that person is William Angelo Delmont, it's twice as long. The reason is simple: Every step takes longer because "Billy" Delmont knows nearly everyone in Lackawanna, and as he meets other pedestrians, he stops to greet them. They joke with him, tell him of their troubles, ask for help. They're talking to the right man, too. For Billy Delmont has a sense of humor, much empathy, and the kind of political savvy and know-how that gets things done.

Lackawanna is a political town and it is fitting that "Mr. Lackawanna" is Billy Delmont, for Billy is a political man. A five foot nine inch, eversmiling, Italian-American newspaper publisher, Billy was elected at age 25, a city councilman in Lackawanna's old 3rd Ward in 1955.

Today, at 41, Billy publishes four weekly newspapers in Lackawanna, South Buffalo, West Seneca and Blasdell. He serves the city as a commissioner of civil service, and just completed serving the unexpired term of the director of urban development in former Mayor Mark Balen's administration. He was an unusual appointment, for Balen is a Democrat, and Billy is a Republican committeeman.

Former English teacher Bill Carney, now secretary of the Erie County Water Authority, likes to kid Billy about being the only newspaper publisher in these parts who flunked English. But Billy, who graduated from George Washington School, where he now serves as a member of the PTA, and Lackawanna High School, where he led steelworkers' sons to victory after victory as the toughest, sharpest "little" quarterback in that school's gridiron history, did attend Canisius College and Ithaca College before embarking on a journalistic career. His forte isn't scholarship, however. Where Billy excels is in his concept of service.

He believes that newspapers are not only journals of fact and opinion, but institutions designed to serve the communities they address. And he gives substance to this belief by being available to all who wish to approach him, virtually 24 hours a day.

His familiarity with the names, families and lives of almost every citizen of Lackawanna grew out of his personal contact with the people when he operated a delivery service for a clothes-cleaning enterprise. Discharged from the Navy in 1951 after being severely injured in an auto accident, Billy established the delivery service. Almost every home in town became familiar with "Billy the Cleaner." Later Billy was appointed chairman of the Lackawanna Municipal Housing Authority, from which he retired in 1968 after 11 years of service.

An uncomplicated, friendly man, Billy Delmont, is people oriented. People, not creeds, ideologies or causes, are his bag. He is a credit to the newspaper business, to his father and mother, the former Catherine Pitillo, to his wife, the former Maryann Salem, and to his six children, Kathy, Kim, Noreen, Lynne, Mary and Phillip.

The Lackawanna Front Page currently is undertaking to establish a scholarship fund for Lackawanna boys and girls to study journalism. As I said, Bill Delmont is interested in service. I wish him well in this venture. It only underscores my claim that Billy Delmont deserves the soubriquet, Mr. Lackawanna.

The first annual awards dinner for the scholarship fund is set tentatively for March 19 and the probable location will be the Hotel Lackawanna. Plans are in the making, but the speaker is assured and he is sensational. He is Malcolmn Kilduff, great newsman who was assistant press secretary to Lyndon B. Johnson and a deputy press secretary to President John F. Kennedy. It was he who carried Kennedy into the Parkman Hospital in Dallas, and it was he who quietly said to Johnson, "Let's get to the airport, Mister President," intoning the title for the first time.

SENATE—*Friday, January 21, 1972*

The Senate met at 11 a.m. and was called to order by the President pro tempore (Mr. ELLENDER).

PRAYER

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

Almighty and ever-living God "our help in ages past, our hope for years to come," guide our leaders that the Nation may be rebuilt on the principles of the Founding Fathers and on the everlasting truth of Thy Word. In turbulent and contentious times keep our purposes pure, our honor untarnished, our vision high and clear. Through honest expression of differing appraisals, may there be forged a final wisdom higher than our own, overruling our faulty judgments and our human errors. Set our feet in high places and keep us there.

"Under the shadow of Thy throne
Still may we dwell secure.
Sufficient is Thine arm alone,
And our defense is sure."

Amen.

MESSAGE FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, January 20, 1972, be dispensed with.

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

ATTENDANCE OF SENATORS

Hon. BIRCH BAYH, a Senator from the State of Indiana, and Hon. MARLOW W. COOK, a Senator from the State of Kentucky, attended the session of the Senate today.

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE PUBLIC BROADCASTING FAIRNESS DOCTRINE

Mr. SCOTT. Mr. President, I notice that the three networks and the public broadcasting system, in honorable pursuit of the fairness doctrine, have allowed the opposition twice as much time to reply as the President used in his state of the Union message.

I can only observe that, indeed, they will need it.

Mr. President, I yield back the remainder of my time.

Mr. MANSFIELD. Mr. President, I would like to take this means to thank the networks for the consideration and the fairness they have shown toward the party of the opposition in the Congress of the United States.

May I say that I am especially delighted with the fact that four of the outstanding Senators on this side of the aisle—Senators CHURCH, PROXMIRE, EAGLETON, and BENTSEN—will be representative of this body and this party.

They have our full confidence. We know that they will handle themselves extremely well.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, not to exceed 30 minutes.

The Senator from Montana (Mr. METCALF) is now recognized.

(The remarks of Mr. METCALF when he introduced S. 3052 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ANNIVERSARY OF THE DEATH OF SENATOR RICHARD B. RUSSELL, OF GEORGIA

Mr. GAMBRELL. Mr. President, a year ago today, on January 21, 1971, my distinguished predecessor in this body, Senator Richard B. Russell, of Georgia, passed away. A man of high character and principle, he was one of the great leaders in all the history of this country. He served for 38 years in the U.S. Senate. At the time of his death, he was its senior Member, being President pro tempore.

He was beloved among his fellow citizens in Georgia, as well as by his colleagues in the Senate. He was a close personal friend, and a respected mentor to me.

I think it is appropriate that this body honor him and his memory today by tak-

ing note of this, the first anniversary of his departure from the halls.

Mr. TALMADGE. Mr. President, Richard Brevard Russell, the late distinguished Senator from Georgia, has been gone from our midst for a year.

When he died a year ago on January 21, on the day that the first session of the 92d Congress convened, it was the first time Dick Russell missed the opening of a new Congress in the 38 years that he served in this body.

The Senate and the Nation grieved his passing. We lost a great statesman and one of the most magnificent Senators in American history. We sorely miss his presence, the dignity that he brought to the Senate, and the wisdom of his leadership. I join the Senate today in honoring the memory of this great man.

As many Senators know, I am chairman of the Richard B. Russell Foundation, Inc., which was created to raise funds for a library at the University of Georgia where the important historical papers of the late Senator Russell, spanning a total of 50 years of public service, will be preserved for posterity.

A year has passed since we began our campaign, and I am proud to report that although we have not as yet attained our final goal, we have made considerable progress, and I am confident that the library will be a fitting tribute to Senator Russell and the distinctive service that he rendered his beloved State of Georgia and the Nation.

The PRESIDENT pro tempore. Is there further morning business?

Mr. MANSFIELD. Mr. President, I wish to join my distinguished colleagues, the Senators from Georgia, both of whom represent their State with distinction, integrity, and courage, and to state on this anniversary of the passing of a great U.S. Senator that I feel honored to join with them in remembrance of Richard B. Russell. I feel honored to remember in this way, a man who made so many contributions to his State, to this body, and to the Nation as a whole.

He was one of the truly great Senators not only of our time, but also of all time. He was a man to whom all Members looked for advice and counsel. He was unselfish in his devotion and dedication to the Senate. His memory will be the friendships which he left in this Chamber and in this Nation.

His contributions will be long remembered. To those of us who had the honor of knowing him—at least partially—during the many years of his service in the U.S. Senate, his loss is continued to be felt just as deeply today as it was a year ago, when he passed from us.

Mr. STENNIS. Mr. President, on the first anniversary of the passing of our late, lamented, great friend, the former Senator from Georgia, Mr. Russell, I know that all of us have missed his direct impact on the floor of the Senate, in committee rooms, and in counsel chambers of this body. We have missed not only his companionship but also we have missed his fine counsel, his advice, his vigorous mind, his experienced concept of sound government, and his lofty, patriotic approach to every problem that came to him officially or personally.

I do not believe anyone has missed him any more than I have because of the role in which my assignment in the Senate places me. I think one of the finest tests of a man's usefulness is for him to be missed. So I salute again the great career of our late friend, and I speak sentiments of appreciation not only as a Senator but also as an American for the truly great contribution he made during the almost 40 years he served in this body.

I point with pride to his continued influence that is here. He laid the groundwork for the continuation of principles of government he espoused, principles that I know will continue to serve us all for decades and decades to come. Untold numbers of people yet unborn will benefit by our late friend's great, constructive service, his unselfishness, and his willingness to meet the hard questions along with all the other questions. I believe that everything considered he was the most able man not only in the Senate but in the Federal Government in his time.

I salute his memory. I am indebted to him for his record. I commend, as a citizen and as a Senator to the youth of this Nation, and as I did in my few remarks a year ago, the words he spoke and his counsel as a pattern for the highest type citizenship.

Mr. BYRD of West Virginia. Mr. President, I join my distinguished majority leader and the distinguished Senator from Mississippi (Mr. STENNIS) in commending the two distinguished Senators from the State of Georgia for taking the floor today to further eulogize the late Senator Richard B. Russell, whose death occurred 1 year ago today.

Senator Russell was magnanimous and honorable in all of his dealings with all men. He was able in every sense of the term. He was a truly great U.S. Senator. His service in the Senate, his actions and his words here, exemplified the very essence of the Senate as an institution, and, in my opinion, he was the most able of Senators. I admired him more than I admired any man in Washington.

I think he knew more about the vast ramifications of the Federal Government than did any other man. He was a man who was patient, considerate, and fair, and those who from time to time had to oppose him on issues respected him for that fairness. All Senators respected him for his calm, even, and sound judgment. He revered the Senate above any other institution of American government.

Senator Russell was a Senator whose place, I believe, will never be filled in this body.

Mr. President, Senator Russell was an inspiration to me and, I am sure, to all Senators who served with him. I shall never forget his life and service in this body. It will never cease to have an influence on me during my service here, and I shall never cease to revere and praise his name.

I saw the sun sink in the golden west:
No angry cloud obscured its latest ray.
Around the couch on which it sank to rest
Shone all the spendor of a summer day.
And long, though lost to view, that radiant light,
Reflected from the sky, delayed the night.
Thus, when a good man's life comes to a close,
No doubts arise to cloud his soul with gloom,
But faith triumphant on each feature glows,
And benedictions fill the sacred room.
And long do men his virtues wide proclaim,
While generations rise to bless his name.

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

A REVOLUTIONARY AND POTENTIALLY TRAGIC DECISION

Mr. ALLEN. Mr. President, the revolutionary and potentially tragic decision rendered by U.S. District Court Judge Robert R. Merhige in the Virginia school districts consolidation case has received considerable national attention. From the standpoint of passing judgment on ultimate consequences of the decision, few persons are as well qualified to do so as are the editors of local newspapers who speak with the authority of intimate knowledge of the people affected by the decision. On January 11, 1972, the Richmond Times-Dispatch expressed its editorial judgment.

The editorial points out that the judge's order would require the busing of 78,000 pupils, 36,000 of whom would be transported to schools far from their neighborhoods. Under the circumstances, one cannot but agree with the editorial that—

> Rather than to submit to such a disruptive order many parents would abandon public schools.

Mr. President, there is ample evidence from all over the United States and particularly in the District of Columbia to demonstrate the validity of this conclusion. Under the circumstances, we also agree with the editorial that—

> If the decision is allowed to stand, the quality of public education in the Richmond area—and eventually throughout the nation—is almost certain to plummet.

But this is not the end of adverse consequences. The radical theories upon which this decision rests must eventually extend to all publicly afforded services provided by the State such as, public welfare, hospitals, clinics, utilities, housing. If, in the exercise of equity powers of courts, Federal judges can disregard the geographic boundaries of separate political subdivisions of government in implementing their concepts of a socialistic hog's heaven, then the traditional concepts of equity will have been perverted beyond recognition and this too is a great tragedy. The editorial points out:

> The decision could serve as a malignant precedent for the final destruction of nearly all powers local governments now exercise.

Mr. President, I believe we have reached the end of an era. I believe the judicial pendulum has swung in one direction to the ultimate of its arc. Inevitably, the pendulum must reverse its course. However, if the decision is upheld, I agree with the Times-Dispatch editorial that it may well result in a public outcry so strong as to promote passage of a constitutional amendment to put an end to destructive Federal court attacks upon public schools once and for all.

In this connection, the distinguished syndicated columnist, Smith Hempstone, pointed out in his column in the January 19, 1972, issue of the Washington Evening Star that suits similar to the Richmond case are pending in a half dozen cities and that one can anticipate many more in the near future. In fact, the city of Baltimore announced just yesterday that it too had filed suit to consolidate its city schools with those of adjoining counties. Both the Richmond Times-Dispatch editorial and Mr. Hempstone question the patronizing implication upon which these suits are based, to the effect that a black child cannot obtain a decent education except in a school where the majority enrollment is white.

Mr. President, if the Richmond decision stands, then this implication will have been given judicial sanction as a revealed truth. However, as Mr. Hempstone suggests, many black parents and educators understandably would contest such a racist doctrine.

Mr. President, if Federal courts do not return to a reasonable and rational approach to an admittedly complicated problem—then Congress must act—and it can act to put an end to this extremist, racist, judicial approach. Otherwise, a constitutional amendment, in my judgment, is inevitable. National polls continue to indicate that an overwhelming majority of the people oppose the concept of involuntary busing of schoolchildren. Neither Congress nor Federal courts can continue to disregard the will of the people without jeopardy.

Mr. President, I ask unanimous consent that the Times-Dispatch editorial and Mr. Hempstone's column be printed in the RECORD.

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

[From the Richmond (Va.) Times-Dispatch, Jan. 11, 1972]

THE DECISION

What many in this community have feared for months has now been confirmed: U.S. District Judge Robert R. Merhige Jr. is more interested in manipulating human attitudes than in promoting excellent public education.

This he showed by warmly endorsing, in his school consolidation opinion yesterday, the pernicious gibberish of those social engineers who argue, in effect, that a school system's primary function is to promote racial togetherness, not to give children the best possible academic education. Views to the contrary the judge dismissed with patent contempt.

Under Judge Merhige's appalling decision, the schools of the city of Richmond and of the counties of Henrico and Chesterfield will be consolidated next fall unless a higher court acts to avert the tragedy. And tragedy is the right word, for if the decision is allowed to stand, the quality of public education in the Richmond area—and eventually throughout the nation—is almost certain to plummet. Further, the decision could serve as a malignant precedent for the final destruction of nearly all powers local governments now exercise. Make no mistake: The effects of the Merhige school consolidation opinion could not be restricted to public education.

Judge Merhige's decision is a nauseating mixture of vacuous sociological theories and legal contradictions. It is insulting to black children in particular, callously indifferent to the interests of all children, and in conflict, on at least one important point, with the views of the U.S. Supreme Court.

Over and over in his opinion, Judge Merhige refers approvingly to the notion, advanced by some of the sociologists who testified during the trial, that schools have a duty to promote the "attitudinal development" of children, to improve "self-perception" and to teach black and white children to develop positive impressions of one another. Academic education is relegated to a position of secondary importance. Indeed, he accepts the theory that neither white, nor blacks can get a good education unless they go to school together—a theory that will dismay people who live in communities populated by only one race.

But if black children are to benefit from integrated schools, the judge in effect concluded, they must be kept in the minority. According to this offensive theory, which is supposed—somehow—to boost the Negro child's ego, black children do not perform at their maximum ability in a predominantly black school. Thus, Judge Merhige approved a mixing plan that would make every school in the metropolitan area predominantly white. This would require the busing of 78,000 pupils, 36,000 of whom would be transported to schools far from their neighborhoods. Rather than submit to such a disruptive order, many parents would abandon public schools.

Here Judge Merhige collided with the Supreme Court. In its latest busing opinion, issued in April the court declared that some "one-race, or virtually one-race," schools are permissible. Moreover, the court declared that when a community had developed a legally acceptable school integration plan, federal courts would not be required to see that the same racial ratios are maintained year after year. By implication, the Merhige decision calls for a predominantly white system, in which the black enrollment at no school would exceed approximately 40 per cent, forever.

Legally, Judge Merhige seeks to justify consolidation by stressing that public education in Virginia is primarily a state responsibility and that the boundaries of political subdivisions are, therefore, meaningless. Should this theory prevail, localities are certain, in the future, to lose other powers. Counties and cities are creatures of the state, and the state develops guidelines and establishes general policies for numerous local functions—including in addition to education, such activities as law enforcement, public welfare, public health, taxation, utility operations and public safety. If federal courts can ignore local boundaries in considering educational matters, what is to prevent them from ignoring local boundaries in considering other matters? Nothing. In time, the Merhige decision could lead to the destruction of local governments, locally controlled, and to the division of states into purely administrative regions.

Truly, Judge Merhige's decision could be an epochal document, capable of ushering the nation into a dreary era. Still, it could be beneficial in at least one respect. Should the decision stand, metropolitan school systems throughout the nation would be subject to consolidation, and the public outcry against such a possibility could be strong enough to promote passage of a constitutional amendment that would put an end to destructive federal court attacks upon public schools, once and for all.

[From the Washington (D.C.) Evening Star, Jan. 19, 1972]

YANKEES WILL HAVE TO GRASP MERHIGE'S NETTLE

(By Smith Hempstone)

Had R. R. Merhige rather than U. S. Grant been in command of the Union forces at Appomattox, there would have been none of that generous nonsense of allowing the defeated Confederates to retain their horses for spring plowing.

Judge Merhige is an unconditional surrender man and the terms he has imposed on the city of Richmond, Va., whose schools were 70 percent black, and surrounding Henrico and Chesterfield Counties, whose schools were 91 percent white, are draconian: Consolidate the three school systems within 90 days and—by busing 78,000 of its 106,000 students for as long as an hour—achieve a racial mix in most schools of aproximately 60 percent white and 40 percent black.

The federal District Court judge's 325-page decision in *Carolyn Bradeley v. School Board of the City of Richmond* may be good law. That will be determined by the U.S. Fourth Circuit Court of Appeals and, almost certainly, by the Supreme Court.

Bradley's patronizing implication that a black child cannot obtain a decent education except in a school where the majority is white may even be correct, although many black parents and educators understandably would contest that.

Merhige's ruling may be sound social engineering, leading to the development of positive impressions of each other between children of the two races. All of those things *may* be true and, if *Bradley* is unheld, it is earnestly to be hoped that they are true.

But amidst all these fuzzy uncertainties, one truth stands out in stark illumination: If *Bradley* is sustained, Virginians will not be the only Americans forced to grasp Merhige's nettle.

There were, at last count, four U.S. cities—Washington, D.C., Atlanta, Ga., Newark, N.J., and Gary, Ind.—with black majorities, and seven others were more than 40 percent black. Suits similar to *Bradley* are pending in half a dozen cities and others unquestionably will be filed.

Most of these suits, quite naturally, will be in parts of the country where the most segregation persists. And that—according to figures released last week by the Department of Health, Education and Welfare—means not the South, but the rest of the country.

According to HEW, only 9.2 percent of the South's 290,390 Negro students are attending all-black schools; 11.2 percent of the North and West's 325,874 black students attend such schools. In the District of Columbia and six border states, the percentage is 24.2.

Almost 44 percent of Southern black pupils attend predominantly white schools; the figure is 28 percent for the North and the West and 30 percent for border states.

In the past, non-Southern segregation has been tolerated by the courts because it was *de facto* (arising from housing patterns) rather than a relic of the *de jure* system authorized by state laws. But *Bradley* blurs that distinction and decries both types of separation.

De facto segregation became characteristic of many Northern cities when Southern blacks flooded into them in the years after World War II. This was matched by a related movement of whites out of the cities which in recent years has become a flood: Between 1960 and 1970, Detroit lost 29 percent of its white population.

In part, the latter movement unquestionably was related to school integration. But there were many other factors such as changing life-styles (the penchant for informality, the proliferation of the automobile) and the desire for personal security.

Now the manifold problems of the inner city are to be in part exported to the suburbs as urban school districts are consolidated (if *Bradley* stands) with contiguous county districts to achieve a "lighter" racial mix in public schools.

It might reasonably be expected that this will stem white flight, but this is not necessarily so, particularly since most of the whites who are going already have gone. While there is a limit to how far a man can live from his job, the application of the Merhige decision to many cities could simply depress suburban land values and boom those in the exurbs farther from the urban core and its consolidated school district.

Most parents, white or black, would prefer their children to have a good education at a neighborhood school. If a good education can be had only by time-consuming busing, they will accept that. But no good parent of any color, if he has an option, is going to see his child bused out of his neighborhood to a school which is inferior.

There is, of course, an alternative for those who do not want to move to the suburbs and are reasonably affluent. They can do as Judge Merhige does: His son, Mark, attends Collegiate School, a private school in Henrico County.

REPORT BY SENATOR JACKSON ON THE IMPLEMENTATION OF SAFEGUARDS IN CONNECTION WITH THE LIMITED NUCLEAR TEST BAN TREATY

Mr. STENNIS. Mr. President, on behalf of the Senator from Washington (Mr. JACKSON), who is necessarily absent today, I wish to place in the RECORD his report on the implementation of the safeguards to be maintained in connection with the Limited Nuclear Test Ban Treaty. As chairman of the Nuclear Safeguards Subcommittee of Armed Services and the chairman of the Military Applications Subcommittee of the Joint Committee on Atomic Energy, Senator JACKSON has monitored the safeguards program since 1963 and has made periodic reports to the Senate to keep us fully informed on the degree of support and implementation of the four safeguards.

I believe all Members of the Senate will wish to read and study Senator JACKSON's report. I ask unanimous consent that the report may be printed in the RECORD.

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

REPORT ON NUCLEAR TEST-BAN TREATY SAFEGUARDS

(By Senator HENRY M. JACKSON, chairman, Nuclear Safeguards Subcommittee, Senate Committee on Armed Services; chairman, Military Applications Subcommittee, Joint Committee on Atomic Energy, January 20, 1972)

INTRODUCTION

Since the adoption of the Limited Test Ban Treaty in 1963, staff members of the Joint Committee on Atomic Energy and the Preparedness Investigating Subcommittee have continually monitored the safeguard program to insure that the safeguards are implemented in accordance with the Presidential commitment. Since 1963 I have made periodic reports to the Senate assessing the safeguard program. This report to the Senate concerning the implementation of the safeguards covers a two-year period, 1970 and 1971. During that time a number of international agreements looking towards arms control have been continued, and discussions of possible new agreements have been taken up. In particular, the Limited Test Ban Treaty remains in effect, though neither France nor the People's Republic of China have seen fit to participate. The Non-Proliferation Treaty has come into force—again with a considerable number of important non-participants. Agreement has been reached on keeping the sea bed free of nuclear weapons, on the limitations of biological weapons, and, most prominently, the SALT talks looking toward bilateral limitations on strategic delivery systems have been pursued with great vigor.

The objectives of these and similar agreements and efforts are of great importance to us and to all mankind. Any progress towards these objectives, painfully slow though it be, is encouraging and welcome. The hopes which fuel these efforts and move them forward deserve everyone's support.

Nevertheless, in this as in all fields of human endeavor, it is essential not to make the mistake of regarding mere hopes—however profound—as equivalent to accomplished fact. We still live in a dangerous world and we still must depend on our nuclear deterrent, and will continue to have to do so until it may ultimately be possible to lay it aside. Other countries continue work to improve their nuclear capability, and, as long as that goes on, we must keep our nuclear technology and capabilities fully up to the best possible level. We must, that is, continue to ensure that the safeguards stipulated by the Senate in 1963 as an essential corollary to the Limited Test Ban Treaty are kept clearly in sight and maintained in a satisfactory and reassuring manner. Indeed, if, as some would urge, more restrictive treaties or agreements on the matter of nuclear weapons testing are to be considered, then the present safeguards—possibly with some modification in detail but, in any case, provisions with the same spirit and intent—*will acquire an even greater importance, and deserve an increased emphasis and care in their implementation.* In fact, as will be discussed later, this implementation may well require funding and manpower support in excess of that applied presently.

As you will recall, the four safeguards the Senate established were: first, that the country maintain an active underground testing program; second, that we maintain strong nuclear weapons laboratories; third, that we maintain a readiness to resume atmospheric testing in the event of need; and, fourth, that we maintain and improve our capability to monitor the treaty and maintain our knowledge of foreign nuclear activity.

These four provisions bear on rather different aspects of our nuclear program and on the problem of maintaining our position under the limitations of a treaty. The second safeguard—that aimed at preserving our capability in weapon design and technology—is most fundamental, and would preserve its importance in connection with any type of treaty, even a very extensive one. The first provision—that calling for an active underground testing program—is intimately bound to the second, since it is only by observing the *results* of full-scale experiments that those engaged in research and design can confirm the correctness of their work and obtain the basis for confidence that they are on the right track—a necessary precondition for continuing progress. We are going to have to think very seriously and carefully about the close and strong interaction of these two safeguards before—for example—we should subscribe to a treaty banning all nuclear testing. The fourth safeguard—that of being able to monitor foreign activities, so that we shall know at all times that any treaty arrangement in effect is being adhered to—will obviously assume a larger importance in the event of any extensive arms control treaty.

By comparison with these safeguards, the third one—that of maintaining readiness to resume testing in the atmosphere—is contingent, since the need to exercise that option might never arise. Nevertheless, it is in this area that some of our most severe limitations of knowledge exist. This arises in part because of the incompleteness of the information obtained on the subject of weapons effects at high attitudes during the 1962 test series. Since that time a large, costly and continuing program has been carried out by DOD and AEC to answer some of these questions by less satisfactory means. Some of this work is supported by, and complements, the readiness program.

I should like to remind you that in my 1969 report on these matters, I called attention to the fact that the Administration was proposing to reduce its efforts in support of the third safeguard. This was the first significant reduction in the safeguards program; and, as such, it warranted a very thorough enquiry and review on our part. After careful consideration it appeared that the country's position would not be unduly exposed by the changes considered; so that the cutback was made, and since that time this particular program has been continued at about the level to which it was then reduced. Further reductions would, however, be very serious as will be discussed later on.

This important safeguard is essential to help deter a Soviet resumption of atmospheric testing. Our own ability to quickly resume such testing can discourage the Soviet Union from hoping to gain a major advantage by violating the test ban and carrying out a quick series of atmospheric tests and then calling for a renewal of the test ban agreement.

In 1969 I reported that the efforts in support of the other three safeguards appeared to be well and satisfactorily maintained. However, since then there has been a distinct reduction in the support of *all* these three safeguards. This relaxation in their implementation is a matter of very serious concern.

As examples, the funds devoted to nuclear R&D and weapon engineering were about 250 million in FY–1970. In order to maintain the *same* actual level of effort this amount would have to have increased by about 15 million a year since then, which would have required about 280 million in FY 1972. By contrast, the amount available for FY–72 is close to 240 million. This shows an appreciable reduction in the support of Safeguard 2—our research and development effort. The support provided for on-continent testing—the activity called for in the first safeguard—has dropped from about 190 million in FY–70 to about 160 million in FY–72. This, if one allows for the effects of inflation, represents at least a 25 percent reduction in actual effort.

There is a similar picture in connection with at least some parts of the country's Atomic Energy Detection System—the AEDS—which is the heart of the effort devoted to the fourth safeguard—the monitoring program. The activities of some elements of the AEDS are classified. But suffice it to say that the Air Force has cut the funds for certain research programs under its jurisdiction more sharply than the gross Air Force budget was cut. These programs included some which were concerned with methods and techniques of monitoring for foreign nuclear tests and were quite central to the implementation of the fourth safeguard.

As mentioned earlier, some of these relations and reductions look very much like moves in the wrong direction; particularly at

a time when some consideration is being given to possibly more stringent limitations on testing. The Senate will have to enquire most carefully into these developments, particularly those things which may constitute an undesirable and dangerous softening of the safeguards which we are required to oversee.

With these general comments, I should like now to review briefly the particular situation with respect to the implementation of each of the safeguards over the period since my 1969 report.

SAFEGUARD 1—UNDERGROUND TEST PROGRAM

This safeguard requires a systematic, comprehensive program of underground nuclear testing aimed at providing the maximum improvement of our military weapons systems and the furthering of our knowledge of the design, behavior, and effects of nuclear weapons. Under the guidance of our nuclear laboratories (Los Alamos Scientific Laboratory at Los Alamos, New Mexico; Lawrence Livermore Laboratory at Livermore, California; and Sandia Laboratories at Albuquerque, New Mexico, and Livermore, California) this program has proved to be a highly productive one. The results of the underground testing program have exceeded by far what was expected when the safeguards were first formulated. Now, however, I must report that for the first time the program seems to be suffering budgetary reductions which could jeopardize this safeguard.

Specifically, the increased concentration on containment problems as a result of the Baneberry venting has resulted in an *increase* in cost per experiment of 10 to 15 percent. The AEC–NTS funding was *reduced* from $110 million for FY-1971 to $97 million for FY-1972. The result of these changes is that the weapon development laboratories for the first time since the test moratorium in 1958–1961 cannot test at the rate that they feel proper to keep up with their design efforts, and the Department of Defense is unable to conduct the effects tests to obtain information relative to strategic systems at the rate that they feel proper.

Any technical endeavor consists of several interacting and vital functions—the generation of concepts, the checking of these concepts both by calculation and by experiment, the revision of the concepts and models to agree with the observed facts, and finally the fabrication of the actual hardware or system made possible by the new concepts. No technical endeavor can succeed if one of these functions is missing or severely curtailed. We must recognize that the underground test program called for by the first safeguard provides *one of these vital functions*, namely, experiment by underground testing. Any significant reduction of our effort from that of the past will severely affect our whole nuclear weapons program.

In the years since the Limited Test Ban Treaty was signed, our nuclear laboratories have conducted weapons design and test programs which have resulted in products which have greatly increased the effectiveness of our country's forces. Most of these new warheads contain important qualitative improvements that have been developed since the cessation of atmospheric testing. These new devices have made possible large dollar savings in our overall weapons *systems* development programs, since time and time again warhead improvements have greatly reduced the need for new or increased numbers of weapons delivery systems.

During FY-1971, the Emery underground test series at the Nevada Test Site, and at the two supplemental test sites, continued the advancement of our weapons knowledge. The series included one Plowshare experiment (peaceful uses) and one DOD effects test logistically supported and technically supported by the AEC. The number of tests was about half that of the previous Bowline series, due to the effects of a strike at the test site and to a cessation of testing while the AEC reevaluated containment and environmental criteria. This deferred many tests into the current (FY-1972) Grommet test program, but the Grommet series has a reduced funding level compared with previous years.

Thus Safeguard 1 is now at a very important point in its history. It is essential that an adequate level of testing be maintained.

In summary, our underground test programs in the past have been highly successful, and have provided our weapons systems with improved capabilities. Our ability to continue to provide these improved capabilities must not be jeopardized by arbitrary reductions in the underground test program.

SAFEGUARD 2—MAINTENANCE OF STRENGTH OF THE LABORATORIES AND PROGRAMS

The Second Safeguard requires the maintenance of modern laboratory facilities and programs in theoretical and exploratory nuclear technology which will attract, retain and insure the continued application of our scientific resources to those programs.

Though the strength and morale of the weapons laboratories have been reasonably good up until FY–1971, these laboratories, for the first time in the history of the United States nuclear program, experienced a cut in support which occurred again in FY–1972. Since that time there has been an overall reduction of about seven percent in scientists, engineers, and support people in the laboratories. In 1970 the Laboratory Directors in closed hearings made it very clear that such a cut could seriously impair the capabilities of this unique resources if this were construed as setting the stage for the future. At that time it was anticipated that the reduction in funds and personnel was a transient phenomenon and was not to be taken as an indication of the future. However, when reductions again were required by the fiscal 1972 budget the continued viability of these laboratories as national resources became a matter for investigation. The three weapons laboratories have a grave responsibility to the citizens of the United States and even to the rest of the free world whose security is dependent upon the strength and credibility of the U.S. strategic and tactical nuclear deterrent. They must be adequately funded.

The science and technology necessary for completely new designs and concepts must continue to be developed. Contrary to predictions made some years ago we have not reached a plateau for weapon technology. Some extremely important advances have evolved which have so far enabled us to maintain the credibility of our strategic deterrence with a fixed number of delivery systems in the face of an ever increasing Soviet threat.

Detailed sophisticated examination of data obtained on the high altitude tests of 1962 coupled with innovative technology has materially assisted in the defense of our Minuteman. New options have appeared for tactical nuclear weapon systems which may assume a major role in preserving the peace in the future.

The only alternative available to the United States short of increasing the number of our strategic forces in the light of the superior single missile throwweight of the Soviets is to employ advanced technology in our warheads to compensate for the Soviet payload advantage.

Advanced technology rests on a scientific base generated both within and without the nuclear weapon laboratories, but the applications in this sophisticated field must be made by scientists in the laboratories who are fully cognizant of all the implications of new technologies and discoveries. Any further cuts in the funding of the nuclear weapon laboratories must be viewed with grave concern by the Senate as such a move could seriously affect the quality of the scientific staffs of these laboratories, contrary to the spirit and assurance given by Safeguard 2.

Concurrent with the effects of overall budget cuts has been the increased emphasis being made by the Commission with regard to safety and fire protection at the laboratories. I commend the Commission for their concern in these matters and their regard for the input of their operations to the environment. I am, however, concerned that the very substantial efforts being made by the laboratories to insure the complete safety to property, personnel and to the environment are not being supported with the additional funds that these activities deserve. The consequence of this action is that the weapons programs have been curtailed with a loss in technological advance and even the number of nuclear tests that have been executed.

Present plans are to roll up the Amchitka Test Site beginning this month—January 1972. It will cost approximately 15 million dollars of FY 1973 funds to accomplish that roll up. At the end of that period the United States will no longer have a proving ground to test bombs of appreciably above one megaton yield. It will take from three to four years to prepare such a facility again. The lack of such a proving ground clearly forces our weapon designers to concentrate on advances in techniques in small weapons. Such a limitation also increases the number of tests required by the laboratories.

As mentioned earlier, the weapons laboratory viability and competence are very closely coupled with the ability to conduct meaningful tests. To severely limit the extent to which testing can be conducted could have an adverse effect on maintaining the strength and excellence of the weapons laboratories.

For the past 20 years history has clearly shown that the innovation and scientific competition which has been made possible by having the three laboratories has benefited our nation's nuclear weapons program. This competition in itself assists in maintaining the technical excellence, morale, and national prominence which is unique to these laboratories compared to other government laboratories. I believe maintaining this concept is vital to our nation's security.

In summary, for the first time in the history of our nuclear program questions have been raised with regard to the continuing existence and technical excellence of our nuclear weapons laboratories as a result of two successive budget cuts requiring dismissal of personnel, reduction in field operations, construction deferrals of new facilities and upgrading of existing ones, and reduction in the procurement of new equipment. This trend cannot be allowed to continue. I believe that assurance must be given that the responsibilities assigned in Safeguard 2 will be fulfilled. I trust in view of the observations and the seriousness of the consequences, the Commission will view its weapons laboratories in a special light and make certain that no further degradation of their technical excellence and capabilities comes about as a result of overall AEC budgetary limitations.

SAFEGUARD 3—READINESS-TO-TEST PROGRAM

The third safeguard requires the maintenance of facilities and resources necessary to institute *promptly* nuclear tests in the prohibited environments (atmosphere, underwater and space) should they be deemed essential to our national security. The program in support of Safeguard 3 achieved a status of adequate readiness in 1965. The funding (AEC $26.3 million, DOD $24.4 million*) in FY 1966 was considered adequate

*The DOD figure represents only the RDT&E funding and does not include construction funds for readiness facilities and such O&M expenditures as maintenance and operation of air drop, diagnostic and sampler aircraft and of Johnston Atoll.

to maintain that capability. In the period FY 1966 to FY 1971 the funding decreased by approximately a factor of four. In 1968 the emphasis was changed to put a larger portion of the effort on readiness for high altitude effects tests. However, the funding level at that time was not adequate to properly prepare for the proposed high altitude tests; for example, it was not adequate to bring into being a genuine capability to do high altitude intercept experiments.

The AEC and the DOD have very recently agreed on a draft new National Nuclear Readiness-to-Test Plan. That plan was designed to match the FY 1972 funding and states that we presently have the capability to do less and do it less promptly than before. It is clear that there are many areas of information needed from tests; among these are:

1. Realistic data on the electromagnetic fields created by nuclear detonations in low and high altitudes.
2. Cratering, ground shock and debris effects on hardened systems and insulation.
3. Airburst and underwater shock effects related to problems of anti-submarine warfare and modern ship structures.
4. Full proof tests of the survivability of the hardened reentry vehicles when they are subjected to a realistic nuclear environment while in their operational modes.
5. Blackout and all associated phenomena.

However, in FY 1972 the DOD readiness effort was cut from $6.7 million to $3 million. The result of this and other decisions is to further extend the response time to test in the atmosphere to such a length that it no longer can be called a prompt response. In effect there would be no *viable program* in support of Safeguard 3. A perhaps more serious effect is that the theoretical studies that have been applied to the readiness effort to plan tests will be so reduced that the quality of effects tests in the atmosphere in the future will be lessened.

In order to maintain a prompt response capability for air drop tests, the AEC in 1963 was furnished three NC–135 aircraft by USAF, which were modified at a cost of approximately $30 million to provide airborne diagnostic and command capability. For approximately five years these aircraft, with their highly complex telemetry, tracking, positioning and scientific data acquisition equipment, were exercised in overseas (deployment) and CONUS (non-deployment) operations, together with B–52 drop, RB–57 sampler, EC–121 array control, and other aircraft required for conduct of air drop tests. Each of these operations contributed to development of the air drop capability by identifying problems in critical operational, technical, or safety areas, and to maintenance of that capability through exercise of the complex military and civilian skills involved in performance of the air drop mission. Moreover, in addition to exercising the readiness capability of this part of the system, invaluable data have been obtained applicable to AEC/DOD interests.

The decision to deploy the safeguard ABM system and studies of advanced ABM systems have resulted in a major shift in emphasis in both the AEC and DOD readiness activities.

The most critical areas in which data must be acquired, should testing be resumed, involve high altitude phenomenology and effects, particularly those related to ABM warheads. Therefore, while maintenance and development of the Air Drop Capability has continued at a lower level of effort, the greatest part of recent AEC use of the diagnostic aircraft has been directed toward technical preparation for a high altitude series. This preparation requires use of the aircraft as flying test beds for long lead-time high altitude event instrumentation, but also, and most importantly, requires extensive use of the aircraft in the conduct of experimental programs involving observation of simulated or natural phenomena closely related to high altitude nuclear explosion phenomenology. These experimental programs contribute in an essential way to development of plans, predictions, and measurement objectives for future high altitude tests, and directly affect both the response time for such tests and the quality of the response.

In my evaluation the present effort in support of Safeguard 3 is marginal at best, and I am worried about implications for the future.

SAFEGUARD 4—MONITORING THE LIMITED TEST BAN TREATY AND KEEPING INFORMED ON FOREIGN NUCLEAR ACTIVITY

Safeguard 4 requires that we develop and improve our capabilities of verifying that those nations which signed the treaty continue to abide by its terms. This means we must carry out research and development on methods of detecting and identifying nuclear tests in the forbidden regions, namely in the atmosphere, in outer space, and underwater. In addition, Safeguard 4 requires that we maintain our knowledge of foreign nuclear activities, and this requires that we also develop methods of monitoring underground nuclear tests, which the treaty allows.

The U.S. research and development effort to improve our capabilities of observing foreign nuclear tests is referred to as the Vela program, which is divided into three subprograms: Vela Uniform for monitoring underground explosions, Vela Satellite for satellite-based methods of observing tests in outer space and in the atmosphere, and Vela Surface Based for ground-based methods of monitoring explosions in space. Effective work continues in all these programs and not only supports Safeguard 4 but also provides support for continuing discussion of arms limitation and discussion of a possible comprehensive test ban treaty.

Vela uniform program

The AEDS seismic network is now capable of detecting, identifying, and locating underground explosion events in the Soviet Union and China which have a yield above a certain threshold region.

Obviously the capability of such a system is dependent not only on the fact that it can detect very small earth tremors but to what extent it can decide that the event is natural or man made. It is in this area of research and development that highly worthwhile advances are still feasible and this work should be continued and enlarged. Even at this time, a relatively inexpensive improvement of the seismic detection system could markedly reduce the number of events which are not unambiguously identified. Such improvements and continuing research on seismic detection methods and systems are particularly desirable and necessary in view of discussion of a possible comprehensive test ban, especially in view of the possibility that deliberate evasive techniques could be applied in clandestine testing.

Vela satellite program

Six successful launches of the highly instrumented Vela Test Detection Satellites have now been completed, the first in 1963, and the most recent in 1970. Each launch has boosted two satellites into distant orbits on opposite sides of the earth. From these locations almost all of outer space and the atmosphere even down to the earth's surface is viewed by at least one satellite, which is ready to observe the radiations from a possible nuclear explosion, and thus to monitor nuclear tests almost anywhere except underground or underwater. As space technology has developed it has been possible to continually improve the instrumentation carried on the newly launched satellites.

The satellite capabilities for monitoring nuclear tests have been demonstrated by observations of tests conducted by nations which did not sign the Limited Test Ban Treaty. Furthermore, the economic feasibility of this satellite program is supported by the fact that the useful lifetime of these satellites has in every case been at least five years. The older satellites have been retired from active service only because of the better capabilites of the newer satellites.

This satellite program has also supported Safeguards 2 and 3 in very significant ways, as well as Safeguard 4. Safeguard 2, the maintenance of healthy and vigorous nuclear research laboratories, has been supported by the basic and applied research which has been necessary in order to design and develop the satellite payloads and then subsequently to interpret the observations returned to earth from the orbiting satellites. The payload instruments have been designed to be ready to observe radiations from nuclear explosions and also to study the solar and cosmic and geomagnetospheric radiations which must be distinguished from the radiations from nuclear explosions. Safeguard 3, the maintenance of readiness to resume atmospheric testing, has been supported by the fact that the instrumented satellites provide a continuous immediate readiness to observe the performance, not only of foreign tests, but also of our own tests, in case it became necessary for us to resume testing at high altitude or in the atmosphere.

SUMMARY

In summary our responsiblity to the Congress and to citizens of the United States to guarantee the implementation of the four Safeguards has not lessened since their adoption. However, I am greatly concerned that through a series of budget cuts, each taken by itself to appear not dangerous in this context, we have approached a level of support of the Safeguards which could have serious consequences for the future of the United States.

The trend of budget reductions which have jeopardized the support of the four Safeguards must be reversed.

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD of West Virginia. Mr. President, how much time remains for morning business?

The PRESIDENT pro tempore. One minute.

EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time for morning business be extended 3 minutes.

The PRESIDENT pro tempore. Is there objection? Without objection, is is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROPOSED FACILITIES PROJECTS FOR THE AIR NATIONAL GUARD AND AIR FORCE RESERVE

A letter from the Deputy Assistant Secretary of Defense submitting, pursuant to law, a list of certain facilities projects proposed to be undertaken for the Air National Guard and Air Force Reserve (with accompanying papers); to the Committee on Armed Services.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States submitting, pursuant to law, a report entitled "Audit of Federal Crop Insurance Corporation, Fiscal Year 1971" (with accompanying report); to the Committee on Government Operations.

POSITIONS IN GRADE GS–17

A letter from the Commissioner of Immigration and Naturalization submitting, pursuant to law, information concerning the 11 positions the Commissioner of Immigration and Naturalization may place in grade GS–17 (with accompanying papers); to the Committee on Post Office and Civil Service.

REPORT ON FEDERAL VOTING ASSISTANCE PROGRAM

A letter from the Secretary of Defense, transmitting, pursuant to law, a report on the Federal voting assistance program (with an accompanying report); to the Committee on Rules and Administration.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A resolution of the Legislature of the State of Nebraska; to the Committee on Post Office and Civil Service:

"LEGISLATIVE RESOLUTION 3

"Whereas, The Spanish-American War was the dawn of this Nation's leadership among the nations of the world, and it marked the last great conflict between the people of a free, self-governing republic and that of an absolute monarchy; and

"Whereas, it was this country's first war for humanity, and the only one hundred per cent volunteer army the world has ever known. Twenty thousand volunteers were called, and two million answered those calls. Four hundred and eighty-three thousand served, and one million five hundred and seventeen thousand were not needed. The men came from all parts of our country, the North, the South, the East and the West. These soldiers wiped out sectionalism, and healed the wounds of civil strife, marking the rebirth of a Nation; and

"Whereas, the Spanish War Veteran received no bonus, no war risk insurance, no adjusted compensation, no vocational training and no hospitalization until 1922, twenty years after the Spanish War was over; and

"Whereas, the veterans of all our wars have been brave and worthy sons of America. Millions went to war before the Spanish-American soldier and millions have gone since, yet, he stands unique, distinctive, one who deserves the admiration of all mankind; and

"Whereas, the issuance of a commemorative postage stamp would be a fitting acknowledgment that this country has not forgotten these men.

"Now, therefore, be it resolved by the members of the eighty-second Legislature of Nebraska, second session:

"1. That the President of the United States and the United States Post Office authorities are urged to issue a stamp or stamps commemorating the unique history written by the deeds of the Spanish-American War Soldier, and honoring the United Spanish War Veterans.

"2. That copies of this resolution be transmitted by the Clerk of the Legislature to the President of the United States, to each member of Congress from Nebraska, to the Speaker of the House of Representatives and to the President of the Senate."

A resolution adopted by the Council of the City and County of Honolulu, Hawaii, urging that Bellows Air Field be declared surplus to its military requirements; to the Committee on Armed Services.

A resolution adopted by the Commissioners of Asotin County, Wash., praying for the enactment of legislation relating to tax-sharing; to the Committee on Finance.

A resolution adopted by the Commissioners of Walla Walla County, Wash., praying for the enactment of legislation relating to tax-sharing; to the Committee on Finance.

A resolution adopted by the Town Council of Asotin, Wash., praying for the enactment of legislation relating to tax-sharing; to the Committee on Finance.

A resolution adopted by the Board of Pierce County Commissioners, Tacoma, Wash., praying for the enactment of legislation relating to tax-sharing; to the Committee on Finance.

A resolution adopted by the Renton City Council, Wash., praying for the enactment of legislation relating to tax-sharing; to the Committee on Finance.

A letter from the Secretary of the Navy, transmitting petitions of certain citizens, expressing opposition to further U.S. military involvement in Vietnam, Laos, Cambodia, or other countries of Southeast Asia (with accompanying petitions); to the Committee on Foreign Relations.

A resolution adopted by the San Diego County Federation of Republican Women's Clubs, San Diego, Calif., calling upon Congress to cancel membership of the United States in the United Nations Organization; to the Committee on Foreign Relations.

A resolution adopted by the University Unitarian Church, Seattle, Wash., praying for an end to the war in Southeast Asia; to the Committee on Foreign Relations.

A resolution adopted by the National Conference on State Parks, praying for repeal of the Federal Water Projects Recreation Act of 1965; to the Committee on Interior and Insular Affairs.

A petition of sundry students of Kent State University, Ohio, praying for the enactment of Senate Concurrent Resolution 26; to the Committee on Interior and Insular Affairs.

A resolution adopted by the Alaska Reea Native Board of Health, Edgecumbe, Alaska, recommending that the Federal trust relationship and responsibilities be continued to all Alaska Native groups; to the Committee on Interior and Insular Affairs.

A resolution adopted by the American Ornithologists' Union, expressing concern in the matter of population growth; to the Committee on Labor and Public Welfare.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. METCALF (for himself and Mr. MANSFIELD):

S. 3052. A bill to authorize the Secretary of the Interior to designate the Beartooth Highway, Montana and Wyoming, as the James E. Murray Memorial Parkway, and for other purposes. Referred to the Committee on Public Works.

By Mr. STAFFORD:

S. 3053. A bill to provide for the establishment of a national cemetery in the State of Vermont. Referred to the Committee on Veterans' Affairs.

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

S. 3054. A bill to amend the Manpower Development and Training Act of 1962. Referred to the Committee on Labor and Public Welfare.

By Mr. FANNIN:

S. 3055. A bill for the relief of Maurice Marchbanks. Referred to the Committee on the Judiciary.

By Mr. DOMINICK (for himself, Mr. BENNETT, Mr. COOK, Mr. CURTIS, Mr. DOLE, Mr. JORDAN of Idaho, Mr. SCOTT, and Mr. TOWER):

S. 3056. A bill to amend Public Law 92–178, the "Revenue Act of 1971." Referred to the Committee on Finance.

By Mr. PACKWOOD (for himself and Mr. JAVITS) (by request):

S.J. Res. 187. A joint resolution to provide a procedure for settlement of the dispute on the Pacific Coast and Hawaii among certain shippers and associated employers and certain employees. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. METCALF (for himself and Mr. MANSFIELD):

S. 3052. A bill to authorize the Secretary of the Interior to designate the Beartooth Highway, Montana and Wyoming, as the James E. Murray Memorial Parkway, and for other purposes. Referred to the Committee on Public Works.

JAMES E. MURRAY MEMORIAL PARKWAY

Mr. METCALF. Mr. President, one of the most spectacular and popular of this country's national parks is Yellowstone, with major entrances in the States of Wyoming and Montana. In my estimation the most beautiful and rugged of all the entrances is at Cooke City, which is served by the Red Lodge-Cooke City Highway, often referred to as the Beartooth Highway. The road is in the midst of beautiful scenery and is famed for its series of switchbacks winding to the top of this mountain pass, leading to the Cooke City entrance. Over the years there has been a problem of financing necessary improvements on this highway because of the question over jurisdiction. My senior colleague, Senator MANSFIELD, and I believe that the time has come to develop a reasonable plan of funding and this can best be done by placing the entire highway under the national parkway system. This designation would be similar to that provided the George Washington Memorial Parkway in nearby Virginia.

An additional reason for establishing the Red Lodge-Cooke City Highway as a national parkway is that it would be an opportunity to establish an appropriate memorial to one of the great Senators from Montana—the late Senator James E. Murray. Senator Murray was an active and vigorous representative of the Big Sky Country and the Nation as a whole. It is my pleasure to have served with Senator Murray as a member of the Montana congressional delegation when I was in the House of Representatives. As his colleagues will recall, he was

a man of great humanitarian concern, a decent and dignified person who fought in behalf of the disadvantaged, sick, and the oppressed and was influential in changing many of the Nation's attitudes. Senator Murray was known for his work in the areas of health, welfare, minimum wage, and full employment. He also was concerned about conservation and the development of Montana's resources. This was especially evident when he was chairman of the Senate Committee on Interior and Insular Affairs. Senator Murray was most influential in bringing about interest in the preservation and conservation of our Nation's resources. It is most appropriate that the Nation pay tribute to this great man for his work in the field of conservation. Senator MANSFIELD and I believe that the naming of this majestic highway in his memory would be most fitting.

Mr. President, in behalf of my colleague, Mr. MANSFIELD, and myself, I send to the desk legislation which would authorize the designation of the Beartooth Highway in Montana and Wyoming as the James E. Murray Memorial Parkway, and ask that it be appropriately referred.

The PRESIDENT pro tempore. Without objection, the bill will be received and appropriately referred.

Mr. MANSFIELD. Mr. President, will my distinguished colleague yield to me?

Mr. METCALF. I am happy to yield to my colleague from Montana.

Mr. MANSFIELD. Mr. President, I am delighted and pleased to join with my distinguished and able colleague from Montana, Senator LEE METCALF, in introducing legislation to establish the James E. Murray Memorial Parkway in the area north of Yellowstone National Park in Montana.

The naming of the highway, often referred to as the Red Lodge-Cooke City Highway, in honor of the late Senator James Murray is most appropriate in view of his distinguished record in resource conservation and development. This highway designation would not only establish a monument to a great man but would provide the necessary protection and development of one of the Nation's most scenic access highways. This designation would simplify highway funding in addition to protecting the area from commercial developments and preserve its natural state.

Jim Murray is one of the great Senators to come out of the West and it is a great honor to have been associated with him in representing the State of Montana for a period of 18 years, the last eight of which we represented the State of Montana here in the Senate. At all times we worked with cordiality as good friends and representatives of a great State.

Senator Murray, as we all know, was a great champion of the labor movement. He took the lead in pioneering new legislation in the area of Federal aid to education. This was done in cooperation with the then Representative from Montana's western district, LEE METCALF, who was elected to succeed Senator Murray here in the Senate. Most important, Senator Murray at the time of his retirement was chairman of the Senate Interior and Insular Affairs Committee where he led the good fight in behalf of the conservation and management of our natural resources.

Mr. President, when public figures of note pass on to their reward, there is often a public effort to establish an appropriate memorial. In the case of the late Senator James E. Murray, I believe that he is worthy of a memorial not of stone, but a memorial signifying his interests and achievements in the field of conservation. This the Congress can do by establishing the James E. Murray Memorial Parkway.

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

S. 3054. A bill to amend the Manpower Development and Training Act of 1962. Referred to the Committee on Labor and Public Welfare.

Mr. NELSON. Mr. President, on behalf of Senator JAVITS and myself, I am today introducing a bill to amend the Manpower Development and Training Act of 1962 for the purpose of removing a provision which, while technical in nature, is a serious impediment to good program planning in the MDTA program at the present time.

The provision proposed to be deleted prohibits the further disbursement of funds under MDTA after December 30, 1972—6 months after the act's expiration date of June 30, 1972. That means that, although contracts may be entered into until June 30 of this year, it is not possible for those contracts to make commitments to provide funding even for 1 year. It has in the past been a normal practice for MDTA contracts to make commitments for 1 year. However, since January of this year, the Labor Department has only been able to enter into contracts involving commitments which could not give rise to the disbursement of funds beyond the end of this year.

The provision which my bill proposes to delete is an unusual one; but whatever the reason may have been for including it in the original MDTA it now serves no useful purpose and is contrary to the practice in similar programs. In fact, in the case of those work and training programs which are funded under title I of the Economic Opportunity Act, appropriations legislation has for years provided that disbursements may be paid out over a period of up to 2 years from the date of the contract.

The chairman of the Labor and Public Welfare Committee (Mr. WILLIAMS) has called an executive session of the full committee for Wednesday, January 26, for the purpose of considering the bill Senator JAVITS and I are introducing today, and other matters.

At that time, I will move to report this bill to the Senate. In view of the emergency situation for the MDTA program, I am hopeful that the Senate can act on the bill within a short period of time.

Let me make clear that the ranking minority member of the Labor and Public Welfare Committee (Mr. JAVITS) and I are as committed as ever to finishing our work on comprehensive manpower legislation in this session of Congress. I believe that the overwhelming majority of Members of the Senate are committed to reorganizing and consolidating our various manpower programs, including the Manpower Development and Training Act. That should in no way detract from the notable accomplishments of the Manpower Development and Training Act over the past 10 years.

Mr. President, I ask unanimous consent to have printed in the RECORD a table showing the accomplishments of the MDTA from 1963 to 1970.

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

ACCOMPLISHMENTS OF MDTA

TABLE F-4.—ENROLLMENTS, COMPLETIONS, AND POSTTRAINING EMPLOYMENT FOR INSTITUTIONAL AND ON-THE-JOB TRAINING PROGRAMS UNDER THE MDTA, FISCAL YEARS 1963–70

[In thousands]

Item	Total	Fiscal year—							
		1970	1969	1968	1967	1966	1965	1965	1963 [1]
Total:									
Enrollments	1,451.4	221.0	220.0	241.0	265.0	235.8	156.9	77.6	34.1
Completions	987.2	147.0	160.0	164.2	192.6	155.7	96.3	51.3	20.1
Posttraining employment	773.4	115.3	124.0	127.5	153.7	124.0	73.4	39.4	16.1
Institutional training:									
Enrollments	978.4	130.0	135.0	140.0	150.0	177.5	145.3	68.6	32.0
Completions	654.7	85.0	95.0	91.0	109.0	117.7	88.8	46.0	19.2
Posttraining employment	484.3	62.0	71.0	64.5	80.0	89.8	66.9	31.8	15.3
On-the-job training:									
Enrollments	473.0	91.0	85.0	101.0	115.0	58.3	11.6	9.0	2.1
Completions	335.5	62.0	65.0	73.2	83.6	38.0	7.5	5.3	.9
Posttraining employment	289.1	53.3	53.0	63.0	73.7	34.2	6.5	4.6	.8

[1] Program became operational August 1962.

Note: Completions do not include dropouts. Posttraining employment includes persons employed at the time of the last followup. (There are 2 followups, with the 2d occurring 6 months after completion of training.)

By Mr. DOMINICK (for himself, Mr. BENNETT, Mr. CURTIS, Mr. COOK, Mr. DOLE, Mr. JORDAN of Idaho, Mr. SCOTT, and Mr. TOWER):

S. 3056. A bill to amend Public Law 92–178, the "Revenue Act of 1971." Referred to the Committee on Finance.

Mr. DOMINICK. Mr. President, on behalf of myself and Senators BENNETT, CURTIS, COOK, DOLE, JORDAN of Idaho, SCOTT, and TOWER—and on behalf of any other Senators who may like to cosponsor this bill—I introduce, for appropriate reference, a bill to repeal title VIII of the Revenue Act of 1971.

Senators are aware, title VIII establishes a so-called tax checkoff plan for financing presidential election campaigns. On returns filed after January 1, 1973, an individual taxpayer can specify that $1 of his tax liability be set aside in a special account in the presidential campaign fund for the candidates of whatever political party he designates. Or, he can specify that the $1 be set aside in a nonpartisan general account in the fund. Moneys will accumulate in the fund for 4 years preceding each presidential election, and then will be distributed by formula to party nominees for postprimary campaign expenses.

Title VIII passed the Senate by a narrow margin, 52 to 47. I opposed it then, and I feel strongly that it should be repealed now. I oppose, for reasons going to its merits, the concept of financing presidential elections with tax revenues, and will state those reasons in a moment. But first, aside from the merits, I think that to state the background of this tax checkoff plan is to state the strongest argument for its immediate repeal.

A similar tax checkoff plan for financing presidential campaigns was adopted by Congress in 1966 after only cursory hearings and little debate. It was repealed the following year. It has not been considered in congressional hearings since then.

When Senator PASTORE held hearings in March of last year on S. 382, the Election Reform Act, he rejected the inclusion of a public financing system for presidential elections, saying it was "10 years ahead of its time." Yet, less than 8 months later, and still without hearings, he proposed such a system as an amendment to the Revenue Act of 1971. Why? The answer is clear. The Democratic Party was going into a presidential election year with a $9-million debt carried over from the 1968 campaign. In short, the tax checkoff was a scheme to shift to the American taxpayers a $9-million debt incurred by the Democratic Party in 1968. That this was the primary motivation is not open to serious question.

I do not think anyone can deny that Lawrence O'Brien, current chairman of the Democratic National Committee, initiated the amendment as a solution to the considerable financial problems facing the Democratic Party this year. His strategy, with the concurrence of the democratic leadership, was to attach it to the tax bill, which, because of its crucial importance to the economy, would be difficult to veto.

The tax checkoff plan did pass the Senate—by a close vote divided along party lines. As passed by the Senate, it would have been effective in time to raise an estimated $20.4 million for each of the two major parties, and $6.3 million for George Wallace as an Independent candidate for the Presidency in 1972. But, after it became apparent that the President would not succumb to blackmail when he indicated that he would indeed veto the tax bill if title VIII remained unchanged, and head counts showed approval of the conference report to be doubtful in the House, the conferees agreed to postpone its effective date until January 1, 1973. It was enacted with that and other minor changes.

So, to summarize, the tax checkoff plan was proposed by the chairman of the Democratic National Committee and passed by the Democratic-controlled Senate as an emergency financial measure for the debt ridden Democratic Party's 1972 presidential campaign effort. The primary motivation for the plan was removed when its effective date was postponed until after the 1972 election. There were no congressional hearings on the plan, and have been none since a similar plan was repealed by Congress in 1967.

Such an unquestionably radical change should not be made without further study. To preserve whatever public faith remains in the integrity and credibility of the legislative process, title VIII should be immediately repealed and reconsidered on its merits in full congressional hearings and debate in both Houses.

I believe the arguments on the merits against any system of financing presidential elections with tax revenues, and this plan in particular, far outweigh the arguments in favor.

A good starting point for a discussion of the tax checkoff system of financing presidential elections is to ask the questions. Who will pay for it, and how much? The answer to the first is, of course, all American taxpayers. Since the $1 checkoff comes out of a taxpayer's tax liability, the effect is to divert money from other Federal programs which are funded with tax revenues. By permitting a portion of the taxes owed the Government every year to be set aside for use in presidential campaigns, the act would result in a proportionate reduction in Government services available to all American citizens, including the poor. The only possible way to avoid this, short of raising taxes, would be through increased deficit spending by the Government. I am not sure this is a reasonable alternative—particularly at a time when the national debt is about $413 billion, with a projected deficit of $40 billion in fiscal 1973, and Congress is considering massive and expensive new programs to deal with a variety of complex problems and needs which become more critical as our population expands.

The answer to the second question, based on rough estimates furnished by the Treasury Department, is that it will reduce tax revenues by more than $60 million in 1976. Assuming two major parties and one minor party are eligible then and the minor party receives roughly the same percentage of the vote in 1972 that Wallace received in 1968, each major party would be entitled under the act to about $26 million, and the minor party about $8 million. The $60 million total figure would increase if additional parties are eligible in 1976, as seems likely due to incentives the act provides for new parties. This diversion of tax revenues to political campaigns is in addition to an even greater new Federal subsidy under title VII of the Revenue Act of 1971, which permits tax credits or deductions for political contributions to all candidates. The projected revenue losses for tax years 1972 through 1976, based again on rough estimates by the Treasury Department, total $327 million. That approach will encourage active involvement in politics, and will result in substantially increased private contributions to campaigns at all levels. Why do we need to go any further? No satisfactory answer to that question can be found in the debate on title VIII.

Proponents of the tax checkoff plan have argued that it would reduce overall campaign spending and would free presidential candidates from postelection obligations to "fat cat" contributors. These thin arguments are easily penetrated. Since funds are available under the act only for postprimary spending, the act will cause no reduction whatever in campaign spending through the primaries. It will, in fact, have the opposite effect. If there is a publicly funded "pot of gold" awaiting successful primary candidates, will they not be encouraged to increase spending in the primaries? Of course they will. And there is no reason to believe they will be any less dependent on strings-attached contributions from fat cats. Moreover, it is unlikely that even the limit on postprimary spending for party nominees who opt for public financing will be effective. There is no way to control the number of "unauthorized" committees which can spend up to $1,000 for a candidate. Admittedly, reductions in campaign spending and in the disproportionate influence of wealthy contributors are laudable goals. But this legislation clearly does not move in that direction. Senator SCOTT saw this for what it really is, and called a spade a spade when, during the floor debate, he commented:

> This has even brought back all the Presidential candidates because the click, click, click and the dong, dong, dong of the cash register has been heard in every Senatorial district in America. I do not wonder that they are here. They are here to vote for a program without having to demean themselves. No longer will they have to lower themselves to their constituents and say, "Please support me." All they have to say is "Slip this thing through, get us money from the taxpayers, and we will not have any trouble at all. We will use the money that normally comes in to pay our abject deficit and then we will take the rest and finance our campaign at the expense of the taxpayers."

The tax checkoff plan will result in undesirable party centralization. The national committees work to a large extent through the State and local party organizations to raise postprimary campaign funds. This requires the parties to

accommodate a broad range of viewpoints and to be attentive to diverse local interests. Once the national committees are relieved of the necessity of raising such funds, they will become largely independent of the State and local organizations. As a result, the parties and the candidates will ultimately be less responsive to local issues and concerns. Any movement in that direction should be strongly resisted. The late Senator Robert Kennedy analyzed this issue very well when he argued for repeal of the Presidential Election Campaign Fund Act of 1966:

But first the Long Act must be repealed. It places funds where they are relatively less needed and, more important, it does so by giving massive amounts of funds in a dangerous and unrestricted way to the national leadership of the two major political parties.

The Long Act has the potential of changing our whole political system. Our national political parties have always been coalitions of State parties, which in turn are coalitions of local parties. Our ideal and our working rule have been that political decisions and policies will be made from the bottom up, not from the top down.

Unrestricted public financing of national political campaigns is a revolutionary overturn of principles which have served our Republic for 175 years. The national parties would be divorced to a large extent from local control, and given immense power to reward or punish local candidates. By this power to decide where to concentrate, and where to refrain from, presidential campaign efforts, the national chairman would wield enormous leverage over the prospects and policies and, indeed, over the very process of selection of local candidates all over the country. The national leadership of the two parties could thereby dominate State and local elections all over the country.

Control of local parties by the national committees, moreover, would lead, perhaps irrevocably, to national parties rigidly organized along lines of class and ideology. If the history of the past century has any lesson for us, it is that governments based on such political divisions cannot preserve either freedom or stability for their people.

Now the Senator from Louisiana has proposed to amend the law so that each party will have to choose whether it will have its Presidential campaign expenditures paid out of public funds or by private contributions. He did so presumably, to meet the objection of the Senator from Tennessee

That would be Senator Gore—

. . . and others that the law as enacted last year would allow the commingling of public and private funds, and could have the unfortunate result of just adding public funds to an already acquired private treasury. Senator Long's new proposal, however, in many ways creates more difficulties. The assumption is that the parties will choose public funding. But forcing them to reject all private contributions will only insulate them even further from control by their membership around the country than did last year's law. The result will be an even greater departure from the goal of broadening the base of our political parties than was implicit in last year's law.

I think we should also be asking ourselves whether we want the Federal Government to have complete control over presidential elections, and eventually congressional elections. I have never subscribed to the philosophy, which seems to be increasingly popular these days, that problems are most easily solved with Federal money. It has been my experience that the money does indeed get spent, but the problems do not get solved. Even worse, Federal controls follow Federal dollars. And, Federal control, like rigor mortis, is difficult to reverse. Presidential election campaigns are one area of the body politic to which this creeping cancer has not yet spread, but it is in grave danger if title VIII of the Revenue Act is not repealed.

It is no answer to suggest that candidates are not obliged to opt for public financing. There will be enormous pressures to do so. Public financing for the general election will free substantial funds for concentration on the primaries and other preconvention efforts. A candidate who rejected public financing would be open to accusations that he was going to the "fat cats," and would be controlled by them after the election. Further, it would be difficult to raise private funds for the general election after "wasting" the opportunity to use public funds.

The act will subject the candidates and their parties to the close scrutiny and supervision of a Federal official—the Comptroller General. He will have the power to determine what candidates are eligible to share in the campaign fund, how much they are entitled to receive, and how they can spend it. Instead of raising money and running campaigns, the party organizations will spend the bulk of their time reporting to the Comptroller General. Do we want political candidates to be primarily responsible to their constituencies or to Federal bureaucrats?

The opportunities for abuse—particularly in favor of an incumbent President—are obvious. No Government official can be invulnerable to outside pressures. It is not difficult to imagine a Comptroller General deciding that a splinter party candidate espousing extreme and unpopular views, or whose candidacy would be detrimental to the incumbent party, is not eligible for payments from the campaign fund. Maybe the present system has imperfections, but would it not make sense to take time to analyze some of the problems inherent in the system replacing it? Congress certainly did not do that last session.

I think the tax checkoff plan will encourage sectional and "spoiler" candidacies, and the formation of splinter parties. I am not opposed to new parties for constituencies who feel their views and interests are not being adequately represented. But I believe the two-party system is one of the major strengths of our form of government, which has been the most stable in the history of the free world. One reason for this stability is that heretofore, in order to raise necessary campaign funds, and to capture enough electoral votes to win, it has been necessary for each party to accommodate a wide variety of interests. To the extent that funds are available without this broad accommodation, stability is lessened. Since under the act the two major parties need only get 25 percent of the vote to qualify for a maximum share of the campaign fund, there is no real incentive to attempt to accommodate the widest possible range of interests. The inevitable result is a narrowing of the bases of the two major parties.

Conversely, there is no incentive for sectional, ethnic, and other special constituencies to work with the major parties to insure that their interests are represented. A sectional candidate such as George Wallace would be guaranteed public financing for a campaign in 1976, merely by polling 5 percent of the vote in 1972. He received 13 percent in 1968. The checkoff system almost compels him to run, rather than work with the major parties. Likewise, a new party has nothing to lose by fielding a candidate, since general election expenses will be reimbursed out of public funds if he gets 5 percent of the vote. That party's candidate will then be guaranteed advance funds out of the campaign fund in the following election. This encourages "spoiler" candidacies aimed, not at winning the election, but at denying an electoral majority to either major party and throwing the election into the House, thus presenting the opportunity for high stakes bargaining on the strength of their "swing" votes. If we leave title VIII on the books, we can look forward to a wide array of new parties, all bristling with militant little axes to grind: a Labor Party, a States' Rights Party, a Black Party, a Chicano Party, a Women's Liberation Party, a Youth Party—you name it. I do not think the possible consequences require further elaboration. Suffice it to say that the two-party system will be weakened, and along with it the stability of our form of government.

The tax checkoff system of financing presidential elections is of questionable constitutionality. New York Times columnist, Tom Wicker, described it as "thick with constitutional question marks." The most obvious question is how it affects the first amendment rights of those who desire to contribute more than $1 to the candidate of their choice. Should not a citizen have the right to contribute up to the maximum permitted by statute, if he is so inclined? Also, does not the checkoff system ignore the rights of approximately 10 million young and elderly who cannot contribute because they incur no tax liability? The reason that comes up is that once a presidential candidate determines he is going to go for public financing, he is prohibited from taking any private contributions. So, the people who would like to contribute are not allowed to do so.

Another serious constitutional question is whether the tax checkoff system is an improper exercise of Congress' power to spend tax funds. Article I, section 8, gives Congress power to spend for several enumerated purposes, including the general welfare. The question is whether an appropriation for the purpose of financing presidential election campaigns is for the general welfare. The case law is inconclusive. A 1909 Colorado law appropriating campaign money directly to political parties was held unconstitutional by the Colorado Supreme Court. A similar Massachusetts law was held unconstitutional by the State supreme court because it was not spending for a public purpose. The U.S. Supreme Court has never dealt with this question. But assuming title VIII were effective in

time for this year's election, so that its immediate effect would be to transfer, as its proponents intended, $9 million in Democratic Party debts to the American taxpayers, I think I know what the Court's answer would be.

A good argument can also be made that the tax checkoff, by permitting tax payers to earmark tax funds for use in political campaigns, is an unconstitutional delegation of Congress exclusive power to spend. Again, the case law is not clear, but aside from the strict constitutional aspect, it is clear that it sets a dangerous precedent. If taxpayers are here allowed to earmark a portion of their tax liability for use in political campaigns, why should not they be able to earmark for other uses in the future? Where will it end? Senator Gore voiced this concern when arguing for repeal of the 1966 tax checkoff act:

> This unique procedure is one which has never been followed before. True, Congress has in the past levied taxes, and then provided that the revenue from that tax or a portion of it would be earmarked for a special purpose. Today, for example, revenue from certain highway-user taxes is earmarked for highway construction. But it is Congress that earmarks the revenue or a portion thereof. So far as I can ascertain the law passed last year, which I now seek to repeal, is the first time the Congress has ever undertaken to authorize the individual taxpayer to decide on a year-to-year basis the purpose for which a portion of the money he pays in taxes shall be used. If it is a sound practice for the taxpayer to say for what it shall be used, it would be equally sound for him to say for what it shall not be used; and to the extent that a taxpayer directs that tax funds shall be used for a particular purpose, he automatically thereby says it shall not be used for other purposes. . . .
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> If we start down the road of allowing each individual taxpayer to decide for what purpose his tax funds may or may not be spent, we may well find that Congress has abdicated its constitutional responsibility of making appropriation of public funds. If a taxpayer has that right, if it is constitutional and if this precedent should be followed, perhaps there are taxpayers who would like an opportunity to decide whether their tax money shall be spent or not be spent for the war in Vietnam, or a war on poverty, or education, or public works projects, or agriculture programs, or urban redevelopment, or support for agricultural commodities, such as milk. Where do we stop with this process? Is this a wise precedent? We have made a mistake, Mr. President. Let us erase that mistake, and the quicker the better.

Well, Congress did erase its mistake in 1967, but incredibly, repeated it last year. I hope this mistake, too, will be erased.

Finally, Mr. President, if the tax checkoff is thick with constitutional questions, it is even thicker with administrative problems, many of which seem to me to be insoluble. What happens when a taxpayer designates a $1 contribution to a candidate who later turns out to be ineligible for public financing? This is bound to happen on lot of returns. That money has to go back into the Treasury. In the meantime, the taxpayer withholds a private contribution to his candidate, thinking he has already contributed. Also, why are not minor parties represented on the Presidential Election Campaign Fund Advisory Board, which assists the Comptroller General in enforcing the act? The composition of the Board, under the act, is four members from each party and three members from the general public. The act encourages new and minor parties to utilize the checkoff system of financing, yet gives them no voice in seeing that it is administered properly.

Then, there is the additional time and expense of auditing an estimated 75 to 80 million returns every year to determine the total number of checkoffs. Under existing IRS procedure, only about 10 percent of the returns are audited. But, under the tax checkoff, each return would have to be audited, including those indicating no tax liability. I am advised that total figures would not be available from IRS until June of each year.

This presents another problem. The first convention is in early July, after which the nominee must make an immediate decision whether to opt for public financing or depend on private contributions. He would not know until June how much money will be available to him from the campaign fund. If he decides such funds are inadequate, he will not have sufficient time to raise private contributions. Fund raising takes considerable time, and I do not think a presidential candidate can wait until June to start raising funds for the general election campaign.

In order to protect themselves all candidates will go full steam ahead with private fundraising from the outset. If a candidate opts for public financing, the act limits the total amount he can spend in the general election. If his share of the campaign fund is less, he can retain private contributions necessary to bring his total finances up to that limit. The act requires that all other private contributions be returned. On the other hand, if he spends more than the maximum entitlement during the general election, he is required to repay it to the Treasury after the election. The same is true of expenses incurred for purposes not authorized under the act. This sounds fine on paper, but I think the repayment provisions of the act will be unenforceable in practice. The stakes are high in a presidential election. The practical effect of this act will be merely to heap public tax funds on top of campaign funds gathered from private sources. Rather than reducing campaign expenditures and the influence of private contributors, it will increase both.

Moreover, what good will it do to require a President to repay funds he used to get elected? Is this not closing the barn door after the horse is out? Worse than the futility of this is the fact that postelection complaints regarding illegal contributions and expenditures can only serve to jeopardize the stability of the Government. The whole thing seems to me to be an expensive and almost dishonest hoax on the American public.

Mr. President, I would summarize by suggesting that title VIII of the Revenue Act of 1971—the so-called presidential tax checkoff plan—should be repealed for several basic reasons. First, it was initiated for a purpose which can no longer be achieved—to bail the Democratic Party out of its financial problems going into the 1972 elections by transferring $9 million in debts to the American taxpayers. Second, because its proponents were motivated by the foregoing purely political reasons, it was enacted without adequate consideration of the arguments on its merits. Third, it is indefensible on its merits. It would not do what its proponents say it will, and will have consequences damaging to our political system and the stability of our Government. While title VIII is the result of a strictly partisan effort, its adverse effects will be felt by all of us. I hope, therefore, that with an objective bipartisan effort, it will be repealed.

I ask unanimous consent to insert in the RECORD at this time several articles from the Washington Post, New York Times, and the Pueblo, Colorado Chieftan, which are related to this issue.

The two articles by Don Oberdorfer of the Washington Post are excellent, and I think furnish an accurate picture of the background of the tax checkoff legislation to which I referred in my floor statement last Friday.

The Associated Press article in the January 21 issue of the Washington Post shows the almost amusing resourcefulness of the Democratic Party in looking for ways to get out from under its $9.3 million debt from the 1968 campaign. After Congress rejected its attempt to shift this debt to the American taxpayers prior to the 1972 elections, the Democrats are now running full-page fund raising ads in 10 major cities, and are trying to get permission from A.T. & T. to include campaign solicitations in telephone bills. Since $1.5 million of the 1968 debt is owed to A.T. & T., the company has obvious incentive to go along with it.

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

[From the Washington Post, Jan. 21, 1972]

DEMOCRATS TO LAUNCH FUNDRAISING IN 10 CITIES

A full-page ad declaring "the Democratic party is just about broke" and appealing for funds to "help assure you of a choice of candidates in 1972" will greet newspaper readers in about 10 cities in early February.

The ads are the first step in a double-barreled fund-raising campaign being mapped by Democratic party leaders to start paying off their $9.3 million 1968 debt and begin building a fund to finance the 1972 race.

The second step: Fund-raising appeals for "the party of your choice" to be sent with telephone and other bills, provided those businesses go along.

The new campaign, unveiled by treasurer Robert S. Strauss of the Democratic National Committee, is the party's answer to congressional rejection of the plan to give each major party $20.8 million through a $1-per-taxpayer checkoff on income tax returns.

The newspaper ads, planned for New York, Los Angeles, St. Louis, Washington, Louisville and some smaller cities, will cost about $45,000. Strauss hopes they'll at least recover the cost and provide a list of contributors who can be reached again in the fall.

As for the plan to put bipartisan fund-raising appeals into the envelopes in which Americans receive phone or creditcard bills, Strauss said he discussed it with representatives of American Telephone & Telegraph Co. and a major oil company.

"They haven't said no yet," he said.

Strauss said that since he became party

treasurer in March, 1970, the national committee has paid all its regular bills. But it still has to contend with the 1968 debt and the stockpiling of funds for the 1970 campaign.

One of the major items in the debt is nearly $1.5 million owed AT&T and its subsidiaries for phone service.

[From the Washington Post, Dec. 14, 1971]

CHECKMATING THE CHECKOFF—NIXON'S DILEMMA BECOMES DEMOCRATS' DEFEAT

(By Don Oberdorfer)

On Nov. 23, the day after the Senate passed the Democratic-sponsored amendment to finance presidential election campaigns with public funds, Democratic National Chairman Lawrence F. O'Brien telephoned Rep. Wilbur Mills, the key figure in deciding the fate of the measure in the House of Representatives. "Well, Wilbur, here we are," said O'Brien. "How do you feel about the prospects?"

Mills replied that he was totally committed to the approval of the $1 per tax return checkoff plan to furnish up to $20.4 million for major party presidential nominees, and predicted that a Senate-House conference committee would approve the plan as an amendment to President Nixon's tax cut bill. Once attached to the agreed Senate-House version of the tax bill, it could only be dislodged by a majority vote of the House membership under difficult conditions.

A commitment and prediction by Wilbur Mills counts for a great deal in such matters. As chairman of the House Ways and Means Committee, he would lead the House delegation to the Senate-House conference committee. On tax questions, he is the most powerful figure in the Congress.

Just about the time of the O'Brien-Mills conversation, President Nixon was having breakfast in the family quarters of the White House with his Senate GOP leaders, Hugh Scott and Robert Griffin, to discuss strategy and tactics for the continuing fight against the checkoff plan.

Scott strongly urged the President to announce a firm decision to veto the tax cut bill if the Democrats insisted on the checkoff amendment. If this were done, the senator was convinced, public opinion and business pressures would force the Democrats to back down.

Mr. Nixon was in an agonizing dilemma. He was adamantly opposed to the checkoff but he kept asking his advisers, "What about my tax bill?" He authorized Scott to say that he was "seriously considering" a veto, but made no firm decision. Presidential Press Secretary Ronald Ziegler, reflecting the official caution, told reporters, "I'm not going to predict what the President would do with a piece of legislation still in the legislative process."

In a strategy meeting in the nearly-deserted Capitol the following day (Nov. 24, the day before Thanksgiving), Rep. William Springer of Illinois succinctly captured the intensity of GOP fears about the checkoff. "The Democrats feel they could beat Nixon with this $20 million from the Treasury and they might be right," Springer told assembled White House aides and House Republican leaders. "This issue will decide the 1972 election. After all, (Hubert) Humphrey almost turned it around with only $2 million in television commercials during the last 10 days of the 1968 campaign."

CONCERN OVER HIGH COST

Even so, some of the GOP leaders were deeply concerned about the high cost of a veto. John Byrnes, the senior Republican in the Ways and Means Committee and a member of the Senate-House tax bill conference, suggested that the President sign the bill when it reached his desk but refuse to implement the checkoff provision on constitutional or other legal grounds. White House and Justice Department officials were investigating this idea but it, too, held substantial risks. A court test might go against the President. In any case, he would seem to be defying a law for his own political gain.

After the meeting at the Capitol, Presidential assistants John Ehrlichman and Clark MacGregor returned to the White House to brief Mr. Nixon before his departure for San Clemente, Calif., for the Thanksgiving weekend. Included in the discussion was a recommendation from William Timmons, the deputy to MacGregor for congressional relations. Timmons recommended that the President summon Wilbur Mills and John Byrnes to the White House at 11 a.m. the following Monday (Nov. 29) along with their counterparts from the Senate, Russell Long and Wallace Bennett. There would be no publicity and no presidential aides present except for Treasury Secretary John Connally. The purpose of the meeting would be to announce to the Democrats in convincing fashion that the tax bill would definitely be vetoed if the campaign checkoff provision should survive.

ANOTHER HUDDLE SET

Over the week end in California, Mr. Nixon decided against such a personal confrontation with Mills and Long, on the grounds that it might be resented. But as Air Force One roared back toward Washington Sunday night, the President summoned Ehrlichman, MacGregor and Timmons—and Attorney General John Mitchell—to a Monday morning meeting at the White House. It would be among the most crucial conferences in four days of intense maneuvering which followed.

Monday

Riding to work in their staff limousines early that morning of Nov. 29, White House aides were dismayed to read two political columns side-by-side on the opposite editorial page of the Washington Post. Rowland Evans and Robert Novak were saying the President might shrink from a veto of the tax bill because of the economic consequences, but seek to nullify the checkoff by administrative action. And Joseph Alsop declared Mr. Nixon was being told that the checkoff could actually help him in 1972—by financing George Wallace and siphoning votes from the Democrats. Evans and Novak and Alsop are established oracles often used by high officials to transmit signals to political Washington. The doubts raised in those Monday morning columns would make it difficult to convince the Democrats that Mr. Nixon's veto threat was real.

At 8:30 a.m. Mr. Nixon met with Mitchell, Ehrichman, MacGregor and Timmons.

Mr. Nixon seemed to have made up his mind to make the big veto gamble but he kept going over and over the consequences, circling the question and coming back again.

At one point he remarked that there really was a serious problem with campaign finance in this country, and observed that other democratic countries had state-owned television networks which supplied free time to bring national candidates before the public.

Perhaps one way to solve the problem without resort to the checkoff, he mused, was to require the American networks to supply time for candidates. (A similar recommendation had been made by a Twentieth Century Fund study several years ago. The study commission, headed by former FCC Chairman Newton Minow, called its proposal "voters' time.")

After 2 hours and 20 minutes of discussion, the President decided he would go all the way. He would definitely veto the tax bill if the checkoff plan should be a part of it in its present form. For maximum effect on Congress, he directed MacGregor to announce the decision right away. Working with chief Presidential writer Ray Price, MacGregor drew up a statement, cleared it with Mr. Nixon and made the announcement in the White House press room.

On Capitol Hill Wilbur Mills was preparing for the first meeting of the Senate-House conference committee that day, and he was becoming concerned about the situation in the House as a whole. Rep. Joe Waggonner of Plain Dealing, La., a conservative Democrat who often works with Republicans on major issues, had begun lobbying Dixie Democrats to oppose the checkoff plan.

Faced with the possibility that Republicans and Southern Democrats might unite to defeat the checkoff plan on the House floor—even if it were approved by the conference committee—Mills telephoned Waggonner and asked him to desist. Waggonner refused. He told Mills the checkoff was a bad idea, and predicted that the House would repudiate Mills if he tried to push it.

Tuesday

On direct instructions of the President, White House operatives had been alerting business and financial leaders to the danger that the tax bill would be delayed or even killed as a result of the confrontation over the checkoff. The business world was asked to mount a campaign to convince Congress to back down on the presidential financing plan and thus avert a veto.

Former Republican National Chairman and Postmaster General Arthur E. Summerfield, now an automobile dealer in Flint, Mich., was a key man in contacts with the automobile industry. A program was underway to have major auto dealers inform recent automobile buyers that the Democrats' political funds plan might kill the $200 per car tax rebate contained in the tax bill.

Tuesday morning, Summerfield was in Washington putting his case to Wilbur Mills and to Rep. Martha Griffiths of Detroit, a Democratic member of the Senate-House conference committee. It is also rumored that the heads of the major automobile companies telephoned Mills direct (he denies this); Mrs. Griffiths was visited by officials of General Motors and Ford.

After his Capitol conferences, Summerfield came to the White House to see MacGregor, and the conversation turned to the idea of mandating the television industry to provide free time for the national candidates.

With MacGregors help, Summerfield drew up a memo headed "A Possible Compromise" (MacGregor changed this to "A Possible Alternative") suggesting that the major presidential candidates be given $8.4 million each in free broadcast time and George Wallace a smaller amount in keeping with his 1968 vote. Summerfield took it immediately to Mills. The Democratic chairman took it out of his pocket just before the meeting of the conference committee that day and astounded his senior GOP colleague, John Brynes, by announcing it was a White House approved plan.

Late Tuesday afternoon MacGregor went to the Capitol to meet House GOP leader Ford, Byrnes and other Republicans on the conference committee. The lawmakers were anxious to find a counter-offer to avert the collision between the President and the Democrats, feeling that Mr. Nixon would be hurt in the process, but they objected that the television industry should not be expected to supply free time. They felt the TV lobby, one of the most powerful in the Nation, would surely stymie such a proposal.

Byrnes suggested that if television time for presidential candidates was a good idea, it should be paid for with public funds. Byrnes had worked with Mills for many years, and he sensed that his Democratic colleague was beginning to back away from the checkoff and search for an alternative.

MacGregor took the Byrnes idea to the oval office. The President indicated he would approve the plan as a last resort alternative to the checkoff.

Larry O'Brien was preparing to leave his office at the Watergate about 8 p.m. when

the telephone rang. It was Mills, and he said the checkoff might be in trouble on the House floor. The congressman then reported that the Republicans were offering an alternative—an authorization of $8.4 million per major party to finance broadcast time in 1972. O'Brien scoffed. At that point he was convinced the $20.4 million checkoff would be approved.

Wednesday

First thing in the morning, Mills met in his office with Andrew Biemiller, the AFL–CIO lobbyist and O'Brien. Nothing was said about the Republican proposal for federal purchase of time. Mills seemed optimistic about the chances of the checkoff plan.

At Mills' request, Biemiller called his 15 top labor lobbyists to a meeting to begin a full head count for House support for the checkoff. Mills earlier had asked House Democratic Whip Thomas O'Neill to begin a separate whip check of members' positions. After the count was well along, Mills passed along the word to call it off; he asserted that Joe Waggonner had lined up 80 Democratic votes against the checkoff, far more than enough to kill it. Then another reversal: Mills asked the whips to begin counting once more.

House Republicans had completed a head count of their own members on the checkoff, and found only two likely defectors. Allowing for absentees and these two losses, the Republicans calculated they could count on 162 votes against the plan in a House floor test. Joe Waggonner, who had been conferring several times per day with GOP leaders, reported he had lined up 35 to 45 Democratic votes (Far fewer than Mills had claimed). The Republican-Southern Democratic coalition would need about 205 votes * * * the total attendance were particularly heavy. Clearly, from the Republican count, the contest would be very, very close.

The Democratic whips found the same thing. By Wednesday night they had counted about 110 sure votes for the checkoff and nearly 30 Democratic defectors.

It was clear that an all-out lobbying effort by Speaker Albert, Chairman Mills, labor and party officials would be needed to win—and even then it would be touch and go.

Mills was still publicly predicting victory for the checkoff in the conference committee, and the White House had reason to believe that he was still not convinced Mr. Nixon would cast a veto of the tax bill. In the White House view, it became urgent to convince him that the President was not bluffing.

Evans and Novak, who had reported Monday that the President might not veto the bill, were fed an inside version of the Monday morning meeting. Press Secretary Ziegler declared for the third day in a row that the President would certainly veto the tax bill should the checkoff survive.

The best way to convince Mills, presidential aides decided, was to send him messages through trusted associates. The White House contacted several Mills intimates of long standing. The message: Mr. Nixon is absolutely serious. He is ready to cast a veto, and blame the Democrats for playing politics with the economy.

Thursday

Sen. John Pastore, the man who led the checkoff forces in the Senate, rose early at his home in suburban Kensington and read The Washington Post as an aide drove him to the Capitol. On page one Senate correspondent Spencer Rich reported the latest White House declaration that the President would cast his veto, and set forth the likely scenario: the Democrats will insist that Mr. Nixon vetoed the tax bill out of a greater concern for his 1972 campaign than for the economy; the White House will respond that the Democrats were the ones playing politics with the economy. Inside the paper, Evans and Novak reported the Monday meeting at the White House, and the conclusion that a veto was coming.

Pastore was very much disturbed. He had led the battle and believed in it but now, he recalled later, "it was a moment of conscience-searching." If Mr. Nixon did get to the tax bill, the Democrats could not override his action. The checkoff would die anyway, and the country would be left with a political controversy instead of a tax bill.

Whoever was right and whoever was wrong about campaign financing, the country would blame both sets of politicians. The citizenry, the business leaders, the auto buyers, the people unemployed and waiting for the economy to revive, would condemn both sides.

The Rhode Island senator went to Senate Democratic Leader Mike Mansfield and expressed his misgivings. With Mansfield sitting by, he telephoned Wilbur Mills. The House leader was in his office preparing for the showdown meeting of the Senate-House conference committee.

"How does it look?" asked Pastore. Mills replied that certain changes would have to be made in the plan, evidently referring to a court test and appropriations requirements he had been prepared to add.

TOUCH AND GO OUTLOOK

"What are the chances in the House?" the senator asked. Mills said House floor approval of the plan was doubtful. It would be touch and go. He was not certain he could hold it.

"Do you think the President is serious about a veto?" asked Pastore. Mills was now convinced he was.

Pastore expressed his misgivings about what would happen, and quickly established that Mills had strong misgivings, too. Pastore and Mills discussed action to preserve the principle of the checkoff but to delay its application until after the 1972 election.

It appeared likely that the Republicans would agree to this and thus avert a veto and the resulting head-on collision. Pastore told Mills that if postponing the checkoff until 1973 was necessary to preserve the concept, the House leader would not have his criticism but his support. Mills seemed very relieved.

Mansfield and Pastore quickly convened a meeting of Senate Democratic elders, and Pastore reported that Mills did not have the votes to sustain the plan in the House. The senators agreed, with hardly a murmur, to approve the postponement until 1973.

Mills said later, in explanation of his change in plans, that "I didn't have the votes" to pass the checkoff as originally conceived. This is a matter of judgment which nobody can prove or disprove. Neither the labor head count nor the Democratic whip check in the House was ever completed. Asked why he didn't fight it out even if he lacked the votes to win, Mills replied, "I don't do that." Part of his power stems from his reputation for rarely losing a major test on the floor of the House.

Larry O'Brien, who had not been consulted up to this point, learned through an aide that the conference committee was about to abandon the checkoff so far as the 1972 campaign was concerned. Alarmed and dismayed, he and his aides began a series of 11th-hour calls. Hubert Humphrey and Edmund Muskie were asked to contact Mills to stiffen his resolve. Labor was asked to have George Meany call Mills. But it was too late. The Senate-House committee was in session. With Senate Democratic approval—and to the astonishment of the Republicans—Mills amended the checkoff plan to take effect beginning 1973.

Clark MacGregor was having lunch in his office when Under Secretary of the Treasury Charles Walker called to report the surprise action of the conference committee. Walker had to know within five minutes whether the President would accept the modified checkoff, effective 1973.

Mr. Nixon was dictating to his secretary, Rose Mary Woods, in the Oval Office, when MacGregor walked in with the news. The President expressed surprise and asked what happened to the television financing plan; MacGregor replied the Democrats had turned it down.

MacGregor said the $1 tax return checkoff was still in the bill but—as in the 1966 battle—it was doubtful that it would ever take effect.

DECIDES TO SIGN

"They've killed the monster," he said. The President quickly interjected, "And they ought to have the decency to bury it." Nonetheless, Mr. Nixon said he would sign the bill with the postponed checkoff, though he would object to the provision in his signing statement and seek to block its future implementation. (Mr. Nixon signed the tax bill last Friday, Dec. 10, with a blast at the checkoff provision).

Declining the company of friends and aides, O'Brien went home alone that night and sat for a long time alone in his apartment. He thought of the appalling prospect of his debt-ridden party facing President Nixon's heavily-financed campaign in 1972, and of the system under which vast sums of money are an essential element in the election of a President.

O'Brien was dumbfounded by the sudden turnaround and dismayed that a public financing plan had come so far over so many months, only to be jettisoned in the end.

Pastore, on the other hand, was not depressed but proud that Congress had again approved the principle of the checkoff. Despite the vast public importance and supposed public interest in the issue, he had received only seven letters about it during the 17 days of the battle. One of them, an anonymous note approving the plan, contained a $1 bill to start the presidential election fund.

Pastore didn't know what to do with the dollar, since there was no return address. Finally he decided he would send it to John Connally to be held in the treasury for the presidential campaign financing plan if it ever should become effective. It was a small thing, and he hoped Connally wouldn't think he was being facetious—$1 to start a $20.4 million per party campaign fund to elect a President who superintends a $100-billion federal budget and a $1-trillion American economy.

[From the New York Times, Nov. 21, 1971]

THE CHECKOFF SCHEME

(By Tom Wicker)

Clever, those Democrats in the Senate. Tying their campaign subsidy plan to President Nixon's tax reduction bill makes it about as veto-proof as anything can be. Unfortunately, the subsidy plan itself is not much better than it was five years ago, when another Democratic Senate rejected it.

It is true enough that the Democrats, although they are the majority party, are out of pocket—in debt from 1968, facing a series of expensive primary campaigns before they can even get at Mr. Nixon, and wary in the knowledge that even now the Republicans are putting together their usual fat campaign bankroll.

It may also be true—although not proven—that the costs of American political campaigns are so high, and will get so much higher, that some form of Federal subsidy has to be devised to relieve parties and candidates of overreliance on big contributors. The Democrats' $1 checkoff plan nevertheless is a dubious solution either to the party's immediate poverty or to the long-range

problem. The plan appears to be no better considered and as full of loopholes and questions in its resurrected state as it was when Russell Long of Louisiana first dashed it off, more or less on the back of an envelope in 1966.

Aside from weightier considerations, the plan might not even solve the Democrats' most immediate problem, which is the forthcoming series of primaries. It may be argued that a $20.4-million Federal subsidy for the general election campaign would free Democratic money for the primaries; but it is not necessarily true that those who would give to a convention nominee will support primary candidates instead, and the psychological effect of the subsidy might be to dry up rather than to stimulate specific kinds of contributions.

The checkoff plan is thick with constitutional question marks. What does it do to the First Amendment rights of a citizen who wants to express his or her Presidential views in more substantial ways than diverting $1 of income tax? Depending on exactly how the money in the over-all campaign fund is divided among the parties, there might also be a question whether some citizens were being made to contribute involuntarily to a party or candidate they did not support. And if private money spent for a Presidential nominee without his consent is to be charged against his Federal subsidy, the result will be either sharp and probably unenforceable limits on those who want to engage in independent political activity, or—more likely—chaos.

The checkoff would work great change in the party system. Obviously, with its greater benefits to the major parties, it would tend to perpetuate them as major parties; minor parties would be put at severe and unwarranted disadvantage. Where is it written and on what tablets of stone that Democrats and Republicans are ordained from on high and endowed with special privilege?

The parties themselves might be altered irretrievably. If every Presidential nominee is to be handed, the day after his nomination, a fat Federal check to finance his campaign, the party's national committee and various state affiliates will be downgraded and deprived of their major function. Party control will be centralized in the candidate who will have the cash; the net effect of that on party policies on state and local political activity, on citizen political participation is not entirely foreseeable but appears ominous.

Besides, although there is a real and present danger of a pernicious influence on politics from some big givers, it is nevertheless true that some other big givers have a beneficial effect on politics. Won't total Federal financing of a Presidential candidate tend to make him less not more, responsive to the public will and to the play of interests and political forces in society? Do we really want to make Presidents and the men who compete for the office even more powerful and independent than they are now?

It is true that the plan—insofar as it is settled—gives candidates the option of rejecting the subsidy and financing their campaigns in the old way. That choice may be more theoretical than real; a candidate who had rejected a $20-million Federal handout might appear noble, but would surely have a hard time explaining why he needed private contributions to say for his nobility.

In a thoughtful article in the fall 1971, issue of The Public Interest, Vic Fingerhut makes another applicable point. Private contributions to political parties, particularly those made by individuals, he argues, are one of the most effective means of citizen competition with the vast power of large interests to make their cases, either by advertising or by politically influence. If the citizen can no longer help pay for Presidential campaigns directly, by that much he loses some of his ability to influence public policy.

As Mr Fingerhut put it, "No similar restrictions will be placed, for example, on major oil companies, which will remain free to saturate television with commercials persuading the public of the necessity for a pipeline development project."

POLITICAL POKER WITH A $1 BILL—CHECKOFF BATTLE FOUGHT FOR HIGHEST STAKES

(By Don Oberdorfer)

It was after 8 p.m. on Nov. 15 and the end of a long and busy day in the U.S. Senate. Eleven votes had been taken that day on amendments to President Nixon's highest priority legislation—the tax cut bill—and the chamber was deserted except for a handful of senators, some clerks and two or three newsmen preparing to go home.

Democratic whip (or assistant floor leader), Robert Byrd of West Virginia, standing near the front of the chamber and holding a sheaf of papers in his hand, called for unanimous consent to limit Senate debate in the days ahead on five additional tax amendments. The last of the five was dscribed only as "an amendment which may be identified as the tax deduction for political contributions amendment, to be offered by Mr. (Alan) Cranston (of California) for himself and others, or by others."

Sen. Robert Griffin, Byrd's counterpart on the other side of the aisle, was charged with protecting the interests of Republicans after the rest had gone home or off to dinner. Griffin had heard nothing of such a "political contributions amendment," but some instinct told him to be cautious. Before agreeing to the debate limitation of six hours on the Cranston plan, he made certain that any change in it which might be proposed would be entitled to an additional hour of consideration—thus giving Republicans time to stall should the need arise.

This brief transaction seemed utterly routine but it was not. In fact, the "Cranston" amendment turned out to be the $1 tax checkoff plan to allot up to $20.4 million in public funds to each major party's presidential candidate, a drive conceived in lengthy private conferences over many months by the Democratic leaders of Congress.

The Byrd-Griffin agreement on limiting debate was the curtain raiser on 17 days of intense maneuvering involving the most powerful politicians in both parties, pitting President Nixon and his supporters against the Democrats who would supplant him in the White House, pitting titans of labor against titans of industry.

This "poker" game was played for the very highest stakes: The 1972 presidential election, the fate of the nation's economy, the future of the financial underpinnings of the American political system. Before the battle ended—in defeat for the Democrats—President Nixon had mobilized members of his Cabinet as lobbyists for his cause, agents of Attorney General John N. Mitchell and Democratic Party Chairman Lawrence F. O'Brien had moved into competing offices in the Capitol, and the Republicans offered, in vain, to finance $19 million worth of political broadcast time with general funds of the U.S. Treasury in 1972.

Bits and pieces of this drama have come to light piece meal, and some others are still disputed or obscure. But most of the story can now be obtained from the inflighters and outriders in the opposing camps. Seen in the round—from both sides of the battle lines—the history of maneuver and countermove in the tax checkoff battle is an extraordinary case study in big time politics, circa 1971.

It is also a damning chapter in the continuing inability of the American political system to deal effectively with its Achilles' heel—the insistent need for ever-larger sums of money to finance campaigns for high office.

Back in 1966, Sen. Russell Long (D-La.) conceived and put through Congress a plan to finance presidential campaigns by a tax checkoff plan. Each taxpayer would be able to say on his annual return whether he wished $1 of his tax to go for this purpose. In election years, the Long plan would have provided $30 million or more to the Presidential war chests of the major parties, thus freeing the candidates from the rigors of fund raising.

The Long plan was signed into law by President Johnson, but before it could take effect its implementation was blocked by another act of Congress. The anti-checkoff drive led by Sen. Robert Kennedy (D-N.Y.), who feared that public financing would give too much power to the incumbent President.

In the spring of 1971, Sen. Long had a visit from Andrew Biemiller, chief Capitol lobbyist of the AFL-CIO, who suggested that the checkoff proposal be resurrected. With the Democratic Party still $9 million in debt from 1968 and facing a well-heeled Republican President in 1972, the urgency of some new financing mechanism was clear.

Long's first step was to confer with Sen. Edward M. Kennedy, the last of the famous brothers, and to obtain his approval on a revised version of the checkoff.

Next, Long took his proposal to Senate and House Democratic leaders, who agreed to add it to a comprehensive package of campaign reforms pending on Capitol Hill. One of those who was party to this agreement, in a June 29 meeting in Speaker Carl Albert's office, was Chairman Wilbur Mills of the tax-writing House Ways and Means Committee.

In a July 19 meeting, senior Democrats agreed to separate the controversial checkoff plan from the other reform proposals (many of which had bipartisan support). Wilbur Mills suggested that checkoff be passed later as an amendment to the Nixon welfare reform bill "or a similarly significant measure" which the President would find it hard to veto.

Meanwhile, Democratic National Chairman O'Brien convened a dinner meeting July 14 with his party's leading presidential contenders and Congressional leaders. Late in the meeting, O'Brien suggested the checkoff as the solution to the growing problem of presidential campaign finance and specifically, the extreme financial disadvantage facing the Democrats in 1972.

His checkoff suggestion was immediately endorsed by Senate Democratic Leader Mike Mansfield and Speaker Albert, and all the Democratic Presidential contenders present agreed Mills, who was present for part of the meeting, had left by this point.

After President Nixon proposed a tax cut to spur the economy as part of his Aug. 15 New Economic Program, Democrats selected the Nixon tax bill as the vehicle for the checkoff amendment to be added in the Senate. Only a handful of leaders, including Mansfield, Albert, Mills, and Long were privy to this strategy.

But after Russell Long spoke enthusiastically about it at a luncheon meeting of Senate Democrats on Nov. 10, the word was out. Three days later, news of the checkoff strategy broke into print on page one of both The Washington Post and The New York Times.

Throughout this gestation period of nearly six months the Senate Republican leaders and the political chiefs in the White House were unaware of the coming birth of the checkoff plan. Even the disclosures in the newspapers of November 13 somehow failed to awaken the GOP.

Late on Monday, Nov. 15, Griffin agreed to the debate limitation on the unseen and unexplained political amendment—without realizing it was the Democratic checkoff plan.

Late the next day, Tuesday, an aide of Senate GOP leader Hugh Scott of Pennsylva-

nia telephoned chief presidential lobbyist Clark MacGregor at the White House to spread the news that the Democrats were trying to resurrect the checkoff, and that this was serious.

Just before the amendment was ready to be unveiled, Russell Long decided he would not sponsor the checkoff; he explained it seemed improper to spring such a surprise as chairman of the Senate Finance Committee. At a meeting Nov. 16 in Mansfield's office, the strategists chose John Pastore of Rhode Island as chief sponsor and floor leader of the amendment.

Pastore is an earthly five-foot-four Italian-American, a scrappy debater and a strong leader. With the help of Herman Talmadge of Georgia to work with the Southern wing of the party, Pastore plunged into the drive to pass the campaign financing amendment.

On Nov. 18 the Democrats won a first test vote, 49 to 46, with no Republican help. Only two Democrats—Sam Ervin and John McClellan—voted against the proposal. Harry Byrd, the Virginia independent, also joined the GOP ranks.

Senate GOP Leader Hugh Scott from the beginning was determined that the Republican Party should fight back with every weapon at its command. Scott is a former national chairman of his party, and a canny politician. The first and most obvious weapon was the threat of a presidential veto of the tax bill, and he asked the White House for authority to make strong suggestions of a possible veto ahead.

At 1600 Pennsylvania Avenue, MacGregor briefed Mr. Nixon for the first time on the problem posed by the checkoff. The President did not seem familiar with the situation or with the substance of the proposal, but he was quick to grasp its significance.

MacGregor suggested a statement to be given to Hugh Schott for his deputy, Bob Griffin, for their use on Capitol Hill. Mr. Nixon asked if Attorney General Mitchell, his political manager had been informed; he had not, but MacGregor agreed to do so.

As composed by MacGregor and cleared by Mitchell, the paper for the senators said: "Sen. Scott and Sen. Griffin have conferred with the President. The President expressed grave concern with the Pastore amendment (the checkoff plan); he feels that it is an irresponsible piece of legislation and if it remains in the bill, the President will necessarily have to consider the prospects of a veto."

On Capitol Hill, Scott took the veto talk to the Senate Press Gallery and the Senate Radio-TV Gallery. Since a chief executive cannot veto a particular item on a bill without rejecting the entire measure, there were grave doubts in the press galleries that the veto threat was anything more than psychological warfare.

It did not seem likely that Mr. Nixon would reject the tax cut bill which he had urgently requested to spur the economy. His re-election chances in 1972 appeared to hang at least as much on the condition of the economy as on his campaign financial advantage over the debt-ridden Democrats.

During the day on Thursday, Scott began stalling for time to concoct a counter-strategy against the Democrats and to bring public opinion to bear against the checkoff. The Senate GOP leader recommended that the White House alert corporate leaders to the peril to the tax cut bill, which included large benefits for business and industry.

The automobile industry, particularly, had a great deal at stake because the tax bill contained the repeal of the 7 per cent auto excise tax. Nearly 3,000,000 new cars had been sold since the new tax plan was announced Aug. 15 and the purchasers expected to receive a tax rebate—averaging $200 per car—when the tax bill passed.

Scott suggested that these citizens should be alerted that the Democratic "treasury grab" (as he called it) and the resulting veto would endanger the auto tax rebates. Scott had visions of Democrats in Congress besieged by protests from angry car buyers.

Scott's device for stalling the final checkoff vote was seemingly endless stories of major and minor amendments to the plan, each of which was entitled to one hour's debate under the agreement reached the first night by Byrd and Griffin. Aides to several Republican senators moved into a corner of Scott's Capitol office down the hall from the Senate chamber. There William Nichols, a Justice Department lawyer dispatched by Mitchell, helped them to draw up amendment after amendment to consume time.

One floor below, another outsider was a coordinator of the forces in the proposed checkoff camp. William B. Welsh, a senior aide to Democratic National Chairman O'Brien, was in and out of the Capitol offices of the Senate Democratic Policy Committee, coordinating the activities of party operatives, labor lobbyists and senatorial aides.

He was also the link to O'Brien's headquarters in the Watergate Office Building.

On Friday morning (Nov. 19) President Nixon was in Key Biscayne, Fla., preparing to address a hostile AFL-CIO convention at Miami Beach. Most of the senior men on the White House staff, however, remained in Washington and they met as usual in the early morning to discuss the problems of the moment.

That morning, one of the major topics was the Democratic drive for public financing of presidential campaigns, and someone suggested a White House briefing for the press to get the GOP view into the Sunday papers.

Later in the day Mr. Nixon's chief of staff, H. R. Haldeman, telephoned lobbyist Clark MacGregor with the assignment. Newsmen were summoned to a late afternoon press conference with MacGregor in the office of Herbert G. Klein, Mr. Nixon's director of communications.

Reading from hastily-composed notes, MacGregor gave the GOP reasons for opposing the tax checkoff. He also repeated the language which Scott and Griffin had been using for several days—the checkoff plan is "irresponsible" and if it remained in the tax bill, the President "would necessarily have to consider the prospects of a veto."

Reporters were told that the Friday afternoon MacGregor press conference could not be used until Sunday morning (to keep the story out of the relatively thin but newsy Saturday papers and angle for better news play in the thick and relatively newsless Sunday papers). Newsmen abided by this rule without argument. Despite the fact that the MacGregor statement was an exact replay of the Capitol Hill language, many newspapers made the "veto threat" a big story on Sunday morning.

Shortly after the first test vote on Thursday, Democratic Senators John Stennis and James Eastland of Mississippi let Democratic leaders know they would have to vote against final passage of the checkoff plan (though they could and often did help sustain their party's position in preliminary votes).

With the loss of Stennis and Eastland added to that of Ervin and McClellan, John Pastore had exactly 50 Democrats remaining. There were 49 votes on the other side of the issue. (The remaining vote in the 100-member Senate was that of Republican Karl Mundt, who has had a stroke and does not participate.) Thus the head count was 50 to 49; one more Democratic defection or a single Democratic absentee would kill the checkoff.

Pastore was most concerned about the possible defection of Allen Ellender of Louisiana, an unpredictable individualist, and Everett Jordan of North Carolina, whose colleague Ervin was strongly against the plan. He nervously kept a close watch on both men.

Pastore's other worry was that some of his stalwarts might be absent while the GOP produced all of theirs. The Democratic presidential contenders—Henry Jackson, Hubert Humphrey, George McGovern and Edmund Muskie—all had extensive out-of-town speaking schedules, and all were persuaded to cancel important engagements Friday and Saturday to be available to vote.

Birch Bayh, a presidential contender until recently, insisted on going to Indiana to the funeral of Mike Sperling, one of his important political sponsors. Larry O'Brien thought Bayh's vote might be so important that he authorized use of hard-pressed Democratic Party funds to charter an airplane to speed the senator. (According to Bayh's office, the charter plane was not used.)

The President suddenly cut short his weekend in Florida on Friday afternoon and flew back to Washington under mysterious circumstances, ostensibly to attend a performance of Cambodian dancers at the John F. Kennedy Center. Political reporters, bemused by this sudden presidential affection for the arts, suspected there was another reason. At 12:15 p.m. Saturday, as he was boarding a helicopter to Camp David, Md., Mr. Nixon received a detailed written report on the checkoff crisis written by William Timmons, deputy chief of the White House lobbying team.

The Timmons report stated that Stennis and Eastland would vote with the administration on final passage of the checkoff, but that the Democrats would still win it, 50 to 49. Only one vote was needed, and some possible targets were listed: Virginia Democrat William Spong, who had missed Thursday's key vote and who voted against the checkoff plan in 1967; Everett Jordan of North Carolina; several Democratic freshmen with no previous record on the checkoff issue.

Timmons suggested a presidential statement to make clear that he was absolutely serious about a veto of the tax bill, and a draft of such a statement was appended for the President's inspection. He also recommended that White House aide Charles Colson immediately arrange for outside interest groups to be altered to the veto threat.

Mr. Nixon read the Timmons report at Camp David and telephoned MacGregor at the White House. The President would not issue a statement at the moment, but he authorized an "all-out effort" by MacGregor to secure the single Democratic defector needed to win.

With Mr. Nixon's approval, MacGregor began calling members of the Cabinet to use their influence with Democrats with whom they have close relationships. It was the first time since MacGregor joined the White house this January that he had mobilized Cabinet members for a lobby effort unrelated to their departments.

Transportation Secretary John Volpe telephoned William Spong, who has shown particular interest in transportation (so much so that Virginia Republicans complain Spong gets politically-attractive announcements first). Secretary of Housing and Urban Development George Romney called John Sparkman of Alabama, chairman of the committee that works with Romney on the Hill.

Treasury Secretary John Connally, while still nominally a Democrat, was assigned to woo his fellow Texan, Lloyd Bentsen, away from the Democratic fold. Attorney General Mitchell called Judiciary Committee Chairman James Eastland, who was already on the team for the final vote.

Defense Secretary Melvin Laird—who was reached on a parade field in California where he was reviewing troops—was assigned to shore up the resolve of Armed Service Committee Chairman John Stennis. The answers were quick in coming; no net gain for the Republican Party.

Early in the proceedings, GOP Sen. Charles McC. Mathias of Maryland had offered Pastore a deal authorized by high-level Republican sources: Postponement of the im-

plementation of the checkoff until after the 1972 election, plus a "free choice" amendment permitting a taxpayer to specify the political party which was to receive his dollar. If these changes were accepted, Mathias said, a substantial number of Senate Republicans would vote to approve the checkoff.

At this stage, Pastore had no thought of postponing the checkoff until 1973, and he flatly rejected the proposal.

Jittery about the one-vote margin for their cause, Pastore decided a little later to seek Mathias' defection to the Democratic ranks by accepting a small part of his package.

The acceptable portion was Mathias' free choice idea. When Mathias returned to this subject in debate, Pastore grabbed the ball and offered to work out an accommodation. Meetings were held and Mathias—convinced that the Democrats would win anyway—agreed to vote for the check-off if his free choice amendment were adopted.

Word of the Mathias arrangement caused alarm at the White House and among GOP Senate leaders, who were still seeking Democratic defections. At White House urging, Mathias withheld his free choice amendment while the effort to woo the Democrats continued. As the final vote approached on Monday (Nov. 22) the White House reluctantly informed Mathias that it still lacked enough strength to win.

After this assurance, the Maryland senator offered his amendment and, after its approval, voted for the checkoff plan on final passage. To the Democrats' surprise, New Jersey's Clifford Case, a Republican, shifted sides along with Mathias.

The final Senate vote on the political finance provisions—including the check-off and tax credits and deductions for small contributions—was 52 in favor and 47 against.

Immediately after the vote, Clark MacGregor telephoned the President to give him the bad news. Mr. Nixon was unhappy but philosophical about it; he has become accustomed to difficulties with Congress.

The two men agreed that the focus of attention now would be the Senate-House conference committee, headed by Wilbur Mills, which would either accept or reject the checkoff amendment as a part of the tax reduction bill. MacGregor said he would go to work on it right away.

[From the Pueblo Chieftain, Nov. 30, 1971]

CAMPAIGN AID BILL BLUNDER

(By Injun Woody)

If the American people stand for this latest raid on the U.S. treasury, the bill to siphon off millions for the benefit of politicians to finance their job-hunting, then we are finished for sure.

This is the most flagrant violation of constitutional law ever nightmared by that spend-thrift congress now in power.

O, sure; they maintain it is the taxpayer's choice, where his tax dollars go—to the demos or repubs. But suppose, the taxpayer doesn't want to support the deadbeats at all. How long do you think it will take them to rearrange the tax form and simply take "one dollar" from the amount paid in. It wouldn't take any longer than it did to pass the "campaign spending" bill.

If anyone can point out to me why I should finance those barons in Foggy Bottom to hunt for work, I'll stand on my head. If you are looking for a job do you expect the American people to finance your trips round and about whilst you make application?

This is about the dirtest move we have seen in politics in a long time, and in all truthfulness it is the democrats, who never have been able to manage money anyhow, who want to collect the moola from the little feller for perpetration of further boondoogles . . .

Regardless of whether this rider will scrap the president's economic bill, if he doesn't veto it, we will be in far worse shape than if he lets it ride and reduces our taxes a little.

This would be a mere hole in the dike of disaster . . .

By Mr. PACKWOOD (for himself and Mr. JAVITS) (by request):

S.J. Res. 187. A joint resolution to provide a procedure for settlement of the dispute on the Pacific coast and Hawaii among certain shippers and associated employers and certain employees. Referred to the Committee on Labor and Public Welfare.

THE WEST COAST LABOR DISPUTE

Mr. PACKWOOD. Mr. President, I am today introducing for myself and for Senator JAVITS, by request, a joint resolution designed to meet the west coast longshore crisis head-on.

As a former labor lawyer, there is nothing more deplorable, in my mind, than governmental intervention in free collective bargaining. I remain firmly convinced that all parties to a labor dispute should have full freedom to determine the provisions of their contracts, and should retain the right to call a strike or lockout. Only in extreme cases should intervention be permitted by either the Executive or by Congress. Similarly, only in extreme cases should the basic right to strike or lockout be superceded.

But Mr. President, when the failure of free collective bargaining results in the national emergency we are now experiencing, consideration must be given to remedial procedures to meet the emergency and protect the public health and welfare.

In the current longshore dispute, efforts to resolve differences between the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association have been underway since October 1970. As is clearly apparent, these efforts have proved unsuccessful. The union members have suffered as a result and shipping companies have suffered. But most importantly, innocent third parties have suffered untold damage as a result of a dispute in which they play no part. Many of the innocent parties are in Oregon. Many more are in the west coast States and Hawaii. Millions more are in other Western States and the Midwest.

It should be emphasized that efforts to resolve this dispute have been underway since October 1970. That is 15 months. Many of the 15 months passed without the parties even speaking to one another. Many passed with scant or no progress. Even the 80-day cooling-off period which was finally invoked in October 1971, failed of its mark. During most of the 80 days, there were not even any negotiations. The President, having used his one available option, the Taft-Hartley 80-day cooling-off period, now has no alternative legal course of action at his disposal to protect from this new crippling tieup, which began again on January 17. He is forced once again to come to Congress—the most inappropriate arbitrator I know—to request ad hoc emergency legislation.

Had this body acted on legislation to provide the President with new options in dealing with emergency disputes in the transportation industry, Congress would not today be faced with this dilemma. But the fact is that we have not passed permanent legislation, the President's hands are tied, and the buck stops in Congress.

I have tried to envision all the alternative courses we in Congress might take to meet the current crisis. With great reluctance, I must conclude that the only meaningful and lasting action we can take, under the current circumstances, is to authorize the Secretary of Labor to empanel a three-man Arbitration Board to arbitrate the west coast dispute to finality. Under the terms of the resolution I am introducing, strikes and lockouts are prohibited until the Arbitration Board issues its decision, which will be final and binding.

Mr. President, most of us in the West had hoped that the parties to this dispute would have long ago recognized their responsibility to the public, as well as to their own interest. We had hoped that free collective bargaining would lead the parties to a mutually satisfactory and equitable contract without the need for any sort of governmental interference. We had hoped that this dispute would have been settled during the 80-day cooling off period which expired on December 25. Most importantly, we had hoped that today's action would not be necessary.

But I regret to say that the request I am making of my colleagues today is necessary. It is vitally necessary, if we are to avoid a recurrence of the devastating choas which consumed the west coast for 100 long days last year.

Mr. President, because of my background in labor law, I probably abhor the thought of strike prohibitions and compulsory arbitration more than most any of my colleagues. But Mr. President, I see no other alternatives. The stark reality of a transportation emergency is here, and I hope and trust that this body will see its responsibility to the public and meet the emergency with the firm action I have proposed.

I ask unanimous consent that the joint resolution be printed at this point in the RECORD, along with the text of the President's message to Congress and a section-by-section analysis of the resolution.

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

S.J. RES. 187

Joint resolution to provide a procedure for settlement of the dispute on the Pacific Coast and Hawaii among certain shippers and associated employers and certain employees

Whereas there is a dispute between employers (or associations by which such employers are represented in collective bargaining conferences) who are (1) steamship companies operating ships or employed as agents for ships engaged in service from or to Pacific Coast or Hawaiian ports of the United States, (2) contracting stevedores, (3) contracting marine carpenters, (4) lighterage operators, or (5) other employers engaged in related or associated pier activities for ships engaged in service from or to Pacific Coast or Hawaiian ports of the United States, hereafter called "employers") and certain of the employees

of such employers represented by the International Longshoremen's and Warehousemen's Union (hereafter called Longshoremen's Union); and

Whereas the order enjoining a strike in this dispute granted by the United States District Court, Northern District of California in *United States* v. *International Longshoremen's and Warehousemen's Union et al.*, Docket No. C–17–1935–WTS, October 6, 1971, expired on December 25, 1971, pursuant to the Labor-Management Relations Act of 1947 as amended (29 U.S.C. 176–178); and

Whereas all procedures for resolving such dispute provided for in the Labor-Management Relations Act, 1947, have been exhausted and have not resulted in settlement of the dispute; and

Whereas a settlement has not been reached despite intensive mediation efforts; and

Whereas there is a dispute, involving members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter called the Teamsters Union) employed by some of the above employers and by other employers engaged in activities related to the maritime, stevedoring and pier work described above, concerning the assignment and performance of such work; and

Whereas a dispute in Hawaii, involving certain employers engaged in activities related to maritime, stevedoring and pier work described above and certain of their employees represented by the Longshoremen's Union and the Teamsters Union, threatens to disrupt essential transportation services for that State and to endanger the health and safety of its citizens; and

Whereas these disputes are closely related to and a portion of the dispute on the Pacific Coast; and

Whereas it is vital to the national interest, including the national health and safety, that essential transportation services be maintained; and

Whereas the Congress finds that emergency measures are essential to continuity of essential transportation services affected by this dispute;

Therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That an Arbitration Board shall be established herein to hear and settle all issues in this dispute, and to issue a determination which shall be deemed a final and binding resolution, understanding and agreement among the parties and shall also be deemed to supersede to the extent inconsistent therewith all other agreements or understandings in which these parties are involved; provided that the Secretary of Labor may terminate the procedures of this Resolution before issuance of a determination by the Arbitration Board if he finds that all the labor organizations and employers involved in the dispute have reached complete agreement on all the issues. The determination of the Arbitration Board shall be effective for the period stated therein, which may not be less than 18 nor more than 24 months. During such period, there shall be no resort to strike or lockout and the parties thereto shall be bound by the terms of the determination notwithstanding any agreements they may conclude among themselves.

From the date of enactment until the Arbitration Board makes its determination, there shall be no resort to strike or lockout, and no change, except by agreement of the parties, in the terms and conditions of employment as prescribed in the court order in *United States* v. *International Longshoremen's and Warehousemen's Union et al.*, Docket No. C–17–1935–WTS, October 6, 1971, the agreement between the Longshoremen's Union and certain employers in Hawaii, which expired June 30, 1971, under which they have been operating from that time, and the collective bargaining agreements, interpretations, rulings and practices governing assignment and performance of work involved in this dispute by members of the Longshoremen's Union and the Teamsters Union.

For the purposes of this resolution, the term "parties" shall mean the parties who were under the jurisdiction of the court in United States versus International Longshoremen's and Warehousemen's Union, et al., Docket No. C–17–1935–WTS, October 6, 1971, in the Pacific coast portion of this dispute who have not settled prior to the enactment of this resolution, and the parties in section 6 of this resolution. In addition, any employer or employees involved in this dispute who are represented by Teamster Union locals listed in section 6, not otherwise made a party, may elect to place itself voluntarily under the jurisdiction of the Arbitration Board created by section 2 of this resolution as a party by giving notice of such election by certified mail within seven days of the enactment of this resolution to the Board in care of the Secretary of Labor, Washington, D.C. 20210, and to the Teamsters Union Local involved at its local address and to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America at 25 Louisiana Avenue, N.W., Washington, D.C., 20001.

SEC. 2. (a) There is established an Arbitration Board (hereafter called the "Board") consisting of three members, to be appointed by the Secretary of Labor within five days of enactment of this resolution. The members shall then elect a chairman.

(b) The Board shall make all necessary rules for conducting its hearings and giving the parties to the controversy a full and fair hearing, which shall include an opportunity to present their case in person, by counsel or by other representative as they may select.

(c) For the purpose of hearings conducted by the Board, it shall have authority conferred by the provisions of sections 9 and 10 (relating to the attendance and examination of witnesses and the production of books, papers and documents) of the Federal Trade Commission Act of September 26, 1914, as amended (15 U.S.C. 49, 50).

(d) The Board shall begin its hearings no more than fifteen days after enactment. The Board shall make its determination no later than forty days after enactment.

(e) In its determination the Board shall resolve all the issues in the dispute.

(f) The Board's determination shall be retroactive to the date of enactment of this resolution. The Board may make such further provisions for retroactivity to a date prior to the enactment of this resolution, if any, as it finds appropriate and consistent with the terms of this resolution.

(g) The Board shall make its determination consistent with the policy of the Economic Stabilization Act of 1971, and such determination shall be final and binding in every respect, subject only to review as provided in section 2(h).

(h) Any party, as defined in section 1, aggrieved by a determination of the Board may, within fifteen days after its issuance, obtain review of the determination in the United States Court of Appeals for the District of Columbia. The decision of the court of appeals may be reviewed in the Supreme Court by writ of certiorari or upon certification as provided for in section 1254 (1) and (3), title 28, United States Code. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the determination of the Board. A determination of the Board shall be conclusive unless found to be arbitrary or capricious.

(i) Members of the Board shall receive compensation at a rate of per diem equivalent to the rate for a GS–18 when engaged in the work of the Board as prescribed by this section, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703), for persons in the Government service employed intermittently and receiving compensation on a per diem when actually employed basis.

For the purposes of carrying out its functions under this Act, the Board is authorized to employ experts and consultants or organizations thereof as authorized by section 3109 of Title 5, United States Code, and allow them while away from their home or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by 5 U.S.C. 5703, for persons in the Government service employed intermittently, while so employed. The Board is also authorized to employ such support services as are necessary for its operation.

SEC. 3. (a) The Secretary of Labor shall appoint a Special Referee within three days of enactment of this Resolution who shall have the responsibility provided herein and shall receive the same compensation as a member of the Board.

(b) Notwithstanding any other law, the Special Referee shall have exclusive jurisdiction over any disagreement occurring after the enactment of this Resolution but before the arbitration determination has gone into effect which involves collective bargaining agreements, interpretations, rulings, and practices governing assignment and performance of work between the Longshoremen's Union and the Teamsters Union, and which may lead to violation of this Resolution. The Special Referee may also during this period consider other disagreements which may lead to violation of this Resolution if he finds it would effectuate the purposes of the Resolution to do so rather than to defer to other procedures, and if he does so he shall assume exclusive jurisdiction over such disagreements. The Special Referee shall have the same authority provided in section 2(c) relating to attendance and examination of witnesses and the production of books, papers and documents. The Special Referee is authorized to issue orders to obtain compliance by the parties with the requirements of this Resolution. The Attorney General shall have power to petition the District Court of the United States wherein the violation or threatened violation occurs or having jurisdiction of the parties for enforcement of such orders and for appropriate relief or restraining orders.

The findings of the Special Referee, unless found to be arbitrary or capricious, shall be conclusive. The jurisdiction of the United States District Court, and its judgment and decree as to matters within its jurisdiction under this section shall be final and not subject to review.

SEC. 4. (a) The Attorney General of the United States shall be authorized to maintain any civil action necessary to obtain compliance with any provision of this Resolution.

(b) Any strike, lockout or other concerted activity in violation of this Resolution shall be subject to a penalty not to exceed $100,000. Each calendar day in which such a violation occurs shall be considered a separate violation.

SEC. 5. There is authorized to be appropriated such sums as may be necessary for the implementation of this Resolution.

SEC. 6. (a) The following employers and labor organizations are parties to the dispute in addition to those parties described in section 1.

Castel & Cooke Terminals, Ltd., 965 North Nimitz Highway, Honolulu, Hawaii 96817.

Hilo Transportation & Terminal Co., Post Office Box 455, Hilo, Hawaii 96720.

Theo. H. Davies & Company, 800 Fort, Honolulu, Hawaii 96813.

Honolulu Terminals Co., Ltd., Pier 19, Honolulu, Hawaii 96817.

Kawaihae Terminals, Post Office Box 818, Hamuela, Hawaii 96743.

Kauai Sugar Storage Corporation, Post Office Box 1743, Lihue, Hawaii 96766.

Matson Terminals, Inc., 521 Ala Moana Boulevard, Honolulu, Hawaii 96803

McCabe, Hamilton & Renny, Co., Ltd., 224 Mokauea, Honolulu, Hawaii; Lihue, Hawaii, Kahului, Hawaii 96819

Oahu Transport Company (Hwy. & Terminal Warehousing Co., Ltd.), Post Office Box 3288, Honolulu, Hawaii 96801.

Seatrain Lines, California, San Island Access Road, Honolulu, Hawaii 96819

Pacific Container Service, Honolulu, Hawaii

International Longshoremen's and Warehousemen's Union, Locals 142 and 160, 451 Atkinson Drive, Honolulu, Hawaii

Kahului Trucking and Storage, Kahului, Hawaii

(b) The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

The following Teamster Union Locals, of:

STATE OF WASHINGTON

City of Seattle, Local Unions 174, 741, 44 and 117.

City of Takoma, Local Unions 313 and 461.

City of Aberdeen, Local Union 599.

STATE OF OREGON

City of Portland, Locals 162 and 81, Coos Bay 689, Hoquin Local 58.

Vancouver, Washington—Local 501.

Astoria Local 569.

STATE OF CALIFORNIA

Long Beach, Local 692.

San Diego, Local 542.

Oakland, Local 70.

San Francisco, Local 85.

Stockton, Local 439.

Sacramento, Local 150.

Oakland, Locals 85 and 853.

STATE OF ALASKA

Anchorage, Alaska, Local 959.

STATE OF HAWAII

Honolulu, Local 996.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

The Nation is faced today with yet another transportation strike which is intolerable in its effect upon millions of Americans, and I am determined that we shall end it at once.

The dock dispute on the West Coast has been festering for over a year, but because a few have been insensitive to the harm they are inflicting upon the many who are not a party to it, no reasonable settlement has been reached. Now this work stoppage, renewed after an injunction under the Taft-Hartley Act has expired, again threatens the Nation's health and safety. Those of us in public office must act swiftly and responsibly to avert its damaging consequences.

Because all other Government remedies have been exhausted, I am proposing to the Congress today special legislation to set up immediately a three-member arbitration board. This board, to be appointed by the Secretary of Labor, would hear and settle all issues in this dispute. No strike or lockout would be permitted from the day this legislation is enacted until the day that the arbitration board makes its determinations. The board's determinations would be made within 40 days and would be binding upon the parties for a definite period of time—at least 18 months.

Let there be no mistake about the urgency of this legislation. This is a vital matter to the people of this country, and the Nation can afford no delay. I earnestly implore the Congress to have this resolution on my desk by the end of next week.

This is an unusually pressing request for the opening days of a new session of the Congress, but let there also be no mistake about the dimensions of destruction which this strike is wreaking upon its victims:

—Before I invoked the Taft-Hartley injunction in an earlier attempt to settle this dispute, thousands of farmers reaped a harvest of despair as their export crops were blocked by closed port and could not reach waiting customers overseas. Hundreds of millions of dollars were lost. Because the strike has now resumed, these farmers are again victimized.

—There is an increasing danger that some of these trade losses will become permanent, as foreign purchasers come to believe that our farmers and businessmen cannot provide dependable deliveries. Japan, a billion-dollar market for agricultural imports, has already asked other suppliers to step up production so that it can lessen its dependence on American exports.

—Layoffs, reduced operations, and even business failures also hang over the heads of many other Americans who engage directly or indirectly in exports. Some areas are especially vulnerable, such as the State of Hawaii, which has been hit by shortages of vital supplies, mounting food costs and unemployment rates unmatched for half a generation. Also hard-pressed are California, Oregon and Washington.

I cannot emphasize too strongly that all of these people—and, indeed, our national economy—have been made hostage to the interests of those few who persist in prolonging this dispute. These men and women who are hurt so unfairly cannot accept the fact that a dispute in which they play no part can destroy them—nor can you and I. There is no justification for waiting any longer.

It is with extreme reluctance that I propose this legislation, for as I have stressed to the Congress before, I firmly believe that governmental intervention in the collective bargaining process should be as limited as possible. Compulsory arbitration is not generally a satisfactory method of resolving labor disputes. Under the present, deplorable circumstances, however, there is no remaining alternative.

As this resolution is considered, there is one very tough question before us to which reasonable Americans deserve an answer: Why have we once again reached the flash point?

Let there be no mistake about the facts. For two long years, the Congress has had before it comprehensive proposals which I submitted and have repeatedly urged that it pass for the resolution of emergency transportation disputes. This legislation still languishes unenacted.

These proposals, which should best be called the "Crippling Strikes Prevention Act" in the future, would have avoided the present crisis, and if enacted will avert what will otherwise be the inevitability of similar crises in the future. They would encourage the parties to bargain more responsibly, and in the event that no settlement is reached, would establish a workable mechanism for resolving the dispute without Congressional action.

Our present legislative tools are plainly inadequate. Four times since I called for these comprehensive measures, it has been necessary for the Congress to enact special legislation to deal with disputes in the troubled transportation industry.

The present dock dispute is perhaps the best illustration of how futile Government actions can be under present law. Bargaining between the parties began in November 1970. After six months of negotiations, the parties gave up their attempt to reach early agreement and suspended their talks until the contract deadline approached. On July 1, 1971, the longshoremen went out on strike, creating a shipping paralysis on the West Coast which reverberated throughout our economy.

The resources of the Federal Government, including exhaustive mediation efforts by the Director of the Federal Mediation and Conciliation Service, proved to be of no avail in resolving the dispute. With grave concern, I watched the crisis broaden and deepen, and I personally met with the parties in an attempt to find some way to end this bitter impasse.

By October 1971, it became evident that collective bargaining had failed in this dispute and that action had to be taken to protect the national health and safety. Thus on October 4, I invoked the national emergency provisions of the Taft-Hartley Act which resulted in an 80-day cooling-off period.

Unfortunately, the lengthy negotiations during this period and thereafter did not result in the hoped-for settlement.

The history of this dispute and the bargaining posture of the parties provide no hope that a further extension of time would be useful, or that it would bring the parties any closer to a resolution of this matter. They compel me to submit this special legislation to the Congress and to appeal once more for legislative action that will enable us to deal with future emergency transportation disputes without the necessity of this sort of *ad hoc* legislation that can never undo the damage already done.

I proposed new, comprehensive legislation in February 1970, and there was no Congressional action that year. I resubmitted the measure in February 1971, and hearings were held, but there was no appreciable action. On December 15, 1971, I reminded the Congress that a renewed work stoppage was possible on the west coast and that statutory remedies were desperately needed. The Congress recessed without any response.

As soon as the Congress enacts the special legislation before it today, I urge in the most emphatic terms that it turn its attentions immediately to the Crippling Strikes Prevention Act.

RICHARD NIXON.

THE WHITE HOUSE, *January 21, 1972.*

SECTION-BY-SECTION ANALYSIS

Section 1. *Statement of Purpose and Findings.*—This section sets forth the purpose of the legislation. It states in the "whereas" clauses that there are disputes between shippers and associated employers and the Longshoremen's Union on the Pacific Coast; between the Longshoremen's Union and the Teamsters Union on the Pacific Coast and Hawaii and between employers engaged in maritime and related activities and the Longshoremen's Union in Hawaii.

It states that legal procedures for resolving the Pacific Coast dispute have been exhausted; that the disputes are closely related and that national health and safety demand that transportation services be maintained. The section states further in the "therefore" clause, that an arbitration board shall be established to settle the dispute by making a determination. The determination shall be effective for a period not less than 18 nor more than 24 months as the board deems appropriate. During the effective period there shall be no strikes or lockouts, and the parties shall be bound by the determination notwithstanding any agreement they enter into among themselves. The Secretary of Labor may terminate the procedures before the determination has been made if he finds that the employers and labor organizations have reached agreement.

The section states further that there shall be no strike, lockout or change in conditions of employment by the parties from the conditions prescribed in the court order in *United States* v. *International Longshoremen's and Warehousemen's Union et al.*, Docket No. C–17–1935–WTS, the agreement

between the Longshoremen's Union and maritime employers in Hawaii which expired June 30, 1971, and the collective bargaining agreements, interpretations, rulings and practices governing assignment of work involved in this dispute before the determination of the Arbitration Board.

The section defines the parties as those who were parties in the above-mentioned court case who have not settled prior to enactment; the parties listed in section 6 of the Resolution and employers of members of Teamster Union locals, not otherwise parties, who elect to place themselves under the jurisdiction of the Board.

Section 2. *Arbitration Board—Powers and Function:*

(a) Establishes the Arbitration Board consisting of three members appointed by the Secretary of Labor within 5 days of enactment.

(b) States that the Board shall establish rules of procedure and conduct fair hearings.

(c) States that the Board shall have the authority of section 9 and 10 of the Federal Trade Commission Act with respect to attendance of witnesses and production of documents.

(d) States that the Board shall begin its hearings no more than 15 days after enactment and make its determination no less than 40 days after enactment.

(e) States that the Board shall resolve all the issues in dispute.

(f) States that the determination is retroactive to the date of enactment or, in the Board's discretion, to an earlier date.

(g) States that the Board shall make its determination consistent with the policy of the Economic Stabilization Act of 1971; that the determination shall be binding in all respects and subject to review only as provided in (h).

(h) Allows for judicial review of the determination in the U.S. Court of Appeals for the District of Columbia. It states that commencement of a proceeding shall not operate as a stay of the determination unless ordered by the court—and that the determination is conclusive unless found to be arbitrary or capricious.

(i) Provides for compensation of Board members and also that the Board may have consultants and support service.

Section 3. *Special Referee*:

(a) States that the Secretary of Labor shall appoint a special referee whose responsibilities are described in (b) and whose pay is that of a Board member.

(b) Grants the special referee exclusive jurisdiction over disagreements occurring after enactment but before the determination has gone into effect which might lead to violation of the Resolution. The special referee is empowered to issue orders of compliance and has the same authority as in 2(c) with respect to witnesses, books and documents. His findings are conclusive unless arbitrary or capricious. The Attorney General is empowered to petition in U.S. District Court for appropriate relief.

Section 4. *Enforcement*:

(a) Authorize the Attorney General to maintain appropriate civil action to enforce the Resolution.

(b) Provides a penalty for a strike, lockout or other concerted action up to $100,000 with each day of violation being a separate violation.

Section 5. *Authorization of Appropriation.* Authorizes appropriations to implement the Resolution.

Section 6. *Parties*:

Lists parties to the dispute, in addition to those described in section 1.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that a statement prepared by the Senator from New York (Mr. JAVITS) relating to the joint resolution I have introduced be printed in the RECORD.

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

STATEMENT BY SENATOR JAVITS

At the request of the Administration I have today joined with Senator Packwood in introducing the Administration's proposed legislation to deal with the West Coast longshore strike.

I have joined in sponsoring this bill on a "request" basis because I am not at this time convinced that the terms of this bill are the most appropriate way to resolve this dispute. As this bill is considered by the Committee on Labor and Public Welfare—and I shall ask that hearings begin immediately—I am certain that we will exhaustively investigate alternative approaches to settling this dispute, including partial operation, seizure, final-offer selection, and other approaches which might be authorized instead of, or in addition to, the arbitration remedy proposed by the Administration bill, as a way of fairly resolving the dispute.

I deplore the fact that Congress once again must take ad hoc action to deal with a labor dispute which threatens the regional or national health and safety. Again and again during recent years we have been faced with crises of this kind because we have failed to enact permanent legislation to protect the national or regional health and safety when it is threatened by labor disputes. We in Congress have met our responsibility to deal on an ad hoc basis with these emergencies in past years, and I have no doubt that we will meet our responsibility to act in this crisis. The floor of Congress, however, is just not the appropriate place to resolve these disputes. The public interest demands that we now give the highest priority to the enactment of permanent legislation to protect the people of this country against paralyzing work stoppages or lockouts, such as the one we are now facing on the West Coast.

With regard to the current West Coast dispute, I do not believe there can be any question about the necessity for enactment of specific legislation to deal with it. The courts have already held that a coastwide stoppage of this type constitutes a threat to the national health and safety under the Taft-Hartley Act. Hence, I believe that Congress should act expeditiously to enact legislation to end the current work stoppage.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1307

At the request of Mr. RANDOLPH, the Senator from Minnesota (Mr. HUMPHREY) was added as a cosponsor of S. 1307, a bill to provide increased employment opportunities for middle-aged and older workers, and for other purposes.

ADDITIONAL COSPONSORS OF CONCURRENT RESOLUTIONS

SENATE CONCURRENT RESOLUTION 33

At the request of Mr. BROCK, the Senator from Florida (Mr. CHILES), the Senator from Kansas (Mr. DOLE), the Senator from Colorado (Mr. DOMINICK), the Senator from Oklahoma (Mr. HARRIS), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Vermont (Mr. STAFFORD), the Senator from Georgia (Mr. TALMADGE), and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of Senate Concurrent Resolution 33 regarding the persecution of Jews and other minorities in Russia.

SENATE CONCURRENT RESOLUTION 53

At the request of Mr. WILLIAMS, the Senator from Oklahoma (Mr. HARRIS), the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. MATHIAS), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), the Senator from Utah (Mr. MOSS), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of Senate Concurrent Resolution 53, relating to International Environmental Standards.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 805 THROUGH 809

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

Mr. ERVIN (for himself and Mr. ALLEN) submitted five amendments intended to be proposed by them jointly to the bill (S. 2515) to further promote equal employment opportunities for American workers.

AMENDMENT NO. 810

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

SMALL BUSINESS RELIEF AMENDMENT

Mr. GAMBRELL. Mr. President, I am offering today an amendment to the pending bill, which amends the Equal Employment Opportunity Act of 1964.

May I say in offering this amendment, that I share a strong commitment to the principle of equal employment opportunities, regardless of race, sex, or national origin. Fundamental to the goals of "life, liberty, and the pursuit of happiness" are the right to vote and the opportunity for gainful employment. Neither of these should be restricted arbitrarily, or for fanciful reasons, or by outmoded customs.

A widely expressed goal, shared by the President and both major parties, is that of welfare reform. I consider this Nation's commitment to equal employment opportunities to be a plank in the welfare reform platform. If we are truly committed to the reform of our welfare system, we can hardly tolerate the denial of access to economic rewards on grounds of race, color, religion, sex, or national origin.

The privilege which we enjoy to make distinctions and selections for meritorious reasons, does not extend to distinctions and selections made for the reasons cited. If the luxury of discrimination for these reasons is to be tolerated, then our welfare system must necessarily make special allowances for the harvest of unemployment, underproductivity, irresponsible behavior, and poverty which naturally will result. We cannot permit the relegation of many of our citizens to substandard economic opportunities and at the same time deplore their lack of initiative and productive work habits.

Thus, Mr. President, I am prepared to support adequate enforcement provisions for the implementation of equal employment opportunities. If we truly believe in equal employment opportunities, and that the National Government should accord these opportunities to all citizens, there can be no hesitation from assuring that these rights have meaningful enforcement.

The House of Representatives has adopted a measure which I can support. An amendment to the pending bill has been offered by the Senator from Colorado (Mr. DOMINICK) substituting the House-passed enforcement procedures for those recommended by the Senate Labor and Public Welfare Committee. I expect to support the adoption of the Dominick amendment, and to vote for the Senate bill as so amended.

At the same time, I do not feel that I can at this time, in good conscience, support the method of enforcement contained in the Senate committee version of this legislation. My reasons for making an important distinction between the House enforcement version, and the Senate enforcement version are twofold.

First, I have confidence in the Federal judicial system to implement a consistent and manageable job discrimination act. There may be areas of public administration in which some peculiar expertise is required in the enforcement area, justifying the formation of a special Federal agency with cease and desist powers. I do not believe that this has been proven to be so in the case of equal employment opportunities. Such expertise as may be necessary, can be developed and fully exposed in Commission activity under the House bill.

However, if employers, for reasons sufficient to themselves wish to have court determinations of the issue of discrimination in a given case, or of legal questions arising in a given case, I believe the Federal court system to be completely adequate for this purpose.

The surge toward cease and desist powers smacks of an effort to play politics with job discrimination, and to leave the entire field in a constant uproar, resulting in continued racial tension and consequent disruption of trade and commerce.

In my judgment, an advisable course would be to adopt the court enforcement provisions at the present time, and to evaluate progress in the elimination of job discrimination through experience under that form of enforcement. Should that experience disclose a need for cease and desist authority, then let it come at the proper time.

In addition, I have reservations about the cease and desist approach because of the experience which we have had in my section of the country, the South, with administrative manipulations of civil rights enforcement. The South has become a laboratory for social experiment, where laws are enacted, and enforcement practices applied, which are not and would not be enacted and applied for other sections of the country. In short, there is widespread evidence of discriminatory civil rights enforcement by Federal agencies against the South, and I would be more hopeful of even-handed treatment from the Federal judiciary than to an unbridled Federal agency.

My specific purpose today is to propose an amendment which I think appropriate, regardless of the enforcement procedures adopted in this legislation. Its purpose is to assure that enforcement of this legislation, which must necessarily be selective and exploratory, does not have the effect of destroying small businesses which have been wrought out of the sweat, blood, and tears of individual American citizens whose only purpose in conducting business is to secure a decent living for themselves. As a private practicing attorney in my home State, as a member of the Select Committee on Small Business, and as a U.S. Senator, I am constantly confronted with the devastating effects which well-meaning Government regulations have on small business. Although our Government has a legislative commitment to free enterprise, the encouragement of individual opportunities, and categorically to small businesses of all kinds, we condone on every side regulatory practices and procedures which pit the overwhelming financial strength and manpower of the Federal Government against the individual businessman. There is no question but what this imbalance of relative strength denies small businessmen a fair opportunity for self defense against Government regulation. Big and rich business enterprises can afford to battle Government equally, and in some cases at an advantage, securing for themselves much more favorable treatment through "fair trials" and "consent judgments."

The amendment which I have offered, in a very small way, assures the owners of small businesses who may be selected for investigation, prosecution, and enforcement under this act, that they will not have to bear the full economic brunt of defending themselves. We owe this to the small business community in simple justice, not only to balance the equities of individual cases but because almost all of those moved against in the early stages will be "guinea pigs" for testing the laws and procedures under it.

In specific terms, my amendment provides for the payment by the U.S. Government of reasonable expenses and attorney's fees of very small businesses proceeded against under the act, and for payment of one-half of such costs in the case of somewhat larger business enterprises, who still cannot be considered to have the resources to engage in fair legal proceedings against the U.S. Government. Limits of $5,000 and $2,500, respectively, are placed upon the amounts which may be paid. The reasonableness of charges submitted is to be based upon the comparable costs and expenditures of the Federal Government in investigating and prosecuting the respective complaints.

It is not the purpose, nor the effect, of this amendment to exempt small businesses from the application of substantive provisions of the act. Its enactment will be simply a step in the direction of placing the small businessman on an equal footing with the big businessman, and with the Government, in enforcement procedures adopted under this act.

I might take this opportunity to say that I think similar provisions should be made with respect to a variety of other Federal enforcement programs. I expect to ask the Select Committee on Small Business to investigate and report on the unfair impact of Federal regulatory practices on small businesses, and the tendency of these practices to impede the growth of small business in this country.

I ask unanimous consent, Mr. President, that the 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. 810

On page 34, line 21, after the period ".", insert the following:

"Notice of the terms of eligibility for the respondent to receive expenses and attorney's fees pursuant to Subsection (h) shall be served on him along with the notice of the charge."

On page 37, line 17, after the parenthesis ")", insert the following:

"and notice of the terms of eligibility for the respondent to receive expenses and attorney's fees pursuant to Subsection (h)"

On page 39, after line 19, insert the following:

"(h) Any respondent that is an employer of less than 25 employees, shall, upon application to the Commission, be indemnified by the United States for the cost of his defense against the charge in an amount not to exceed $5,000, including all reasonable expenses and attorney's fees incurred after the serving of notice on him of the charge, unless a final determination is made that the respondent willfully committed the unlawful employment practice charged to him. Any respondent that is an employer of 25 to 100 employees whose average income from such employment is less than $7,500, shall upon application to the Commission, be indemnified by the United States for one-half of the cost of his defense against the charge not to exceed $2,500, including all reasonable expenses and attorney's fees incurred after the serving of notice on him of the charge, unless a final determination is made that the respondent willfully committed the unlawful employment practice charged to him. The costs evidenced by respondent's vouchers of his expenses and attorney's fees shall be deemed reasonable so long as they are comparable to the total amount of the expenses and attorney's fees incurred by the Commission in investigating and prosecuting the charge. Disallowance of any part of such request shall be made a part of the Commission's order in such proceedings. Any United States Court before which a proceeding under this Title shall be brought may upon request by the employer make the determination provided for in this Subsection. The Treasurer of the United States shall indemnify the respondent as provided for herein upon certification by the Commission. No enforcement procedure under this Title may be initiated against an employer until the amount of such indemnity has been paid in full."

Subsections (h) through (w) as referred to in Section 4 are redesignated as Subsections (i) through (x), respectively.

NOTICE OF CHANGE OF DATE OF INDIAN HEARINGS

Mr. WILLIAMS. Mr. President, I ask unanimous consent to have printed in

the RECORD an announcement by the Senator from Washington (Mr. JACKSON).

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

STATEMENT BY SENATOR JACKSON

On December 14 I announced to the members of the Senate and the Public that the Committee on Interior and Insular Affairs will conduct 3 days of open public hearings in this session of the Congress on S. 2724, the Comprehensive Indian Education Act of 1972.

It has been necessary to make a change in our Committee schedule, and the hearings originally set for February 8 and 9 will now be held on February 9 and 10, at which time we will receive testimony from Indian and other nongovernment witnesses. Testimony from Government agencies and national education organizations will still be received on March 1 as originally planned.

The hearings on all 3 days will begin at 10 a.m. in room 3110 New Senate Office Building.

ANNOUNCEMENT OF HEARING TO REVIEW ENERGY AND MINERAL RESOURCES ADMINISTRATION OF THE PROPOSED DEPARTMENT OF NATURAL RESOURCES

Mr. BYRD of West Virginia. Mr. President, at the request of the distinguished Senator from Washington (Mr. JACKSON), I ask unanimous consent that a statement prepared by him be printed in the RECORD.

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

STATEMENT BY SENATOR JACKSON

On January 28, 1972 at 10 A.M. in Room 3110, New Senate Office Building, the Senate Interior and Insular Affairs Committee will hold a hearing to review with representatives of the Department of Interior and the Atomic Energy Commission the structure, organization, and function of the Energy and Mineral Resources Administration proposed in S. 1431, the bill recommended by the Administration to establish a Department of Natural Resources. This hearing will be chaired by Senator Frank Moss, Chairman of the Subcommittee on Minerals, Materials and Fuels, and is being conducted pursuant to Senate Resolution 45, which authorizes the Interior and Insular Affairs Committee and Ex-Officio representatives of other Senate Committees to undertake a comprehensive study of national fuels and energy policy. S. 1431 is now pending before the Senate Government Operations Committee. The Committee's hearing on the energy functions of the proposal is for informational purposes only.

The Committee invites the submission of statements for publication in the hearing record by any interested persons or organizations. For purposes of the Committee's review the statements should be confined to the proposed Energy and Mineral Resources Administration and should not deal with the overall organization of the proposed Department of Natural Resources except as it relates to policy development and program administration for Federal energy programs. The Committee, of course, welcomes and will review any statements or suggestions concerning alternative approaches to organizing governmental functions around the concept of energy. The hearing record will remain open until February 17, 1972 for additional statements.

ANNOUNCEMENT OF HEARING ON EVALUATION OF THE ADMINISTRATION ON AGING AND THE WHITE HOUSE CONFERENCE ON AGING

Mr. CHURCH. Mr. President, to continue and perhaps conclude hearings on "Evaluation of the Administration on Aging and the White House Conference on Aging," the Senate Special Committee on Aging and the Subcommittee on Aging of the Senate Committee on Labor and Public Welfare, Mr. EAGLETON, chairman, will conduct a hearing on February 3 at 10 a.m. Room to be announced later.

Only Dr. Flemming and other Administration representatives will be heard at that time. We will be primarily interested in:

First, a report on plans to implement key recommendations from the Conference.

Second, administration reaction to the suggestion that "mini-White House Conferences on Aging" be conducted at 2- or 3-year intervals during the next 9 or so years.

Third, administration views on whether the Older Americans Act should be extended or replaced by an entirely new arrangement—perhaps along the lines suggested by the Advisory Council to the Senate Committee on Aging or by Secretary Richardson's task force.

Fourth, the use to which the additional funding for the Administration on Aging will be put.

Fifth, timing and tentative provisions of possible new Administration proposals on retirement income, housing, long-term care, health care, and provision of social services for the elderly.

ADDITIONAL STATEMENTS

NAME OF NEW HOUSING PROJECT IN PORTLAND, MAINE, A DISAPPOINTMENT

Mrs. SMITH. Mr. President, recently many Maine citizens, including myself, were keenly disappointed that a new housing project in Portland, Maine, was not named after one of the great leaders of the Portland area, the late Alexander Wallace.

An excellent editorial published in the Portland Evening Express of December 22, 1971, clearly expressed our regret. 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:

WHY NOT ALEXANDER WALLACE?

As troubles and problems go these days, the naming of the new high-rise apartment house for the elderly on Danforth Street is close to the bottom on any priority list.

Yet it can't be overlooked when the preference of nearly a thousand citizens is ignored and a bland name such as Harbor Terrace is chosen over that of a human being who was held in high esteem by thousands of residents of this City.

Petitions signed by more than 900 people and a considerable number of letters from prominent community leaders asking that the building be named after the late Alexander Wallace were rejected by the Portland Housing Authority. Instead they chose just another name, and a name at that, in the category of Pine Bluff Boulevard, Rose Lawn Lane, Harmony House, Happy Hollow Motel and such.

Mr. Wallace was a highly respected individual with an unusually wide circle of friends and admirers, many of them still living today. His business establishment occupied the site of the new apartment building for more than half a century. We think it would have been very appropriate to honor a human being whose life made his town a better place. It is regrettable the Authority did not listen to so many of their fellow citizens and attach more importance to helping honor and preserve the memory of one who was a humble and good man.

EXECUTIVE ORDERS: POTENTIAL FOR VIOLATION OF SEPARATION OF POWERS

Mr. ERVIN. Mr. President, the Subcommittee on Separation of Powers, of which I am chairman, held hearings in October 1971 on President Nixon's Executive Order 11605, which increased the functions and powers of the Subversive Activities Control Board.

Mr. Richard Zimmerman, a reporter in the Plain Dealer Washington bureau, wrote an article entitled "Executive Orders—The Now Powers of the President, and How Congress Would Like To Kill Them Off," which was published in the Plain Dealer Sunday magazine of November 7, 1971. Mr. Zimmerman's article discusses the history of Executive orders and describes how they have been used by Presidents since the time of George Washington, and points out the complexity of the problems involved in the exercise of this power, especially when it is used, not for its rightful purpose of "housekeeping" within the executive branch, but for the purpose of actively "making laws" desired by the Executive but which the Congress has chosen not to enact.

It was to this circumvention of the legislative powers of Congress that the subcommittee addressed itself in the hearings on Executive Order 11605. My bill S. 2466, which would make it unlawful for the Subversive Activities Control Board to carry out the additional functions which the order conferred on the Board, and my resolution, Senate Resolution 163, which expresses the sense of the Senate that Executive Order 11605 is an usurpation of the powers of Congress, have been reported by the Subcommittee on Separation of Powers and are now pending in the Committee on the Judiciary.

Mr. President, I ask unanimous consent that Mr. Zimmerman's article be printed in the RECORD.

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

[From the Plain Dealer Sunday magazine, Nov. 7, 1971]

EXECUTIVE ORDERS: THE NOW POWERS OF THE PRESIDENT, AND HOW CONGRESS WOULD LIKE TO KILL THEM OFF

(By Richard G. Zimmerman)

WASHINGTON.—Under normal circumstances, a president's attempt to unload enough responsibility on five $36,000-a-year

bureaucrats to keep them awake past their morning coffee would be applauded on Capitol Hill. But President Richard M. Nixon's recent move giving the almost moribund Subversive Activities Control Board (SACB) something to do has caused outraged howls on both the congressional right and left.

It is not only because the anachronistic SACB generally is snickered at on Capitol Hill—which it certainly is. Of far deeper significance is the method by which the President expanded the powers of SACB.

It was not through the implementation of a specific act of Congress that Nixon granted SACB the additional power to update a government list of so-called subversive organizations—a duty once assumed and then neglected by various attorneys general. Nor is the President exercising a clear constitutional grant of authority in making the five-member, 10 employe board accomplish a bit of work in return for its $400,000 budget. Rather, the President expanded the responsibilities of the congressionally created SACB simply by signing a document whose continued use forever fires a far from simple and omnipresent power struggle between the President and Congress. The document is called an executive order.

Among those most outraged by this particular executive order and other orders in the past is Sen. Sam J. Ervin Jr., a crusty, testy conservative Democrat from Morganton, N.C. Ervin is chairman of the Senate subcommittee on separation of powers and interprets the Constitution so unequivocally as to suggest he receives daily vibrations from the ghost of Thomas Jefferson.

Even though a conservative by most measures, Ervin insists the Constitution both upholds the right of free association (a right many believe is grossly violated by any governmental use of a subversive organizations list) and, more important, grants to Congress the exclusive power to legislate. And Ervin has done something about what he considered to be the President's infringement on the legislative prerogative.

Employing one of the basic weapons Congress has at its disposal to contravene executive orders, Ervin is backing legislation that would forbid any federal employe from engaging in the new activities assigned SACB by executive order. Further, Ervin is sponsoring a "Sense of the Senate" resolution suggesting that by granting SACB powers not enumerated in the act creating it, Nixon is attempting "to usurp the legislative powers conferred on the Congress by the Constitution."

The confrontation between the White House and Congress over the order expanding the powers of SACB is not of the tremendous consequence of some past confrontations, especially those concerning executive orders involving wartime powers and civil rights. But this most recent conflict between presidential and congressional power involves all the elements that have confounded both judges and political scientists in their attempt to cleanly divide the powers of the branches of government since the 18th century.

The early history of the executive order, which played such a major role in the initial growth of executive power, is wrapped in historical confusion and conflicting judicial interpretation. The form, use and importance of this institution evolved in such a helter-skelter fashion that to this day no one can find a precise definition of an executive order—not even in the executive orders. Even pedantic historians often make no distinction between orders, presidential proclamations (usually ceremonial documents dealing with individuals) and executive agreements (documents dealing with foreign powers that fall just short of treaties).

Adding to the confusion is the fact that until 1907 executive orders were not even systematically numbered and were not required to be published on a regular basis until 1935. Dusty files in the National Archives suggest that Executive Order Number One was issued by President Lincoln on Oct. 20, 1862, and created a provisional court in Louisiana. The same files indicate Executive Order Number Two, offering a $1,000 reward for the capture of pirates, was not issued until 1865.

Obviously, a huge number of what may properly be defined as executive orders were issued prior to 1862 and between 1862 and 1865, for George Washington quickly discovered that the chief executive had to have some means by which to control even the small bureaucracy of the late 18th century.

In Washington's time, as to this day, the vast majority of executive orders covered mechanical administrative matters, such as erecting lighthouses and wtihdrawing public lands for Indian use. Even the ubiquitous Theodore Roosevelt had to slow down long enough to personally sign such housekeeping orders as one permitting Miss Alice Masters to be appointed a clerk at the Census Bureau sans civil service examination.

Since World War II the devolution of presidential duties to subordinates has cut the number of minor housekeeping orders. Nevertheless, even President Nixon still must take the time to personally approve orders "providing for the identification of unneeded federal real property" or "placing certain positions in levels IV and V of the federal salary schedule."

But from Washington to Nixon it has not been the housekeeping orders—no matter though they be of questionable legal status—that have inspired the wrath of those seeking to limit presidential power. Rather, it has been those sweeping orders summarily establishing national policy, such as Washington's Neutrality Order of 1793, which created the specter of an American dictator.

The Neutrality Order, which really began all the controversy, declared the United States to be neutral in the war between Great Britain and France and ordered American nationals to act accordingly.

Thomas Jefferson was horror stricken by the order of neutrality, arguing that the power not to declare war, as well as the positive power to declare war, rested entirely with Congress. On the other hand, Alexander Hamilton argued that the constitutional article declaring "the executive power shall be vested in a President of the United States" was a royal-like grant of power in itself, rather than just a simple statement of administrative duties.

Washington was able to smooth over the controversy by assuring a ruffled incoming Congress that his order was not designed to remain in effect beyond the first day of the new congressional session. But a historic precedent had been set, oddly enough by a man who feared the growth of executive power.

It took only 10 years for the U.S. Supreme Court, under John Marshall, to lay down what has become the classic, if sometimes difficult to interpret, limit on the presidential executive order.

Acting on the basis of a law instructing naval commanders to seize any U.S. vessel found to be sailing to a French port, President John Adams, through his Navy secretary, ordered the seizure of U.S. vessels found to be sailing to and from French ports. Marshall suggested that the President probably had the power to issue the "to-and-from" order under his constitutional powers as commander-in-chief, but only if Congress had taken no action whatsoever on the matter. Since Congress had clearly stated that only ships found entering French ports could be seized, Marshall held the President must follow the congressional directive.

But, as will be shown, Marshall's principle of the supremacy of congressional action over executive order is not always easy to apply in such cases as the SACB affair.

Thus controlled by the Marshall principle, the executive order did not again become a major issue until presidential power reached a new apex under the stewardship of Lincoln.

Faced with a dissolving union, Lincoln employed the executive order to accomplish such extraordinary measures as the suspension of the writ of habeas corpus and the freeing of all slaves. In defending the suspension of the right of habeas corpus, Lincoln stated:

"Are all the laws but one to go unexecuted and the government itself go to pieces lest one be violated?"

From Lincoln's time forward, especially in times of economic crisis, wars and rumors of war, the power of the executive to legislate, barring constitutional prohibitions or clear congressional action, grew under a procession of strong presidents. Franklin D. Roosevelt, for example, confronted with a grave depression, issued 674 executive orders during his first 15 months in office, declaring: "In the event Congress should fail to act, and act adequately, I shall accept responsibility, and I will act."

It was not until the 1952 steel seizure case that the Supreme Court again was given the opportunity to review and comment on the Marshall principle. The court held 6–3 that President Truman did not have the right to nationalize and keep open the nation's struck steel mills by executive order.

The majority, following Marshall's lead, noted that Congress had established machinery for the settlement of such disputes. The minority took the position that the President had extraordinary power to act in time of war, at least until Congress had the opportunity to act.

But as in the Marshall case, the steel seizure case applied only to a specific set of circumstances and the legal implication could not always be applied to later disputes, especially those involving civil rights.

From the time of Franklin Roosevelt on, executive orders have been used in the cause of civil rights, primarily because Congress for decades refused to take affirmative action. Against this background President Kennedy issued an executive order in 1962 banning racial discrimination in all federally aided housing.

The Kennedy order raised the ticklish question as to whether the outright refusal of Congress on six prior occasions to include similar language in housing bills constituted inhibiting congressional action under the Marshall principle. Or must Congress take some positive action to head off an executive order?

Since Congress passed affirmative fair housing legislation in 1968, the question in regard to the Kennedy order is moot. But for old Sam Ervin, the basic constitutional issues is far from moot.

Besides being embroiled in the SACB affair, Ervin, to the dismay of his SACB-baiting liberal friends, also is deeply entangled in the fight to do away with presidentially imposed minority hiring quotas in the building trades industry.

This controversy centers on the 1964 civil rights act barring discrimination by contractors holding federal contracts. On the authority of this act, President Johnson issued an executive order requiring government contractors to take "affirmative action" to end wide-spread discrimination in the building trades. On the basis of this executive order, the Department of Labor drafted the so-called "Philadelphia Plan" establishing a precise quota system for minority hiring.

An outraged Ervin, citing the steel seizure case and insisting Congress explicitly refuse to establish a quota system even as it enacted legislation in the area of building trades discrimination, ordered hearings on the Philadelphia Plan. To no one's surprise, Ervin's subcommittee found:

". . .The (1964 civil rights) act requires, in very positive terms, that an employer be

'color blind' when he hires new employes. The Philadelphia Plan, by instituting quotas . . . positively requires an employer to have color in mind . . ."

A federal appeals court held the Philadelphia Plan to be a proper exercise of executive power and as of this writing the case is on appeal before the Supreme Court.

The SACB case presents a more complex set of negative circumstances.

Nixon first asked Congress to expand the powers of SACB by law, which it refused to do. So Nixon issued an executive order expanding SACB's scope of activities.

In a countermove to Nixon's countermove, Ervin amended an omnibus appropriations bill embracing SACB specifically to state that no part of the appropriation could be used to implement the executive order—another classic method Congress uses to sidetrack executive orders.

In a counter-counter-counter-move, the administration saw to it that Ervin's amendment got lost in conference committee and the appropriations act subsequently shoveled funds SACB's way without strings attached. According to an interpretation by the attorney general's chief counsel, this action was tantamount to congressional approval of the SACB executive order.

Citing the specific refusal of Congress to expand SACB's activities and the haste with which the omnibus appropriations act was passed just before summer recess, Ervin and his odd liberal bedfellows snort that Congress meant nothing of the sort.

The specific issues involving SACB and the Philadelphia Plan likely will be resolved one way or another in the coming months. But the broader issue of executive order versus congressional power likely will be debated for as long as the republic endures.

MAINTENANCE OF U.S. MILITARY POWER

Mr. GOLDWATER. Mr. President, all of us are aware of the problems involved with maintaining U.S. military power in the face of the current massive build-up of Soviet arms. This question was taken under extensive consideration in October of 1971 by the Association of the U.S. Army. This very authoritative group stated its firm conviction that the United States has already reduced its Army strength below acceptable security minimums. Pointing out that the principal objective of U.S. military power is to deter war by having sufficient and creditable power to maintain peace, AUSA claims that the cause of prudence and safety demand a reversal of the "downward trend" in our ability to protect the national interests.

Because of the importance of the subject to Congress and the country, I ask unanimous consent to have published in the RECORD an AUSA position paper entitled "Our Diminishing Defense" and a set of resolutions adopted by AUSA at its October annual meeting.

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

OUR DIMINISHING DEFENSE

The Secretary of Deefnse has stated that our basic National Security objective is to preserve the United Staets as a free and independent nation, to safeguard its fundamental institutions and values, and to protect its people. Through its foreign policy and collective security arrangements, the United States seeks an environment in which its security objectives can be attained.

Our continuing ability to carry out these objectives is a matter of serious concern. In the past twelve months we have seen the most drastic and rapid decimation of our fighting forces since World War II, this in the face of growing defense capabilities by those whose national goals are the antithesis of ours.

The politics of strength are little understood in our country and in the present climate are equated with a desire to fight rather than as a major deterrent to war.

1972 is a Presidential Election year. There will be an understandable effort by politicians of both sides to minimize National Defense needs to lay greater stress on the "other priorities" which are presumed to be much more attractive to the electorate. But unless we can defend our status as a world power, these other priorities will never come to fruition. Like it or not, we live in a time when little wars and revolutions can escalate and major wars can develop on short notice. So, an adequate defense becomes more than a luxury.

1972 is a crucial period in our defense posture. We believe that cuts in personnel and budgets which have already occurred, and those reportedly being processed, go beyond all prudence and constitute a threat to the security of our Nation. The ability of our Nation to determine its own destiny can well be in the balance.

President Nixon summed it up very well when he said, "It needs to be understood with total clarity that Defense Programs are not infinitely adjustable—there is an absolute point below which our security forces must never be allowed to go. This is the level of sufficiency. Above or at that level, our defense forces protect National Security adequately. Below that level is one vast undifferentiated area of no security at all. *For it serves no purpose in conflicts between nations to have been almost strong enough.*" We believe that our National Security forces have already gone below the level of sufficiency necessary to meet our commitments. The remainder of this statement will outline the reasons why.

The basis for our current National Strategy is summarized in the Nixon Doctrine. The first of the three pillars of that doctrine states flatly that "the United States will keep its treaty commitments."

Through treaties and assurances of mutual assistance given in other forms, the United States is committed to come to the aid of some 48 nations in every segment of the globe. And in many of these areas, the dangers of escalation of minor conflicts is indeed a serieous concern.

NATO stands, after twenty-two years, our most apparent success in the deterrence of war and aggression. The uneasy detente which exists in Europe may, in time, give way to truly productive agreements with the Soviet Union. But there are a variety of sound reasons why our strength and continued presence in Europe are essential to provide the stability and credibility to this important collective security arrangement.

As a recent Brookings Institution study points out, "the size and character of American force deployments in Western Europe do not fit a precisely calculable military requirement. How much is enough is not the issue. It is rather how many and what kinds of forces will satisfy a number of considerations, some political, others strategic. These considerations should not be seen as short term. They have to do rather with the kind of world order the United States seeks to encourage; with the kind of lasting relationship we wish to establish with Western Europe; with how to impart greater stability to the East-West environment while avoiding steps that might encourage latent instabilities."

Our investment in NATO continues to be a most effective insurance policy for this country and one that offers great possibility for future contributions to improved world stability. This after all, is our ultimate goal.

We should be ever mindful, however, that a segment of our society, including some leaders in the Congress, pursues a continuing and determined effort to emasculate the United States presence in Europe—which in turn would upset the tenuous detente we now enjoy there.

While we are not bound by treaty arrangements that are apt to draw us into the Mid-East conflict between Israel and the United Arab Republic, it remains a tinder box which could ignite a most serious conflagration with great danger to both the Communist and the Free World. With the great powers as directly involved, as the United States and the Soviet Union are, in efforts to maintain some sort of balance of military power between countries with such basic animosities as Israel and the Arab states, the potential for trouble is great indeed.

If the outbreak of hostilities between India and Pakistan goes no further, this may not present any danger of escalation in which we would become involved. However, the subcontinent seethes with misery and unrest and must always be an area of concern.

In the rest of Asia, our problems are more diverse. Some view our involvement in southeast Asia as transient—something which we ultimately can wind up once and for all. They seem to forget that three times in a single generation Americans have crossed the Pacific to fight in Asia and we are still fighting there. No single area of the world has engaged more of our energies in the post World War II period. The President has made it clear in his report to the Congress on United States foreign policy in the 1970's, that it will continue to be in the national interest for the United States to remain involved in Asia. In the President's words, "We are a Pacific power. We have learned that peace for us is much less likely if there is no peace in Asia."

The ANZUS treaty merely reaffirms our long standing friendship and affinity for our loyal allies in Australia and New Zealand.

Our 1951 bilateral treaty with our long time friends and allies in the Philippines could be the source of either great embarrassment or considerable difficulty in the years ahead while that young nation seeks maturity and stability.

Our bilateral treaty with the Japanese only creates a problem if Nippon's less affluent neighbors should institute war-like action against a nation we have discouraged from developing an adequate defense establishment; or if, on the other hand, Japan enters into a treaty with Red China that would be detrimental to our national interests.

Our treaty with the Republic of Korea remains a viable one, and the growing strength of that nation has permitted us, during the past year, to make a reduction of U.S. troops stationed there. We have only to recall our earlier conflict on that peninsula to know how quickly an enemy miscalculation can change the picture as far as the need for U.S. Army strength is concerned.

The SEATO treaty is more ambiguous than most. It lets us reserve judgment on whether or not an attack against one of the treaty nations constitutes enough of a threat to our national interests for us to help out. As long as we wish to remain a Pacific Nation—and the President says we will—it is difficult to imagine our disregarding a serious attack against a SEATO Nation.

Our bilateral treaty with the Republic of China (Formosa) which was signed in 1954, certainly has taken on a new significance in recent months with our support of Red China for a seat in the United Nations—and President Nixon's scheduled visit to this sworn enemy of our treaty partner. But the treaty is still there and as long as it exists we must be prepared to live up to it.

We have a special relationship with our

neighbors in Latin America and certainly there are compelling reasons for strengthening our ties. The instability in some areas of Latin America poses a threat to peace in the Western Hemisphere which we would be foolish to ignore. The past confrontations regarding possible Russian missile and submarine bases in Cuba are examples of the kinds of problems which can crop up in our own backyard.

Even so, our RIO Pact is not normally considered a source of potential danger although the continuing unrest throughout Latin America provides a seedbed for serious mischief which conceivably could make demands on us for some future military effort.

Thus our treaty commitments are rather extensive and involve some risks, but are not more than the inevitable involvement of a world power. The Soviet Union and Red China make no secret of their national policy to exploit unrest and trouble, wherever they find it, to further the expansion of their national goals and power. Knowing this, we have no alternative to remaining strong unless we choose a course of ultimate subjugation to the will of others. Hopefully, our national leadership will continue to steer us past this shoal.

The real threat to our National Defense may not stem from our treaties or pacts of mutual assistance. It may very well be in the weakening will of our people to face up to the realities of our world today.

It seems incredible that politicians could attack National Defense or advocate seriously weakening it without suffering a serious loss of constituent support. Such politicians recognize that the activists and those who speak out and work in the political arena of their communities are more concerned about "other priorities" than they are about National Defense. They are aware of the fact that there is a serious lack of understanding and knowledge about the importance of our defense needs, and that these needs are unlikely to receive much favorable publicity. They assume that the public will continue to ignore the seriousness of the threat which confronts us and that those who support an adequate National Defense will be unable to overcome the apathy and inertia which exists.

The willingness of many, including some elected to the Congress, to accept without protest second-class status for our Nation, may well signal the beginning of our demise as a world power. Certainly with a seriously weakened military capability, the credibility of our deterrent capablity and the acceptance of our will to keep our word come into serious dobut. In that climate, much can be won by or international adversaries without firing a shot.

The budget proposals for FY73 are only now being readied for announcement. However, the recently completed action by the Congress on the FY72 budget already provides cause for serious concern about the rapid decimation of our military strength.

What has happened to the Active Army strength is best graphically depicted in this chart—not printed in the RECORD.

Note that for FY 72 the Administration had programmed the Army for a strength of 942,000. Halfway through the budget year, Congress proceeded to cut funds for 50,000 man years out of that program which will force the Active Army far below the programmed strength with an end strength somewhere between 850—860,000—the lowest strength for the Army since 1950 just before the Korean War.

Because this rapid cut (almost in half in 3 years) is taking place in the Active Army, and because the war in Vietnam is drawing to a close, there has been far less use of Selective Service as a source of manpower.

This in turn has been reflected in the serious personnel problems affecting the Army National Guard and the Army Reserve. At the beginning of January 1972, the Army National Guard strength was 19,000 below its authorized 400,000. The Army Reserve units were down in strength by 6,000 from their authorized 260,000.

Moreover, the situation in those two components may worsen appreciably this year because during 1965 many thousands of young men took a six-year enlistment in a reserve component as an alternative to active service. Those enlistments will run out this year and current retention figures are not good enough to keep the total strength from dropping further. So, a very real problem centers on getting the quality people the Army needs in sufficient numbers.

The Army continues to pursue a most vigorous and imaginative All-Volunteer Program, and has had some notable success. However, the pay raises recently passed by Congress have not as yet had any really significant impact on new enlistments. Moreover, All-Volunteer Programs, particularly those that are soldier-oriented such as fixing up barracks and civilianizing KP have been seriously reduced in the budget process. If service attractiveness cannot continue to be improved, the volunteer program cannot be expected to meet its objectives. Both in the Congress, as well as in the executive department budgeting process, the All-Volunteer effort does not have the dynamic and sustained support that are requisites for success. There is insufficient evidence that we can maintain a volunteer force of the size and quality required to protect our National Security.

This is further complicated by growing costs. A high proportion of the Defense Budget is required for manpower costs. This cost is increasing and it means less is available for research and less for replacement of weapon systems. In FY68, 41% of the Defense Budget was devoted to manpower costs. In FY72, with more than a million fewer men under arms, the percentage increased to 52%. In the mid-seventies, with the addition of All-Volunteer costs, it could approach two-thirds of the budget—even with the drastic cuts in personnel which have already taken place.

With personnel costs rising, not only in the military but in all sectors of our society, the amount available for weapons and equipment is decreasing, even as the cost of these weapons is mounting dramatically. Growing complexity and sophistication play a part in these increased costs but more than 25% of the increase has been attributed to inflation itself.

Even with the tightest management procedures possible, present funding will be inadequate to provide adequate stocks of modern equipment for our Army.

Meanwhile, it is most important to note that the overall trend of defense spending is definitely downward. Whether you measure it in terms of percentage of the Gross National Product or as a portion of total budget, defense outlays continue to go down. For example, in FY64, considered the last peacetime year, the defense expenditure represented 8.3% of the Gross National Product and 41.8% of the Federal Budget. In 1968, the peak spending year for Vietnam, took 9.5% of the Gross National Product and 42.5% of the Federal Budget. FY72 was programmed for defense outlays of 6.8% of the Gross National Product and 32.1% of the total National Budget. A Nation as great as this can afford something more than one-third of its Federal Budget for an adequate National Defense.

In 1953, the peak for the Korean War, the Defense Budget hit 13.3% of the Gross National Product and 62.1% of the total Federal Budget. This was due in large measure to the fact that we had permitted our Armed Forces to get so low in strength and equipment inventory that our credibility was seriously doubted—the North Koreans and their backers didn't think we had the strength or the will to retaliate, hence that costly misadventure. This is an awfully high price to pay for unpreparedness.

The late Dean Acheson, former Secretary of State, had some interesting observations on this point in testimony before Congressional Committees in 1969.

"I see no basis for the notion that we tend to overdo the military aspects.

"To the contrary, the nation has repeatedly neglected to provide a military basis to match its policy or to cope with aggressive forces. We tried unilateral arms reduction in the inter-war period. We got Pearl Harbor. We reverted to habit after World War II. We got the Korean War. With respect to military power, I do not share the worries of those who discern and deplore dangers of too much. We had a temporary advantage in ratios of available military resources at the time of the Cuban missile crisis. Some would have called it a redundancy. That margin was not a surplus. It provided a basis on which President Kennedy was able to bring off an acceptable outcome—

"General Marshall used to drill into me the vast importance of maintaining a means of preparedness in armaments at all times and not to raise it to terrific heights during times of trouble and then to scrap the whole thing and go down to almost zero between crises. We have always been unprepared for conflict. Our wars as a result have lasted too long. The casualties have been too high."

At the Annual Meeting of this Association in October 1971, we took the position that with the winddown of the war in Vietnam, that the U.S. Army total force strength—Active, National Guard, Reserve—should not be reduced below a minimum of 1.6 million. It is our firm view that the Active Army should not be reduced below 900,000. As indicated earlier, Active Army strength will this year drop to the 850–860,000 range and the Reserve Forces are already down to 635,000. In our view this 100,000 deficit presents unacceptable risks.

In the preamble to our Resolutions, we took cognizance of this growing problem. We were particularly struck by a passage in the Supplemental Statement to the Report of the Blue Ribbon Defense Panel which was submitted to the President on 30 September 1970:

"Within a span of less than two decades we have moved from complete security to perilous insecurity.

"Yet, the response of the public generally, much of the media and many political leaders ranges from apathy and complacency to affirmative hostility—not against the potential enemies which threaten us—but toward our own military establishment and the very concept of providing defense capabilities adequate to protect this country and its vital interest. . . . Thus, we respond as a nation—not by appropriate measures to strengthen our defense, but by significant curtailments which widen the gap.

"In short, the mood of the people and much of the Congress is almost one of precipitous retreat from the challenge. This paradox in response to possible national peril is without precedent in the history of this country."

Our task at hand is to reduce the apathy and create an awareness of the essentiality for an adequate defense posture if the freedoms and liberties we now enjoy are to be preserved.

Mr. Acheson gave Congress a very simple explanation of the position of this nation in the world where he said "the power of the United States alone blocks the Sino-Soviet ambitions in this world. They may fall out between themselves, they may have difficulties, they may fight with one another in a minor way, but on one matter they are completely and wholly agreed. The United States is the enemy.

"It is our power which stands in the way of their ambitions and they have no doubt about that at all. We are alone at this pinnacle of power."

Our announced National Policy precludes further weakening of our National Defense.

The Nixon Doctrine does not espouse isolationism. It recognizes that the United States has commitments which must be honored. The extent of these commitments must be clearly understood by other nations. We must maintain a level of credible military power sufficient to make deterrence a policy.

We need a strong Army for the future and the stronger it is the less likely we are to have to use it. The cause of peace has no more ardent advocates than those who have been to war. The soldier above all other people prays for peace, for he must suffer and bear the deepest wounds and scars of war. We therefore agree with President Nixon when he says that America's strength is one of the pillars in the structure of a durable peace. He puts it this way: "Peace requires strength. So long as there are those who would threaten our vital interests and those of our Allies with military force, we must be strong. American weakness could tempt would-be aggressors to make dangerous miscalculations." He goes on to say that we cannot trust our future entirely to the self restraint of countries that have not hesitated to use their power even against their allies.

It is our firm conviction that we have already reduced our Army strength below acceptable security minimums. The cause of prudence and safety demand a reversal of the current downward trend in our ability to protect our national interests and to continue as the masters of our fate.

The principal objective of United States military power is to deter war by having sufficient and credible to maintain peace. We cannot have this without paying for it. We cannot afford to be without it.

AUSA RESOLUTIONS ADOPTED AT 1971 ANNUAL MEETING, OCTOBER 13, 1971

I certify that the Preamble and Resolutions Numbers 1 through 10 were adopted at the Annual Business Meeting of the Association of the United States Army held this date.

Resolutions from previous years, specified in Resolution Number 10, follow that Resolution.

FRANCIS S. CONATY, Jr.,
Colonel, USA, Retired, Secretary.

PREAMBLE

There is a clear and compelling need to alert the American people to the disturbing trend in this country's strategic posture. The following passage from the Supplemental Statement to the Report of the Blue Ribbon Defense Panel, which was submitted to the President and the Secretary of Defense on 30 September 1970, describes concisely and well the general extent of the trend and the underlying reasons for it:

"The situation which our country faces is without precedent. For a few years following World War II, our national security was complete and unchallenged. In the early 50's the Soviet Union became a nuclear power and, with gradual but increasing momentum, it undertook to challenge American superiority. But we enjoyed marked advantages in our industrial base, our technology, and in the sheer number and quality of strategic weapons. In the 60's, our complacency in this respect became so great, and our preoccupation with the Vietnam war so distracting, that we neglected our strategic posture.

"As a result, we enter the 70's confronted by (1) a superior Soviet offensive missile capability, (2) a marked Soviet advantage in defensive missile capability, (3) a menacing Soviet fleet, and (4) with respect to all of these, a Soviet commitment and momentum which are quite unmatched in this country. We are also confronted, as Red China orbits its first satellite, with the certainty of a new and growing ICBM capability from that irrationally hostile nation.

"Within a span of less than two decades we have moved from complete security to perilous insecurity.

"Yet, the response of the public generally, much of the media and many political leaders ranges from apathy and complacency to affirmative hostility—not against the potential enemies which threaten us—but toward our own military establishment and the very concept of providing defense capabilities adequate to protect this country and its vital interests. . . . Thus, we respond as a nation—not by appropriate measures to strengthen our defenses, but by significant curtailments which widen the gap.

"In short, the mood of the people and much of the Congress is almost one of precipitous retreat from the challenge. This paradox in response to possible national peril is without precedent in the history of this country."

The task at hand is to reduce the apathy and create an awareness of the essentiality for an adequate defense posture if the freedoms and liberties we now enjoy are to be preserved.

Our announced national policy precludes further weakening of our national defense. The Nixon Doctrine does not espouse isolationism. It recognizes that the United States has commitments which must be honored. The extent of these commitments must be cleary understood by other nations. We must maintain a level of projectable military power sufficient to make deterrence a reality.

We need a strong Army for the future and the stronger it is the less likely we are to have to use it. It is a basic ingredient for successful collective security. The move toward nuclear superiority by the Soviet Union has vastly increased the importance of nonnuclear capability by all of our armed forces, but especially the Army. It has noticeably increased the danger to the United States in any exchange of nuclear weapons. We must reduce our reliance on the possible use of these weapons. This means providing an adequate alternative with conventional kinds of military power—of which the Army is the major element. Thus, the U.S. Army remains the ultimate guarantor for the security of our country.

Acutely cognizant of this awesome responsibility, the Army is meeting today's challenges with a dedication that is in the highest tradition of the soldier. Its determination to achieve the highest standards of professionalism, despite formidable obstacles, deserves the strong support of every American.

The only lasting source of national will lies in the spirit of our people. The understanding and confidence in the nation's goals and its armed forces must be restored. The divisive influences which undermine our will must be overcome if we are to rekindle the national unity and sense of purpose which have guided this nation to its position of great leadership. To these ends, this Association pledges its unswerving effort.

NO. 1. THE ARMY ROLE IN CURRENT NATIONAL POLICY

Our current national strategy is designed to prevent wars by furthering the President's goal of building a viable structure of peace based on adequate strength, true partnership and meaningful negotiations. An analysis of each of these factors emphasizes the inevitable expansion of the Army's role in insuring ultimate success of this new strategy.

In the partnership role, the Army is the major contributor to the global security arrangements which constitute the reality of a deterrent posture. Moreover, the Army's role has been vital heretofore, and will continue to be in the future, in assisting our defense partners in improving their contribution to both national and collective defense through the management of military assistance programs.

A strong United States Army, bulwark of a free world military capability, is the essential foundation of deterrence, particularly in an environment of nuclear parity.

Because only land armies can take and hold territory, a modern, effective Army, in close association with the total force of the free world, provides an essential base from which any successful negotiations can be conducted. Such a force is also a prerequisite to the vitality and credibility of the American presence in international alliances, as well as providing a necessary precondition for progress in the Strategic Arms Limitations Talks and negotiations on Mutual and Balanced Force Reductions.

We therefore resolve to support fully a strategy of realistic deterrence with its stress on the prominent role of the Army in the attainment of U.S. national security and foreign policy objectives.

NO. 2. MINIMUM SIZE OF THE ARMY

The Army is undergoing a reduction in size as a result of the withdrawal from Vietnam, budgetary limitations and changes in national security strategy.

The Army can anticipate continued operation under conditions of an international parity of nuclear force which intensifies the need for a flexible response to conventional threats. The free world sees no reduction in the source, nature, size or intensity of the threats—visible and potential—to a just and lasting peace.

The Army must be prepared to meet force requirements created by existing treaty commitments and by the unforeseen contingencies that will arise in a divided and troubled world, while assuring the continued security of the United States. Strong Active Army, National Guard and Army Reserve forces are indispensable ingredients of our conventional defense posture and the strategy of realistic deterrence.

We therefore resolve that the Association of the United States Army declares its firm and resolute opposition to any action which would reduce or lower the level of Army total force strength below a minimum of 1.6 million or the level of Army active force strength below a minimum of 900,000.

NO. 3. TOWARD A MODERN VOLUNTEER ARMY

In 1970, the Association of the United States Army resolved to fully support all measures designed to improve the attractiveness of military careers, encourage the maximum number of true volunteers to serve in our armed forces, and to urge continuance of the Selective Service System until such time that qualified personnel in sufficient numbers, properly distributed within services and including the National Guard and the Reserve, can be provided without such a system.

The Modern Volunteer Army program seeks to enhance professionalism, improve service life and attractiveness, and increase public understanding and support. The objective of improved and attractive service life reflects an internal and external view of the same goal: to reestablish the appeal of an Army career.

Professionalism must be maintained through attracting individuals of sound qualifications and good potential for development.

The quality of Army life is related to both the Army's image and its purpose of protecting America. Society cannot disparage the value or need of armed forces to protect our national interest and, at the same time, expect its members to volunteer for Army service. The public must regard defending the country as a worthwhile profession. Those who serve must know that in serving they gain the public's respect and support.

In turn, the image of the Army is projected by the appearance of its members, their performance of duty and their way of life. For example, no one will find an organization attractive which cannot adequately care for its members and their families.

Substantial improvements in the number and quality of troop and family housing are essential.

We therefore resolve that the Association of the United States Army shall devote its efforts to the improvement of public understanding, appreciation and esteem for the individuals in its uniformed services so that the public will support actively the concept of a Modern Volunteer Army.

We further resolve that the Association use its resources to support Army emphasis on the highest standards of professional conduct and discipline in order to continue to attract young people who are interested in a career of opportunity and service with similarly motivated and dedicated individuals.

NO. 4. ONE ARMY: ACTIVE, RESERVE AND NATIONAL GUARD

The threat to the security of the United States and the free world posed by the increasing military power and potential of the Soviet Union, the People's Republic of China, their allies and satellites has never been more real than it is today.

In the face of this continuing threat, the leadership of our nation has repeatedly affirmed the United States' resolve to honor, within the national strategy for realistic deterrence, its commitments and obligations to contribute to international order.

The Secretary of Defense has pointed out in a statement to Congress that, if a major expansion of our military forces is required in the future, the principal reliance will be on the National Guard and Reserves, rather than on draftees, to augment the active forces. The statement also recognizes that National Guard and Reserve forces must be upgraded in personnel, equipment, training and availability for immediate transition from private life to active service.

The Secretary further urged that reductions in the manpower and force structures be accompanied by the development of a sound technological base and initiatives to insure the availability of the best possible modern weaponry.

We, therefore resolve, That One Army, deriving its strength and flexibility from the size, quality, readiness and dedication of its component parts—the Active Army, Army Reserve and National Guard—is essential to the effective deterrence of any military threat against the United States.

NO. 5. MODERNIZATION OF ARMY EQUIPMENT

The Army is emerging from a period of prolonged conflict during which relatively few weapon systems have been added to its equipment inventory.

The policy to avoid postwar surplus has caused a drawdown of materiel reserves which are in urgent need of replenishment.

To maintain superiority, the Army requires not only an adaptation to new techniques in the development of reliable equipment but the improvement or replacement of equipment which is becoming obsolescent.

We therefore resolve that the Association of the United States Army urge the recognition of the imperative need to re-equip the Army with new and modern weapon systems to enable it to carry out its basic function of securing this nation.

NO. 6. RESEARCH AND DEVELOPMENT

While the Soviet Union's military research and development effort continues to grow, the United States has failed to keep pace.

Our world leadership, due in significant part to our technological superiority since World War II, is being seriously jeopardized as a result of insufficient funds for adequate research and development. One potential danger resulting from this situation is the nation being placed in a position vulnerable to international blackmail.

One area of significant contribution has been the accomplishments of existing in-house laboratories, complementing the country's civilian research and development effort. These have added greatly to the overall effectiveness of this program and should be continued.

We therefore resolve to urge that sufficient resources be provided to the defense research and development effort to insure world technological leadership.

NO. 7. RACE RELATIONS AND EQUAL OPPORTUNITY

The U.S. Army, which is composed of personnel from every part of the nation and from many ethnic, religious, and social groups, is a cross-section of American society.

Realizing the impact that prejudice, injustice and lack of equal opportunity have upon morale and efficiency, the Army has striven to insure racial equality and equal opportunity. Only through an active and dedicated individual effort by all Army personnel will discrimination and social injustice be eliminated in the Army.

We therefore resolve to support all programs of the armed forces to eliminate discrimination and injustice and to foster, in every facet of military life, equal opportunity and understanding for Army personnel—male and female—and their families, both on and off post.

NO. 8. DRUGS AND ALCOHOLISM

The Association of the United States Army recognizes the seriousness of excessive drugs and alcohol by some members of the armed forces. This problem is national in scope and is not in itself the result of military service.

The Association also recognizes that there are insufficient specialized facilities in the military services to cope with this problem and that anything short of an intensive program is likely to be ineffective.

The Association supports educational and medical measures already taken by the Army. Further, we applaud the contributions of other agencies, such as the Veterans Administration, in providing long-term treatment for those who use drugs and alcohol to excess.

We therefore resolve to support and encourage efforts which will continue to allocate funds, material and personnel resources for the purposes of identifying excessive users of drugs and alcohol who require special help, organizing programs for this help, and staffing and equipping facilities designed specifically to provide such help.

We further resolve to support the position that long-term treatment and rehabilitation of those who use drugs and alcohol to excess be conducted by agencies outside of the military services.

NO. 9. DEPENDENT DENTAL CARE

The Association of the United States Army has long recognized a need for a more positive dependent dental care program. Emphasis now being placed on the Modern Volunteer Army makes it even more important that a broader and uniformly administered program be established that would be commensurate with the medical care now being provided.

We therefore resolve to support necessary action to provide adequate dental care for all dependents of active duty personnel and eligible retired personnel, and that appropriate facilities be made available for this purpose.

NO. 10. CONTINUING RESOLUTIONS

Twelve resolutions adopted at preceding annual meetings are still valid and remain in force.

We therefore resolve that the following continuing resolutions receive the full support of every member of the Association of the U.S. Army:

Redeployment of U.S. Forces from Vietnam
Prisoners of War
Strategic Airlift and Sealift
Support of the ROTC
Survivor Annuity and Benefits (Widows' Equity)
Commissaries and Post Exchanges
Equity in Service Pay
United States Military Academy
Civil Defense
Army Civilian Employees
National and Post Cemeteries
Retirement Pay Credit for Enlisted Men

REDEPLOYMENT OF U.S. FORCES FROM VIETNAM

We therefore resolve to support the President's programs designed to base the redeployment of U.S. forces from the Republic of Vietnam upon progress in Vietnamization, developments in the peace negotiations and the intensity of enemy activity. (Resolution No. 2, 1970)

PRISONERS OF WAR

One of the most shocking and cruel results of the war in Southeast Asia is the plight of the prisoners of war held by the North Vietnamese and Viet Cong. Even the most basic consideration usually accorded prisoners of war by the nations of the civilized world has been denied.

Families and other loved ones of these prisoners have been left to live in the uncertain agony of ignorance as to the prisoners' whereabouts, state of health or even existence.

We therefore resolve that the Association of the United States Army encourage the federal government and reputable organizations to use whatever resources necessary to call the attention of the world and the American public to the plight of U.S. prisoners of war and those of other nations held by the North Vietnamese and Viet Cong. We further urge that this publicity be a continuing effort so that the expression of outrage on the part of all people be sufficient to persuade the enemy to adopt more humane practices and hasten the return of prisoners of war to their homes.

Further, the Association expresses its sympathy in behalf of all of its members to the gallant wives, families and loved ones of these prisoners. (Resolution No. 3, 1970)

STRATEGIC AIRLIFT AND SEALIFT

We therefore resolve that action be taken to provide continued support for programs designed to expand and modernize the merchant marine and to support the improvement in, and obtainment of, sufficient amounts of strategic airlift, multipurpose ships and other sealift, together with their supporting facilities, required to meet the operational needs of our ground forces. (Resolution No. 7, 1970)

SUPPORT OF THE ROTC

We therefore resolve to continue support of the ROTC program and to urge that institutions of higher learning be encouraged to cooperate with military services to upgrade their ROTC programs and encourage student participation in them by giving academic credit for course work completed.

We further resolve to urge that institutions continue to provide the military services with an acceptable climate of institutional support for the ROTC program on campus, and to accept the responsibility for education of our military leaders comparable to their responsibility of educating leaders of other segments of our society. (Resolution No. 8, 1970)

SURVIVOR ANNUITY AND BENEFITS (WIDOWS' EQUITY)

We therefore resolve to support the establishment of a survivor annuity program which would eliminate the inequitable aspects that now exist. (Resolution No. 11, 1970)

COMMISSARIES AND POST EXCHANGES

We therefore resolve that the Association of the United States Army support expan-

sion of the facilities of commissaries and post exchanges, and, further, that these services provide adequate personnel to properly maintain efficient operation. (Resolution No. 13, 1970)

EQUITY IN SERVICE PAY

We therefore resolve that existing inequities in pay policies be eliminated. These include, but are not limited to, the following:

(1) The relationship of retired pay to active duty pay.

(2) Equal risk flight pay for warrant officers.

(3) The Dual Compensation Act as it discriminates against retired regular officers in federal employment.

We further resolve to continue to support strongly a modernization of the military pay system that will provide remuneration comparable to that of civilians of equal skill, education and responsibility. (Resolution No. 3, 1969)

U.S. MILITARY ACADEMY

We therefore resolve to continue and emphasize a program to encourage outstanding youth to seek appointments to the United States Military Academy and to search for new ideas leading to its further development and effectiveness. (Resolution No. 8, 1968)

CIVIL DEFENSE

Now, therefore, be it resolved, that the Association of the U.S. Army supports civil defense authorities in their efforts to provide the American people with adequate shelter against the effects of nuclear attack. (Resolution No. 6, 1967)

ARMY CIVILIAN EMPLOYEES

Now, therefore, be it resolved, that this Association extends special commendation and gratitude to the civilian employees of the Army and recommends that dynamic career programs be maintained to recruit, retain and encourage the continued service of dedicated public servants in consonance with the command responsibilities and missions of the U.S. Army. (Resolution No. 11, 1967)

NATIONAL AND POST CEMETERIES

Now, therefore, be it resolved, that it is the considered opinion of the Association of the U.S. Army that the best interests of the nation and the members of our armed forces and their dependents will be served by the expansion of national and post cemetery facilities immediately, to insure that the members of our armed forces who have served honorably will be provided a resting place in a military cemetery as a tribute to their service. (Resolution No. 14, 1967)

RETIREMENT PAY CREDIT FOR ENLISTED MEN

Now, therefore, be it resolved, that this Association encourage and indorse measures which will permit enlisted personnel to receive credit for inactive reserve duty prior to 1 June 1958 for retirement pay purposes. (Resolution No. 15, 1964)

THE STATE OF THE UNION MESSAGE AND OLDER AMERICANS

Mr. CHURCH. Mr. President, the President's state of the Union message—as read to a joint session of Congress—made two or three references to the elderly.

In the longer written statement given to the press, President Nixon made a more detailed description of his program on aging.

I would like to comment briefly on his proposals at this time, with the understanding that I and other Members of the Senate Committee on Aging intend to offer additional remarks, and new proposals, early next month.

Mr. Nixon's first order of business is action on H.R. 1, which includes several provisions of direct importance to the elderly. This "welfare reform bill," when first submitted by the administration, did not call for an across-the-board increase in social security. Thanks to action by the House, the bill would now provide a 5-percent increase in social security benefits. This is a worthwhile and vitally needed increase, but I believe that it is inadequate. I am hopeful that the Senate Finance Committee, and then the Senate, will pass at least a 12-percent increase and take action on other proposals to improve the benefit level for lower-income Americans. I am disappointed that the President did not call for an increase beyond the 5-percent level.

In addition, H.R. 1 calls for a Federal monthly income floor of $195 per couple and $130 for an individual. Here again the House has improved upon the administration's original request, which proposed $65 a month for an individual. I am glad that the administration is not opposing these higher levels; I only wish that the administration had exerted greater leadership in getting us to this more adequate level.

President Nixon's statement then calls for action which, frankly, is puzzling. He says:

I am requesting that the budget of the Administration on Aging be increased fivefold over last year's request, to $100 million, in part so that we can expand programs which help older citizens live dignified lives in their own homes.

As one who had long sought higher appropriations for the AOA, I welcome any such evidence of Presidential interest.

But surely the President must know that the Senate and the House acted late in December to take the very action he now calls for. The Administration on Aging already has a funding level of $100 million, and the AOA is now busily at work attempting to determine how to make the best use of that funding level, which is more than $55 million more than previously.

The President devotes one paragraph to nursing homes. He promises only that he will continue the "crackdown on substandard nursing homes" began in 1971 and that "our followthrough will give special attention to providing alternative arrangements for those who are victimized by such facilities."

It seems to me that the problem of long-term care in this Nation will not be resolved by more inspections and shutdowns of marginal institutions. What we need is a genuine national policy on long-term care, more appropriate use of alternative facilities, and greater emphasis upon rehabilitation for those now in nursing homes. On December 2, Senator FRANK MOSS—chairman of the Subcommittee on Long-Term Care for the Senate Special Committee on Aging—introduced a legislative package which would take this Nation a long way toward the goals I just described. I commend the Senator's proposals to the President and his staff.

Mr. Nixon also mentioned earlier suggestions he has made about pension reform and the property tax, but does not provide essential details.

In short, Mr. President, the President's state of the Union message gives no real assurance that he really has paid careful attention to the recommendations made by the thousands of delegates who attended the White House Conference on Aging late in 1971.

We can only hope that future messages will fill in gaps and answer questions.

And we on the Committee on Aging will make certain that such questions are asked.

J. EDGAR HOOVER INTERVIEWED

Mr. EASTLAND. Mr. President, the nationally circulated magazine Nation's Business, in its January 1972, edition contains an excellent and worthwhile article entitled "J. Edgar Hoover Speaks Out." The article, subtitled "An exclusive interview with the senior statesman of law enforcement," traces Mr. Hoover's career as Director of the Federal Bureau of Investigation.

Emphasizing his record of service to law enforcement, the story gives an insight into Mr. Hoover's deep dedication to America and its well-being as a nation. At the same time, the article, in question-and-answer style, gives Mr. Hoover the opportunity to discuss many of the vital issues facing our citizens today.

It has always been my belief that Mr. Hoover ranks with the greatest of Americans. He is a man of great personal integrity, and his dedication to principle is well known. The creed by which J. Edgar Hoover lives could well be a guide for every American who seeks to better serve his country and his fellowman.

I believe the article will make excellent reading for every citizen; therefore, I ask unanimous consent that it be printed in the RECORD.

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

AN EXCLUSIVE INTERVIEW WITH THE SENIOR STATESMAN OF LAW ENFORCEMENT, J. EDGAR HOOVER

J. Edgar Hoover speaks out about:
Presidents he has known.
Attorneys General he has known.
Crooks he has known.
Organized crime in business.
The FBI—past, present and future.
Demands that he retire.

Almost 48 years ago, a hardworking young Justice Department lawyer was called into the office of then Attorney General Harlan Fiske Stone and told: "I want you to take over as acting director of the Bureau of Investigation."

J. Edgar Hoover reflected for a moment. A Justice Department employee since 1917, he had been assistant director of the Bureau for three years, agonizing all the time as it became increasingly a product of the political spoils system.

"I'll take the job, Mr. Stone," he replied, "on certain conditions":

The Bureau must be divorced from politics. Appointments and promotions must be based on merit, and the Bureau must be responsible to the Attorney General only.

"I wouldn't give it to you under any other conditions," the Attorney General said. "That's all. Good day."

In the years since then, John Edgar Hoover has seldom been out of the public eye as he has molded the Federal Bureau of Investigation into a model law enforcement agency and kept it that way. (The word "federal" was added to the Bureau's title in 1935. The word "acting" was dropped from Mr. Hoo-

ver's own title a few months after his appointment.)

"FBI" became an abbreviation that commanded the respect and cooperation of citizens.

"G-Man" became a nickname feared by criminals and subversives.

Mr. Hoover set a rigid standard of personal behavior for himself and for the people of the FBI. To attain a goal of excellence, he believes there is one essential: integrity of self and deed. With absolutely no compromise.

A lifelong bachelor whose work is his first love, he does find time for other interests, too. In the evenings at his two-story house in a pleasant Northwest Washington neighborhood (a housekeeper oversees the establishment), he relaxes in front of the television set and in the company of his two cairn terriers. ("Naturally, they're spoiled. They boss me around.")

He loves gardening and is proud of his roses. And now that he's put down artificial turf in his spacious back yard, "I can forget about seeding grass every year. This stuff is wonderful."

His favorite sport is horse racing. A big reason is that "you can relax completely. I love to watch the horses run." The Ex-Agent Association recently gave him a statue of a stallion—"the first I've ever owned, though I've supported many of them."

He was also a fan of the Washington Senators before the franchise was moved to Texas last fall, and frequently went to games with Richard Nixon when he was Vice President. (Mr. Nixon "knew all the players by name and everything about them—batting, fielding, everything.")

His favorite vacation spot is La Jolla, Calif., and if he were an agent in the field, that's where he'd most like to be assigned. His second choice would be Butte, Mont.

"I've been accused of using Butte as a kind of Siberia for agents that displease me," he says with a chuckle. "When that allegation was made, I checked up and found we actually had 144 requests from agents to be assigned there. You know why? It's close to Glacier National Park, and some of the best hunting and fishing in the world is around there."

Mr. Hoover, 77 this New Year's Day, has been warmly lauded for his performance as director of the FBI. An inner corridor leading to his office is lined with plaques and citations from sources of organizations and with mementoes from notables he has known.

In recent years, he also has been the target of criticism, a fact he accepts as inevitable in light of the position he holds.

In this interview with editors Jack Wooldridge and Wilbur Martin of Nation's Business, Mr. Hoover talks over many of the highlights of his career, taking note of achievements for which he has won praise as well as matters for which he's been criticized, and discussing other subjects ranging from Presidents and Attorneys General he has known to crooks he has known.

You have served under eight Presidents. Were you closer to some than others?

President Coolidge I only knew officially. I became very, very close personal friends with Herbert Hoover, but really this was after he left office. He was chairman of the board of the Boys' Clubs of America and I was a board member. I got to know him quite well.

I didn't know until he told me years after he left office that he was responsible for my being named director of the FBI. As a young lawyer in the Justice Department, I had worked with the Senate Foreign Relations Committee on an investigation of whether we should restore recognition to Russia. I had come to the attention of Mr. Hoover, who was then Secretary of Commerce.

Attorney General Stone mentioned to him that he was looking for someone to put in charge of the Bureau and Mr. Hoover recommended me.

I always felt President Hoover was terribly wronged. Everyone blamed him alone for the Depression. He was a very shy man, you know, very human. We used to walk down the street in New York City after he had been President and no one recognized him. I thought, "How terrible, to be forgotten."

I was so pleased that in his later years he was recognized for the great man that he was.

I was very close to Franklin Delano Roosevelt, personally and officially. We often had lunch in his office in the Oval Room of the White House. During his Presidency and afterwards, at Gettysburg, I was close with Gen. Eisenhower. He was a great man and a great President.

I lived across the street from Lyndon Johnson for 19 years. We were very close friends and this friendship continued during his Presidency and to this day, I hear from him regularly.

When he was in the Senate, and we were neighbors, he had a little dog he called Little Beagle Johnson. Every few days he would come over in the evening and say, "Edgar, Little Beagle Johnson's gone again. Let's go find him."

And we would go off looking all over the neighborhood.

When he was President, two of LBJ's beagles died. One swallowed a stone and the other one was run over by a Secret Service car.

I got a little beagle from a kennel in Atlanta and gave it to him. One day, I was visiting at the White House and he said, "Let's go look at the dogs." We were walking along when all of a sudden he hollered, in his big Texas voice right in my ear, "Edgar, where are you?"

Well, I was right beside him and I didn't know what he meant. "I'm here, Mr. President," I said.

"Oh, I don't mean you," he answered. "I mean the dog, the beagle, I call him Edgar."

I had a letter from President Johnson just a few weeks ago and he told me Edgar was doing just fine on the ranch in Texas.

Of course, I have been friends with President Nixon for a long time. I first met him on the Alger Hiss case. A lot of hatred for President Nixon stems from this case, from some of the liberals and pseudoliberals who've never gotten over this case. I think much of the hatred for me stems from this case, too.

[Mr. Nixon, then a Congressman, played an active role in the case, in which Hiss, a former State Department official accused of having passed on secrets to the communists, was convicted of perjury.]

President Nixon has changed materially. He's much more extroverted today than when I first met him. That's good. I think he's doing an excellent job as President, despite the brickbats he gets thrown at him from some of the media. He never loses his cool. He's done an excellent job on economic matters and I think his coming trips to China and Moscow will turn out well. He knows how to negotiate with people without giving up principles.

You have also served under 16 Attorneys General and once termed Ramsey Clark the least effectives. Who was the best?

Oh, that's hard to say. There are a half dozen that stand out, those I was very close to.

There was Harlan Fiske Stone [who served under President Coolidge]. He appointed me and we were very close. After he became Chief Justice of the Supreme Court he often would stop by. He'd say, "Edgar, I've come by to get an account of your stewardship." He considered me the steward of the FBI.

Then there was John G. Sargent [who also served under President Coolidge]. He was a big man, 6 feet 6 or 7, and wore a size 15 shoe. His feet always hurt and sometimes when I went home with him to lunch, he'd take his shoes off. He was like the mountains of Vermont—solid, very solid.

Herbert Brownell [under President Eisenhower] is a great lawyer, a great administrator. And Bill Rogers [William P. Rogers, now Secretary of State]. We were very close. When he was Attorney General and President Nixon was Vice President, we would frequently spend the Christmas holidays in Miami Beach together.

Frank Murphy [who served under President Roosevelt] was a very close personal friend. I don't know why. In the beginning, we were so opposite philosophically. Murphy was very shy and stiff in public. But in private he was the life of the party. After he was named to the Supreme Court, I would go up and we would walk from the Court to the Washington Hotel, where he lived.

Of course, there's John Mitchell, the present Attorney General. He is a very able man, a very down-to-earth individual, very unlike those Herblock cartoons in *The Washington Post*.

And I'm completely fascinated by his wife. Martha is a wonderful person. She speaks her mind. She has integrity in thought. I like that.

I was very close to the wives of some of the other Attorneys General. Mrs. Homer Cummings [her husband served under President Roosevelt], Mrs. Brownell, Mrs. Rogers.

What, in your mind, has made you successful in your administration of the FBI?

Principally, instilling in every FBI employee the absolute need for excellence in performance.

A law enforcement agency is only as good as the support it receives from the public. Over the long run, the public cannot be fooled. Only demonstrated performance produces the respect and cooperation necessary to achieve the results FBI responsibilities demand—and which the public has every right to expect.

This attention to a goal of excellence requires its sacrifices. It means long, often grueling hours of work on the part of our special agents. It means they must maintain personal conduct standards that raise no question as to our capacity to discharge FBI duties with skill and integrity, strict impartiality in conducting investigations, and self-discipline to withstand the frequent taunts and abusive manners of those who would impede the performance of our lawful obligations.

Some of my critics have charged me with being a harsh and autocratic administrator, but they fail to recognize the trust that must be generated from the proper discharge of FBI responsibilities. This fact leaves little room for error. An enforcement agency, by the very nature of its duties, is an easy and natural target for criticism.

You spoke of critics. In recent years, the most persistent criticism concerning you, Mr. Hoover, has been that you should retire and hand over the reins of the FBI to a younger man. What is your reaction to this?

I don't consider my age a valid factor in assessing my ability to continue as director of the FBI—any more than it was when, at the youthful age of 29, I was appointed to this position. I was criticized then as "the Boy Scout." Now, I'm called "that senile old man."

My appointment to head the FBI was based on performance and I believe that same standard should apply to any evaluations of my fitness to continue in this post.

Years are only a guide to a person's age and have little meaning when attempting to equate them with ability, vigor and demonstrated performance.

This is what I believe many young people are talking about today when, in spite of their youth, they demand a more active role in our society commensurate with the many obligations they are required to shoulder. And they are right.

Many of our great artists and composers did their best work in their 80s. They were judged on performance, not age. Other leaders, too.

Look at Bernard Baruch; he was brilliant in his 90s—and Herbert Hoover and Douglas MacArthur in their 80s.

That is my policy. I judge a man on the quality of his performance. So long as I am blessed with good health and enthusiasm for my work, I would hope that I may be judged in this same manner.

How much has the FBI grown since you assumed its leadership?

When Attorney General Stone appointed me on May 10, 1924, to head what was simply called the Bureau of Investigation, the Bureau had 441 special agents.

Compared with today, the Bureau's jurisdiction was quite limited. Through the years Congressional enactments, Presidential directives and orders of the Attorney General have substantially increased our jurisdiction to some 185 federal investigative matters.

We have 59 field offices located throughout the U.S. and Puerto Rico. In addition to these major offices, there are hundreds of resident agencies or suboffices. All told, the Bureau now has approximately 19,000 employees, and over 8,000 of these are special agents.

I might say here that the average agent works overtime 2½ hours every day, but gets paid for only one hour and 49 minutes, the legal limit. I think the amount of overtime is grossly excessive, but it's necessary because of the vastly expanded duties given the Bureau.

Has the nature of your own work changed as the Bureau has grown?

In the early days, I could get out and visit the field offices every year, personally see the agents in action, and spot those with potential, those who did more—or less—than their duty.

I can't do that now. I have to stay here.

I spend a lot of time in preparation for testimony before Congressional committees, and in testifying.

But the FBI inspection division reports to me on what you might call "the blood pressure of the service." It makes inspections of every field office—not to get somebody, but to find the soft spots, if any. We can't afford these.

Another difference is that in the early days, I could get out on cases. I wish I could do that now, but somebody has to run things here. I still sweat the hard cases out, though here at hearquarters.

The plane hijackings, for example.

What were some of the cases you went on?

Some were publicized, some were not. There was one involving John Henry Seadlund, in the '30s. He was wanted for the kidnaping and murder of Charles S. Ross [a wealthy St. Paul, Minn., businessman]. Seadlund was arrested at the Santa Anita race track in California and I flew out there to get his confession.

In the FBI, we have never countenanced any rough stuff, never any "third degree." I believe psychology plays a large part in dealing with criminals. Psychology and integrity, even with criminals. This case makes that point.

I talked all day to Seadlund and I hadn't had any sleep. Or food. I asked him if he wanted something to eat.

"What do you want to know for?" Seadlund snapped at me. "You won't get it for me." I asked him pretty bluntly, "What do you want to eat?"

He said, "Steak, potatoes, and pie à la mode." I told an agent, "Just double that order.

The next day Seadlund asked to see me. He told me, "Well, you kept your word and got me my steak. Now get your steno and I'll tell you what you want to know." I got a full confession.

So psychology and integrity are tremendously important. FBI agents were warning suspects of their constitutional rights long before it was required by law.

We had to take Seadlund to St. Paul. When we left Los Angeles it was 78 degrees and when we got to St. Paul it was zero. We had to hide out from the press in the woods for two or three days, looking for the bodies of Ross and Seadlund's partner, whom he had also killed.

I asked one of the agents to get me some warm clothing. He brought me a suit of red woolen underwear. He could have at least gotten white, but it was a gag and it was appreciated.

Weren't you also personally in on the Alvin Karpis affair?

Of course, there was Karpis. He was part of the Ma Barker gang, and kept sending me postcards from all over the country, saying he was going to kill me like Ma Barker and her son [Fred] were killed in a gun battle in Florida. I passed the word that whenever we spotted him, I wanted to make the capture personally.

Well, we tracked him to New Orleans [in April, 1936] and I flew down there.

We try to make an arrest at dawn, or some other time when there aren't many people on the street. But we had to do this one at 5 in the afternoon. Karpis had been holed up in an apartment on Jeff Davis Parkway and it was the rush hour and there were people everywhere.

Karpis and a companion suddenly walked out of the house and got into a car. I ran up on one side and grabbed him. Another agent went to the other side and grabbed the other fellow.

I said, "Bring the handcuffs," but everybody had forgotten to bring handcuffs. So an agent who had grown up on a cattle ranch said, "I can tie him up so he can't move." And he did, tying his hands behind him with a necktie.

When we got into the car, Karpis called me by name. I asked him how he knew who I was and he said, "Oh, I saw your picture in the paper in Miami." I'd had my picture taken when I caught that sailfish on the wall over there, the only one I've ever caught. Karpis said that my luck was better than his, that he'd been trying to catch one for three years.

On the way downtown, the agent driving the car got lost.

Karpis spoke up, wanting to know where we were going. I asked him why he cared and he said, "Well, if it's to the post office building, I can tell you how to get there. I was planning to rob it." So he directed us.

The agent who was driving heard from me later.

You have always shown particular interest in kidnaping cases, haven't you?

Yes. Every case is important, but kidnapings strike me as being extremely vicious crimes against society. Often they involve young children or other family members. I don't think there is anything worse than the kidnaping of a child and the agony of the family. I look with a great deal of personal satisfaction on our accomplishments in these cases.

We first got the name "G-man" on a kidnaping, the Urschel case. [Oklahoma oilman Charles F. Urschel, kidnaped in 1933 by the George "Machine Gun" Kelly gang. Caught in a house in Memphis, Tenn. Kelly cringed and cried, "Don't shoot, G-men, don't shoot, G-men!"]

The federal kidnaping statute, passed in 1932 after the Lindbergh baby kidnaping, as well as a series of other special "crime bills" in the early '30s, greatly expanded our responsibilities in that field.

Do you have any advice on how to keep in good health?

I try to stay in good health by avoiding excesses. Moderation in everything you do is a good rule. I take a physical every year and the last one showed I was in better shape than when I took the first one in 1938. I had to lose a little weight after that one.

All of our agents must be in top physical condition. They can be a little underweight, but they can't be overweight. When I put that rule in, some men groaned a little. But the wives all think it is great.

I exercise every morning on an exercycle.

I try to get enough sleep each night, but not too much.

In the evening I relax and watch television. I usually have a highball, maybe two. But never more than two. Jack Daniels black label—on the rocks, with a dash of soda. I never drink martinis. Martinis are poison. Nobody can drink four and be sober.

I never take work home with me Monday through Friday. But I take a lot of work home with me on the weekend when I have time to think.

Of course, I watch my diet. Again, you have to do everything in moderation.

I have two little cairn terriers. One is 17, blind and deaf, and the other is four. She's a little hussy, bosses the older one around. At breakfast, they get my bacon and eggs. I get the fruit juice and black coffee.

I always have the same thing for lunch: grapefruit, cottage cheese and black coffee. And usually I eat at the same place [the Mayflower Hotel].

I like to relax at lunch. One of the things that irritates me is for people to come up and ask, "You don't know me, do you?" I always say, "If you were ever in Alcatraz, I know you. We'd have a record on you."

My dinner at home is always moderate. I'd love to have a piece of chocolate cream pie. But I don't. Moderation in what you do, integrity in what you do. I believe in that absolutely.

Horse racing is your favorite sport. Have you seen any of the great winners?

Yes. I saw Whirlaway, for example.

As a matter of fact, I was at Aqueduct and asked a friend with me to get a ticket on him. He came back with a ticket on the wrong horse, Tola Rose I think it was, a 20–1 shot. Whirlaway was something like 2–5. And Tola Rose won. I told him I should let him pick the horses every time.

One fellow I wouldn't let ever pick a horse is George Allen [a friend of President Roosevelt, Truman and Eisenhower]. He always bets three horses in the same race—to win.

President Eisenhower used to give George $5 to bet for him every now and then. I told President Eisenhower, "I'd never let George bet for me. He's the worst at picking horses I ever saw."

George said that if I'd told that to anybody else but the President, he'd have sued for slander. We're very good friends.

What are your 10 most important accomplishments as director of the FBI?

It's difficult to pick out any specific number of accomplishments. Certainly among the most important was cleaning up the Bureau, cleaning out the political hacks. This was the mandate given to me by Attorney General Stone when he appointed me. Also, winning the support the FBI has consistently received over the years from the law-abiding and concerned public.

Without these, it is doubtful the FBI could have realized many other accomplishments. I am particularly proud that FBI performance during my tenure has merited the public's support.

Other accomplishments which were important in the development of the FBI include the nationwide centralization of criminal fingerprint records in the FBI Identification Division in 1924; establishment in 1932 of the FBI Laboratory; and establishment in 1935 of the FBI National Academy, which

provided a university-level advanced training program for select law enforcement officers throughout the nation.

Also, the capture of the Nazi saboteurs landed on our shores by submarine during World War II; the convictions of top communists leaders following the war; the successful investigations into the Rosenberg and Col. Rudolf Ivanovich Abel spy cases in the 1950s; the convictions resulting from our investigations of the murders of a number of civil rights workers during the 1960s; and the beginning of the FBI National Crime Information Center.

There are many more, of course, but these stand out in my mind.

What about your own politics?

You know, when I took over with the mandate to clean out the political hacks and straighten out the Bureau and did, I was accused of being a Democrat because the Republicans were in office. Then I was accused of being a Republican when the Democrats took over.

I grew up in and live in the District of Columbia. I have never voted in my life: I don't like labels and I am not political. My feeling about politics is that both parties should nominate for all offices the very best qualified man—unfortunately, that isn't always the case—and that the people should vote for the man who they believe is the best qualified.

You have been quoted as saying the FBI's National Crime Information Center is a real breakthrough in fighting crime. Why so?

The NCIC provides what was long urgently needed, a comprehensive and swiftly efficient informational exchange system of national scope.

This computerized index of documented crime data is now tied to all states and Canada by a vast telecommunications network. The total number of NCIC active records concerning stolen property and persons wanted for crimes has climbed to over three million, with daily transactions sometimes well over 75,000.

I'll give you an example of why I think this gives our nation's law enforcement community an essential tool to meet the challenge of crime.

Recently, two state troopers in New York stopped a car. They radioed for a check on it and within two minutes—two minutes—they knew that the car had been stolen and that its two occupants were wanted for murder in California.

Some have charged that federal computer systems are leading to a huge national data bank that could strip the individual of his privacy. Could you comment?

As far as the FBI is concerned, those fears are groundless.

The National Crime Information Center is the principal FBI computer system and it contains only documented data concerning criminals and stolen property. Its information is available only to authorized law enforcement agencies and the system was designed to prevent any abuse or misure of its data.

Any allegations that this could lead to a "big brother is looking at you" operation are completely false.

The FBI has been accused of engaging in unauthorized wiretapping. What are the facts?

The facts are that the FBI has not used wiretaps without the authority of the Attorney General, and then only to a limited extent in cases involving our nation's security.

Also, under the Omnibus Crime Control and Safe Streets Act of 1968, federal judges may authorize the FBI to use electronic surveillance techniques in some cases involving organized crime. The Attorney General has to approve each instance, and a written affidavit establishing probable cause for action must be presented to the judge.

Assertions that FBI wiretapping is widespread are absurd. If the FBI engaged in wiretapping to just a fraction of what its critics suggest, it would have no time for anything else.

These critics who accuse the FBI of this practice can never produce any proof.

Congressman Boggs (Rep. Hale Boggs (D.-La.), majority leader in the House) made a wild statement that his telephone had been tapped. That charge was simply not true. No telephone of any Congressman has ever been tapped since I became Bureau director in 1924. He was put in the position of having to "put up or shut up" on that charge and he shut up.

Another accusation against the FBI is that of snooping on campuses.

Completely false. I believe this is only a scare tactic to inflame the academic community against the FBI.

Yes, the FBI does conduct investigations on college campuses—or anywhere else in the nation. But only if there is a violation within its investigative jurisdiction.

If, for example, an ROTC building has been destroyed by a fire or explosion, we will investigate to see if there is evidence of sabotage or destruction of government property. Many campuses have government research or other government facilities. If government property is damaged or stolen, the FBI investigates.

We do not snoop on campuses, or in any way treat the campus different from any other area of society. The FBI has the highest respect for academic freedom.

American business is making great use of computer technology, particularly in records management. What steps has the FBI taken along this line?

One of the first actions I took upon becoming director was the establishment of a centralized national file of arrest records on fingerprints. This led to formation of the FBI Identification Bureau in 1924, the year of my appointment.

From 800,000 fingerprint records, this has now grown to nearly 200 million, including many civilian and military fingerprints that are kept separately from those filed as a result of arrests. I have always felt strongly that fingerprints for identification purposes are a protection for the public. I remember I personally took the fingerprints of John D. Rockefeller Jr. and his family in 1924 to encourage the public to take advantage of this protection, and to show there was no stigma in having your fingerprints recorded. Nelson was a little boy then.

As far back as 1934, the FBI installed a punch card system of searching fingerprints. However, because of the rising volume of fingerprint records this proved inadequate and, by necessity, the Identification Division had to return to manual searching. Presently, development contracts are nearing completion to computerize fingerprint files and to electronically read, classify and retrieve—within seconds.

In 1954, we had in operation the first automated payroll system in the federal government.

What are some of the major problems the FBI has run into in combating organized crime, especially in the field of legitimate business?

There is no question the two most serious problem areas are the complexity and size of the investigations themselves, and the general apathy of citizens directly or indirectly affected.

On one series of gambling raids we used over 200 FBI agents. In another series, we had to call upon over 400 agents. In one major hoodlum international bankruptcy case alone, we had investigations being conducted by 31 offices in 28 states, ranging from New York to California and from Minnesota to Alabama.

Many hoodlums, unfortunately, have acquired a facade of semi-respectability in their communities. People find it hard to believe that these so-called "businessmen" can possibly be involved in illegal activities.

Even more disturbing, from a law enforcement view, is the seeming indifference of otherwise responsible citizens to the acknowledged existence of specific phases of organized crime in their communities.

What they are overlooking, of course, is that hoodlum-connected major thefts increase their insurance rates, that labor racketeering increases consumer costs, that gambling and narcotics corrupt youth, and that bribery of civic and police officials undermines good government and deprives the public of the protection to which it is entitled.

Is there a law which particularly helps the FBI to fight infiltration of business by criminals?

Under the Organized Crime Control Act of 1970, which the President signed into law in October, 1970, Title IX bans the investment of underworld funds in legitimate business ventures. This provides for severe criminal penalties, as well as forfeitures.

Successful businessmen place great emphasis upon personnel training. What is the FBI doing in this area?

I certainly agree with the importance of personnel training, and effective personnel training has been a keystone of FBI operations since I became director. In fact, the FBI pioneered advanced law enforcement training with the establishment of the National Academy in 1935.

In addition to the Academy, the FBI has some 1,500 specially trained special agent police instructors who go out where requested and give a wide variety of training. For example, this FBI Field Police Training Program just this past year conducted more than 9,000 training schools, attended by more than 300,000 people. And this involved over 83,000 hours of classroom instruction by Bureau personnel.

The new facility for our Academy at Quantico, Va., when we move in later this year, will enable us to increase the number of officers to be trained from 200 to 2,000 annually. It will also provide specialized courses for 1,000 others. These will be management courses, and I'm quite proud that we will be able to do this. I believe it will certainly strengthen local law enforcement.

Do you think the United States should have a national police force?

I am vigorously opposed to a national police force, or any trend toward one. I want to make one point clear, and it is one that critics of the FBI seem to want to overlook.

The FBI does not decide what it will investigate. It is given responsibilities by Congress, by the President, by the Attorney General. It is charged by law to carry out certain functions. And we will do that.

I might also say that I opposed our being given some of these responsibilities. For instance, we are charged with investigating an illegal gambling case if it involves five or more persons, remains in business 30 days, or has a daily $2,000 gross. I believe this is a function of local law enforcement.

The FBI has a relatively small number of Negro special agents. What is its policy with respect to employing members of minorities?

The FBI is unequivocally dedicated to the principles of equal employment opportunity. I insist that all appointments and other personnel actions be based on merit and fitness.

Let me say that nothing would please me more than to have a greater number of special agents from minority groups. We have a very real need for them, and they would be a most welcome asset. We will continue to make every effort to attract those qualified.

But I have not, and will not, relax the high standards which the FBI has traditionally demanded of special agents without favor or exception.

Attorney General [Robert F.] Kennedy became very angry with me over this.

I would not yield.

The standards for a special agent of the FBI are stringent. Applicants must be of outstanding appearance and outstanding character, and have the required education in law, accounting, languages or sciences, or three years of executive, professional or investigative experience.

We demand of FBI employees a standard of morality which can be approved by the majority of the American people. Some say we are too strict, but I submit to public judgment that discipline is an absolute necessity. An undisciplined law enforcement agency is a menace to society.

We do have exacting standards in the FBI and we apologize to no one for them. We have no intention of arbitrarily compromising these standards to accommodate kooks, misfits or slobs.

As I have said publicly, disregard for law and order is encouraged by hatemongers, extremists and others who say that revolution against society is justified and necessary.

A number of terrorist or revolutionary groups seem to have sprung up in recent years. Would you comment?

Terrorist-extremist sentiment is on the rise in the nation today, especially in the so-called New Left. The Students for a Democratic Society was formed in 1962 and by 1967 this group had developed a revolutionary, violent posture, urging destruction of our democratic institutions. In 1969, it was torn by factionalism and its extremist wing became the Weatherman.

The Weatherman, which went underground in 1970, believes in violence. Its adherents have collected explosives and set up bomb factories. They have carried out acts of violence not only against police facilities, but against military and government buildings and even private buildings which happen to house the offices of companies these extremists don't like.

Small terror groups, operating from underground, represent a great danger. Unfortunately, the Weatherman type of extremist mentality seems to have spread to some other young people and even some adults.

You have black nationalist terror organizations such as the Black Panther Party. The Panthers are hoodlum-type revolutionaries, and their true nature must be exposed.

Currently the Panther Party is doing everything possible to show a "humanitarian face"—to show that it is interested, for example, in the welfare of children through its so-called Breakfast for Children program.

This is a public relations gimmick. Part of the reason for this feigned emphasis on humanitarianism is to encourage contributions from wealthy white liberals, who have given thousands of dollars to the Panthers.

What is the FBI's role concerning protests, such as those against the Viet Nam War?

In America, we have freedom of expression. Individuals have a right on their own to oppose the war or say anything else they desire about Viet Nam.

There are a number of antiwar groups and they have the right to voice their viewpoints. The FBI does not in any way attempt to stifle groups or individuals who speak out against the Viet Nam War. Charges that we do are completely false.

The FBI becomes concerned only when members of these or any other groups violate laws within its investigative jurisdiction. Or when the activities of the groups become violent or terroristic and pose a threat to the internal security of the country.

You mentioned what you consider your most important accomplishments as FBI director. What would you consider the most important cases the FBI has investigated?

I like to think that all of our investigations are important. But in terms of their impact on FBI operations or the events of the time, a few stand out.

The successful investigation of the kidnaping of Charles Lindbergh's son in 1932 led to the passage that same year of the federal kidnaping statute, giving the FBI added jurisdiction over this despicable crime.

John Dillinger had become a full-blown American folk hero by the time our agents were forced to shoot while moving in to arrest him in Chicago during 1934. I saw an ad the other day that they were making another movie about Dillinger. I suppose this one will make him a hero again. I can't understand this. The worst movie ever made was that one about Bonnie and Clyde. They were nothing but a couple of bum criminals, the worst kind.

Just a few months prior to the Japanese bombing of Pearl Harbor in 1941, FBI agents arrested 33 members of the network of the German spy, Frederick Duquesne. This case, together with the FBI capture of the Nazi saboteurs landed secretly in this country, I am sure, stopped serious enemy attempts to sabotage our war effort. Those Nazi saboteurs were tried in Classroom No. 1 of this building [the Justice Department building].

In 1949 our investigations resulted in the conviction of 11 top leaders of the Communist Party, U. S. A. We were only a few years removed from working with the world's leading communist power, the Soviet Union, as an ally. It was hard for some to realize the conspiratorial nature of the Communist Party in those circumstances.

The trial in which the leaders were convicted galvanized public opinion to the fact the communists were attempting to subvert our democratic form of government. The Rosenberg atom bomb spy case the following year left little doubt of these motives.

The six-year-long FBI investigation of the 1950 robbery of Brink's, Inc., at Boston demonstrated the virtue of investigative persistence and hard work.

The FBI investigation of the assassination of President Kennedy at Dallas resulted in the interviewing of approximately 25,000 persons and the submission of more than 2,000 reports to the Warren Commission.

As a result of the assassination and the investigation, Congress passed legislation, approved by the President, providing for federal criminal penalties in instances involving Presidential assassination, kidnapping and assault. The FBI was charged to investigate such violations, which were previously the responsibility of the local jurisdiction in which the crime occurred.

The FBI investigation of the murder of three civil rights workers in Mississippi in 1964, as well as investigations of other similar instances of violence and brutality, helped to hasten the passage of broader civil rights legislation.

Mr. Hoover, is there one crook you remember most vividly?

Gaston B. Means. I think he was the worst crook I ever knew. I fired him from the Bureau the first thing when I took over and he became mixed up in all sorts of things. He was a scoundrel.

Evalyn Walsh McLean [the wealthy Washington socialite] knew he was a crook, but she thought because he was, he could help in the Lindbergh kidnapping. She gave him $100,000 to try to get the baby back, and would have given him more. She was going to pawn her jewels, but I stopped that.

We never did find the money Means got from Mrs. McLean and which he said he had buried. We had divers searching the Potomac. When he was convicted and in the hospital at Leavenworth, I flew out there and saw him.

"Why did you lie to our men about where the money is?" I asked him.

He put his hand over his heart and said, "Oh, Edgar. That wounds me."

He was a complete scoundrel. But he was the type some people liked—a sort of lovable scoundrel.

A headquarters building for the FBI is being constructed across the street. When will it be completed?

There are some who maintain that the only reason I am staying on as director of the FBI is to be present at the dedication of this new building. I say this is absolute nonsense. In a recent speech, I facetiously noted that at the rate it is going up, none of us will be around by the time it is completed.

Hopefully, it will be ready for occupancy in 1974. We have shared space with the Department of Justice since 1934 and during that period our staff and that of the Department have multiplied many times. It's been necessary to relocate many phases of our operations in seven other sites in the capital.

This new headquarters will bring everything under one roof and vastly improve our administration and efficiency.

Would you take a look ahead at the FBI's role in the years to come?

I would hope the FBI's role in the future will be identical with its role in the past and at the present. That is, being a servant of the people.

The FBI's success has been built on one vital base—the confidence of the people. If we knock on a citizen's door, he does not have to talk to us or give our special agents information. This is a decision he must make. We can solve cases only if citizens furnish information.

We want to maintain the confidence and support of citizens in all walks of life, in all areas of the country. If we don't, we simply cannot do the job for which we are responsible.

I want the FBI's work in the future to continue to merit the approval of the people. This means, on our part, top quality investigations. Efficient, loyal and responsible personnel. A willingness to work hard.

One last question, Mr. Hoover. You've spent your life fighting crime. Have you, as a person, ever been victimized?

Yes. Once by a fellow who came door-to-door. I bought a load of fertilizer from him for my roses. The stuff turned out to be black sawdust.

And then, once by the fellow they called "The Birdman of Alcatraz." He had two cells—one in which he lived, and another where he kept his birds.

My mother was alive then and she always liked to keep a few birds, so I bought a canary from him. Only it turned out to be just a sparrow, dyed yellow.

So I've been conned at least twice in my life. I guess that proves I'm human.

MEYER SOKOLOW—MARYLAND VETERAN OF THE YEAR

Mr. BEALL. Mr. President, it is indeed satisfying to see someone who has worked long and hard for his country and for the interests of all veterans receive the credit he so richly deserves. Such a man is Meyer Sokolow, who has been selected as "Maryland Veteran of the Year" by the Joint Veterans Committee of Maryland.

Mr. Sokolow, past departmental commander of the Jewish War Veterans of the U.S.A. and chairman of the Joint Veterans Committee of Maryland, has done much to strengthen the voice of Maryland veterans. Through his leadership, both local and national veterans' organizations have actively promoted the patriotic ideals that have held our Nation in fine stead.

Mr. Sokolow has long been concerned about the welfare of innocent victims of war, particularly the people of South Vietnam. While serving as national chairman of Aid to the People of South Vietnam for the Jewish War Veterans, he supervised the collection of hundreds

of tons of clothing and medical supplies that were sent directly to the U.S. Army and Marine Corps civic action officers for distribution in hamlets and villages in South Vietnam. Through these efforts, the hardships of war for many unfortunate people were lessened. Clearly, Meyer Sokolow is a man who is deeply concerned both for principles and the people.

I ask unanimous consent that the editorial published in the Baltimore News-American of January 20, 1972, commending Meyer Sokolow be printed in the RECORD.

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

VETERANS' HONOR

A coveted award, "Maryland Veteran of the Year," has gone to Meyer Sokolow, past departmental commander of the Jewish War Veterans of the U.S.A.

The honor is the most significant because it is bestowed by the Joint Veterans' Committee of Maryland. This organization represents the members of the American Legion, Catholic War Veterans, Disabled American Veterans, Jewish War Veterans, Marine Corps League, Veterans of Foreign Wars, and Veterans of World War I.

Mr. Sokolow, a veteran of the Korean conflict, has served as national chairman of Aid to the People of South Vietnam for the JWV, supervising the collection of tons of clothing, soap and medical supplies sent to aid the war victims in South Vietnam.

We congratulate Mr. Sokolow upon his selection. The service that veterans' organizations do for others, such as the Vietnamese war victims, is too often overlooked by those who think the Legion, the VFW, the JWV and others are merely social groups.

AWARD TO W. O. DuVALL, ATLANTA, GA.

Mr. TALMADGE. Mr. President, each year Dixie Business, edited and published in Decatur, Ga., by Hubert E. Lee, selects an outstanding citizen for "A Great American" award. Selected for 1971 was W. O. DuVall, chairman of the board of the Atlanta Federal Savings & Loan Association.

I ask unanimous consent there be printed in the RECORD the article from Dixie Business designating Mr. DuVall as the "A Great American" for 1971 and also the remarks I made in 1967 in the Senate when Mr. DuVall received an honorary doctor of laws degree from the Atlanta Law School.

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

[From Dixie Business]

W. O. DuVALL: "A GREAT AMERICAN" FOR 1971

(By Hubert F. Lee)

W. O. DuVall, Chairman of the $500-Million Atlanta Federal Savings and Loan Association has been named the "A Great American" for 1971 by the editors of Dixie Business.

He is the 17th to be honored.

Mr. DuVall was named to the South's "Hall of Fame for the Living" on the basis of his life record. See page 15.

The Atlanta Kiwanis Club in 1969 dubbed him "Kiwanian of the year."

His alma mater, the University of Florida, in 1968 conferred on Mr. DuVall honorary law degree—LLD—as reported in Dixie Business and inserted in the Congressional Record by Rep. Fletcher Thompson.

Mr. DuVall was nominated by Hubert F. Lee, editor of Dixie Business; Joseph R. Mills, a Deacon of the Glen Haven Presbyterian Church and owner with his son Bob Mills, of the Mills Body Shop, seconded the nomination.

The day-to-day management of Atlanta Federal was turned over to able Bill Wainwright by Mr. DuVall on July 23, 1971.

Mr. Wainright is president and has been Mr. DuVall's good right hand.

Rev. James P. Wesberry best tells the Saga of W. O. DuVall.

[From the CONGRESSIONAL RECORD, Oct. 18, 1967]

HONORARY DOCTOR OF LAWS DEGREE CONFERRED UPON W. O. DuVALL, CHAIRMAN, ATLANTA FEDERAL SAVINGS & LOAN ASSOCIATION

Mr. TALMADGE. Mr. President, an honorary doctor of laws degree was conferred by the Atlanta Law School upon one of the city of Atlanta's most outstanding businessmen, W. O. DuVall, chairman of the board of the Atlanta Federal Savings & Loan Association.

This was indeed a high honor for Mr. DuVall and a well-deserved recognition of the outstanding contribution he has made to his city and State.

On this occasion, the Reverend James P. Wesberry, pastor of the Morningside Baptist Church in Atlanta, delivered an eloquent tribute to Mr. DuVall:

Rev. James P. Wesberry, pastor of the Morningside Baptist Church, Atlanta, one of the great preachers and leaders of our time, outlined the achievements of the honorees.

Here is what Rev. Wesberry wrote and said about W. O. DuVall, a real in the flesh Horatio Alger success hero:

"You were born in Pearson in South Georgia on July 23, 1901.

"At the age of 14, upon the occasion of the eternal homecoming of your father, you came to Atlanta to live with your physician brother, Beecher DuVall.

"Upon graduation of Young Harris College you were principal of an elementary school at Hampton, Florida for two years and at Lawtey, Florida for two years while you continued your education at the U. of Florida.

While teaching and administering the school at Hampton you met, fell in love with, and married the former Harriett Turner of Leaksville, Miss.

"At the time you received your A.B. degree from the U. of F. in 1924, several unique events happened in your life; you served as an instructor at the University during the summer; . . . your first daughter was born; and you served as a member of the State Legislature of Florida.

"You came back to Atlanta in 1925 and taught at Joe Brown High School and attended the Atlanta Law School at night.

"Often, after working hard all day and going to Law School at night, you did your studying with a law book on one knee and a baby on the other.

"Upon graduation from the Atlanta Law School you were admitted to the bar and became a member of one of the most respected law firms in Atlanta.

"One of your partners in the law, Mr. McElreath, a founder of the Atlanta Building and Loan Association, encouraged you to become its secretary and attorney. You handled all titles and loan closings.

"The assets of your Building and Loan Association at that time amounted to $121,000.

"Today its assets are $325 million.

"You have served as Executive Vice President, as President, and now as chairman of the board.

"You have also served as a director of other influential financial organizations.

"You are a highly respected, eminent citizen of this city, a giant business man, a man of honor and integrity, a man of noblest Christian character.

"You have never failed to serve your community.

"You served for 9 years as chairman of the initial joint City and County Bond Commission, charged with planning and financing Atlanta's $100 million expressway system.

"You continued as member of the new commission that administered an $87 million bond issue for public improvements.

"You served as a trustee of the Fulton-DeKalb Hospital Authority for 5 years and as its chairman for 3 years.

"You are past president of the downtown Atlanta Kiwanis Club.

"You, too, are a Master Mason and a Shriner.

"You are a member of many other outstanding clubs and organizations and have received many honors.

"Above all, you are one of Atlanta's noblest, finest Christian citizens and you serve as a Deacon in the Second Ponce de Leon Baptist Church, as a trustee of the Atlanta Baptist College and of Young Harris College.

"Because of your golden Christian character, your many attainments and great influence for good, and your superlative qualities as a lawyer, your Alma Mater, the Atlanta Law School, is happy and privileged to honor you.

"You honor the School more than the School can honor you.

"And I take great pleasure in presenting you, Wallace Odell DuVall, my dear, good friend, for the honorary degree of doctor of laws."

[From the Birmingham Post-Herald, Nov. 11, 1955]

FIRST MAGAZINE AWARD GOES TO DR. KETTERING

Dr. Charles F. Kettering, Southern Research Institute trustee and General Motors research consultant, last night was awarded the initial distinguished award of the "Dixie Business Magazine."

The presentation of the illuminated scroll, in the name of Hubert F. Lee, editor, was by Thomas W. Martin, SRI board chairman, at the SRI annual dinner last night.

The award cites Dr. Kettering as "A Great American." This is the first of the awards by the magazine and they will hereafter be made annually.

[From the Atlanta Journal, Nov. 13, 1959]

SENATOR HILL WINS MAGAZINE HONOR

BIRMINGHAM.—Senator Lister Hill (D-Ala.) has been named winner of the 1959 Great American Award from Dixie Business Magazine.

Hubert F. Lee, publisher of the magazine, announced the choice here Thursday, saying it was based on Hill's extensive efforts in behalf of legislation in the field of medicine.

The award was established in 1955.

WE MUST INCREASE DEFENSE SPENDING

Mr. BENNETT. Mr. President, in his state of the Union message, President Nixon called for an increase in defense spending. Coming at a time when the Vietnam war is winding down and Americans are weary of the burdens of war, the President's request is at once courageous and controversial.

However, available evidence indicates the wisdom of his request, and history teaches us the truth of his statement that "we must maintain the strength necessary to deter war." As President Nixon also correctly noted:

Strong military defenses are not the enemy of peace. They are the guardian of peace.

The Nixon administration, as everyone knows, has concentrated its efforts in

the military area toward ending American involvement in Vietnam—an involvement, I might add, that was incurred during previous administrations. The United States not only has been *spending* money for the conduct of the war, but has been using up its basic inventories. While we have not had funds to update our strategic defense, spending for this purpose in the Soviet Union has soared.

Although estimates vary as to how much the U.S.S.R. is spending on phases of its Military Establishment, Dr. John S. Foster, Director of Defense Research and Engineering at the Pentagon, has said the Soviet Union is spending 30 percent more than we are on military research and development alone.

Some groups in this country dispute Dr. Foster's figures and his conclusion that the Soviet Union is headed for technological superiority unless these trends change. For example, the Federation of American Scientists—comprising 2,000 Americans scientists and engineers—said in a rebuttal to Dr. Foster last year:

> Even if the Soviet Union were gaining one year of technology in every three or four, it does not provide evidence that they will—as charged—"assume technological superiority" but only that they may eventually achieve rough technological parity.

To me, this is a cavalier attitude that can be afforded only by those who will not be held responsible for the consequences of allowing the Soviet Union to achieve parity with this Nation's defense—a defense that is the chief bulwark against aggression in the free world.

Mr. President, if we in the Senate are to err, let us err on the side of prudence.

An interesting commentary on the need for increased defense spending appeared last month in the Washington report of the American Security Council. Although I cannot vouch for all of its conclusions, I believe it should be brought to the Senate's attention. The article was written by Foreign Editor Frank Johnson. I ask unanimous consent that it be printed in the RECORD.

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

A LESSON FROM HISTORY

(By Frank J. Johnson)

For nearly 25 years Marcus Porcius Cato ended all of his speeches in the Roman Senate with the solemn intonation: "Besides, I think that Carthage must be destroyed." By 151 B.C. he had won his point; Rome declared war on Carthage and a fleet set sail for Africa. But the Carthaginians, now peace-loving and unprepared for major war, sought desperately to avoid it. The Roman Senate promised their hastily dispatched envoys that Carthage would be spared if 300 children from the most prominent families would be given up as hostages. With great uneasiness and lamentation, this was done. Next, the Carthaginian ambassadors were summoned to hear the Roman demand that Carthage surrender her remaining ships and implements of war. This, too, was done. Finally, the Romans demanded the evacuation of the city so that it could be burned to the ground.

When the Carthaginians heard this final demand they realized they had been tricked, in one of history's greatest acts of perfidy. Wild with grief and anger, they tore limb from limb the leaders who had urged appeasement and frantically sought to rebuild their defenses. In two months, while the Romans massed their forces, they produced 8,000 shields, 18,000 swords, 30,000 spears, 60,000 catapult missiles and a new fleet of 120 ships. But it was too little and too late. Following a bitter siege of three years, the Roman armies broke through the walls and nearly the whole population of Carthage perished by the sword. The city was then razed to the ground and the soil plowed and sown with salt. The destruction was as complete as might be the most devastating nuclear attack of today's world.

MODERN PARALLELS

Historical analogies are never exact, of course, but the lessons they teach about the attitudes of men and governments are instructive. The America of today would do especially well to pay some attention to the sad story of Carthage. Because if we do not soon come to our senses we will be well on the way toward a rerun, with ourselves this time cast in the unfamiliar role of the victims.

Cato called for the destruction of Carthage because he saw that it was regaining its prosperity after its earlier defeat under the great Hannibal, who had invaded Italy and had very nearly conquered Rome itself. Cato believed that the world of his day could not accommodate two strong, antagonistic powers, and that Carthage would again become a military threat to Rome if left unchecked. Therefore, he persuaded his countrymen to launch a *preventive* war.

In reality, the people of Carthage had no further imperial ambitions. They wished only to be left in peace to develop trade and commerce and pursue their "domestic priorities." They must have been well aware of Cato's exhortations and of the developing Roman attitude, but they did little to prepare for war, hoping thereby not to provoke the Romans. When the prospect of war nevertheless became immediate, they sought to avert it by the most abject appeasement, including submission to total disarmament. When this policy was unsuccessful they chose to fight rather than surrender, but by then their resources were hopelessly inadequate to the task. The result was that they, as well as their city, perished forever.

For more than 25 years since the U.S. and the U.S.S.R. became the two predominant world powers, we have heard the Soviet equivalents of Cato proclaim the undying "conflict of social systems" in which they have sworn that their system will emerge as the victor. Desiring no conflict of any kind ourselves, and wishing only a live and let live arrangement with our adversaries, we have allowed ourselves to be comforted by Soviet assurances that war is not necessary to the triumph of their system. And we have been generally content to leave in slavery those who have fallen victim to their system in order not to appear "provocative."

At the same time, we have listened to our own philosophers assuring us that nuclear weapons have rendered war "unthinkable" because it is, supposedly, "unwinnable." Thus bemused, we have watched, with apparent lack of official or popular concern as the overwhelming military superiority which we once enjoyed over our enemies has ever more rapidly melted away. That superiority, with official blessing, has given way to what is now called "sufficiency."

Whether or not the Soviet Union is now operating upon some Hitlerian timetable leading up to an actual attack upon the United States, in order to remove us once and for all as a military rival, is debatable. Quite possibly no decision has yet been made that this is necessary—not yet.

What does seem certain beyond reasonable doubt is that a period of almost unimaginable danger—not a "generation of peace"—lies ahead of this country. This stems from a combination of two factors. One is the political rot and erosion that is sweeping almost completely through what was once known as the "free world." The other is the rapidly accelerating momentum of the Soviet strategic military buildup.

FUNDAMENTALS OF WORLD CONFLICT

In the conflict of social systems, which the Soviets regard as the principal characteristic of the world situation, these two factors go hand in hand and complement each other. The U.S. and U.S.S.R., as nation-states, carry on a constant struggle for prestige and influence. This is the class struggle on the international scale. The respective military power of the two nations is fundamental to this struggle. Moscow's objectives vis-a-vis each nation are, first, to bring about non-alignment (meaning a break with the U.S. alliance system), second, to bring about an "anti-imperialist orientation" (meaning a general dependence on the world socialist system), and third, to bring about the consolidation of power by the Communist party within each nation, using U.S.S.R. military power as support where necessary and feasible.

Since World War II the military strength of the United States has always constituted the primary impediment to the Communist revolutionary thrust, as well as the only serious threat to the U.S.S.R. military-technical base. During the long period when the U.S. possessed unquestioned strategic military superiority, the U.S.S.R. was forced to keep its own power thrust relatively muted, relying for its revolutionary gains largely upon the self-imposed defensive attitude of the United States and the peculiar mental processes of most Western statesmen and intellectuals, who imply refuse to understand what the game is all about. The refusal, for example, to support the Bay of Pigs landing once it was underway, and the conclusion drawn afterwards that it was foolish to have launched the operation to begin with, illustrate such thinking to perfection.

TIME IS RUNNING OUT

The "correlation of forces," however, has now changed. The military-technical base of the U.S.S.R. is no longer inferior to that of the U.S. Soviet military momentum is now such that unless the U.S. rapidly increases its own level of spending the U.S.S.R. will have across the board military superiority by 1975. Most of our professional military leaders, such as Admiral Hyman Rickover, concede that they have superiority now in many categories of military power. Their ICBM force of over 1,600 launchers vs. 1054 for the U.S. is only the most dramatic example of such superiority. The most significant may well be their level of spending on military-related research and development (R&D). Beginning about 1968 the "crossover" occurred, when Soviet R&D spending exceeded our own. According to the best estimates, it now exceeds ours by some 40–50% per year—or $3 billion annually. Given the added Soviet advantage of secrecy, which generally prevents us from learning about new Soviet weapons until they reach the prototype and testing stages, this will make the U.S. increasingly vulnerable to the kind of technological surprise that could make a Soviet first strike against us militarily feasible.

Even before we lost military superiority to the U.S.S.R., the U.S. largely lost its credibility as a military bulwark against Communist revolutionary warfare by the manner in which it chose to fight in Vietnam. By now, whether the Saigon Government does or does not survive politically has become almost academic. The indecisive conflict so traumatized American society that the U.S. President has as much as promised that we will never do anything like that again. And President Nixon's potential challengers to his job are all pledged to do less, not more, to defend our friends and allies.

Cuba's Fidel Castro, on his recent triumphal visit to Chile, felt confident enough to proclaim that left-wing revolutionaries now need to resort to force only as a last resort.

"The United States has reached a low point in its international prestige," he declared. "At the time of the Cuban revolution, the world balance between socialism and imperialism was about even," said Castro, demonstrating with his hands. "Now it's like this," he went on, raising one hand higher. "It has changed in favor of revolutionary movements."

THE NEW "OSTPOLITIK"

The growing political rot is best illustrated in Europe by West German Chancellor Willy Brandt's so-called "Ostpolitik." It is interesting that ten years ago, on June 17, 1961, this man spoke in West Berlin as follows:

"To ask us to approve the dismemberment of Germany means the expectation that we should destroy our own honor. It is the suggestion that we should betray our own compatriots; that we should betray our aim of German unity and freedom. He who gives his hand to such a betrayal does not belong to us. . . . to sign the two so-called peace treaties would mean signifying German agreement with the illegal dismemberment of the policy of "negotiation rather than given up our demand for self determination."

Yet here is this same Herr Brandt now betraying every one of his own words. The Berlin agreement, along with the Warsaw and Moscow Pacts signed by West Germany in 1970 will, if ratified by the West German Parliament, formally recognize the dismemberment and division of Germany, leave standing the Berlin Wall, and deny forever the principle of self-determination for the people of East Germany. The U.S. Government has given the treaties its blessing—all part of the policy of "negotiation rather than confrontation," which the Soviets plainly regard as the highway toward the dissolution of NATO.

The truly incredible thing is that, even at this late date, the bulk of Americans persist in living in a fool's paradise. While we bask in the reassuring radiance of upcoming Presidential visits to Peking and Moscow, while we comfort ourselves with the happy idea that an Arms Control agreement will soon make it possible for us to reduce even further our already greatly slashed military expenditure, while we look with satisfaction at a world in which there at least seem to be no major East-West crises, while we relax in the spirit of "detente" being pushed by the world-traveling Soviet leadership, and while we ignorantly conclude from all this that the Communists, this time, have really changed (the "death of ideology" one newspaper columnist proclaimed!), time is running out on us with chilling speed.

The Vice President, at least, seems to understand. In an interview with Alan Drury, printed in *Look Magazine*, October 19, 1971, he said this:

"We're talking now about our grandchildren, or at least about the next generation. Then is when the blow will come from the Soviets. By that time we will be so weak that we will not be able to respond unless we are willing to launch massive retaliation that could blow up the world. They have been extremely clever in never forcing a crisis. Their method is to work around us and weaken us on every side without forcing a confrontation. Again I say it scares me because these fellows in the Senate and in the House who oppose our foreign policy are doing things to this country which cannot possibly be reversed unless we soon start to do them. They will soon be irreversible."

One might take issue with Mr. Agnew only on the part about the "next generation." If present trends continue the crunch will come much sooner than that.

THE MOMENT OF TRUTH

Soviet strategic planners may also be assumed to be students of history. They cannot presume that United States lassitude and stupidity will continue as a constant, right up until the end. If they have studied the Carthage case, they know that the Carthaginians did elect to fight, even though the odds against them had become almost hopeless and the decision amounted to virtual suicide. The Soviets have always taken into account that the same may occur with us . . . that is, when at last the ruins of our policy of negotiation and appeasement stand so starkly visible that they cannot be hidden, and when at last we realize that we have been hopelessly tricked and that our own leaders and intellectuals have duped and deceived us, then we, too, may go literally mad. In a last suicidal fury—the Soviets may reason—the United States people will tear their own appeasers limb from limb, install a right wing reactionary government in power, and launch a war against the Soviet Union with whatever forces still remain.

Krushchev talked of this possibility and so do Soviet military planners. They talk of it because of their own complete confidence that they will win the world struggle. They know that the U.S. must some day face the moment of truth.

Consequently, by every objective standard that we can now measure the Soviets are building a military establishment which is aimed not merely at deterring war, as ours is, but of winning such a war, should it occur. The period of maximum danger to themselves, when the U.S. might have used its near monopoly of strategic military power to launch a preventive war against the U.S.S.R., is long past. What they must now worry about is that the sweeping tide of their political successes, coming as the inevitable fruit of their enhanced military position, will sooner or later threaten them with a desperation U.S. military response. To counteract this possibility, mere military parity with the U.S. is not enough. They have to achieve such overwhelming strategic military superiority that they can either overawe us into a final internal collapse and surrender or, should they detect signs that we intend to fight rather than submit, then they want to be able to fight and win a war with the United States. This could conceivably involve a preemptive nuclear first-strike by the Soviet Union.

The world is already fairly far along in this ghastly scenario of events. Yet most Americans understand these realities very poorly. Never having experienced war on our own homeland, and being unaccustomed to defeat, we Americans cannot really grasp the possibility that, for us, history could end disastrously.

Yet most Americans do understand military power, and a recent Wall Street Journal Poll indicated that more than 80% of those contacted still want America to be number one in military strength. What they don't understand, because they generally aren't being told, is that we are losing our military position to such a degree that a direct threat to our military security is developing. There are indications that this may become more evident to the nation at large when the Secretary of Defense goes before Congress with his latest military posture statement—probably next February. His report is expected to be extremely grim.

Even so, unless the President himself puts away delusion and politics and places the prestige of his own office behind a massive effort to alert the country behind the need for a reversal of priorities, then it seems difficult to imagine how America is going to escape, in one form or another, the fate of Carthage.

RETIREMENT OF PAUL HOFFMAN

Mr. McGEE. Mr. President, an epoch has come to an end at the United Nations with the retirement of Paul Hoffman from the U.N. development program's governing council.

Paul Hoffman has made many significant contributions to the international community on behalf of this country and the United Nations. It is, therefore, with a sense of regret that we must see him step down from the post of administrator of the development program—a position he had held since 1966.

Hoffman was administrator of the Marshall plan after World War II and very instrumental in the success of that program, which, through massive U.S. aid efforts, brought stability to an economically shattered Europe.

Perhaps the United Nations development program has been that organization's greatest achievement. This program provides developing countries with technical assistance and investment-generating surveys, training, and pilot projects. It is supported by voluntary contributions from governments.

The success of the U.N. development program is a tribute to the skill and abilities of Paul Hoffman. Through his foresight has come the awareness that the world's rich must necessarily share in easing the burdens of the world's poor.

Although the international community suffers from the retirement of Paul Hoffman, it is nevertheless enriched by his efforts. It is my hope that the U.N. development program can continue with the same sense of dedication it demonstrated under Hoffman's leadership and guidance.

I ask that Senators join me today in paying tribute to a man who is truly international in character and vision.

AEROSPACE TECHNOLOGY

Mr. GOLDWATER. Mr. President, the subject of aerospace technology is one which has caused me great concern ever since this Chamber shortsightedly deprived the United States of an opportunity of producing a prototype supersonic transport. Even before this unhappy event which, in effect, forced this Nation to turn its back on technological progress, things were not good in the aerospace industry. But, since the demise of the SST, they have gone from bad to worse and unemployment in the aerospace industry in this country has become a severe and difficult problem.

Recently, Robert Anderson, president and chief operator of North American Rockwell, addressed himself to this problem in an address before the Aerospace Meeting, Society of Automotive Engineers, in Los Angeles, Calif. He made one very cogent point when he asserted:

It is not incidental that aerospace unemployment, the U.S. decline in research—both military and civilian—our drooping balance of trade and the potential loss of U.S. technical superiority are occurring simultaneously.

Mr. Anderson aptly described aerospace technology as a key to the future. Truer words were never spoken. It is not too much to say that our future as a commercial nation and our future as a leading nation may well be tied to this factor. Because of the vast importance of this subject to Members of Congress, I ask unanimous consent that Mr. Anderson's speech be printed in the RECORD.

There being no objection, the address

was ordered to be printed in the RECORD, as follows:

AEROSPACE TECHNOLOGY: KEY TO THE FUTURE

(Remarks by Robert Anderson)

Ladies and gentlemen: I'm delighted to be among my friends of the Society of Automotive Engineers.

The Society has been a part of my working life for a long time, and that is one of the reasons why I have some definite ideas about science, engineering and technology. I have an irrepressible feeling that our profession, and the aerospace industry in particular, are engaged in a battle for survival.

If you agree with me, then I'm confident you will also agree that we are in the eleventh hour, and it is important that we stop talking to ourselves and speak candidly to the American people.

It is of paramount importance that they recognize that the battle of survival I have just mentioned is their battle as well. The anti-technologists, the anti-defense spenders, the anti-space program buffs are constantly vocal while we engineers, scientists and researchers seem incapable of espousing one of the foremost and fundamental factors in American life . . . the need for the continued fostering and support of the engineering profession and the resulting scientific research and technology that has made this country No. 1 in the world.

Since last year more than a quarter of a million persons have left the aerospace industry, and at least one out of every five was either an engineer or a scientist. That fact, of course, is painfully obvious to everyone in this room who can number among those bleak statistics long-time associates, loyal employees, and yes, even some top-quality bosses.

That many of these individuals have left our industry can only be described as a national tragedy. The loss of this energy source now, this dissipation of a major part of our country's technological base, could very well lead to the permanent erosion of the United States' position as a world power.

Dr. Eberhardt Rechtin, a top Department of Defense official, underscores this erosion with sobering statistics that should give concern to every loyal American.

"Since 1968 the Soviets have increased research and development expenditures approximately 10 to 15 percent each year. The present USSR research and development effort amounts to about $10 billion a year, compared to about $7 billion for the United States.

"This $3 billion difference in effort means the Soviets could generate 50 to 100 percent more prototypes of major weapon systems than the United States in the upcoming years."

The sheer magnitude of the Russian's research effort could very well result in some Sputnik-like surprises in national security systems during this time period, he warns.

There is no question, either that the Russians are continuing substantial investment in space research, while that of the U.S. is dropping each year.

Our manned space program calls for just two more flights to the moon next year and then three earth orbital Skylab missions in 1973 and 1974. Even with the space shuttle getting a full green light, there is not much likelihood of another American manned space flight until the end of the decade. Do you really suppose the Russians will go to the sidelines as long as the game clock is still running just because we do? I don't.

For more than a half century the U.S. has been the richest nation in the world. Our wealth not only has maintained what up to now has been the most powerful defense force in the world, but also has provided our citizenry the highest standard of living in history. We have been, and are producing, with less work, more real goods and services for every man, woman and child in this country than any nation in the world.

How have we done it? Is it because Americans are more energetic than other peoples? Are we smarter? Is it because of our country's greater natural resources? Certainly, the latter is important. But the basic reason is an economic system that rewards successful innovation; a system that seeks out new ways of doing things; that searches out and markets new products; that develops new methodology.

The wellspring this system draws upon is technology.

Our growth as a nation is a history of technical innovation. Engineers and scientists have been the key element in creating the most productive and the most successful nation in the world.

Dr. J. Herbert Holloman, consultant to President Nixon, says this disparity in technical effort may have begun to be reflected in our trade with Europe and Japan.

The imports from Europe of such high-technology products as chemicals, machinery, electrical equipment, transportation equipment and instruments is increasing at a 20 percent rate, while the rate of growth in their export from the United States averaged only nine percent. While United States imports from Japan were growing at 32 percent a year, U.S. exports to Japan were increasing at only 7 percent a year.

If this trend continues, economist Michael Boretsky estimates that by 1973, in high technology products alone, there will be a trade deficit with Europe of almost $2 billion, and with Japan, a deficit of almost $5 billion.

If these numbers are not impressive, take another look at wire service photos of the Concorde flying over South America after a non-stop supersonic transatlantic flight. Or read about travel in the supersonic Russian Tupolev in an *Aviation Week* advertisement. The development of the Soviet's long-range, supersonic, swing-wing bomber is still another example.

Since the demise of the SST there is not even an advanced design of an American equivalent on the drawing boards.

Or, count the number of foreign-made automobiles that will be sold in America this year. And then count the four hundred thousand non-existent American jobs those cars represent.

There is no question that we are fast losing our momentum that in the past has let us compete successfully in the world market on the basis of our superior technology, despite our higher wage scale. It is most unfortunate that just as many of our industries are being threatened by the rapidly rising productivity of competitor nations, we appear to be anxious to slow the kind of technical effort that pushed us to the forefront.

However, just as in defense, the payoff for civilian research and development is way downstream. And, the rest of the world is catching up rapidly. One recent study showed that in eight European countries whose combined Gross National Product was one-third that of the U.S. there were three times as many engineers, scientists and technicians engaged in civilian-oriented R&D.

Comparisons between the U.S. and Japan are even more striking. The Japanese, with one-half the U.S. population and one-fifth of our Gross National Product, employed 70 percent as many professional research and development personnel in their civilian effort as did the U.S.

It is not incidental that aerospace unemployment, the U.S. decline in research—both military and civilian—our dropping balance of trade, and the potential loss of U.S. technical superiority are occurring simultaneously.

They are the inevitable result of a shift in national priorities that calls for more emphasis on programs to improve the conditions of the poor, the aged, and the disadvantaged as well as a growing concern to improve and preserve our national resources.

While this shift had been in motion since 1965 when U.S. spending for human resources began to increase dramatically, it became an overwhelming factor in the 1971 fiscal budget. While national defense outlays in 1971 declined by $7.7 billion from the 1969 level and space spending also dropped, the budget for human resources programs increased by $18.4 billion to a total of $81.9 billion! The result was inevitable unemployment for 80,000 engineers!

There is nothing wrong with re-ordering priorities. It's healthy, and it is part of our national strength that we can change as times and needs change. The danger is in over-reaction, in trying to move too fast and too precipitously.

The problems we are trying to solve are very complex. Not only are they socially and economically complex, they are technically complex. A good example is the recent advice of the U.S. Surgeon General to housewives to go back to using phosphate detergents in preference to "ecologically safe" washing materials. As the *Los Angeles Times* pointed out, "the detergent dilemma is a sobering reminder of the complexities of protecting the environment. Sometimes alternatives are worse than what they replace. Propaganda and slogans are no substitute for hard scientific work to sort out the real hazards and the practical solutions.

It is ironic that during the very period that this shift in government spending was taking place, there also has developed a climate of irrational hostility toward science and technology that seems to be growing throughout the country, particularly among our young people.

NASA's Dr. Wernher von Braun describes the situation this way, "It is irrational because those most vocal in their hostility toward science and technology are the very ones professing the greatest concern about poverty, poor housing, hunger and quality of the environment. All of these problems of society depend in varying degree upon our technological capabilities, and certainly upon increased productivity, for their solutions."

I am sure engineers and scientists are just as concerned about the air they and their children breathe, the water they drink, the aged and the poor, as anyone in this country. We share the national concern for the proper utilization of the earth's resources. While others have been talking about it, our profession has been working for years to improve the quality of life within our cities.

I think it's important to note that industry was working for a cleaner America long before Earth Day even came into the headlines. But we give full credit to our young people for having brought to the effort an emotional excitement and an intellectual commitment that had completely escaped us.

We professionals are confronted with more than just the problems, however. There are many who point a finger at us and say that we *are* the problem. In effect, the say: "Abolish science and engineering, physics, aerodynamics, everything that contributes to the advance of technology—and the degradation of our environment will slow to manageable proportions."

Hasn't our profession been characterized by self-effacing individuals who much preferred the drafting board to the public platform? Haven't we leaned toward technical dissertations of our own journals rather than letters to the editor of our local newspaper?

Wouldn't we rather discuss the isothermal properties of new metal in a quiet technical meeting such as this, than debate the merits of the SST in an open forum?

I am not suggesting that we completely

change our life styles, or that we all take up public speaking or journalism. But, I am suggesting that we assume a much more vocal role in society.

Emilio Daddario, formerly Chairman of the House of Representatives Subcommittee on Science, Research and Development, outlined an excellent approach in a recent issue of MIT's *Technology Review*.

The former congressman calls for a "gradual, consistent education of the public to perform the kind of town-meeting assessments of technology which must be done for almost any community development in this day and age."

"The point is that technology assessment in all public problems involving technical matters, requires a number of forums: The professional community, the congressional committee, Congress as a whole, the executive agency, the courts, the special interest, and the public at large."

Pan American's president Najeeb Halaby made a similar point in a paper delivered before the recent Test Pilot Symposium. ". . . . we must concentrate on conveying to the general public our concern and the value to society of what we are striving to do.

"Producing the happy supporting public flocking to the spaceport to fly in the new space shuttle will be just as difficult as producing the machine, but if we fail to accomplish both, we are very likely to end up with neither."

An informed, even sympathetic public unfortunately is not going to solve all of our problems, however. No matter what scientific programs the Congress might vote this session, it would take years for most of the out-of-work engineers to find jobs again in the aerospace industry.

This state of affairs is not, I am sure, what the Congress expected or intended when it voted to cut back on space and defense spending. It did not foresee these cuts coinciding with—and certainly reinforcing—a general recession. Many were fooled by the familiar "If we can go to the moon, why can't we clean up our cities, or our rivers. or end poverty?"

I think many of them really expected to turn off the valve that controls our space effort, and with equal ease turn on the valve that directs this newly unemployed talent into entirely new areas. It was a naive expectation. The result is not only a personal tragedy for the many individuals involved, it is also a waste of a vital national resource.

Aerospace talent—on a scale large enough to have real impact—can only be redirected to new priority problems when the government has *defined* and *funded* specific projects directed to these problems. The government has initiated some programs in this area but they are still small and piecemeal. And, more important, we do not yet see a real commitment on the part of government to push and encourage promising projects.

Let me give you a specific example of what I mean. Some years ago, actually as a fallout from its work with nuclear reactor coolants, our Atomics International Division found that molten salts provide a very effective means of removing sulfur fumes from stack gases.

It appeared to have good potential as a major step in combating air pollution. Several government agencies and many utility companies expressed considerable interest in the process, and, after several months of negotiation a pilot program finally was ready to go.

We were willing to contribute a share of the development expense. The utilities pledged their share and so did the government. Unfortunately, the recent budget squeeze forced the government to withdraw its support. This, of course, throws a heavy burden on the utilities and our Atomic International Division as they continue with the development effort.

There are two important points to be noted here. First, the aerospace industry cannot take substantial steps in applying its technology in solving our environmental problems unless it has *customers* for the techniques and hardware which it can offer. Second, if significant steps in controlling the environment are to have high governmental priority, there must be equally high priorities insofar as allocations of government funds are concerned.

In the meantime we are wasting our technical talent. Aerodynamicists are selling ice cream and insurance; spacecraft technicians are repairing television sets; and some physicists are lucky to be employed as teaching assistants.

While we search for practical ways of saving our environment and solving our social problems we must take immediate steps to maintain our dwindling technical force so that we will be able to complete these tasks when they finally are defined.

In my view there is only one sure way to do this, and that is to adequately fund those space and defense programs which already have been assessed as vital to the national need. Failure to do this will not only eliminate the fountainhead of technology—but ultimately, the loss of this capability will threaten the survival of this country. Certainly, the space shuttle is a prime example of the type of program that will bring tangible benefit to our country while supplying important opportunities to our technical work force.

Aside from the direct benefits of our space effort—such as weather and communication satellites—it has been difficult to transfer space technology to every day use. Nevertheless, it is being done and at an increasing rate.

Despite our problems, I see some promise for the aerospace industry in recent actions of the Federal government. Most significant has been establishment of a key White House study group under William Magruder to develop a new national technology policy. It is hoped that this study will produce a broad, sweeping assessment of this vital national resource and result in a strong, effective plan for the future.

It is my hope that this plan not only will utilize our technical resources in their traditional roles, and develop support for our major continuing programs, but also will spearhead a national assault on our environmental problems.

It is imperative that each of us as individuals, as technical societies or as industrial entities make our thoughts known to Mr. Magruder. And, we must mount a concerted effort to make the need for such a viable national policy clearly understood by our families, our friends, our neighbors, our legislators. Because they are the American citizens who must decide not only our future—but the future of this nation as well.

A TRIBUTE TO JOHN EDELMAN AND AIME FORAND

Mr. CHURCH. Mr. President, the National Council of Senior Citizens, within the period of 3 weeks, has lost two of its former presidents, John W. Edelman and former Representative Aime J. Forand.

The council's loss is the Nation's loss, too.

Mr. Edelman had a long fruitful lifetime as a journalist, a representative of labor, and as an ardent and effective spokesman for good causes. He was often on Capitol Hill to speak out for the well-being of people; he was always welcome. His term as president of the National Council of Senior Citizens was marked, not only by constant attention to the problems of older Americans, but to a better life for all Americans.

The same was true of Mr. Forand, who certainly was a major pioneer in the legislative evolutionary process that finally led to medicare. From 1957 on, Congressman Forand argued for his bills to provide health insurance for the elderly. His ultimate victory was a victory for all Americans, those now old and those who will be.

Mr. President, the Washington Post published excellent articles on the achievements of both men. Their public record is the best tribute to them; I ask unanimous consent that the articles be printed in the RECORD.

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

JOHN W. EDELMAN, HEADED COUNCIL OF SENIOR CITIZENS

(By J. Y. Smith)

John W. Edelman, a president emeritus of the National Council of Senior Citizens and a former labor leader, died at his home in Arlington yetserday of cancer. he was 78.

Mr. Edelman, who resided at 813 S. Veitch St., was president of the National Council, which claims 3 million members, from 1963 to 1969, when failing health forced his retirement.

The Council was formed in 1961 to promote health insurance for the elderly. Their program eventually took the form of Medicare. When President Johnson flew to Independence, Mo., to sign the Medicare bill into law in the presence of President Harry S. Truman in 1965, he took Mr. Edelman with him.

Mr. Edelman was born in Belleville, N.J. His parents took him to England at an early age, and it was there that he began his career in the labor movement. He was a union organizer among British textile workers. At 14, he was a branch secretary of the Independent Labor Party.

In 1916, he returned to the United States. He served in the U.S. Army in World War I. Afterwards, he worked as a newspaperman in Springfield, Mass., Camden, N.J., and Reading, Pa.

In 1924, he managed the Pennsylvania campaign of the late Sen. Robert M. LaFollette of Wisconsin, who made an unsuccessful third-party bid for the presidency with the backing of the American Federation of Labor.

Mr. Edelman joined the American Federation of Full Fashioned Hosiery Workers in 1926. For the next 11 years, he served as the union's education and research director and as editor of its publication, The Hosiery Worker.

In 1937, he was named eastern Pennsylvania regional director of the Congress of Industrial Organizations. He helped organize strikes among hosiery workers in Reading, Pa., Elizabethtown, Tenn., and Danville, Va.

In 1945, he was appointed Washington representative of the Textile Workers Union of America (AFL–CIO). He held that post until his retirement in 1963.

Mr. Edelman also had an extensive career in government. He served as a consultant to the Federal Housing Administration and to the Resettlement Administration in the Roosevelt Administration. In World War II, he worked with the Office of War Emergency and in the labor office of the Office of Price Administration.

For several years he was a member of a committee advising the Department of Agriculture on the problems of rural development.

In the Kennedy and Johnson administrations, he served on the Task Force on the Aging Poor, a body that advised the Office of Economic Opportunity. He resigned in 1968 in protest against what he regarded as the lack of concern on the part of the OEO with the problems of the elderly.

In a statement, Nelson H. Cruikshank, now the president of the National Council of Senior Citizens, said:

"John Edelman fought the good fight to win a better life for his fellow man. His life is a shining example for today's generation and generations to come."

Mr. Edelman is survived by his wife, Kate, of the home; a son, John Arnold Edelman, of Alexandria; two daughters, Ann Steuphansky, of Chevy Chase, and Alison Carter, of Westport, Conn., and by 11 grandchildren.

EX-REPRESENTATIVE AIME J. FORAND DIES AT 76

(By Jean R. Hailey)

Former Rep. Aime J. Forand (D-R.I.), who fought long and hard for what eventually became Medicare, died Tuesday night after suffering an apparent heart attack in his home at Boca Raton, Fla. He was 76.

Mr. Forand, who had served 22 years in Congress before he decided not to run again in 1960 because of ill health, was considered the father of Medicare although a health insurance bill for the elderly did not become law until 1965.

But his fight to get through his own bill, which he introduced in 1957 and which failed to pass, was considered the important springboard for the later bill.

Mr. Forand's bill would have increased the Social Security tax one-fourth of 1 per cent on both employee and employer to pay the costs of surgery and up to 120 days of combined hospital and nursing-home care a year. It was strongly attacked by the medical profession as a "compulsory" first step toward "socialized" medicine.

Later, in 1965, when the present Medicare bill was passed, Mr. Forand was among those invited to Independence, Mo., by former President Lyndon B. Johnson, when he signed the bill into law in the presence of former President Harry S. Truman.

Gov. Frank Licht of Rhode Island issued the following statement yesterday:

"The death of former Congressman Aime J. Forand saddens all of Rhode Island. He was indeed the father of Medicare and fought in his public career particularly for the welfare of our senior citizens. Mr. Forand was an outstanding public servant."

After he left Congress, Mr. Forand continued to battle for medical care and other benefits for the elderly.

More than any other person, he was considered responsible for the White House Conference on Aging, held in January, 1961. Ironically, he was not invited to the conference.

Conference officials at the time called it an "oversight" and said an invitation would be issued. Mr. Forand, however, balked, saying it was too late.

Mr. Forand served at one time as national chairman of the National Council of Senior Citizens for Health Care through Social Security, which he helped organize.

He had headed the Senior Citizens for Kennedy Committee in the 1960 presidential campaign and had served on a 25-man advisory committee on housing for senior citizens. Many buildings in housing projects for the elderly in Rhode Island have been named for him.

Born in Cumberland, R.I., Mr. Forand was considered a self-made success. Of a large family, he had to drop out of school in the seventh grade to help support the family because of his father's illness.

"From that time on, it was home study for me," he once explained. "I took a bookkeeping course sold by Sears Roebuck. I went to night school and took shorthand until I could write 100 words a minute. I then was working in a cotton mill."

There were other jobs, as a dump-truck driver, radio repairman, chauffeur, grocery clerk, newspaperman and secretary to congressmen. Always there was study at night.

Mr. Forand was a member of the Rhode Island House of Representatives from 1923 to 1927. Later he was chief of the Rhode Island State Division of Soldiers' Relief and commandant of the Rhode Island Soldiers' Home. He was a veteran of World War I.

He later said it was his first-hand experience in these positions, which involved medical needs of the aged, that prompted his introduction of his bill.

"The needy will never again be just statistics to anybody who has to deal with their personal problems," he said at the time.

AFL–CIO FLSA RESOLUTION

Mr. WILLIAMS. Mr. President, the Labor Subcommittee is currently considering amendments to the Fair Labor Standards Act, including S. 1861 which I introduced to increase the minimum wage and greatly expand the coverage of the act. It is a sad truth that today's minimum wage of $1.60 per hour yields to a full-time working man or woman many of whom are the heads of families, approximately $3,200 per year, almost $800 below the poverty level for a family of four. In many instances that family head would do better financially by leaving work and joining the welfare rolls. For many, the situation is even worse because they are not covered by even the limited provisions of the Fair Labor Standards Act.

In recognition of the plight of the low-wage worker, the AFL–CIO at its recent convention reaffirmed its long-standing and outspoken support for immediate improvement in the provisions of the FLSA. Further, they resolved to fight for a minimum wage of at least $2.50 an hour, in the future, and universal coverage, among other things. In order to share this commitment with Senators, I ask unanimous consent that the 1971 AFL–CIO resolution on the Fair Labor Standards Act be printed in the RECORD.

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

THE 1971 AFL–CIO RESOLUTION FAIR LABOR STANDARDS ACT

Whereas, Congress is on its way toward enacting new minimum wage or Fair Labor Standards Act legislation. A bill to increase the minimum wage to $2.00 an hour is before the House of Representatives and one to raise it to $2.25 is before the Senate. The legislation in both chambers also provides some additional new coverage and closes some other existing exemption loopholes in the Fair Labor Standards Act, and

Whereas, After these amendments to the FLSA are approved by Congress, additional new legislation still will be necessary in the future. Further increases in the minimum wage will be required, since $2.00 and even $2.25 an hour still leave full time, minimum wage workers near the current poverty level and far below the U.S. Bureau of Labor Statistics' "lower living standard budget." Expected future increases in the cost of living will worsen this situation, and

Whereas, Millions of workers will still suffer from either complete or partial exclusion from the minimum wage and/or maximum hours provisions. The workweek will still be at the 1938 level and prevent a sharp increase in employment. Puerto Rican workers will still be discriminated against. Farm workers will still get second class treatment. And young people will still suffer from subminimums; therefore, be it

Resolved: That the AFL–CIO will continue to give top priority support to the maximum immediate improvement feasible through action on the Fair Labor Standards Act amendments now before Congress, and be it further

Resolved: That in future action on FLSA legislation, the AFL–CIO will seek:

1. A minimum of at least $2.50 an hour.

2. Full minimum wages and maximum hours coverage for all workers engaged in interstate commerce, the production of goods for commerce or affecting commerce.

3. Equal protection concerning the minimum wage, maximum hours and child labor provisions for farm workers as all other workers.

4. The same minimum wage protection for workers in Puerto Rico as on the mainland U.S.

5. The elimination of all subminimums for youths.

THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Mr. ERVIN. Mr. President, on December 6, 1971, I placed in the RECORD several articles and editorials relating to the Subversive Activities Control Board. Among them was an article by Mr. Carl T. Rowan entitled, "Do-Nothing SACB Should Keep on Doing Just That," which had been published in the Washington Evening Star of July 25, 1971. Included in Mr. Rowan's article was a reference to Mr. Otto F. Otepka, a member of the Subversive Activities Control Board.

Last week, I received from Mr. Otepka a letter requesting that I place in the RECORD a letter which he addressed to the editor of the Washington Evening Star. The letter was published in the Star of August 4, 1971, in rebuttal of Mr. Rowan's article.

Mr. President, in fairness to Mr. Otepka, I am happy to comply with his request and, therefore, ask unanimous consent to have printed in the RECORD Mr. Otepka's letter to me of January 7, 1972, and his "Letter to the Editor," and to have reprinted in the RECORD Mr Rowan's article which is the subject of this correspondence.

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

SUBVERSIVE ACTIVITIES CONTROL BOARD,
Washington, D.C., January 7, 1972.

Hon. SAM J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: On December 6, 1971 you had five articles and editorials inserted into the Congressional Record all of which are in opposition to the Subversive Activities Control Board.

One is a column by Carl Rowan which appeared in the Washington Star of July 25, 1971. I have no comment with respect to the criticism of the SACB but Mr. Rowan's column contains statements about me which are untrue. Since the Record is read by Senators who I understand desire to vote one way or another on my pending nomination for another term on the SACB when that nomination is sent to the floor by the Majority Leader, I wish to bring to your attention my letter to the Star which was published on August 4, 1971 without any editorial change or condensation (copy enclosed.)

As you know the Judiciary Committee favorably reported out my nomination last June by a 13–3 vote and you cast one of the favorable votes. May I ask if it is possible also to include my answer to Mr. Rowan's column in the Record?

Many thanks for your past consideration of my case.

Sincerely yours,

OTTO F. OTEPKA,
Member.

[From the Washington (D.C.) Evening Star, Aug. 4, 1971]

OTEPKA REPLIES TO ROWAN

SIR: In the interest of fairness and accuracy, I respectfully request that you publish the following in order to correct statements made about me by Carl T. Rowan in his column of July 25.

Mr. Rowan said: "Otepka was fired by the State Department for leaking secret documents to senators known to share his right-wing sentiments."

The fact is that I have never been fired, dismissed or discharged by the State Department for any reason whatsoever. I entered on duty in the Subversive Activities Control Board on June 30, 1969, by transfer from the State Department without any break in service. My position at the time of my transfer from the department was management analyst. I originally entered the government service in 1936.

I did not leak, slip, or otherwise slyly or secretly convey any documents to any senator and I was not charged by the department with any such offense.

Along with other State Department personnel I was formally requested to appear before the Senate Internal Security Subcommittee and asked to testify under oath concerning security procedures. After I was duly informed that the testimony of my superiors was in material conflict with mine and in derogation of my performance, I provided the subcommittee with two, and only two, so-called classified documents to support my testimony.

I was never a volunteer witness before any congressional committee but testified at all times on written request and with the knowledge and permission of my superiors.

In common with certain other journalists when writing about me, Mr. Rowan consistently omits from his columns the fact that my testimony provided that my superiors lied under oath. Because of their false testimony one superior was required to resign and another was reassigned to other duties. One subordinate was also required to resign because of his false statements. It was not I who was dismissed but those who did not tell the truth.

Mr. Rowan also wrote: "The Senate has yet to confirm Otepka, who is a sort of Daniel Ellsberg in reverse."

There isn't the slightest resemblance of my actions to those of Mr. Ellsberg. I did not furnish any classified document to any newspaper nor did I make any classified information public. As a government official, I appeared in a closed session of the Senate Internal Security Subcommittee, and authorized functionary of the United States government, and provided relevant documents on its request while testifying under oath.

I am proud that I fulfilled my sworn obligation to United States government authorities by availing myself of the opportunity given me to testify before Congress. I am equally proud, as is my family, that I resisted the State Department's attempts to dismiss me because of my testimony. In the process I was compelled to endure five years of isolation in a tiny room during which all sorts of unbelievable tactics were used to thwart my determined appeals to obtain justice through the administrative procedures of that government agency. I refused all inducements to resign.

My personal life has been influenced by my family in a philosophy which is now rejected by many modern philosophers. It is in the tradition of the ancient Greeks who said: "He who so loves truth will not care to return evil for evil; he will think it better to suffer injustice than to do it; he will go forth by sea and land to seek after men who are incorruptible, whose acquaintance is beyond price."

OTTO F. OTEPKA,
Member, Subversive Activities Control Board.

[From the Washington (D.C.) Star, July 25, 1971]

DO-NOTHING SACB SHOULD KEEP ON DOING JUST THAT

(By Carl T. Rowan)

It seems such a shame to have the United States Congress tied up for days in argument about a do-nothing relic of the postwar witch-hunts called "The Subversive Activities Control Board."

Unfortunately, such action by Congress is necessary if we are to prevent the use of the SACB to impose another spell of McCarthyism and ease the country a little further into police statism.

As things stand, the SACB is no big threat to the people's liberties. The courts long ago clipped the board's wings to the extent that it is just a $450,000-a-year boondoggling sop to those conservatives who still see Communists under every bed.

The board now rarely meets, and, according to testimony by its chairman, interviewed only three people last year. So it is hardly the great protector of the nation's security.

But the SACB has been of convenience to presidents. When Lyndon B. Johnson wanted to favor one of his secretaries, he named her groom to a seat on this board.

When Richard Nixon wanted to curry favor with the right-wingers, he named one of their favorites, Otto F. Otepka, to a $36,000-a-year seat on the board. The Senate has yet to confirm Otepka, who is a sort of Daniel Ellsberg in reverse. Whereas Ellsberg leaked the "Pentagon papers" out of liberal, anti-war convictions, Otepka was fired by the State Department for leaking secret documents to senators known to share his right-wing sentiments.

With liberals (and conservative Democrats like Sen. Allen J. Ellender of Louisiana) complaining about spending half a million dollars a year for such a moribund outfit, President Nixon decided to give the SACB at least the appearance of doing something.

On July 2 he issued a little-noticed executive order that would empower the SACB to "determine whether any organization is totalitarian, fascist, Communist, subversive, or whether it has adopted a policy of unlawfully advocating the commission of acts of force or violence to deny others their rights under the Constitution or laws of the United States or of any state or which seeks to overthrow the government of the United States or any state or subdivision thereof by unlawful means."

Thanks to that ever-surprising civil libertarian, Sam J. Ervin Jr., D.-N.C., the Senate has voted that SACB may use nary a dollar of its $450,000 appropriation to carry out the broad duties that Mr. Nixon wants to give it.

Ervin and others in Congress know that SACB's proposed new role would carry us back into that ugly era of punishment by smear and guilt by association.

When scores of groups are screaming for peace, who are these five members of SACB to decide that one organization is true-blue American and another subversive?

Who are they to decide which civil rights group is "too militant" and is to be labeled "totalitarian, fascist, Communist, or subversive"?

What worthwhile purpose does it serve in a free society for the attorney general or SACB to draw up a list telling me that the Ku Klux Klan or the Black Panthers are "subversive"? If anyone in either group violates the law, let him be indicted, tried fairly, and if convicted, punished according to the law. This business of punishment by government blacklisting has no place in this society.

With a shift of four votes the Senate would have cut off funds and abolished SACB completely.

But if the board must continue, let it doze in do-nothing splendor the way it has for years. In which case I promise not to ridicule the SACB ever again, having learned the painful way that it is wise to let sleeping ogres lie.

CARING ABOUT THE ELDERLY AT CHRISTMAS

Mr. CHURCH. Mr. President, Margaret Mead—speaking about programs to serve the elderly—has wisely said:

> The government can never do it completely . . . we have to organize life in ways that people care for each other.

This philosophy has been expressed in some federally assisted programs. The Older Americans Act, for example, places great emphasis upon local initiative: Title III community development programs are designed to make the most of the concern that neighbors have for neighbors. Other Federal efforts, such as the senior AIDES program, succeed largely because the Federal apparatus does not get in the way: it assists people dealing with grassroots problems in grassroots fashion.

But sometimes the most effective actions are taken without any governmental assistance at all. Such was the case in Idaho this Christmas when the Idaho Statesman and the Boise Soroptomist Club made a joint appeal for Christmas gifts to the needy elderly. Betty Penson, Statesman woman's editor, described the result as the greatest expression of caring she has seen in 37 years of newspapering in Idaho. Gifts for some 76 needy elderly had been requested, but more than 700 gifts were actually delivered to the Statesman.

An article in the December 26 Statesman provides additional details. I ask unanimous consent that it be printed in the RECORD, and I commend all concerned with this fine effort.

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

STATESMAN'S ANNUAL PROJECT GETS 1,000 PERCENT RESPONSE: A GREAT BIG THANK YOU TO ALL WHO PLAYED SANTA TO THE OLD FOLKS AND MADE THIS THE CHRISTMAS THAT WILL LAST ALL YEAR

(By Betty Penson)

"The government can never do it completely . . . we have to organize life in ways that people care for each other."—Margaret Mead

"Our lack of consideration for the elderly is one of the most conspicuous of our failures. Consider that the budget for the AoA is less than the cost of a single bomber . . . Perhaps it is due to our fast-paced lives that so many of our people are unaware of the way so many elderly people live."—Sen. Frank Church of Idaho.

It was the greatest Christmas ever. Christmas 1971. When hundreds of Idahoans brought literally truckloads of gifts to The Idaho Statesman for the needy elderly.

The response was . . . incredibly . . . something like 1,000 per cent. Can you believe it?

Two weeks ago today, Dec. 12, we asked you readers the same thing we've asked each Christmas season for more than 50 years . . . to furnish gifts for some 76 needy elderly.

And how did you answer? You brought over 700 gifts.

In my own 37 years of newspapering in Idaho, it was the greatest expression of caring I have ever seen.

More than the needed gifts were all promised by 10 o'clock Monday morning . . . but you just kept on bringing them in.

Day after day, the beautifully wrapped packages flooded in to The Statesman until they filled almost a whole storage room in the basement . . . kept under lock and key, like a beautiful treasure (which in truth they were).

Some of the wrappings were works of art. The letters were beautiful. Many of the gifts were hand-made. Personal expressions of caring.

The list is staggering . . . the man who made 50 pounds of peanut brittle . . . the 50 gifts from the Hawthorne Kindergarten . . . the great box of gifts from Burley? (Burley? Yes . . . 'way down there in the middle of the bottom of the state) . . . gifts from other towns, especially Mountain Home and Emmett and Ontario . . . and two came special delivery from a newspaper gal in Los Angeles.

There were goodies from a cooking class at Fairmont Junior High . . . oranges from a high school drill team . . . Christmas corsages from the Capital Lions Club . . . fruits from a fifth grade class with hand-painted cards . . . 20 quarts of home-canned apricots . . . checks of $5 and $10.

The Soroptimist Club which had volunteered to be distributing angels nearly went into a group faint. "This is the most exciting thing that has ever happened to the Soroptimists," said one of the little ladies . . . in fact, they all seem to be about five-feet-two and look fragile as Christmas tree angels . . . but you should have seen them distribute.

One of them . . . Muriel Heller . . . loaned a truck and Donder and Blitzen how they flew around town, to the nursing homes and to the little places where lonely oldsters live close to the poverty line.

The list of needy oldsters had grown considerably since the Dec. 1 announcement . . . but even so, the gifts of generous Idahoans were spread onto many bare tables.

The Soroptimists shared the cookies, the candies, the fruits with the Christian Children's Home, the Christian Community Center in Garden City, the Good Samaritan Home.

But what to do with all those duplicate gifts earmarked for special people on the list? The Soroptimists came up with a fabulous answer. They're to have a committee meeting tomorrow, to make the plans. "We're going to set up a calendar," said chairman Mrs. W. B. Cox," with the birthdays of all these people . . ."

"Plus Valentine's Day and Easter," added co-chairman Mrs. Homer Hamblin.

"And make this the Christmas that lasts all year long," beamed Mrs. Cox.

And now that other important matter: To all the people who answered our request, "Can you spare an hour to visit with an oldster?" . . . more than 100 filled out the coupon, many wrote letters . . . Mrs. Cox wants you to know this:

"Because of the overwhelming response, we realize there is tremendous interest. We hope to get an organization, an auxiliary started. First we must form a council, with representatives from the nursing homes.

"But in order to get this well organized and set up an efficient operation, we need a little time. It may be the middle of February before we can start calling on those individuals. Ask them to be patient."

FULL FUNDING FOR MASS TRANSIT: A NATIONAL NECESSITY

Mr. WILLIAMS. Mr. President, the revitalization and expansion of our mass transportation systems are crucial to the mobility of our urban and suburban citizens and to the quality of life afforded by our Nation's cities. In response to the pressing need for Federal support to States and localities in improving mass transit, the Congress authorized $900 million for fiscal year 1972 under the Urban Mass Transportation Assistance Act of 1970.

The 1970 law makes it possible to provide $3 billion over a 5-year period to help finance mass transportation. However, if the program is to meet the need, as well as live up to the expectations it has created, it must be adequately funded.

Accordingly, I was deeply disturbed to learn that the administration was reducing the transit program to $600 million, one-third below its authorized level for 1972. Because of my concern for the vital job mass transit can perform, I joined 36 of my fellow Senators in a November 2, 1971, letter to the President which emphasized the need for committing the full amount authorized. In this letter, we pointed out that obligation of the $900 million is an absolute necessity if we are to make up for years of neglect and meet the backlog of applications from local communities for Federal mass transit assistance.

I regret to say that the reply was extremely disappointing. In a letter dated November 8, 1971, the administration reveals a less than accurate understanding of current transit requirements and of congressional intent under the Mass Transportation Assistance Act of 1970.

In response to the administration's stated position, the senior Senator from New Jersey (Mr. CASE), and I wrote to the President on January 4, 1972, to clarify the issues. We pointed out that to provide the $900 million authorized by Congress this year for mass transit will not neccessitate lower funding in the future as contended by the administration. The administration's position fails to take into account that during the current session the Congress, as required by the 1970 Mass Transportation Act, will be authorizing 2 additional years of contract authority for the program.

Furthermore, as set forth in the January letter to the President, it is clear that various State and local governments have taken significant action since passage of the 1970 act in order to qualify for mass transit assistance.

Mr. President, it is clear that the requirement for Federal financing is growing even faster than anticipated and that State and local efforts will be frustrated if the mass transit program continues to be funded at the $600 million level.

The administration's cursory reply of January 17, 1972, unfortunately, shows no increase in sensitivity to the Nation's urban and suburban transportation problems. In view of the overwhelming evidence supporting full funding for mass transit. I hope that the administration will take immediate action to reconsider its position and meet our transit commitments.

In this connection, Mr. President, I ask unanimous consent that the correspondence between the administration and Members of this body, along with an excellent article by Albert R. Karr on the status of mass transit, be printed in the RECORD.

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

NOVEMBER 2, 1971.

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

DEAR MR. PRESIDENT: We urge the speedy allocation of the $900 million provided by Congress for the urban mass transit program in fiscal 1972.

There is ample justification for committing the full amount of this appropriation.

After years of neglect, the cost of revitalizing and expanding our urban and surburban transportation systems will be substantial.

One striking measure of the cost is the backlog of applications for Federal assistance placed with the Urban Mass Transit Administration. It presently totals $2.6 billion.

That the states and cities will not be able to undertake the job on their own is beyond question. They understandably must look to the Federal Government as their principal source of financing.

Under the 1970 law, which expanded the mass transit program, it will be possible to provide $3 billion over a five-year period to help finance mass transit improvement. However, if the program is to meet the need, as well as live up to the expectations it has created, it must be adequately funded.

The Administration request for a $600 million program level is a step in the right direction. Under this approach, $510 million would be allocated to capital grants, the heart of any effort to replace, improve and expand local bus, rail and subway systems.

Yet we believe that at least the full $900 million appropriated by Congress is needed. Under the Congressional figure, the allocation to capital grants will be $810 million.

The Urban Mass Transit Administration advise that it can commit the appropriated amount between now and the end of the present fiscal year next June 30. In addition, it believes a substantial portion of the $810 million can be put to use quickly on existing construction projects and thereby create jobs in this period of his unemployment.

Mass transit stands at a critical juncture. Without adequate support from the Federal Government it surely will fail in the vital job which only it can perform.

The Federal Government has made a commitment to help the thousands upon thousands of people living in our metropolitan areas deal with their serious transportation problems. We must meet that commitment.

It is essential that the $900 million be made available promptly.

Gordon Allott, Birch Bayh, J. Glenn Beall, Jr., Lloyd Bentsen, Edward W. Brooke, James L. Buckley, Clifford P. Case, Frank Church, Alan Cranston, Thomas F. Eagleton, David H. Gambrell, Robert P. Griffin.

Fred R. Harris, Philip A. Hart, Vance Hartke, Mark O. Hatfield, Harold E. Hughes, Hubert H. Humphrey, Jacob K. Javits, Edward M. Kennedy, Warren G. Magnuson, Charles McC. Mathias, Jr., George S. McGovern, Walter F. Mondale.

Edmund S. Muskie, Gaylord Nelson, Robert W. Packwood, Claiborne Pell, Charles H. Percy, Jennings Randolph, Abraham Ribicoff, Richard S.

Schweiker, Hugh Scott, Adlai E. Stevenson III, Stuart Symington, Lowell P. Weicker, Jr., Harrison A. Williams, Jr.

THE WHITE HOUSE,
Washington, November 8, 1971.

Hon. HARRISON A. WILLIAMS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: This is to acknowledge and thank you for your letter to the President of November 2 in which you join with a number of your colleagues in urging the expenditure of $900 million on the Urban Mass Transit Program during fiscal 1972.

As you are aware, the Mass Transit Assistance Act of 1970 authorized $3.1 billion for the five-year period 1971–1975. The Act did not specify how the total amount should be allocated. It has been the view of the Department of Transportation officials that phased increases throughout the period will be most consistent with the capabilities of systems managers to absorb additional funds and to gradually expand the program. To provide $900 million this year would necessitate a lower funding level in the future; it would be desirable to avoid this "roller coaster" effect. The $1 billion committed to the program in 1971 and 1972 is more than has been expended during the entire history of the program. As to the backlog cited in your letter, I believe it is important to recognize that $1.5 billion of that amount is accounted for in Chicago and New York City alone. In the case of New York, the bond issue to provide "matching" local shares in order to receive Federal funds was defeated November 2.

The Administration feels that the above considerations support the establishment of FY '72 funding at the $600 million level and will facilitate the orderly continuation of progress of the urban mass transit program.

With warm regards,

Sincerely,

WILLIAM E. TIMMONS,
Assistant to the President.

U.S. SENATE,
Washington, D.C., January 4, 1972.

THE PRESIDENT,
THE WHITE HOUSE,
Washington, D.C.

DEAR MR. PRESIDENT: On November 2, 1971, 37 Senators, including ourselves, sent you a letter urging you to allow the Urban Mass Transit Administration of the Department of Transportation to obligate $900 million—$810 million for transit capital grants—during fiscal year 1972. This is the total amount which the Congress appropriated for urban mass transit for that year.

On November 8, 1971, Mr. William E. Timmons, Assistant to the President, answered our letter and stated that the Administration intended to obligate only $600 million during the current fiscal year. Mr. Timmons in his letter stated that "to provide $900 million this year would necessitate a lower funding level in the future . . ." In making this statement, he failed to realize that during the current session the Congress will, as required by the Urban Mass Transit Assistance Act of 1970, be authorizing two additional years of contract authority for the mass transit program. Therefore, the $3.1 billion which is authorized for contractual obligations during the first five years of the Act is not an absolute figure for the entire life of the program. It could more accurately be called obsolete since the need for improved mass transportation throughout our nation has substantially increased during the past two years.

The need for the continuous updating of mass transit dollar authorizations and the Congress' commitment to an expanding program was clearly brought out during the debate in the House of Representatives on the 1970 Act, when it was emphasized that the amount of money available for contractual obligation would be updated every two years and that additional funds would be made available as our nation's transit needs warranted.

In our opinion, for Mr. Timmons to suggest as he did in his November 8 letter that a $600 million funding level is appropriate and consistent with the goals of the 1970 Act and that it "will facilitate the orderly continuation of progress of the Urban Mass Transit Program" is erroneous. To label increases in appropriations which the Congress has made to respond to demonstrated and defensible needs as adding to a "roller coaster effect" suggests a total lack of familiarity with the true situation confronting our nation's mass transit systems.

Mr. Timmons stated that the $2.6 billion of pending projects is overstated because $1.5 billion of this amount is from the New York and Chicago metropolitan areas. However, as of November 15, 1971, the total dollar amount of pending projects filed with the Urban Mass Transit Administration had risen to over $4 billion with all of these additional requests coming from areas outside of New York and Chicago.

Our attention was also called to the failure of the voters of the state of New York to approve a bond issue which have provided the matching local share required under the Act's provisions. The defeat of this referendum does not diminish the state of New York's ability to provide funds for pending projects. In fact, $450 million authorized by the state of New York in a 1967 urban mass transportation bond issue still remains unused due to that state's failure to receive Federal funds. In addition, $250 million of appropriated funds from the city of New York is currently available to provide the local matching share if pending applications are approved. Thus, both the state of New York and the city of New York have ample resources to match their requests for Federal funds.

Other states and local governments have also taken action since the passage of the 1970 Act to raise the local matching share for pending transit projects. Among these actions are:

The creation of the Chicago Urban Transit District with authority to issue revenue bonds in the amount of $400 million;

The passage by the Illinois State Legislature of legislation to provide $200 million of finance the local share for capital grant applications submitted by that state;

The approval by the state of Massachusetts of authority to provide $125 million for the local matching share to finance Federal capital grants for urban mass transit;

Passage by the legislature of the state of California of a provision earmarking a portion of the state sales tax for transit purposes. This provision will provide approximately $75 million per year for urban mass transportation;

The passage by the voters in the city of Atlanta of a regional sales tax to finance urban mass transportation. This proposal is expected to support a request for approximately $1 billion in Federal funds during the next 10 years.

These are just a few of the activities taken by state and local governments in order to qualify for capital grants under the opinion, be frustrated if the program continues to be funded at the existing $600 million level.

Mass transit is now more than just an idea whose time has come. Transit is the last and best hope of all of our nation's citizens who foresee the need for more than just highways to serve an increasing mobile urban and suburban population. We, therefore, hope that you will reconsider your decision and allow the Urban Mass Transit Administration to obligate the full $900 million which the Congress authorized for our nation's mass transit programs for fiscal year 1972.

Sincerely,

CLIFFORD P. CASE.
HARRISON A. WILLIAMS, Jr.

THE WHITE HOUSE,
Washington, January 11, 1972.

Hon. HARRISON A. WILLIAMS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: In Bill Timmons' absence, I would like to thank you for your January 4 letter to the President, which was co-signed by Senator Case, commenting further on the urban mass transit programs. You may be assured that your continuing interest and additional remarks will be called to the attention of the President at the earliest opportunity, and will be shared with those who have the direct responsibility for advising him on this subject.

With cordial regards,

Sincerely,

RICHARD K. COOK,
Deputy Assistant to the President.

[From the Wall Street Journal, Dec. 24, 1971]

RIDING THE BRAKE: TRANSIT BOOSTERS COMPLAIN THAT ADMINISTRATION IS HOLDING BACK FUNDS ALREADY OKAYED BY CONGRESS

(By Albert R. Karr)

WASHINGTON.—The Nixon administration is riding the brakes on its mass-transit spending at a time when such outlays were expected to accelerate rapidly.

To the dismay of transit-system boosters, some key officials have concluded there's little political mileage in pumping huge amounts of transit funds into big cities that generally vote Democratic, like Chicago and New York.

The transit industry still takes heart, however, from signs of some friendly views in the Nixon ranks. Transportation Secretary John A. Volpe and Carlos Villareal, head of the Urban Mass Transportation Administration, a Transportation Department unit, are said to favor substantially higher mass-transit spending. They've been trying to convince their colleagues that more transit grants could well bring votes—by creating jobs, for instance.

"If I were a politician," says Mr. Volpe, a former Massachusetts governor, "it certainly would behoove me to get all the money I could pumped into transit systems by November of 1972."

Mr. Villareal calculates that cities could use about $1 billion more right now. Secretary Volpe's department hasn't even been successful in getting the White House to release $300 million in impounded mass-transit funds for the current fiscal year, which began July 1. It reportedly has been seeking $1.2 billion in the coming fiscal year's budget, double the current year's $600 million, and it is said to be getting indications it will wind up with perhaps $800 million in the new budget.

So far, says the American Transit Association, the government's follow-through on its 1969 program has been a "vast disappointment," measured against "the hopes and plans that were generated" by the new law.

Picking up a plan developed but never launched by the Johnson administration, the Nixon men in 1969 announced a $10 billion, 12-year transit capital-aid program, starting with $3.1 billion for transit systems' use in the first five years. In October 1970, Congress enacted it into law by a resounding vote.

Now, while transit men are grateful that the current federal funding level is triple the low level of previous years, they aren't exactly happy. They contend that because transit systems have deteriorated for so long, a much bigger commitment is needed. And they say

the government effort is falling far short of the hopes raised by even the Nixon program.

Transit officials had hoped the administration would push for authority to obligate the full $3.1 billion early, with key resistance expected to come from appropriations committee in Congress. But the President's Office of Management and Budget (OMB) became the real obstacle.

Though the administration asked for approval of $850 million for the fiscal year ended last June 30, its transit doubts evidently began to develop soon afterward; the OMB budgeted only $100 million of the $600 million approved by Congress for that year, and just two-thirds of the $900 million allocated by Congress for the current fiscal year. So only a third of the $3.1 billion has been budgeted in the first two years of the five-year span. "We have never been able to count on even the meager funding that the Congress has proposed," says Gov. Frank Licht of Rhode Island, a Democrat.

SOME HAVE ALL THEY NEED

Some administration officials have recently been saying that $600 million a year is the most transit men can expect, and that a $900 million level this fiscal year would only require a cutback later.

Though transit men concede that a number of cities have gotten all the federal funds they're ready to use and that others, like Atlanta and Los Angeles, have been promised bigger funding, they say that some major projects are being held up by a lack of federal financing. In Chicago, $500 million in federal funds will be needed to pay for two-thirds of the cost of putting the existing elevated railroad "Loop" underground and building for two new subway loops, says Milton Pikarsky, public works commissioner. He says about $150 million of the total, in federal funds, could be used immediately. If the city had had the money at the start of the year, it would be in construction now, and if it got the money now, it could be building by next summer. Mr. Pikarsky says.

Some key administration officials have been saying in their own councils and in talks with transit leaders that they are little political value for Republicans in pouring money into transit systems of traditionally Democratic big cities. "The cities aren't going to vote for Richard Nixon in 1972 no matter what we do," says one Transportation Department official.

Most administration planners argue the cities aren't ready to use any more transit money than currently budgeted anyway; they say, for instance, that the cities don't have the local financing they need to qualify for federal matching funds. Besides, adds an administration policy man, "there aren't many proposals coming in early that have any merit at all," in terms of planning. The few that are ready for big sums, like New York projects, would gobble up all that could be provided, short-changing other cities and towns, officials say.

But the American Transit Association (ATA), whose members run most U.S. systems, sees evidence of readiness in the fact that transit operators have about $4.04 billion in applications before the Urban Mass Transportation Administration (UMTA), a Transport * * * systems are eligible under the new law, the ATA says. "If you don't want to spend the kind of money Congress has approved you can come up with all kinds of reasons why nobody's ready for it," a transit-authority head gripes.

MORE STRINGENT RULES

The Nixon administration has been more stringent about making transit systems qualify for grants, critics say. Federal funding has been trimmed to 50% of a project's cost from 75% if the system doesn't show a regional plan, even for straight replacement of old equipment.

Sen. Gordon Allott (R., Colo.) has introduced a bill to loosen up the regional-planning rules. Though his boss is a Republican, an Allott aide says the Nixon administration "has gotten finicky" over these requirements. Michael Cafferty, chairman of the Chicago Transit Authority, says that although he has gotten tentative approval of planning for buying 1,000 new buses, the government could quickly retract that approval.

Thus far, administration men have generally been cool to pleas by transit-system heads for federal subsidies to cover deficits; the industry projects an overall $360 million loss this year, and managers insist the systems cannot survive without operating subsidies. But there is recent evidence that the Transportation Department might be willing to approve a start on the operating-subsidy front.

A kind of chicken-and-egg debate has emerged. Federal officials say local financing is necessary before they can provide federal money. James M. Beggs, Under Secretary of Transportation, says: "I haven't seen any city hemmed up by not having federal money available." But many city and transit executives insist a firm guarantee of long-range federal money is necessary before they can persuade voters to approve a bond issue or new tax for transit.

TAX MEASURES IN ATLANTA

Nevertheless, some cities are moving ahead anyway, hoping they can prod the federal government to match their efforts. A sales-tax measure to support transit was passed by Atlanta voters on Nov. 9, and state aid has been voted recently for Boston and Chicago. The Boston-area Massachusetts Bay Transportation Authority will soon be handing UMTA applications totaling near $250 million in federal money to match $124 million in state-backed funds, says Joseph Kelly, general manager. Among other things, the financing would be used to buy 200 new streetcars.

The stack of solid funding applications on Mr. Villareal's desk at UMTA will soon grow some more, transit men say. They hope the political pressure from this increased demand will overcome doubts among administration officials about the advisability of sharply higher funding.

Chicago's Mr. Pikarsky suggests that Boston, Philadelphia, New York, Seattle, Atlanta, San Francisco, Los Angeles, Chicago, Baltimore and other cities will all be clamoring for large federal sums before long, much of it for costly rail systems.

To date, Nixon administration efforts have been concentrated mostly on less-expensive saving or improving of bus systems, many of them in smaller towns. For one thing, it'll be a long time before new rail systems can be built.

The manager of one big-city transit system says UMTA has rejected his requests for funding some rail improvements and told him to boost his request for some new bus money instead. "They want to see something visual on the streets, and soon," he says.

DEATH OF MARGARET SIMPSON, WYOMING NEWSPAPER, CORRESPONDENT

Mr. McGEE. Mr. President, much of Wyoming was saddened recently by the death of Margaret Simpson, a truly exceptional individual whose loss is felt very deeply.

People of Wyoming knew Margaret Simpson through her bylines as a newswriter for her hometown newspaper, the Greybull Standard, and the State's largest newspaper, the Casper Star-Tribune. She was also one of the most reliable stringers to work for both the Associated Press and United Press International in our State. And yet, Margaret Simpson was completely paralyzed for the nearly 25 years of her professional career as a journalist.

Today, I pay tribute to a woman who contributed so much to my State in spite of such great odds. Shortly after her death, an editorial appeared in the Greybull Standard which epitomizes those special qualities she exhibited.

I ask unanimous consent that the Greybull Standard editorial be printed in the RECORD.

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

MARGARET SIMPSON

Margaret Simpson who died Tuesday has been a writer for this newspaper for a long, long time but more significant than that has been her equally as long fight against extreme hardship and adversity. There are few businesses as tough to do week after week as newspapering. There are healthy, active people who are worn down by the mental punishment. Yet Margaret Simpson, almost completely paralyzed, continued being a correspondent for several newspapers for almost 25 years.

She was amazing in her perseverance against the greatest of odds.

She typed her news with one finger. The phone had to be propped up so she could answer it while she was lying down. She had to call for almost all of her news, she couldn't go out and get it or see things happening for herself. She had to rely on other people and especially her husband, Bill, whose help and devotion have been extraordinary, to do the reporter's legwork. Yet for all those 25 years, she has met one deadline after another. Week after week, year after year, her news arrived at the same time.

It truly has been a memorable performance by a person almost entirely handicapped.

Margaret Simpson wanted to be involved in her community. She took sides—sometimes when a reporter shouldn't, and there were times, I know, when she wished she had been more objective. But she wanted things done right. She fought against things done wrong. She liked to know what was going on in the town. She believed in Greybull, Wyoming many times when others didn't. And she was immensely proud of the town.

She personified the small town's pride in its offspring. She kept track of the countless number of kids who had grown up here and were successful now in other places. She and I were always going to compile a list of all of Greybull's "alumni" and the marks they had made on the world. She already had hundreds of names. I don't know how she remembered them all.

"There is not another town this size" she said many times "that has produced any more successful kids than we have."

Out of this idea came her "Very Personally" column which she started in the Greybull Standard and which became her best writing. It was a chance for her to say many of the things she felt. She filled it with the trivia and the important. She remembered everyone who had ever lived here—and they remembered her with letters and cards and many, many personal visits. Her grandchildren were a joy, but so were other people's grandchildren who said funny phrases or did funny things. She was aware of much that went on. Yet she unconsciously fought against the inevitable changes. She revealed her prejudices towards hair that was long and mores that were different. But what is a column if it isn't

just as the person is. And what is the columnist who tries to be someone else in print?

Margaret Simpson's column was Margaret Simpson. Her hopes and her beliefs, how she felt about the world in general and Greybull, Wyoming in particular.

She built an amazingly large audience. It was unfair that we at the Standard heard more of the compliments to her than she did. Yet she must have known how far-reaching her words were through all those people who kept writing and calling and visiting about it.

This column, and all her writing, were her windows to the outside, and through them, she watched the rest of us go through our lives.

Now she has typed out her last one, her last stories. Her news and her column in today's Standard will be the final ones we shall put into print. There is never an easy way to say "Goodbye."

BRUCE KENNEDY.

SENATOR LEN B. JORDAN: IDAHO MAN OF THE YEAR

Mr. CHURCH. Mr. President, each year the Intermountain Observer of Boise—one of Idaho's best weekly newspapers and a journal of nationwide circulation—chooses a man of the year for Idaho. In the issue published January 1, the Observer selected as its man of 1971 our colleague and friend, Senator LEN B. JORDAN.

This is a fitting tribute to a public career which has spanned a quarter of a century, during which Senator JORDAN has served not only our State, but the Nation as well.

The tribute from the Observer is noteworthy in one other regard. The Observer has traditionally differed ideologically and politically with Senator JORDAN. It is a mark of the widespread respect accorded Senator JORDAN in our State that Sam Day, the editor of the Observer, writes that the Senator will be remembered "as one who exemplified in his private and public life an extraordinary capacity for courage, integrity and leadership."

Mr. Day writes further of Senator JORDAN:

He lived by the words of Thomas Wolfe: "To every man his chance, to every man his shining golden opportunity—to every man the right to live, to work, to be himself, and to become whatever thing his manhood and his vision can combine to make him—this is the promise of America."

Mr. President, I commend Mr. Day's article to the Senate and ask unanimous consent that it be printed in the RECORD.

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

MAN OF THE YEAR: TWILIGHT OF A CAREER TO BE LONG REMEMBERED AS LEGISLATOR, GOVERNOR AND U.S. SENATOR, LEN JORDAN LEAVES A MONUMENT TO PERSONAL GROWTH

(By Sam Day)

A young Boise insurance dealer got a telephone call in the spring of 1950 from an old college friend and room-mate who shared his fascination for politics. The friend wanted him to hurry down to the Owyhee Hotel to meet a man who needed help to become the next Governor of Idaho.

"I'd never met the man before," William S. Campbell recalled many years later. "But I can tell you I took an immediate liking to him. He looked me right in the eye and he gave me a good, firm, honest handshake. I felt that here was a real man, the kind of man you can look up to, the kind of man you can follow."

Campbell, then only 30 and later to become the youngest state Republican chairman in American history, has picked and managed a lot of winners in two decades of political leadership in Idaho. But none was a bigger winner than the square-shouldered north Idaho rancher whom he sized up at a glance in that Boise hotel room 21 years ago.

The candidate, Len B. Jordan, went on with help from Campbell and a few other go-getters to win the governorship on his first try and to fashion a career in public service which in decades to come may establish him as one of the half-dozen best remembered figures in Idaho's political history. As Governor from 1951 to 1955 and as an Eisenhower appointee in the late 1950s he left a lasting imprint on Idaho and the West. As a U.S. Senator since 1962 he achieved a stature which has at times approached the reverential.

Jordan's retirement announcement, delivered like a bolt out of the blue August 24th, made him Idaho's man of the year for 1971. It was the biggest news story of the year—significant not only because it foretold the end of a remarkable career and thus the end of an era, but also because it unloosed a political avalanche the like of which Idaho has seldom seen.

Considered an almost sure bet for renomination and re-election, Jordan's sudden withdrawal from the field created a vacuum which sucked in some of the biggest figures in both political parties, altering careers and setting new political tides in motion.

Among the Republican heavyweights whose fortunes were affected are James A. McClure, half-way through his third term as First District congressman; Robert E. Smylie, the three-term Governor who had succeeded Jordan in 1955, and George Hansen, a former congressman from the Second District. McClure and Smylie declared for Jordan's Senate seat and Hansen also made his intentions clear. Other announced candidates were F. W. (Bill) Bergeson of Pocatello and Dr. Stephen Wegner of Kendrick; other possibilities include former Gov. Don Samuelson and perhaps Campbell himself. McClure's departure in turn created a contest in the First District.

On the Democratic side, Jordan's retirement was equally earth-shaking. In place of a sacrificial lamb, the Democrats now were beating the bushes for a winner. Among the potential candidates were W. Anthony Park, who won the attorney generalship in 1970; Dr. William E. (Bud) Davis, president of Idaho State University; State Rep. Vernon D. Ravenscroft, who tried for the governorship in 1970, old-timers like Ralph Harding, who served in Congress from 1961 to 1965, and newcomers like Rose-Marie Bowman and Byron Johnson of Boise.

The sudden appearance of a U.S. Senate seat up for grabs. The introduction of a new wide-open primary law in which all it takes is the $250 filing fee and 1,000 valid signatures to get on the ballot. The decline of party organizations, the rise of volunteerism as a political force, the budding of new political ambitions. These were the ingredients of a volatile mix which Jordan's announcement brought to a quick and unexpected boil in 1971 and which will determine the political dish in Idaho in 1972.

At 72, Jordan is the first U.S. Senator in Idaho history to relinquish office voluntarily. When he steps down in January, 1973, he will have completed a quarter of a century in public life and only one defeat—for the legislature, in 1948—in five attempts for public office. Although bitter controversy has often swirled around him—he was once hanged in effigy on Normal Hill in Lewiston—Jordan will retire not with the scars of ancient wounds but with the glow of current acclaim. Dissatisfaction with his philosophy has been growing in some quarters, rather than abating, in recent years, but the olympian quality of his retirement announcement served to mute the criticism and emphasize his high standing with old antagonists.

"It is the mark of his honesty that this newspaper and others can disagree with more than half of his voting record and yet completely respect his motives and his intentions," wrote Bill Hall, editorial page editor of *The Lewiston Morning Tribune*, a newspaper which had been unsparing in its criticism of Jordan's gubernatorial policies. "Perhaps part of the reason it is true with Jordan is that men of character and fairness also bring out the best in their critics."

Of those who differed philosophically and temperamentally with Jordan, none came to hold him in higher respect than a fellow Idahoan, Democratic Sen. Frank Church, who wrote him in a personal vein last November:

"Our relationship as colleagues has been so satisfactory—indeed the better word might be ideal—that I hardly need say how much I will miss you. However, I should say how grateful I am to you for your friendship and good counsel through the years. When we differed, you never made it personal, and you were always willing, within the limits of your convictions, to search for common ground on which we both could stand."

Grace Edgington Jordan, the daughter of a country doctor, tells the story of a trying night in the 1930s at Kirkwood Bar Ranch, where she and her husband and their three children spent eight years in the solitude of Hells Canyon, deepest gorge in North America. Len had a severe toothache that night, and there seemed no way to ease the pain. He found the dental forceps that her father had sometimes used, fitted them in place and began the job of extracting his own tooth.

When the tooth was about half out the forceps slipped off. The pain was excruciating now. Len set Grace's bedroom mirror on the kitchen table, pulled the kerosene lamp a little closer, reapplied the forceps and went to work again while Grace built up the fire. Finally, the tooth came out. Len sat for a while, sipped a cup of coffee and then went to bed.

Len Jordan's life has always had that kind of story-book quality. Born May 15th, 1899, in Mount Pleasant, Utah, and reared at Enterprise, Ore., near the towering Wallowa Mountains, which form the west face of Hells Canyon, his father was a county judge and his mother a school teacher. He did well in classes, graduating from high school at the age of 16. The family had no money to send him to college, so he worked on a ranch, then enlisted in the Army and was commissioned a second lieutenant in a machine gun company. He never got overseas.

After World War I he won a football scholarship at the University of Oregon, played halfback and graduated Phi Beta Kappa in business administration. He took graduate courses in economics but ran out of money and went to work on a ranch which ran 20,000 sheep and 1,500 cattle on the Oregon side of the Middle Snake River. He became foreman and was on his way to acquiring a spread of his own when the 1929 stock market crash wiped out the business and his own small savings.

The father of three young children, Jordan was working for $100 a month and board and room in 1932 when a Portland bank offered him the managership of the Kirkwood Bar Ranch, on which it had foreclosed a $50,000 mortgage. The ranch, a remote place which could be reached only by boat from Lewiston, had 1,000 acres and grazing rights to 17,000 more on the slopes

of Hells Canyon. All the bank really wanted was its money back.

"Go in there and operate it, get our money back with interest, and the place is yours," Jordan was told. Len and Grace leaped at the chance. "It was a pretty good place to batten down and ride out the depression," she said later.

For eight back-breaking years Jordan ran sheep over the hills, rebuilt the stone ranch house with his own hands and restored Kirkwood Bar to a thriving business enterprise, while Grace taught the children around the kitchen table. By 1941, after an adventure in family style rugged individualism which Grace was to record later in *Home Below Hells Canyon*, the first of a series of books, the Jordans had sold the ranch, repaid the bank, accumulated a modest reserve and were ready to move on. They settled in Grangeville, the nearest big town to the east, where the oldest of the children could attend high school.

The young rancher quickly made a mark for himself in Grangeville, a marketing center for the rich wheatlands of Camas Prairie and the timber stands of the Nez Perce National Forest. He invested his money in seed and croplands, managed a string of grain elevators, established a farm implement business, bought a real estate agency and an auto dealership. He could have become a wealthy man, but his interests lay elsewhere.

"I quit trying to earn a million dollars when I realized I could only eat three meals a day and wear just so many suits," he told an interviewer later. "I didn't want to change my living habits."

As a businessman and rancher, Jordan tangled often with politicians over the routing and maintenance of roads, which were then the patronage of a corrupt and politics-ridden state highway department. It was the issue which drew him into politics. Running as a highway reformer, he won election to the State House of Representatives in 1946 as a Republican from predominantly Democratic Idaho County.

As a legislator in the 1947 session, Jordan headed a committee which drafted legislation that formed the basis of reforms which were to take the State Highway Department out of politics under a non-partisan three-member board of highway commissioners and a professional state highway engineer. Despite a productive year as a freshman legislator, he was defeated for re-election in 1948. But by this time Jordan had the political bug and was ready to try for something higher.

The governorship was a long shot for anyone in 1950, let alone a neophyte. Four other Republicans, all better known than he, were preparing campaigns for the nomination to succeed Dr. C. A. Robins, the incumbent Republican governor. One of them was former GOP state chairman Reilly Atkinson, owner of a Boise food brokerage firm, who had the solid backing of the Ada County Republican machine. Another was J. D. (Cy) Price, the secretary of state, who enjoyed a statewide reputation.

All Jordan had was a lot of nerve and energy and the help of some hard-charging backers, including Grace, who wrote his press releases, and the two University of Idaho room-mates, Bill Campbell and David Doane.

Campbell and Doane put their fertile imaginations to work on gimmicks which later were to become standard fare in Idaho political campaigns: bumper strips, silk screen billboards, store front campaign headquarters, painted station wagons. They plastered pictures of the good looking rancher all over the state and called it "the only new face in the race." One of the advertisements which caught on quickly consisted of a photograph showing Jordan, looking very much at ease, shoeing a horse. The caption said, "If the shoe fits, put it on."

That kind of raz-ma-taz, plus 20,000 miles of handshaking, was enough to put Jordan over the top. He won the Republican nomination with 20,668 votes. That was only 34 per cent of the total, but it was 3,500 ahead of Atkinson and 5,800 ahead of Price. In the general election the following November Jordan topped Calvin E. Wright, a well-known Lewiston Democrat, by a vote of 107,-642 to 97,150.

One of the businesses which Jordan acquired soon after he moved to Grangeville was an insurance agency. He bought it from a man whose son had gone off to war, served as a pilot and been declared missing in action. Jordan built up the business to more than double its former size. But then the young pilot, Orin Webb, who was to have inherited the agency, returned home very much alive. Jordan sold the business back to the Webb family for exactly the price he had paid for it.

Jordan carried the same instinct for decency and fair play into his public life. Time and again it was to shield him from personal criticism arising from the effect of official policies and actions which were not always so benign in their application. His political instincts were those of a conservative schooled in the precepts and values of the businessman and rancher.

In the name of conservatism and business efficiency he completed the highway reforms which he had initiated as a legislator and undertook other structural changes in government. In the belief that government is best which governs least, and at least cost, he applied a sharp knife to governmental services.

In his zeal to sweep away what he regarded as the outmoded and costly vestiges of an overgrown state bureaucracy, Jordan plunged into a battle royal over higher education. The immediate targets were the state's two normal schools—North Idaho College of Education at Lewiston and South Idaho College of Education at Albion, near Burley. He proposed to the 1951 Legislature that both be closed in the name of economy. The Republican-dominated legislature, after a bitter row, obliged.

Subsequent developments vindicated Jordan's judgment in the case of the Albion institution, which had outlived its day and was never to be successfully revived. But the Lewiston school had had a long history and was thriving, with an enrollment well over 1,000, at the time the ax fell. Its closure was regarded in north central Idaho as an act of treachery, evoking bitter resentment which did not begin to abate until the school was reopened four years later, after Jordan had left office.

Such economies yielded huge surpluses in the state's general fund, enabling the legislature to approve substantial tax cuts, with Jordan's blessing, in 1953. The damage of four years of *lassez-faire* was not always apparent at the time. But the state paid a heavy toll in the form of low paid teachers, staff shortages in its social service programs and neglect of its mental institutions. (For more than 400 mental patients at State Hospital North the professional staff consisted of a single physician).

The row over the Lewiston normal school exacerbated the state's traditional north-south split, which was made even wider and angrier by a fight over development of Hell's Canyon on the Middle Snake, in which Jordan was a leading protagonist. The dispute was over whether Hell's Canyon was to be impounded by means of a single high federal dam or three smaller dams proposed by Idaho Power Co.

North Idaho favored the high federal dam, which had been originally proposed by the Truman Administration, on grounds that it would make fuller use of the river's hydroelectric power potential and hasten the introduction of low cost public power to Idaho. Jordan, along with most south Idaho Republicans, favored the Idaho Power plan on grounds that it would be of greater benefit to upstream users in southern Idaho. (There was no talk in those days of safeguarding the river from dam development.)

Jordan's close personal identification with Hells Canyon and his knowledgeability in water matters added lustre and prestige to the power company's side of the argument. Idaho Power Co. won the fight (the dams were begun in 1956 and completed in 1968) and in the process Jordan acquired a reputation for ideological commitment to private power development which has tended to obscure his real interests in land and water use.

A provision of the state constitution, since repealed, limited Jordan to a single four-year term as Governor. He left office in 1955 to accept appointment as chairman of the U.S. section of the International Joint Commission, an organization which negotiates water agreements between the U.S. and Canada. He served on the commission, often with frustration, until 1958, then took a brief hitch on a foreign aid advisory board before returning to private life to join two old friends, Raleigh and Marguerite Campbell, in the operation of the Circle C Ranch, a huge cattle spread above New Meadows in central Idaho.

Close political associates say Jordan, his credentials as a private power man and fiscal conservative clearly established by his four years in the governor's office might have become Dwight Eisenhower's secretary of the interior had it not been for a political commitment which the Idahoan did not see fit to break. At the Republican national convention in 1952, when Ike won the GOP presidential nomination, Jordan headed an Idaho delegation which went down with all flags flying, voting ballot after ballot after ballot for Robert A. Taft.

Jordan's return to political center stage in August, 1962, prompted by the death in office of Republican Sen. Henry C. Dworshak, evoked the misgivings of some. *The Lewiston Morning Tribune* and Perry Swisher, the liberal Republican newspaper publisher, among others, expressed fears that his return would reopen old wounds. But to others, including Bill Campbell, who quickly grasped the reins, it presented an opportunity to show that neither the old warrior nor his followers had lost their magic.

The Dworshak death, coming barely three months before the 1962 general election, touched off a scramble not unlike the stampede which was later to be unleashed by Jordan's own retirement announcement. In addition to Jordan, three other Republican contenders quickly emerged: Hamer Budge, a longtime Second District congressman who had been unseated in 1960; Dr. Raymond L. White of Boise, who had served in the State Senate, and George Hansen, the former mayor of Alameda, who had done well for a newcomer in the U.S. senatorial primary a few weeks earlier. (The death gave Idaho two senate elections that year.)

The outcome was decided at a meeting of the Republican State Central Committee, sitting as a nominating convention, at Pocatello. The Jordan forces overwhelmed the combined opposition and won on the first ballot. Governor Smylie, who would have preferred a less ambitious nominee in hopes that he himself could have succeeded to the office on the expiration of his third term in 1966, but who took no visible part in the convention proceedings, thereupon appointed Jordan to fill the vacancy.

The Jordan forces campaigned with the slogan that their man would "stand tall in Washington," making capital of the fact that his opponent was a woman. Gracie Pfost, the Democrats' veteran First District congresswoman, ran a hard race but lacked strength in the Second District and fell 5,000 votes short in a total count of 257,000. Frank

Church, meanwhile, who benefited from Republican concentration on the Jordan campaign, was handily winning a second term in the Senate over Jack Hawley of Boise.

As expected, Jordan lined up with the conservative wing of the Republican minority in the Senate. Respectful of the Senate's tradition of freshman anonymity, he was quiet and unspectacular during his first four years (the remainder of the term to which he had been elected). His initial years were marked by jousting with Church over the question of extension of a Bonneville Power Administration transmission line to southern Idaho, which was a new version of the old private vs. public power fight, and by opposition to many of the domestic and foreign policy proposals of Democrats John F. Kennedy and Lyndon B. Johnson. He voted against the nuclear test ban treaty in 1963, but, to the surprise of many, he supported the Civil Rights Act of 1964.

As time wore on, and particularly after his election to a full six-year term in 1966, Jordan began to exhibit a growing independence. This was heightened by the outcome of the 1968 presidential election, which brought a Republican administration to power, coupled with the outcome of the 1966 gubernatorial election in Idaho, which had brought a new kind of Republican administration to Boise. The occasional party pressures from the two administrations soon made it spectacularly evident that Jordan as a senator was his own man.

The Nixon administration was still young when Jordan delivered a rebuff to the new vice president, Spiro Agnew, who had violated custom by going on to the Senate floor to lobby for a minor administration bill. Jordan made his complaint in the privacy of the Senate Republican Policy Committee, but word of it leaked out and the subsequent Senate edict against such tactics became known informally as "Jordan's rule of the Senate." The matter ended there, but Jordan's coolness toward Agnew lingered on, deepening in later years as the vice president sharpened his politics of discord. Jordan's impatience with Gov. Don Samuleson, with whom he found it difficult to work on federal-state relations, became manifest through the years. In 1970, alone among top drawer Idaho Republicans, he boycotted a fund raising dinner at which Agnew spoke in Samuelson's behalf, contending that this was an unwarranted intrusion into Idaho gubernatorial politics. (Samuelson at the time was opposed for renomination by Dick Smith of Rexburg, a moderate more of Jordan's stripe.)

It was in November, 1969, over the confirmation of Clement C. Haynsworth to the U.S. Supreme Court, that Jordan made the most notable of his infrequent breaks with the Republican orthodoxy. In a decision which helped greately to erode conservative support for the South Carolina judge and contributed to his eventual defeat, Jordan announced that he would vote against the nominee.

Jordan made a point of saying he had no quarrel with Haynsworth's record of opposition to racial integration or with other aspects of his strict constructionist judicial philosophy. He felt a balance of judicial philosophies on the court was desirable. He based his opposition, rather, on ethical considerations. A study of the 700-page hearing record had convinced him that Haynsworth had lied to the Senate Judiciary Committee about conflicts of interest involving his ownership of a vending machine company.

Further, said Jordan, he was offended by attempts of the Nixon Administration to put pressure on him, through Republican colleagues in Idaho, to change his vote on the Haynsworth nomination.

"During my more than seven years of service in the United States Senate few issues have generated more pressure on my office than has the confirmation of Judge Haynsworth," Jordan said in a speech on the Senate floor. "Some of my friends have been persuaded to call me even though they have not been provided copies of the hearing record from which they might make an independent judgment as I have."

To Senate associates he was reported to have said privately: "This crowd knows how to kill a senator. They play rough."

The Haynsworth vote brought rumbles from many of the party faithful in Idaho. "You told all of us to support Richard Nixon from Miami Beach through the fall of 1968," wrote one of them, Pembroke T. Rathbone, a state committeeman in Owyhee County. "He placed the name of a man in nomination for Supreme Court justice. He needed support from his meager team in the Senate and you handed the ball to the other team. Thanks a lot."

The vice president of the Idaho Young Republicans, C. Lee Barron of Corral, publicly rebuked the senator and accused him of selling out to the liberals. Other Republican regulars voiced their dismay in private. But Jordan came out of it with overwhelming backing in the press. "It is obvious that Senator Jordan is a man of 'unimpeachable integrity' and that Judge Haynsworth is not," said the weekly *North Side News* of Jerome, one of the most conservative papers in the state.

A year later, Jordan broke ranks on another issue of high importance to the Nixon administration, support for the supersonic transport program, although by this time the administration had learned not to try to twist his arm.

"I have concluded that the $290 million requested for the SST program for fiscal year 1971 could be better spent elsewhere," he told the Senate. "I believe that given our tight budgetary situation and the many pressing needs calling for federal funding that we should not commit almost a third of a billion dollars to a program which may or may not turn out to be a success."

Jordan's opposition helped provide the thin margin which killed the program.

On rare occasions, as in the Haynsworth case and the SST vote, events thrust Jordan into the national limelight, illuminating his qualities of independent judgement. But Jordan shunned heroic involvement in the great national issues. His interest—and his strength—lay in more mundane matters closer to home.

As an economist, rancher, businessman and public office holder from an arid western state, two-thirds of which is owned by the federal government, he had long been preoccupied by questions of the use of the public lands and waters on which Idaho depended for survival. It was in this area that he had acquired his greatest expertise, and it was in this area that he applied his interest and his time, and on occasion his considerable power.

Since the days of his youth, Jordan's heart and mind had been intertwined with the Snake River, especially the rugged stretch which flows through Hells Canyon. It was inevitable that his Senate service would propel him into the still unresolved conflict over the future of what he had always regarded as Idaho's economic lifeline.

Jordan had a special feeling about the Snake. He liked to call it a working river.

"The Snake River is the life blood of Idaho," he would say in a passage which recurs frequently in his writings. "The natural flow has been changed by many structures for storage and diversion. It is truly a regulated river with man-made regulated flows. It is Idaho's greatest resource—irreplaceable but constantly renewable.

"If every residence and every commercial building in the great Snake River Valley were reduced to ashes and rubble by some great disaster, the homes and business properties would be rebuilt—they would rise from the ashes and the rubble. Like the Phoenix of ancient mythology, the cities and the towns and the villages would rise again.

"But let a disaster of a different kind dry up the water of the Snake River, if that were possible, and the cities and towns and villages would wither away like the ghost towns of yesteryear when the mining boom had passed."

To a younger generation, more attuned to the disasters of war, overpopulation, urban decay and man's impingement on the qualities of life which rivers like the Snake afford, such fears as Jordan expressed had an unreal ring. But to those, like Jordan, who had struggled for sustenance from the lands of the great Snake Basin it was no idle fantasy.

The network of irrigation canals and ditches which had made the desert bloom bore witness to Jordan's testimony that southern Idaho did indeed depend upon the river system for its lifeblood. The Snake might never dry up and the towns wither away, but deep in the subconscious of the irrigationist lay the fear that the water might be curtailed and the headgate shut, threatening his economic base.

The fear that downstream users might establish a superior claim to the waters of the Snake had been at the heart of southern Idaho's unalterable opposition to the high Hells Canyon dam—intended primarily to satisfy the hydroelectric power needs of Washington and Oregon. The fears were rekindled in 1964, soon after Jordan's accession to the Senate, by new talk of a scheme to tap the waters of the upper Snake to meet the needs of the teeming Southwest.

The Los Angeles water scare sent a shudder through Idaho, giving rise in 1965 to establishment of the Idaho Water Resource Board, the purpose of which was to tie down the uses of Idaho water in Idaho in such a way as to hold off the claims of outsiders. The major thrust of Jordan's work in the Senate has been to help provide time and elbow room for Idaho to devise a statewide water use plan which could withstand outside assault. He and the water board have thought of water use primarily in terms of application of the water to the land through irrigation and reclamation projects.

With the help of Sen. Henry Jackson of Washington, chairman of the Senate Interior Committee, and other members of the Northwest delegation, Jordan scored a breakthrough in 1968 with passage of a 10-year moratorium on Colorado River Basin diversion studies. Thus, the Southwest was held at bay for a decade to give Idaho and the Pacific Northwest time, through water planning, to put a dike around the Columbia River Basin.

Next, Jordan turned his attention to plugging the hole through which most of the river water leaves Idaho—at Hells Canyon in the Middle Snake. He and others had failed through the years to secure concurrence on the part of Washington and Oregon to a "basin of origin" agreement in which the rights of upstream water users in Idaho would be protected. Jordan hoped above all else for eventual construction of a final Middle Snake dam which, through the storage and pump-back of water, would assure a maximum of irrigation and land reclamation in southern Idaho. A proposal for a high dam at the Mountain Sheep site in Hells Canyon had long been pending from a consortium of Northwest private power companies (including Idaho Power Co.) and public utility districts. But the proposal had no guarantee of Idaho water rights, and so Jordan came to oppose it as vigorously as he had fought the federal Hells Canyon dam plan a decade and a half earlier.

The absence of upstream guarantees and the immaturity of Idaho's own water development plans led logically to the idea of a moratorium on Middle Snake development

to forestall the licensing of any outside projects on the Middle Snake and to give Idaho time to come up with a project of its own. From 1968, Jordan devoted his efforts to securing a 10-year moratorium for the Middle Snake.

In this he found a ready ally in his Democratic colleague from Idaho. Frank Church had a far different dream for the Middle Snake, having come to the conclusion that it ought to be left free-flowing, like other streams for which he had helped secure a protected "wild river" status elsewhere in Idaho and the nation. The moratorium served his purposes, too, and he and Jordan fought hard for it, twice pushing it through the Senate but failing thus far to gain consideration in the House.

The effort for a Middle Snake moratorium came to be the cornerstone of a grand alliance between the two senators, otherwise separated by differences of age, political philosophy and temperament. Again and again the alliance found expression in cooperative action on Idaho projects where the two could share common ground. In the Middle Snake, as in the Sawtooth-White Clouds of central Idaho, where commercial development and environmental interests also clashed, the accommodations that were necessary to forging a joint position frequently led the two senators into hot water with their traditional supporters. But they stuck together.

The Jordan-Church alliance had its origins in a bond which grew up between the two men in the mid-1960s. One was a conservative Republican, the other a liberal Democrat 25 years his junior. They went their separate ways socially and on the Senate floor where national and international questions were concerned. But ideological differences melted in the warmth of a relationship which came to assume some of the qualities of father and son. In what is a rarity in Idaho congressional relationships, the two men became genuinely fond of one another. Their two staffs worked together with uncustomary closeness.

Neither Jordan nor Church cared as much for some of their colleagues of the same political party on Capitol Hill. When Ralph Harding, a Democratic congressman, challenged Jordan for re-election in 1966, Church gave him only token support. Jordan reciprocated the following year by discouraging Republican participation in an abortive attempt to recall the Idaho Democrat. In Church's own re-election campaign in 1968 Jordan managed to busy himself with other tasks rather than stump for his fellow Republican, Congressman George Hansen.

The feeling between the two was characterized by Church's son Chase during a family get-together in the kitchen of the Churches' Boise home on Christmas Eve of 1970, after a harrowing 21-hour plane ride that he and the two senators had just taken from Washington. Chase summed it up in one sentence, Church recalled in a recent letter to Jordan.

"On a tough trip like that," he said, "Senator Jordan sure is a good man to travel with."

Some day a giant dam may rise from the vast deepness of the Middle Snake, taming the last of the wild waters near the home below Hells Canyon where Len Jordan first made his mark. It would be a lasting reminder of a man who traveled far in his time but in a sense never left the Kirkwood Bar Ranch.

But events are likely to deal more kindly with the river, sparing it that fate and in the process leaving Jordan a monument more enduring than concrete and steel. He will be remembered not as he might wish to have been, as the man who fought and tamed Hells Canyon, but as one who—however dim the light which sometimes guided him—exemplified in his private and public life an extraordinary capacity for courage, integrity and leadership.

He lived by the words of Thomas Wolfe: "To every man his chance, to every man his shining golden opportunity—to every man the right to live, to work, to be himself, and to become whatever thing his manhood and his vision can combine to make him—this is the promise of America."

And he will retire to the fitting farewell of editor Robb Brady, who wrote recently in the *Idaho Falls Post-Register*:

"Senator Jordan was a big and broad man—broad enough to sense and absorb the changing times and yet traditional enough to preserve what he felt was precious to the American heritage. Like few do, he learned and grew in the respect and acceptance of his colleagues as well as his fellow Idahoans."

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. The time for the transaction of routine morning business has expired.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The PRESIDENT pro tempore. The Chair lays before the Senate S. 2515. It is the Chair's understanding that the amendment by the distinguished Senator from Colorado (Mr. DOMINICK) is now in order.

The clerk will read the bill by title.

The legislative clerk read the bill by title, as follows: A bill (S. 2515) to further promote equal employment opportunities for American workers.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMINICK. Mr. President, is my amendment No. 611 the pending business?

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the distinguished Senator from Colorado.

Mr. DOMINICK. Mr. President, yesterday I gave a brief statement of my reasons for having introduced this amendment. Today, with the manager of the bill present, I should like to go into the matter at a little more length. I do not intend to indulge in any terribly extended discussions, but we have also, in addition to myself, some other Senators who want to speak in support of the amendment, and I suspect that this will take a large portion of the day. I am, however, willing, at any point that a noncontroversial amendment or other amendment may be ready for consideration, to let this amendment be set aside so that others may be taken up, and then we can go back to this one.

Since enactment as part of the Civil Rights Act of 1964, title VII has stood as a national commitment to the elimination of all forms of employment discrimination. However, in many cases the commitment has remained only a declaration which, because of the lack of enforcement machinery, has not been translated into concrete realities for those in the Nation's work force who have been denied employment rights, because of their race, color, religion, sex or national origin. The Equal Employment Opportunity Commission is charged with enforcing the law against infringements upon such employment rights, but it is essentially limited in its enforcement powers to mediation and voluntary compliance. We would all prefer to see these issues divided in that way but the temper of the times militates against it.

The issue, therefore, is no longer whether we need enforcement powers for title VII, but rather what form and scope of enforcement is needed to best protect the rights of all parties involved. To accomplish this end the Senate is given two types of enforcement machinery to choose from—vesting EEOC with cease and desist powers or giving EEOC the authority to sue directly in Federal courts.

As most of you know, I am a confirmed proponent of Federal district court enforcement. I firmly believe that the courts offer the fairest, most expeditious redress of employee discrimination grievances. For that reason I am offering this amendment which strikes all language vesting the Equal Employment Opportunity Commission with cease-and-desist powers and substitutes therefor language giving the EEOC power to resolve employment discrimination disputes in Federal courts.

Mr. President, at this point, with the acquiescence, as I understand it, of the manager of the bill, I send to the desk an amendment to my amendment which will clarify the problems of my amendment created by the adoption of the independent counsel procedure yesterday. These amendments are simply technical. I do have to have unanimous consent to have them adopted. I would ask the manager of the bill if he has any objection to them.

Mr. WILLIAMS. I have no objection to the modifications.

The PRESIDENT pro tempore. The modifications will be stated.

The legislative clerk read as follows:

On page 1, starting on line 2, strike all through line 6, page 2.

On page 2, line 7, strike "(b)" and insert in lieu thereof "Sec. 4(a)".

On page 2 lines 7 and 9 strike "(h)" and insert in lieu thereof "(i)".

On page 2, line 19, strike "(c)" and insert in lieu thereof "(b)".

On page 5, line 15, strike "3" and insert in lieu thereof "7".

On page 6, after line 6, insert the following:

"In Sec. 8(e)(1) starting on page 59, strike 'before the Commission, and the conduct of litigation' and insert in lieu thereof 'and the conduct of litigation in Federal District Courts.'"

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Colorado? The Chair hears none, and the amendment will be so modified.

Mr. DOMINICK. I thank the Chair.

Before discussing the merits of my amendment, the dictates of objectivity require me to dispose of several simplistic arguments which through sheer volume and weight of rhetoric have achieved

credibility. The most nonsensical and distressing of such arguments is that the Dominick amendment is antiemployee or anticivil rights.

The manager of the bill said yesterday, and I know this to be true, that he does not consider this amendment to be of that nature at all, and I appreciate that statement, even though he still objects to the amendment.

Because the amendment vests enforcement powers in the district courts, the primary tenet of such reasoning must be that Federal district courts are antiemployee or anticivil rights. To even think such thoughts is potently absurd. Consider for a moment where minorities would be without the monumental court decisions recognizing and protecting their rights in education, in public accommodations, in housing, in voting and in equal employment. No less an authority than the EEOC itself, in referring to their experience as amicus participators in 167 fiscal year 1970 title VII private suits, endorse the courts' understanding of the equal employment problem. The EEOC states in its fifth annual report which covers the fiscal year 1970:

The Commission feels that the course of litigation over the past year has been encouraging and that the law has developed in a liberal fashion appropriate to a humanitarian and remedial statute. The implementation of title VII gives hope for the future of all Americans.

Even more offensive than the absurdity of such an argument is its accompanying implications that an aggrieved employee will not receive justice in U.S. district courts. By impugning the reputation of an old and trusted friend of minority rights, the civil libertarians are doing Brutus proud. The old lament, "How soon they forget" was never more appropriate.

If the civil libertarians are to prevail with their argument, they must prove that not only will the Dominick amendment not effectively protect the employment rights of minorities, but that cease-and-desist enforcement will. This, in and of itself, is a shaky premise. Essentially, the argument must be that by vesting an acknowledged advocate of employees' rights such as the EEOC with enforcement powers, you thereby guarantee the best protection of such rights. This is overly simplistic for several reasons.

Prof. Alfred Blumrosen, of Rutgers Law School, finds such reasoning faulty. Mr. Blumrosen, an authority on minority employment, wrote a book on the subject in 1971, "Black Employment and the Law." As quoted in a September 15, 1971, Wall Street Journal article by Elliot Carlson, Mr. Blumrosen, in referring to cease-and-desist proponents, states:

An awful lot of liberals haven't stopped to think that what they're fighting for isn't appropriate to the problem. 'They're basing their views on the NLRB experience, and think that because the board helped unions get established the EEOC can do the same for civil rights groups. That's not necessarily so."

The article continues to say:

Mr. Blumrosen argues that minorities have been far more successful achieving their rights through courts than administrative procedures. He also asserts that States have invariably failed in their own efforts to eradicate job bias through administrative cease-and-desist powers. (Of 34 States with fair employment practice commissions, 32 have such powers.) Others support his argument.

"I doubt whether cease-and-desist orders could get at the vestiges of bias better than the courts," declares Bernard Anderson, assistant professor of industry at the University of Pennsylvania. "It would take years to build up the guidelines on which to base such orders, but if you had a good case you could be in court next week."

The article further states:

Pennsylvania's Mr. Anderson contends that most discriminatory treatment is institutional: subtle practices that leave minorities at a disadvantage because of cultural and educational differences. He doubts whether such forms of bias could be rooted out by cease-and-desist powers.

"At the labor board, individual cases are decided on individual merits," he observes. "Thus cease-and-desist orders fail to create broad legal principles, and 'that's not good enough for race questions.' Mr. Anderson questions, for instance, whether any such order could ever have had the impact of the Griggs vs. Duke Power Co. decision, in which the Supreme Court recently held that employment tests, even if fairly applied, are invalid, if they have a discriminatory effect and can't be justified on the basis of business necessity.' "

Additionally, this logic fails to consider the legendary vicissitudes of presidentially appointed boards. Such boards tend to react to political winds rather than stare decisis and, consequently, what is a proemployee board today could well be a proemployer board tomorrow. Probably the best example of this is the National Labor Relations Board. The NLRB, which possesses cease-and-desist enforcement powers similar to S. 2515, has been criticized for lack of long-term consistency, fluctuating from promanagement decisions during the Eisenhower administration to prolabor positions during the Johnson and Kennedy administrations. Determination of employment civil rights deserves and requires nonpartisan judgment. This judgment is best afforded by Federal court judges who, shielded from political influence by life tenure, are more likely to withstand political pressures and render their decision in a climate tempered by judicial reflection and supported by historical judicial independence.

Allegations have been made that in placing enforcement of employment disputes in Federal courts, the amendment will clog court dockets and greatly extend the settlement time of such disputes. Consideration of this contention is most important as a speedy resolution of the dispute is vital to both employees and employers. Interestingly enough, facts indicate that the potential administrative snarl created by S. 2525 language threatens effective resolution of employees grievances much more so than court enforcement backlogs.

Consider these facts. I referred to them yesterday, and they are worthwhile repeating today. Chairman Brown of the EEOC testified that as of June 30, 1971, the Commission had a backlog of 32,000 cases. The EEOC anticipated a caseload of 32,000 new cases in fiscal year 1972 and 45,000 in fiscal year 1973. As of February 1971—the most recent data we have been able to get—EEOC complaints required from 18 to 24 months for disposition.

I might interpolate here that I understand that it is longer than that at the present time.

To this already substantial backlog one must add the impact of the more complex and time consuming cease-and-desist procedure and the expanded coverage provided by S. 2515. Included for the first time in the expanded coverage are approximately 6.5 million employees of small employers—that is, those employing between eight and 25 employees, 4.3 million educational employees—teachers and professional and nonprofessional staff members—and 10.1 million State and local governmental employees whose disputes are to be conciliated by the EEOC according to a committee adopted amendment. Thus, the EEOC will be responsible for an additional 21 million potential aggrieved persons.

I should say that, additionally, all Federal employees are included in a remedy system. They go through their agency and then into the court system or through the Civil Service Board of Appeals and Reviews and then through the court system, if necessary under the existing bill. There is a need to coordinate what is done in those agencies and the court system with the actions taken by the EEOC.

If court enforcement is adopted the district courts will be faced with the same expanded caseload, but they are substantially better adapted to cope with the increase. Under S. 2515 language, EEOC field attorneys could investigate and attempt to conciliate disputes, but only the Commission in Washington would be available to issue cease-and-desist orders. This procedure would require the hiring and training of 100 new trial examiners and supportive staff. Contrast this with the existing Federal district court system of 93 courts and 398 judges with established reputations for fairness, discretion and impartiality.

Further, it is my impression that companies and labor organizations and their legal counsels are much more impressed by precedents established in our Federal court system than by precedents established of administrative agencies. Accordingly, as court precedents are established under my amendment, I believe the result will be a substantial increase in the number of respondents complying with court decisions or entering into meaningful conciliation agreements with the Commission, rather than appealing cases lost in Federal district court. In addition, I envision a much larger number of cases being settled by agreement without litigation where the alternative is a Federal court trial by respondents who would take their chances in drawn-out administrative proceedings, even where the precedents were clear.

Whereas the EEOC backlog is from 18 to 24 months, the median time interval from issue to trial in U.S. district court in 1970 according to the annual report of the Director of the Administrative Office of the U.S. courts was 10 months.

A more accurate prognosis of the impact of district court enforcement can be made by comparing the backlogs of

the 29 district courts having jurisdiction over the 10 highest States in terms of fiscal year 1970 recommended EEOC investigation. According to Congressman JOHN ERLENBORN'S study of those 29 district courts, 21 courts had a median time of 12 months or less for nonjury trials and eight courts had a median trial completion time of 6 months or less. These courts appear capable of handling the increased caseload activity without undue delay.

In addition to the other expanded responsibilities that S. 2515 thrusts on an already swamped Commission, it also transfers all contract compliance activities of the Secretary of Labor under Executive Order 11246—as amended by Executive Order 11375—to the EEOC and over a 2-year period, the section 707 "pattern and practice" suits from the Justice Department.

The total impact of the increased procedural responsibilities, expanded coverage, and transfers could well create an administrative nightmare which will effectively frustrate the rights of all parties. The district court approach offers existing, respected, proven, national network of tribunals capable of coping with the increased caseloads.

Before proceeding to the merits of the amendment, one last point of confusion should be resolved both in my mind and for the purposes of making a viable record. I generally understood, and Ken Meiklejohn, from the AFL–CIO, among others, confirmed the fact that organized labor was in favor of S. 2515 generally, and cease-and-desist enforcement powers specifically. It was, therefore, disquieting to read in the November 13, 1971, National Journal that the letter of James C. Lee, president of the 350,000-member State Building and Construction Trades Council of California, urging defeat of the House version of S. 2515, the Hawkins-Reid bill, was totally ignored by the AFL–CIO. Not only were President Lee's objections ignored, but according to the article, John F. Hennings, president of the California Labor Federation, AFL–CIO, wrote to the California House delegation endorsing the Hawkins-Reid bill. I find this incident disquieting, because I doubt that it represents an isolated occurrence.

I doubt that it represents an isolated occurence, because I can only interpret EEOC vested cease-and-desist enforcement powers as being contrary to the interests of the rank-and-file members of organized labor unions. It is logical to assume that the present Commission will continue to pursue its active employees' rights philosophy after being armed with cease-and-desist powers. The consequence will most probably be increased minority hiring requirements at the expense, in many instances, of union hiring and seniority rights. I am somewhat confused as to why the leaders of organized labor have chosen to apparently jeopardize the very important hiring and seniority rights of their members, especially when it is contrary to the express dictates of the members in at least one instance. Any explanation as to this apparently inconsistency would be most helpful for both my information and the legislative record we are trying to establish.

Having disposed of some of the rather misleading rhetoric surrounding the amendment, I will now proceed to the substance of the language. My amendment does not affect present bill language which improves the respondent's rights of due process by requiring a 10-day notification of the filing of a Commission charge or the 2-year limitation of back pay liability. It does not affect bill language whereby approximately 10.1 million State and local government employees can seek redress of their grievances through Federal district courts. The amendment does not change a committee adopted amendment authored by Senator CRANSTON and me creating machinery suggested by Clarence Mitchell, director, Washington Bureau, NAACP. The machinery provides a remedy procedure for the approximately 2.6 million civil service and postal workers whereby an aggrieved employee has the option, after exhausting his agency remedies, of either instituting a civil suit in Federal district court or continuing through the Civil Service Board of Appeals and Reviews to district court, if necessary. Curiously enough, the majority members of the committee seem pleased with ultimate court enforcement procedures for 2.6 million Federal employees and 10.1 State and local government employees, but continue to urge cease-and-desist procedures for private employees.

Why this is not discriminatory in and of itself, I find hard to realize.

The amendment does not affect the expanded coverage provisions in the bill concerning small employers, State and local government employees, or educational institution employees. Additionally, it leaves undistured S. 2515 language transfering Justice Department "pattern and practice" suits and Labor Department's Office of Federal Contract Compliance to the EEOC. Finally, the amendment does not limit aggrieved employees to only title VII remedies or bar class action suits.

My understanding is that amendments on all these points will be brought up at a later date for decision by the Senate, but this amendment does not affect any of them.

What the amendment does do is to provide for trial in the U.S. district courts whenever the EEOC has investigated a charge, found reasonable cause to believe that an unlawful employment practice has occurred, and is unable to obtain voluntary compliance. The Commission would have complete authority to decide which cases to bring to Federal district court and those cases would be litigated by Commission attorneys. Once a Federal district court had issued a decision and order in a case, appeals litigation in a U.S. Court of Appeals or the U.S. Supreme Court would be conducted by the Attorney General's Office. An aggrieved person would retain the right to commence his own action in Federal court if the EEOC dismissed his charge.

This amendment protects the rights of both respondents and aggrieved by providing a fair, effective, and expeditious resolution of the dispute.

I might point out here, Mr. President, that my amendment simply takes the enforcement procedure down one level in the court system and out of the hands of the executive agency. The enforcement procedure, as the bill proposes, puts adjudicatory power in the hands of the executive agency with appeal to the court of appeals. What we are doing is avoiding star chamber procedure in the executive agency system, which has not worked in the past and which we do not believe will work in this situation.

Whereas the court approach preserves the traditional separation of powers which we as a nation so highly cherish, the cease and desist procedure seriously threatens the respondent's due process rights in a star chamber procedure which joins the prosecutory function with the adjudicatory function. Under a cease and desist proceeding the EEOC would investigate the charge, issue the compaint, prosecute the complaint, adjudicate the merits of the case, and seek enforcement of its decisions in the U.S. circuit courts of appeals. Elemental concepts of fairness and due process require an impartiality in the adjudicatory function which could not be attained under S. 2515, but could be under my amendment if agreed to.

This amendment provides a combination of the expertise of the EEOC in investigating, processing, and conciliating unfair employment cases with the expertise and independence of the Federal courts. An expertise, which as I mentioned earlier had exhibited unusual understanding of the rights of minorities in areas of public accommodations, voting rights, education, housing and equal employment. The equal employment area is one which produces strong emotions among all parties—those discriminated against, those accused of discriminating, and even those charged with enforcing the law. I believe that these strong emotions should be tempered by restraint when the adjudication of personal rights is at issue. The Federal courts are best able to provide the tempering restraint which will allow for a rational resolution of the issues of any given case.

Mr. President, to interpolate for a minute, as I reported yesterday, my recollection of the evidence is that approximately 30 percent of the cases which are being filed now—at least in excess of 20 percent are related to sex discrimination. And when we get an angry woman who feels she has been discriminated against in her job or in getting her job, we have really got emotions running high. And we have the same situation involved when a man is being discriminated against or thinks that he is being discriminated against because he is not a female. These are matters that go on and on and on. They get much more difficult to handle through voluntary compliance or an executive agency level than if we had some totally impartial method of solving the disputes.

In my opinion, we do not get adequate impartiality with cease-and-desist orders or with the EEOC having the untram-

meled discretion to impose unreasonable employment relation requirements. Everybody is mad.

If we have an impartial court proceeding, we would have much faster action, much more impartiality, and some ability to temper the heat of the issues involved.

As I pointed out, effective protection of the rights of both the employer and the employee demands a speedy resolution of the dispute. Facts in addition to the previously discussed backlog problems indicate that the court enforcement procedure is more expeditious as it involves a one-step enforcement procedure whereas the cease-and-desist order requires two steps. A district court order is immediately self-enforcing as it is backed by court contempt proceedings. A Commission cease-and-desist order must be brought to the court of appeals before it achieves similar sanction power. Additionally, there is a definite practical advantage in having the judge who enters the original order be the person who will hear any subsequent enforcement proceedings. A judge who is enforcing his own orders rather than those of some commission will be determined that such orders are properly enforced.

This amendment offers a welcome opportunity in an era of increasing concentration of executive power to strike a small, but perhaps significant blow for the judicial branch of our Government. As a respecter of our Founding Fathers and their intent to create a tripartite form of government with each branch exercising separate but equivalent powers, I am disturbed and have been for a long time, by the steadily encroaching power of the administrative branch. Each day heralds the birth or expansion of some executive agency. Such expansion is not only bureaucratically unwieldy, but also threatening to the very existence of our concept of checks and balances. If the executive branch is allowed to continue this usurpation neither the legislative nor the judicial branch will be able to exert enough power to check the runaway executive branch. Nowhere is executive usurpation more evident than in S. 2515. If the Commission is given cease-and-desist powers, clearly a judicial function, then the legislative branch has no one to blame but itself for the further diminution of the judiciary branch and the strengthening of the executive branch. Many would argue that this is simply one more small concession to the executive branch, but I submit that it establishes precedent, either pro or con, for the eventual destruction of one of the cornerstones of our form of government. As such, it should not be dismissed as simply one more small concession.

Mr. President, how many times have I heard on this floor from one Senator or another, from one side of the aisle or the other, that an executive agency is creating rules and regulations which have the force of law and which Congress did not intend. To compound the situation Congress itself now is attempting to give an agency not only the power to make regulations which may well affect everyone's business and personal rights, but we now propose to also give them judicial powers as well.

Why not discard the philosophy of local control and simply give in to the concept that the country is too big and too complicated and that we should let a bunch of bureaucrats run it? I for one am not willing to make such a concession.

Mr. President, rather than jeopardize the aggrieved employee's rights with a potential administrative nightmare and the respondent's due process rights with a star chamber proceeding, let us turn to the Federal courts of the United States where an established judiciary assures us of competent, impartial decisions. We have never been hesitant to rely on our Federal judicial system before, least of all in civil rights cases, and the import of equal employment opportunity makes it inappropriate to desert such a proven and respected system at this time.

I hope and sincerely plead that my colleagues see the light and give us at least one chance to continue our tripartite system and avoid increasing the power of these executive agencies. Let us try to do something which will protect the rights of all parties concerned in any of these very emotional employment disputes by adopting the Federal court procedure.

Mr. President, I yield the floor.

Mr. FANNIN. Mr. President, I commend the distinguished Senator from Colorado and I express my support for amendment No. 611 offered by the Senator from Colorado (Mr. DOMINICK). I do so in the belief that adoption of this amendment is urgently required to assure the most effective realization of the objective of S. 2515 and of title VII of the Civil Rights Act of 1964—the elimination of discriminatory practices in the employment of American workers.

S. 2515 would vest the adjudicatory power and authority to issue cease-and-desist orders in the EEOC itself and the analysis of this proposal has been very adequately pointed out by the distinguished senior Senator from Colorado. I express my support and concur in his analysis that what is involved is that this would enable the EEOC to sue in Federal court for redress of employees' grievances if the amendment is adopted.

We should not be confused into accepting the knee-jerk reaction that because the cease-and-desist approach is the more extreme remedy it is, therefore, a more effective, pro-civil-rights approach than the court enforcement method.

Nothing could be further from the truth. An objective comparison of the two approaches reveals that the court enforcement method would more effectively repair injuries caused by employment discrimination and protect the civil rights of all Americans.

First and foremost, it is inevitable that the rights and interests of aggrieved employees and of respondent employers will be prejudiced if the EEOC is granted the power not only to investigate charges and issue complaints, but also to adjudicate those complaints and issue enforcement orders. If the Commission were to adopt the impassive attitude proper for its role as judicial arbiter, the employees would lose the benefits of the Commission's present function as advocate for their cause and as zealots in the effort to redress employee grievances. If, on the other hand, the Commission continued its attitude of proponent for the employee, the respondent employers would clearly not receive the due process to which they are entitled in the adjudicatory proceeding.

Mr. President, I do not believe that the amendment adopted yesterday by the Senate solves this problem. I voted in favor of that amendment and I think it is a step forward.

There is no excuse for us to sanction new injustices in our efforts to right existing injustices—certainly not when a reasonable and more effective remedy is available to us.

The Equal Employment Opportunity Commission is a politically appointed body, and if it were given the cease-and-desist power, its exercise of that power would inevitably fluctuate with the political winds.

If, as we propose, the EEOC is authorized to prosecute complaints in Federal district courts, then the investigative and prosecutory function will be properly separated from the adjudicatory power—each body performing that function for which it is perfectly suited. The EEOC can remain a zealous proponent of the employee and the district court judge can perform the service for which he has distinguished himself in every area. The judge, having a lifetime appointment, is insulated from the whims of politics in approaching delicate issues such as we here encounter. The district courts are experienced in handling civil rights matters, having in recent years dealt effectively with a broad spectrum of civil rights cases, including those involving employment discrimination.

And adjudication by the Federal courts will provide the consistency and continuity which is a vital element of our judicial process.

Court enforcement, therefore, offers a more fair and equitable representation of the interests of both employee and employer. In addition, court enforcement offers a more expeditious settlement, and a speedy resolution is vitally important both to an aggrieved employee and to a respondent employer.

Presently the EEOC has an enormous backlog of cases under investigation, and the disposition of a complaint requires from 18 to 24 months. S. 2515 adds 6.5 million nongovernmental employees and 10.1 million employees of State and local governments to the EEOC's jurisdiction, so obviously the backlog of investigations and the time required for processing them can be expected to increase in the future. If the Commission is given cease-and-desist authority, the time required for completion of the adjudicatory process will obviously be considerable—and it must be remembered that the cease-and-desist order must be brought to a Federal court of appeals before it achieves a sanction power similar to that of the order a district court judge would enter at the end of a court enforcement process.

In 1970, the median time interval from issue to trial in nonjury cases in U.S. dis-

trict courts was 10 months. Clearly, this avenue offers the aggrieved employee and the respondent employer a faster answer to his problem. Furthermore, it is relevant to consider that this prospect of swift resolution in court should encourage settlement by conciliation of a larger percentage of cases, thereby helping the Commission handle its tremendous investigative and conciliation responsibilities more quickly.

If the resolution of employee discrimination cases is fairer and faster under the court enforcement procedure, what possible reason is there to depart from this traditional means of administering justice in the United States? Proponents of the cease-and-desist authority lean heavily upon the arguments which have been advanced in granting this authority to executive agencies in other areas: First, that a special expertise in a technical field is required of the adjudicating officer; and second, that putting such cases in the Federal courts would clog the Federal judiciary system. Neither argument stands up in this case.

Civil rights is not a highly technical area. It is a matter of human understanding and common sense, qualities possessed as fully by Federal judges as by potential nominees to the EEOC.

The district court judges have shown in recent years their capacity to resolve civil rights disputes in areas such as housing, public accommodations, and school integration. Furthermore, because of the respect with which the Federal judiciary is viewed, their decisions have greater immediate impact and moral sanction than would the decision of an executive administrative agency.

I see no way that the court enforcement procedure would clog the Federal courts. There are 398 Federal district judges to hear those cases which the EEOC does not resolve by conciliation. In fiscal year 1970, only 732 of 20,122 charges received by the EEOC failed a solution by voluntary compliance. As stated above, I believe the court enforcement procedure would increase the number of voluntary settlements. Therefore, those cases which had to go to court would be easily distributed among the district judges. Certainly then it would not be so manageable if all had to be handled by the Commission itself under the cease-and-desist procedure.

Without the Dominick amendment, S. 2515 opens the door to another unnecessary expansion of an already cumbersome Federal bureaucracy. This will add another unnecessary cost to our Government and saddle our taxpayers with the bill.

We must remember that when we have unnecessary costs to our Government, there are increased taxes and increased costs of productivity. In our country today we are facing a very serious problem, the problem of being competitive with other countries of the world. We have an imbalance of trade that exceeds any imbalance we have ever had before, increasing considerably our imbalance of payments and threatening our dollar and the very economy of this Nation. We cannot afford to place additional burdens on our economy. We must work in the other direction to try to bring about better relations between management, labor, and government. We have a very serious problem facing us. We are going to have to have jobs for the people of this country. However, a program that is going to further burden us with additional costs and that places a further burden on the companies and employees involved is something that is absolutely unnecessary if we are to continue our progress forward in facing the competitive situation in the world today.

I submit that all who are truly interested in attaining the purposes of the Civil Rights Act of 1964 and the Equal Employment Opportunity Enforcement Act of 1971 will support the Dominick amendment.

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

Mr. FANNIN. I yield to the distinguished Senator from Colorado.

Mr. DOMINICK. I want to express my thanks to the very distinguished Senator from Arizona for his aid, support, and cosponsorship of this amendment. I think his statement was excellent. His extensive record in the public service, first, as Governor and then as a Senator makes such comments most authoritative and informed.

It looks to me as though my amendment is being attacked by emotion rather than by logic. The Federal court system, logically speaking, would be a far better one. As the Senator so aptly said, this procedure can take care of this situation much more readily and much more efficiently than if it were enforced by an executive agency of this kind.

I look forward to coordinating efforts with the Senator so as to help bring us to a winning vote on this amendment on Monday.

Mr. FANNIN. I thank the Senator. The Senator from Colorado is to be commended for taking the initiative and bringing forth what is involved. It is very vital that we have cooperation between management, labor, and government. We could give many illustrations of where we have had prolonged trouble just because we did not have a court to settle the issues. We have cases before us today which would have been settled many months ago if we had had the same system which the distinguished Senator is recommending.

We face serious problems in this Nation. We know one of the most serious, if not the most, is unemployment. We want to try to coordinate our efforts to bring about additional employment, but we must be competitive with the other countries of the world. In the last few years we have seen companies move across the water, for various reasons, some in this field.

I abhor the thought that this could be a factor in the future, and I am sorry it has been a factor in the past, but I think we must recognize that when there are serious problems between management and labor, and they are not brought to a conclusion because there is a strike or the companies are in a position where they cannot make their decisions for months at a time, then there is a serious question of whether they can expand their operations to employ more people and go forward in this country of ours, rather than look to operations overseas.

So I think we have more involved here than meets the eye on a very cursory examination. The very future of our country is involved, as far as competitiveness is concerned. I do not mean to infer that this alone is going to threaten our economy, but I think we must realize that building up that problem does affect the economy and our ability to meet the world market.

Mr. DOMINICK. I know how completely the Senator has researched the question of the economic competitiveness of our country. I have real respect for his judgment on that question. It seems to me the question of employment discrimination could be settled rather rapidly if we could get a coordinated labor-management effort on it. This logically should occur as an amendment such as mine seeks to improve the situation for both groups.

Mr. FANNIN. I certainly think the Senator is right. The people of America have confidence in their courts. The employees have confidence in their courts. I think they would feel far better if they knew a court was passing judgment on some conflict that might be involved in their negotiations, even more than, as we have had in the past, through efforts of the National Labor Relations Board and other agencies. They have done great work, but if somewhere along the line they cannot come to an agreement, a decision has to be made. Otherwise we are going to have to face disadvantages such as occurred in the shipbuilding industry and many others. The result has been that the companies involved in these confrontations have become less and less competitive.

In order to reach a settlement, the courts would decide the righteousness of the claims of the parties. This is what the Senator wants to bring about—a process that will bring about a settlement.

Mr. DOMINICK. Once again I want to thank the Senator for his help.

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

The PRESIDING OFFICER. Does the Senator yield the floor?

Mr. FANNIN. I yield the floor.

Mr. ERVIN. Mr. President, will the Senator yield for some questions?

Mr. FANNIN. I am very pleased to yield.

Mr. ERVIN. I have been interested in the amendment which was offered by the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) for the Senator from Ohio (Mr. TAFT) and the Senator from New York (Mr. JAVITS) on yesterday, and I would like to see what the opinion of the distinguished Senator from Arizona is with respect to it.

The Senator from North Carolina has studied it, and he thinks that it is so much window dressing, which is comparable to the saying that hypocrisy is the homage which evil pays to righteousness.

This amendment provides that the President is to appoint a General Counsel, but it also provides that the General Counsel shall appoint regional attorneys with the concurrence of the Chairman of the Commission. Just how much independence would be given by a

provision that the General Counsel cannot appoint regional attorneys to assist him in carrying out his duty without the approval and concurrence of the Chairman of the Commission which is charged with the duty of enforcing the law?

Mr. FANNIN. I would say to the distinguished Senator from North Carolina that his analysis is certainly correct in my mind. It does pose a problem because after all, the stated intent of the amendment was to accomplish just exactly what was stated as far as appointment of counsel is concerned, but not the follow-through. I concur in the feeling that if we are going to have equity involved, then we must not have the appointment of the people that are going to be carrying through with the adjudication of cases, with the presenting of the evidence and whatever else may be involved, under the very control of the Commission that is going to hear it. So I certainly concur in the feelings of the distinguished Senator from North Carolina. I am sorry that stipulation is in that amendment.

Mr. ERVIN. Does the Senator from Arizona agree with the Senator from North Carolina that that amendment leaves unmodified the duty and the power of the Commission to investigate charges and even to go to the General Counsel and urge him to make charges?

Mr. FANNIN. The Senator always presents his case effectively and very righteously, and that is true. This is carrying a program that was intended to try to settle differences into an area that creates differences. I feel that is very unfair. I certainly do not think one can be judge and jury and decide the case and then decide the penalties and be fair and equitable as a commision. I think it is unfair to the Commission to impose these obligations on it.

Mr. ERVIN. Is not this fundamentally comparable to what would have been the situation when the 18th amendment to the Constitution was adopted to outlaw liquor—if the amendment had given the prosecuting attorneys the power to prosecute charges and then to determines the charges that were valid?

Mr. FANNIN. I think, when one is making an analogy, he could carry through on that basis. I agree that that would be an analogy that would be sustained. I, of course, feel very keenly about this because not only do I feel the Commission is charged with a responsibility, but that it has a burden to carry that is beyond a commission's actual potential.

They should not have to carry through from A to Z. There should be others involved in making the decision in this regard.

Mr. ERVIN. Now, the amendment gives a little more lipservice to the idea that everyone is entitled to a fair trial by saying that:

> No employee or agent of the Commission may engage in the performance of prosecutorial functions for the Commission in a case or any factually related case, and also participate or advise in the decision recommended decision, or Commission review of a decision, except as a witness in public proceedings.

It says he cannot give any advice unless he takes the witness stand and testifies on oath how his fellow Board members ought to decide it. Is that not the case?

Mr. FANNIN. It is rather inconsistent with what is intended under the statutes that we rely upon so faithfully in this country of ours for equity under the law.

Mr. ERVIN. Does the Senator from Arizona agree with the Senator from North Carolina that under this bill, the Commission is charged with the responsibility of enforcing a law which is designed to compel the majority to employ people from the minority rather than from the majority?

Mr. FANNIN. Yes; of course, the whole intent of the legislation was to be fair and equitable with the minority; I do not think it was ever intended that it should be unfair to the majority. But in the very operation of the Commission, where they have this dual or, one might say, double responsibility, it is very difficult for them to carry through with what I think was originally intended by Congress.

Mr. ERVIN. In other words, the duty is placed upon the Commission to enforce a specific law, and then the Commission, in effect, are made judges to decide whether the law that they are charged with enforcing is violated; is that not true?

Mr. FANNIN. That is true, and I think it is very unfair to impose that obligation upon them.

Mr. ERVIN. Now, while this amendment designates the General Counsel as the one who can make the charges before the Commission, it still leaves the Commission and its agents with the responsibility for investigating charges, and gives them the power to make charges subject to the approval of the General Counsel, and so they are charged, in effect, with either assembling or supervising the evidence to sustain the charges that they called to the attention of the General Counsel.

Mr. FANNIN. That is true. It is regrettable that it is that way.

Mr. ERVIN. Then the members of the Commission, or those who are psychologically allied with them in the enforcement of this statute, sit as judges to pass on the validity of the charges which are based upon the investigations made by the agency itself.

Mr. FANNIN. Well, the problem, as I see it, that is being created, is that we have a General Counsel appointed by the President, but that the General Counsel is not in control of his responsibilities. His responsibilities would be carrying through as a General Counsel, and the people under him would be under his jurisdiction and not under the Commission's jurisdiction. This is what I think the distinguished Senator from North Carolina has brought out as a great inequity.

Mr. ERVIN. If we are going to have a system where justice is administered, we are going to have to have a complete divorce between those who are to exercise the judicial function and those who are going to set in motion the cases that are eventually to require judicial decision, are we not?

Mr. FANNIN. Yes. I think that is the intent of our laws and the intent of our Constitution.

Mr. ERVIN. And does not the Senator from Arizona agree with the Senator from North Carolina that no matter how good the men may be who are appointed to an agency to enforce a law of this kind, with responsibility placed on the agency of investigating allegations of violations of the law and of assembling evidence on the subject, and then confer on that same agency, even with the intervention of a General Counsel between the two functions, the power to judge the cause, we inevitably have a system where the members of the agency who judge the cause are psychologically disabled, in most cases, to be fair and impartial?

Mr. FANNIN. I think because of that fear we do have the separation of powers in this great Government of ours, and I feel that that is not being carried through in this legislation.

Mr. ERVIN. In 1949, the Supreme Court of the United States had before it the case of Wong Yang Sung against McGrath, which is reported in volume 339, beginning at page 33, of the official reports of the Supreme Court, where the Justice dealt with this subject. The Court spoke of the fact that this had been a problem which, prior to the enactment of the EEOC bill, had given our Government much concern, and President Roosevelt had appointed a distinguished Committee to study this business of uniting in one Federal agency the duty of enforcing the law and determining whether that law has been violated.

Justice Jackson, who wrote the opinion invalidating the procedures of the administrative board of the immigration authorities which united all these functions in the same agency, said this, on page 38:

> President Roosevelt's Committee on Administrative Management in 1937 recommended complete separation of adjudicating functions and personnel from those having to do with investigation or prosecution.

Now, the Senator will note that the decision in this case recommended not only divorcing the functions of those who judge the matter from those of the prosecuting attorney, but also from that of the investigator; and this amendment leaves the investigating powers and duties of the Commission untouched, does it not?

Mr. FANNIN. That is my understanding.

Mr. ERVIN. Is it conceivable to the Senator from Arizona that we can expect an unbiased judgment where the agency which assembles the testimony on which a prosecution is based is to judge the validity of the accusation based on its investigation?

Mr. FANNIN. I agree with the Senator. I think it is very unfortunate that we impose on this Commission these obligations, because they would have, I think, an opportunity to render a greater service if they could carry through with what I think was intended by Congress originally, and that was not to adjudicate the cases.

Mr. ERVIN. Justice Jackson wrote an opinion in the case to which I have

referred which I believe every person who advocates legislation like this ought to memorize before attempting to persuade Congress to enact it.

He points out that it is not sufficient merely to say that a man who investigated or who prosecuted should not sit as a judge, but that the diverse functions should be entirely separate and put in separate agencies. He cites much learned discussion from reports of committees that have investigated this subject—that where a man one day acts as an investigator or a prosecutor and the next day acts as a judge for the purpose of judging the validity of charges, he gets in a personal psychological situation in which he cannot discharge the judicial function fairly.

Mr. WILLIAMS. Mr. President, will the Senator from North Carolina yield at that point?

Mr. ERVIN. I yield.

Mr. WILLIAMS. I think the Senator is perhaps suggesting that I memorize that case, but I would have to know what the case was, what the facts were, and what agency Justice Jackson as talking about.

Mr. ERVIN. Well, he was talking about the procedures of the immigration authorities and the immigration authorities did exactly what the EEOC officials do. They conducted investigations, and then they judged the charges based on their investigations. The Court struck that down as not in sufficient compliance with the Administrative Procedure Act.

I read from page 43:

Merely to provide that in particular cases different inspectors shall investigate and hear is an insufficient guarantee of insulation and independence of the presiding official. The present organization of the field staff not only gives work of both kinds commonly to the same inspector but tends toward an identity of viewpoint as between inspectors who are chiefly doing only one or the other kind of work. . . .

. . . We recommend that the presiding inspectors be relieved of their present duties of presenting the case against aliens and be confirmed [*sic*]—

The word should be "confined"—

. . . entirely to the duties customary for a judge. This, of course, would require the assignment of another officer to perform the task of a prosecuting attorney. The appropriate officer for this purpose would seem to be the investigating inspector who, having prepared the case against the alien, is already thoroughly familiar with it. . . .

A genuinely impartial hearing, conducted with critical detachment, is psychologically improbable if not impossible, when the presiding officer has at once the responsibility of appraising the strength of the case and of seeking to make it as strong as possible. Nor is complete divorce between investigation and hearing possible so long as the presiding inspector has the duty himself of assembling and presenting the results of the investigation. . . .

Justice Jackson pointed out that the Attorney General had a committee study this question. It said:

These types of commingling functions of investigation or advocacy—

I invite attention to the fact that he put the question of investigation in exactly the same category as advocacy.

These types of commingling of functions of investigation or advocacy with the function of deciding are thus plainly undesirable.

And so forth.

I suggest that this business of vesting quasi-judicial powers in agencies or the officers of agencies who are charged with responsibility for enforcing a particular law is plainly undesirable; and one of these days the Supreme Court of the United States is going to rise to the occasion and say that it is a denial of due process of law, in that it prevents a fair trial of the issues.

No man who is charged with the duty of seeing that a law is enforced, as are the members of such an agency, can be unbiased in his decision when he sits as a judge. I do not care how good a man he is; he gets a psychological handicap which prevents him from being unbiased.

I had occasion, when I had the honor to serve on the Supreme Court of North Carolina, to try to define what is a fair trial. I came to the conclusion that the essence of a fair trial can be defined in this way: In order to have a fair trial, a litigant is entitled to have his cause heard by an unbiased jury, before an impartial judge, in an atmosphere of judicial calm. You cannot have an unbiased factfinder when the agency of which the factfinder is a member is charged with the solemn responsibility of collecting the information on which the prosecution is based and of analyzing that testimony, even if he has to present it to a general counsel for prosecution. Such a system just will not work fairly or justly.

Agencies such as this should not exist. No matter how much the law sanctioning them may try to pay lip service to impartiality—as did the Schweiker amendment—there is a wedding of absolutely discordant and irreconcilable principles which result in a denial of justice.

(At this point, Mr. METCALF assumed the chair as acting President pro tempore.)

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

Mr. FANNIN. I yield.

Mr. WILLIAMS. The Senator is of the opinion, then, that any agency of Government that has enforcement procedures within the agency is operating at variance with the best principles in which the Senator believes.

Mr. ERVIN. Yes; and they ought not be permitted, if justice is to be done. No one should have the right to adjudicate the rights of other people finally except a court of law which is vested with the judicial power of the United States. It is unfortunate that the Supreme Court does not hold that whenever Federal judicial power is exercised, it has to be exercised by a third article judge. Such a judge holds office for life. He is divorced from the enforcement of law. He is charged with the duty of considering the facts as they are assembled and presented by the parties.

I think it is a mockery; indeed, I think it is a prostitution of the judicial process, to unite in one agency the function of investigating claims of violation of law and the function of judging those claims. This is true even if the agency assigns different officers or agents to the discordant functions. When men work together day by day, and one day a man is an investigator and the next day he is a judge, his relationship to his fellow officers is such that he is going to give undue credence to what his fellow officers have done in collecting data and bringing about the prosecution.

The distinguished Senator from Arizona has pointed out that the appointees to this commission are political appointees. They are not selected because of their judicial capacity. They are put on the board because of political reasons. It is inconsistent with reality to expect to make impartial judges out of people who are, as I said yesterday, essentially crusaders for a cause. No man who is tried by a crusader is going to get a fair trial. Men who think that we can settle all racial employment problems by simply arrogating to Government the power to rob men who invest their talents and resources in business naturally gravitate to positions with the EEOC.

Mr. FANNIN. I say to the Senator from North Carolina that I am not condemning members of the Commission. I do not think he is, either. It is the basis upon which they are given the responsibility of carrying through as the judge, the jury, and the complainant. This, I feel, is very unfair.

I think that giving dictatorial powers—which is not the case here—to any agency of our Government is certainly improper. Our system of government is based on law and on the fact that we will have the opportunity for a hearing before a court if a dispute is involved.

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

Mr. FANNIN. I yield.

Mr. WILLIAMS. This is strong language—"dictatorial power." I will say that the Senator said it does not apply in this case, and it certainly does not; because in the area of equal employment and the operations of the Commission right now, there is not enforcement power in the Commission. This bill would bring that. The road is clear right to the Supreme Court of the United States, within this bill, and there cannot be any dictatorial exercise of power while the Supreme Court sits there.

Mr. ERVIN. If the Senator will pardon me, the road to the Supreme Court runs up against a mountain which cannot be crossed. I say that because this bill——

Mr. WILLIAMS. That is wrong. I dislike to hear that in this Chamber.

Mr. ERVIN. I say it. I have no hesitation in saying it, because it is the truth. In this bill is a provision that the findings of the Commission are binding on the Supreme Court and every other court if they are supported by any substantial evidence. As I said yesterday, 5 percent of the evidence is substantial.

Mr. WILLIAMS. The findings of the Commission would be based on a preponderance of the evidence. I would accept it.

Mr. ERVIN. Especially if the court, rather than the Commission, would be given the power to review the decision of the Commission on the question of whether there is a preponderance of the evidence.

Mr. WILLIAMS. On the Court of Appeals.

Mr. ERVIN. Yes.

Mr. WILLIAMS. On the way to the

Supreme Court. Would the Senator offer such an amendment?

Mr. ERVIN. Yes, I will offer an amendment to that effect.

Mr. WILLIAMS. I would be happy to accept an amendment that the Commission make its findings on a preponderance of the evidence.

Mr. ERVIN. Fine. Fine.

Mr. WILLIAMS. I should not interrupt here, but I appreciate the great Justice Jackson's opinion in this case. It seems to me that the procedures outlined in this legislation before us meet the tests laid down there by Justice Jackson because here no individual, as an individual, is in both positions of investigator, prosecutor, and judgment determiner.

Mr. ERVIN. But his agency is. The agency is. One day a man investigates. The next day he judges.

Mr. WILLIAMS. That is what I am saying does not happen under this legislation.

Mr. ERVIN. Oh. Oh.

Mr. WILLIAMS. The same man?

Mr. ERVIN. The same man, yes.

Mr. WILLIAMS. Literally the same man? Is that what the Senator is saying?

Mr. ERVIN. An officer or employee of the agency ought not to be a judge in the case. The agency originates the case. It investigates it. It causes it to be brought. But the fellows that will judge the case are the people the investigator works with every day and they will be reluctant to say, "Our brother is wrong, when he investigated the case and reached a conclusion. That should be presecuted and so recommended to the general counsel. Thate was the reason Congress did not give the Commission any enforcement powers, when it created the Commission but gave enforcement power to the courts. It should remain there, in my judgment. I am not criticizing the members of the Commission. The law puts an officer or employee of the agency in an impossible position——

Mr. FANNIN. That is right.

Mr. ERVIN. Where it compels the agency to investigate a case in a restricted field of law and then compels it to decide the case. Officers or employees of the agency are not psychologically free to act as judges under such circumstances. The same agency ought not to exercise these inconsistent functions.

Mr. WILLIAMS. That was the effort of the Senator from Ohio (Mr. TAFT) in his amendment, to divorce the functions where there would be any doubt of an individual's working in the areas of prosecution and judgment. That is why this general counsel amendment was offered. I believed that was one of the reasons why the Senator from North Carolina voted for it.

Mr. ERVIN. I voted for the amendment because it made the bill about one-half of 1 percent less obnoxious than it is.

Mr. WILLIAMS. One-half of 1 percent?

Mr. ERVIN. Yes. The essential vice of the whole setup still remains.

Mr. WILLIAMS. Was that a scintilla? Is a scintilla better?

Mr. ERVIN. I said the essential vice——

Mr. WILLIAMS. No. I refer to the one-half of 1 percent. That is about a scintilla of improvement?

Mr. ERVIN. It might be deemed a substantial part of the evidence by a Commission which has final fact-finding power.

Mr. WILLIAMS. I thought, when the Senator from North Carolina voted "yea" on yesterday, that he made the wisest judgment possible in accepting the amendment and voting "yea" on it.

Mr. ERVIN. Well, it is like starting on a trip to heaven and making a first stop at the first saloon. [Laughter.]

Mr. FANNIN. I thank the distinguished Senator.

Mr. President, I yield the floor.

Mr. WILLIAMS. Before the Senator yields the floor, I wonder whether I could ask one or two questions. The Senator was concerned about the employer faced with uncertainty and the economic burden that entails.

Mr. FANNIN. I would say to the Senator from New Jersey there are cases, he knows about, where they have been in turmoil and have not been able to get the cases settled. There was one in Virginia not too long ago, a shipbuilding company which had problems so far as contracts were concerned. The Senator remembers that very well, does he not?

Mr. WILLIAMS. Was that not the Bethlehem Steel case?

Mr. FANNIN. No. The Newport News case.

Mr. WILLIAMS. Yes, that was the problem where the company was faced with three agencies—the EEOC, the Department of Justice, and the OFCC.

Mr. FANNIN. That is right.

Mr. WILLIAMS. That was a concern and was a concern to the committee presenting the bill. That is why we have tried——

Mr. FANNIN. They could have gone to a court and presented their case and it could have been settled in a short time equitably for all the parties involved. That is why I feel that the amendment of the Senator from Colorado is vital to this legislation.

Mr. WILLIAMS. All right. I appreciate that. That would give the EEOC the authority to go to court to have its findings prosecuted and judged. Would the Senator agree, then, to make life more certain for an employer, that the functions of the Justice Department under patterns and practices, and the Department of Labor under the OFCC could and should logically be brought to the EEOC so that companies like Bethlehem or Newport News, or whoever they may be——

Mr. FANNIN. This has been a matter of contention as to how it could be handled. I realize that there are a multiplicity of problems here, but I would not want to, at this time, without careful investigation, say that I think all those powers should be in the EEOC because I do not think we could make that flat statement.

Mr. WILLIAMS. But they should reside in one place.

Mr. FANNIN. We realize that there is such a proliferation of authority in most all of active government today—yes, as a general principle, I favor trying to get the authority in one governmental agency where decisions can be made if it is necessary for court action where the people involved can gain a settlement, but I do not want to say that this should be under the EEOC at this time without careful investigation of that particular subject.

Mr. WILLIAMS. But the same subject matter logically and for the sake of efficiency and certainty should reside in one place, should it not?

Mr. FANNIN. It is a confusing situation today, I agree with the Senator from New Jersey; but I am not in a position to say whether that should be in one place or in another at this time.

Mr. STENNIS. Mr. President, I am very strongly opposed to the provisions of S. 2515, the Equal Employment Opportunities Enforcement Act.

The main issue to be dealt with in the bill is to decide what means of enforcement machinery shall be established to carry out the findings of the Equal Employment Opportunity Commission. As now drafted, the bill would vest the Commission with the power to issue cease-and-desist orders. In my judgment this is unsound. It violates the concept of separation of powers because the Commission, and the Commission alone, would have the powers of investigation, of the determination of the action to be taken in a case, and the implementation of that decision. The Commission would be the prosecutor and the judge. This is dangerously unsound. It infringes on the freedoms of the American people as individuals and as groups.

This use of cease-and-desist orders is unnecessary and illogical as well as a dangerous precedent. The Federal court system is available for disposition of enforcement rulings which the Commission might seek. This is the constitutional solution to the problem, as well as the logical solution. The Equal Employment Opportunity Commission is not staffed or trained to carry out this additional mission and already labors under a large backlog of cases, even under its present more limited authority. A large, additional administrative organization would have to be recruited and trained to create this new and unnecessary bureaucracy—an illogical action and a dangerous innovation in our governmental system of judicial review of disputes between citizens.

There are other faults in this bill, as well. It would vest in a Federal administrative agency—the Commission— jurisdiction over certain aspects of State and local governments. The bill provides that, in this particular case, cease-and-desist orders would not be used and enforcement would be by Federal courts. Even so, the entrance of concentrated Federal power into the operations of local governments is wrong, and can have ultimate effects that are very disturbing to contemplate.

Similarly, the removal of exemptions for educational institutions has implications that are extremely undesirable.

The continual harassment of the people of our country by detailed Federal controls is onerous to an extreme degree. Federal regulation of the daily ac-

tivities of our peoples lives is growing each year, and it is rapidly becoming intolerable. At the best, the thousands of requirements of all the Federal regulations are time consuming, and can become expensive to an employer or an individual citizen. At the worst, they can leave the citizen lost in a bureaucratic maze of conflicting information, or even inflicted with an inequity for which the regulations provide no recourse.

This bill establishes a regulatory morass which will be enough to founder an average citizen trying to make a living under the free enterprise system. For example, it applies to anyone who hires eight or more persons, and as I said, that includes a State or local government, or a university. A charge of unlawful employment practice can be lodged by anyone, including an employee of the EEOC. The charge would no longer have to be under oath, as previously required. The EEOC then must serve the employer with notice that a charge has been filed against him. The EEOC then proceeds to investigate the employer. They can keep him on the hook for 4 months before they tell him how he came out. If they do not like what he did, they can issue a cease-and-desist order and award back pay to an employee for up to 2 years. If the employer does not like what the EEOC did to him, it is too bad. All he can do is seek refuge in the U.S. court of appeals and try to obtain justice. I say again, if there is a decision to be made as to whether one citizen has damaged another, it belongs in the court in the first place, and not in the EEOC.

The recordkeeping that will be required by this bill staggers the imagination. The EEOC is authorized to impose recordkeeping and reporting requirements on employers, employment agencies, labor organizations, schools, State or local governments, and others. A new provision in the bill is anything but sympathetic to the plight of those who must keep these records. It says that persons or organizations experiencing hardship because of the recordkeeping requirements may petition the courts for relief, after having exhausted all administrative avenues for such relief. Again, the punishment is by administrative action and the only refuge from it is to get under the protection of a court. The whole system established by this bill is simply inconsistent with our form of government and with democratic practices.

Mr. President, the bill that is before us was reported in the other body by the House Education and Labor Committee, but it was rejected outright last September on the floor, in favor of judicial enforcement. I would hope that a similar action can be taken on this floor.

When a measure similar to this bill was considered on the Senate floor on October 1, 1970, I concluded my remarks with a sentence that I wish to repeat. If our concept of true liberty and freedom ever really fails, history will record that the passage of this bill will be one of the major milestones on the road to that destruction.

MESSAGE FROM THE PRESIDENT

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

THE WEST COAST LABOR DISPUTE—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. ALLEN) laid before the Senate the following message from the President of the United States, which was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

The Nation is faced today with yet another transportation strike which is intolerable in its effect upon millions of Americans, and I am determined that we shall end it at once.

The dock dispute on the West Coast has been festering for over a year, but because a few have been insensitive to the harm they are inflicting upon the many who are not a party to it, no reasonable settlement has been reached. Now this work stoppage, renewed after an injunction under the Taft-Hartley Act has expired, again threatens the Nation's health and safety. Those of us in public office must act swiftly and responsibly to avert its damaging consequences.

Because all other Government remedies have been exhausted, I am proposing to the Congress today special legislation to set up immediately a three-member arbitration board. This board, to be appointed by the Secretary of Labor, would hear and settle all issues in this dispute. No strike or lockout would be permitted from the day this legislation is enacted until the day that the arbitration board makes its determinations. The board's determinations would be made within 40 days and would be binding upon the parties for a definite period of time—at least 18 months.

Let there be no mistake about the urgency of this legislation. This is a vital matter to the people of this country, and the Nation can afford no delay. I earnestly implore the Congress to have this resolution on my desk by the end of next week.

This is an unusually pressing request for the opening days of a new session of Congress, but let there also be no mistake about the dimensions of destruction which this strike is wreaking upon its victims:

—Before I invoked the Taft-Hartley injunction in an earlier attempt to settle this dispute, thousands of farmers reaped a harvest of despair as their export crops were blocked by closed ports and could not reach waiting customers overseas. Hundreds of millions of dollars were lost. Because the strike has now resumed, these farmers are again victimized.

—There is an increasing danger that some of these trade losses will become permanent, as foreign purchasers come to believe that our farmers and businessmen cannot provide dependable deliveries. Japan, a billion-dollar market for agricultural imports, has already asked other suppliers to step up production so that it can lessen its dependence on American exports.

—Layoffs, reduced operations, and even business failures also hang over the heads of many other Americans who engage directly or indirectly in exports. Some areas are especially vulnerable, such as the State of Hawaii, which has been hit by shortages of vital supplies, mounting food costs and unemployment rates unmatched for half a generation. Also hardpressed are California, Oregon and Washington.

I cannot emphasize too strongly that all of these people—and, indeed, our national economy—have been made hostage to the interests of those few who persist in prolonging this dispute. These men and women who are hurt so unfairly cannot accept the fact that a dispute in which they play no part can destroy them—nor can you and I. There is no justification for waiting any longer.

It is with extreme reluctance that I propose this legislation, for as I have stressed to the Congress before, I firmly believe that governmental intervention in the collective bargaining process should be as limited as possible. Compulsory arbitration is not generally a satisfactory method of resolving labor disputes. Under the present, deplorable circumstances, however, there is no remaining alternative.

As this resolution is considered, there is one very tough question before us to which reasonable Americans deserve an answer: Why have we once again reached the flash point?

Let there be no mistake about the facts. For two long years, the Congress has had before it comprehensive proposals which I submitted and have repeatedly urged that it pass for the resolution of emergency transportation disputes. This legislation still languishes unenacted.

These proposals, which should best be called the "Crippling Strikes Prevention Act" in the future, would have avoided the present crisis, and if enacted will avert what will otherwise be the inevitability of similar crises in the future. They would encourage the parties to bargain more responsibly, and in the event that no settlement is reached, would establish a workable mechanism for resolving the dispute without Congressional action.

Our present legislative tools are plainly inadequate. Four times since I called for these comprehensive measures, it has been necessary for the Congress to enact special legislation to deal with disputes in the troubled transportation industry.

The present dock dispute is perhaps the best illustration of how futile Government actions can be under present law. Bargaining between the parties began in November 1970. After six months of negotiations, the parties gave up their attempt to reach early agreement and suspended their talks until the contract deadline approached. On July 1, 1971 the longshoremen went out on strike, creating a shipping paralysis on the West Coast which reverberated throughout our economy.

The resources of the Federal Government, including exhaustive mediation efforts by the Director of the Federal Mediation and Conciliation Service, proved to be of no avail in resolving the dispute. With grave concern, I watched the crisis broaden and deepen, and I personally met with the parties in an

attempt to find some way to end this bitter impasse.

By October 1971, it became evident that collective bargaining had failed in this dispute and that action had to be taken to protect the national health and safety. Thus on October 4, I invoked the national emergency provisions of the Taft-Hartley Act which resulted in an 80-day cooling-off period.

Unfortunately, the lengthy negotiations during this period and thereafter did not result in the hoped-for settlement.

The history of this dispute and the bargaining posture of the parties provide no hope that a further extension of time would be useful, or that it would bring the parties any closer to a resolution of this matter. They compel me to submit this special legislation to the Congress and to appeal once more for legislative action that will enable us to deal with future emergency transportation disputes without the necessity of this sort of *ad hoc* legislation that can never undo the damage already done.

I proposed new, comprehensive legislation in February 1970, and there was no Congressional action that year. I resubmitted the measure in February 1971, and hearings were held, but there was no appreciable action. On December 15, 1971, I reminded the Congress that a renewed work stoppage was possible on the west coast and that statutory remedies were desperately needed. The Congress recessed without any response.

As soon as the Congress enacts the special legislation before it today, I urge in the most emphatic terms that it turn its attention immediately to the Crippling Strikes Prevention Act.

RICHARD NIXON.

THE WHITE HOUSE, *January 21, 1972.*

QUORUM CALL

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

The ACTING PRESIDENT pro tempore (Mr. METCALF). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. RANDOLPH. Mr. President, I send an amendment to the desk and ask that it be stated.

The ACTING PRESIDENT pro tempore. The Chair is advised that there is an amendment pending. Is the amendment of the Senator from West Virginia an amendment to that amendment or is the Senator asking that the pending amendment be set aside?

Mr. DOMINICK. Mr. President, I ask unanimous consent that the pending amendment, the Dominick amendment, be set aside temporarily so that the Senator from West Virginia (Mr. RANDOLPH) may present his amendment, and that the Dominick amendment be taken up immediately after completion of the amendment of the Senator from West Virginia.

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

The amendment of the Senator from West Virginia will be stated.

The legislative clerk read as follows:

On page 33, after line 13, insert the following:

"(6) After subsection (i) insert the following new subsection (j):

'(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's, religious observance or practice without undue hardship on the conduct of the employer's business.' "

Mr. RANDOLPH. Mr. President, it is my hope that we can have a rollcall vote on this amendment, not that there is opposition to the amendment itself, but it is felt that a rollcall would serve a constructive purpose.

I am grateful to my able colleague from Colorado for permitting me to use just a few minutes in presenting the reasons why I have proposed this amendment to the pending legislation.

Mr. President, I ask unanimous consent to include as cosponsors of the amendment the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. BEALL), and the Senator from California (Mr. CRANSTON).

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

Mr. RANDOLPH. Mr. President, freedom from religious discrimination has been considered by most Americans from the days of the Founding Fathers as one of the fundamental rights of the people of the United States. Yet our courts have on occasion determined that this freedom is nebulous, at least in some ways. So in presenting this proposal to S. 2515, it is my desire and I hope the desire of my colleagues, to assure that freedom from religious discrimination in the employment of workers is for all time guaranteed by law.

I am sure that my colleagues are well aware that there are several religious bodies—we could call them religious sects; denominational in nature—not large in membership, but with certain strong convictions, that believe there should be a steadfast observance of the Sabbath and require that the observance of the day of worship, the day of the Sabbath, be other than on Sunday. On this day of worship work is prohibited whether the day would fall on Friday, or Saturday, or Sunday. There are approximately 750,000 men and women who are Orthodox Jews in the U.S. work force who fall in this category of persons I am discussing. There are an additional 425,000 men and women in the work force who are Seventh-day Adventists.

Mr. President, I am a member of a denomination which is a relatively small one, the Seventh-Day Baptists. Perhaps there are only 5,000 individuals within that denomination in the work force. I do think it is important for me to say that within the groups that I have mentioned, we think in terms of our observance of the Sabbath beginning at sundown Friday evening and ending at sundown Saturday evening, following the Biblical words, "From eve unto eve shall you celebrate your Sabbath." I make this statement only by way of explanation of the groups I have just mentioned.

I think it is important for us to realize that the persons for whom I hope I speak—and I hope I speak for all persons in this matter—are workers scattered throughout the United States of America. There is no section of the country which would not be affected, we hope constructively, by the adoption of this amendment.

I say to the distinguished chairman of the Labor and Public Welfare Committee, who manages this bill, that there has been a partial refusal at times on the part of employers to hire or to continue in employment employees whose religious practices rigidly require them to abstain from work in the nature of hire on particular days. So there has been, because of understandable pressures, such as commitments of a family nature and otherwise, a dwindling of the membership of some of the religious organizations because of the situation to which I have just directed attention.

I hold my membership in our church here in this area. We have the Washington Seventh Day Baptist Church. We have several of those churches in my State of West Virginia. At an earlier period I held my membership in the Salem, W. Va., Seventh Day Baptist Church.

I invite the attention of my able colleague to the fact that in the State of New Jersey there are many, many Seventh Day Baptist Churches. In places like Shiloh, Marlboro, and Plainfield—actually being the headquarters of the denomination to which I belong, located close to New York City, but actually located in the State of New Jersey.

My own pastor in this area, Rev. Delmer Van Horn, has expressed his concern and distress that there are certain faiths that are having a very difficult time, especially with the younger people, and understandably so, with reference to a possible inability of employers on some occasions to adjust work schedules to fit the requirements of the faith of some of their workers.

The term "religion" as used in the Civil Rights Act of 1964 encompasses, as I understand it, the same concepts as are included in the first amendment—not merely belief, but also conduct; the freedom to believe, and also the freedom to act.

I think in the Civil Rights Act we thus intended to protect the same rights in private employment as the Constitution protects in Federal, State, or local governments. Unfortunately, the courts have, in a sense, come down on both sides of this issue. The Supreme Court of the United States, in a case involving the observance of the Sabbath and job discrimination, divided evenly on this question.

This amendment is intended, in good

purpose, to resolve by legislation—and in a way I think was originally intended by the Civil Rights Act—that which the courts apparently have not resolved. I think it is needed not only because court decisions have clouded the matter with some uncertainty; I think this is an appropriate time for the Senate, and hopefully the Congress of the United States, to go back, as it were, to what the Founding Fathers intended. The complexity of our industrial life, the transition of our whole are of employment, of course are matters that were not always understood by those who led our Nation in earlier days.

Mr. President, the competent chairman of the Labor and Public Welfare Committee, who is the chief sponsor of S. 2515, and who is floor managing the very bill before us, I believe understands and appreciates, and I hope agrees with, the arguments that I am presenting. I have had some opportunity to counsel with him in reference to the amendment. I hope he can agree that there can be at least an agreement on the amendment, even though we have a roll call upon it, hopefully in the next few minutes. I think it is a well-intentioned amendment, a good amendment, a necessary amendment, a worthwhile amendment, because it carries through the spirit of religious freedom under the Constitution of the United States.

Mr. President, I, therefore, urge most earnestly the adoption of the amendment.

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

Mr. RANDOLPH. I yield to my colleague from Colorado.

Mr. DOMINICK. I have listened very carefully to the Senator's presentation, and was impressed by it. Could the Senator tell me, whether this amendment would also affect, for example, the Amish, or some other religious sect which has a different method of conducting their lives than do most Americans?

Mr. RANDOLPH. Yes; I envisage that it would.

Mr. DOMINICK. Would it apply to the following situation? A young man I just talked to from Virginia, works 15 days on and then is off 15 days. Would the amendment require an employer to change that kind of employment ratio around, so that he would have to work a customary 5- or 6-day week?

Mr. RANDOLPH. I do not believe that an undue hardship would come to such an employer. The Senator has explained a specific case. I do not believe that there are really problems that would flow from the adoption of this amendment in connection with the employer meeting situations that he could not properly handle with employees.

Mr. DOMINICK. I thank the Senator. I think this amendment will be helpful. All of these various situations keep arising because of our pluralistic method of conducting our business in this country. It is hard to foresee far enough ahead so that each specific type of case can be anticipated.

Am I correct in understanding that the amendment allows flexibility both to the EEOC and to its investigators to determine whether or not any particular group of religious adherents are having their customary observance of their religious activities unduly interfered with? In other words, flexibility is provided so that someone could make a discretionary judgment on it?

Mr. RANDOLPH. The Senator from Colorado correctly follows me in the thinking that I have placed in the language of the amendment, that there would be such flexibility, there would be this approach of understanding, even perhaps of discretion, to a very real degree.

I agree with the Senator's feeling, and I am sure that that is what is meant and would flow from the adoption of the practice under the amendment.

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

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

Mr. RANDOLPH. I yield.

Mr. WILLIAMS. I did not follow the last colloquy entirely, and perhaps this is the same question, but where the employment is such that the job has to be done on a day that a person under his faith would make his religious observations, it might be an undue hardship to close down the operation to accommodate that person. There are jobs that are Saturday and Sunday jobs, and that is all, serving resorts and other areas. Certainly the amendment would permit the employer not to hire a person who could not work on one of the 2 days of the employment; this would be an undue hardship, and the employer's situation is protected under the amendment offered by the Senator from West Virginia, is it not?

Mr. RANDOLPH. That is correct; yes. I am in agreement with the Senator's statement.

Mr. WILLIAMS. It seems to me that this codifies a very worthy general practice, but there are situations——

Mr. RANDOLPH. There are the gray areas, and I recognize them. But I think the thrust of what we would do here is important at this time.

Mr. WILLIAMS. Yes.

Mr. RANDOLPH. The purpose to be achieved.

Mr. WILLIAMS. The Senator and I are employers. As a matter of practice, we recognize the days of religious observations of some of our staffs, even though they are regular working days, generally, of the Senate, its committees, and its officers.

Mr. RANDOLPH. That is correct. I know of many instances of that kind. I think that usually the persons on both sides of this situation, the employer and the employee, are of an understanding frame of mind and heart. I do not think they try to present problems. I do not think they try to have abrasiveness come into these decisions. I think they are just building upon conviction, and, hopefully, understanding and a desire to achieve an adjustment; and if in perhaps a very, very small percentage of cases this is not able to be accomplished, that should not deter the Senate in its action in approving this amendment.

Mr. WILLIAMS. As I read the first amendment of the Constitution, there is no problem here presented by the amendment in connection with the first clause:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

In dealing with the free exercise thereof, really, this promotes the constitutional demand in that regard.

I certainly agree with the objective of the amendment.

Mr. RANDOLPH. I appreciate what the able chairman is saying. I refer to the presence in the Chamber of our colleague from Ohio (Mr. SAXBE). There are, in the Seventh Day Baptist Church, of which I am a member, many individual members of our faith who belong to our churches within the State of Ohio. We have, usually, small churches in small communities in the State the Senator so ably represents.

I add also the Senator from Colorado. I think it is not inappropriate for me to say that one of our strong churches is in Denver. Another of our strong churches is in Boulder, in the State of Colorado. So, although we are a small denomination, it goes across the country in major cities and smaller communities, where people of a belief feel that insofar as possible, the law flowing from the original Constitution of the United States should protect their religious freedom, and hopefully their opportunity to earn a livelihood within the American system, which has become, of course, as has been indicated, more pluralistic and more industrialized through the years.

I ask unanimous consent that the cases and regulations which are applicable to this issue be printed at this point in the RECORD.

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

DEWEY V. REYNOLDS METALS COMPANY

(No. 19746, United States Court of Appeals, Sixth Circuit—June 4, 1970, order July 30, 1970—Rehearing denied Aug. 11, 1970)

Action by employee under Civil Rights Act alleging that he had been unlawfully discharged on account of his religious beliefs. The United States District Court for the Western District of Michigan, 300 F.Supp. 709, Noel P. Fox, J., entered judgment for employee, and employer appealed. The Court of Appeals, Weick, Circuit Judge, held that even if regulations adopted by Equal Employment Opportunity Commission subsequent to employee's discharge applied retroactively, action of employer in permitting employee, by a replacement system, to observe Sunday as his Sabbath constituted a reasonable accommodation to religious needs of employee and gave employer the right to discharge employee for refusal to make replacement arrangements for performance of scheduled over-time work on Sundays. It was further held that suit on an alleged unlawful employment practice may not be brought in court after grievance has been finally adjudicated by arbitration.

Reversed and remanded with directions.

Combs, Circuit Judge, dissented and filed opinion.

McCree, Circuit Judge, who had been appointed to take the place of Judge Combs, dissented from denial of rehearing and filed opinion.

1. Civil rights—2

Statute providing that it shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any

individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin is aimed only at discriminatory practices. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

2. Civil Rights—13

In proving an unlawful employment practice, it was incumbent on employee to establish by a preponderance of evidence that, in discharging him for refusal to perform scheduled overtime work on Sundays, employer had discriminated against him on account of his religion. Civil Rights Act of 1964, § 701, 42 U.S.C. A. § 2000e.

3. Civil Rights—13; Labor Relations—350

With respect to collective bargaining agreement providing, inter alia, that employer had right to set straight time and overtime schedules and that employees were obligated to work such schedules unless they had a substantial and justifiable reason for not doing so, evidence established that there was nothing discriminatory in provisions of agreement or in manner in which employer executed it and that it provided a fair and equitable method of distributing heavy workload among employees without discriminating against any of them. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

4. Civil Rights—3

In determining whether employer, by discharging employee for refusal to work scheduled overtime work on Sundays, had committed an unfair employment practice by discriminating against employee's religious beliefs, it was appropriate to apply regulation on Equal Employment Opportunity Commission then in effect that, absent an intent on part of employer to discriminate on religious grounds, a job applicant or employee who accepts a job knowing or having reason to believe that normal work week and foreseeable overtime requirements will conflict with his religious obligations is not entitled to demand any alterations in such requirements to accommodate his religious needs. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

5. Civil Rights—3

Obligations contained in collective bargaining contracts, which are lawful under regulations of Equal Employment Opportunity Commission in effect, ought not to be impaired by application of a subsequently passed inconsistent regulation. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

6. Civil Rights—3

Having a lawful right to discharge employee for refusal to perform scheduled overtime work on Sundays under regulations of Equal Employment Opportunity Commission then in effect, employer was not required to reemploy employee at a later date and pay him back salary merely because Commission decided to change rule by adopting new, inconsistent regulations. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

7. Civil Rights—3

Under regulations of Equal Employment Opportunity Commission then in effect, discharge of employee for refusal to perform scheduled overtime work on Sundays plus refusal to arrange for a replacement, which was an alternate procedure under collective bargaining agreement obligating all employees to work overtime schedules set by employer, did not constitute an unlawful employment practice as tending to discriminate against employee on account of his religious beliefs. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

8. Civil Rights—3

Even if regulations adopted by Equal Employment Opportunity Commission subsequent to employee's discharge applied retroactively, action of employer in permitting employee, by a replacement system, to observe Sunday as his Sabbath constituted a reasonable accommodation to religious needs of employee and gave employer the right to discharge employee for refusal to make replacement arrangements for performance of scheduled overtime work on Sundays. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

9. Injunction—128

Evidence failed to sustain finding that employer had intentionally engaged in an unlawful employment practice by discharging an employee on account of his religious beliefs so as to require issuance of an injunction. Civil Rights Act of 1964, § 706(g), 42 U.S.C.A. § 2000e—5(g).

10. Civil Rights—3

Where employment grievances are based on an alleged civil rights violation, and parties consent to arbitration by a mutually agreeable arbitrator, arbitrator has a right to finally determine them, and award of arbitrator is as binding on employee as it is on employer. Civil Rights Act of 1964, § 701, 42 U.S.C.A. § 2000e.

11. Civil Rights—13

Suit on an alleged unlawful employment practice may not be brought in court after grievance has been finally adjudicated by arbitration. Civil Rights Act, § 701.42 U.S.C.A. § 2000e—2(a).

On rehearing

12. Civil Rights—2

Although Civil Rights Act inhibits discrimination against an individual because of his race, color, religion, sex or national origin, it does not coerce or compel one person to accede to or accommodate religious beliefs of another. Civil Rights Act of 1964, § 703(a), 42 U.S.C.A. § 2000e—2(a).

13. Constitutional Law—84

To construe Civil Rights Act as authorizing adoption of regulations which would coerce or compel an employer to accede to or accommodate religious beliefs of all his employees would raise grave constitutional questions of violation of Establishment Clause of First Amendment, Civil Rights Act of 1964, § 703 (a), 42 U.S.C.A. § 2000e–2(a); U.S.C.A. Const. Amend. 1.

14. Constitutional Law—84

Government, in its relations with religious believers and nonbelievers must be neutral, and is without power to support, assist, or handicap any religion. U.S.C.A. Const. Amend. 1.

15. Civil Rights—2

Under Civil Rights Act, religious discrimination cannot be equated with failure to accommodate. Civil Rights Act of 1964, § 703 (a), 42 U.S.C.A. § 2000e–2(a).

16. Civil Rights—2

Fact that employee was sincere in his belief that it was a sin for him to obtain a replacement for overtime work on Sunday gave him no greater rights over those of other employees when it came to enforcement of collective bargaining agreement requiring employees seeking relief from overtime assignment to make arrangements for a replacement. Civil Rights Act of 1964, § 703(a), 42 U.S.C.A. § 2000e–2(a).

William A. Coughlin, Jr., Detroit, Mich., for defendant-appellant; Cross, Wrock, Miller & Vieson, Detroit, Mich., on the brief; Fred R. Edney, Asst. Gen. Counsel, Reynolds Metal Co., Richmond, Va., of counsel.

Donald F. Oosterhouse, Grand Rapids, Mich., for plaintiff-appellee; Vander Veen, Freihofer & Cook, Peter R., Tolley, Grand Rapids, Mich., on the brief.

George H. Darden, Washington, D.C., for Equal Employment Opportunity Commission, amicus curiae; Russell Specter, Acting Gen. Counsel, Equal Employment Opportunity Comm., Washington, D.C., on the brief.

Lawrence Halpern, Detroit, Mich., on brief for National Jewish Commission on Law and Public Affairs, amicus curiae; Howard I. Rhine, of counsel.

Before Weick and Combs, Circuit Judges, and O'Sullivan, Senior Circuit Judge.

Weick, Circuit Judge.

The action in the District Court was brought under the provisions of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e.

Plaintiff's (Dewey's) claim was that he was wrongfully discharged by his employer, the defendant, Reynolds Metals Company (Reynolds), because of his religious beliefs, and he prayed for reinstatement with back pay.

Prior to bringing the action, Dewey filed grievances with Reynolds on the identical claim set forth in his complaint, under the provisions of a collective bargaining agreement entered into by Reynolds with Local 277, United Automobile Aerospace and Agricultural Workers of America, AFL–CIO (UAW), which was the bargaining representative of Reynolds' employees. Dewey was a member of UAW. The grievances were processed and resulted in their submission to a mutually agreeable arbitrator, who made an award denying them on June 29, 1967.

Contemporaneously with the submission of the grievances, Dewey made application to the Michigan Civil Rights Commission for issuance of a complaint against Reynolds, alleging discrimination on account of his religious beliefs.

The following is a Summary of Findings and Order of Dismissal, entered by the Commission on December 13, 1966:

"The findings indicate that the claimant, despite due notice of overtime requirements by the company and the applicable Collective Bargaining Agreement provisions, continued to refuse to perform scheduled overtime work on Sundays and took the position that his right to continued employment while following his religious belief without interference was an absolute right.

"The Commission has previously ruled that where the normal work week and foreseeable overtimes requirements are prescribed in a Collective Bargaining Agreement, that absent or (sic) intent on the part of respondent to discriminate on religious grounds, an employee is not entitled to demand any alteration in such requirement to accommodate his religious beliefs.

"The investigation did not reveal any intent on the part of the respondent to discriminate on religious grounds and it is, therefore, recommended that this application for the issuance of a complaint be denied for lack of probable cause.

ORDER OF DISMISSAL

"The Commission has found insufficient grounds on which to issue a Complaint and, therefore, the above Application is herewith denied. This Order of Dismissal shall automatically become effective within 15 days from the date of mailing unless the Claimant shall demand a hearing prior thereto." (App. 93a–94a)

Dewey requested the United States Office of Federal Contract Compliance to review his charges of religious discrimination, and that office found no basis for a charge of discrimination.

On January 4, 1967, Dewey filed a charge with Equal Employment Opportunity Commission (EEOC), claiming religious discrimination. The Commission, on January 5, 1967, contrary to the recommendation of its Regional Director that the Commission find no probable cause, determined that there was reasonable cause to believe that Reynolds had engaged in unlawful employment practices and authorized the bringing of the

present action in the District Court. Reynolds moved for dismissal of the complaint filed in the District Court on the grounds that the arbitrator's award was a final adjudication of the grievances and that they could not be relitigated. The District Judge, in a memorandum opinion, denied the motion to dismiss. 291 F.Supp. 786 (W.D.Mich.1968).

Reynolds then answered, denying it discriminated against Dewey on account of his religion and pleaded provisions of the collective bargaining agreement which required employees to perform all straight time and overtime work required of them by the company. Reynolds further alleged that Dewey refused to perform overtime work on Sundays or to arrange for another qualified employee to replace him, basing his refusal on his religious convictions. Reynolds, after giving warnings and a three-days' layoff, finally discharged Dewey under its plant rules for his continued refusal to comply with the provisions of the collective bargaining agreement.

The parties stipulated the facts and the case was tried by the Court without a jury. In a memorandum opinion, the District Judge ruled in favor of Dewey. He ordered Reynolds to reinstate Dewey with back pay and enjoined Reynolds from requiring Dewey to work on Sundays. 300 F.Supp. 709 (W.D. Mich.1969). The District Court refused to stay execution on the reinstatement pending appeal, and required Reynolds to post a $15,000-bond to stay execution on the judgment of $7,286.92 for back pay. 304 F.Supp. 1116 (W.D.Mich.1969). Reynolds appealed. We reverse.

The applicable statute is 42 U.S.C. § 2000e–2(a), which provides as follows:

"(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; * * *."

[1] The legislative history of the statute is clear that it was aimed only at discriminating practices. Congressional Record, Vol. 110, pages 13079–13080, June 9, 1964.

[2] In order to prove a violation of the Act it was incumbent on Dewey to establish by a preponderance of the evidence that his employer discriminated against him on account of his religion. In 1964 U.S. Code Cong. & Adm. News, page 2515, it is stated:

"A substantial number of committee members, however, preferred that the ultimate determination of discrimination rest with the Federal judiciary. * * * In addition, we believe that the employer or labor union will have a fairer forum to establish innocence since a trial de novo is required in district court proceedings together with the necessity of the Commission proving discrimination by a preponderance of the evidence."

On page 2516 it is stated:

"Similarly, management prerogatives, and union freedoms are to be left undisturbed to the greatest extent possible. Internal affairs of employers and labor organizations must not be interfered with except to the limited extent that correction is required in discrimination practices."

Reference to the collective bargaining agreement indicates rather clearly that the provisions with respect to straight time and overtime work apply to all employees equally and do not discriminate against Dewey or any other employee.

Reynolds operated a "job type" plant, producing, on order, aluminum extrusions and billets. It was necessary therefore for production to be scheduled to meet delivery dates provided for in contracts with customers.

Prior to the 1960 collective bargaining agreement, overtime was performed by employees on a voluntary basis. As a result thereof, with an increase in orders it became impossible to schedule production on Saturdays and Sundays. In order to remedy this difficulty, Reynolds negotiated with UAW the 1960 and 1965 collective bargaining agreements which provided that the company had the right to set straight time and and overtime schedules and the employees were obligated to work such schedules unless they had a substantial and justifiable reason for not doing so. The 1965 agreement provided:

"All employees shall be obligated to perform all straight time and overtime work required of them by the Company except when an employee has a substantial and justifiable reason for not working; provided, however, that no employee shall be required to work more than twelve (12) continuous hours without his consent."

The agreement provided time and one-half for work on Saturdays and double time for work on Sundays.

The agreement further provided that overtime work shall be divided as equally as possible. If more employees are needed they are assigned in the inverse order of their seniority. Reynolds also issued an interpretation that any employee assigned to overtime could be relieved from the assignment simply by arranging for another qualified employee to replace him. This system was used extensively.

Dewey had been employed by Reynolds in various capacities since 1951, and at the time of his discharge, on September 12, 1966, was a die repairman. Since 1961 Dewey has been a member of Faith Reformed Church. He never volunteered for overtime work on Sunday after joining the church, although he did volunteer for other days.

Dewey was scheduled to work on Sunday, November 21, 1965. He refused to work because of his religious beliefs. He was given a warning and informed as to the necessity of a seven-day operation and was advised that a repetition would lead to disciplinary action under Plant Rule 11, which prohibits "absence from work without reasonable cause," and provides a three-offense progression of punishment with discharge for the third offense.

Between January and August, 1966, Dewey was scheduled to work on five Sundays. He obtained replacements as provided in the contract. On August 28, 1966, he was scheduled again to work on Sunday, and he not only refused to work but also refused to obtain a replacement on the ground of his religious beliefs. The arbitrator found:

"(Dewey, it will be recalled, accelerated his disciplinary timetable by telling Zagman [a fellow employee] not to serve as a replacement any more.)"

On September 4. 1966, Dewey refused to work or to obtain a replacement. He was given a written warning and a disciplinary layoff of three days. Again he refused to work or to obtain a replacement on September 11, 1966, and was discharged for violation of Plant Rule 11.

[3] We find nothing discriminatory in the provisions of the collective bargaining agreement or in the manner in which Reynolds executed it. In our opinion, it provided a fair and equitable method of distributing the heavy workload among the employees without discrimination against any of them.

The District Judge found that the compulsory overtime provision of the collective bargaining agreement "is not discriminatory on its face." We agree. However, he said this is only the first step. He found it was discriminatory in its impact. We disagree. He relied on Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963); but this case involved state, and not private action.

In reaching his decision that the collective bargaining agreement discriminated against Dewey, the District Judge applied retroactively Regulation 1605.1, adopted by EEOC effective July 10, 1967, which was nearly ten months after Dewey had been discharged and after the arbitrator and the Michigan Civil Rights Commission had rejected Dewey's charges.

[4] In our opinion, it would have been more appropriate for the District Court to have applied the EEOC Regulation 1605.1 which was in force at the time of Dewey's discharge, and which became effective June 15, 1966.

The 1966 regulation contained the following provisions which restricted any obligation upon the part of the employer to accommodate to the reasonable religious needs of his employees:

Section 1605.1(a):

"(3) However, the Commission believes that an employer is free under Title VII to establish a normal work week (including paid holidays) generally applicable to all employees, notwithstanding that this schedule may not operate with uniformity in its effect upon the religious observances of his employees. For example, an employer who is closed for business on Sunday does not discriminate merely because he requires that all his employees be available for work on Saturday."

Section 1605.1(b):

"(3) The employer may prescribe the normal work week and foreseeable overtime requirements, and, absent an intent on the part of the employer to discriminate on religious grounds, a job applicant or employee who accepted the job knowing or having reason to believe that such requirements would conflict with his religious obligations is not entitled to demand any alterations in such requirements to accommodate his religious needs."

The 1967 regulation, retroactively applied by the District Court, omitted the above quoted language and other material parts of the 1966 regulation, and instead of providing definite guidelines for the assistance of employers who might be affected, left the matter largely on an *ad hoc* basis for the decision of the Commission on the particular facts of each case.

[5] It is clear that Reynolds complied with the 1966 regulation. The obligations contained in the collective bargaining contract, which were lawful under the regulations of EEOC then in effect, ought not to be impaired by the application of a subsequently passed inconsistent regulation.

[6] The District Judge took into account his *ex post facto* application of the 1967 EEOC regulation by starting Dewey's back pay from August 1, 1967, instead of from the date of his discharge, holding that this date was a reasonable time after the 1967 regulation became effective for the company to work out accommodation to it. The trouble with this treatment is that Dewey was no longer in the employ of Reynolds. Having a lawful right at the time to discharge Dewey under the 1966 regulations, Reynolds ought not to be required to reemploy him at a later date and pay his back salary merely because EEOC decided to change the rule by adopting new, inconsistent regulations. The rights of Dewey and Reynolds were governed by the law in effect at the time of the discharge. EEOC could not affect these rights by subsequently adopting a new regulation.

The Act further provides:

"No order of the court shall require * * * the hiring, reinstatement or promotion of an individual employee, or the payment to him of any back pay, if such individual * * * was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 2000e3(a) of this title." 42 U.S.C. § 2000e5(g).

[7] The reason for Dewey's discharge was not discrimination on account of his religion; it was because he violated the provisions of the collective bargaining agreement

entered into by his union with his employer, which provisions were applicable equally to all employees. The violation consisted not only of his refusing to work on Sundays, but also his refusing to arrange for a replacement, which was an alternate procedure. He did arrange for five replacements, but later refused even to do this, claiming that it was a sin. He apparently did not regard it as sinful for him to collect wages from an employer who was compelled to schedule overtime production in order to meet its contractual commitments and eventually meet its payroll.

To accede to Dewey's demands would require Reynolds to discriminate against its other employees by requiring them to work on Sundays in the place of Dewey, thereby relieving Dewey of his contractual obligation. This would constitute unequal administration of the collective bargaining agreement among the employees, and could create chaotic personnel problems and lead to grievances and additional arbitrations. The practice of permitting the employee, rather than the employer, to secure the replacement served to insulate the employer against any charge of unequal naming of replacements.

[8] But even if the 1967 regulations are applied, we think that Reynolds complied with Section 1605.1(b) thereof by making a reasonable accommodation to the religious needs of its employees when it permitted Dewey, by the replacement system, to observe Sunday as his Sabbath.[1] He stubbornly refused to exercise this privilege. The finding of the District Court that Reynolds did not make reasonable accommodations to the religious needs of Dewey is not supported by substantial evidence and is clearly erroneous. Rule 52(a) Fed.R.Civ.P.

The District Court referred to the inalienable right of freedom of religion, which he said is protected by the First and Fourteenth Amendments to the Constitution and the Civil Rights Act. The employer did not question Dewey's right to freedom of religion; Reynolds did question Dewey's right to practice his religious beliefs on it and to interfere with the operation of its plant.

An additional defense is provided in the first sentence of 42 U.S.C. § 2000ee–5(g), which provides:

"If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice)."

This section of the statute requires a finding that the employer has intentionally engaged in an unlawful employment practice before the court may award relief. Richards v. Griffith Rubber Mills, 300 F. Supp. 338, 341 (D.Ore.1969).

[9] It can hardly be said that Reynolds intentionally violated the Act when no discrimination was found by either the Michigan Civil Rights Commission, the Office of Federal Contract Compliance, the arbitrator chosen by agreement of the parties, or the Regional Director of the EEOC in Cleveland. In addition, in order to support his finding of an unlawful employment practice, the District Judge had to apply regulations adopted subsequent to the employee's discharge and ignore those in force at the time the alleged violation took place. The finding of the District Court that there was an intentional violation of the Act is not supported by substantial evidence and is clearly erroneous. Rule 52(a) Fed.R.Civ. P.

Effect of the arbitration

It is clear that if the arbitrator of the grievances had granted an award to Dewey, instead of to Reynolds, the award would have been final, binding and conclusive on Reynolds. Reynolds would not have been permitted to relitigate the award in the courts. This is the teaching of the United Steelworkers trilogy, which clearly defined the respective functions of the courts and the arbitrator. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 to 602, 80 S.Ct. 1348, to 1347, 4 L.Ed.2d 1403 to 1408 363 U.S. 574 to 592, 80 S.Ct. 1347 to 1358, 4 L.Ed.2d 1409 to 1423, 363 U.S. 593 to 602, 80 S.Ct. 1358 to 1363, 4 L.Ed.2d 1424 to 1431 (1960); Washington v. Aerojet-General Corp., 282 F.Supp. 517 (C.D.Cal., 1968).

In *Steelworkers*, the Court said:

"When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal." (*Id.* at 569, 80 S.Ct. at 1347)

[10] The arbitrator had jurisdiction to determine the grievances. The arbitration involved an interpretation of the collective bargaining agreement with respect to Dewey's claims that he had been laid off and discharged because of his religious beliefs. In arbitration proceedings, frequently questions of law and fact are resolved by the arbitrator. Where the grievances are based on an alleged civil rights violation, and the parties consent to arbitration by a mutually agreeable arbitrator, in our judgment the arbitrator has a right to finally determine them. Any other construction would bring about the result present in the instant case, namely, that the employer, but not the employee, is bound by the arbitration.

This result could sound the death knell to arbitration of labor disputes, which has been so usefully employed in their settlement. Employers would not be inclined to agree to arbitration clauses in collective bargaining agreements if they provide only a one-way street, *i. e.*, that the awards are binding on them but not on their employees.

The tremendous increase in civil rights litigation leads one to the belief that the Act will be used more frequently in labor disputes. Such use ought not to destroy the efficacy of arbitration.

In the supplemental brief of EEOC as amicus curiae, the case of Smith v. Evening News Ass'n, 371 U.S. 195, 197–198, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962), is cited for the proposition that "the complainant is not required to elect between his contractual rights or his statutory rights but may seek to vindicate his claim in contractual and statutory proceedings." (EEOC Supp. Brief, p. 3) The writer of the brief neglected to state that the collective bargaining agreement in *Evening News* contained no grievance arbitration procedure which had to be exhausted before recourse could be had to the courts. 371 U.S. 196, fn 1, 83 S.Ct. 267.

[11] The question in our case is not whether arbitration and resort to the courts could be maintained at the same time; rather our case involves the question whether suit may be brought in court *after* the grievance has been finally adjudicated by arbitration.

We see no good analogy between jurisdiction of the National Labor Relations Board and that of EEOC. The Labor Board has adjudicatory powers over unfair labor practices, subject only to judicial review. Orders of the Board may be vacated on review only when they are not supported by substantial evidence upon consideration of the record as a whole. EEOC, on the other hand, has no such power. The District Court considers EEOC cases de novo. The legislative history, from which we have previously quoted, indicates the reason for the difference.

Nor do we find any national policy for ousting arbitrators of jurisdiction to finally determine grievances initated by employees, based on alleged violation of their civil rights.

The judgment of the District Court is reversed and the cause is remanded with instructions to dismiss the complaint.

Combs, Circuit Judge (dissenting).

I respectfully dissent. In my opinon the District Court correctly concluded that the company had not complied with Titile VII of the Civil Rights Act in that it failed to make reasonable accommodation to Dewey's religious beliefs.

The Equal Employment Opportunity Commission was formed to further the purposes of the Act, 42 U.S.C. § 2000e–4, and was granted power to promulgate regulations consistent with the provisions of the Act. 42 U.S.C. § 2000e–12(a). The Commission's interpretation of the Act is persuasive although not binding on this Court. It was said in Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965): "[T]his Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration," citing Unemployment Compensation Commission v. Aragon, 329 U.S. 143, 153, 67 S.Ct. 245 91 L.Ed. 136 (1946); Gray v. Powell, 314 U.S. 402, 62 S.Ct. 326, 86 L.Ed. 301 (1941); and Universal Battery Co. v. United States, 281 U.S. 580, 50 S.Ct. 422, 74 L.Ed. 1051 (1930).

Pursuant to its statutory authority, the Commission issued Regulation Section 1605.1, effective July 10, 1967, which provides, inter alia:

"(b) The Commission believes that the duty not to discriminate on religious grounds, required by section 703(a)(1) of the Civil Rights Act of 1964, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business.* * *

(c) Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable.

As the majority opinion correctly points out, the 1967 Regulations were not in effect at the time of Dewey's discharge. However, the 1966 Regulations, which were in effect at that time, also provided that "the duty not to discriminate on religious grounds includes an obligation on the part of the employer to accommodate the reasonable religious needs of employees and, in some cases, prospective employees where such accommodations can be made without serious inconvenience to the conduct of the business." It is thus apparent that the cornerstone of both the 1966 and 1967 Regulations is the obligation of the employer to accommodate the religious needs of employees where such accommodations can be made without undue hardship on the conduct of the employer's business.

This is a reasonable interpretation of the Act. So, the test is whether the company has made reasonable effort to accommodate Dewey's religious beliefs. The only accommodation to which the company points, in addi-

[1] It should be observed that it is regulation 1605.1(b) and not the statute (§ 2000e–2(a)) that requires an employer to make reasonable accommodations to the religious needs of its employees. As we have pointed out, the gravamen of an offense under the statute is *only* discrimination. The authority of EEOC to adopt a regulation interfering with the internal affairs of an employer, absent discrimination, may well be doubted.

tion to requesting volunteers, is the privilege extended to Dewey to obtain replacement for his Sunday overtime assignments. The majority views the existence of this privilege as a reasonable accommodation to Dewey's religious needs, and notes that "he stubbornly refused to exercise this privilege." This "stubborn" refusal on Dewey's part was grounded in his belief that working on Sunday is inherently wrong and that it would be a sin for him to induce another to work in his place. The replacement system was therefore no solution to Dewey's problem. There is a significant failure by the company to show that it could not have obtained a replacement for Dewey without hardship or inconvenience. There is also no showing that Dewey's failure to work himself or to obtain a replacement would have seriously disrupted work schedules or internal discipline. I find no support in the record for the assertion in the majority opinion that to grant Dewey's request would cause "chaotic personnel problems and lead to grievances and additional arbitrations." I think the company has completely failed to show that Dewey's refusal to work on Sunday would create undue hardship on the conduct of its business.

Nor am I impressed with the argument that to grant Dewey's request would necessarily affect the company's contractual right to require overtime work. No evidence was adduced on this point. The company may not stand flatfootedly on its contractual right to require overtime work. Provisions of the contract must give way to constitutional mandates and valid statutory enactments. The First Amendment right to freedom of religion has always been recognized as one of the Bill of Rights' strongest mandates. Even though this right has not been extended into the field of labor relations, section 703 (a) (1) of the Civil Rights Act is a Congressional directive that reasonable accommodation should be made by management to the religious beliefs of employees when this can be done without undue hardship on the employer. The District Judge did not apply the First and Fourteenth Amendments to the bargaining agreement here involved, but placed his reliance on Title VII of the Act and specifically stated that he did not find it necessary to reach the question whether plaintiff's constitutional rights had been violated.

Lastly, I am unable to agree that Dewey made an election of remedies by first pursuing the grievance procedure under the bargaining agreement and that he is thereby precluded from maintaining this action. Dewey's rights under the collective bargaining agreement and those created by Title VII of the Act are separate and distinct. The election of remedies doctrine therefore does not apply. See Bowe v. Colgate Palmolive Company, 416 F.2d 711 (7th Cir. 1969); Bankers Trust Co. v. Pacific Employers Ins. Co., 282 F.2d 106, 110 (9th Cir. 1960). The Seventh Circuit held in *Bowe* that a plaintiff suing under 42 U.S.C. § 2000e could "utilize dual or parallel prosecution both in court and through arbitration so long as election of remedy was made after adjudication so as to preclude duplicate relief which would result in an unjust enrichment or windfall to the plaintiffs."

I would affirm the judgment.

A majority of the judges of this Court having voted against a rehearing en banc, it is ordered that the petition for rehearing be referred to the panel for final disposition. Judges Edwards and McCree voted in favor of a rehearing en banc.

Entered by order of the Court.

Before Weick and McCree*, Circuit Judges and O'Sullivan, Senior Circuit Judge.

Weick, Circuit Judge.

It is contended that we have adopted a narrow construction of the Civil Rights Act and the regulations adopted by EEOC thereunder. We submit that we have not. The legislative history of the Act expresses a clear Congressional intent to inhibit only discrimination against an individual because of his race, color, religion, sex or national origin. The plain language of the statute, Section 2000e–2(a) of Title 42, is susceptible of no other meaning.

[12] Nowhere in the legislative history of the Act do we find any Congressal intent to coerce or compel one person to accede to or accommodate the religious beliefs of another. The requirement of accommodation to religious beliefs is contained only in the EEOC Regulations, which in our judgment are not consistent with the Act.

The collective bargaining agreement, by which *all* employees were obligated to perform straight time and overtime required of them by the company, was equally and uniformly applied to all of the employees, and it discriminated against no one.

[13, 14] To construe the Act as authorizing the adoption of Regulations which would coerce or compel an employer to accede to accommodate the religious beliefs of all of his employees would raise grave constitutional questions of violation of the Establishment Clause of the First Amendment. It is settled that the Government, in its relations with religious believers and nonbelievers, must be neutral. The Government is without power to support, assist, favor or handicap any religion. See Abington School Dist. v. Schempp, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed. 2d 844 (1963); Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962); Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961); Everson v. Board of Educ., 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947); Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944).

In Braunfeld v. Brown, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1951), the Court upheld a state Sunday Closing Law against the contention that it operated to prohibit the free exercise of appellant's religion which observed Saturday as the Sabbath.

No one disputes Dewey's right to his religious beliefs. The question is whether he has the right to impose his religious beliefs on his employer and interfere with the operation of its plant. As Mr. Justice Douglas pointed out in his concurring opinion in Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963), the religious beliefs of individuals may take on many forms. He mentioned specifically only a few, including Moslems, who attend a mosque on Friday and pray five times daily; Sikh, who carry a symbolic or regular sword; Quakers, who affirm instead of swearing; and Seventh Day Adventists, who observe Saturday as Sabbath and eat only certain meats.

The arbitrator in his award stated that an employee might even join a religious organization which observed Wednesday as Sabbath.

It is argued that under EEOC Regulations the employer is required to make only reasonable accommodations to the religious needs of his employees. The employee may claim that all of his religious needs are reasonable, irrespective of discrimination, and file charges with EEOC against his employer for failure to accommodate them. An employer with thousands of employees could certainly be harassed by the filing of many of such claims. This would also present serious problems for labor organiaztions to cope with.

Congress did not intend that employers or labor organizations should be harassed with respect to claims not involving discrimination. In the legislative history of the Act it is stated:

"Internal affairs of employers and labor organizations must not be interfered with except to the limited extent that correction is required in discrimination practices." 1964 U.S. Code Cong. & Adm. News, at p 2516.

[15] The fundmental error of Dewey and the Amici Curiae is that they equate religious discrimination with failure to accommodate. We submit these two concepts are entirely different. The employer ought not to be forced to accommodate each of the varying religious beliefs and practices of his employees.

Dewey entered the employ of Reynolds before he acquired his religious beliefs. The 1960 collective bargaining agreement was also entered into prior to that time. After he acquired his religious beliefs, his employer did endeavor to make accommodation to the religious beliefs of its employees by interpreting the agreement so as to permit any employee assigned to overtime to be relieved from the assignment simply by arranging for another qualified employee to replace him. We hold that this was a reasonable accommodation.

Dewey, with no difficulty, did arrange for replacements on five different occasions, and then he decided not only that it was a sin for him to obtain a replacement, but the arbitrator found specifically that Dewey told his replacement, Zagman, "not to serve as a replacement any more."

[16] While it was stipulated that Dewey was sincere in his beliefs, he offered no proof that the tenets of his church forbade his designating a replacement to serve in his place on Sundays. The fact that he was sincere in his beliefs gave him no greater rights.

Moreover, the retroactive application of the 1967 Regulations to the 1966 discharge is justified by EEOC in its amicus brief, with the assertion that its Regulations are only "interpretations" and that "the timing of the Commission interpretations is irrelevant" since the 1966 Regulation is now a "defunct Commission guideline." Although defunct in 1967, it was certainly in full force and effect in 1966 and authorized the employer to prescribe "the normal work week and foreseeable overtime requirements and absent an intent to discriminate on religious grounds, a job applicant or employee who accepted the job knowing or having reasonable grounds to believe that such requirements would conflict with his religious obligations is not entitled to demand any alterations in such requirements to accommodate his religious needs."

Dewey did not acquire his religious beliefs until after his employer had entered into the 1960 collective bargaining agreement which required all employees to work overtime. Dewey thus had actual knowledge that the requirements of the collective bargaining agreement would conflict with his subsequently acquired religious needs. Under the regulations in force at the time, which EEOC claims are now defunct, the employer was under no obligation to accommodate. There was no claim that the employer intended to discriminate on religious grounds. These regulations had the force and effect of law. Their subsequent repeal, after the discharge ought not to affect the rights of obligations of either party.

The simple answer, however, to all of Dewey's claims is that the collective bargaining agreement was equal in its application to all employees and was uniformly applied, discriminating against no one.

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* Judge McCree was designated by the Chief Judge as the third member of the panel, to take the place of Judge Combs who resigned as a member of the Court on June 5, 1970, prior to the filing of the petition for rehearing. The designation was made in order that Judge McCree may file a dissent expressing his views.

Effect of the Arbitrator's Award

The case of Culpepper v. Reynolds Metals Co., 421 F.2d 888 (5th Cir. 1970), is relied on in support of the proposition that an employee may utilize both arbitration and an action under Title VII of the Civil Rights Act. In Culpepper, however, only a grievance was filed, which was never processed through arbitration. *Culpepper* involved racial discrimination, which a majority of the panel thought was so serious as to impose—"* * * the duty on the courts to make sure that the Act works. * * *"

Circuit Judge Coleman, who filed a concurring opinion, disagreed rather vigorously that any such duty was imposed on the Courts. He stated:

"Under our Constitutionally ordained form of Government, whether an Act works or fails is the concern of the Executive or Legislature, or both—not the courts."

We do not regard it as our function to enlarge on the plain language of a statute so as to impose on citizens obligations never intended by Congress, in order to make it work.

Great reliance is placed upon Hutchings v. United Industries, Inc., 428 F.2d 303 (5th Cir. 1970), which was decided after our decision in the present case was announced. In our opinion Hutchings does not comport with Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed. 2d 199 (1970).

In *Boys Markets*, Mr. Justice Brennan emphasized the importance of arbitration in the settlement of labor disputes. He said:

"However, we have frequently noted, in such cases as *Lincoln Mills*, [353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972] the *Steelworkers* [363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403] *Trilogy*, and *Lucas Flour*, [369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593] the importance which Congress has attached generally to the voluntary settlement of labor disputes without resort to self-help and more particularly to arbitration as a means to this end. Indeed, it has been stated that *Lincoln Mills*, in its exposition of § 301(a), 'went a long way towards making arbitration the central institution in the administration of collective bargaining contracts.'

"The *Sinclair* [370 U.S. 195, 82 S. Ct. 1328, 8 L. Ed. 2d 440] decision, however, seriously undermined the effectiveness of the arbitration technique as a method peacefully to resolve industrial disputes without resort to strikes, lockouts, and similar devices. Clearly employers will be wary of assuming obligations to arbitrate specifically enforceable against them when no similarly efficacious remedy is available to enforce the concomitant undertaking of the union to refrain from striking." [footnote omitted].

Similarly, employers would be wary of arbitration clauses in collective bargaining agreements if, as in the present case, the arbitration is binding on them only and not on their employees.

Our case is even stronger than *Boys Markets* because the grievance here was submitted to arbitration and the arbitrator made an award which was final, binding and conclusive on the parties. It is as binding as a judgment. 5 Am. Jur. 2d, Arbitration and Award, § 147. It remains in full force and effect.

The amicus brief of NAACP Legal Defense Fund candidly recognizes that "[i]t may be true that the result of such an accommodation will be that the employer but not the employee will be bound by the decision of the arbitrator." (Brief, p. 14).

We know of no good reason why an award of an arbitrator should not be binding on both parties, the same as a judgment of a court.

It is difficult for us to believe that any employer would ever agree to arbitration of a grievance if he knew that the employee would not be bound by the result.

The importance of arbitration in the resolution of all labor disputes is the theme of the United Steel Workers Trilogy, 363 U.S. 564–602, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960). The purpose of arbitration is thwarted if the awards are held by the courts to be binding on employers only and not on employees.

The petition for rehearing is denied.

McCREE, Circuit Judge (dissenting). I would grant the petition for rehearing and affirm the judgment of the District Court for the reasons stated in the dissenting opinion of Judge Combs. Furthermore, I observe that in addition to the Seventh Circuit, Bowe v. Colgate-Palmolive Co., 416 F. 2d 711 (1969), the Fifth Circuit has held that appellee's invocation of the grievance-arbitration procedure did not bar him from proceeding in the District Court under Title VII of the Civil Rights Act. Hutchings v. United States Industries, Inc., No. 28750 (5th Cir. June 19, 1970).

ROBERT KENNETH DEWEY V. REYNOLDS METALS COMPANY. NO. 835,

OCTOBER TERM, 1970

On writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

Former decision, 400 U.S. 1008, 91 S.Ct. 566. 401 U.S. 932, 91 S.Ct. 919; 91 S.Ct. 1365.

Facts and opinion, D.C., 300 F.Supp. 709; 6 Cir. 429 F.2d 324.

Donald F. Oosterhouse, Grand Rapids, Mich., for petitioner.

Lawrence G. Wallace, Washington, D. C., for the United States, as amicus curiae, by special leave of Court.

William A. Coughlin, Jr., Detroit, Mich., for respondent.

June 1, 1971. PER CURIAM. The judgment is affirmed by an equally divided Court.

Mr. Justice HARLAN took no part in the consideration or decision of this case.

[U.S. District Court for the Middle District of Florida]

CHARLES B. RILEY v. THE BENDIX CORP.

This action came on for trial before the Court, Honorable Richard M. Duncan, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant, The Bendix Corporation, recover of the plaintiff, Charles B. Riley, its costs of action.

ORLANDO, FLA., *July 12, 1971.*

MEMORANDUM OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff instituted this action in this court on June 3, 1969, pursuant to Title 42 Section 2000e–5 United States Code, the Civil Rights Act of 1964, alleging that the defendant had violated his civil rights by terminating his employment for the reason that he refused to work from sun-down on Friday until sundown on Saturday of each week. He seeks damages, restoration to his former employment, an injunction enjoining the defendant from further interfering with his religious beliefs, and attorney's fees.

Plaintiff is a member of the Seventh Day Adventist Church and he states that one of the doctrines of his church is that its members shall not engage in any gainful employment between sun-down Friday and sundown Saturday of each week.

Plaintiff was employed by the defendant in January, 1967, as a mechanical foreman at a salary of $725.00 per month. After serving a short period of time in the mechanical department, at his request he was placed in charge of a program for the training of mechanics. His hours were from 7:30 o'clock a.m. until 4:00 o'clock p.m. five days a week.

On July 14, 1967, the plaintiff was informed that he had been transferred to the second shift. The hours of labor on that shift were from 3:30 p.m. to 12:00 o'clock midnight, five days a week, which would require the plaintiff, in the performance of his duties, to work several hours after sun-down on Friday.

Plaintiff says that at the time of the transfer he told his general foreman, Mr. O'Neill, that he was a Seventh Day Adventist, and that his religious beliefs prevented him from working after sun-down on each Friday. On the contrary, the supervisor says that the plaintiff did not object to the shift or tell him of his religious convictions at the time, but that just before going to work on the second shift plaintiff did come to his office and tell him that he could not work after sun-down on Fridays. Plaintiff also says that O'Neill told him under the company policy he would have to work the hours required on that shift.

At the time the Bendix Corporation was operating under a contract with the National Aeronautics and Space Administration in connection with the building and launching of missiles from Cape Kennedy. The particular branch of the section to which the plaintiff was assigned was engaged primarily in the maintenance of heavy machinery and other equipment incident to the launching of missiles. There were four groups in the mechanical section to which the plaintiff was assigned, and at the time of his employment the section consisted of about 220 men. He was transferred from the mechanical group preparing training programs for the swing-arm program to the maintenance group and subsequently to the second shift. Plaintiff began work on the second shift on Monday, July 17, 1967.

After his assignment to the second shift, plaintiff did not work after sun-down on any Friday. He would report for work at 3:30 and before sun-down he would notify his supervisor and leave the job. This meant that he had worked approximately three or four hours, and would be absent for the remainder of the second shift. He did not provide for any replacement during the period of his absence. He and his supervisor discussed the subject on several occasions, and on each occasion he was told that it would be necessary for him to continue his work.

It was the policy of the company to shift the foremen of a group every 90 days, which, of course, necessitated those who were assigned to the second shift to work from 3:30 to midnight, five days a week. The reassignment of plaintiff made in July, 1967, was necessitated by the vacation season. When one foreman was on vacation it was necessary for another foreman to substitute for him and to take his place.

On August 18, 1967, the plaintiff was discharged for insubordination for his refusal to work the required hours on the second shift. The controversy was submitted to the Equal Employment Opportunity Commission, and when the Commission and the Company were unable to agree upon a reinstatement of the plaintiff, this action was filed. The following written communications were passed between the plaintiff and various officers of the defendant prior to the filing of this suit:

On July 27, 1967, following plaintiff's transfer to the second shift, he signed an AVO (Avoid Verbal Orders) form, addressed to A. S. O'Neill in which he stated:

"Being a member of the Seventh Day Adventist Church for the past 13 years I observe the seventh day sabbath from Friday at sundown to Saturday at sundown. I would like to have this time off to attend to my religious beliefs.

"(I will work this time in an emergency.)

From: Charles B. Riley".

On August 1, A/S. O'Neill signed an AVO addressed to Charles B. Riley, in which he stated:

"Time off for the Seventh Day Church observance.

"Any employee is allowed time off to attend church however time off for a religious observance cannot be allowed if work schedules dictate a necessity to work.

"The above does not pertain to your request to be absent from work every Friday evening at sundown to Saturday evening at sundown. Your request for permission to do the above was turned down by me, and you absented yourself from the job irregardless.

"From: A. S. O'Neill".

On August 3, 1967, the plaintiff signed another AVO directed to A. S. O'Neill, in which he stated:

"I believe in keeping the Sabbath day holy, for this reason I would like to be excused from sundown Fri. to sundown Sat. Time off will be only 4 hours by regular scheduled shift."

"Signed: Charles B. Riley".

On August 4, A. S. O'Neill signed an AVO addressed to the plaintiff in which it was stated:

"Your request to be absent from the job from 9 August 1967 through 11 August 1967 has been granted, but only as a non-paid absence."

"Signed: A. S. O'Neill".

On the same day, August 4, A. S. O'Neill signed another AVO directed to Charles B. Riley, in which he stated:

"Your required hours of work are from 1530 to 2400 hours."

On August 7, A. S. O'Neill addressed a communication to Riley, in which he stated:

"Shift requirements.

"You are required to be present daily for your entire scheduled shift, first or second shift, whichever it may be. You are also required to respond to the requests for overtime, first or second shift, whichever it may be. The Company has no allowance for Church Holidays as such, except for an occasional special service.

"In the event the above is unacceptable to you, you should seek employment elsewhere. Your recent practice of working half of your scheduled shift on Fridays and clocking out without permission cannot be tolerated and if you continue to persist with this practice, you will be terminated."

On August 21, A. S. O'Neill signed an AVO addressed to Charles B. Riley in which it was stated:

"Termination.

"You have been terminated from the Bendix Launch Support Division effective 2030 Hrs. 18 August 1967, for insubordination. You have been insubordinate on at least four occasions by absenting yourself from the job and going home prior to the end of your shift after you had been informed by me, verbally and in writing that your request to leave early had been denied."

Following the plaintiff's dismissal, the controversy was submitted to the Equal Employment Opportunity Commission. After consideration by that Commission, the Company addressed the following communication to Riley:

"Mr. Charles B. Riley,
"10209 West Hillsborough Avenue,
"Tampa, Florida 33615

"January 3, 1968.

"Serial: IR–1 68–1.

"Dear Mr. Riley: We have again reviewed the circumstances and conditions of your previous employment with the Launch Support Division at the request of the Office of Federal Contract Compliance with whom your complaint charging the division with religious discrimination was filed.

"In keeping with sound management procedure, the division must accept its responsibility to point out the following:

"(1) You were clearly in violation of established division policy through insubordination by leaving your job prior to the end of the shift on several occasions particularly after being told in writing not to do so.

"(2) You acted without apparent regard for the continuation and safety of the operations of the Launch Support Division to maintain its contractual obligations with NASA since you left without notice or making preparation for someone to assume your responsibilities as foreman.

"Under these circumstances the division felt compelled to take action to safeguard the integrity of its other employees. We believe your charges of religious discrimination to be without foundation.

"Nevertheless, to make every possible effort to utilize your talents, we make the following offer subject to the condition (applicable to all employees in the division) that you agree to work as assigned and abide by divisional policy.

"We hereby offer you reemployment as a foreman at the rate of $725. per month. We trust this arrangement will be suitable to you and that your reemployment will be mutually beneficial to you and the division.

"May we hear from you regarding your decision. It is necessary that we receive your answer by 12 January 1968, as we are holding the position open for you.

"Very truly yours,

"/s/ George W. Knox,
"George W. Knox,
"Supervisor, Employment and Employee Relations.

"GWK/kk
"Ph: 305 267–4310."

On January 8, 1968, the plaintiff replied to the defendant's communication of January 3 in five paragraphs in which he sought to justify his leaving the job prior to sundown Friday. He then set out in detail the expenses which he had incurred in attempting to obtain other employment, in the amount of $4,520.00. He further stated:

"I accepted an 'Industrial Engineering' position as an estimator working on Government contracts. The position is with the Honeywell Co., Tampa, Fla.

"I received a good salary and they hired me with the understanding I would have the 'Sabbath' from sundown Friday evening to sundown, Saturday evening off. I would like to point out that I'm now working 10–12 hours a day with a crash program coming up. I will come in on Sundays too. My talents will be used more here than at the 'Cape.'

"I will drop the charge against the Bendix Launch Support Division under the following conditions:

"Pay all losses of salary and expenses (Total—$4,520.00), permit me to be *re-instated* and let the records show that I resigned not 'Fired.'

"This letter indicates my wish to have a fair and final settlement of claim against the Bendix Launch Support Division.

"Respectfully,

"/s/ Charles B. Riley,
Charles B. Riley."

The defendant replied on January 25, 1968 as follows:

January 25, 1968.

"Mr. Charles B. Riley,
"10209 W. Hillsborough Ave.,
"Tampa, Fla.
"Serial: IR–1 68–14.

"Dear Mr. Riley: We have your reply dated 8 January, 1968 to our offer of reemployment. While you were unable to accept our offer, we are nonetheless pleased to learn that you are employed in a position satisfactory to you.

"Obviously we cannot assume responsibility for any of the various claims listed in your letter since these were incurred by you in pursuit of your personal objectives.

"Reinstatement is possible only upon agreement at the time of rehire whenever an employee has been terminated (voluntarily or involuntarily). Our records have been adjusted, however, to indicate that you are eligible for rehire as you requested.

"Our offer of reemployment was tendered in a positive effort to rehire you as the most appropriate avenue open to both you and the division for satisfying previous differences. As you are unable to accept our offer we must consider the matter closed.

"Very truly yours,

"/s/ George W. Knox,
"George W. Knox,
"Supervisor, Employment and Employee Relations.

"GWK/kk."

Following the foregoing series of correspondence, this suit was filed. The parties have stipulated that by this action "the Plaintiff seeks reinstatement to his former job with the defendant before his discharge, back pay for loss of interim earnings between the date of discharge and the present date, attorneys fees and court costs for the institution and prosecution of this lawsuit."

The defendant contends that it did not intentionally discharge the plaintiff because of his religious beliefs contrary to Section 706(a) of the Civil Rights Act of 1964, but rather for the reason that plaintiff was insubordinate in refusing to accept his shift assignment under the circumstances of this case, together with his failure to perform his duties as a foreman in the position to which he was assigned.

The parties have stipulated, and the court is in agreement, that the initial question which must be resolved is "did the defendant discharge the plaintiff in violation of Section 706 of the Civil Rights Act of 1964?"

The defendant contends that it was not its intention to violate the statute, nor did it discharge the plaintiff because of his religious belief, but solely because of his failure to follow rules of the company in failing to work the hours assigned to him.

Section 2000e–2 Title 42 U.S.C. provides:

"(a) It shall be an unlawful employment practice for an employer—

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin * * * ."

Under Section 713(a) of the Civil Rights Act of 1964, the Equal Employment Opportunity Commission is clothed with authority from time to time to issue, amend or rescind procedural regulations to carry out the provisions of the Act. Such regulations must be in conformity with the standards and limitations of the Administrative Procedure Act, Title 5 § 500 *et seq.* U.S.C. In accordance with such provision the Commission issued and published two sets of "Religious Discrimination Guidelines" one effective on June 15, 1966, and the other effective July 10, 1967, which are set out in their entirety in appendices A and B, which are made a part hereof. These guidelines were in effect at the time of the plaintiff's transfer to the second shift, and at the time of his discharge.

The plaintiff relies heavily upon the regulations promulgated by the Equal Employment Opportunity Commission, and he cites numerous cases to the effect that the regulations issued by an agency charged with the administration of a statute should be given great weight by the courts in their interpretation of that statute. *Udall* v. *Tallman, et al.*, 380 U.S. 1 (1965). We do not disagree with that generally recognized principle of law. Such regulations to be valid must however, be in conformity with the Act which authorizes their issuance and with the standards and limitations set forth in the Administrative Procedure Act, Title 5 § 500 *et seq.* 42 U.S.C. § 2000e–12.

Paragraph (c) of the Commission's July 10, 1967, guidelines states:

"Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, *the employer has the burden of proving* that undue hardship renders the required accommodation to the religious needs of the employee unreasonable." [Emphasis supplied]

We do not believe that the Commission is vested with the authority of determining the procedural question of burden of proof. All hearings and investigations are to be conducted in accordance with the Administrative Procedure Act, and certainly the Commission has no right to say to this court that it shall shift the burden of proof from the plaintiff to the defendant. Aside from that fact we feel it would be unreasonable and impractical to require the complex American business structure to prove why it cannot gear itself to the "varied religious practices of the American people". See Appendix B paragraph (d).

In both the June 15, 1966 and the July 10, 1967, guidelines, the Commission expresses its view that it is the duty of employers not to discriminate on religious grounds and that employers should accommodate the reasonable religious needs of employees where such accommodation can be made without serious inconvenience to the conduct of the business. We note that the Commission in the issuance of the July 10, 1967 guidelines, did not expressly repeal paragraph (a) (3) of its June 15, 1966 guidelines which states that under Title VII of the 1964 Civil Rights Act an employer is free "to establish a normal work week * * * generally applicable to all employees," notwithstanding that such a schedule "may not operate with uniformity in its effect upon the religious observances of his employees."

In his brief the plaintiff cites the case of *Jackson* v. *Veri Fresh Poultry, Inc.*, 304 F. Supp. 1276 (E.D. La. 1969). The plaintiff in that action was employed by the defendant as a chicken picker at a wage of $1.25 per hour. She began work on August 9, 1966, and in November, 1966 she informed her foreman that she would be unable to work between approximately 5:00 p.m. Friday and 5:00 p.m. Saturday because in her religion that was considered the Sabbath. She was subsequently told by another of her supervisors that if she could not work after 5:00 p.m. or on Saturdays, the company could not use her services. The plaintiff's employment was terminated on November 16, 1966. The court determined that the plaintiff's discharge was in violation of 42 U.S.C. § 2000e.

In arriving at its conclusion the court was "impressed by the opinion * * * in the case of *Dewey* v. *Reynolds Metals Co.*, 300 F. Supp. 709" which the court described as a "case strikingly similar" to the case then under consideration. The *Dewey* case was subsequently reversed in *Dewey* v. *Reynolds Metals Co.*, 429 F. 2d 324 (6th Cir. 1970, *cert. granted*, 400 U.S. 1008 (March 1, 1971). [Not yet decided]

We agree that the facts in *Dewey* and *Jackson* are substantially similar, but we have difficulty in following the reasoning of the court in arriving at the conclusion that the plaintiff in *Jackson* was discharged because of her religious beliefs. In our view her religion was simply an incident, and if it prevented her from performing the duties required of her by her employer, he had a right to separate her from the job. The rules of Bendix requiring work on Saturday applied uniformly to all employees no matter what their religious affiliation happened to be.

The plaintiff also cites *Sherbert* v. *Verner*, 374 U.S. 398, 10 L.ed. 2d 965, 83 S.Ct. 1790 (1963). In that case the plaintiff was a Seventh Day Adventist whose religious convictions prevented her from working on Saturday. She was denied unemployment compensation under the South Carolina Compensation Act for failing, without good cause, to accept available suitable work when it was offered to her. The Supreme Court held that it was a violation of her constitutional rights to refuse her workmen's compensation for failing to work on her Sabbath. We think the *Sherbert* case is clearly distinguishable from the case now before us and from the *Jackson* case.

The defendant denies that plaintiff was discharged because of his religious beliefs or that it had any intention to violate the statute in discharging the plaintiff. We believe that the defendant had a right to make rules and working conditions to be imposed upon its employees for the conduct of its business, if such rules are not in conflict with the law, and any one accepting employment is bound to accept such rules and working conditions.

Defendant's testimony clearly reveals that its rules and working conditions applied uniformly with respect to all of its employees and at no time did it ever discriminate against any person because of race, creed or color. The record contains no evidence to the contrary.

The guarantee of religious freedom in the United States has resulted in many forms of religion, religious philosophies and sects, and it is the absolute right of every person that these beliefs shall not be infringed upon. An employer may not refuse to employ or discharge any person because of his religious beliefs, but surely the great and diversified types of American business cannot be expected to accede to the wishes of every doctrine or religious belief. If one accepts a position knowing that it may in some way impinge upon his religious beliefs, he must conform to the working conditions of his employer or seek other employment.

When plaintiff accepted employment with the defendant, he signed a compensation agreement which provided for compensation for "overtime or night shift work."

He was a salaried employee and his pay was not based upon an hourly rate. If he was an essential employee it is not difficult to understand how leaving his job in the middle of the shift would have its effect upon the work he was performing.

As we have heretofore stated, the second shift was from 3:30 in the afternoon to midnight. After plaintiff's assignment to the second shift he reported for work at 3:30 but quit about 7:30 Eastern daylight saving time. Certainly to call another foreman to report for duty at 7:30 for the purpose of working until 1:00 in the evening, would not only be impractical but likely impossible under existing labor agreements.

Although the plaintiff contents that *Dewey* v. *Reynolds Metals Co.*, 49 F.d 34 (6th Cir. 1970), is to be distinguished both factually and legally from the case now before us, we must respectfully disagree. Dewey, because of his religious beliefs, refused to perform overtime labor when, under the rules of his company, he was required to do so. He was discharged because of his refusal to work on Sunday. At the time of his discharge there was a contract in force between the labor organization to which Dewey belonged and Reynolds. This agreement provided:

"All employees shall be obligated to perform all straight time and overtime work required of them by the Company except when an employee has a substantial and justifiable reason for not working * * *."

Following his discharge Dewey filed grievances which were subsequently submitted to arbitration. The arbitrator ruled adversely to Dewey holding it was his duty to perform the work required. After obtaining a like ruling from the Michigan Civil Rights Commission Dewey filed a charge with the Equal Employment Opportunity Commission alleging religious discrimination. The Commission then authorized the bringing of suit under Title VII of the Civil Rights Act of 1964. The Court of Appeals for the Sixth Circuit found nothing discriminatory in the provision of the collective bargaining contract or in the manner in which Reynolds executed it. The court stated at page 330:

"The reason for Dewey's discharge was not discrimination on account of his religion; it was because he violated the provisions of the collective bargaining agreement entered into by his union with his employer, which provisions were applicable equally to all employees. The violation consisted not only of his refusing to work on Sundays but also his refusing to arrange for a replacement, which was an alternate procedure."

We are unable to draw a distinction between the *Dewey* case and the present case, so far as the legal principles involved are concerned, because the Union contract required a member to work overtime or on Sunday, if necessary. Certainly if it is a violation of an employee's constitutional rights for the employer to require him to work overtime or to work on Sunday, it would equally be a violation of his constitutional rights for the union to attempt to enforce such a contract agreement.

The most recent expression on the subject is found in *Dawson* v. *Mizell*, 325 F. Supp. 511 (E.D. Va. 1971). Dawson was a mail carrier and a Seventh Day Adventist. He was discharged by the postmaster for failure to work on Saturday. Dawson did not have enough seniority to obtain a position which did not require Saturday work, and his assignment to another shift would have been a violation of the bargaining contract between the Post Office Department and the Union. Because of his lack of seniority, Dawson found himself assigned to a shift which required that he work on Saturday. Judge Merhize held that:

"The Court finds no infringement of plaintiff's rights concerning his religious beliefs. Religious discrimination should not be equated with failure to accommodate."

The testimony reveals that it was the policy of the defendant to rotate its foremen on the second shift every 90 days, and in the regular course of carrying out this practice plaintiff was assigned to that shift on July 17, 1967. This was the vacation season and when a foreman was on vacation, it became necessary for some other foreman to take his place.

It is our finding that the defendant did not in any respect discriminate against the plaintiff because of his religious beliefs. The assignment to the second shift came in the usual and normal conduct of the defendant's business and was in no respect discriminatory against any foreman because of his religion. All of the foremen were treated equally.

It is therefore our conclusion that the plaintiff was discharged solely because of his refusal to work the hours assigned to him and not as a result of any religious discrimination against him on the part of the defendant.

Done and ordered in chambers in Kansas City, Missouri, this 7th day of July, 1971.

RICHARD M. DUNCAN,
U.S. Sr. District Judge.

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APPENDIX A

(Equal Employment Opportunity Commission, Religious Discrimination Guidelines (Effective June 15, 1966))

"Section 1605.1 Observance of Sabbath and religious holidays.—(a) (1) Several complaints filed with the Commission have raised the question whether it is discrimination on account of religion to discharge or to refuse to hire a person whose religious observances require that he take time off during the employer's regular work week. These

complaints arise in a variety of contexts, but typically involve employees who regularly observe Saturdays as the Sabbath or who observe certain special holidays during the year.

"(2) The Commission believes that the duty not to discriminate on religious grounds includes an obligation on the part of the employer to accommodate the reasonable religious needs of employees and, in some cases, prospective employees where such accommodation can be made without serious inconvenience to the conduct of the business.

"(3) However, the Commission believes that an employer is free under Title VII to establish a normal work week (including paid holidays) generally applicable to all employees, notwithstanding that this schedule may not operate with uniformity in its effect upon the religious observances of his employees. For example, an employer who is closed for business on Sunday does not discriminate merely because he requires that all his employees be available for work on Saturday.

"Likewise, an employer who closes his busines on Christmas or Good Friday is not thereby obligated to give time off with pay to Jewish employees for Rosh Hashanah or Yom Kippur:

"(b) While the question of what accommodation by the employer may reasonably be required must be decided on the peculiar facts of each case, the following guidelines may prove helpful.

"(1) An employer may permit absences from work on religious holidays, with or without pay, but must treat all religions with substantial uniformity in this respect. However, the closing of a business on one religious holiday creates no obligation to permit time off from work on another.

"(2) An employer, to the extent he can do so without serious inconvenience to the conduct of his business, should make a reasonable accommodation to the needs of his employees and applicants for employment in connection with special religious holiday observances.

"(3) The employer may prescribe the normal work week and foreseeable overtime requirements, and, absent an intent on the part of the employer to discriminate on religious grounds, a job applicant or employee who accepted the job knowing or having reason to believe that such requirements would conflict with his religious obligations is not entitled to demand any alterations in such requirements to accommodate his religious needs.

"(4) Where an employee has previously been employed on a schedule which does not conflict with his religious obligations, and it becomes necessary to alter his work schedule, the employer should attempt to achieve an accommodation so as to avoid a conflict. However, an employer is not compelled to make such an accommodation at the expense of serious inconvenience to the conduct of his business or disproportionate allocation of unfavorable work assignments to other employees."

APPENDIX B

(Equal Employment Opportunity Commission, Religious Discrimination Guidelines (Effective July 10, 1967))

"Section 1605.1 Observance of Sabbath and other religious holidays.—(a) Several complaints filed with the Commission have raised the question whether it is discrimination on account of religion to discharge or refuse to hire employees who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days.

"(b) The Commission believes that the duty not to discriminate on religious grounds, required by section 703(a)(1) of the Civil Rights Act of 1964, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer.

"(c) Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable.

"(d) The Commission will review each case on an individual basis in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the American people."

[Equal Employment Opportunity Commission Release, July 12, 1967]

EEOC ADOPTS NEW GUIDELINES ON RELIGIOUS DISCRIMINATION

The Equal Employment Opportunity Commission today announced new Guidelines concerning the observance of the Sabbath and other religious holidays as they relate to discrimination in employment.

The Guidelines, effective immediately, state:

The duty not to discriminate on religious grounds, required under Title VII, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees when such obligation does not place undue hardship on the employer's business.

To illustrate, the Guidelines say that an undue hardship may exist when the employee's needed work cannot be performed by another employee during the absence of the Sabbath observer.

The Commission recognizes the sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs. Under the new Guidelines, the employer has the burden of proving that an undue hardship prevents him from making reasonable accommodations to the religious needs of the employee.

In an effort to equitably apply the Guidelines the Commission will review each case on an individual basis since a variety of situations arise out of different religious practices.

The Guidelines apply to cases before the Commission as well as to those filed in the future. They substitute for those issued June 14, 1966.

The Commission undertook a review of the 1966 guidelines after several charges were filed raising the question whether it is religious discrimination to discharge or refuse to hire employees who regularly observe a day other than Sunday as the Sabbath and certain religious holidays and do not work on such days.

The new Guidelines were proposed and publicly announced on May 10, 1967.

Text of new Guidelines attached.

TITLE 29—LABOR—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (29 CFR PART 1605)

GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION—OBSERVANCE OF THE SABBATH AND OTHER RELIGIOUS HOLIDAYS

By virtue of its authority under Section 713 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-12(b), the Equal Employment Opportunity Commission hereby amends Section 1605.1, Guidelines on Discrimination Because of Religion. This amendment becomes effective immediately and shall be applicable with respect to cases presently before or hereafter filed with the Commission. Section 1605.1 as amended shall read as follows:

§ 1605.1 Observation of the Sabbath and other religious holidays.

(a) Several complaints filed with the Commission have raised the question whether it is discrimination on account of religion to discharge or refuse to hire employees who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days.

(b) The Commission believes that the duty not to discriminate on religious grounds, required by Section 703(a)(1) of the Civil Rights Act of 1964, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer.

(c) Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable.

(d) The Commission will review each case on an individual basis in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the American people.

Signed at Washington, D.C., this tenth day of July 1967.

LUTHER HOLCOMB,
Acting Chairman.

RULES AND REGULATIONS

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1600—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General

Subpart B—Limitations on conduct and responsibilities of employees

Subpart C—Conduct and responsibilities of special government employees

Subpart D—Statement of employment and financial interests

AUTHORITY: The provision of this Part 1600 issued under E.O. 11222, 30 F.R. 6469, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.

SOURCE: The provisions of this Part 1600 appear at 33 F.R. 4329, Mar. 8, 1968, unless otherwise noted.

Subpart A—General

§ 1600.735 101 Purpose and policy.

(a) *Purpose.* The purpose of this part is to implement Executive Order 11222, May 8, 1965 (30 CFR 6469) and Part 735 of the Civil Service Commission Regulations adopted pursuant thereto (5 CFR Part 735) by defining standards of conduct and related procedures for employees and special Government employees of the EEOC.

(b) *Policy.* The maintenance of high standards of ethical conduct by Government employees and special Government employees is essential to assure the proper performance of the Government's business and the maintenance of confidence and respect of the citizens in their Government. No public officer can lawfully engage in business activities which are incompatible with the duties of his office.

§ 1600.735–102 Definitions.

(a) "Agency" means the Equal Employment Opportunity Commission.

(b) "Employee" means an officer or employee of the Equal Employment Opportunity Commission, but does not include a special Government employee.

(c) "Executive order" means Executive Order 11222 of May 8, 1965.

(d) "Person" means an individual, corporation, company association, firm, partnership, society, joint stock company, or any other organization or institution.

(e) "Special Government employee" means a temporary employee, with or without compensation, appointed to perform for not to exceed 130 days during any period of 365 consecutive days duties on either a full-time or intermittent basis. Such employees are generally consultants or experts.

§ 1600.735–103 Interpretations and counseling.

The General Counsel shall provide any needed counsel and assistance to all EEOC employees concerning the policy and procedures contained in this part. Field Office Directors shall serve as deputy counselors in their jurisdictions, referring any controversial problems of interpretation to the General Counsel.

§ 1600.735–104 Disciplinary and other remedial action.

An employee or special Government employee of the agency who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned-duties;

(b) Divestment by the employee or special Government employee of his conflicting interest; or

(c) Disqualification for a particular assignment.

§ 1600.735–105 Appeal.

Any employee or group of employees who disagree with the provisions of this part have the right to request a review of their complaint through the Employees' Grievance Procedure, Administrative Order II–12.

Subpart B—Limitations on conduct and responsibilities of employees

§ 1600.735–201 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this part which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1600.735–202 Gifts, entertainment, and favors.

(a) *General limitations.* Employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with this agency;

(2) Conducts operations or activities that are regulated by this agency;

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) *Exceptions.* Section 1600.735–202(a) does not preclude:

(1) Acceptance of a gift, gratuity, favor, entertainment, loan, payment of expenses, fee, compensation, or other things of monetary value incident to obvious family or personal relationships (such as those between the employee and the parents, children, or spouse of the employee) when the circumstances make it clear that it is the family relationship rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions or customary terms to finance proper and usual activities of employees such as home mortgage loans;

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value, and

(5) Receipt of bona fide reimbursement, unless prohibited by law, for expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, or for travel on official business proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

(c) *Gifts to superiors.* An employee shall not solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion; i.e., marriage, illness, or retirement.

(d) *Gifts from foreign governments.* An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in Public Law 89–673, 5 U.S.C. 7342.

§ 1600.735–203 Outside employment and other activity.

(a) *General limitations.* An employee shall not engage in outside employment or other activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair the mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(3) Receipt by an employee of any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(b) Employees are encouraged to engage in teaching, lecturing and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Commission or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(c) [Reserved]

(d) *Exceptions.* Section 1600.735–203 does not preclude:

(1) Participation in the activities of national or state political parties not proscribed by law.

(2) Participation in the affairs of, or acceptance of an award for, a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civil organization.

(3) Outside employment permitted under this part, including payments or reimbursements under § 1600.735–202(b)(5).

(e) *Procedure.* An employee who engages in outside employment shall obtain his supervisor's approval in advance and shall inform the Personnel Division by memorandum.

[33 F.R. 4329, Mar. 8, 1968, as amended at 33 F.R. 9610, July 2, 1968]

§ 1600.735–204 Financial interests.

An Employee shall not:

(a) Have a direct or indirect financial in-

terest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or

(b) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

This does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive order, or these regulations.

§ 1600.735–205 Other standards of conduct.

(a) *Use of Government property.* An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

(b) *Misuse of information.* For the purpose of furthering a private interest, an employee shall not, except as provided in § 1600.735–203(b), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

(c) *Indebtedness.* An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. A "just financial obligation" means one acknowledged by the employee, or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, the agency is not required to determine the validity or amount of his disputed debt.

(d) *Gambling, betting, and lotteries.* An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(e) *General conduct prejudicial to the Government.* An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(f) *Miscellaneous statutory provisions.* Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Government. Attention is specifically directed to the following statutory provisions:

(1) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service".

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(3) The prohibition against lobbying with appropriate funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(5) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(6) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(7) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(8) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(10) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1719).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(14) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641), (2) failing to account for public money (18 U.S.C. 643), and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(16) The prohibitions against political activities—in subchapter III of chapter 73 of Title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(17) The prohibition against an employee acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart C—Conduct and responsibilities of special Government employees

§ 1600.735–301 Limitations.

Special Government employees shall be subject to the same standards of conduct proscribed in Subpart B above for other employees, except § 1600.735–203(a)(3), plus the following:

(a) *Use of Government employment.* A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) *Use of inside information.* A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section "inside information" means information obtained under Government authority which has not become part of the body of public information. Such employees may teach, lecture, or write in a manner not inconsistent with § 1600.735–203(b) above.

(c) *Coercion.* A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or to another person, particularly one with whom he has family, business, or financial ties.

(d) *Gifts, entertainment, and favor.* A special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with his agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(e) *Miscellaneous statutory provisions.* Special Government employees are responsible for a knowledge of statutory obligations as outlined in § 1600.735–205(f).

Subpart D—Statement of employment and financial interests

§ 1600.735–401 Employees required to submit statements.

(a) The following categories of employees are determined by the EEOC, subject to the right of appeal under § 1600.735–105, to be within the scope of 5 CFR 735–403, 735–404 and therefore they shall submit Statements of Employment and Financial Interests:

(1) Employees paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code, except the members of the Commission who report under section 401 of Executive Order 11222.

(2) Employees in Grade GS–16 or above of the General Schedule in 5 U.S.C. 5332.

(3) Employees in the Office of Liaison engaged in grant or reimbursement activities classified at GS–13 or above of the General Schedule.

(4) Employees in the Office of Administration engaged in contracting or procurement activities who are classified at GS–13 or above of the General Schedule unless otherwise indicated, i.e., Director of Administration, Chief of Administrative Services, Contract Specialists, and Contract Specialist GS–12.

(b) Each special Government employee shall submit a Statement of Employment and Financial Interests showing all other employment and such financial interests as the agency determines are relevant in the light of the duties he is to perform, except when this requirement is waived under 5 CFR 735.412(c).

§ 1600.735–402. Time and place for submission of employee statement.

Statement of Employment and Financial Interests shall be submitted by employees covered by § 1600.735–401 within 60 days after issuance of this part for employees on the rolls at that time and for new employees within 30 days of their entrance on duty. Special Government employees will complete duplicate copies of the forms in appendix A at the time of entrance on duty. All other employees required to file Statements of Employment and Financial Interests will complete duplicate copies of the form in appendix B. The completed original of these forms will be sent to the Director of Personnel in a sealed envelope marked on the outside "Confidential Statement Enclosed." The duplicate copy will be retained by the employee. The Personnel Division shall retain files of the Statements of Employment and Financial Interests.

§ 1600.735—403 Review of statement of employment and financial interests.

The Director of Personnel shall review these statements for the purpose of disclosing any conflict of interest or apparent conflict of interest. If such conflict between the interests of an employee or special Government employee and the performance of his services for the Government are found, they shall be brought to the attention of the employee or special Government employee and he shall be granted the opportunity to explain the conflict and attempt to resolve it. If the indicated conflict cannot be resolved, the Director of Personnel should submit a written report with the recommendation for appropriate remedial action to the Chairman through the General Counsel.

§ 1600.735—404 Supplementary statements.

Changes in, or additions to, the information contained in an employee's Statement of Employment and Financial Interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of 18 U.S.C. 208 or this part.

§ 1600.735—405 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of

the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 1600.735—406 Information not known by employees.

If any information required to be included interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 1600.735—407 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in a professional society or a charitable, religious, social, fraternal, recreational public service, civil, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 1600.735–408 Confidentiality of employees' statements.

The agency shall hold each Statement of Employment and Financial Interests, and each supplementary statement, in confidence. The Director of Personnel or other employee authorized to review or retain a statement are responsible for maintaining them in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The agency may not disclose information from a statement except as the Civil Service Commission or the Chairman, EEOC, may determine for good cause shown.

§ 1600.735–409 Effect of employees' statements on other requirements.

The Statements of Employment and Financial Interests and supplementary statements are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

PART 1601—PROCEDURAL REGULATIONS

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1601.33 Action on Petition.

AUTHORITY: The provisions of this Part 1601 are issued under sec. 813, 78 Stat. 265; 42 U.S.C. 2000e–12.

SOURCE: The provisions of this Part 1601 appear at 30 F.R. 8401, July 1, 1965, unless otherwise noted.

§ 1601.1 Purpose.

The regulations set forth in this Part 1601 contain the procedures established by the Equal Employment Opportunity Commission for carrying out its responsibilities in the administration and enforcement of Title VII of the Civil Rights Act of 1964. Based upon its experience in the administration of the Act and upon its evaluation of suggestions and petitions for amendments submitted by interested persons in accordance with § 1601.32, the Commission may from time to time amend and revise these procedures.

Subpart A—Definitions

§ 1601.2 Terms defined in Title VII of the Civil Rights Act of 1964.

The terms "persons," "employer," "employment agency," "labor organization," "employee," "commerce," "industry affecting commerce," and "State" as used herein shall have the meanings set forth in section 701 of Title VII of the Civil Rights Act of 1964.

§ 1601.3 Title VII: Commission.

The term "Title VII" as used herein shall mean Title VII of the Civil Rights Act of 1964. The term "Commission" shall mean the Equal Employment Opportunity Commission or any of its designated representatives.

§ 1601.4 Region; subregion.

The term "region" as used herein shall mean that part of the United States or any territory thereof fixed by the Commission as a particular region. The term "subregion" shall mean that area within a region fixed by the Commission as a particular subregion.

Subpart B—Procedure for the Prevention of Unlawful Employment Practices

§ 1601.5 Submission of information.

The Commission will receive information concerning alleged violations of this title from any person. Where the information discloses that a person is entitled to file a charge with the Commission, the appropriate office will render him assistance in the filing of a charge. In the alternative, a member of the Commission may file a charge based upon the information, in accordance with § 1601.10.

§ 1601.6 Charges by aggrieved persons.

A charge that any person has engaged in or is engaging in an unlawful employment practice within the meaning of Title VII may be made by any person claiming to be aggrieved.

§ 1601.7 Where to file.

Such charge may be filed at the offices of the Commission in Washington, D.C., or at any of its field offices or with any designated representative of the Commission.

[34 F.R. 5602, Mar. 25, 1969]

§ 1601.8 Forms; jurat.

Such charge shall be in writing and signed and shall be sworn to before a notary public, designated representative of the Commission, or other person duly authorized by law to administer oaths and take acknowledgements. Charge forms are available to all persons from all offices of the Commission. Appropriate assistance in filing out forms will be rendered to aggrieved persons by personnel of the Commission.

§ 1601.9 Withdrawal of charge by an aggrieved person.

A charge filed by an aggrieved person may be withdrawn only with the consent of the Commission.

§ 1601.10 Charges by members of the Commission.

Any member of the Commission who has reasonable cause to believe that an unlawful employment practice within the meaning of title VII has occurred or is occurring may file a charge in writing with the Commission. If section 706(c) of title VII should be applicable, the Commission, before taking any action with respect to the charge, shall notify the appropriate State or local authority and offer to refer the charge to it. The Commission will allow the State or local authority a 10-day period to request an opportunity to act under its law except when EEOC notifies the appropriate authority in writing of a different time period.

[35 F.R. 18661, Dec. 9, 1970]

§ 1601.11 Contents; amendment.

(a) Each charge should contain the following:

(1) The full name and address of the person making the charge.

(2) The full name and address of the person against whom the charge is made (hereinafter referred to as the respondent).

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practice.

(4) If known, the approximate number of employees of the respondent employer or the approximate number of members of the respondent labor organization, as the case may be.

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local authority charged with the enforcement of fair employment practice laws, and, if so, the date of such commencement and the name of the authority.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is deemed filed when the Commission receives from the person aggrieved a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, includ-

ing failure to swear to the charge, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date. However, an amendment alleging additional acts, constituting unlawful employment practices not directly related to or growing out of the subject matter of the original charge will be permitted only where at the date of the amendment the allegation could have been timely filed as a separate charge.

[31 F.R. 10269, July 29, 1966]

§ 1601.12 Referrals to State and local authorities.

(a) In order to give full weight to the policy of section 706(b) of the Act which affords State and local fair employment practice agencies that fall within the provisions of that section an opportunity to resolve disputes involving alleged discrimination concurrently regulated by Title VII of the Civil Rights Act of 1964 and State or local law, the Equal Employment Opportunity Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission where there is no evidence that such allegations were earlier presented to the State or local agency. It is the intent of the Commission to thereby encourage the maximum degree of effectiveness in the State and local agencies. The Commission shall endeavor to maintain close communication with the State and local agencies with respect to all matters forwarded to such agencies and shall provide such assistance to the State or local agency as is permitted by law and is practicable. It is the experience of the Commission that because of the complexities of the present procedures, persons who seek the aid of the Commission are often confused and even risk loss of the protection of the Act. Accordingly, it is the intent of the Commission to simplify filing procedures for parties in deferral States and localities, and thereby avoid the accidental forfeiture of important Federal rights.

(b) The following procedures shall be followed with respect to cases arising in the localities to which the Commission defers:

(1) Any document, whether or not verified, filed at any field office of the Equal Employment Opportunity Commission or at Washington, D.C., which may constitute a charge cognizable under title VII, shall be deferred to the appropriate State or local agency pursuant to the procedures set forth below.

(i) All such documents shall be date and time stamped on receipt.

(ii) A copy of the original document shall be transmitted by the registered mail, return receipt requested, to the appropriate State or local agency.

(iii) The aggrieved party shall be notified, in writing, that the document which he sent to the Commission has been forwarded to the State or local agency pursuant to the provisions of section 706(b), and that unless the Commission is notified to the contrary, on the termination of State or local proceedings, or after 60 days have passed, whichever comes first, the Commission will consider the charge to be filed with the Commission and commence processing the case. Where the State or local agency terminates its proceedings within 60 days of the date of receipt of the document without notification to the Commission of such action, the date on which the aggrieved party is notified of the termination of the State or local action shall be deemed to be the date that the document was filed as a charge with the Commission.

(iv) The 60-day period shall be deemed to have commenced on the receipt of the document by the State or local agency as evidenced by the date indicated on the return receipt. On notification of termination of State proceedings or the expiration of 60 days, whichever comes first, the Commission will consider the charge to be filed with the Commission and commence processing the case.

(v) In cases where the document is filed with the Commission more than 150 days following the alleged act of discrimination but less than 210 days therefrom, the case shall be deferred pursuant to procedures set forth above: *Provided, however,* That unless the Commission is earlier notified of the termination of the State or local proceeding, the Commission will consider the charge to be filed with the Commission on the 209th day following the alleged discrimination and will commence processing the case. Where the State or local action shall be deemed to be the date that the document was filed as a charge with the Commission.

[33 F.R. 16408, Nov. 8, 1968]

§ 1601.13 Service of charge

Upon the filing of a charge or the amendment of a charge, the Commission shall furnish the respondent with a copy thereof by certified mail or in person.

[31 F.R. 10269, July 29, 1966]

Investigation of a Charge

§ 1601.14 By whom made.

The investigation of a charge shall be made by the Commission. During the course of such investigation, the Commission may utilize the services of State and local agencies which are charged with the administration of fair employment practice laws or appropriate Federal agencies. As a part of each investigation, the charging party and the respondent shall each be offered an opportunity to submit a statement of its position or evidence with respect to the allegations.

[35 F.R. 3163, Feb. 19, 1970; 35 F.R. 10110, June 19, 1970]

§ 1601.15 Documentary evidence to be produced by a respondent.

To effectuate the purposes of Title VII, the Commission may demand in writing that the respondent produce or permit access to, for the purpose of examination and copying, evidence described in the demand. Such demand shall (a) disclose the relationship to the Commission of the person before whom such production shall be made or to whom access shall be permitted, and (b) fix the time and place for such production or access within the State wherein the evidence is kept. If there be noncompliance with any such demand, the Commission may utilize the procedures of section 710 of Title VII to compel compliance.

§ 1601.16 Witnesses.

To effectuate the purposes of Title VII, the Commission may demand in writing that a person appear at a stated time and place within the State in which such person resides, transacts business, or is served with the demand, for the purpose of testifying under oath before the Commission or its representative. If there be noncompliance with any such demand, the Commission may utilize the procedures of section 710(b) of Title VII to compel such person to testify. A transcript of testimony may be made a part of the record of each investigation.

§ 1607.17 Payment of witness fees and mileage.

Witnesses who testify as provided above shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

§ 1601.18 Right to inspect or copy data.

A person who submits data or evidence to the Commission may retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness may for good cause be limited to inspection of the official transcript of his testimony.

Procedure Following Filing of Charge [1]

NOTE: Amendments made 35 F.R. 3163, February 19, 1970 re charges shall be applicable with respect to charges presently pending in which the investigation had not been completed by February 19, 1970; 35 F.R. 10110, June 19, 1970.

§ 1601.19 Dismissal of charge.

Where the allegations of a charge on its face, or as amplified by the statements of the charging party to the Commission, disclose that the charge is not timely filed or otherwise fails to state a valid claim for relief under Title VII, the Commission, through the Director of the Field Office where the charge is lodged, may dismiss the charge without further action. Charging party and respondent where the charge has been served, shall be notified in writing of the disposition of the charge together with the reasons therefor. Objections to such dismissal will be considered by the Commission, when filed in writing at its headquarters in Washington, D.C., within twenty (20) days of receipt of the Field Director's notice of dismissal.

[35 F.R. 3163, Feb. 19, 1970]

§ 1601.19a Field Director's findings of fact.

Upon completion of an investigation, the Field Director will cause to be prepared and served upon the parties his findings of fact in the case, which shall contain findings of fact and a summary of the evidence upon which such findings are based.

[35 F.R. 3163, Feb. 19, 1970, as amended at 35 F.R. 10110, June 19, 1970]

§ 1601.19b Exceptions to Field Director's findings of fact.

(a) Within fifteen (15) days, or within such further period as the Field Director may allow, from the date of service of the Field Director's findings of fact, the parties may file such exceptions to the Field Director's findings of fact, objections, briefs and evidnce in support thereof as they desire. When requested by a person not represented by counsel, assistance in the preparation of exceptions to the Field Director's findings of fact will be provided by personnel of the Field Office as deemed practicable by the Field Director.

(b) Each exception shall:

(1) Set forth the specific procedure, finding, policy, or interpretation of law or fact to which objection is taken;

(2) Identify any and all parts of the Field Director's findings of fact to which exception is taken by reference to the precise page and paragraph of the determination;

(3) State the grounds for the exception, including the citation to any authority relied upon, and a description of any factual circumstance or interpretation of facts upon which reliance is placed.

(c) Any exception to findings which is not specifically urged may be deemed waived. Any exception which fails to comply with the requirements set forth in paragraph (b) of this section may be disregarded.

(d) Within five (5) days from the date of this filing of exceptions, or within such further period as the Field Director allows, cross exceptions may be filed in the manner set forth in paragraph (b) of this section.

(e) All such exceptions and cross exceptions shall be accompanied by proof of service on all parties. The Field Director may perfect service as deemed practicable.

[35 F.R. 3163, Feb. 19, 1970]

§ 1601.19c Predecision procedure.

Following the issuance of the Field Director's findings of fact and the receipt of exceptions if any, the Field Director may invite the parties to engage in settlement discussions. Should settlement be reached, the terms thereof will be reduced to writing and

[1] 35 F.R. 3163, Feb. 19, 1970.

shall be signed by the parties and, if approved by the Field Director, forwarded to the Commission for approval and such further action as may be appropriate. In the event no settlement is attempted or reached, the Field Director shall, upon consideration of exceptions, objections, briefs and evidence submitted under § 1601.19b, either cause the charges to be reinvestigated, issue his redetermination of fact based thereon, or forward the full investigation file to the Commission for determination as to reasonable cause.

[35 F.R. 3163, Feb. 19, 1970]

§ 1601.19d Determination as to reasonable cause.

(a) Following receipts of the full investigative file, the Commission shall consider and decide the issues presented and serve a copy of its decision upon the parties. If the Commission determines that the charge fails to state a valid claim for relief under title VII, or that there is not reasonable cause to believe that a charge is true, the Commission shall dismiss the charge. Where, however, the Commission determines that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring, it shall endeavor to eliminate such practice by informal methods of conference, conciliation, and persuasion.

(b) The Commission shall promptly notify the charging party, the respondent and, in the case of a charge filed under § 1601.10, the person aggrieved, if known, of its determination under paragraph (a) of this section. The Commission's determination is final when issued; therefore, requests for reconsideration will not be granted. The Commission may, however, on its own motion, reconsider its determination at any time and, when it does so, the Commission shall promptly notify the charging party, the respondent and, in the case of a charge filed under § 1601.10, the person aggrieved, if known, of its intention to reconsider its determination, and of its subsequent decision on reconsideration.

(c) Where a member of the Commisison has filed a charge under § 1601.10, he shall not participate in the determination in that case.

(d) Notwithstanding any other provision in this part, where the allegations of a charge on its face, or as amplified by the statements of the charging party to the Commission, disclose that the charge is not timely filed or otherwise fails to state a valid claim for relief under title VII, the Commission may dismiss the case without further action, but it shall notify the charging party, and the respondent if the charge has been served, in writing of its disposition of the case and the reasons therefor. The Commission's dismissal of a charge becomes final when issued; therefore, requests for reconsideration will not be granted. The Commission may, however, on its own motion, reconsider such dismissal at any time and, if it does so, the Commission shall promptly notify the charging party, and the respondent if the charge has been served, of its decision.

[35 F.R. 3163, Feb. 19, 1970]

§ 1601.20 Confidentiality.

Neither a charge, nor information obtained pursuant to section 709(a) of Title VII, nor information obtained from records required to be kept or reports required to be filed pursuant to sections 709 (c) and (d) of said Title, shall be made matters of public information by the Commission prior to the institution under the title of a court proceeding involving such charge or information. This provision does not apply to such earlier disclosures to the charging party, the respondent, witnesses, and representatives of interested Federal, State, and local agencies as may be appropriate or necessary to the carrying out of the Commission's functions under the title, nor to the publication of data derived from such information in a form which does not reveal the identity of the charging party, respondent, or person supplying the information.

Procedure to Rectify Unlawful Employment Practices

§ 1601.22 Conciliation; settlements.

In conciliating a case in which a determination of reasonable cause has been made, the Commission shall attempt to achieve a just resolution and to obtain assurances that the respondent will eliminate the unlawful employment practice and take appropriate affirmative action. Disposition of a case pursuant to this section shall be in writing, and notice thereof shall be sent to the parties. Proof of compliance with Title VII will be obtained by the Commission before the case is closed.

[31 F.R. 10270, July 29, 1966]

§ 1601.23 Refusal of respondent to cooperate.

Should a respondent fail or refuse to confer with the Commission or its representative, or fail or refuse to make a good faith effort to resolve any dispute, the Commission may terminate its efforts to conciliate the dispute. In such event, the respondent shall be notified promptly, in writing, that such efforts have been unsuccessful and will not be resumed except upon the respondent's written request within the time specified in such notice.

§ 1601.24 Confidentiality of endeavors.

Nothing that is said or done during and as a part of the endeavors of the Commission to eliminate unlawful employment practices by informal methods of conference, conciliation, and persuasion may be made a matter of public information by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding.

Procedure After Failure of Conciliation

§ 1601.25 Notice to respondent and aggrieved person.

In any instance in which the Commission is unable to obtain voluntary compliance as provided by Title VII it shall so notify the respondent and the aggrieved person or persons. Notification to an aggrieved person shall include:

(a) A copy of the charge.

(b) A copy of the Commission's determination of reasonable cause.

(c) Advice concerning his right to proceed in court under section 706(e) or Title VII.

§ 1601.25a Processing of cases; when notice issues under § 1601.25.

(a) The time for processing all cases is extended to sixty (60) days except insofar as proceedings may be earlier terminated pursuant to § 1601.19d.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commission shall not issue a notice pursuant to § 1601.25 prior to a determination under § 1601.19d, or where reasonable cause has been found, prior to efforts at conciliation with respondent, except as provided in paragraph (c) of this section.

(c) At any time after the expiration of sixty (60) days from the date of the filing of a charge, or upon dismissal of the charge at any stage of the proceedings, or upon the expiration of the time for filing objections to dismissal by the Field Director pursuant to § 1601.19, the charging party or the respondent may demand in writing that a notice issue pursuant to § 1601.25, and the Commission shall promptly issue such notice, with copies to all parties.

(d) Issuance of notice pursuant to paragraph (c) of this section shall suspend further Commission proceedings unless the Field Director determines that it is in the public interest to continue such proceedings, or unless, within twenty (20) days after receipt of such notice, a party requests the Field Director, in writing, to continue to process the case.

[35 F.R. 3164, Feb. 19, 1970; 35 F.R. 1011, June 19, 1970]

§ 1601.25b Issuance of notice in cases involving Commissioner Charges

(a) Section 706(e) of the Civil Rights Act of 1964, provides that in cases involving Commissioner Charges when the Commission has been unable to secure voluntary compliance with the Act, the Commission shall notify any person whom the charges alleged was aggrieved by the alleged unlawful employment practices of his right to sue in a Federal District Court. To come within the purview of this section an individual may either be specifically designated by name or be among the class of persons aggrieved by the practices complained of in the charge. Accordingly, in cases involving Commissioner Charges, the Commission will follow the procedures outlined in paragraphs (b), (c), (d), and (e) of this section.

(b) The Commission shall not issue any Notice-of-Right-to-Sue prior to a determination on the merits, except as provided in paragraph (d) of this section. Furthermore, where the Commission has found reasonable cause, the Commission shall not issue such notice prior to failure of the Commission's conciliation efforts, except as provided in paragraph (d) of this section.

(c) Where the Commission has found reasonable cause but has been unable to obtain voluntary compliance with title VII, the Commission shall so notify the respondent and all identifiable members of the class aggrieved by the practices complained of in the charge. Notification to aggrieved members of the class shall include the following:

(1) A copy of the charge;

(2) A copy of the Commission decision;

(3) Advice concerning his right to proceed in court under section 706(e) of title VII.

(d) At any time after 60 days have expired since the charge was filed, any member of the class aggrieved by the practices alleged in the charge, or any respondent named in the charge, may demand in writing that a Notice-of-Right-to-Sue issue, and the Commission shall promptly issue such Notice-of-Right-to-Sue, pursuant to paragraph (c) of this section.

(e) Issuance of a notice pursuant to paragraph (d) of this section does not terminate the Commission's jurisdiction of the proceeding and the case shall continue to be processed.

[35 F.R. 10006, June 18, 1970]

§ 1601.26 Referral to the Attorney General.

If the Commission is unable to obtain voluntary compliance, it may inform the Attorney General of appropriate facts in the case with recommendations for intervention by him in a civil action previously instituted by an aggrieved party under section 706 of Title VII, and the Commission may make public the fact that it has so recommended to the Attorney General. The Commission may further recommend to the Attorney General that he institute a civil action under section 707 of said title involving a pattern or practice of resistance to the full enjoyment of any of the rights secured by said title.

Subpart C—Notices to Employees, Applicants for Employment and Union Members

§ 1601.27 Notices to be posted.

(a) Every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employ-

ment, members, and trainees are customarily posted the following notice:

Equal Employment Opportunity is the Law.

Discrimination is prohibited by the Civil Rights Act of 1964 and by Executive Order Number 11246.

Title VII of the Civil Rights Act of 1964—*Administered by* the Equal Employment Opportunity Commission prohibits discrimination because of race, color, religion, sex or national origin by employers with 75 or more employees, by labor organizations with a hiring hall or 75 or more members, by employment agencies, and by Joint Labor-Management Committees for Apprenticeship or Training. After July 1, 1967, employers and labor organizations with 50 or more employees or members will be covered; after July 1, 1968, those with 25 or more will be covered.

Any person who believes he or she has been discriminated against should contact the Equal Employment Opportunity Commission, 1800 G Street NW., Washington, D.C. 20506.

Executive Order Number 11246—*Administered by* the Office of Federal Contract Compliance prohibits discrimination because of race, color, creed or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

By all Federal Government contractors and subcontractors, and by contractors performing work under a federally assisted construction contract, regardless of the number of employees in either case.

Any person who believes he or she has been discriminated against should contact the Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210.

(b) Copies of such notice may be obtained on request from the Commission.

(c) Section 711(b) of Title VII makes failure to comply with this section punishable by a fine of not more than $100 for each separate offense.

[31 F.R. 9004, June 30, 1966]

Subpart D—Interpretations and opinions by the Commission

§ 1601.28 Request for interpretation or opinion; who may file.

Any interested person desiring a written interpretation or opinion from the Commission may make a request therefor.

§ 1601.29 Contents of request; where to file.

A request for an "opinion letter" shall be in writing, signed by the person making the request, addressed to the Chairman, Equal Employment Opportunity Commission, Washington, D.C., and shall contain:

(a) The names and addresses of the person making the request and of other interested persons.

(b) A statement of all known relevant facts.

(c) A statement of reasons why the interpretation or opinion should be issued.

§ 1601.30—Issuance of interpretation or opinion.

Only (a) a letter entitled "opinion letter" and signed by the General Counsel on behalf of the Commission or (b) matter published and so designated in the FEDERAL REGISTER may be considered a "written interpretation or opinion of the Commission" within the meaning of section 713 of Title VII.

Subpart E—Construction of rules

§ 1601.31 Rules to be liberally construed.

The rules and regulations in this part shall be liberally construed to effectuate the purpose and provisions of Title VII.

Subpart F—Issuance, amendment, or repeal of rules

§ 1601.32 Petitions.

Any interested person may petition the Commission, in writing, for the issuance, amendment, or repeal of a rule or regulation. An original and 12 legibly duplicated (not carbon) copies of such petition shall be filed with the Commission in Washington, D.C., and shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

§ 1601.33 Action on petition.

Upon the filing of such petition, the Commission shall consider the same and may thereupon either grant or deny the petition in whole or in part, conduct an appropriate proceeding thereon, or make other disposition of the petition. Should the petition be denied in whole or in part, prompt notice shall be given of the denial, accompanied by a simple statement of the grounds unless the denial be self-explanatory.

PART 1602—RECORDS AND REPORTS

AUTHORITY: The provisions of this Part 1602 issued under sections 709, 713, 78 Stat. 263, 265; 42 U.S.C. 2000e–8, 2000e–12.

§ 1602.1 General.

(a) Section 709 of Title VII requires the Commission to establish regulations pursuant to which employers labor organizations, joint labor-management committees, and employment agencies subject to said Title shall make and preserve certain records and shall furnish specified information to aid in the administration and enforcement of the Title.

(b) This Part 1602 sets forth the procedure to be used by the Commission in establishing, amending and revoking such regulations, and by future amendments will set forth regulations so established.

[30 F.R. 8409, July 1, 1965]

Subpart A—Procedure

SOURCE: The provisions of this Subpart A appear at 30 F.R. 8409, July 1, 1965; 31 F.R. 2832, Feb. 17, 1966, unless otherwise noted.

§ 1602.2 Initiating a proceeding.

The Commission, on its own motion, or upon the petition of an interested person submitted as provided in § 1601.32 of this chapter, may initiate a proceeding to make, amend, or revoke regulations requiring persons subject to Title VII to make or keep records or to provide information in accordance with section 709.

§ 1602.3 Notice of a proceeding.

(a) Notice of the institution of a proceeding shall be published in the FEDERAL REGISTER. Such notice shall (1) refer to section 709 as authority for the proposed regulations and direct attention to this Part 1602 governing the procedure; (2) contain the terms or substance of the proposed regulations; and (3) invite interested persons (i) to participate in a public hearing to be held with respect to the proposed regulations, specifying the time and place that such hearing shall commence and information that must be submitted earlier by persons desiring to participate, and (ii) to submit pertinent written data, views, and argument by means other than participation in a hearing, specifying the time and place for such submission.

(b) The Commission may also give additional notice of the initiation of a proceeding as it may deem necessary or appropriate.

§ 1602.4 Procedure governing public hearings.

A hearing under § 1602.3 shall be conducted by a member of the Commission or its designated representative who shall have authority to administer oaths and affirmations. Such hearing shall be stenographically reported, and transcripts shall be made available to interested persons upon such terms as the Commission may provide. Matter which the Commission may wish to be made a part of the record shall be presented at the hearing by an attorney designated by the Commission who may call and examine witnesses, and cross-examine witnesses called by other persons. Subject to such limitations as the presiding officer may impose to limit the record to pertinent matter, every interested person shall be afforded the opportunity to offer evidence through witnesses, to cross-examine witnesses called by others, and to present argument. The presiding officer shall regulate the course of the hearing and shall dispose of procedural requests, objections and comparable matter. The presiding officer shall also have power to call and examine witnesses, to govern the control of the record, to exclude persons from the hearing room for good cause, and, upon the conclusion of the testimony, to keep the hearing open for a stated reasonable time in order to receive written proposals and supporting reasons.

§ 1602.5 Decision.

After the close of the hearing and the receipt of materials under § 1602.3(a)(3)(ii), the Commission shall carefully consider all matters presented to it and any other matter available, and shall thereafter make a final decision adopting, rejecting, or modifying the proposed regulation. The decision shall be expressed in a document signed by the Chairman of the Commission on behalf of the Commission and shall be published in

the Federal Register as an amendment to this Part 1602.

§ 1602.6 Effective date of record keeping and reporting rules.

the Commission relieves a restriction, it shall provide an effective date for the change of not less than 30 days after the date of its publication in the Federal Register unless a shorter time is provided for good cause found and expressed in the document.

Subpart—Employer information report

SOURCE: The provisions of this Subpart B appear at 31 F.R. 2833, Feb. 17, 1966, unless otherwise noted.

§ 1602.7 Requirement for filing of report.

On or before March 31, 1967, and annually thereafter, every employer subject to Title VII of the Civil Rights Act of 1964 which meets the 100-employee test set forth in section 701(b) thereof shall file with the Commission or its delegate executed copies of Standard Form 100, as revised (otherwise known as "Employer Information Report EEO–1") in conformity with the directions set forth in the form and accompanying instructions. Notwithstanding the provisions of § 1602.14, every such employer shall retain at all times at each reporting unit, or at company or divisional headquarters, a copy of the most recent report filed for each such unit and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710(a) of Title VII. Appropriate copies of Standard Form 100 in blank will be supplied to every employer known to the Commission to be subject to the reporting requirements, but it is the responsibility of all such employers to obtain necessary supplies of same prior to the filing date from the Joint Reporting Committee, Federal Depot, 1201 East 10th Street, Jeffersonville, Ind. 47130.

[31 F.R. 16780, Dec. 31, 1966]

§ 1602.8 Penalty for making of willfully false statements on report.

The making of willfully false statements on Report EEO–1 is a violation of the United States Code, Title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.9 Commission's remedy for employer's failure to file report.

Any employer failing or refusing to file Report EEO–1 when required to do so may be compelled to file by order of a U.S. District Court, upon application of the Commission.

§ 1602.10 Employer's exemption from reporting requirements.

If an employer is engaged in activities for which the reporting unit criteria described in section 4(c) of the Instructions are not readily adaptable, special reporting procedures may be required. In such case, the employer should so advise by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to the date on which the report is due. If it is claimed the preparation or filing of the report would create undue hardship, the employer may apply to the Commission for an exemption from the requirements set forth in this part.

§ 1602.11 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Employer Information Report EEO–1, about the employment practices of individual employers or groups of employers whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of Title VII. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of Title VII and as otherwise prescribed by law.

Subpart C—Recordkeeping by employers

SOURCE: The provisions of this Subpart C appear at 31 F.R. 2833, Feb. 17, 1966, unless otherwise noted.

§ 1602.12 Records to be made or kept.

The Commission has not adopted any requirement, generally applicable to employers, that records be made or kept. It reserves the right to impose record-keeping requirements upon individual employers or groups of employers subject to its jurisdiction whenever, in its judgment, such records (a) are necessary for the effective operation of the EEO–1 reporting system or of any special or supplemental reporting system as described above; or (b) are further required to accomplish the purposes of Title VII. Such record-keeping requirements will be adopted in accordance with the procedures referred to in section 709 (c), and as otherwise prescribed by law.

§ 1602.13 Records as to racial or ethnic identity of employees.

Employers may acquire the information necessary for completion of Items 5 and 6 of Report EEO–1 either by visual surveys of the work force, or at their option, by the maintenance of post-employment records as to the identity of employees where the same is permitted by State law. In the latter case, however, the Commission recommends the maintenance of a permanent record as to the racial or ethnic identity of an individual for purpose of completing the report form only where the employer keeps such records separately from the employee's basic personnel form or other records available to those responsible for personnel decisions, e.g., as part of an automatic data processing system in the payroll department.

§ 1602.14 Preservation of records made or kept.

(a) Unless the employer is subject to a State or local fair employment practice law or regulation governing the preservation of records and containing requirements inconsistent with those stated in this part, any personnel or employment record made or kept by an employer (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the employer for a period of 6 months from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 6 months from the date of termination. Where a charge of discrimination has been filed, or an action brought by the Attorney General, against an employer under Title VII, the respondent employer shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action. The term "personnel records relevant to the charge," for example, would include personnel or employment records relating to the charging party and to all other employees holding positions similar to that held or sought by the charging party; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the charging party applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a charging party may bring an action in a U.S. District Court or, where an action is brought against an employer either by a charging party or by the Attorney General, the date on which such litigation is terminated.

(b) The requirements of this section shall not apply to application forms and other pre-employment records of applicants for positions known to applicants to be of a temporary or seasonal nature.

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Subpart D—Apprenticeship information report

SOURCE: The provisions of this Subpart D appear at 32 F.R. 10650, July 20, 1967, unless otherwise noted.

§ 1602.15 Requirement for filing and preserving copy of report.

On or before September 30, 1967, and annually thereafter, certain joint labor-management committees subject to Title VII of the Civil Rights Act of 1964 which control apprenticeship programs shall file with the Commission, or its delegate, executed copies of Apprenticeship Information Report EEO–2 in conformity with the directions set forth in the form and accompanying instructions. The committees covered by this regulation are those which (a) have five or more apprentices enrolled in the program at any time during August and September of the reporting year and (b) represent at least one employer sponsor and at least one labor organization sponsor which are themselves subject to Title VII. Every such committee shall retain at all times among the records maintained in the ordinary course of its affairs a copy of the most recent report filed, and shall make the same available if requested by an officer, agent or employee of the Commission under the authority of section 710(a) of Title VII. It is the responsibility of all such committees to obtain from the Commission or its delegate necessary supplies of the form.

§ 1602.16 Penalty for making of willfully false statements on report.

The making of willfully false statements on Report EEO–2 is a violation of the U.S. Code, Title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.17 Commission's remedy for failure to file report.

Any person failing or refusing to file Report EEO–2 when required to do so may be compelled to file by order of a U.S. District Court, upon application of the Commission, under authority of section 710(b) of Title VII.

§ 1602.18 Exemption from reporting requirements.

If it is claimed the preparation or filing of Report EEO–2 would create undue hardship, the committee may apply to the Commission for an exemption from the requirements set forth in this part.

§ 1602.19 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as Report EEO–2, about apprenticeship procedures of joint labor-management committees, employers, and labor organizations whenever, in its judgment, special or supplemental reports are necessary to accomplish the purpose of Title VII. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of Title VII and as otherwise prescribed by law.

Subpart E—Apprenticeship Recordkeeping

SOURCE: The provisions of this Subpart E appear at 32 F.R. 10650, July 20, 1967, unless otherwise noted.

§ 1602.20 Records to be made or kept.

(a) Every person required to file Report EEO–2 shall make or keep such records as are necessary for its completion under the conditions and circumstances set forth in the

instructions accompanying the report, which are specifically incorporated herein by reference and have the same force and effect as other sections of this part.

(b) Every employer, labor organization, and joint labor-management committee subject to Title VII which controls an apprenticeship program (regardless of any joint or individual obligation to file a report) shall, beginning August 1, 1967, maintain a list in chronological order containing the names and addresses of all persons who have applied to participate in the apprenticeship program, including the dates on which such applications were received. (See section 709(c), Title VII, Civil Rights Act of 1964). Such list shall contain a notation of the sex of the applicant and of the applicant's identification as "Negro," "Spanish Surnamed American," "Oriental," "American Indian," or "Other." The methods of making such identification are set forth in the instructions accompanying Report EEO–2, section 7. The words "applied," "applicant" and "application" as used in this section refer to situations involving actual applications only. An applicant is considered to be a person who files a formal application, or in some informal way indicates a specific intention to be considered for admission to the apprenticeship program. A person who casually appears to make an informal inquiry about the program, or about apprenticeship in general, is not considered to be an applicant. The term "apprenticeship program" as used herein refers to programs described in section 8 of the instructions accompanying Report EEO–2.

(c) In lieu of maintaining the chronological list referred to in § 1602.20(b), persons required to compile the list may maintain on file written applications for participation in the apprenticeship program, provided that the application form contains a notation of the date the form was received, the address of the applicant, and a notation of the sex, and the race, color, or national origin of the applicant as described above.

[32 F.R. 10650, July 20, 1967 as amended by 33 F.R. 282, Jan. 9, 1968]

§ 1602.21 Preservation of records made or kept.

(a) Notwithstanding the provisions of section 1602.14, every person subject to § 1602.20 (b) or (c) shall preserve the list of applicants or application forms, as the case may be, for a period of 2 years from the date the application was received, except that in those instances where an annual report is required by the Commission calling for statistics as to the sex, and the race, color, or national origin of apprentices, the person required to file the report shall preserve the list and forms for a period of 2 years or the period of a successful applicant's apprenticeship, whichever is longer. Persons required to file Report EEO–2, or other reports calling for information about the operation of an apprenticeship program similar to that required on Report EEO–2, shall preserve any other record made solely for the purpose of completing such reports for a period of 1 year from the due date thereof.

(b) Other records: Except to the extent inconsistent with the law or regulation of any State or local fair employment practices agency, or of any other Federal or State agency involved in the enforcement of an antidiscrimination program in apprenticeship, other records relating to apprenticeship made or kept by a person required to file Report EEO–2, including but not necessarily limited to test papers completed by applicants for apprenticeship and records of interviews with applicants, shall be kept for a period of 2 years from the date of the making of the record. Where a charge of discrimination has been filed, or an action brought by the Attorney General under Title VII, the respondent shall preserve all records relevant to the charge or action until final disposition of the charge or the action. The term "records relevant to the charge," for example, would include applications, forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the charging party applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a charging party may bring an action in a U.S. District Court or, where an action is brought either by a charging party or by the Attorney General, the date on which such litigation is terminated.

Subpart F—Local union equal employment opportunity report

SOURCE: The provisions of this Subpart F appear at 32 F.R. 10651, July 20, 1967, unless otherwise noted.

§ 1602.22 Requirements for filing and preserving copy of report.

On or before November 30, 1967, and annually thereafter, every labor organization subject to Title VII of the Civil Rights Act of 1964 shall file with the Commission or its delegate an executed copy of Local Union Equal Employment Opportunity Report EEO–3 in conformity with the directions set forth in the form and accompanying instructions, provided that the labor organization has 100 or more members at any time during the 12 months preceding the due date of the report, and is a "local union" (as that term is commonly understood) or an independent or unaffiliated union. Labor organizations required to report are those which perform, in a specific jurisdiction, the functions ordinarily performed by a local union, whether or not they are so designated. Every local union, or a labor organization acting in its behalf, shall retain at all times among the records maintained in the ordinary course of its affairs a copy of the most recent report filed, and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710(a) of Title VII. It is the responsibility of all persons required to file to obtain from the Commission or its delegate necessary supplies of the form.

§ 1602.23 Penalty for making of willfully false statements on reports.

The making of willfully false statements on Report EEO–3 is a violation of the United States Code, Title 18, section 1001, and is punishable by fine or imprisonment as set forth herein.

§ 1602.24 Commission's remedy for failure to file report.

Any person failing or refusing to file Report EEO–3 when required to do so may be compelled to file by order of a U.S. District Court, upon application of the Commission, under authority of section 710(b) of Title VII.

§ 1602.25 Exemption from reporting requirements.

If it is claimed that the preparation or filing of Report EEO–3 would create undue hardship, the labor organization may apply to the Commission for an exemption from the requirements set forth in this part.

§ 1602.26 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as Report EEO–3, about the membership or referral practices or other procedures of labor organizations, whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of Title VII. Any system for requirement of such reports will be established in accordance with the procedures referred to in section 709(c), and as otherwise prescribed by law.

Subpart G—Recordkeeping by labor organizations

SOURCE: The provisions of this Subpart G appear at 32 F.R. 10651, July 20, 1967, unless otherwise noted.

§ 1602.27 Records to be made or kept.

Those portions of Report EEO–3 calling for information about union policies and practices and for the compilation of statistics on the race, color, national origin, and sex of members, persons referred, and apprentices, are deemed to be "records" within the meaning of section 709(c), Title VII, Civil Rights Act of 1964. Every local, independent, or unaffiliated union with 100 or more members (or any agent acting in its behalf, if the agent has responsibility for referral of persons for employment) shall make these records or such other records as are necessary for the completion of Report EEO–3 under the circumstances and conditions set forth in the instructions accompanying it, which are specifically incorporated herein by reference and have the same force and effect as other sections of this part.

§ 1602.28 Preservation of records made or kept.

(a) All records made by a labor organization or its agent solely for the purpose of completing Report EEO–3 shall be preserved for a period of 1 year from the due date of the report for which they were compiled. Unless subject to a State or local fair employment practices law or regulation governing the preservation of records inconsistent with those requirements stated in this part, any labor organization identified as a "referral union" in the instructions accompanying Report EEO–3, or agent thereof, shall preserve other membership or referral records (including applications for same) made or kept by it for a period of 6 months from the date of the making of the record. Where a charge of discrimination has been filed, or an action brought by the Attorney General, against a labor organization under Title VII, the respondent labor organization shall preserve all records relevant to the charge or acting until final disposition of the charge or the action. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a charging party may bring an action in a U.S. District Court, or, where an action is brought against a labor organization either by a charging party or by the Attorney General, the date on which such litigation is terminated.

(b) Nothing herein shall relieve any labor organization covered by Title VII of the obligations set forth in Subpart E, §§ 1602.20 and 1602.21, relating to the establishment and maintenance of a list of applicants wishing to participate in an apprenticeship program controlled by it.

Subpart H—Records and inquiries as to race, color, national origin, or sex

§ 1602.29 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, Subparts D through G, supersede any provisions of State or local law which may conflict with them. Any State or local laws prohibiting inquiries and recordkeeping with respect to race, color, national origin, or sex do not apply to inquiries required to be made under these regulations and under the instructions accompanying Reports EEO–2 and EEO–3.

[32 F.R. 10652, July 20, 1967]

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Sec.

1604.1 Sex as a bona fide occupational qualification.

AUTHORITY: The provisions of this Part 1604 are issued pursuant to Sec. 713(b), 78 Stat. 265; 42 U.S.C. 2000e–12.

SOURCE: The provisons of this Part 1604 appear at 30 F.R. 14927, Dec. 2, 1965, unless otherwise noted.

§ 1604.1 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of co-workers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(iv) The fact that the employer may have to provide separate facilities for a person of the opposite sex will not justify discrimination under the bona fide occupational qualification exception unless the expense would be clearly unreasonable.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b)(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, or for more than a specified number of hours per day or per week.

(2) The Commission believes that such State laws and regulations, although originally promulgated for the purpose of protecting females, have ceased to be relevant to our technology or to the expanding role of the female worker in our economy. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and tend to discriminate rather than protect. Accordingly, the Commission has concluded that such laws and regulations conflict with Title VII of the Civil Rights Act of 1964 and will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

[30 F.R. 14927, Dec. 2, 1965, as amended at 34 F.R. 13368, Aug. 19, 1969]

§ 1604.2 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is pronibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

§ 1604.3 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimnation based on sex prohibited by Title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of Section 703(e)(1) of Title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

§ 1604.4 Job opportunities advertising.

It is a violation of Title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

[33 F.R. 11539, Aug. 14, 1968]

§ 1604.5 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

§ 1604.6 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male ------, Female ------"; or "Mr., Mrs., Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

§ 1604.7 Relationship of Title VII to the Equal Pay Act.

(a) Title VII requires that its provisions be harmonized with the Equal Pay Act (section 6(d) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(d)) in order to avoid conflicting interpretations or requirements with respect to situations to which both statutes are applicable. Accordingly, the Commission interprets section 703(h) to mean that the standards of "equal pay for equal work" set forth in the Equal Pay Act for determining what is unlawful discrimination in compensation are applicable to Title VII. However, it is the judgment of the Commission that the employee coverage of the prohibition against discrimination in compensation because of sex is co-extensive with that of the other prohibitions in section 703, and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) Accordingly, the Commission will make applicable to equal pay complaints filed under Title VII the relevant interpretations of the Administrator, Wage and Hour Division, Department of Labor. These interpretations are found in 29 Code of Federal Regulations, Part 800.119–800.163. Relevant opinions of the Administrator interpreting "the equal pay for equal work standard" will also be adopted by the Commission.

(c) The Commission will consult with the Administrator before issuing an opinion on any matter covered by both Title VII and the Equal Pay Act.

§ 1604.31 Pension and retirement plans.

(a) A difference in optional or compulsory retirement ages based on sex violates Title VII.

(b) Other differences based on sex, such as differences in benefits for survivors, will be decided by the Commission by the issuance of Commission decisions in cases raising such issues.

[33 F.R. 3344, Feb. 24, 1968]

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

§ 1605.1 Observation of the Sabbath and other religious holidays.

(a) Several complaints filed with the Commission have raised the question whether it is discrimination on account of religion to discharge or refuse to hire employees who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days.

(b) The Commission believes that the duty not to discriminate on religious grounds, required by section 703(a)(1) of the Civil Rights Act of 1964, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs

of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer.

(c) Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable.

(d) The Commission will review each case on an individual basis in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the American people.

(Sec. 713(b), 78 Stat. 265; 42 U.S.C. 2000–12)
[32 F.R. 10298, July 13, 1967]

PART 1606—GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN

§ 1606.1 Guidelines on discrimination because of national origin.

(a) The Commission is aware of the widespread practices of discrimination on the basis of national origin, and intends to apply the full force of law to eliminate such discrimination. The bona fide occupational qualification exception as it pertains to national origin cases shall be strictly construed.

(b) Title VII is intended to eliminate covert as well as the overt practices of discrimination, and the Commission will, therefore, examine with particular concern cases where persons within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations. Examples of cases of this character which have come to the attention of the Commission include: The use of tests in the English language where the individual tested came from circumstances where English was not that person's first language or mother tongue, and where English language skill is not a requirement of the work to be performed; denial of equal opportunity to persons married to or associated with persons of a specific national origin; denial of equal opportunity because of membership in lawful organizations identified with or seeking to promote the interests of national groups; denial of equal opportunity because of attendance at schools or churches commonly utilized by persons of a given national origin; denial of equal opportunity because their name or that of their spouse reflects a certain national origin, and denial of equal opportunity to persons who as a class of persons tend to fall outside national norms for height and weight where such height and weight specifications are not necessary for the performance of the work involved.

(c) Title VII of the Civil Rights Act of 1964 protects all individuals, both citizen and noncitizens, domiciled or residing in the United States, against discrimination on the basis of race, color, religion, sex, or national origin.

(d) Because of discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of his citizenship, except that it is not an unlawful employment practice for an employer, pursuant to section 703(g), to refuse to employ any person who does not fulfill the requirements imposed in the interests of national security pursuant to any statute of the United States or any Executive order of the President respecting the particular position or the particular premises in question.

(e) In addition, some States have enacted laws prohibiting the employment of noncitizens. For the reasons stated above such laws are in conflict with and are, therefore, superseded by Title VII of the Civil Rights Act of 1964.

(Sec. 713, 78 Stat. 265; 42 U.S.C. 2000e–12)
[35 F.R. 421, Jan. 13, 1970]

PART 1607—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Sec.
1607.1 Statement of purpose.
1607.2 "Test" defined.
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1607.4 Evidence of validity.
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1607.10 Employment agencies and employment services.
1607.11 Disparate treatment.
1607.12 Retesting.
1607.13 Other selection techniques.
1607.14. Affirmative action.

AUTHORITY: The provisions of this Part 1607 issued under sec. 713, 78 Stat. 265; 42 U.S.C. 2000e–12.

SOURCE: The provisions of this Part 1607 appear at 35 F.R. 12333, Aug. 1, 1970, unless otherwise noted.

§ 1607.1 Statement of purpose.

(a) The guidelines in this part are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by title VII. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may significantly aid in the development and maintenance of an efficient work force and, indeed, aid in the utilization and conservation of human resources generally.

(b) An examination of charges of discrimination filed with the Commission and an evaluation of the results of the Commission's compliance activities has revealed a decided increase in total test usage and a marked increase in doubtful testing practices which, based on our experience, tend to have discriminatory effects. In many cases, persons have come to rely almost exclusively on tests as the basis for making the decision to hire, transfer, promote, grant membership, train, refer or retain, with the result that candidates are selected or rejected on the basis of a single test score. Where tests are so used, minority candidates frequently experience disproportionately high rates of rejection by failing to attain score levels that have been established as minimum standards for qualification.

It has also become clear that in many instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance. Where evidence in support of presumed relationships between test performance and job behavior is lacking, the possibility of discrimination in the application of test results must be recognized. A test lacking demonstrated validity (i.e., having no known significant relationship to job behavior) and yielding lower scores for classes protected by title VII may result in the rejection of many who have necessary qualifications for successful work performance.

(c) The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their selection procedures conform with the obligations contained in title VII of the Civil Rights Act of 1964. Section 703 of title VII places an affirmative obligation upon employers, labor unions, and employment agencies, as defined in section 701 of the Act, not to discriminate because of race, color, religion, sex, or national origin. Subsection (h) of section 703 allows such persons "* * * to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

§ 1607.2 "Test" defined.

For the purpose of the guidelines in this part, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

§ 1607.3 Discrimination defined.

The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility as hereinafter described, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

§ 1607.4 Evidence of validity.

(a) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate § 1607.3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(b) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly auto-

matic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of a performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: *Provided*, That no significant differences exist between units, jobs, and applicant populations.

§ 1607.5 Minimum standards for validation.

(a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street NW., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity.

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and/or are not available through normal commercial channels must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See § 1607.9). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

(i) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when portionately few job vacancies are available;

(ii) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

(iii) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

§ 1607.6 Presentation of validity evidence.

The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See § 1607.5(c) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

§ 1607.7 Use of other validity studies.

In cases where the validity of a test cannot be determined pursuant to § 1607.4 and § 1607.5 (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when; (a) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and (b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (a) and (b) of this section.

§ 1607.8 Assumption of validity.

(a) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

(b) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

§ 1607.9 Continued use of tests.

Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: *Provided:* (a) The person can cite substantial evidence of validity as described in § 1607.7 (a) and (b); and (b) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected

also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

§ 1607.10 Employment agencies and employment services.

(a) An employment service, including private employment agencies, State employment agencies, and the U.S. Training and Employment Service, as defined in section 701(c), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(c) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity (see § 1.607.8(a)). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in § 1607.7.

§ 1607.11 Disparate treatment.

The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon any individual or class protected by title VII where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed uopn a class of individuals protected by title VII who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

§ 1607.12 Retesting.

Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier "failure" candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an intervew or other employment procedure claims more education or experience, that individual should be retested.

§1607.13 Other selection techniques

Selection techniques other than tests, as defined in § 1607.2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in §§ 1607.4 and 1607.5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

§ 1607.14 Affirmative action.

Nothing in these guidelines shall be interpreted as diminishing a person's obligation under both title VII and Executive Order 11246 as amended by Executive Order 11375 to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by title VII.

PART 1610—AVAILABILITY OF RECORDS

Subpart A—Production or disclosure under 5 U.S.C. 552(a)

Sec.

Subpart B—Production in response to subpenas or demands of courts or other authorities

AUTHORITY: The provisions of this Part 1610 issued under sec. 713(b), 78 Stat. 265; 42 U.S.C. 2000e–12, 5 U.S.C. 552.

SOURCE: The provisions of this Part 1610 appear at 32 F.R. 16261, Nov. 29, 1967, unless otherwise noted.

Subpart A—Production or disclosure under 5 U.S.C. 552(a)

§ 1610.1 Definitions.

As used in this part:

(a) "Act" refers to Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. sec. 2000e et seq.

(b) "Commission" refers to the Equal Employment Opportunity Commission.

§ 1610.2 Statutory requirements.

5 U.S.C. 552(a)(3) requires each Agency, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, to make such records promptly available to any person. 5 U.S.C. 552(b) exempts specified classes of records from all of the public access requirements of 5 U.S.C. 552 and permits them to be withheld.

§ 1610.4 Purpose and scope.

(a) This subpart contains the regulations of the Equal Employment Opportunity Commission implementing 5 U.S.C. 552. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all organizational units within the Commission. Official records of the Commission made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. Officers and employees of the Commission may continue to furnish to the public, informally and without compliance with the procedures prescribed herein, information and records which prior to the enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. To the extent permitted by other laws, the Commission also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

(b) The Attorney General's memorandum on the Public Information Section of the Administrative Procedure Act, which was published in June 1967 and is available from the Superintendent of Documents, should be consulted in considering questions arising under 5 U.S.C. 552.

§ 1610.5 Public reference facilities and current index.

The Commission will maintain in a public reading area located in the Commission's library at 1800 G. Street NW., Washington, D.C. 20506, the materials which are required by 5 U.S.C. 552(a)(2) and 552(a)(4) to be made available for public inspection and copying. The Commission will maintain and make available for public inspection and copying in this public reading area a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required to be indexed by 5 U.S.C. 552(a)(2). The Commission in its discretion may, however, include precedential materials issued, adopted, or promulgated prior to July 4, 1967. The Commission will also maintain on file in this public reading area all material published by the Commission in the FEDERAL REGISTER and currently in effect.

§ 1610.7 Deletion of identifying details.

When making available any records pursuant to § 1610.5, the Commission will delete identifying details to the extent required to prevent a clearly unwarranted invasion of personal privacy. To each record from which identifying details shall have been deleted when the record is made available for public inspection and copying, the Commission will attach a written justification for such deletions. A single such justification shall suffice for deletions made in a group of similar or related records. Subject to necessary or appropriate variations in individual instances, the justification will be in substantially the following form:

"This record is (These records are) made available for public inspection and copying pursuant to 5 U.S.C. sec: 552(a)(2). As authorized therein, to prevent a clearly unwarranted invasion of personal privacy, identifying details have been deleted."

§ 1610.9 Regional offices.

Each office listed below will maintain in a public reading room or area various public materials dealing with the Act and the Commission:

Federal Office Building, Room 7515, 500 Gold Street SW., Albuquerque, N. Mex. 87101. Telephone No.: Area Code 505, 247–0311 Ext. 2061.

1776 Peachtree Street NW., Room 417, Atlanta, Ga. 30309. Telephone No.: Area Code 404, 526-5941.

300 East Eighth Street, Room G 115, Austin, Tex. 78701. Telephone No.: Area Code 512, 476-6411 Ext. 6845.

U.S. Courthouse and Federal Building, Room 1832, 219 South Dearborn Street, Chicago, Ill. 60604. Telephone No.: 312, 353-7550.

Engineers' Building, Room 402, 1365 Ontario Street, Cleveland, Ohio 44113. Telephone No.: 216, 522-4784.

911 Walnut Street, Room 305, Kansas City, Mo. 64106. Telephone No.: Area Code 816, 374-5773.

Federal Office Building, Room 7730, 300 North Los Angeles Street, Los Angeles, Calif. 90012. Telephone No.: Area Code 213, 688-3400.

Masonic Temple Building, 333 St. Charles Avenue, New Orleans, La. 70130. Telephone No.: Area Code 504, 527-2721.

346 Broadway, Suite 701, New York, N.Y. 10013. Telephone No.: 212, 264-3642.

Appraisers' Building, Room 126, 630 Sansome Street, San Francisco, Calif. 94111. Telephone No.: Area Code 415, 556-0260.

1016 16th Street NW., Room 104, Washington, D.C. 20036. Telephone No.: Area Code 202, 382-1914.

§ 1610.11 Requests for identifiable records and copies.

(a) A request for inspection or copying of a record of the Commission which is neither published in the FEDERAL REGISTER nor customarily made available and which is not available in the public reading area as described in § 1610.5, may be made in person or by mail to the Office of the General Counsel, 1800 G Street NW., Washington, D.C. 20506. Requests may be presented from 9 a.m. to 5:30 p.m., Mondays through Fridays, with the exception of holidays. Telephone inquiries or requests may be made by calling Washington, D.C. telephone number: Area Code 202, 343-7693. Collect calls will not be accepted.

(b) Charges for processing requests will be made in accordance with the schedule set forth in § 1610.17. Such charges are payable in advance.

(c) Each request shall contain a description of the record requested which is sufficiently specific with respect to names, dates, subject matter, and location, to permit the record to be identified and located. A separate request must be submitted for each record requested.

(d) Except where circumstances require special processing, requests will be processed in the order in which they are received. Efforts will be made to make such records available as promptly as is reasonable under the particular circumstances.

(e) No obligation is undertaken by the Commission to compile or create information or records not already in existence at the time of the request.

(f) Where a requested record cannot be located from the information submitted or is known to have been destroyed or otherwise disposed of, the person making the request will be appropriately notified.

(g) When a requested record has been identified and is available, the person who made the request will be notified as to where and when the record will be available for inspection. Upon payment of the necessary fees, a copy of an available record may be furnished to the requester in person or by mail.

§ 1610.13 Records of other Agencies.

Request for records that originated in another Agency and are in the custody of the Commission, will be referred to that Agency for processing, and the person submitting the request shall be so notified. The decision made by that Agency with respect to such records will be honored by the Commission.

§ 1610.17 Schedule of fees and method of payment for services rendered.

(a) The following specific fees shall be applicable with respect to services rendered to members of the public under this subpart:

(1) Searching for records, per hour or fraction thereof	$3.60
(2) Other facilitative services and index assistance—minimum charge, per hour or fraction thereof	3.60
(3) Copies made by Xerox or otherwise (per page)	.25
(4) Certification of each record as a true copy	.75
(5) Certification of each record as a true copy, under the seal of the Agency	1.00
(6) For each signed statement of negative result of search for record	1.00

(b) When no specific fee has been established for a service, e.g., legal or research assistance, or the request for a service does not fall under one of the above categories due to the amount, size, or type thereof, the Director of Administration is authorized to establish an appropriate fee pursuant to the criteria established in Bureau of the Budget Circular No. A-25, entitled "User Charges."

(c) When a request for identifiable records is made by mail, it should be accompanied by remittance of the total fee chargeable, as well as a self-addressed stamped envelope if special mail services are desired.

(d) Fees must be paid in full prior to issuance of requested copies of records. If uncertainty as to the existence of a record, or as to the number of sheets to be copied or certified precludes remitting the exact fee chargeable with the request, the Agency will inform the interested party of the exact amount required.

(e) Payment shall be in the form of a check, bank draft, money order, or, if personally delivered, may be made in cash. Remittances shall be made payable to the order of the Equal Employment Opportunity Commission. The Agency will assume no responsibility for cash which is lost in the mail.

(f) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(g) No charge will be made for services performed at the request of other governmental agencies or officers thereof acting in their official capacities.

§ 1610.20 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in subsection (b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence, and matters involving personal privacy. The scope of the exemptions is discussed in the Attorney General's memorandum referred to in § 1610.4(b).

(b) Section 706(a) of the Act provides that the Commission shall not make public charges which have been filed. It also provides that (subsequent to the filing of a charge, an investigation, and a finding that there is reasonable cause to believe that the charge is true) nothing said or done during and as a part of the Commission's endeavors to eliminate any alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion may be made public by the Commission without the written consent of the parties; nor may it be used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of section 706(a) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than 1 year.

(c) Section 709 of the Act authorizes the Commission to conduct investigations of charges filed under section 706, engage in cooperative efforts with State and local agencies charged with the administration of State fair employment practices laws, and issue regulations concerning reports and recordkeeping. Subsection (e) of section 709 provides that it shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under section 709 prior to the institution of any proceeding under the Act involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of section 709(e) shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than 1 year. The Commission will, however, make available for inspection and copying some tabulations of aggregate industry, area, and other statistics derived from the Commission's reporting programs authorized by section 709 (c) of the Act, where such tabulations have been previously compiled by the Commission and are available in documentary form, to the extent that such tabulations do not consist of aggregate data from less than three respondents, and do not reveal the identity of an individual or the dominant respondent in a particular industry or area in any manner.

§ 1610.23 Administrative decision and review.

(a) The General Counsel shall grant or deny each request made. The denial of each request shall be in writing and shall contain a simple statement of the reasons for the denial. The decision of the General Counsel shall be final, subject only to review as provided in paragraph (b) of this section.

(b) Review of the decision of the General Counsel may be requested by the person submitting the request within 30 days after the date of the notice advising him of the decision. The 30-day limitation may be waived for good cause. The filing of a request for review by the Commission may be accomplished by mailing to the Chairman, Equal Employment Opportunity Commission, 1800 G Street N.W., Washington, D.C. 20506, by certified mail, a copy of the written denial issued under paragraph (a) of this section and a statement of the circumstances, reasons or arguments advanced for insistence upon disclosure of the originally requested record. The decision of the Commission upon review shall be in writing and shall contain a simple statement of the reasons for the decision. The decision after review will be promptly communicated to the person requesting review, and will constitute the final action of the Commission.

(c) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an initial request made to the General Counsel or on review of a denial by him. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference or appearance arranged with or before the General Counsel or the Commission, as the case may be, or any employee designated by him or it for this purpose.

[32 F.R. 16261, Nov. 29, 1967, as amended at 32 F.R. 16491, Dec. 1, 1967.]

Subpart B—Production in response to subpenas or demands of courts or other authorities

§ 1610.30 Purpose and scope.

This subpart contains the regulations of the Commission concerning procedures to be followed when a subpena, order, or other demand (hereinafter in this subpart referred

to as a "demand") of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the Commission; (b) any information relating to material contained in the files of the Commission; or (c) any information or material acquired by any person while such person was an employee of the Commission as a part of the performance of his official duties or because of his official status.

§ 1610.32 Production prohibited unless approved by the General Counsel.

No employee or former employee of the Commission shall, in response to a demand of a court or other authority, produce any material contained in the files of the Commission or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the prior approval of the General Counsel.

§ 1610.34 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Commission for the production of material or the disclosure of information described in § 1610.30, he shall immediately notify the General Counsel. If possible, the General Counsel shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the General Counsel are received, an attorney designated for that purpose by the Commission shall appear with the employee or former employee under whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the General Counsel. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel.

§ 1610.36 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 1610.34 (b) pending receipt of instructions from the General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

[From the Federal Register, Oct. 27, 1971]

TITLE 29—LABOR: CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1601—PROCEDURAL REGULATIONS

Subpart B—Procedure for the prevention of unlawful employment practices

Confidentiality

By virtue of the authority vested in it by section 713(a) of title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e–12(a), 78 Stat. 265, the Equal Employment Opportunity Commission hereby amends Title 29, Chapter XIV, Subpart B, § 1601.20 of the Code of Federal Regulations.

Because the amendments herein adopted are procedural in nature, the provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. section 1003, for public notice and delay in effective date are inapplicable. This amendment shall become effective upon publication in the FEDERAL REGISTER.

Section 1601.20 is revised to read as follows:

§ 1601.20 Confidentiality.

Neither a charge, nor information obtained pursuant to section 709(a) of title VII, nor information obtained from records required to be kept or reports required to be filed pursuant to sections 709 (c) and (d) of said title, shall be made matters of public information by the Commission prior to the institution of any proceedings under this title involving such charge or information. This provision does not apply to such earlier disclosures to the charging party, the respondent, witnesses, and representatives of interested Federal, State, and local agencies as may be appropriate or necessary to the carrying out of the Commission's functions under the title, nor to the publication of data derived from such information in a form which does not reveal the identity of the charging party, respondent, or person supplying the information.

(Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e–12(a))

This amendment is effective upon publication in the FEDERAL REGISTER (10–27–71).

Signed at Washington, D.C., this 18th day of October 1971.

[SEAL] WILLIAM H. BROWN III,
Chairman.

[FR Doc. 71–15527 Filed 10–26–71; 8:46 a.m.]

PART 1610—AVAILABILITY OF RECORDS

Subpart A—Production or disclosure under 5 U.S.C. 552(a)

Fees, Charges, and Methods of Payment

By virtue of the authority vested in it by section 713(a) of title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e–12(a), 78 Stat. 265, the Equal Employment Opportunity Commission hereby amends Title 29, Chapter XIV, Part 1610, Subpart A, by adding § 1610.16, and by amending § 1610.17, of the Code of Federal Regulations.

Because the amendments herein adopted are procedural in nature, the provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. section 1003, for public notice and delay in effective date are inapplicable. These amendments shall be effective upon publication in the FEDERAL REGISTER.

§ 1610.16 User charges, waiver.

It is the policy of the Equal Employment Opportunity Commission to cooperate with charging parties, their counsel, and private agencies working to eliminate employment discrimination. To the extent practicable that policy will be applied under this part so as to permit requests for inspection or copies of records and information to be met without cost to the charging party, attorney, or group making the request. Fees will be charged, however, in the case of requests which are determined by the General Counsel to involve a burden on staff or facilities significantly in excess of that normally accepted by the agency in handling routine requests for information. While the fees charged for services and copying will in no event exceed those as specified in § 1610.17, the Commission reserves the right to limit the number of copies that will be provided of any document or to require that special arrangements for copying be made in the case of records or requests presenting unusual problems of reproduction or handling.

(Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e–12(a).)

§ 1610.17 Schedule of fees and method of payment for services rendered.

(a) Except as provided for in § 1610.16 the following specific fees shall be applicable with respect to services rendered to members of the public under this subpart:

(1) Searching for records, per hour or fraction thereof	$3.60
(2) Other facilities services and index assistance minimum charge	3.60
(3) Copies made by Xerox or otherwise (per page)	0.05
(4) Certification of each record as a true copy	.75
(5) Certification of each record as a true copy, under the seal of the agency	1.00
(6) For each signed statement of negative result of search for record	1.00

(b) When no specific fee has been established for a service, e.g., legal or research assistance, or the request for a service does not fall under one of the above categories due to the amount, size, or type thereof, the Director of Administration is authorized to establish an appropriate fee pursuant to the criteria established in Bureau of the Budget Circular No. A–25, entitled "User Charges."

(c) When a request for identifiable records is made by mail, it should be accompanied by remittance of the total fee chargeable, as well as a self-addressed stamped envelope, if special mail services are desired.

(d) Fees must be paid in full prior to issuance of requested copies of records. If uncertainty as to the existence of a record, or as to the number of sheets to be copied or certified precludes remitting the exact fee chargeable with the request, the agency will inform the interested party of the exact amount required.

(e) Payment shall be in the form of a check, bank draft, money order. Remittances shall be made payable to the order of the Equal Employment Opportunity Commission.

(f) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(g) No charge will be made for services performed at the request of other governmental agencies or officers thereof, acting in their official capacities.

(Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e–12(a)).

This amendment is effective upon publication in the FEDERAL REGISTER (10–27–71).

Signed at Washington, D.C., this 18th day of October 1971.

WILLIAM H. BROWN, III,
Chairman.

FR Doc. 71–15526 Filed 10–26–71; 8:46 am.

[From the Federal Register, Feb. 5, 1971]

TITLE 29—LABOR: CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1601—PROCEDURAL REGULATIONS

Procedure after failure of conciliation

By virtue of the authority vested in it by section 713(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e–12(a), 78 Stat. 265, the Equal Employment Opportunity Commission (hereinafter referred to as the Commission), hereby amends paragraph (c) of § 1601.25a issued February 19, 1970 (35 F.R. 3163), and paragraph (d) of § 1601.25b issued June 18, 1970 (35 F.R. 10005), of the Code of Federal Regulations.

Section 1601.25a(c) states in its pertinent part that, "* * * the charging party or the respondent may demand in writing that a notice issue pursuant to 1601.25."

Section 1601.25b(d) states in its pertinent part that, "* * * any member of the class aggrieved by the practices alleged in the charge or any respondent named in the charge, may demand in writing that a Notice-of-Right-to-Sue issue."

It has been the experience of the Commission that the privileges granted to respondents by these provisions have adversely affected the implementation of the Congressional Policy embodied in title VII, that disputes be settled voluntarily and upon failure of voluntary settlement that such disputes should be resolved in the Federal Courts. In most instances in which respondents have requested notice of right to sue, respondents have refused to enter into voluntary settlement negotiations, maintain-

ing that such disputes shall be resolved in court. However, except where the charging parties request a notice, or the Commission's investigatory procedures have culminated in a decision, it is the Commission's experience that they are frequently unable to locate and secure adequate legal representation within the 30-day period provided by statute for the purpose of filing a timely complaint. Thus such requests for issuance of notice have been effectively used by some respondents to prevent both administrative and judicial resolution of the issues in dispute. Since, therefore, the privilege granted by §§ 1601.25a(c) and 1601.25b(d) has been exercised by respondents in a manner which subverts the remedial scheme provided by title VII, the Commission finds it necessary to withdraw the privilege so granted.

Because the amendments herein adopted are procedural in nature, the provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 1003, for public notice and delay in effective date are inapplicable. This amendment shall become effective upon publication in the FEDERAL REGISTER, and shall be applicable with respect to all requests for notices of right to sue made after such date.

Accordingly the Commission hereby amends § 1601.25a(c) by deleting the phrase, "or the respondent" and amends § 1601.25b (d) by deleting the phrase, "or any respondent named in the charge." As amended, the sections read as follows:

§ 1601.25a Processing of cases; when notice issues under § 1601.25.

* * * * *

(c) At any time after the expiration of sixty (60) days from the date of the filing of a charge, or upon dismissal of the charge at any stage of the proceedings, or upon the expiration of the time for filing objections to dismissal by the Field Director pursuant to § 1601.19, the charging party may demand in writing that a notice issue pursuant to § 1601.25, and the Commission shall promptly issue such notice, with copies to all parties.

* * * * *

§ 1601.25b Issuance of notice in cases involving Commissioner Charges.

* * * * *

(d) At any time after 60 days have expired since the charge was filed, any member of the class aggrieved by the practices alleged in the charge may demand in writing that a notice-of-right-to-sue issue, and the Commission shall promptly issue such notice of right to sue, pursuant to paragraph (c) of this section.

* * * * *

(Sec. 718(a), 78 Stat. 265, 42 U.S.C. 20003–12(a))

This amendment is effective upon publication in the FEDERAL REGISTER (2–5–71).

Signed at Washington, D.C., this 29th day of January 1971.

WILLIAM H. BROWN III,
Chairman.

FR Doc. 71–1518 Filed 2–4–71; 8:52 a.m.

[From the Federal Register, May 19, 1971]

TITLE 29—LABORS CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1601—PROCEDURAL REGULATIONS

Subpart C—Notices to Employees, Applicants for Employment and Union Members

Notices To Be Posted

By virtue of the authority vested in it by section 713(a) of title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e–12(a), 78 Stat. 265, the Equal Employment Opportunity Commission hereby amends Title 29, Chapter XIV, Subpart C, § 1601.27 of the Code of Federal Regulations.

Because the amendments herein adopted are procedural in nature, the provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. section 1003, for public notice and delay in effective date are inapplicable. This amendment shall become effective immediately and shall be applicable with respect to charges presently pending before or hereafter filed with the Equal Employment Opportunity Commission.

Section 1601.27(a) is revised to read as follows:

§ 1601.27 Notices to be posted.

(a) Every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, members, and trainees are customarily posted the following notice:

Equal Employment Opportunity is the Law

Discrimination is prohibited

By the Civil Rights Act of 1964 and by Executive Order Number 11246

Title VII of the Civil Rights Act of 1964—Administered by the Equal Employment Opportunity Commission prohibits discrimination because of race, color, religion, sex, or national origin by employers with 25 or more employees, by labor organizations with a hiring hall of 25 or more members, by employment agencies, and by joint labor-management committees for apprenticeship or training.

Any person who believes he or she has been discriminated against should contact

The Equal Employment Opportunity Commission, 1800 G Street NW., Washington, D.C. 20506.

Or any of its field offices

Executive Order Number 11246 [1]—Administered by the Office of Federal Contract Compliance prohibits discrmination because of race, color, religion, sex, or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment. By all Federal Government contractors and subcontractors, and by contractors and subcontractors performing work under a federally assisted construction contract, regardless of the number of employees in either case—

Any person who believes he or she has been discriminated against should contact

The Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210.

* * * * *

(Sec. 713, 78 Stat. 265, 42 U.S.C. sec. 2000e–12)

Effective date: Date of publication (5–19–71).

Signed at Washington, D.C., this 13th day of May 1971.

WILLIAM H. BROWN III,
Chairman.

FR Doc. 71–6950 Filed 5–18–71; 8:49 a.m.

[From the Federal Register, May 29, 1970]

DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE

PROCESSING OF COMPLAINTS OF EMPLOYMENT DISCRIMINATION AS BETWEEN TWO AGENCIES

Memorandum of understanding

Part I. In order to reduce duplication of compliance activities and to facilitate information exchange, the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance (OFCC) agree to the following:

Prior to investigation of charges filed against Government contractors subject to Executive Order 11246 (30 F.R. 12319), as amended by Executive Order 11375 (32 F.R. 14303). EEOC will contact OFCC to (a) determine whether the contractor has been subjected to a compliance review within the past ninety (90) days, and (b) obtain and review copies of any documents relevant to EEOC's investigation which have been secured by the contracting agency in previous compliance reviews.

Prior to conducting compliance reviews or investigations of complaints against Government contractors. OFCC will contact EEOC to (a) determine whether EEOC has processed similar or identical charges against the contractor, (b) determine whether EEOC has information from prior investigations, if any which may have a bearing on the contractor's compliance with Executive Order 11246, as amended, and (c) obtain and review any pertinent documents.

It is anticipated that these contracts will be made routinely between EEOC regional offices and regional offices of OFCC. In order to facilitate this information exchange:

OFCC will provide EEOC with:

(a) Copies of reports from Compliance Agencies outlining contractor compliance reviews proposed for the next quarter.

(b) Current lists of Compliance Agencies with an associated list of contractor establishments located in each region of each Compliance Agency.

(c) A listing of compliance reviews actually completed each quarter indicating the results of such reviews.

EEOC will provide OFCC with:

(a) A monthly printout listing of all current charges under investigation, by region.

(b) A quarterly listing of all cases in which settlement or conciliation has been completed and the results, by region.

(c) A copy of each conciliation agreement prepared in EEOC field offices as a result of conciliation efforts.

Part II. The following procedure shall be applicable to all cases involving Government contractors subject to the provisions of Executive Order 11246, as amended.

(a) OFCC shall promptly transmit complaints filed with it under Executive Order 11246, as amended, to EEOC, which shall treat such complaints as charges filed under Title VII of the Civil Rights Act of 1964. EEOC will investigate such complaints, if practicable within sixty (60) days or, in the case of charges relating to practices occurring in a state or subdivision thereof in which EEOC is required to refer to an appropriate state or local agency under section 706(b) of Title VII, if practicable, within one hundred and twenty (120) days from the date on which such charge is received by it. In investigating such charges, EEOC will act both on behalf of OFCC under Executive Order 11246, as amended, and on its own behalf under Title VII. EEOC shall promptly transmit its decision and findings of fact in all such cases to OFCC, which shall then take action in accordance with paragraph (b) of this part.

(b) Whenever EEOC determines that reasonable cause exists to believe that a Government contractor subject to Executive Order 11246, as amended, has violated Title VII, it shall transmit its decision and findings of fact to OFCC. The Director of OFCC then shall cause to be served upon such contractor a notice that reasonable cause exists to believe that such contractor is in violation of Executive Order 11246, as amended, and that should conciliation efforts of EEOC fail, said contractor shall have thirty (30) days to show cause why enforcement proceedings should not be commenced against it under Executive Order 11246, as amended. In order to develop effective working procedures to implement this paragraph, the following procedure shall apply during the first ninety (90) days of the operation of this Memorandum:

(1) EEOC shall determine which cases in which reasonable cause has been found against Government contractors will be referred to OFCC for issuance of thirty (30) day show cause notices under this paragraph.

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[1] As amended by Executive Order 11375.

(2) EEOC and OFCC will agree on the total number of cases to be referred.

(3) At the end of ninety (90) days, EEOC and OFCC will review the operation of this Memorandum, and adopt such adjustments to procedures as are appropriate in the light of experience.

(c) A finding by EEOC as to reasonable cause shall not be conclusive as to whether the contractor has violated Executive Order 11246, as amended, nor is anything contained herein intended to limit the authority of OFCC in conducting such further investigations or from instituting such further efforts to obtain compliance with the provisions of Executive Order 11246, as amended, including the commencement of show cause proceedings earlier than the period specified in paragraph (b) above, as it deems appropriate: *Provided,* That in further attempting to resolve questions of noncompliance, OFCC shall give appropriate consideration to the fact that voluntary conciliation efforts of EEOC have failed with respect to such contractor.

(d) EEOC and OFCC shall conduct periodic reviews of the implementation of this agreement, and shall, on an ongoing basis, continue their efforts to develop consistent systems, procedures, and standards in furtherance of the purposes of this agreement.

Signed at Washington, D.C., this 20th day of May 1970.

WILLIAM H. BROWN III,
Chairman, Equal Employment Opportunity Commission.
GEORGE P. SHULTZ,
Secretary of Labor.
JOHN L. WILKS,
Director, Office of Federal Contract Compliance.

[F.R. Doc. 70-6665; Filed, May 28, 1970; 8:45 a.m.]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PROCESSING OF COMPLAINTS OF EMPLOYMENT DISCRIMINATION AS BETWEEN TWO AGENCIES

Memorandum of understanding

Cross reference: For a document regarding memorandum of understanding relative to processing complaints of employment discrimination as between two agencies, see F.R. Doc. 70-6665, Department of Labor, Office of Federal Contract Compliance, *infra.*

[From the Federal Register, Dec. 9, 1970]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

INTERPRETATIONS AND OPINIONS OF THE COMMISSION

The Equal Employment Opportunity Commission (hereinafter referred to as the Commission), in order to dispel an apparent misunderstanding, on the part of a number of respondents, with respect to the materials constituting a "written interpretation or opinion of the Commission" within the meaning of section 713(b) of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-12(b), invites specific attention to the provisions of § 1601.30 of the Commission's Procedural Regulations, 29 CFR 1601.30. The provision referred to has, since July 1, 1965, specifically restricted the meaning of the phrase "written interpretation or opinion of the Commission" to correspondence entitled "opinion letter" and signed by the General Counsel on behalf of the Commission (29 CFR 1601.30(a)). Matter issued pursuant to 29 CFR 1601.30(a) is issued to a specific addressee(s) and has no effect upon situations other than that of the specific addressee(s).

Accordingly, matter appearing in the Quarterly and Annual Digests of Legal Interpretations, formerly issued by the Office of the General Counsel and discontinued subsequent to July 1, 1966, neither met nor were intended to meet the standards required of a "written interpretation or opinion of the Commission" within the meaning of the Commission's procedural regulations, 29 CFR 1601.28-1601.30, or section 713(b), 42 U.S.C. section 2000e-12(b). Similarly, matter appearing in the commercial reporting services erroneously entitled, "opinion letter" or "General Counsel Opinion" do not meet the standard required of a "written interpretation or opinion of the Commission" within the meaning of the Commission's procedural regulations, 29 CFR 1601.28-1601.30, or section 713(b), 42 U.S.C. section 2000e-12(b).

This notice shall be effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 1st day of December 1970.

WILLIAM H. BROWN III,
Chairman.

[F.R. Doc. 70-16503; Filed, Dec. 8, 1970; 8:46 a.m.]

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

§ 1605.1 Observation of the Sabbath and other religious holidays.

(a) Several complaints filed with the Commission have raised the question whether it is discrimination on account of religion to discharge or refuse to hire employees who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days.

(b) The Commission believes that the duty not to discriminate on religious grounds, required by section 703(a)(1) of the Civil Rights Act of 1964, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer.

(c) Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable.

(d) The Commission will review each case on an individual basis in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the American people.

(Sec. 713(b), 78 Stat. 265; 42 U.S.C. 2000-12) [32 F.R. 10298, July 13, 1967]

The ACTING PRESIDENT pro tempore. What is the pleasure of the Senate?

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. RANDOLPH. Mr. President, religious liberty is a precious liberty.

With this thought, Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from West Virginia.

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

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

The legislative clerk proceeded to call the roll.

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

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

The question is on agreeing to the amendment of the Senator from West Virginia. On this question, the yeas and the nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. BIBLE), the Senator from Florida (Mr. CHILES), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Washington (Mr. MAGNUSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Minnesota (Mr. MONDALE), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Rhode Island (Mr. PELL), the Senator from Alabama (Mr. SPARKMAN), the Senator from Mississippi (Mr. STENNIS), the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I also announce that the Senator from California (Mr. TUNNEY), the Senator from Georgia (Mr. TALMADGE), the Senator from Utah (Mr. MOSS), the Senator from Hawaii (Mr. INOUYE) are absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. JACKSON), the Senator from Rhode Island (Mr. PASTORE), the Senator from California (Mr. CRANSTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Rhode Island (Mr. PELL), and the Senator from Illinois (Mr. STEVENSON) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Delaware (Mr. BOGGS), the Senator from Kentucky (Mr. COOPER), the Senator from New Hampshire (Mr. COTTON), the Senator from Nebraska (Mr. CURTIS), the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), the Senator from Delaware (Mr. ROTH), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), the Senator from Texas (Mr. TOWER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from New York (Mr.

BUCKLEY) and the Senator from South Carolina (Mr. THURMOND) are absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), the Senator from Iowa (Mr. MILLER), the Senator from Illinois (Mr. PERCY), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 55, nays 0, as follows:

[No. 3 Leg.]

YEAS—55

Aiken	Eastland	Metcalf
Allen	Ellender	Montoya
Anderson	Ervin	Nelson
Baker	Fannin	Packwood
Bayh	Fong	Pearson
Beall	Fulbright	Proxmire
Bellmon	Gambrell	Randolph
Bennett	Goldwater	Ribicoff
Brock	Gurney	Saxbe
Brooke	Hansen	Schweiker
Burdick	Hart	Scott
Byrd, Va.	Hollings	Smith
Byrd, W. Va.	Hruska	Spong
Cannon	Hughes	Stafford
Case	Jordan, Idaho	Symington
Cook	Kennedy	Williams
Dole	Long	Young
Dominick	Mansfield	
Eagleton	McGee	

NAYS—0

NOT VOTING—45

Allott	Hatfield	Muskie
Bentsen	Humphrey	Pastore
Bible	Inouye	Pell
Boggs	Jackson	Percy
Buckley	Javits	Roth
Chiles	Jordan, N.C.	Sparkman
Church	Magnuson	Stennis
Cooper	Mathias	Stevens
Cotton	McClellan	Stevenson
Cranston	McGovern	Taft
Curtis	McIntyre	Talmadge
Gravel	Miller	Thurmond
Griffin	Mondale	Tower
Harris	Moss	Tunney
Hartke	Mundt	Weicker

So Mr. RANDOLPH'S amendment was agreed to.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WILLIAMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will now resume the consideration of the Dominick amendment, amendment No. 611.

QUORUM CALL

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

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

Mr. SAXBE. Mr. President, I believe the pending business is the Dominick amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. SAXBE. Mr. President, I support the pending amendment, and I do so from a background of having worked closely with civil rights enforcement at the State level. I am in accord with the concept that the Equal Employment Opportunity Commission should have enforcement power. However, I am not satisfied that the enforcement power should be given in this manner. Therefore, I am in support of the Dominick amendment so that the matter might go through the courts.

I voted yesterday for the Taft amendment which I think goes a long way toward assuring due process in its basic form. However, I still think it would be better protected in the courts, even with the Taft amendment.

I have noticed throughout the discussion that there has been a comparison of the EEOC with the National Labor Relations Board. I do not think this is a just comparison. It has been said that it was necessary that the cease and desist powers be given to the NLRB to get the unions started and to protect the unions in their infancy. I do not think this is a similar situation. The persistence and the staying power of the labor movement has been much greater, and it had significantly greater financial backing.

If the issue is one of speed, the EEOC should go to the courts in the first place rather than having a cease and desist order and then going through the courts, as most of them will do.

Finally, the final results will be much more comprehensive and much more satisfactory if we have this as a court action, which will establish precedent and will keep the overzealous advocates and enforcers of the EEOC from going overboard.

This is what I want to talk about specifically because of my personal experience. In Ohio, the civil rights commission was established, as it was in many States, and the Governors of Ohio over the years have appointed to this commission people who were vitally interested in civil rights. These people tend to have an ax to grind. They are people who are very zealous. They then in turn hire investigators and enforcing people who visit the offices, plants, and business institutions. They are people who are also very much wrapped up in the civil rights movement. This is all right. This is fine. However, too often we would find—and I speak as a former attorney general who handled the legal aspects of this matter—that in their zealousness to try to protect the civil rights of some people, they were also eager to violate the civil rights of others.

I remember one specific instance in which they went into a factory and said, "We want a list of your black employees and your white employees."

The man said, "It is illegal for me to keep such a list. It is illegal for me to make a record as to whether a man is black or white. It is illegal for me even to provide you with the list if I had such a list. It is also illegal for me to stand down at the door and head count them as they come in."

The man said, "If you don't, we will cite you for a violation."

They came to me as attorney general and asked me to bring an action citing them for this violation. I said, "You can't force a man to do something that the Federal statutes and our own State statutes say he is not permitted to do. That would be a discrimination. It would even be a discrimination to ask them to identify themselves."

In another particular case, in their zealousness, they worked directly against an employee of a small company that finished photographs. They had perhaps a dozen or 15 girls working on these photographs. These girls belonged to a union. I believe it was called the Photo Tinters, or something of that nature. That union was affiliated with a larger group. They had some office personnel, and they had one Negro man who was a janitor. They said that he was discriminated against because he did not belong to the Photo Finishers Union. He was not causing any trouble, but the civil rights investigators cited these people in for a hearing and forced the union to admit this man as a member of the Photo Finishers Union.

The company, in an effort to solve the problems, did away with the services of the janitor and hired a janitorial service to take over the building.

I know these are instances that indicated a genuine concern. The genuine concern is there, but I do not believe that a board which has a tendency to be biased by political appointment, by interest in sitting on such a board, should be the ones that would issue cease and desist orders, or be the ones that would act as prosecutors in the hearing of cases.

In my experience in working closely with this matter at the State level I know it is not an undue hardship to cite these people into court, and I think they should be cited into court if they are not following the legalities of the statute. I think it was a mistake that we did not have enforcement powers in the law prior to this time, and I certainly want to see it enforced, but I think it will work to the general satisfaction of all concerned, not only the employee and the employer, but also the board itself if the Commission is permitted to go directly into court to file, as lawyers have filed for centuries, their complaint, giving this person the right to be in court, to be heard, to be faced with the accuser, and to be given the opportunity to have a court record made which is appealable, and not a trial de novo, which coud occur in the other instance.

I cannot help but feel that in a campaign year there will be Members who will vote here because they think they are doing labor a great favor or minority groups a great favor by saying, "You can go out and issue your own orders." I do not believe they are doing them a favor. I think they are doing them a disservice. If this is going to work and be effective, it has to be clothed with all the legality with which we can clothe it; and that is the Federal court, which has a record of speed and a record of following up on such cases which is good.

I have before me a comparison of cases with the NLRB and other agencies, which are particularly limited to a certain set of licensing circumstances. It does not apply to every type business where 25 are employed, but a very lim-

ited group. Perhaps in that kind of closed community such as licenses, where they go in and discuss problems among themselves, it could operate; but I do not believe it can operate where they can do this every time that any of the investigators find what they believe to be a violation.

Mr. President, this is my statement on the amendment and I hope I have brought some personal experience in regard to this matter.

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

Mr. SAXBE. I yield.

Mr. DOMINICK. I was extremely interested in listening to the Senator's personal experiences with these problems in Ohio. They are not dissimilar to problems we experience in Colorado.

As an example, I had a gentleman call me up and say he was being discriminated against because he was not being given a better job on a construction project requiring substantial work on scaffolds. He was a Spanish-speaking man. I looked into the matter to find out if there was discrimination involved. In the meantime the man carried the matter all the way up to the president of the company. I found out the reason he was rejected was not because he was Spanish-speaking, but because the job required that he climb to the top of high scaffolds; he had a shriveled arm and a shriveled leg and they did not think he could get up there with all the equipment necessary to perform the job.

When I explained to him that there was no discrimination but rather, only his disability, he was perfectly satisfied. But it took the president of the company and a variety of other officials to satisfy him that he was not being discriminated against.

This is the point I made earlier. These matters become quite subjective and emotional. The more we can utilize an impartial judicial framework the less chance we will have of emotional influence and the better off we will be.

I think the statement of the Senator from Ohio along these lines are extremely helpful. I wish to express my appreciation to the Senator for his support.

Mr. SAXBE. I thank the Senator. I yield the floor.

Mr. BROCK. Mr. President, I rise to associate myself with the remarks of the Senator from Ohio and the Senator from Colorado in connection with this amendment.

I noted both examples that were cited by the Senator from Ohio and the Senator from Colorado, but I think more than any particular example I have concern over the way Congress is delegating authority to nonelected officials in this country today. There are too many instances in this free society in which we have authorized regulatory agencies of the Federal Government to be judge and jury, policeman and prosecutor at one and the same time. This is a terribly dangerous potential for those of us who believe in the Constitution and in due process of law as the ultimate safeguard and protection for every citizen, as the most fundamental civil right of all.

These people are elected by no one. In too many instances they are responsive to no one. The Dominick amendment, in my opinion, is directed at this particular problem and it is an effort to address it to this particular instance of the Equal Employment Opportunity Commission. I support the amendment and I support it because I think we have no alternative if we are to preserve due process of law in this country.

Mr. President, I am delighted to support amendment No. 611 offered by the distinguished Senator from Colorado (Mr. DOMINICK) to provide an efficient and fair method for enforcing the rights of those subjected to unfair employment practices.

Under the Civil Rights Act of 1964 the Equal Employment Opportunity Commission was given authority to investigate complaints of discrimination in employment and to try to resolve grievances through conciliation procedures. The Commission had no mandate to enforce fair employment practices and I believe that deficiency should be remedied.

In restructuring the functions of the Commission, I feel that we should have two goals in mind—the establishment of a procedure which is both fair and efficient.

The public is entitled to have its business handled by Government in an efficient manner. One of the criticisms most often aimed at administrative agencies is that they are notorious in their inefficiency in handling the caseload before them. For example, it has been estimated that the median time in days elapsed in processing NLRB unfair labor practice cases, from filing to decision, amounted to 323 days in 1970. The present EEOC complaint disposition requires from 18 to 24 months. I do not feel that it is fair for the Government agencies to keep either respondents or complainants waiting years before matters in which they are vitally interested are disposed. In restructuring Government agencies such as the EEOC it is incumbent upon Congress to show some imagination to fashion procedures that will provide for a speedy resolution of pending business.

Equally important is that the procedures be equitable. Fundamental to our system of justice is fairness. In our desire to achieve equal employment opportunity we must be fair to both the respondent and complainant. We cannot forsake the principle that anyone charged with violating the law is presumed innocent until proven guilty. He is entitled to be tried by an impartial tribunal. This calls for a disinterested party sitting as the judge of the case. The policeman and the prosecutor cannot sit as judge. If fairness is to be achieved, we must divide the function of prosecution from the function of adjudication.

My objection to S. 2515 as written is not with its objective but with its proposed means for achieving the stated end. Under S. 2515 the EEOC would be able to issue a complaint, to conduct hearings, to issue cease-and-desist orders, and to include in an order such things as demands for reinstatement for back pay, or for the company to report regularly to EEOC on how it is complying with the order. This approach is not fair in that it gives the EEOC czar-like powers of policeman, prosecutor, judge and jury. It violates the fundamental demand of separation of these powers.

Nor would efficiency be served under the provisions of S. 2515. If the EEOC is unable to handle the case load under the present arrangement, there seems little likelihood it could expeditiously dispose of additional responsibilities. It would take an enormous number of new employees and attorneys to handle this case load and it could easily take as long as 3 years before a case is disposed.

In the alternative, the Dominick proposal to empower the EEOC to sue in district courts when conciliatory efforts fail would achieve the objective of strengthening enforcement of equal employment opportunity under a fair and efficient procedure. Fairness is promoted under the district court approach by separating the functions of the policeman, the prosecutor, and the judge. A fair trial and due process are guaranteed to the accused.

Cases could be handled much more efficiently under a court enforced system. Whereas it now requires from 18 to 24 months to dispose of an EEOC case, the median time interval from issue to trial for nonjury trials in U.S. district courts in 1970 was 10 months according to the annual report of the Director of the Administrative Office of the U.S. Courts.

In sum, I believe Senator DOMINICK's amendment to strike all EEOC cease-and-desist language and substitute therefore language allowing the EEOC to file civil actions in Federal district court if they are unable to conciliate the dispute will enhance the workability of S. 2515. This method will combine the EEOC's expertise in investigating, conciliating, and prosecuting unlawful employment cases with due process guarantees available only in impartial courts, a much more fair approach which I urge my colleagues in the Senate to support.

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

Mr. BROCK. I yield.

Mr. DOMINICK. Just prior to the Senator's appearance in the Chamber today, the Senator from North Carolina (Mr. ERVIN), in a colloquy with the manager of the bill, pointed out that President Roosevelt created a commission to look into the executive agencies to determine what should be done about them. Justice Jackson in referring to the findings of this commission emphasized that the first thing that should be done is to separate the prosecutory, the investigatory, and adjudicatory functions. My recollection is that Mr. Landis said the same thing when he was made the head of a similar commission.

What I am trying to do is one portion, and only one portion of what these eminent commissions have already recommended and to which the Senator from Tennessee referred. I appreciate the support of the Senator from Tennessee. I hope we can generate enough support to establish a precedent in this bill against the easy but irresponsible delegation of

important judicial powers and authority to nonelected administrative officials when such powers and authority clearly belongs in our Federal courts.

I thank the Senator for his remarks.

ORDER OF BUSINESS

Mr. DOMINICK. Mr. President, I ask unanimous consent that my amendment may be set aside temporarily and then made the pending order of business following the remarks of the Senator from Oregon (Mr. PACKWOOD).

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

(The remarks of Mr. PACKWOOD when he introduced Senate Joint Resolution 187 are printed in the routine morning business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER FOR RECOGNITION OF SENATOR SCHWEIKER ON MONDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday, immediately following the recognition of the two leaders under the standing order, the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) be recognized for not to exceed 15 minutes.

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

ORDER FOR ADJOURNMENT UNTIL MONDAY, JANUARY 24, 1972, AT 10:45 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10:45 a.m. Monday.

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

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.

AUTHORIZATION FOR THE SIGNING OF BILLS AND JOINT RESOLUTIONS DURING ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Vice President and President pro tempore of the Senate have permission to sign bills and joint resolutions during the adjournment over until 10:45 a.m. on Monday next.

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

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

The PRESIDING OFFICER. The Chair announces that the Senate will resume the consideration of amendment No. 611.

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.

The Senator from Colorado is recognized.

(The remarks of Mr. DOMINICK when he introduced S. 3056 are printed in the routine morning business section of the CONGRESSIONAL RECORD under "Statements on Introduced Bills and Joint Resolutions.")

LAOS AND THE ROLE OF CONGRESS

Mr. SYMINGTON. Mr. President, it was indeed disturbing to note some of the comments contained in an article in the New York Times this morning with respect to the current situation in Laos and the possible future effect of the $350 million "ceiling" which Congress placed on U.S. expenditures in that country for this current fiscal year.

Of particular concern was an incredible quote from a high-ranking official who the Times said asked not to be identified. This official said:

> Maybe one of the reasons the enemy is attacking so heavily here now is because of this amendment. It just shows the tragedy of trying to put a ceiling on any way.

Anyone familiar with the situation in Laos would have little difficulty in identifying this so-called high-ranking official who insists on hiding behind the much-too-frequently-used "backgrounder wall;" and the fact that he—in view of his knowledge about the details involved in adopting this amendment—would make such a statement is hard to understand.

In the first place, this informant is well aware that this $350 million ceiling excludes the costs of United States bombing in Laos, by far the greatest part of the continuing American air war in that country.

Second, it should be pointed out that this amendment was accepted in the Senate by a vote of 67 to 11. We were told at that time that this amount was what the administration expected to spend in the next fiscal year in Laos; again, exclusive of the bombing. The ceiling figure, also accepted by the House and now a matter of law, is therefore that of the administration, not the Congress.

In addition, at the time this amendment was considered it was made clear that if the administration found that additional funds were needed, a supplementary request could be made to the Congress.

The language of the legislative provision itself—

> No funds may be obligated or expended for any of the purposes described in subsection (a) of this section in, to, for, or on behalf of Laos in any fiscal year beginning after June 30, 1972, unless such funds have been specifically authorized by law enacted after the date of enactment of this Act.

It clearly shows that there is nothing to prevent this administration from making an additional request for funds to carry out United States operations in Laos.

This Times story quotes Ambassador Godley by name as saying that:

> The amendment may cause difficulties for this mission in maintaining its assistance to the Royal Laotian Government.

What difficulties? The difficulty of coming to the Congress and saying, "The amount of money we told you was needed is not enough"? The difficulty of telling the Congress and the American taxpayer what these funds are to be used for?

I ask unanimous consent that the article in question—"Laos Losses Spur Calls for More Aid"—be printed at this point in the RECORD.

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

LAOS LOSSES SPUR CALL FOR MORE AID—AMERICANS ARE CONCERNED ABOUT ENEMY'S DRIVE—SOME SECRECY LIFTED

(By Craig R. Whitney)

VIENTIANE, LAOS, Jan. 20.—Concern about the unusually powerful and early Communist offensive in Laos has grown so intense that the United States Government has lifted much of the secrecy it maintained over its efforts here and is saying that, far from doing too much, the Americans are doing too little and the Administration may ask for more money.

The American establishment in Vientiane—including the Ambassador, G. McMurtrie Godley, about 300 men of the Central Intelligence Agency, and the more than 100 Army and Air Force attaches—does not normally speak for attribution. In recent private background interviews, however, and during a trip that the intelligence agency sponsored to the long-secret guerrilla base and airfield at Long Tieng, officials made their concern clear.

A senior American official said that the embassy would probably run out of military and economic aid money for Laos well before the end of the fiscal year this June unless Congress raised the $350-million ceiling on it. The reason, he said, was the serious toll of the American-backed guerrilla and regular Laotian forces since the intense Communist attack began last month and the need for bullets, bombs and artillery shells. The Administration may have to ask for more, the official added.

The Laotian Premier, Prince Souvanna Phouma, is aware of the restrictions on American aid. A European diplomat who saw him recently said today that the Prince was growing discouraged and reported: "He says, 'What can we do? Maybe we'll have to give up.'"

The $350-million limit was imposed by Congress as an amendment to the Administration's military procurement bill last fall. It covers the costs of all forms of military assistance and weapons and about $50-million in economic aid that the Administration said it planned to spend in Laos in the current fiscal year. But it does not cover the costs of American bombing here, the largest

part of the continuing American air war in Indochina.

"Maybe one of the reasons the enemy is attacking so heavily here now is because of this amendment," a high-ranking official said in an interview in which he asked not to be identified. "It just shows the tragedy of trying to put a ceiling on any war."

Ambassador Godley said today: "The amendment may cause difficulties for this mission in maintaining its assistance to the Royal Laotian Government."

Since the North Vietnamese began attacking in unusually large force across the Plaines des Jarres in northern Laos and drove the C.I.A. group and its Laotian defenders out of the Long Tieng base, which is 80 miles north of Vientiane, much though not all of the reticence of the official establishment about its activities has fallen off.

EMBASSY ARRANGED TOUR

This was dramatically apparent yesterday when, for the first time, the embassy, at the Ambassador's direction, arranged for reporters to charter airplanes and helicopters from the Government contractor, Air America, to fly to Long Tieng to see the scope and nature of the American-supported Laotian effort in defense of the base.

An American official accompanied the reporters and allowed them to go anywhere they wanted, but did not permit his name to be published. He said that one reason for finally granting access to the base—after all the C.I.A.'s sensitive radio and other communications equipment had been taken out before the high point of the Communist attack Jan. 12—was that, in his view, much nonsense had been written about Long Tieng "and we thought you should see it for yourselves."

What was there was nothing extraordinary—an airfield, probably used by Laotian T–28 propeller-driven bombers, since it was too short for American jets; a handful of American civilians with radios helping the Laotians on air strikes they could not handle with their own air force, and a large, almost completely abandoned, village where dependents of the guierrilla army of Meo tribesmen had lived before the North Vietnamese swept down from the Plaine des Jarres and began shelling the Long Tieng Valley on New Year's Eve.

The enemy attackers were still on a craggy limestone ridge at the southeast end of the base yesterday. Airplanes do not land on the airstrip now for fear of ground fire but drop supplies by parachute.

It was apparent at the command post overlooking the ruggedly beautiful valley that if the base was ever exclusively run for Maj. Gen. Vang Pao's Meo irregulars, it is no longer. The General whom the Americans in civilian clothes fondly called "V.P." was there, cheerful and natty in a dark brown safari suit with stars on each collar, but he was surrounded by other regular Laotian generals and by the Laotian Defense Minister, Sisouk na Champassak.

In fact, the Meos did bear a heavy burden of the fighting in northern Laos for many years during the so-called secret war of the nineteen-sixties. Long Tieng is a mountain country south of the Plaine des Jarres, which is their ancestral homeland, and may explain why they have been fighting so hard for so long.

But now, according to Americans here, they are weakened, and are believed to number only about 2,000 of the 6,000 or so troops that are fighting on the high ridges overlooking Long Tieng.

There were 400,000 Meos there before the war but only 200,000 are believed there now, through combat losses and the traumas of annual forced migrations, as they lost ground militarily in the dry season and then took it back again when the rains came in summer.

THE COALITION THAT DIED

The clandestine army was set up largely for political reasons. Laos is in theory a neutral kingdom and has been since 1962 when, under international supervision, the indigenous Pathet Lao Communist, the rightist military faction and the neutralists formed a coalition under Prince Souvanna Phouma that collapsed in fighting that year.

Pathet Lao officials left the Government then and their positions have not been filled since. Fighting between the Government forces, quietly supported by the Americans, and the Pathet Lao, supported and now vastly outnumbered by the North Vietnamese Army, has been going on since 1963.

American intelligence here, backed by independent diplomatic sources, says that there are 80,000 to 90,000 North Vietnamese troops in the country but only an estimated 30,000 in the Pathet Lao forces, which do not do the bulk of the fighting.

On March 6, 1970, President Nixon put on record the previously known but officially unacknowledged facts that American Air Force and Navy planes had, with Prince Souvanna Phouma's consent, been bombing North Vietnamese supply trails in southern Laos for years and that they had been flying air support for the Royal Laotian forces in the north as well.

Now, with the latest North Vietnamese attack—6,000 to 9,000 superbly trained and equipped combat troops are estimated to be in the van of the Long Tieng fighting—American officials have apparently concluded that they have nothing to lose by putting more information out in the open.

"It's a North Vietnamese invasion, the most serious attack they've ever made here," one official said at Long Tieng the other day. "They are more determined to knock these people out than they have ever been before."

So the Americans have now allowed reporters to see how they support General Vang Pao and the regular and irregular Laotian forces. Yesterday at Long Tieng, the roar of American Air Force F–105 and F–4 fighters often resounded through the valley as they flew combat-support missions, and the American civilians were planning more big strikes by B–52's. All the planes are from bases to the south, in Thailand.

That support does not come under the Congressional $350-million limit, but the bombs dropped by the 40-plane Laotian Aid Force do come under it.

So did the $1-million for ammunition that blew up at Long Tieng when it was struck by North Vietnamese shells and so did hundreds of thousands of dollars represented by about 20 guns of 105 and 155 millimeters that were captured by the enemy when the Plaine des Jarres was overrun last month.

So too does the money that pays the 3,000 to 4,000 Thai soldiers—the exact number is not known—who have been manning artillery positions here and are described by the American authorities as volunteers paid by the United States through the Laotian Government.

Of these men, 1,000 or 2,000 are still in Laos, in positions around Long Tieng, and others have suffered heavy casualties in fighting farther south on the Boloven Plateau.

There is a growing feeling of futility among the Americans here. "It's obvious we can't just depend on a C.I.A. irregular force," an official said. "We've got to build up some kind of security force, but how?"

A Western ambassador commented: "I haven't the faintest idea what political objective the North Vietnamese have in mind." He and the Laotians themselves expect heavy fighting to continue around Long Tieng during the dry season, which does not end until May.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. SYMINGTON. I am glad to yield to the able assistant majority leader.

Mr. BYRD of West Virginia. I congratulate the distinguished Senator from Missouri on his statement. I do not know whether it has occurred to the unnamed bureaucrat or not, but I think it might be correctly stated that the reason Congress feels impelled to place ceilings on such amounts derives from the very fact that we do have such bureaucrats who are not responsible to the people directly and who place no rein or check upon their own visionary schemes and activities.

I congratulate the Senator from Missouri on his continuing concern about the situation in Laos, Cambodia, and in all of Indochina. I share with him this concern because I am afraid that unless Congress does put its foot down, does place ceilings on these amounts, does exercise a strict surveillance and a check rein, we will find ourselves being sucked into new and continuing Vietnams.

I have visited in many countries of the world and I think I can say without question that in every country so many of our own people seem always to put the interests and viewpoints of the host countries ahead of the interests and welfare of the United States and its people.

In closing I say that such a statement by such a bureaucrat is simply anserine in other words, stupid.

I thank the Senator and I congratulate him on the fact that he takes the floor often to speak his mind and to take a strong stand on behalf of prudence in spending and caution against new involvements in Laos and Cambodia.

Mr. SYMINGTON. I am deeply grateful to the assistant majority leader for his kind but undeserved remarks. I know that my protest will have added weight because of his position in the Senate.

In this connection, incidentally, not only was this bill passed with such a heavy majority, and it was supported by the chairman of the Committee on Armed Services, but also it carefully left open the opportunity for the administration to come back for more money if and when they found it was needed. For this spokesman out there to take upon himself to criticize Congress as he has done according to this article in the press today is an unfortunate way of trying to conduct his business.

FEED GRAIN PRODUCERS HURT BY LOW PRICES

Mr. SYMINGTON. Mr. President, in 1970, the corn blight reduced a projected 4.7 billion bushel corn crop to an actual production of 4.1 billion bushels.

In order to assure adequate production of feed grains for consumers and for export during 1971, the Department of Agriculture asked farmers to plant additional acres.

The result of this increased acreage program was an additional 8.9 million acres planted in grain and more than 5.5 billion bushels of corn produced.

Although the Department of Agriculture request for increased acreage was in the national interest, it is the American farmer and not the Government who is paying for the increased production.

Farmers pay in two ways. First, they invested more time and money in planting, cultivating, and harvesting the 1971

corn crop. Second, it is expected that they will receive an estimated $500 million less income on the larger 1971 crop than they received in 1970.

Because of this development many farm leaders and publications are requesting that the Congress enact legislation to increase the corn loan rate; and also to establish a strategic grain reserve.

Wallaces Farmer, in an editorial in its January 8, 1972, issue, refutes some objections offered by administration spokesmen to the passage of this legislation, and lists as a reason this recommendation for its enactment:

A modest stock of grains in government hands could remove the need for planned overproduction whenever there is a risk of shortage—as with the threat of blight.

I ask unanimous consent that this editorial from Wallaces Farmer be inserted at this point in the RECORD.

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

URGE HIGHER CORN LOAN AND RESERVE PLAN

Congress is considering an increase in loan rate for feed grains and formation of a strategic reserve. This makes good practical sense.

Price of corn at loan rate is just too low in relation to farm costs and farm income.

Ideally, we would find a way of increasing payments to those farmers who divert acreage and thereby contribute most to bringing production in line with demand. But those who form and administer farm programs haven't seen fit to take this approach.

The secretary of agriculture has raised 3 main objections to increasing the loan rate.

One is that he would be required to raise loan rates of other crops which do not need an increase. Congressional action could get around this.

Another is that a higher loan rate might discourage participation in the 1972 feed grain program. This can be solved by boosting the incentive for participation.

His 3rd objection is that a higher price may decrease the amount of feed grains we can export to foreign nations. The $1 price tag on 1971 corn is not expected to increase exports over those from the $1.30 corn from the 1970 crop. It appears that nonprice factors like world supply may be more important than price.

There's also an objection to raising the corn loan rate that seldom gets discussed in an election year. This is the fact that a higher loan rate increases the federal treasury outlays. True. But a stronger case can be made for farm subsidy than for some of our military expenditures, for one example. And putting more money in farmers' hands is a way of stimulating the general economy.

It could be argued that there may be still higher priorities unfunded than improving farm income. But the fact remains that priorities are established by political muscle.

At the moment, farmers have a good deal of political muscle. Their vote was a key in the last presidential election. And may well be in the next one.

Formation of a strategic reserve looks equally sound. A modest stock of grains in government hands could remove the need for planned overproduction whenever there is a risk of shortage—as with the threat of blight.

The secretary of agriculture has pointed out that farmers now hold the nation's strategic reserve of grain.

But where were such reserves when the 1971 acreage goals were planned? It would take more incentive for on-farm storage to make this approach effective.

This looks like the time to push for an increase in corn loan rate and strategic reserve.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

Mr. WILLIAMS. Mr. President, returning to the amendment which is pending and which has been offered by the Senator from Colorado (Mr. DOMINICK), let me say, in final remarks on my part this afternoon, that the issue that goes to the very heart of this bill is whether unfair employment practices should be dealt with by way of administrative cease-and-desist proceedings, subject to appellate court review, or whether the Commission must resolve questions of discrimination through court litigation, as proposed in this pending amendment by the Senator from Colorado. When this bill was last before the Senate this same issue was discussed at great length during the debates on S. 2453, and action by the Senate by a rollcall vote decided in favor of the cease-and-desist approach.

Since the inception of title VII, there has been an almost universal recognition of the need to provide some public mechanism for adjudication of charges relating to unfair employment practices. All of the Government witnesses testified at our hearings on the need for enforcement power for the Commission; and the Committee on Labor and Public Welfare was unanimous in its view that some method of enforcement was required for title VII. The only disagreement has been whether this enforcement power should be through administrative proceedings or litigation in the courts.

An amendment to provide court enforcement for title VII, instead of administrative cease-and-desist proceedings, was given full and careful consideration throughout the hearings and in discussions in the full committee. The amendment was rejected, however, and the bill with administrative cease-and-desist enforcement powers was unanimously reported.

I should stress at the outset, that the type of enforcement favored by the committee is the very same type of authority which has been given to virtually all other Federal regulatory agencies such as the Federal Trade Commission, the Interstate Commerce Commission, the Securities Exchange Commission, the National Labor Relations Board, and others; all of these administrative agencies are empowered to issue cease-and-desist orders after holding administrative hearings.

In addition, the type of enforcement authority provided for in S. 2515 is the same as that adopted by 34 of the 38 States which have equal employment opportunity laws. Thus, we are in harmony with the States and we are in harmony with the other administrative agencies.

The committee found sound reason to follow the same approach in this bill. The same considerations which have led to the adoption of administrative enforcement in other areas were found to be fully applicable here.

One of the considerations is the need for the development and application of expertise in the recognition and solution of employment discrimination problems—particularly as these problems are presented in their more complex institutional forms.

In the past several years, the development of the law of employment discrimination has made it increasingly clear that the most significant subject of dispute is often not whether there has been discrimination but what the appropriate remedy is to correct discrimination. Further, the question of remedy is often not posed as to just one person or small group or persons who have been discriminated against, but involves discriminatory practices inherent in the employer's basic methods of recruitment, hiring, placement, or promotion.

Accordingly, one discrimination has been found, the district courts have increasingly been grappling with complex questions of remedy, involving, for example, the plantwide restructuring of pay scales, progression lines, and seniority systems.

Thus, the nature of the issues arising under title VII indicates that reliance upon the expertise developed by trial examiners and commissioners in the course of their ongoing administrative experience with such issues is just as important for this subject matter as is true of the equally complex subjects handled by the Federal Trade Commission, the Securities and Exchange Commission, and others I have mentioned.

Another consideration of utmost importance is that exclusive reliance on court litigation means throwing a new, additional burden on our already overworked Federal district courts.

The complexity of the issues in employment discrimination cases can give rise to enormous expenditures of judicial resources. The present—and ever increasingly overcrowded—caseloads of the Federal courts is a well-known fact, and, as repeatedly emphasized by the Judicial Conference of the United States, measures are desperately needed to expedite trials and relieve the dockets of these courts.

Statistics appearing in the 1970 Annual Report of the Director of the Administrative Office of the U.S. Courts indicate that there were 16,032 trials completed in the U.S. district courts in 1970, up 11 percent over 1969 and about 60 percent more than in 1962. There was a total of 127,240 civil and criminal cases on the dockets in 1970, and, in jurisdictions where the caseloads are the heaviest, it is not uncommon for several years to elapse before a matter is reached for trial.

The judicial conference report mentions specifically that civil rights cases have accounted for a good part of the overall growth in case filing. Between 1961 and 1970 there was an increase of more that 1,200 percent in civil rights cases filed and in the year 1970 itself, there were 3,985 civil rights cases filed compared to 2,453 in 1969, an increase of 63 percent.

The potential for court backlog created

by requiring these cases to be handled at the initial level in the district courts is clear from these statistics. Moreover, Chief Justice Burger called attention to the problem of overburdening the courts with new cases in his address to the American Bar Association in July of 1970 when he stated:

From time to time Congress adds more judges, but the total judicial organization never quite keeps up with the caseload. Two recent statutes alone added thousands of cases relating to commitment of narcotic addicts and the mentally ill. These additions came when civil rights cases, the voting cases and prisoner petitions were expanding by the thousands.

In appraising the question of enforcement by district court trials rather than through agency hearings followed by appellate court review, the committee was thus particularly concerned with the acute problem of overcrowding of our trial court system. It recognized that to thrust this additional caseload on the district courts would not only clog the already overburdened trial dockets of the courts, but might well delay the administration of justice on a national scale unprecedented in our history. It is truly said that "justice delayed is justice denied." Such is not our objective.

In this bill we have given consideration to the problems encountered by our courts and have not imposed upon them this additional burden.

I should also point out that the enforcement mechanism contained in S. 2515 will insure more quickly a unified approach to the problems of discrimination, since decisions would be rendered by one agency rather than several hundred district court judges. In this way, I believe a greater degree of predictability regarding legal interpretations and remedial approaches will be available to those who are covered by the law.

The argument has been made that court enforcement would be faster and more efficient than administrative enforcement, and the experience of the National Labor Relations Board was cited during our hearings as proof of this argument. The committee examined this contention and concluded that it was not borne out by available figures. The statistics in our record showed that the median time for resolution of a complaint by the National Labor Relations Board, from filing to decision, is a few days more than 1 year, whereas the median time for resolution of contested cases in U.S. district courts, from filing to decision, is 17 months—a considerable difference.

In closing, I would emphasize that our committee concluded that the cease-and-desist mechanism is the best possible method for securing the equal employment opportunities provided in this bill. Court enforcement is not without its merits, nor would it be unworkable if it became the device in the bill—but cease and desist is the better way, and our millions of disadvantaged citizens deserve no less than the best we can provide.

THE WEST COAST DOCK STRIKE

Mr. HRUSKA. Mr. President, President Nixon is to be applauded for his insistence that the west coast dock strike be settled immediately. He has been very tolerant of the congressional leadership which has ignored his two previous urgent pleas of 2 years standing for comprehensive emergency strike legislation.

It is to be hoped that the public will strongly support his present effort to achieve prompt settlement of this crippling work stoppage.

This tieup has disrupted our national economy too long. It is my hope that the Congress will indeed have the legislative solution to the dispute on the President's desk next week.

Our economic problems are serious enough without facing additional deterioration in our export situation, deterioration which was very costly among many others to wheat and livestock farmers in the Midwest as well as shippers of produce and other perishables.

It is estimated that during July and August of last year alone, some $125 million worth of farm products which normally would have moved through west coast ports did not move at all. As much as 60 percent of that business has been lost and will be very difficult if not impossible to regain.

Our largest foreign customer, Japan, relied heavily upon west coast ports. Now Japan is developing new sources of supply because of the unreliability of our exports.

Wheat and flour exports declined at least $100 million in the past 6 months compared to the same period a year ago.

I thoroughly agree with the President that such a damaging disruption can no longer be tolerated. I will enthusiastically support his legislation to settle this dispute promptly.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, before moving to adjourn, 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. 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.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question is on agreeing to the amendment of the Senator from Colorado (Mr. DOMINICK), as modified.

Mr. BYRD of West Virginia. I thank the distinguished Presiding Officer.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the Senate will convene on Monday next at 10:45 a.m. Immediately after the recognition of the two leaders under the standing order, the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) will be recognized for not to exceed 15 minutes, following which there will be a period for the transaction of routine morning business, with statements therein limited to 3 minutes, the period to end at 11:30 a.m.

At the conclusion of morning business, the Chair will lay before the Senate the unfinished business. The pending question at that time will be the amendment by the distinguished Senator from Colorado (Mr. DOMINICK), on which there is a time limitation agreement of 1½ hours, to be equally divided. The time limitation on any amendments in the second degree will be 30 minutes.

At the conclusion of the time on the amendment, and amendments, if any, in the second degree, a vote will occur on the Dominick amendment. The yeas and nays have been ordered, consequently a rollcall vote will occur at circa 1 p.m. on Monday next, the exact time depending, of course, on whether any pending amendment in the second degree is before the Senate at the hour of 1 p.m.

Following the vote on the Dominick amendment, other rollcall votes are expected. Senators are alerted, therefore, that there will be a rollcall vote—or rollcall votes—on Monday next.

The Senate will continue its consideration of the unfinished business until it is disposed of. When the Equal Employment Opportunities measure is disposed of, one way or the other, the Senate will then proceed to take up the Higher Education Act—a message from the House of Representatives—on which there is a time limitation agreement of 6 hours, with 2 hours on any amendment in the first degree and 1 hour on any amendment in the second degree. Rollcall votes are expected on that measure, and when the Senate has disposed of that measure, other thorny issues will confront this body, among which are the Voter Registration Act, the Equal Rights for Women constitutional amendment, the Wheat Reserve Act, the foreign aid appropriation bill—but not necessarily in that order.

Senators, therefore, are alerted to the fact that the Senate has much important business ahead. Business will be expedited. Rollcall votes can come at any time, and the leadership on both sides of the aisle hopes that Senators will arrange their schedules accordingly, so as to assure good attendance at all times, in order that the business of the Senate and the business of the people can be expedited as much as possible.

ADJOURNMENT UNTIL 10:45 A.M. MONDAY, JANUARY 24, 1972

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 10:45 a.m. on Monday next.

The motion was agreed to; and (at 3:40 p.m.) the Senate adjourned until Monday, January 24, 1972, at 10:45 a.m.

NOMINATIONS

Executive nominations received by the Senate January 21, 1972:

NATO COUNCIL REPRESENTATIVE

David M. Kennedy, of Illinois, to be the U.S. Permanent Representative on the Council of the North Atlantic Treaty Organization, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

DEPARTMENT OF STATE

Willis C. Armstrong, of New Jersey, to be an Assistant Secretary of State.

DIPLOMATIC AND FOREIGN SERVICE

Kenneth Franzheim II, of Texas, now Ambassador Extraordinary and Plenipotentiary of the United States of America to New Zealand and to Western Samoa, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Fiji.

John I. Getz, of Illinois, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Malta.

Albert W. Sherer, Jr., of Illinois, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Czechoslovak Socialist Republic.

U.S. DISTRICT COURTS

Wilbur D. Owens, Jr., of Georgia, to be a U.S. district judge for the middle district of Georgia vice William A. Bootle, retiring.

DEPARTMENT OF JUSTICE

Ermen J. Pallanck, of Connecticut, to be U.S. marshal for the district of Connecticut for the term of 4 years vice Gaetano A. Russo, Jr., resigned.

Ralph E. Erickson, of California, to be an Assistant Attorney General vice William H. Rehnquist, resigned, to which office he was appointed during the last recess of the Senate.

Dale Kent Frizzell, of Kansas, to be an Assistant Attorney General vice Shiro Kashiwa, resigned, to which office he was appointed during the last recess of the Senate.

Henry E. Petersen, of Maryland, to be an Assistant Attorney General vice Will Wilson, resigned, to which office he was appointed during the last recess of the Senate.

NATIONAL RAILROAD PASSENGER CORPORATION

Rose M. Fanucchi, of California, to be a member of the board of directors of the National Railroad Passenger Corporation for the remainder of the term expiring April 28, 1973, vice Catherine May Bedell.

U.S. COAST GUARD

The following-named officers of the Coast Guard for promotion to the grade of lieutenant commander:

Andrew F. Durkee, Jr.	James M. Loy
Norman J. Cross	Gordon G. Piche
Milford G. Gillam, Jr.	Edward V. McGuire
Edward K. Roe	John A. Gloria
Richard S. Jarombek	Arnold H. Litteken,
William R. Wilkins	Jr.
George E. Watts	Joseph M. Maka
Stephen P. Plusch	Paul A. Martin
Kenneth W. Thompson	Thomas A. Welch
Peter K. Valade	Anthony J. Lutkus
David N. Arnold	Thomas J. McCarthy
Robert Bates	Richard L. Anderson
James R. Sherrard	Robert L. Hanna, Jr.
Robert L. Sundin	Gary Russell
Fred H. Halvorsen	William E. Remley
Raymond E. Cunning-	Martin C. Miller
ham, Jr.	Walter C. Reissig
Robert T. Dailey	Larry A. Murdock
Richard J. Beaver	Timothy V. Johnson
Harry E. Budd, Jr.	David Zawadzki
Berne C. Miller	Robert J. Heid
Harold G. Reed	Richard B. Ralph
Alan D. Rosebrook	Thomas Rutter
Jerry J. Surbey	George A. Bachtell
Robert E. Hammond II	Paul T. Potter
Frank R. Long	Gary A. Rogers
Richard C. Waterman	James E. Cornell
Burton F. Folce, Jr.	Lawrence R. Rodgers
Jerry C. Bacon	James D. Crisp, Jr.
Martin L. Lindahl	William H. Rollins, Jr.
Charles W. Murray	Charles C. Williams
Richard V. Butchka	Larry P. Scarborough
Donald G. Campbell	Robert H. Miller
William R. Ladd	Anthony G. Kasparian
Walter F. Bodner, Jr.	Jimmie H. Hobaugh
Gary C. Nelson	Bernard W. Ching
Ronald J. Davies	Ted B. Bryant
Larry R. Hyde	William J. Loefstedt
Leo J. Black, Jr.	Thomas J. McKerr
Thomas Nunes	William R. Arnet, Jr.
Stephen H. Davis	James H. Donahue
Andrew F. Hobson	Milton J. Foust
John A. McCullough	Neil A. Wagstaff
Delbert L. Hemphill	Richard W. Werner
Wayne I. Smith	Reed C. Mattingly
Sperry C. Storm	Eldon L. Beavers
Walter B. Ferm	Paul G. Patrinos
David R. Van Dreumel	Raymond C. Herring-
Richard G. Evans	ton
John R. Carlile, Jr.	Dennis W. Kurtz
Thomas L. Osborne	David H. Amos III
Gerald J. Pounds	Lindon A. Onstad
Richard G. Johns	Roger T. Rufe, Jr.
Robert L. Zeller	Marcel J. Bujarski

The following named member of the Permanent Commissioned Teaching Staff of the Coast Guard Academy for promotion to the grade of captain:

Roderick M. White.

The following-named Reserve officers to be permanent commissioned officers in the Coast Guard in the grade indicated:

Lieutenant commander

Jules A. Peebles.

Lieutenant

Gordon O. Tooley.

U.S. ARMY

The following-named officers for appointment in the Regular Army of the United States to the grade indicated under the provisions of title 10, United States Code, sections 3284 and 3307:

To be major general

Maj. Gen. Kenneth Howard Bayer, xxx-xx-x... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Ralph Longwell Foster, xxx-xx-x... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Morgan Garrott Roseborough, xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Lt. Gen. Robert Edmondston Coffin, xxx-xx-x... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Henry Blakefield, xxx-... xxx-xx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Robert Bruce Smith, xxx-xx-xxxx xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Donald Harry Cowles, xxx-xx-xx... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. George Mayo, Jr., xxx-xx-xxxx xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. George Samuel Beatty, Jr., xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Lt. Gen. Robert Clinton Taber, xxx-xx-xxxx xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. John Howard Elder, Jr., xxx-... xxx-xx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Warren Cobb, xxx-xx-x... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Edwin I. Donley, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Erwin Montgomery Graham, Jr., xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. John Daniel McLaughlin, xxx-... xxx-xx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. George Sammett, Jr., xxx-xx-xxxx xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Alden Burke, xxx-xx-xx... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Warren Kennedy Bennett, xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Lt. Gen. Harris Whitton Hollis, xxx-xx-xx... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. George Washington Putnam, Jr., xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Robert Paul Young, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Francis Paul Koisch, xxx-xx-xxxx, Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Thomas Matthew Rienzi, xxx-xx-x... xxx-x... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Russell Kraft, Jr., xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Charles Wolcott Ryder, Jr., xxx-... xxx-xx-xxxx Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Edgar Shedd III, xxx-x... xxx-xx-xx... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. Joseph Edward Pieklik, xxx-xx-x... xxx-... Army of the United States (brigadier general, U.S. Army).

Maj. Gen. William Bennison Fulton, 567–05–6670, Army of the United States (brigadier general, U.S. Army).

U.S. NAVY

Rear Adm. David H. Bagley, U.S. Navy, for appointment as Chief of Naval Personnel in the Department of the Navy for a term of 4 years.

Rear Adm. David H. Bagley, U.S. Navy, having been designated for commands and other duties of great importance and responsibility determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

Rear Adm. Douglas C. Plate, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

Rear Adm. Robert S. Salzer, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

Rear Adm. Stansfield Turner, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

Vice Adm. Robert L. Townsend, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

U.S. MARINE CORPS

Lt. Gen. Donn J. Robertson, U.S. Marine Corps, when retired, to be placed on the retired list in the grade of lieutenant general in accordance with the provisions of title 10, U.S. Code, section 5233.

IN THE AIR FORCE

The following-named officers for promotion in the United States Air Force, under the appropriate provisions of chapter 839, title 10, United States Code, as amended.

MEDICAL CORPS

Lieutenant colonel to colonel

Adamson, Godfrey D., Jr., xxx-xx-xxxx
Aljman, Robert M., xxx-xx-xxxx
Andrews, Philip W., xxx-xx-xxxx
Axline, John W., xxx-xx-xxxx
Breslau, Roger C., xxx-xx-xxxx
Burkhart, Fred L., xxx-xx-xxxx
Calvert, John H., Jr., xxx-xx-xxxx
Costin, Ronald E., xxx-xx-xxxx
Coursey, John W., xxx-xx-xxxx
Cowan, William R., xxx-xx-xxxx
Daniel, Thomas G., xxx-xx-xxxx
Dannemiller, Francis J., xxx-xx-xxxx
Davis, Jefferson C., xxx-xx-xxxx
Davison, Richard A., xxx-xx-xxxx
Dennis, LeBaron W., xxx-xx-xxxx
Edmunds, Frank E., Jr., xxx-xx-xxxx
Fidone, George S., xxx-xx-xxxx
Fite, Fulton W., xxx-xx-xxxx
Gambrell, Richard D., Jr., xxx-xx-xxxx
Guillebeau, James G., xxx-xx-xxxx
Gustavson, Warner H., xxx-xx-xxxx
Hayes, Frank W., xxx-xx-xxxx
Hernandez, Cruz M., xxx-xx-xxxx
Jones, David R., xxx-xx-xxxx
King, William H., xxx-xx-xxxx
Landew, Melvin, xxx-xx-xxxx
Larsen, Gordon L., xxx-xx-xxxx
Lucas, Richard N., xxx-xx-xxxx
Mahon, Charles B., xxx-xx-xxxx
Moralespereira, Antonio, xxx-xx-xxxx
Neal, William R., xxx-xx-xxxx
Oi, Richard H., xxx-xx-xxxx
Oliver, James H., Jr., xxx-xx-xxxx
O'Toole, Robert V., Jr., xxx-xx-xxxx
Peterson, Carlton J., xxx-xx-xxxx
Petrauskas, Raymond R., xxx-xx-xxxx
Plugge, Frederick W., IV, xxx-xx-xxxx
Po, Robert, xxx-xx-xxxx
Poel, Robert W., xxx-xx-xxxx
Preator, Richard F., xxx-xx-xxxx
Rodgin, David W., xxx-xx-xxxx
Schwamm, Harry A., xxx-xx-xxxx
Seidel, Donald R., xxx-xx-xxxx
Singleton, William P., xxx-xx-xxxx
Whitaker, Harry A., Jr., xxx-xx-xxxx
Youngman, Delyle R., Jr., xxx-xx-xxxx

MEDICAL CORPS

Major to lieutenant colonel

Abbott, Kenneth H., II, xxx-xx-xxxx
Adams, John P., xxx-xx-xxxx
Aldredge, Horatio R., III, xxx-xx-xxxx
Andruczk, Robert C., xxx-xx-xxxx
Barry, William E., xxx-xx-xxxx
Behringer, Blair R., xxx-xx-xxxx
Bickel, Rudolf G., xxx-xx-xxxx
Bishop, John E., xxx-xx-xxxx
Blatner, Howard A., xxx-xx-xxxx
Bristow, John W., xxx-xx-xxxx
Burns, John B., xxx-xx-xxxx
Carroll, Herma G., Jr., xxx-xx-xxxx
Chappell, Seaborn M., xxx-xx-xxxx
Cook, James H., xxx-xx-xxxx
Cook, Marshall S., xxx-xx-xxxx
Cruzjimenez, Pedro R., xxx-xx-xxxx
Dacus, Dale S., xxx-xx-xxxx
Dear, Steven R., xxx-xx-xxxx
Dehart, Rufus M., Jr., xxx-xx-xxxx
Demos, George T., xxx-xx-xxxx
Demski, Robert S., xxx-xx-xxxx
Eilert, Robert E., xxx-xx-xxxx
Eisenhart, George V., xxx-xx-xxxx
Erickson, Larry R., xxx-xx-xxxx
Erickson, Larry L., xxx-xx-xxxx
Falbaum, Hartley L., xxx-xx-xxxx
Ferguson, William T., xxx-xx-xxxx
Fisher, William J., xxx-xx-xxxx
Fisher, William J., xxx-xx-xxxx
Giffin, Edward L., xxx-xx-xxxx
Gigax, John H., xxx-xx-xxxx
Hargis, Robert J., xxx-xx-xxxx
Harlan, John R., xxx-xx-xxxx
Hartman, James F., xxx-xx-xxxx
Haydon, John R., Jr., xxx-xx-xxxx
Huey, James R., Jr., xxx-xx-xxxx
Hutton, Robert D., xxx-xx-xxxx
Johnson, Joseph M., xxx-xx-xxxx
Johnson, Wayne A., xxx-xx-xxxx
Kaminski, Paul F., xxx-xx-xxxx
Kasdan, Morton L., xxx-xx-xxxx
Keenan, James D., xxx-xx-xxxx
Kelly, Paul A., xxx-xx-xxxx
Koop, Lamonte P., xxx-xx-xxxx
Logan, Neal J., xxx-xx-xxxx
Longo, Michael R., Jr., xxx-xx-xxxx
Maioriello, Richard P., xxx-xx-xxxx
McFarlane, Claude L., xxx-xx-xxxx
Mendoza, Edward, xxx-xx-xxxx
Michaels, David L., xxx-xx-xxxx
Murphy, Jerry L., xxx-xx-xxxx
Neimanis, Andris, xxx-xx-xxxx
Noga, Gerald W., xxx-xx-xxxx
Olsen, Armin B., xxx-xx-xxxx
Patton, John P., Jr., xxx-xx-xxxx
Paull, Robert M., xxx-xx-xxxx
Pohl, Donald R., xxx-xx-xxxx
Price, Terrill E., Jr., xxx-xx-xxxx
Reay, Donald T., xxx-xx-xxxx
Reber, Howard A., xxx-xx-xxxx
Ring, Robert J., Jr., xxx-xx-xxxx
Robinson, James R., xxx-xx-xxxx
Russell, David S., xxx-xx-xxxx
Sarnacki, Clifford I., xxx-xx-xxxx
Schwark, Thomas E., xxx-xx-xxxx
Shaywitz, Bennett A., xxx-xx-xxxx
Shirley, James H., xxx-xx-xxxx
Slovin, Alvin J., xxx-xx-xxxx
Stevens, Joseph B., xxx-xx-xxxx
Suckow, Lowell C., xxx-xx-xxxx
Sutton, George S., xxx-xx-xxxx
Thompson, Cleveland, III, xxx-xx-xxxx
Thompson, Richard M., xxx-xx-xxxx
Tobias, Thurman E., xxx-xx-xxxx
Todd, David S., xxx-xx-xxxx
Touhey, John E., xxx-xx-xxxx
Urso, Philip J., xxx-xx-xxxx
Vanvonderen, Vernon R., xxx-xx-xxxx
Versteeg, Harold J., Jr., xxx-xx-xxxx
Verwest, Hadley M., Jr., xxx-xx-xxxx
Wallis, William E., xxx-xx-xxxx
Watson, Alfred B., Jr., xxx-xx-xxxx
Weinman, Tay J., xxx-xx-xxxx
Wyatt, Ronald O., xxx-xx-xxxx
Zimmerman, Raymond E. P., xxx-xx-xxxx

IN THE ARMY

The following-named officers for promotion in the Army of the United States under the provisions of Public Law 92–129.

To be lieutenant colonel

Acosta-Natal, Fausto, xxx-xx-xxxx
Adams, William M., Jr., xxx-xx-xxxx
Alabanza, Florentino V., xxx-xx-xxxx
Alexander, Byron B., xxx-xx-xxxx
Allen, Alfred M., xxx-xx-xxxx
Allison, Howard H., xxx-xx-xxxx
Andrada, Manuel T., xxx-xx-xxxx
Babaian, William L., xxx-xx-xxxx
Baddour, George A., xxx-xx-xxxx
Bancroft, William H., xxx-xx-xxxx
Barclay, William A., xxx-xx-xxxx
Barnett, Stanley A., xxx-xx-xxxx
Barreca, Nicholas E., xxx-xx-xxxx
Beaver, Harry C., xxx-xx-xxxx
Bell, Michael J., xxx-xx-xxxx
Bell, Randall W., xxx-xx-xxxx
Bohama, Rajendra K., xxx-xx-xxxx
Blumer, Robert B., xxx-xx-xxxx
Bluehardt, Ralph, xxx-xx-xxxx
Bogart, John N., xxx-xx-xxxx
Bowen, Thomas E., xxx-xx-xxxx
Brown, Gerald S., xxx-xx-xxxx
Brown, Samuel A. II, xxx-xx-xxxx
Buck, Edward G., Jr., xxx-xx-xxxx
Burns, Winton H., xxx-xx-xxxx
Callan, Thomas W., xxx-xx-xxxx
Cameron, Richard D., xxx-xx-xxxx
Cardell, Jose E., xxx-xx-xxxx
Carolan, Patrick J., xxx-xx-xxxx
Carter, Gordon C., xxx-xx-xxxx
Cassisi, Nicholas J., xxx-xx-xxxx
Cavanagh, Richard C., xxx-xx-xxxx
Chase, Norman B., xxx-xx-xxxx
Chezar, Joel A., xxx-xx-xxxx
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EXTENSIONS OF REMARKS

QUALITY MANAGEMENT IN THE NATIONAL FORESTS

HON. LEE METCALF

OF MONTANA

IN THE SENATE OF THE UNITED STATES

Friday, January 21, 1972

Mr. METCALF. Mr. President, as we advance toward establishing quality management in our national forests, the timber industry increasingly exerts pressure on the men who work in the woods, and those in the business communities which serve them, to resist that quality management to their own detriment.

If policies which allow overcutting in the woods are not reversed and soon, today's jobs will end in tomorrow's unemployment lines. Our forests are being overcut and the result can be only barren hills.

The most immediate victim of such overcutting will be the man who today earns his living in the woods, for them there will be no further work at all.

However, it is not only in the woods that industries try to blackmail their employees into resisting environmental advances designed to protect the worker as much as to protect the overall environment. The fumes from a polluting factory affect the factory workers before the fumes affect others. Yet industries create the appearance that unless workers join with management in resisting attempts to protect the environment, their jobs will be eliminated.

Mr. Leonard Woodcock, president of the United Auto Workers, discussed this industrial blackmail in a recent issue of the Sierra Club Bulletin. Portions of his remarks were published in the Evening Star. I ask unanimous consent that Mr. Woodcock's remarks be printed in the RECORD.

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

POLLUTION BLACKMAIL

(By Leonard Woodcock)

A new environmental "game plan" is emerging in American industry.

Employers under notice to comply with governmental anti-pollution standards are seeking to enlist workers, their unions, and their communities in campaigns of resistance to the enforcement of these standards through overt or implied threats that such enforcement would result in loss of jobs and income through shutdowns and layoffs.

Our passage from a pollution-prone to a relatively pollution-free society, even under the best of circumstances is bound to be long and difficult.

But we can be sure that the best of circumstances will not prevail, if through inaction we tolerate an industrial strategy of playing on the economic fears of workers and communities to create widespread political opposition to cleaning up the environment. Giving workers the right to sue would not put an end to that strategy and, at the same time, would create a new and powerful financial incentive to induce polluting employers to step up to their environmental responsibilities.

Lacking such an incentive, employers will be strongly tempted to adhere to past and current practices. In that case, we may not make the passage at all, or not make it in time to avoid irreparable damage to the natural life-support systems that we have until very recently taken for granted.

CONFLICTING VIEWS

What we have today, is not an environmenal policy, but environmental politics—and it is not even a new politics, merely the old politics of corporate irresponsibility, illustrated in classic perfection by Union Carbide's January 1971 announcement that it would have to lay off about 625 workers in order to comply with air-quality standards set by the Environmental Protection Agency. This, it should be noted, reportedly occurs after 15 years of negotiations with state and federal authorities!

It is not difficult to imagine the surprise and shock felt by the corporation's workers, particularly in a part of the country where some workers still refer to factory smoke as "gold dust." Outrage is mixed with great caution not to say fear, among Union Carbide workers.

A. F. Grospiron, president of the Oil Chemical and Atomic Workers, which represents some of the Union Carbide workers, stated: "We resent the fact that Union Carbide is using our members as pawns in its resistance to clean up the air around Marietta."

On the other hand, Elwood Moffett, president of District 50 of the Allied and Technical Workers, which also represents some Union Carbide workers, said: "It is going to take time to correct these problems, and the government ought to give the company more time."

When workers are torn by conflicting views of their economic situation, as in this case, opportunistic management can have a field day.

Management's readiness to exploit the insecurity of workers is dramatically evident in the Union Carbide case. But the situation is not unique. With or without drama, it exists or is implicit wherever there are workers whose major property is in their jobs, working for employers reluctant to face up to the costs of ending environmental pollution.

When General Motors came under pressure from a federal court action for discharging industrial wastes into the Hudson River from its Tarrytown plant, it shifted its offending operation from Tarrytown to Baltimore.

GENTLE HINT

A local newspaper commented: "This put several hundred local employees out of jobs—a gentle hint to the rest that they, too, might join the unemployed, if Hudson River valley residents push too hard for a quick cleanup of the river. In fact, GM was more blunt with the U.S. Attorney's office. At the March 20 appearance of opposing lawyers before Judge Motley in the case, Assistant U.S. Attorney Michael Hess told the judge: "We have been told by General Motors people that 'If we could not dump anything into the Hudson River, we would have to close down and thousands of people would lose their jobs.' "

American workers, perhaps more than the rest of the nation, have good reason to be foes of pollution. They have confronted it, resisted it, and to a dangerous degree have had to endure it over decades on the job. These in-plant hazards have increased with the proliferation of new toxic substances in recent years.

Moreover, workers and their families are most apt to be exposed to the pollution released by industry into the surrounding community, for they are less likely than executives and professional workers to live in residential suburbs.

The problem is not that they are advocates of pollution, but that their economic circumstances require them to think first of jobs, paychecks and bread on the table.

The Congress has no more serious challenge than that of taking specific actions which will assure American workers and their families of a valid alternative to paychecks earned through working and living in a polluted environment. That alternative, put simply, is the alternative of jobs, paychecks, bread on the table—and a clean environment.

Legislation to give workers the right to sue their employers for damages suffered in plant shutdowns or layoffs resulting from pollution of the environment would be a practical, substantial step toward the creation of such an alternative.

Such legislation should give all workers affected both directly, through loss of jobs, and indirectly, through downgrading, the right to sue in federal and state courts.

Where the employer is a corporation, there should be the right to sue the corporation, with the officers and directors joined as defendants.

This is essential, for in a situation where a corporation operates only one plant, if the shutdown were followed immediately by the dissolution of the corporation, the judgment would be meaningless.

The possibility of being held personally liable, would tend to make officers and direc-