Act and could be approved for Federal contribution under such Act if funds were available under such Act for such program or project. Funds may be provided for programs and projects in a State under this subsection only if the Commission determines that the level of Federal and State financial assistance under Acts other than this Act, for the same type of programs or projects in that portion of the State within the region, will not be diminished in order to substitute funds authorized by this subsection. Funds provided pursuant to this Act shall be available without regard to any limitations on areas eligible for assistance or authorizations for appropriation in any other Act. Any findings, report, certification, or documentation required to be submitted to the head of the department, agency, or instrumentality of the Federal Government responsible for the administration of any Federal grant-in-aid program shall be accepted by the Federal Cochairman with respect to a supplemental grant for any project under such program."

(b) The first sentence of subsection (c) of such section is amended by striking out "December 31, 1970" and inserting in lieu thereof "December 31, 1974".

SEC. 111. Section 224(b) of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 224) is amended by striking out "or" immediately preceding "(4)", and inserting before the period at the end of such subsection: "or (5) for any land reclamation, water resource, or other environmental project under section 203, 204, 205, 212, or 214, except in furtherance of a comprehensive environmental improvement plan for an area of the region to be served by such a project, which is approved in the manner provided for programs or projects under sections 223 and 303."

SEC. 112. Section (a)(2) of section 302 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 302) is amended to read as follows:

"(a)(2) to make grants to the Commission for investigation, research, studies, evaluations, and assessments of needs, potentials, or attainments of the people of the region, technical assistance, training programs, demonstrations, and the construction of necessary facilities incident to such activities, which will further the purposes of this Act. Grant funds may be provided entirely from appropriations to carry out this section or in combination with funds available under other Federal or Federal grant-in-aid programs or from any other source. Notwithstanding any provision of law limiting the Federal share in any such other program, funds appropriated to carry out this section may be used to increase such Federal share, as the Commission determines appropriate."

SEC. 113. Section 401 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 401) is amended to read as follows:

"SEC. 401. In addition to the appropriations authorized in section 105 for administrative expenses, in section 201 for the Appalachian Development Highway System and Local Access Roads, and in section 201A for Appalachian Airport Safety Improvements, there is hereby authorized to be appropriated to the President, to be available until expended, to carry out this Act, $268,500,000 for the two-fiscal-year period ending June 30, 1971; $277,000,000 for the two-fiscal-year period ending June 30, 1973; and $294,000,000 for the two-fiscal-year period ending June 30, 1975."

SEC. 114. Section 405 of the Appalachian Regional Development Act of 1965 (40 App. U.S.C. 405) is amended by striking "1971" and inserting in lieu thereof "1975".

SEC. 115. (a) Section 105 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3135) is amended by striking out "June 30, 1971" and inserting in lieu there "June 30, 1972".

(b) Subsection (c) of section 201 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141(c)) is amended by striking out "June 30, 1971" and inserting in lieu thereof "June 30, 1972".

(c) Section 302 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3152) is amended by striking out "and June 30, 1971" and inserting in lieu thereof "June 30, 1971, and June 30, 1972".

(d) Subsection (g) of section 403 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3171(g)) is amended by striking out "June 30, 1971" and inserting in lieu thereof "June 30, 1972".

(e) Subsection (d) of section 509 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3188(d)) is amended by inserting before the period in the first sentence the following: ", and for the fiscal year ending June 30, 1972, to be available until expended, not to exceed $127,500,000".

(f) Section 512 of the Public Works and Economic Development Act of 1965 is amended by striking "June 30, 1971" and inserting "June 30, 1972".

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BOGGS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BUCKLEY. Mr. President, while I am impressed with the achievements of the Appalachian regional development programs, I strongly believe we must begin to move in the direction indicated by President Nixon's special revenue sharing proposals, which would return to the States the authority to determine how each can best utilize tax revenues.

I prefer that funding for Appalachian regional development programs be extended for 1 year rather than 4. A 1-year extension would, I believe, be consistent with the administration's plan to incorporate the funds for Appalachian development programs into special revenue sharing for rural development, and it would not in any sense constitute a lack of appreciation for the great pioneering work of the Commission. It is for this reason that I expressed my opposition to the 4-year extension in committee. It is for this same reason that with reluctance, I have voted against the bill.

DEATH OF WHITNEY M. YOUNG, JR.

Mr. BROOKE. Mr. President, I am saddened to report to the Senate the sudden and tragic death of a great civil rights leader.

Whitney M. Young, Jr., executive director of the National Urban League for the past 10 years, died earlier today of a heart attack in Lagos, Nigeria. He was attending the African-American Dialogs, the third in an annual series of discussions among African and American political and civic leaders.

Whitney Young proved that economic and social progress can result from intelligent, aggressive and moderate leadership.

He lived for only 49 years. But his life was dedicated to the betterment of the lives of others. And he died in the service of that goal.

To his wife, Margaret, and his two children, Marcia, and Lauren, I extend my deepest sympathy. Their loss is also ours, and we share it with them.

Mr. JAVITS. Mr. President, the sudden and untimely death today of Whitney M. Young, Jr., is a great loss to all the people of the United States and of the world. He was a great leader in terms of both his boldness and his sensitivity, and his sense of getting things done always dominated his efforts in behalf of black Americans.

In his service to the people of America, I feel that he demonstrated two great leadership qualities.

First, he showed a unique absence of self-consciousness about being black. He dealt with the problems confronting his people as an American, and his strategies often resembled those of a labor union leader seeking to win the best opportunities and best advantages for the people he served. Underlying this approach was an assumption built into his very bones and sinews that all Americans were alike and should be treated alike and have the same chance.

Second, Whitney Young realized that if blacks in America could only achieve economic equality that actual social equality would be prompt and inevitable. That was why his basic approach was through the business community and why he had such faith in the business community and why that community had such faith in him.

Whitney Young has been described as a moderate among black leaders. But I feel strongly that that term was misleading because while it accurately described his tone, it did not describe his fierce dedication to achieving an equal share of the American dream for his people.

Whitney Young will be remembered as a great patriot and a great human being. He has passed from the American scene in perhaps its most turbulent time far sooner than he should have in terms of the service and the wisdom he had left in him to give to this Nation and to the world.

I join his wife, Margaret, his family, his friends, his fellow black Americans and all people who have faith in the basic goodness of America in mourning the loss of this great son of America.

Mr. HUMPHREY. Mr. President, I desire to make a brief statement about the loss of a very dear, close friend. The word has just reached us that Mr. Whitney M. Young, the executive director of the National Urban League, has passed away.

I have known Whitney Young for at least 25 years. Whitney would have been 50 years old this July. He was relatively a very young man.

Whitney Young received his master's degree in social work from the University of Minnesota in 1947, and from 1947 through 1950 my friend Whitney Young was the industrial relations and vocational guidance director of the Urban League in St. Paul, Minn. In that position, he gained the respect of the people of our State from every walk of life, and he went on from that early assignment to become one of the truly great leaders of the American people.

We identify Whitney Young primarily with the issue of civil rights, but I believe that we can also identify him with the whole broad spectrum of the improvement of life for people of all races, creeds, and colors. This was a man who knew no discrimination in terms of his own thoughts, but who, like other members of his race, had suffered the indignity of discrimination and segregation. But he had no bitterness and no rancor.

Mankind today lost a great and effective leader in the crusade for racial equality and human dignity, and I have lost a dear friend and a close ally in many a battle in the field of social welfare legisation and human rights, and in the many struggles that some of us have waged, in and out of Congress, for improving the lot of mankind.

Whitney Young devoted his life to removing the barriers of discrimination, segregation, fear, and hate. He was an untiring warrior against all forms of evil and injustice. Yet, he was always a gentleman. He was a good and gentle man.

He was militant in the best sense—that he was persevering but never destructive. He always was willing to speak out and speak up for what he believed, but he was also willing to listen to others and to hear their message, even when that message was in contradiction of his own ideals or beliefs.

Whitney Young was a gentle soul who deeply loved his fellow men. He demonstrated the power of love. He also demonstrated that it is important to have not only knowledge but also commitment. He knew that knowledge without commitment was a waste. He also knew that commitment without knowledge could be dangerous. Thus, he blended together in his pattern of life and in his work an insatiable desire to expand the realm of his knowledge, seeking new information, and then applying that knowledge and information to a strong commitment to social justice.

Many things will be written about Whitney Young, and many things will be said about him. I predict that there will be an overwhelming flow of tributes coming from every part of America, complimenting, commending, praising, thanking this good man for what he did for all of us through the deeds of his life as well as the words of his lips. He has shown us a better way, and he will be truly missed.

I need not indicate here the large number of organizations to which he gave of himself and of his talents, but I think I should note that he was appointed by President Johnson to the OEO Advisory Council. He was often called upon by Presidents and leaders of both parties to sit with them in council. He was frequently a guest at the White House, not only for social occasions but also for important and critical meetings. He served his Nation well and faithfully.

He was a patriot in the best sense of the word, because he was willing to stand up for the oppressed, speak out for the minorities, recognizing that there is no justice for anyone unless there is justice for everyone, and recognizing that freedom is indivisible.

His record of public service and of private life is one that inspires us all.

I extend to his dear wife, Margaret, and their two daughters, the sincere sympathy and condolences of Mrs. Humphrey and myself. We have been with them on many occasions. We have been with them as neighbor and friend, and I feel today very sad that another dear friend has passed on. America is the weaker today because of the loss of this soldier for peace and justice.

Mr. SCOTT. Mr. President, the death of Whitney Young is a great loss to this Nation. To me, his death is a personal loss. He was a man who stood for equality of all Americans.

His disposition and moderate approach to attaining many progressive goals will serve as a guide to all the black people in America.

We are a more closely knit Nation today because of men like Whitney Young.

Mr. COOPER. Mr. President, I am saddened by the news of the death of Whitney Young, Jr. While I did not know him intimately, I admired and respected him for his work as executive director of the National Urban League, and his insistent efforts to secure full rights and opportunities for black citizens, and, in

deed, all our citizens lacking opportunities and suffering discrimination. He was a man of high intelligence, character, and force, and his life is one of which our country is proud.

He was born in Kentucky, the son of distinguished parents—his father being a great educator—and he received his first college education as a student and graduate of Kentucky State College, but his work and achievements passed all narrow boundaries.

PUBLIC DEBT LIMIT INCREASE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 35, H.R. 4690, that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER (Mr. BUCKLEY). The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4690) to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to the consideration of the bill which had been reported from the Committee on Finance without amendment.

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

Mr. MANSFIELD. Yes, indeed. I am delighted to yield.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. SCOTT. Mr. President, I rise to ask the distinguished majority leader, first of all, what will be the business for the following week after we have finished the consideration of the proposal to increase the debt limit?

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished minority leader, he may recall that we have discussed the possibilities of taking up Calendar Order No. 2, a joint resolution to establish a Joint Committee on the Environment, to be followed by Calendar No. 30, Senate Resolution 17, a resolution amending rule XXIV of the Standing Rules of the Senate with respect to the nomination and appointment of committee members.

Then, it is my understanding that when these matters have been disposed of, that would clear up the Calendar; but other legislation may be coming out of committees this week, including a measure involving campaign contributions from the Committee on Commerce, and other measures, as well. Pretty soon we will have to take up the question of the extension of the Department of Transportation appropriation under the dictum laid down at the end of the last Congress.

Mr. SCOTT. As I understand it, the campaign expenditures reform bill which went to the Committee on Commerce also went to the Committee on Rules and Administration and to the Committee on Finance. I do not at this moment recall the agreement under which if one committee reported the measure what functions would be exercised by the other two committees. Can the Senator clarify that for us?

Mr. MANSFIELD. It is my understanding under the agreement made that it would be referred to the other two committees with orders to report back, I believe, within 45 days. That would negate any action on that this week, but other measures will be coming from committees. However, as of now, it looks like a relatively light week, and I think the Senate can stand one of them.

Mr. SCOTT. I think the Senate would relish the opportunity to have a light week.

Is there any possibility of agreeing on time limitations on the debt limit act?

Mr. MANSFIELD. I am delighted that the distinguished minority leader has raised that question because he may recall that in a colloquy which we conducted yesterday the minority leader stated as follows:

If we are going to have votes on Friday, we want to have everyone here. If there is any way to work out agreements on time, since there is the possibility there will be a great deal of debate on the social security aspect, I want to express the hope that the manager of the bill might consider whether Senators can expect votes on Friday or whether they could come on Monday. I realize that if we are not able to work out something, we will have to be here.

My answer was:

The debt limit matter cannot be taken up until Friday because the chairman of the Committee on Finance (Mr. LONG) will be absent on official business tomorrow, but any agreement which he and the distinguished ranking minority Member, the Senator from Utah (Mr. BENNETT), would care to advance I am sure the joint leadership would be happy to consider in an effort to try to accommodate Senators. But I should point out that on the basis of the recess schedule which has been laid down on the basis of 4 or 5 days off at the end of certain months, it really behooves us to be here and I am happy to note that no Senator up to this time on either side has asked that he be given special consideration with respect to voting on a day certain; but wherever the leadership can, we will try to accommodate Senators.

Since that time I have been in touch with the chairman of the committee, the distinguished Senator from Louisiana (Mr. LONG), and he has indicated that he would be very willing, the distinguished Senator from Utah (Mr. BENNETT), the ranking minority member concurring, to agree to a time limitation of one-half hour on each amendment and 2 hours on the bill itself.

Mr. BENNETT. I would be very happy to follow the leadership of the chairman and agree to that.

Mr. SCOTT. I am glad the chairman of the committee and the ranking minority member are satisfied with the limitation.

I understand the chairman will have a certain amendment to offer which he feels would improve the chance for passage of the bill. Perhaps this may not be the time to say it but I would like to indicate the possibility, having conferred with the distinguished majority leader, the possibility that we may join in moving to table amendments we feel are inconsistent with the overall intention to work some immediate reform and improvement of the social security system. I have also discussed it with the distinguished senior Senator from New York (Mr. JAVITS).

Mr. PASTORE and Mr. JAVITS addressed the Chair.

Mr. MANSFIELD. I yield first to the Senator from Rhode Island; then I will yield to the Senator from New York.

Mr. PASTORE. Mr. President, the President will address the War College tomorrow at the graduation of his son-in-law and he has invited Senator PELL and me to accompany him to Rhode Island, which both of us have agreed to do and would like to do.

On the other hand we are met with this very important subject of the social security amendment which we are intensely interested in. I hope we might reach some agreement so that if we did stay and forgo the pleasure of being with the President tomorrow we would have some votes and culminate a decision with respect to social security.

Mr. SCOTT. That is the reason for this colloquy.

Mr. PASTORE. Yes, and that is the reason that I state I will lend whatever persuasion I may have for Members of the Senate to be amenable to such an agreement.

Mr. MANSFIELD. Mr. President, I yield to the Senator from New York.

Mr. JAVITS. What I have been told respecting the efforts to improve social security is implicitly in accord with the promise we made social security beneficiaries when we got so embroiled at the end of last year. If we can help the situation, this would not stand in the way of early action on an early increase in social security benefits.

The difficulty is that none of us has any assurance whatever beyond our own personal desire and will that amendments which may require very extensive debate may not be written upon the bill or the social security part of it.

I think the suggestion of the minority leader to the majority leader is very hopeful in that both of them would join in tabling anything which was extraneous beyond the intention which we all understand respecting an increase in social security payments.

To lock that in even further I would like to suggest to the majority leader the possibility of including in the unanimous-consent agreement two things. First, time for the amendment which, perhaps, the Senator from Louisiana (Mr. LONG) will propose, but if there are amendments to that amendment, the time certainly should be provided; and second, I really feel that to protect all Members, if this is going to be an open end operation, which we hope and pray it will not be, and I will not have any input on that—and I see the Senator from Rhode Island (Mr. PASTORE) shaking his head—the ruel of germaneness be not enforced in this case respecting amendments to the social security part. If it is going to be open, let it be open. I am happy and willing that it be closed, but if the floodgates are going to be open let them be open so that no one is foreclosed.

Mr. PASTORE. Does the Senator have in mind the trade bill?

Mr. JAVITS. No, I do not have that in mind. I am concerned about amendments being proposed. I have just suggested, therefore, that we crank into the unanimous-consent agreement something that will protect us on this score, which is laudable and proper, should we find for some reason the understanding is not complied with. If it is to be an open session let it be an open session.

I think I would like to repeat my concrete suggestion: One, if a time be allowed for amendments to the amendment, the normal provision respecting germaneness in this case be not applied, so that one on the social security amendment can without any question be put on; and, two, so that if the floodgates are opened with respect to amendments to that, no Senator is foreclosed.

Mr. BENNETT. Mr. President, I shall withhold my comment until the majority leader makes his.

Mr. MANSFIELD. Mr. President, I am not in a position where I can make a definite commitment at this time, but in response to the suggestions made by the distinguished Senator from New York (Mr. JAVITS), I would suggest that only amendments germane to the bill or to the matter of social security be in order. The debt limit and social security will be the two main components. It is my understanding that if something is not done about raising the debt limit by the 15th of this month, conditions could become difficult for the Government, at least technically speaking.

Would that satisfy the Senator from New York?

Mr. JAVITS. I hope the majority leader understands me. I am working with him, not against him, in making these suggestions. It seems to me his suggestion covers a good part of it, but he should include the provision for amendments to the amendment. Then, there is a very wide area for amendments to the social security bill. There is a very broad range. I would agree with that, but I would hope, therefore, that he would give a little more time on amendments to the amendment than the half hour that was talked about, because we are trying to protect ourselves against eventualities and cooperate with the leadership.

Mr. MANSFIELD. Would the Senator make a suggestion?

Mr. JAVITS. I would suggest 1 hour on the amendments to the amendment which will be suggested on the basic social security provision. Would the Senator fix a time on that amendment as well? I think the Senator mentioned 2 hours.

Mr. MANSFIELD. Two hours on the bill.

Mr. SCOTT. A half hour on amendments.

Mr. JAVITS. What about the social security bill which will be presented? Would not the Senator want to have an hour or so on that?

Mr. MANSFIELD. I am thinking about the membership as well. It was only a few months ago that we went through the social security debate. We are all pretty well aware of what it stands for and what it entails.

It is my understanding that the distinguished Senator from Louisiana (Mr. LONG), the chairman of the committee—and this is subject to correction—intends to offer a social security amendment which will increase payments by 10 percent retroactive to the 1st of January of this year, set a minimum of $100 per month rather than the present $64 or $68, and increase the amounts to be taxed beginning on January 1, 1972.

Is that correct?

Mr. BENNETT. That is my understanding, though I have not seen the actual text of the chairman's amendment.

Mr. MANSFIELD. So, if Senators will agree—and most especially the ranking Republican member of the committee, who will have to speak for that committee, at least for today—I would like to change the unanimous-consent request to an hour on amendments and 2 hours on the bill and to incorporate in the request the declaration that amendments germane to the bill or to the matter of social security be in order, thus retaining the germaneness of the two most important factions of the proposal.

Mr. JAVITS. That is, germaneness will apply to the debt limit bill except for an amendment relating to social security. That is just another way of saying it.

Mr. MANSFIELD. That is saying it another way, but it is the same thing.

Mr. JAVITS. One hour on that basic amendment and 1 hour each on amendments?

Mr. MANSFIELD. If that is agreeable.

Mr. BENNETT. Mr. President, reserving the right to object, I think we are painting ourselves into a corner. If the debt limit bill must be passed by the 15th, tomorrow will be the last day we will meet until the 15th. I think we should all realize that we cannot afford to open this matter up to germane amendments on the basis that has been stated, because if a Senator can offer germane amendments to the social security amendment, then any social security amendment is germane and we are off to the races. So I think——

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

Mr. BENNETT. I yield.

Mr. MANSFIELD. Pending the arrival of the distinguished Senator from Louisiana, there is always the option of tabling

Mr. BENNETT. I was just going to say I would think, to protect the Treasury, a Senator, including the Senator from Utah, would have to announce that we will attempt to table any amendment to the one amendment that the chairman will offer.

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

Mr. BENNETT. May I finish?

Mr. JAVITS. Surely.

Mr. BENNETT. The trouble with allowing 1 hour on every amendment is that a very determined Senator can keep us waiting for him to use up his time on his amendment before it can be tabled.

Mr. PASTORE. It can take only a half hour.

Mr. JAVITS. Mr. President, will the Senator yield to me on that point?

Mr. MANSFIELD. I yield.

Mr. JAVITS. Mr. President, I respectfully suggest that the one amendment that will be presented will be the amendment suggested by the Senator from Montana (Mr. MANSFIELD). Other than that, I think we have a pretty good gentleman's agreement which none of us will want to try to violate. As a matter of fact, I suggested that both the majority and minority leaders should announce that they will move to table.

Mr. SCOTT. Mr. President, I have made such an announcement, saying that I understand the majority leader and I reserve the right, subject to the approval of the chairman of the Finance Committee and the ranking minority member of the committee, to offer a motion to table amendments inconsistent with the Long amendment.

Mr. MANSFIELD. Mr. President, subject to the wishes of the manager of the bill and the ranking member of the committee, I wonder if the Senator would consider a change of 1 hour on each amendment, rather than a half hour on each amendment, and 3 hours on the bill.

Mr. BENNETT. Mr. President, I shall remove my objection on that basis.

Mr. BYRD of Virginia. Mr. President, I concur fully in what was said about the social security amendment or amendments. I think that matter should be handled expeditiously. When we get to the bill, the bill proposes to make it possible to increase the national debt by $40 billion in 15 months.

Mr. MANSFIELD. Yes.

Mr. BYRD of Virginia. I am deeply disturbed about the Government's financial situation, and I would like an opportunity to present my views on that without being rushed along and having to get time from another Member of the Senate.

Would the majority leader consider including in his request the time of 3 hours, as he has proposed, on the bill, but in excess of that, permit me 30 minutes on the bill?

Mr. MANSFIELD. I shall be delighted to.

Mr. BENNETT. Mr. President, would it be possible for those 30 minutes to take place before the time begins to run?

Mr. PASTORE. What difference does it make? We are quibbling now. Let us get the agreement.

Mr. MANSFIELD. Mr. President, I change the request accordingly.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, I wish to ask the distinguished majority leader, just to make sure I understand, whether the unanimous-consent agreement, with the prescribed limitations, would be in effect assuming the amendment to be offered is as described by the Senator from Utah, and that if it is some other amendment, there is no such agreement as to time.

Mr. MANSFIELD. That is correct, and the joint leadership will be subject to the wishes of the chairman and the ranking minority member of the committee if there is any question arising

out of our interpretation. This is in effect a tentative unanimous-consent request.

Mr. BENNETT. We can get another unanimous-consent request if it is necessary.

Mr. GRIFFIN. Mr. President, I withdraw my reservation.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

The Chair would like to address a question to the majority leader.

Mr. SCOTT. Mr. President, may we have order? I understand the Chair has said he has a question.

The PRESIDING OFFICER. The Senate will be in order. The Chair would like to address a question to the majority leader.

Mr. MANSFIELD. Yes.

The PRESIDING OFFICER. When does the agreement take effect, and who controls time?

Mr. MANSFIELD. Beginning at 12 o'clock tomorrow, and the time will be controlled by the distinguished Senator from Louisiana, the chairman of the Committee (Mr. LONG) and the distinguished senior Senator from Georgia (Mr. TALMADGE).

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

The unanimous-consent agreement, subsequently reduced to writing, is as follows:

Ordered, That, effective on March 12, 1971, beginning at 12 noon, during the further consideration of the bill, H.R. 4690, an act to increase the public debt limit set forth in section 21 of the Second Liberty Bond Act, and for other purposes, debate on any amendment, motion, or appeal, except a motion to lay on the table, shall be limited to ½ hour, to be equally divided and controlled by the mover of any such amendment or motion and the Senator from Louisiana (Mr. LONG): *Provided,* That in the event the Senator from Louisiana is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated my him: *Provided further,* That no amendment that is not germane to the provisions of the said bill or the amednment on Social Security to be offered shall be received.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 3 hours, to be equally divided and controlled, respectively, by the Senator from Louisiana (Mr. LONG) and the Senator from Georgia (Mr. TALMADGE): *Provided,* That the Senator from Virginia (Mr. BYRD) is allotted an additional 30 minutes on the bill.

Mr. MANSFIELD. Mr. President, if I may be recognized, for the information of the Senate, there will be no further votes tonight.

Mr. PASTORE. But may I ask the majority leader, there will be votes tomorrow?

Mr. MANSFIELD. We certainly anticipate them, unless something comes up over which we have no control.

Mr. PASTORE. What do we do now with this unanimous consent agreement, fuss around for half an hour and accomplish nothing?

Mr. BENNETT. Mr. President, it would seem that the only reason for no vote tomorrow would be if the Senate accepts the steps in this process without insisting on a record vote.

Mr. MANSFIELD. Which, of course, would not happen, in my opinion, but I cannot be definite, because I feel I cannot bypass the chairman of the committee until I have the final word with him.

Mr. SCOTT. Mr. President, if the Senator will yield. I cannot conceive a situation where the Senate would lose an opportunity to record itself in favor of an increase in social security.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on passage.

The yeas and nays were ordered.

ORDER FOR THE RECOGNITION OF SENATOR CRANSTON TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that tomorrow immediately following the remarks of the Senator from Wisconsin (Mr. PROXMIRE), the Senator from California (Mr. CRANSTON) be recognized for not to exceed 15 minutes to make a statement on American and Chinese relations.

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

ORDER FOR RECOGNITION OF SENATOR HUMPHREY ON MONDAY, MARCH 15, 1971

Mr. BYRD of West Virginia. I ask unanimous consent that on Monday next, immediately following the recognition of the two leaders under the standing order, the distinguished Senator from Minnesota (Mr. HUMPHREY) be recognized for not to exceed 15 minutes.

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

ORDER FOR ADJOURNMENT FROM TOMORROW UNTIL MONDAY, MARCH 15, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 12 o'clock meridian on Monday next.

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

QUORUM CALL

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

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

AUTHORITY FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, following the remarks of the distinguished Senator from California (Mr. CRANSTON) tomorrow, there be a period for the transaction of routine morning business, not to extend beyond 12 o'clock meridian, with statements therein limited to 3 minutes.

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

LEGISLATIVE PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10 a.m., following an adjournment.

Immediately following the recognition of the two leaders under the standing order, the distinguished Senator from Wisconsin (Mr. PROXMIRE) will be recognized for not to exceed 30 minutes, to be followed by the distinguished Senator from California (Mr. CRANSTON) for not to exceed 15 minutes.

Following the remarks of the distinguished Senator from California (Mr. CRANSTON), there will be a period—not to extend beyond 12 o'clock meridian—for the transaction of routine morning business, with statements therein limited to 3 minutes.

Following the completion of morning business tomorrow, the unfinished business will be laid before the Senate, which will occur at 12 o'clock meridian.

Mr. President, as the majority leader has indicated, there will be one or more rollcall votes tomorrow, of which Senators are on notice. A rollcall vote has already been ordered on the final passage of H.R. 4690, the bill increasing the public debt limit.

When the Senate completes its business tomorrow, it will stand in adjournment, under the previous order, until 12 o'clock meridian on Monday next. This is, of course, subject to change on tomorrow.

ADJOURNMENT TO 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 a.m. tomorrow.

The motion was agreed to; and (at 4 o'clock and 46 minutes p.m.) the Senate adjourned until tomorrow, Friday, March 12, 1971, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 11, 1971:

U.S. PATENT OFFICE

Rene Desloge Tegtmeyer, of Virginia, to be an Assistant Commissioner of Patents.

DEPARTMENT OF JUSTICE

John K. Grisso, of South Carolina to be U.S. attorney for the district of South Carolina for the term of 4 years.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

James C. Fletcher, of Utah, to be Administrator of the National Aeronautics and Space Administration.