bill intended to help reduce car repair costs caused by structural, manufacturing deficiencies. This measure was drafted by the Interstate and Foreign Commerce Committee on which I serve.

Known as the Motor Vehicle Information and Cost Savings Act, the legislation would direct the Department of Transportation to establish Federal bumper standards to reduce damages sustained in low-speed collisions. It would also establish a consumer information program intended to stimulate competition among manufacturers to produce cars more resistant to damage and less costly to repair. It would prohibit any tampering with odometers to mislead buyers about the actual milage of a car.

Certainly, there is not a car owner in the Nation who has not seen repair costs grow by leaps and bounds in recent years. Nationally, we are now spending between $25 and $30 billion a year to get our cars repaired, and billions more for accident insurance coverage.

Yet reputable tests have shown that better bumper construction in cases of minor accidents would help enormously to reduce these repair costs, since about 60 percent of all automobile accidents occur at impact speeds of 5 miles per hour or less. The legislation we have drafted is carefully designed to stimulate car manufacturers to build better bumpers that will withstand these minor bangs and bumps without requiring major structural repairs. We know the technology already exists to do the job.

I believe consumers will be well served by this and other features of this measure, and recommend its passage wholeheartedly.

SENATE—*Tuesday, May 23, 1972*

The Senate met at 12 noon and was called to order by Hon. LAWTON CHILES, a Senator from the State of Florida.

PRAYER

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

Eternal Father, who has taught us that even good leaders must themselves be lead, that wise governors must themselves have a wiser governor, that wielders of power must themselves be under a higher power, be to us that leader, governor, and higher power. We beseech Thee to grant to the President and to all in positions of public trust that higher wisdom, that nobler vision, and that stewardship of power which leads to peace and righteousness on this earth. Keep those who labor here cheerful when things go wrong, persevering when things are difficult, serene when things are irritating, strong in mind and resourceful in spirit until the day is done. Then grant them Thy peace.

Through Him who is our light and our salvation. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., May 23, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. LAWTON CHILES, a Senator from the State of Florida, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

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

REPORTS OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of May 22, 1972, the following reports of a committee were submitted on May 22, 1972:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, without amendment:

H.R. 1915. An act to provide for the conveyance of certain real property of the United States (Rept. No. 92–800).

By Mr. METCALF, from the Committee on Interior and Insular Affairs, with amendments:

S. 3230. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Assiniboine Tribes of Indians in Indian Claims Commission docket No. 279–A, and for other purposes (Rept. No. 92–799).

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILL AND JOINT RESOLUTION

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on May 18, 1972, the President had approved and signed the following act and joint resolution:

S. 1379. An act to authorize the Secretary of Agriculture to establish a volunteers in the national forests program, and for other purposes; and

S.J. Res. 234. Joint resolution deploring the attempted assassination of Gov. George C. Wallace, of Alabama.

REPORT ON OCCUPATIONAL SAFETY AND HEALTH—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. CHILES) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

On-the-job protection of American workers continues as a high priority goal in this Administration's effort to improve the quality of life for all Americans.

The Occupational Safety and Health Act of 1970, which I signed into law on December 29, 1970, is a major step towards improving workplace conditions. As I said at that time, this legislation is one of the most important measures ever taken in behalf of those American workers who are covered by the provisions of the act.

The accompanying President's Report on Occupational Safety and Health describes what has been done to implement the act during the first year of its operation, and it also indicates the magnitude and direction of the task ahead. The report examines the responsibilities of the Department of Labor for setting safety and health standards, and for gaining compliance with those standards. Another part of the report explores the activities of the Department of Health, Education, and Welfare in research and training.

Like many problems that we face today, the improvement of job safety and health cannot be accomplished by simply pressing a button. If we are to reduce the injuries, the illnesses, and the deaths connected with working conditions, we must take determined actions: we must increase the number of people who are trained in health and safety techniques; knowledge of the causes of accidents and illnesses must be developed; this knowledge must be translated into effective standards; employers and employees require adequate instructions; and standards must be enforced through energetic and rigorous inspection programs.

Above all else, if we are to be successful, the full collaboration of private industry, the States and the employees must be enlisted.

The Occupational Safety and Health Act of 1970 recognizes the need of reinforcing the role of the States in resolving our national problems. As a consequence, the implementation of the act has emphasized cooperative programs with State Governments. The involvement of the States in these programs has been gratifying. It is a testimonial to the flexibility and vigor of our Federal-State system that the 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands have all expressed a willingness to develop plans for setting and enforcing standards that are at least on a par with the Federal requirements fixed by the act.

In addition, many States are actually aiding the Federal Government by gathering superior statistical data that will provide a basis for charting the future direction of safety and health programs. Many States, too, are now assisting the Federal Government in the enforcement of standards.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

In short, I feel that the essential groundwork has been laid for genuine progress in one-the-job safety and health. This report describes the structures that have been set in place, and it outlines how the building process will continue.

RICHARD NIXON.

THE WHITE HOUSE, *May 22, 1972.*

REPORT ON COMMUNICABLE DISEASE CONTROL ACTIVITIES—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. CHILES) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

As required by Public Law 91-464, I hereby transmit a report on communicable disease control activities prepared by the Secretary of Health, Education, and Welfare.

RICHARD NIXON.

THE WHITE HOUSE, *May 22, 1972.*

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, May 22, 1972, be dispensed with.

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

AUTHORIZATION FOR COMMITTEE ON LABOR AND PUBLIC WELFARE TO HAVE UNTIL MAY 30, 1972, TO FILE ITS REPORT ON S. 3419

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare have until May 30, 1972, to file its report on S. 3419.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 762, 763, and 764.

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

SIX-MONTH EXTENSION OF LIFE OF NATIONAL COMMISSION ON CONSUMER CREDIT

The joint resolution (S.J. Res. 211) to amend title IV of the Consumer Credit Protection Act establishing the National Commission on Consumer Finance was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That title IV of the Consumer Credit Protection Act (82 Stat. 165) is amended as follows:

(1) in section 404(b), by striking out "July 1, 1972" and inserting "December 31, 1972" in lieu thereof;

(2) in section 406(e), by striking out "Ninety days after" and inserting "After" in lieu thereof; and

(3) in section 407, by striking out "$1,500,000" and inserting "$2,000,000" in lieu thereof.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-795), explaining the purposes of the measure.

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

PURPOSE OF RESOLUTION

This resolution would extend the life of the National Commission on Consumer Finance (authorize and establish pursuant to title IV of the Consumer Credit Protection Act of 1968) until December 31, 1972.

Currently the Commission is due to report on or before July 1, 1972, and expire 90 days thereafter. The Commission is performing original research in the consumer credit field and obtaining empirical data never previously collected. Due to the originality of the Commission's research efforts, certain unseen delays arose in the data gathering; creditor responses to requests for information far exceeded expectations and increased the scope of the survey and at the same time increased the accuracy of the results.

In addition the Commission was late in commencing its work. Although authorized in late 1968 it was not until the spring of 1970 that all of the Commission members were named and appointed, and the administrative and technical staff were employed. For these reasons, the 6-month extension proposed by this resolution is necessary.

The 6-month extension which would be granted by this resolution does not contemplate a 90-day period for the Commission to wind down its work beyond December 31, 1972. The Commission believes that it can arrange for its winding-down activities within the 6-months' extension provided in the resolution.

The resolution also authorizes the additional appropriation of $500,000 to carry the activities of the Commission through the extension proposed by this resolution. These funds are necessary, principally, to cover greater than anticipated expenses incurred in carrying out the central data gathering project which was largely contracted for with the Bureau of the Census as well as such costs as salaries, rent, and other administrative items. Since this was the first time that a project of this nature has been undertaken, it was impossible for the Bureau of the Census to estimate the cost of such data gathering with any degree of accuracy. The additional funds provided by this resolution should be sufficient to cover the data gathering project costs and all other expenses of the Commission including the printing of the final report.

The resolution was reported by the committee without objection. The committee recommends favorable action by the Senate.

CORDON RULE

In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

AMENDMENT OF THE YOUTH CONSERVATION CORPS ACT OF 1970

The Senate proceeded to consider the bill (S. 2454) to amend the Youth Conservation Corps Act of 1970 (Public Law 91-378; 84 Stat. 794) to expand the Youth Conservation Corps pilot program, and for other purposes which had been reported from the Committee on Interior and Insular Affairs with amendments on page 1, after the enacting clause, insert "That the Act of August 13, 1970 (84 Stat. 794) is hereby amended to read as follows:"; on page 4, line 23, after the word "programs", insert "as well as any liability for personal injury or property damage stemming from such use"; on page 5, after line 2, strike out:

"(b) The provision of title II of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply to appointments made to the Corps, to temporary supervisory personnel, or to temporary program support staff.

At the beginning of line 7, strike out "(c)" and insert "(b)"; in line 8, after the word "to", strike out "appointments of youth employees to" and insert "employment in"; at the beginning of line 10, strike out "(d)" and insert "(c)"; in line 13, after the word "the", strike out "Act." and insert "Act upon non-Federal public lands and water areas."; and, in line 22, after the word "centum", strike out "nor be less than 10 per centum"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of August 13, 1970 84 Stat. 794) is hereby amended to read as follows:

"POLICY AND PURPOSE

"SECTION 1. The Congress finds that the gainful employment during the summer months of American youth, representing all segments of society, in the healthful outdoor atmosphere afforded in the national park system, the national forest system, the national wildlife refuge system, and other public land and water areas of the United States creates an opportunity for understanding and appreciation of the Nation's natural environment and heritage. Accordingly, it is the purpose of this Act to further the development and maintenance of the natural resources of the United States by the youth, upon whom will fall the ultimate responsibility for maintaining and managing these resources for the American people.

"YOUTH CONSERVATION CORPS

"SEC. 2. (a) To carry out the purposes of this Act, there is hereby established in the Department of the Interior and the Department of Agriculture a Youth Conservation Corps (hereinafter referred to as the 'Corps'). The Corps shall consist of young men and women who are permanent residents of the United States, its territories, or possessions, who have attained age fifteen but have not attained age nineteen, and whom the Secretary of the Interior or the Secretary of Agriculture may employ during the summer months without regard to the civil service or classification laws, rules, or regulations, for the purpose of developing, preserving, or maintaining lands and waters of the United States as determined by the Secretary of the Interior, and the Secretary of Agriculture.

"(b) The Corps shall be open to youth of both sexes and youth of all social, economic, and racial classifications, with no person being employed as a member of the Corps for a term in excess of ninety days during any single year.

"SECRETARIAL DUTIES

"SEC. 3. (a) The Secretary of the Interior and the Secretary of Agriculture shall:

"(1) determine with other Federal agencies, areas under their administrative jurisdictions which are appropriate for carrying out programs using employees of the Corps; and to determine and select appropriate work and education programs and projects for participation by Corps employees;

"(2) determine the rates of pay, hours, and other conditions of employment in the Corps: *Provided*, That members of the Corps shall not be deemed to be Federal employees, other than for the purposes of chapter 171 of title 28, United States Code, and chapter 81 of title 5, United States Code;

"(3) provide for such transportation, lodging, subsistence, and other services and equipment as they may deem necessary or appropriate for the needs of members of the Corps in their duties. The Secretary of the Interior and the Secretray of Agriculture may contract with any public agency or organization or any private nonprofit agency or organization which has been in existence for at least five years for the operation of any Youth Conversation Corps project. Whenever economically feasible, existing but unoccupied Federal facilities and surplus and/or unused equipment, of all types, including military facilities and equipment, shall be utilized for the purposes of the Corps, where appropriate and with the approval of the Federal agency involved. To minimize transportation costs Corps members shall be employed on conservation projects as near to their places of residence as is feasible;

"(4) promulgate regulations to insure the safety, health, and welfare of the Corps members;

"(5) provide, to the extent possible, that permanent, or semipermanent facilities used as Youth Conservation Corps camps be made available to local schools, school districts, State junior colleges and universities, and other educational institutions for use as environmental/ecological education camps during periods of nonuse by the Youth Conservation Corps program. Costs for operation, maintenance, and staffing of these facilities during periods of use by non-Corps programs as well as any liability for personal injury or property damage stemming from such use shall be the responsibility of the entity or organization using the facility and shall not be a responsibility of the Secretaries or the Corps.

(b) The provisions of section 3110, title 5, United States Code shall not apply to employment in the Corps

"(c) The Secretary of the Interior and the Secretary of Agriculture are hereby authorized to establish a pilot Federal-State cost-sharing program with the States, territories or possessions for purposes as outlined in the Act upon non-Federal public lands and water areas.

"(1) The funds appropriated for any program year shall be made available to States requesting participation, and determined by the Secretary of the Interior and Secretary of Agriculture to have qualified programs to meet the objectives of the Act.

"(2) The total number of employees of the Corps in State cost-sharing programs shall not exceed more than 25 per centum of the total number of employees in the Corps in any program year. The Federal share of the cost of the participating States program shall not exceed 80 per centum in any program year.

"SECRETARIAL REPORTS

"SEC. 4. Upon completion of each year's program the Secretary of the Interior and Secretary of Agriculture shall prepare a joint report detailing the contribution of the program toward achieving the purposes of the Act and providing recommendations. Each report shall be submitted to the President not later than one hundred and eighty days following completion of that year's program. The President shall transmit the report to the Congress for review and appropriate action.

"AUTHORIZATION OF FUNDS

"SEC. 5. There are hereby authorized to be appropriated amounts not to exceed $150,000,000 annually to be made available to the Secretary of the Interior and the Secretary of Agriculture to carry out the purposes of this Act."

Mr. JACKSON. Mr. President, I am happy to support S. 2454, a bill to expand and make permanent the Youth Conservation Corps, which Congress so wisely initiated in 1970, by passage of the Youth Conservation Corps Act. Congress, in adopting the original Youth Conservation Corps Act, decisively demonstrated its concern for our young people and the conservation of our natural resources. Now is the time to reaffirm that commitment and to push forward with a permanent and a greatly expanded Youth Conservation Corps program.

Senators will recall that the original act, Public Law 91–378, established in the Departments of the Interior and Agriculture a 3-year pilot program designed to provide summer employment for young people in the outdoors and at the same time provide the Nation's young men and women an opportunity to undertake vitally needed conservation and resource projects on our public lands. In addition to supplying needed job opportunities, the act also included important provisions for environmentally oriented education, and not to be discounted, the opportunity for young people to learn the value and meaning of a day's hard work.

Mr. President, S. 2454 as reported by the committee would provide additional employment opportunities for young people while at the same time enabling an intensified effort to be made to further the proper development, protection, and maintenance of the natural resources of the United States. In addition, the new Youth Conservation Corps program would: first, permit the establishment of a new pilot program of Federal support to States in their administration of Youth Conservation Corps programs on State lands; second, authorize the Youth Conservation Corps to utilize surplus and/or unused Federal property; third, make available for on-season use by local educational institutions Youth Conservation Corps facilities; and, fourth, exempt appointments to the Youth Conservation Corps from coverage under section 3110, title 5, United States Code, pertaining to the employment, promotion, or advancement of relatives.

I think that a brief review of last summer's Youth Conservation Corps program would be helpful in the Senate's consideration of S. 2454.

First, there was greater enthusiasm on the part of the public and participants than was anticipated. Even with the little advance publicity given to the program, over 124,000 young people applied for the 2,600 positions that were available. Ninety-eight percent were turned down, not because they were ineligible, but because there were no positions for all who wanted to participate. The 2,600 teenagers who were accepted attended 64 YCC camps of which half were coeducational. The camps were located in 37 States, the District of Columbia, and in American Samoa.

These young people, aged 15 to 18 years, took on some difficult and unglamorous jobs in the management of our recreation areas and public lands. Tasks undertaken included campground and trail construction, maintenance, erosion control, range management, and improving wildlife habitat. They worked long hard hours at their assigned tasks on conservation projects. Yet, in spite of the hard work and often rugged and primitive living conditions, only 4 percent of the young people involved dropped out of the program.

I had an opportunity to ask one young woman who participated in the program what she liked about the Youth Conservation Corps. Her response reaffirmed my own faith in our young people. Her answer: "Work."

Second, I think everyone was surprised at the amount of useful and important work that was accomplished by these young people. Their enthusiasm for hard work often outpaced everyone's expectations and jobs were completed in record time. In the words of one administrator of the program:

> One thing we gained was a new respect for the Nation's teenagers . . . Our main problem this summer was keeping up with them.

There can be no question that these youngsters made a valuable contribution to resource management. Based on testimony submitted by the administration during the hearing on S. 2454, the total cost of the program for last summer was $2,423,000. The value of the work accomplished was $1,762,000. This means that for every tax dollar that went into the program about 73 cents was directly returned in the form of actual physical labor performed for the benefit of the public on Federal lands. This leaves 27 cents per dollar to be accounted for, which brings me to the third point I would like to make in reviewing last summer's program.

It is my belief that the indirect benefits such as the value to society of having these youngsters gainfully employed, the conservation education they receive, and the broadening social experience that they experience more than make up for that 27 cents. The youngsters in the program learned to live and work with people of diverse backgrounds. Beyond this, they gained a new respect for the Nation's natural environment and heritage. What value to our society can we place on our young people learning the virtues of hard work and caring for our Nation's resources? In the long run I think it is clear that the benefits will far exceed the costs.

The action by the Senate Interior and Insular Affairs Committee in reporting the bill was unanimous. I urge the Senate to act promptly and affirmatively by forwarding this measure to the House of Representatives for its consideration.

The amendments were agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–796), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

It is the view of the members of the Interior and Insular Affairs Committee that because of the success of the Youth Conservation Corps program established by Public Law 91–378, it should be made permanent by the enactment of S. 2454. The new program would provide additional employment opportunities for young people while at the same time enabling an intensified effort to be made to further the proper development, protection and maintenance of the natural resources of the United States. In addition, the new Youth Conservation Corps program would (1) permit the establishment of a new pilot program of Federal support to States in their administration of Youth Conservation Corps programs on State lands; (2) authorize the Youth Conservation Corps to utilize surplus and/or unused Federal property; (3) make available for off-season use by local educational institutions Youth Conservation Corps facilities; and (4) exempt appointments to the Youth Conservation Corps from coverage under section 3110, title 5, U.S. Code, pertaining to the employment, promotion or advancement of relatives.

COMMITTEE AMENDMENTS

Most of the amendments made by the committee to S. 2454 are minor or technical in nature and were designed to clarify committee intent. However, one amendment would affect the scope of the recommended legislation and a brief explanation of this action is believed necessary in order that the intent of the committee is clear.

The committee amended the bill by striking the phrase "nor be less than 10 per centum" on page 5, line 17, of the measure. Since the section provided that employees in the State cost-sharing programs could not be less than 10 percent of the total number of employees in the Corps, the participation in the State cost-sharing program could limit the overall participation in the program. For example, if there were few participants in the State cost-sharing program, the overall program would have had to be correspondingly limited. The committee believes that the number of participants in the overall program should not be constrained by the number of participants in the State cost-sharing program.

BACKGROUND

Several attempts in the past decade to establish a youth-oriented conservation program were culminated in the 91st Congress by enactment of Public Law 91–378 which provided for the creation of a pilot Youth Conservation Corps program to be administered by the Secretaries of Interior and Agriculture.

The summer of 1971 provided the first full-scale test of the concepts embodied in Public Law 91–378. As evidenced by the committee during hearings held on October 14, 1971, regarding S. 2454, the results of and enthusiasm for the Youth Conservation Corps exceeded all expectations.

With very little advance publicity, over 124,000 young people applied for the 2,600 positions available in the program. In addition to the number of young people who expressed an interest, the contribution made by the corpsmen to the husbanding of our natural resources far surpassed expectations. It is estimated that for every dollar spent on the program, 73 cents were directly returned in the form of physical labor performed for the benefit of the public on public lands.

These youngsters, aged 15 to 18 years, took on some of the roughest jobs in the management of our recreation areas and public lands. Tasks included, but were not limited to, campground and trail construction and maintenance, erosion control, range management, and improving wildlife habitat. Their enthusiasm for hard work was greater than anticipated, and jobs were completed in record time. As recorded in the hearings on S. 2454, a healthy attitude on the part of American youth is typified by the response of one young lady who was asked what she liked about the program. Her answer: "Work."

It is the sound performance of the Departments in administering the first year's program and the high degree of enthusiasm by the participants which leads the committee to recommend expansion of the program upon enactment of this legislation.

SAWTOOTH NATIONAL RECREATION AREA, IDAHO

The Senate proceeded to consider the bill (H.R. 6957) to establish the Sawtooth National Recreation Area in the State of Idaho, to temporarily withdraw certain national forest land in the State of Idaho from the operation of the U.S. mining laws, and for other purposes which had been reported from the Committee on Interior and Insular Affairs with an amendment to strike out all after the enacting clause and insert:

That, in order to assure the preservation of, and to protect the scenic, historic, pastoral, fish and wildlife, and other recreational values of the Sawtooth Mountains and adjacent lands, there is hereby established, subject to valid existing rights, the Sawtooth National Recreation Area.

SEC. 2. The boundaries of the recreation area shall be those shown on the map entitled "Proposed Sawtooth National Recreation Area" dated March 1971, which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture. The Secretary of Agriculture (hereinafter called the "Secretary") shall, as soon as practicable after the date this Act takes effect, publish in the Federal Register a notice of the establishment of the Sawtooth National Recreation Area, together with a detailed description and map showing the boundaries thereof.

SEC. 3. The Secretary shall administer the Sawtooth National Recreation Area in a manner that will best provide for (1) the protection and conservation of the salmon and other fisheries; (2) the conservation and development of scenic, historic, pastoral, wildlife, and other values, contributing to and available for public enjoyment, including the preservation of sites associated with and typifying the economic and social history of the American West; and (3) on federally owned lands, management, utilization, and disposal of natural resources, such as lumbering, grazing, and mining, that will not substantially impair the purposes for which the recreation area is established.

SEC. 4. Subject to the limitations hereinafter set forth, the Secretary may acquire by purchase with donated or appropriated funds, by gift, exchange, bequest, or otherwise, such lands or interests therein, including mineral interests, within the boundaries of the recreation area as he determines to be needed for the purposes of this Act. But, any property or interest within the recreation area owned by the State of Idaho or any political subdivision thereof may be acquired unde the authority of this Act only by donation or exchange.

In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property or interests therein located within the boundaries of the recreation area and convey to the grantor of such property any federally owned property or interests therein within the State of Idaho under the jurisdiction of the Secretary, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value: *Provided*, That the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged.

Notwithstanding any other provision of law, any Federal property located within the recreation area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the purposes of this Act. Lands acquired by the Secretary or transferred to his administrative jurisdiction within the recreation area shall become parts of the recreation area and of the national forest within or adjacent to which they are located.

SEC. 5. (a) The authority of the Secretary to acquire an interest in private property within the recreation area, other than mineral interests, without the owner's consent and by means of condemnation shall be limited to—

(1) the acquisition of scenic easements when the private owner is unwilling to use his property in conformance with the standards of a use provided for in subsection (c) of this section; and

(2) the acquisition of easements for access to and utilization of public property; and

(3) the acquisition of nonresidential land for recreation and other administrative facilities; and

(4) the acquisition of preexisting nonresidential uses, where the nature of the use is incompatible with the purposes of this Act, and with the standards of use provided for in subsection (c) of this section: *Provided*, That acquisitions under (2), (3), and (4) hereof shall not exceed 5 per centum of the total acreage of all private property within the recreation area as of the effective date of this Act.

(b) Nothing in this Act shall be construed as limiting the authority of the Secretary of Agriculture to acquire mineral interests in lands within the recreation area, with or without the consent of the owner. Upon acquisition of any such interest by the Secretary of Agriculture, the lands and minerals covered by such interest are by this Act withdrawn from appropriation under the United States mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(c) The Secretary shall make and publish regulations setting standards for the use, subdivision, and development of privately owned property within the boundaries of the recreation area. Such regulations shall be generally in furtherance of the purposes of this Act and shall have the object of assuring that the highest and best private use, subdivision, and development of such privately owned property is consistent with the purposes of this Act and with the overall general plan of the Sawtooth National Recreation Area. Such regulations shall be as detailed and specific as is reasonably required to accomplish such objective and purpose. Such regulations may differ amongst the several parcels of private land in the boundaries and may from time to time be amended by the Secretary. All regulations adopted under this section shall be promulgated in conformity with the provisions of the Administrative Procedure Act. The United States District Court for the District of Idaho shall have jurisdiction to review such regulations after their effective date, upon a complaint filed by any affected landowner, in an action for a declaratory judgment.

(d) To assure that private land within the boundaries of the national recreation area is used in a manner which is not detrimental

to the purposes of this Act, the Secretary is authorized to procure by gift, purchase with donated or appropriated funds, or otherwise, scenic easements within the boundaries of the recreation area.

As used in this Act the term "scenic easement" means the right to control the use of land in order to protect the esthetic values for the purposes of this Act, but shall not preclude the continuation of any use exercised by the owner as of the date of this Act.

(e) Where an owner of private property within the exterior boundaries of the recreation area as of the date of this Act, or his heirs and devisees, desires to dispose of such property to the Federal Government, the Secretary shall purchase said property at a price that shall include compensation for any decrease in the value thereof not previously compensated for under the provisions of this Act that may have resulted from the promulgation of regulations, standards, or other consequences of the establishment of the recreation area. In the event the Secretary and the owner are unable to agree upon the purchase price, and the Secretary declines to complete the purchase, the owner may file a complaint setting out these facts, together with a good and sufficient deed to the property, in the United States District Court for the District of Idaho. After the filing of an answer by the United States, the case shall be treated to the extent possible, in the same manner as an action for the condemnation of property brought by the United States: *Provided, however,* That the provisions of this subsection shall cease to be in effect after a period of ten years from the date of the enactment of this Act.

SEC. 6. (a) In accordance with subsection 3(b) of the Wilderness Act of September 3, 1964 (78 Stat. 891), the area classified as the Sawtooth Primitive Area, as generally depicted as the "Sawtooth Wilderness—Proposed" on the referenced map in section 2 of this Act, is hereby designated as the Sawtooth Wilderness within and as a part of the Boise National Forest, Challis National Forest, and Sawtooth National Forest, comprising an area of approximately two hundred and one thousand acres.

(b) As soon as practicable after this Act takes effect, the Secretary shall file a map and a legal description of the Sawtooth Wilderness with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made.

(c) The Sawtooth Wilderness shall be administered by the Secretary in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(d) The previous classification of the Sawtooth Primitive Area is hereby abolished.

SEC. 7. Provisions for review, recommendations, and other procedures of the Wilderness Act of September 3, 1964, shall apply to the Sawtooth National Recreation Area. The Secretary of Agriculture shall comply with the requirements of section 3 of said Act in relation to national forest lands within the Sawtooth National Recreation Area in an expeditious manner.

SEC. 8. The Secretary may cooperate with other Federal agencies, with State and local public agencies, and with private individuals and agencies in the development and operation of facilities and services in the area in furtherance of the purposes of this Act, including, but not limited to, the restoration and maintenance of the historic setting and background of the frontier ranch-type town of Stanley.

SEC. 9. Nothing in this Act shall diminish, enlarge, or modify any right of the State of Idaho, or any political subdivision thereof, to exercise civil and criminal jurisdiction within the recreation area or of rights to tax persons, corporations, franchises, or property, including mineral or other interests, in or on lands or waters within the recreation area.

SEC. 10. Nothing in this Act shall affect the jurisdiction or responsibilities of the State of Idaho under other provisions of law with respect to hunting and fishing.

SEC. 11. The jurisdiction of the State and the United States over waters of any stream included in the Sawtooth National Recreation Area shall be determined by established principles of law. Under the provisions of this Act, any taking by the United States of a water right which is vested under either State or Federal law at the time of enactment of this Act shall entitle the owner thereof to just compensation. Nothing in this Act shall constitute an express or implies claim or denial on the part of the Federal Government as to exemption from State water laws.

SEC. 12. In order to permit adequate time to study and determine the provisions desirable and necessary for management of the Federal lands described in section 2 of this Act, said lands are hereby withdrawn, subject to valid and existing claims, from all forms of location, entry, and operation under the mining laws of the United States.

SEC. 13. The Congress hereby recognizes and declares the need to take action to regulate the use of, and protect the surface values of, the Federal lands described in section 2 of this Act, and directs that rules and regulations necessary to carry out this section shall be promulgated and issued by the Secretary of Agriculture. Such regulations shall include, when deemed necessary, provisions for control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of such Federal land in connection with any authorized activities on such land, including but not limited to mineral prospecting, exploration, or development operations.

SEC. 14. Patents shall not hereafter be issued for locations and claims heretofore made in the area described in section 2 under the mining laws of the United States.

SEC. 15. Money appropriated from the land and water conservation fund shall be available for the acquisition of lands and scenic easements for purpose of establishing the Sawtooth National Recreation Area. There is hereby authorized to be appropriated not more than $45,000,000 for the development of recreation and related facilities and for the acquisition of land and interests in land pursuant to this Act.

SEC. 16. (a) The Secretary of the Interior, in consultation with appropriate Federal, State, and local agencies, shall make a comprehensive analysis of the natural, economic, and cultural values of the Sawtooth National Recreation Area and the adjacent Pioneer Mountains for the purpose of evaluating the potentiality of establishing therein a national park or other unit of the national park system. He shall submit a report of the results of the analysis along with his recommendations to the Congress by December 31, 1974.

(b) His report shall show that in making the aforesaid recommendations he took into consideration, among other things—

(1) the feasible alternative uses of the land and the long and short term effect of such alternative uses upon, but not limited to, the following:

(A) the State and local economy,

(B) the natural and cultural environment,

(C) the management and use of water resources,

(D) the management of grazing, timber, mineral, and other commercial activities,

(E) the management of fish and wildlife resources,

(F) the continued occupancy of existing homesites, campsites, commercial and public recreation enterprises, and other privately owned properties and the future development of the same,

(G) the interrelation between recreation areas, wilderness areas, and park lands, and

(2) the establishment of a national park in the mountain peaks and upland areas, together with such portions of the national recreation area as may be necessary and appropriate for the proper administration and public use of and access to such park lands, leaving the valleys and low-lying lands available for multiple-use purposes.

(c) Any recommendation for the establishment of a unit of the national park system shall be accompanied by (1) a master plan for the development and administration of such unit, indicating proposed boundaries, access or other roads, visitor facilities, and proposed management concepts applicable to such unit; (2) a statement of the estimated Federal cost for acquisition, development, and operation of such unit; and (3) proposed legislation for establishment of such park administrative unit.

(d) There are authorized to be appropriated not more than $50,000 to carry out the provisions of this section.

SEC. 17. If any provision of this Act is declared to be invalid, such declaration shall not affect the validity of any other provision hereof.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–797), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The basic purpose of this legislation is to establish as the Sawtooth National Recreation Area some 750,000 acres of the Sawtooth, White Clouds, and Boulder Ranges and adjacent forest and high mountain valley lands located in or adjacent to the Sawtooth, Challis, and Boise National Forests in south central Idaho. The proposed area would include the 201,000-acre Sawtooth Primitive Area, which would be designated as wilderness by the bill. The bill, as amended by the Committee, would require the Secretary of the Interior to develop a specific proposal for the creation of a national park in this area and to submit his recommendations to the Congress no later than December 31, 1974.

DESCRIPTION AND LOCATION OF AREA

The area involved in H.R. 6957, as amended, totals about 750,000 acres of some of the nations most scenic mountain country.

Historically, because of its rugged character, it has remained relatively undeveloped and sparsely populated, but now, with more people seeking outdoor recreation opportunities and improved transportation to the region, pressures are beginning to mount. About a million and a half people live within 250 miles from the proposed recreation area in cities like Boise, Salt Lake City, Spokane, and Missoula. While outdoor recreation opportunities in the West are more abundant than they are in other parts of the country, there is a noticeable increase in the use and enjoyment of these areas by people coming from more distant locations.

Located in south-central Idaho, the jagged peaks of the Sawtooth country pierce the fre-

quently clear, blue sky offering the visitor a scenic panorama that is difficult to surpass. Forty-two of them jut more than 10,000 feet into the air. Scattered throughout these mountains, along the glacially scarred valleys, and among the lush meadows are some 180 gem-like lakes ranging up to 2000 acres in size. Traversing this setting are several hundred miles of rushing streams which form the tributaries of five important water sources of the Columbia River Basin—the Salmon River and its East Fork, the South Fork of the Payette River, and the North and Middle Forks of the Boise River.

The Sawtooth Valley is bounded on the west by the rugged peaks of the Sawtooth Mountains, while Stanley Basin lies at the north end of that range. The barren high peaks of the White Clouds and the Boulder Mountains provide the backdrop on the east and some of the region's loveliest uplands.

For the most part, the higher elevations are bare rock capable of supporting only the most meager amounts of vegetation except for the verdant alpine meadows which are interspersed throughout the region. By way of contrast, the lower slopes are timbered and the valleys are lush and green.

It is this spacious, peaceful setting which most visitors come to enjoy. The view across the broad open ranch lands, a mountain meadow, or an emerald lake with the rugged crest of the mountains in the background gives the Sawtooths their grandeur.

ECOLOGY OF THE AREA

Nothing has a more pronounced effect on the ecology of this area than its geologic and geomorphic features. The largest geologic formation in the State is the Idaho batholith which underlies most of the area and which is now exposed over a 20,000 square mile area. During the Eocene and Oligocene periods, the Sawtooth batholith intruded into the older batholith and is now exposed in the high eastern part of the Sawtooth Range.

Over the centuries, the surface has been gouged by glaciers and eroded by the waters and winds to form the soils typically found in the area. Coupling soil development with the geomorphic influences on the weather and drainage systems, it is apparent that the vegetation characteristic of the region reflect the influence of the physical land features. The type of animal life in the area is closely associated with the food supply available in the ecological chain.

Man's activities in this region are largely controlled by these same features. They make the area attractive for outdoor recreation, and because of their rugged physical characteristics, they remain largely unchanged. They are rich in mineral values, but they cannot be extracted without a cost to the general environment.

HISTORICAL BACKGROUND

The earliest known man to frequent this locality came to the area primarily to hunt along the edges of the retreating glaciers. Later, a band of the Shoshoni Indians, known as the Sheepeaters, came to inhabit the mountain area of central Idaho, but most white men avoided the rugged terrain until after 1800 when mountain men came looking for beaver. After they left the scene, in the early 1830's there was little interest in the area until 1860, when gold was discovered at Orofino Creek 150 miles to the north. By 1863, discoveries within 10 miles of the Sawtooth Mountain Range brought intensive mining activity to this area—an activity which has persisted to this time. As a matter of fact, five of six low grade roads into the White Clouds provided access to mining operations.

Although grazing began earlier, ranching in the area did not get underway to any significant extent until the turn of the century when many people filed homesteads in the Sawtooth Valley. Agriculture however, did not prove to be very profitable and many of the homesteaders sold their lands to sheep ranchers who still operate substantial ranches in the valley.

CREATION OF THE FOREST RESERVE

It has been said that some of the ranges were severely overgrazed prior to the creation of the 1,950,000-acre forest reserve by President Theodore Roosevelt in 1905. In 1906, that area was expanded to about 3⅓ million acres and, later, it was divided into the three principal national forests that now blanket much of this region—the Sawtooth, Challis, and Boise National Forests. Subsequently, in 1937, a 200,942-acre Sawtooth Primitive Area was created in order to retain a portion of the lands in their natural state without roads or habitations.

While the recreational value of this outstanding scenic area cannot be minimized, it must be recognized that restrictions on the use at Federal lands may have severe effects since the Federal Government is the dominant landowner in the area. It is generally agreed that ranching, for example, is compatible with and, in fact, beneficial to the general setting of the recreation area. Numerous ranching operations depend upon this area for summer and fall forage and more than two-thirds of the livestock ranches in the Sawtooth Valley and Stanley Basin rely, at least in part, on grazing privileges on national forest lands.

NEED FOR NATIONAL RECREATION AREA

The establishment of a national recreation area will give national recognition to the scenic and recreational values of the area. While other activities and uses may continue to the extent that they do not interfere with the outdoor recreation objective of the area, the dominant purpose of the area is the enhancement of those values which maximize the recreation objectives. Special provisions have been included in the legislation to protect the surface values of the land until a complete study can be made and recommendations for a specific park proposal formulated for the consideration of a future Congress. This area includes all of Sawtooth Valley, a portion of Stanley Basin, and the White Clouds and Boulder Mountains.

THE WILDERNESS AREA

H.R. 6857, as amended, would designate the 201,000 acre Sawtooth Primitive Area as a unit of the National Wilderness Preservation System but includes the proposed wilderness area within the recreation area. This area is to be administered in accordance with the provisions of the Wilderness Act, except that future mineral locations are prohibited under provisions of this Act.

The legislation also directs the Secretary of Agriculture to review the undeveloped and unimproved portions of the recreation area as to suitability or nonsuitability for preservation as a part of the National Wilderness Preservation System.

OTHER VALUES

In addition to the scenic values of this area, the fishery resource is extremely important—both economically and as a recreation resource. The numerous lakes, streams and rivers which are located within the boundaries provide a varied habitat for many species of fish. Probably the most interesting and unique of these are the anadromous fish—chinook salmon, sockeye salmon, and steelhead trout—which travel upstream nearly 800 miles from the Pacific Ocean to spawn and die. Among the numerous sport fish are rainbow, cutthroat, eastern brook, and California golden trout.

Hunting is also a relatively popular activity at the lower elevations where deer and elk are the domoinant big game animals. A small number of mountain goats and numerous other animals and birds inhabit the area, as well.

Naturally, such an outstanding area has many demands which do not particularly compliment general public outdoor recreation. One of the potential threats to the recreation objective is the prospect of the subdivision of the presently privately owned, undeveloped lands which form the foreground of the mountain setting. While practically no one objects to broad open pasture lands with an occasional ranch house and associated outbuildings, the intensive development of summer cottage subdivisions on lots as small as one-eighth of an acre would severely detract from the setting which H.R. 6957 seeks to preserve. There is ample authority in the legislation to allow the Secretary to develop standards of land use which will permit ranching operations to continue, but there is also authority for the Secretary to acquire any lands which are being used, or which are obviously in danger of being used, in a manner which would not be compatible with the recreation objectives of the legislation.

Another use which threatens to undermine the recreation objective of the legislation is the potential development of a large molybdenum deposit in the vicinity of the White Cloud Peaks. Extensive preliminary explorations have apparently confirmed the existence of a major ore body which might justify a substantial investment. Extraction of the ore, however, could result in considerable earth excavation if open pit mining is utilized; while underground mining would require the construction of above ground structures that would probably be considered objectionable intrusions on the scene. Either mining method would require waste areas of substantial proportions.

The validity of at least some of the claims involved is not in question. Valid, unpatented mining claims on public lands are property rights. They cannot be taken without just compensation.

While the legislation does not contemplate the acquisition of these claims at the present time, it does contain three important provisions bearing on the issue:

First, it withdraws all Federal lands within the recreation area from all forms of location and entry under the Federal mining laws so that no new claims can be established;

Second, it authorizes the Secretary of Agriculture to establish regulations to control the use of motorized or mechanical equipment on any Federal lands within the recreation area; and

Third, it precludes the issuance of patents on claims.

WATER RIGHTS

Section 11 provides that the jurisdiction of the State and the United States over waters of any stream included in the proposed recreation area shall be determined by established principles of law. Any taking of a water right vested under either State or Federal law would entitle the owner to just compensation.

HUNTING AND FISHING

The proposed recreation area offers outstanding hunting and fishing and attracts a large number of people to participate in these activities. The influx of hunters substantially extends the season of resorts and businesses in the area. The bill provides that the State will continue its present jurisdiction over hunting and fishing.

REVERSE CONDEMNATION

Section 5(e) permits a reverse condemnation action being filed in Federal District Court. Within 10 years from the date of enactment the owner of private property within the boundaries of the recreation area may file a complaint together with a good and sufficient deed to his property with the court, and the case shall be treated to the extent possible in the same manner as an action for

condemnation of property brought by the United States. This provision affords the private owner a reasonable time to consider, without risking a loss in value during that period, the effects of the establishment of the recreation area and the desirability of disposing of his property to the government.

AMENDMENTS

The Committee amended S. 1407 before substituting its text for that of H.R. 6957, the House-passed bill. This included language to make sure that the Forest Service could condemn nonresidential land without the owner's consent, for access to and utilization of public property, administrative facilities, and to halt pre-existing nonresidential uses incompatible with the purposes of the Act. Language was also inserted in the bill to avoid any limitation on the Secretary of Agriculture to acquire mineral interests in lands within the area, with or without the consent of the owner, and to provide that such acquisitions be withdrawn from appropriation under the mining laws.

Other amendments would make permanent, subject to valid existing claims, the withdrawal of the lands in the recreation area from future location, entry, and operation under the mining laws, and would prohibit granting of patents on existing claims. Original language had called for a five-year moratorium on future locations.

Still another amendment would include the adjacent Pioneer Mountains in the evaluation to be made of the area for possible inclusion of a portion in the national park system.

COST

The bill, as amended, authorizes to be appropriated not more than $45,000,000 for the development of recreation and related facilities and for the acquisition of land and interests therein. An additional $50,000 is authorized to be appropriated to conduct the study and formation the specific park recommendation contemplated by section 16.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs in executive session on May 17, 1972, unanimously recommended the enactment of H.R. 6957, as amended.

ORDER FOR ADJOURNMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 12 noon tomorrow.

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

(This order was subsequently modified to provide for the Senate to convene at 11 a.m. tomorrow.)

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, I yield back my 3 minutes to the United States and in the interest of silence.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. 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.

COMPULSORY BUSING

Mr. HARRY F. BYRD, JR. Mr. President, a major study on school desegregation by busing at five Northern cities concludes that:

. . . achievement test scores of black students have not been raised. Moreover, the busing experiments in several cases, have led to a worsening of race relations, rather than an improvement.

Mr. President, the article I am quoting from is a significant one, published on the front page of last Sunday's Washington Post. The Washington Post, I might add, is not noted for its objectivity in matters of this kind. But the 64-page study, to which the article refers, was written by David J. Armor, associate professor of sociology at Harvard University, who previously had conducted research for the U.S. Civil Service Commission.

The study reports that—

The grades of Negro students generally fell when they were transferred to predominantly white schools because grading standards were higher.

Black youngsters in these schools, the study says, have a stronger sense or racial identity and a greater desire for black separatism than do students in predominantly black schools.

The report suggests that much of the research on race and education done before the late 1960s and widely used in court integration decisions is now outdated because it fails to take into account the new militancy and pride of many black students.

Mr. President, at the appropriate time, I shall ask unanimous consent that the entire text of this article dealing with this important study be printed in the RECORD, but before doing that, I want to say that Congress has an obligation to the people of this country, as I see it, to meet the busing issue headon. So far, Congress has refused to do that. In the report on higher education which will be submitted to the Senate at 12:30 p.m. today, it, too, has refused to meet the issue of busing. Yet the overwhelming majority of the people of this country are strongly opposed to compulsory busing for the purpose of achieving an artificial racial balance.

The study I have just quoted from indicates that the very people it is trying to help, supposedly by compulsory busing, are being hurt by compulsory busing. The evidence, to me, is clear, that compulsory busing is wrong. It is unjust and it is not in the public interest.

Mr. President, the question of compulsory busing has been forced on the people of this Nation by the Federal courts and by the Department of Health, Education, and Welfare here in Washington, D.C. And the Congress of the United States in submitting to pressure groups has refused to come to the aid of the mothers and fathers whose children are being taken from their homes and bused a long ways across communities for the sole purpose of achieving an artificial racial balance in those schools.

I think this is a sad day for the United States. The Congress, the representatives of the people, wil not meet this issue and will not give some protection to the parents of the schoolchildren throughout the Nation.

Mr. President, this is a most significant study. I ask unanimous consent that the article from the Washington Post by Lawrence Feinberg, a Washington Post staff writer, be printed in the RECORD.

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

[From the Washington Post, May 21, 1972]

STUDY CASTS DOUBT ON BUSING

(By Lawrence Feinberg)

A major study of school desegregation by busing in five Northern cities concludes that achievement test scores of black students have not been raised. Moreover, the busing experiments, in several cases, have led to a worsening of race relations, rather than an improvement.

The study reports that the grades of Negro students generally fell when they were transferred to predominately white schools because grading standards were higher.

Black youngsters in these schools, the study says, have a stronger sense of racial identity and a greater desire for black separatism than do students in predominantly black schools.

The report suggests that much of the research on race and education done before the late 1960s and widely used in court integration decisions is now outdated because it fails to take into account the new militancy and pride of many black students.

The 64-page study was written by David J. Armor, an associate professor of sociology at Harvard University who previously had conducted research for the U.S. Civil Rights Commission.

It includes research on a city-suburb desegregation program in Boston, which Armor conducted himself, plus data on similar programs in Ann Arbor, Mich., Hartford, Conn., Riverside, Calif., and White Plains, N.Y.

Overall, about 5,000 students, ranging from grades one to 12, have participated in these busing programs. The data that Armor compiled from 1967 to 1971 follows the children for from one to five years.

Armor's study has been presented at a seminar at Harvard, and it is scheduled for publication this summer in The Public Interest magazine.

He said in an interview that his study is the largest showing the "before and after" effect of long-term busing projects by using the same tests to compare bused children with others.

In the mid-1960s Armor worked on a government research project, headed by James S. Coleman, which compiled a massive report on race and education. The report concluded that lower-class black students make some academic gains in predominantly middle-class white schools.

But in his new study Armor notes that the tests Coleman used were all given at the same time—in the fall of 1965. Thus, conclusions about the effect of integration were made, he said, by comparing youngsters in schools with different proportions of black and white students, rather than by following the same children after they had switched from a predominantly black school to a predominantly white one.

"NO SIGNIFICANT GAINS"

In four of the programs he studied, Armor said, black children bused to suburban schools made "no significant gains" when compared to other black students who stayed in inner-city schools or to whites who took the same achievement tests.

In the fifth program, Hartford, the results were mixed. Negro children in suburban schools did better in some grades. But in others, the children in their neighborhood schools scored higher.

Armor, whose prime field of work is research methods and statistics, said he also reviewed reports on over a dozen other desegregation programs, including Berkeley, Calif., and Rochester, N.Y. All of them, he said, were seriously flawed, either by including different tests at different times or by not having a control group against which to check the progress of the students who were bused.

Besides the data on achievement, Armor's study contains the results of questionnaires and psychological tests given to measure children's attitudes toward themselves and toward other races.

Contrary to expectations based on earlier research Armor said the aspirations of black children were slightly lower in mostly white schools than in all-black ones. But in both types of schools, he said, their ambitions—for white-collar jobs and a college education—were generally high.

One factor in the slight decline, he said, may be the lower grades that many Negro students get in predominantly white schools. He said that in his study their marks averaged about half a grade lower in these schools—about C, compared to a B-minus average in the mostly black schools.

"Since black students are behind white students (on standard achievement tests)," he said, "we should expect their grades to fall when they are taken from the competition in an all-black school to the competition in a predominantly white school."

In the measures of racial attitudes, Armor said the data indicated that "integration heightens racial identity and consciousness (and) enhances ideologies that promote racial segregation."

This finding, he said, is "the converse . . . (of one of the central sociological hypotheses in integration policy . . . that integration should reduce racial stereotypes, increase tolerance, and generally improve race relations."

Instead, he said, "the effect is the opposite."

One indicator of this, he said, was the question he asked black students in Boston: "If you could be in any school you wanted, how many students would be white?"

Among those bused to suburban schools the proportion wanting a school less than half white increased from 51 percent to 81 percent between 1968 and 1970. For a group of their brothers and sisters who stayed in city schools, the proportion increased less markedly—from 47 percent to 66 percent.

The bused students also became "much more likely to support the idea of black power," Armor said, and between 1969 and 1970, they reported "less friendliness from whites, more free time spent with members of their own race, more incidents of prejudice, and less frequent dating with white students."

"In other words," he concluded, "the longer the contact with whites, the fewer the kinds of interracial experiences that might lead to a general improvement of racial tolerance."

He said the trend is "clearest" for older black students, but also occurred in the elementary grades. "It seems to be true for whites also," he said, "insofar as their support for the integration program decreases and own-race preferences increase as contact increases."

Even though "in the formal sense . . . all races are treated equally" in an integrated school, Armor said the integration itself "does very little in the short term to eliminate the socio-economic and academic status differentials." Thus, he said, stereotyped beliefs can be reinforced.

"For black students," he said, "initial stereotypes about white students as snobbish, superior, and straight may be partially confirmed by actual experience; the same may be true for white stereotypes of black students as non-intellectual, hostile, and having different moral standards."

Pride in their own culture, he said, has been one of the main elements in the change in black attitudes, especially those of young Negroes, during the past decade.

"It would be a mistake," he added, "to view the increased racial solidarity of black students as a completely negative finding (for) . . . a certain amount of culture conflict (is) inevitable and even necessary if an integrated society is to be realized."

Armor, who is white and lives in a Boston suburb, said his own children attend a school to which black youngsters are bused in a voluntary program, and he urged that such programs be continued.

In his study Armor also presents data from two reports showing that black students in suburban schools are more likely to go to prestige colleges than those attending inner-city schools. This "channeling effect," he said, supports one of the hoped-for gains of integration.

But, Armor said, the "integration policy model," advanced by sociologists and courts, also contends that integration will "enhance black achievement, aspirations, and self-esteem, and (improve) race relations."

All four of these goals, he said, have "failed to be supported by the data." And this, he said, "calls into question" the value of mandatory busing programs.

Mr. GRIFFIN. Mr. President, I commend the distinguished Senator from Virginia for calling the attention of the Senate to the article which appeared in the Washington Post on Sunday. I read that particular article with great interest.

Back on September 24, 1971, I made a statement expressing my opposition to forced busing and said that it would be counterproductive in terms of achieving the goals of racial harmony and a society without discrimination.

Mr. President, at that time I had no scholarly study conducted by Harvard experts to back up that commonsense appraisal. Indeed, the studies then available seemed to point in the opposite direction.

However, this study which the Senator has referred to and which was described in the Washington Post article, made by a Harvard professor merely substantiates what many people of all political philosophies and of all colors have known for quite a while as a matter of plain commonsense.

Mr. President, today at 12:30 the Senate will take up the conference report on higher education.

It seems to me that the least we can do in the consideration of this conference report is to insist that the conferees agree to the strongest language that is available, and that would be the language that is in the House-passed bill.

Mr. President, the House has already instructed its conferees on two occasions to insist in conference on the House language with respect to the busing provisions.

Before we vote up or down on the conference report and at the appropriate time, I will move that the conference report be recommitted to the committee on conference, with instructions that the conferees on the part of the Senate be instructed to recede from the position of the Senate with respect to the busing provisions and concur in the position taken by the House relative thereto.

If the Senate will do that and instruct its conferees to accept the House provisions, then a further meeting of the conferees should be a rather perfunctory formality. Since the House has already instructed its conferees to take precisely the same action, conferees would have nothing to decide. Their further meeting would be a mere formality to adopt and report back a conference report with the stronger busing language of the House-passed bill.

COMPENSATION FOR VICTIMS OF VIOLENT CRIME

Mr. MANSFIELD. Mr. President, the weekend press carried an account of a victim of violent crime. The man suffered permanent disability. He was Mr. Payton Bailey, a 33-year-old cab driver. And as the story in the Washington Post puts it:

Mr. Bailey was shot in the back of the head on the night of March 19, 1971, after he jumped out of his cab at the intersection of Eastern Avenue and 63rd Street, SE., to try to stop the purse-snatch robbery of a woman who had been waiting for a bus.

This was a tragic and deplorable act of violence. Tragic and deplorable—but not unusual. It is not unusual that a crime was committed, nor that serious injury resulted from the commission of that crime.

What is significantly different about the outcome in the case of Mr. Bailey is that the Maryland Compensation Board awarded him $45,000 for the personal injuries suffered at the hands of the criminal assailant. I do not mean to suggest that $45,000 is compensation enough for a "good Samaritan," who himself is permanently disabled for the heroic act of endeavoring to aid a purse-snatch victim, but I do wish to call the Senate's attention to this example of how humane and just the concept of criminal victim compensation functions in the framework of our law enforcement and criminal justice system.

Had this crime occurred solely within the District of Columbia and had it been committed against one who is a resident of the District of Columbia, it is certain that no compensation award would have been possible. It is certain that Mr. Bailey—regardless of his courageous and selfless act—would not have been entitled to seek compensation for the injuries he sustained. Maryland is one of only six States within the United States that has incorporated the rights of the victim into its system of criminal justice.

There has been pending in the U.S. Senate for some time a proposal that is designed to establish such a compensation system within the Federal criminal jurisdiction. Once again I must voice my concern that the Senate has not acted yet in behalf of those who suffer

the ravages of violent crime within the Federal jurisdiction. Compensating the criminal victim was the exclusive objective of S. 750, introduced by me early in the first session of this Congress. In setting such an objective, S. 750 sought to revive within our system of criminal justice both at the Federal level and with inducement for State programs as well, what so many modern societies have long recognized—that the innocent victim of crime deserves consideration, that the citizen who suffers at the hands of the arsonist and the rapist should be compensated for the injuries he personally sustains. Senate bill 750 would have afforded all citizens of this Nation what is already afforded to those who happen to reside in just six of our States.

I am optimistic, however, about the outlook for this proposal in the coming weeks. I am particularly encouraged by the actions of the able and distinguished chairman of the Subcommittee on Criminal Laws and Procedures which is now processing the crime victim proposal. Along with several related measures, Senator McCLELLAN incorporated S. 750 into an overall Omnibus Victims of Crime Act, which we introduced together at the close of the first session and which has been cosponsored by 41 of our colleagues on both sides of the aisle. As subcommittee chairman, Senator McCLELLAN has advised me that he expects to bring this measure to the floor of the Chamber sometime during the month of June, in advance of the adjournment for the July convention.

There is one factor that has arisen in connection with this measure that disturbs me, however. To date, it is my understanding that the administration has not formally gone on record with regard to the concept of compensating victims of violent crime. It is unfortunate that such an endorsement has not yet been forthcoming as this is the type of issue, in my judgment, that deserves to get underway with the full backing and support of the U.S. Government. Already, law enforcement officers have been singled out for special consideration when victimized by the criminal, and the police compensation proposal has been incorporated along with S. 750 into the provisions of S. 2994, the Omnibus Victim Act. Compensating all criminal victims has now been embraced by a wide, bipartisan crossection of the Senate; and I would hope that the proposal would soon receive similar consideration downtown.

To assist those responsible, it should be pointed out that under this administration—as under past administrations—the U.S. Government has paid out millions of dollars to compensate citizens of foreign lands who happen to be victims of crimes committed by U.S. servicemen abroad.

I wish to repeat the last sentence: "The U.S. Government has paid out millions of dollars to compensate citizens of foreign lands who happen to be victims of crimes committed by U.S. servicemen abroad." There is simply no justification in my judgment for treating foreign nationals more favorably than citizens of the United States with respect to this issue. Nevertheless, that is the law. Under the Foreign Claims Act, which is set forth in title X of the United States Code, section 2734, it is provided that personal injury or death at the hands of U.S. military personnel abroad is to be compensated. Under this provision, inhabitants of foreign lands may collect awards if they are victims of crime caused by military or even civilian employees of the military departments. It is my understanding that Army Regulation 27–20 which implements the Foreign Claims Act provides that in determining an appropriate award, local standards are generally applied. In investigating this matter, I have found that since 1970, over 17,000 claims have been approved in amounts approaching a total of $10 million. A substantial percentage of these awards covered claims for assaults, thefts, murders, and the like committed by our military and civilian employees against foreign nationals. This past March alone, approximately 40 percent of the dollars paid out under the Foreign Claims Act went to compensate victims of criminal acts.

What I am urging then is that we extend to U.S. citizens what we grant to citizens of other lands with respect to acts of criminal violence committed by citizens of the United States. We owe the same consideration to victims of violence who happen to reside here in our land—our own citizens.

I cited this only as further justification for endorsing and adopting the criminal victim compensation proposal now pending before the Subcommittee on Criminal Laws and Procedures. Only then will American citizens residing in all States be afforded the same opportunities and rights that are now extended to those citizens of foreign lands who happen to be victimized.

Mr. President, I urge the prompt consideration of this matter. It is my hope that the Committee on the Judiciary will report this measure just as soon as possible so that the Senate can add its stamp of approval to the concept of giving consideration to the criminal victim, who for too long has been ignored within our system of criminal justice.

Mr. President, I do not have the slightest doubt in my mind but that the Senate will approve overwhelmingly, if not unanimously, this proposal.

I ask unanimous consent to have printed in the RECORD an article contained in last Saturday's edition of the Washington Post.

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

MAN HURT FIGHTING THIEVES GETS AWARD

(By Douglas Watson)

ANNAPOLIS, May 19.—A Maryland board has ruled the state can pay up to $45,000 in compensation to a Capitol Heights man who was shot in the head while trying to halt a robbery that occurred just inside Washington.

After Maryland Gov. Marvin Mandel interceded, the Criminal Injuries Compensation Board reversed an earlier ruling that had denied an award to Payton Bailey, a 33-year-old cab driver.

Bailey was shot in the back of the head on the night of March 19, 1971 after he jumped out of his cab at the intersection of Eastern Avenue and 63d street, SE to try to stop the purse-snatch robbery of a woman who had been waiting for a bus.

Bailey collared one youth, but he was set upon by three others and in the ensuing scuffle was shot. The assailants, who took $5 from the woman, fled and have not been apprehended.

The three-member Maryland board had ruled that since Bailey apparently was shot just inside the District line—Eastern Avenue being the boundary between Maryland and Washington—he did not qualify for compensation under the Maryland law that provides funds to innocent victims of crime.

Martin I. Moylan, executive director of the three-member board, said today that Mandel recently had called him and asked that the board reconsider its earlier decision.

After a hearing on Wednesday attended by Mr. and Mrs. Bailey, the board decided that at least part of Bailey's struggle with his assailant apparently had occurred inside Maryland and he is qualified for the compensation.

Because Bailey has been found by doctors to be 100 per cent disabled by the bullet that is still lodged in his head, he is likely to receive the full $45,000 that any one person can receive under the Maryland law, Moylan said.

Bailey, of 846 Brooke Rd., said today that he feels a lot better than he did a few days ago. His injury has affected his memory, impaired his speech and his coordination.

Mrs. Bailey said of the award, "It's long overdue. He really deserves it." She said that about a year before his injury, her husband had leaped out of their car and apprehended an alleged rapist. "He's just a Good Samaritan," she said.

Moylan said that the Baileys, who have four children will not receive the money in a lump sum, but that the board will immediately pay off unpaid medical bills and then pay them a monthly amount, perhaps about $360 per month.

Mrs. Bailey said the award assures the family that they will not lose their home because of overdue mortgage payments incurred because Bailey has been unable to work since the shooting.

SCHOOL BUSING

Mr. GURNEY. Mr. President, I was in the Chamber earlier when the distinguished Senator from Virginia spoke on the school busing problem, and also when the distinguished Senator from Michigan, the assistant Republican leader, made his remarks on that subject. I, too, wish that we could instruct the conferees in language other than appears in the Senate version and the House version of these respective bills, which really does not do the job of preventing the busing that is going on in this country, as we all know.

If this bill were before this body after some of the Presidential primaries that have been going on up and down the country had been concluded, and the people of those primaries had spoken in uncertain terms on the matter of busing, probably the language in both the Senate version and the House version would have been quite different than we have it now, and a good deal stronger in preventing this asinine bus business.

I listened with great interest as the Senator from Michigan stated it was his intention to propose a motion instructing our conferees to go back to conference, to accept at least the best terms of the two bills so far as prohibiting this busing business is concerned. I wish we could go further but obviously that is as

far as we can go. I do intend to support the effort of the Senator from Michigan when the time arrives later today.

I, too, hope that the committees of the Senate assigned to do this job can get on with some of the bills that have been pending before them, the administration's bill as well as the constitutional amendment we have in one of our committees. We must do a beter job of prohibiting busing as it exists around the country. In my tenure in public office, and I have been in public office around here for 10 years, I doubt if a situation has ever arisen in this country where the representatives of the people, in the Senate and in Congress, have refused to listen to winds of opinion back home, that are generating hurrican winds now and trying to make their feelings felt about the busing that is going on in this country.

I predict that unless we take action pretty soon to stop it, some heads will fall in Congress, both in this body and in the other body, when the people back home in all States where they have this problem recognize their representatives are not responsive to the wishes of the people.

SCHOOL BUSING

Mr. TALMADGE. Mr. President, I listened with interest to the remarks of the distinguished Senator from Virginia, the distinguished minority whip, the Senator from Michigan; and the distinguished Senator from Florida. I fully concur with the remarks they have made.

It was the intention of the Senator from Georgia to move to recommit this conference report to the conference, with instructions to accept the House amendments. The distinguished minority whip has indicated he will make such a motion and I will defer to him in that regard.

If there is one thing the American people are fed up with at the present time, it is transporting our schoolchildren long distances in this country to achieve a racial balance construed by some Federal judge or some bureaucrat in the Department of Health, Education, and Welfare.

In my State—and I think in many areas of our country—it has rendered a grave disservice to our educational process. In addition to reducing the effectiveness of our schools, Mr. President, it has created tyranny in America that people are not content to let continue. That goes for blacks as well as whites.

In my own State and in many areas, children are required to get up before daylight, stand in the sleet and snow, in the darkness, waiting for school buses to transport them long distances into areas in our country where they do not want to go to school, where their parents do not want them to go to school, where the public does not want them to go to school, where the general electorate does not want them to go to school.

That situation, Mr. President, is largely confined to the Southern States at the present time. Under the report that has been brought in by the conferees on this particular bill, there is some temporary relief in other areas of the country. But there is no relief in the Southern States, where all rights of appeal have been exhausted.

If busing is bad—and the conferees seem to indicate that future busing is bad, but not that present busing is bad—then busing is bad, present or future, and ought to be dealt with accordingly.

I have read polls taken in this country by Mr. Harris and Mr. Gallup which indicate that almost 80 percent of the American people are opposed to school busing to achieve a racial balance. When one looks at the recent primaries that have taken place in Tennessee, in Florida, in North Carolina—yes, in Michigan, it confirms those polls by overwhelming majorities.

I hope that the Senate will act today to stop insane school busing that has so divided our people. I think the best way we can act today is to recommit the bill to the conferees with instructions to accept the amendments as proposed by the House.

In my judgment, the amendments that have been proposed by the House do not go far enough, but I think those amendments are far more desirable than the conference report that our conferees have brought back to us to act upon.

I hope that at a later date, when we have another opportunity, we can act even more strongly than the House amendments provide and lay to rest once and for all what I thought we did in title IV of the Civil Rights Act of 1964, which stated that children should not be assigned or transported to schools to achieve a racial balance.

I yield the floor.

THE VIETNAM VETERANS ACT OF 1971

Mr. MATHIAS. Mr. President, almost a year ago I introduced legislation to provide greater educational assistance for our veterans. This bill, S. 2163, the Vietnam Veterans Act of 1971, would authorize the Veterans' Administration to provide up to $1,000 directly to educational institutions to pay the costs of tuition, books, fees, and related supplies for each eligible veteran. Twenty of my Senate colleagues have joined in cosponsoring this bill, a gratifying demonstration of support for this principle.

On February 17 of this year, I stated on the floor of the Senate that we could delay no longer in enacting legislation to increase the educational benefits of veterans. Shortly thereafter, the House passed H.R. 12828 to increase educational benefits for veterans and the Senate Veterans' Affairs Committee began hearings on my bill and other proposals to improve educational benefits.

On March 24, I testified before the Veterans' Affairs Committee in support of my bill and to urge the committee to adopt legislation that would institute the concept of direct payment for tuition, books, fees, and supplies, as would my bill, and a similar proposal offered by the American Legion.

As we approach June, it has been almost a year since my bill was introduced and still there has been no veterans legislation reported by the Senate Veterans' Affairs Committee. Time is running out. We are at the end of 1 academic year. Within 3 months, another academic year will have begun for millions of veterans. Today, there is no Senate bill to go to the House so that we can get legislation to the President in order to allow implementation of badly needed improvements in this program to serve millions of Vietnam veterans by this coming school term.

Concern for our veterans is widespread in our Nation. Last week I called the attention of the Senate to an article from Time which described the urgency which today's veterans attach to obtaining better educational benefits in general and a direct tuition allowance specifically. The National Association of Collegiate Veterans, at its recent meeting urged enactment of legislation to expand the monthly allowance and to provide up to $1,000 per year for tuition, books, and fees.

The distinguished columnist, David Lawrence, stated in his April 14 column that the GI bill should be updated and our veterans "have the right to expect their Government to see that their benefits will provide the means to return to civilian life without additional burdens."

The veteran has enough problems when he returns home without having to face the fact that he is unable to obtain his educational objectives due to lack of funds. The very least we can do for him is to put him into a competitive position with his peers through education. The Vietnam war continues to wrack the life of our country. Yet, these men who have fought, to whom we owe so much, are receiving so small a part of our interest and our concern. We tell them that we cannot provide them with tuition, books, fees, and supplies in college now because there were some abuses in a similar program under the old GI bill a generation ago. If we can protect against abuses in Federal grant-in-aid programs which exist today, and which provide millions of dollars of assistance to institutions and individuals each year, then we certainly can protect against abuses in a program to provide our veterans with the cost of tuition.

As it stands now, our veterans are distressed, annoyed, and frustrated because their representatives in the U.S. Congress have not sent legislation which would help them to the President for signature. The Congress has indeed been callous to the needs of our Vietnam veterans. We pass measures which support the war effort in which so many of them have suffered serious, perhaps lifetime, wounds, both mentally and physically. But this very same Congress has yet to give them a substantially improved veterans educational benefits program. This failure to act is a war crime against those who have served their country.

I urge my colleagues on the Senate Veterans' Affairs Committee, all of whom are dedicated to meeting this issue and who have worked hard for our veterans in so many ways, to do all that they can to see that a veterans education bill is reported in the near future so that our veterans can receive the assistance that they so much deserve. We owe them so much, yet we are giving them so little.

EXTENSION OF PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. All time for transaction of routine morning business has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business be extended for 6 minutes.

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

ORDER FOR RECOGNITION OF SENATORS GRAVEL AND PROXMIRE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order tomorrow, the distinguished Senator from Alaska (Mr. GRAVEL) be recognized for not to exceed 15 minutes, and that he be followed by the distinguished Senator from Wisconsin (Mr. PROXMIRE) for not to exceed 15 minutes.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, following the unanimous-consent orders recognizing Senators for 15 minutes tomorrow, there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes.

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

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I yield to the Senator from Maryland.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

POLICIES IN CONNECTION WITH EXPANSION OF ANTIETAM NATIONAL BATTLEFIELD

Mr. MATHIAS. Mr. President, I am very grateful to the distinguished senior Senator from New York for yielding me a minute to call to the attention of the Senate a very remarkable report which has been submitted to me and to my colleague from Maryland (Mr. BEALL) dealing with the land acquisition policies of the National Park Service.

The particular instance to which I refer arose in connection with my proposal for the expansion of the Antietam National Battlefield. This would involve, of course, acquisition of private property. This acquisition of private property by the Park Service and by the Department of the Interior differs from the normal procedures followed in areas which are relatively unpopulated, unsettled, and practically wilderness, because Antietam is a highly populated area which has been settled and civilized for 300 years.

The local community exhibited a great deal of leadership in connection with the proposed expansion. The Board of Commissioners of Washington County appointed an Antietam National Battlefield Advisory Committee, composed of local leaders, to examine all the facts and facets of land acquisition for the expansion of Antietam National Battlefield, and they have today submitted a detailed report. I would hope that it might be a model for the entire country because this is a healthy procedure in which policy develops at the grassroots. It is democracy in action.

I hope the Department of the Interior will carefully study the recommendations that have been made by this committee and that legislation can be enacted which will result in the expansion of the Antietam National Battlefield.

Having received this report, I intend to draft such legislation to implement the recommendations contained therein.

I ask unanimous consent that the report be printed in the RECORD at this point.

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

FINAL REPORT: THE ANTIETAM NATIONAL BATTLEFIELD ADVISORY COMMITTEE

OFFICE OF THE COUNTY COMMISSIONERS,
Hagerstown, Md., May 22, 1972.

Hon. CHARLES McC. MATHIAS, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: The Board of County Commissioners is pleased to present the Final Report of the Antietam National Battlefield Advisory Committee.

It has been a pleasure to provide this document for you, and we trust that it will be of assistance in preparation of legislation for the Antietam National Battlefield Site.

If we may at any time be of further service, please do not hesitate to call upon us.

Very truly yours,

LEM E. KIRK,
President.

OFFICE OF THE COUNTY COMMISSIONERS,
Hagerstown, Md.

In formulating the following recommendations, the Antietam National Battlefield Advisory Committee has endeavored to strike an equitable balance between the wishes of involved property owners and the desire to protect and preserve the Antietam National Battlefield Site as an important part of our American Heritage.

Each parcel proposed by the National Park Service for inclusion in the General Development Plan and Land Acquisition Plan has been individually reviewed by the Committee. Of the fifty-one (51) property owners involved in the proposal, thirty-three (33) expressed their wishes in writing to the Committee. In addition to a parcel by parcel evaluation, recommendations concerning implementation and administration of the proposal are submitted below.

The procedure followed by the Committee in arriving at its final recommendations was as follows:

1. A request was made by Senator Charles McC. Mathias to Lem E. Kirk, President of the Board of County Commissioners of Washington County, to work with the property owners included in the proposed expansion of the Antietam National Battlefield Site.

2. The Antietam National Battlefield Advisory Committee was appointed by Mr. Kirk on August 10, 1971, with members chosen to represent a wide variety of interests:

Rome F. Schwagel, who served as Chairman of the Committee, represented the County Commissioners.

Leroy R. Burtner was chosen to represent the Washington County Planning and Zoning Commission.

Donald L. Spickler served as a representative of the Washington County Historical Advisory Committee.

Fred Kramer was chosen as an owner of a farm who was willing to sell.

Millard Kefauver was selected as an owner of a farm who was not willing to sell.

Mayor Elmer Koontz and Vice-Mayor Thurman Jamison represented the Town of Sharpsburg.

Massey Roe represented the Washington County Sanitary Commission, which provides water service to the area.

Mrs. John McCollom was selected as an interested citizen of Sharpsburg.

3. The Committee met for the first time on September 7, 1971, at which time it was disclosed that the recommendation of the Washington County Historical Advisory Committee endorsing expansion of the Battlefield had been approved by the County Commissioners.

4. On January 12, 1972, letters were sent to all property owners included in the proposed expansion, notifying them of a public meeting on the proposal.

5. A public meeting was held in the Washington County Court House on January 31, 1972, at which time the expansion proposal was explained by representatives of the National Park Service. The Committee verbally requested letters from property owners at the meeting and by letter on February 1 and February 17.

6. In workshop session on February 28, the Committee reviewed each letter received, made recommendations on each, as well as on properties on which letters had not been received. Further comments on each parcel were requested from the National Park Service.

7. At the next workshop on March 27, the National Park Services' comments on each parcel were presented to the Committee.

8. A Preliminary Report was drafted, and forwarded for review on April 10, to the Washington County Historical Advisory Committee and the historical staff of the National Park Service.

9. At the final workshop session on April 24, the comments of the Washington County Historical Advisory Committee and the historical staff of the National Park Service were considered prior to preparation of the Final Report.

Cooperation in this matter between the National Park Service, the Committee, and all other parties involved, was excellent. The procedures followed in providing for participation by property owners, local citizens, their elected officials, and the National Park Service, have served to be what we feel is a most desirable approach in projects of this type.

RECOMMENDATIONS

MAP 76

Owner, Parcel, and Acreage[1]

Hugh D. Chapman, 89, 5.39.

A scenic easement should be acquired on the back portion of this property from the

[1] Total acreage owned. In several cases, only a portion of total acreage has been proposed for inclusion in the Plan.

west corner of The Antietam National Cemetery to the corporate limit of Sharpsburg along High Street. The remainder of the parcel should be deleted from the Plan.

Gale H. Lyon, 190, 68.99.

A scenic easement should be acquired on this entire parcel.

David H. Harris, 198, 56.16.

A scenic easement should be acquired on this entire parcel.

Paul B. Shade, 182, 136.27, I (Map 80), 84.24.

Both of these properties should be obtained through fee acquisition.

Rene Burtner, 16, 211.

A scenic easement should be acquired on that portion of this property within the boundaries of the Plan, consisting of approximately 50 acres, due to its proximity to Burnside Bridge.

Charles E. Ritchie, 14, 130, 15, 161.

A scenic easement should be acquired on parcel 14, as well as on the approximately 60 acres of parcel 15 within the boundaries of the Plan.

William H. Cunningham, 5, 165.

A scenic easement should be acquired on this entire parcel as it is located in the middle of the Plan boundaries.

C. Dudley Pry, 40, 66.63.

A scenic easement should be acquired on this entire property.

Howard E. Miller, Jr., 4, 179.50.

Approximately 5 acres of this parcel situated on Bloody Lane, should be obtained through fee acquisition. A scenic easement should be acquired on the remainder of the tract, as it is located in the middle of the Plan boundaries.

Albert B. Deatrick, 3, 98.

A scenic easement should be acquired on that portion of this property within the boundaries of the Plan, consisting of approximately 40 acres.

George H. Poffenberger Estate, 100, 151.

A scenic easement should be acquired on this property.

Fred G. Ellis, 22, ——.

A scenic easement should be acquired on this property. In no case should the property be obtained through fee acquisition and the existing home demolished.

Alden C. Kefauver, Jr., 19, 113.25.

A scenic easement should be acquired on this property.

Leo B. Wyand, 20, .96.

A scenic easement should be acquired on this property. In no case should the property be obtained through fee acquisition and the existing home demolished.

Eleanora E. Poffenberger, 2, 7.70.

This property should be obtained through fee acquisition and a life estate granted to the present occupant.

Richard K. Hershey, 31, 11.40.

This property should be obtained through fee acquisition.

Floyd E. Gatrell, 178, 2.17.

A scenic easement should be acquired on this property.

Wilfred E. Grayson, 176, 5.61.

A scenic easement should be acquired on this property.

James E. Poffenberger, 173, lot, 168 lot.

These properties should be obtained through fee acquisition.

Mumma's Graveyard, 86,——

A scenic easement should be acquired on this property.

Charles A. Lohman, 95, 3.88.

This property should be obtained through fee acquisition, as it is situated on Bloody Lane.

MAP 72

Owner, parcel, and acreage

John D. Flook, 8, 165.

A scenic easement should be acquired on that portion of this property within the boundaries of the Plan, consisting of approximately 150 acres.

James F. Colpo, Sr., James F. Colpo, Jr., 86, 18.

A scenic easement should be acquired on this property.

Harvey C. Poffenberger, 89, 143.66.

All of this parcel should be obtained through fee acquisition.

Fred Kramer, 124, 120.

This entire parcel should be obtained through fee acquisition.

Leon S. Price, 9, 173.25.

A scenic easement should be acquired on that portion of this property within the boundaries of the Plan, consisting of approximately 50 acres.

Alan R. Wilson, 11, 43.23.

This owner should be given the choice of accepting all scenic easement or all fee acquisition on his property.

Paul M. Culler, 20, 143.99.

The owner should be given the choice of accepting all scenic easement or all fee acquisition on his property.

Mrs. Hubert P. Stine, 92, .50.

This property should be obtained through fee acquisition, and a life estate granted to the present occupant.

Millard D. Kefauver, 10, 155.50, 13, 115.65, 12, 12.

The Demonstration Farm should be relocated from this site, and the owner given the choice of accepting scenic easement or fee acquisition on all three of his properties.

Mary L. Shank, 84, 152.50.

The owner should be given the choice of accepting all scenic easement or all fee acquisition on the approximately 40 acres of this property within the boundaries of the Plan.

Virginia R. Blickenstaff, 112, .35.

This property should be obtained through fee acquisition, with or without a retained use of up to 25 years granted to the owner.

Bernard A. Milburn, 91, .35.

In view of the recommended relocation of the Demonstration Farm, this parcel should be deleted from the Plan.

Marvin L. Jamison, 129, 1.21.

This property should be obtained through fee acquisition, with or without a retained use of up to 25 years granted to the owner.

MAP 80

Owner, parcel, and acreage

Kermit S. Midthun, 2, 106.30.

A scenic easement should be acquired on that portion of this property within the boundaries of the Plan, consisting of approximately 60 acres.

William Dorsey, 3, 154.50.

A scenic easement should be acquired on that portion of this property within the boundaries of the Plan, consisting of approximately 20 acres.

Richard E. Eichelberger, 219, lot.

A scenic easement should be acquired on this property.

Charles V. Rupp, 185, lot.

A scenic easement should be acquired on this property.

Albert L. Hetzel, 164, 5.98.

A scenic easement should be acquired on this property.

II—FURTHER RECOMMENDATIONS

A. In several instances, scenic easements only have been suggested on properties. These particular recommendations we believe to be most acceptable to the property owner affected, while at the same time, fulfilling the wishes and needs of the National Park Service. To provide flexibility for both the National Park Service and property owners, however, it is recommended that on properties where a scenic easement only has been proposed, the owner be given the alternative of accepting fee acquisition.

B. As proposed, a large portion of the Battlefield expansion will be executed through acquisition of scenic easements. This arrangement will impose certain restrictions on property owners so affected, and will require authorization from the Secretary of the Interior, or in this case, the Battlefield Superintendent acting as his Designee, prior to undertaking certain improvements. It is recommended that provision be made for two County citizens to be appointed by the County Commissioners for one-year terms, to act in an advisory, non-voting capacity in working with the National Park Service Representative on administration of scenic easements.

C. Prior to introduction of Battlefield legislation, existing laws and statutes should be carefully examined to determine the manner in which scenic easement restrictions would affect property tax assessment.

OFFICE OF THE COUNTY COMMISSIONERS,
Hagerstown, Md., May 15, 1972.

Hon. CHARLES MCC. MATHIAS,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MATHIAS: It is our understanding that the National Park Service has requested funds from Congress for the purpose of connecting the Visitors Center at the Antietam National Battlefield Site to the water system of the Town of Sharpsburg.

The Antietam National Battlefield Advisory Committee requests any assistance you can provide to assure that monies are made available for this project at the earliest possible date.

Your attention to this request will be greatly appreciated.

Sincerely,

ROME F. SCHWAGEL,
Chairman, Antietam National Battlefield Advisory Committee.

APPENDIX

COMMENTS OF MEMBERS OF THE ANTIETAM NATIONAL BATTLEFIELD ADVISORY COMMITTEE RESPONDING ON THE COMMITTEE'S FINAL REPORT

SHARPSBURG, MD.,
May 9, 1972.

ANTIETAM NATIONAL BATTLEFIELD, ADVISORY COMMITTEE.

Attn.: Rome Schwagel:

The final report meets my approval.

Sincerely,

THIRMAN E. JAMISON.

TERRACE LIQUOR STORE,
Hagerstown, Md., May 12, 1972.

Attn: Mr. Rome Schwagel.

WASHINGTON COUNTY COMMISSIONERS,
Court House,
Hagerstown, Md.

DEAR ROME: Just a line to let you know I'm happy with the fund report of our committee, and you should be congratulated on the job you did chairing the committee.

It was a pleasure working with you. If I can be of any further help please call.

FRED KRAMER.

WASHINGTON COUNTY PLANNING AND ZONING COMMISSION,
Hagerstown, Md., May 12, 1972.

Re: Final Report of the Antietam National Battlefield Advisory Committee.

Mr. ROME F. SCHWAGEL,
Chairman, Antietam National Battlefield Advisory Committee, County Commissioners Office, Court House Annex, Hagerstown, Md.

DEAR MR. SCHWAGEL: I have read the Final Report and am pleased to say that it has my approval.

It was a pleasure to serve on this Comm ittee and to participate in the detailed decision-making process. I feel that *every* effort was made by you, the Committee members and the Planning and Zoning Commission Staff, to review and act on the proposed Antietam National Battlefield Development Plan and Land Acquisition Plan in relationship to the historical, existing, and possible future uses of the involved properties.

My congratulations to you for serving as a fine Chairman and for a job well done.

Sincerely,

LEROY R. BURTNER.

WASHINGTON COUNTY
HISTORICAL ADVISORY COMMISSION,
Clear Spring, Md., May 9, 1972.

Hon. ROME F. SCHWAGEL,
Chairman, The Antietam National Battlefield Advisory Committee, Washington County Court House, Hagerstown, Md.

DEAR ROME: I approve the Final Report of The Antietam National Battlefield Advisory Committee. It has been a real pleasure to work with you and the rest of the committee. I hope our work will produce the desired results.

Sincerely,

DONALD L. SPICKLER.

SHARPSBURG, MD.,
May 10, 1972.

ROME F. SCHWAGEL,
Chairman, Antietam National Battlefield, Advisory Committee.

DEAR ROME: I have examined the Final Report and agree that the said report recommendations, made by the Advisory Committee, are as fair as we can make to the Property Owners involved, and to the National Park Service. I can not see where we can make any changes to better the situation.

It has been a pleasure to work with you and the other members of the Advisory Committee, on the subject of enlarging the Antietam National Battlefield. Lets protect it.

Sincerely,

ELMER C. KOONTZ,
Mayor of Sharpsburg.

WHAG–TV,
Sharpsburg, Md., May 10, 1972.

Mr. ROME F. SCHAWAGEL,
Chairman, Antietam National Battlefield Advisory Committee, Office of the County Commissioners, Hagerstown, Md.

DEAR ROME: This letter is to confirm my approval of the Final Report of the Antietam Battlefield Advisory Committee.

No doubt it has already come to your attention that the line "A scenic easement should be acquired on this property" was left off page 7 under Albert L. Hetzel.

I appreciate very much having been a member of this committee and say "well done" to those people who worked long and faithfully to compile this report.

Please call on me at any time if I can be of further service to the battlefield preservation.

Sincerely yours,

BEVERLY MCCOLLOM.

KEEDYSVILLE, MARYLAND,
May 8, 1972.

Mr. ROME F. SCHWAGEL,
Chairman, Antietam National Battlefield Advisory Committee, Hagerstown, Md.

DEAR MR. SCHWAGEL: Referring to your letter of May 3, 1972, enclosing your Final Report on the Antietam National Battlefield Advisory Committee.

As advised you and the committee at our meeting on April 24, 1972, I do not want to part with my home, farm, to the Park Service or any one else at any price, this home, farm, has family history, further back than the Civil War, and we just don't want to part with it. I have worked very, very hard here myself, as well as my family in the past 23 years that I have owned it, and sacrificed a lot to make it what it is today, and still have much I want to do.

We are not interested in scenic easement or fee acquisition.

Sincerely,

MILLARD D. KEFAUVER,
Land, Farm Owner.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the bill (S. 635) to amend the Mining and Minerals Policy Act of 1970, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the bill (S. 976) to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON VIETNAMESE SUPPORT COSTS

A letter from the Assistant Secretary of Defense, transmitting, pursuant to law, a confidential report relative to Vietnamese support costs (with an accompanying report), to the Committee on Appropriations.

REPORT ON THE APPROPRIATIONS "CONTINGENCIES, DEFENSE"

A letter from the Deputy Secretary of Defense, reporting, pursuant to law, on the appropriation "Contingencies, Defense", for the period July 1, 1971–March 31, 1972; to the Committee on Appropriations.

REPORT ON FACILITIES PROJECTS PROPOSED TO BE UNDERTAKEN FOR THE NAVAL AND MARINE CORPS RESERVES

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on facilities projects proposed to be undertaken for the Naval and Marine Corps Reserves; to the Committee on Armed Services.

REPORT ON FACILITIES PROJECTS PROPOSED TO BE UNDERTAKEN FOR THE AIR NATIONAL GUARD

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on facilities projects proposed to be undertaken for the Air National Guard; to the Committee on Armed Services.

PROPOSED TRANSFER OF SUBMARINE

A letter from the Assistant Secretary of the Navy, installations and logistics, reporting, pursuant to law, on the proposed transfer of the submarine U.S.S. *Silversides* (ex–AGSS–236) to the Combined Great Lakes Navy Association, Chicago, Ill.; to the Committee on Armed Services.

PARTS II, III, AND IV OF 1970 NATIONAL POWER SURVEY

A letter from the chairman, Federal Power Commission, transmitting, pursuant to law, parts II, III, and IV of the 1970 National Power Survey (with an accompanying document); to the Committee on Commerce.

REPORT ON IMPLEMENTATION OF THE NATIONAL TRANSPORTATION POLICY

A letter from the Secretary of Transportation, transmitting, pursuant to law, a report on implementation of the National Transportation Policy (with an accompanying report); to the Committee on Commerce.

PROPOSED INCREASE OF APPROPRIATION AUTHORIZATION OF THE NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to increase the annual appropriation authorization of the National Advisory Committee on Oceans and Atmosphere (with accompanying papers); to the Committee on Commerce.

PROPOSED AMENDMENT OF THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

A letter from the Assistant to the Commissioner of the District of Columbia, transmitting a draft of proposed legislation to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide relocation payments for persons displaced by local code enforcement in the District of Columbia (with an accompanying paper); to the Committee on the District of Columbia.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Status, Progress, and Problems in Federal Agency Accounting During 1970 and 1971," dated May 19, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Opportunities For Improving Administration of Government-wide Indemnity Benefit Plan of Health Insurance for Federal Employees and Annuitants," Civil Service Commission, dated May 22, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Observations on Dredging Activities and Problems," Corps of Engineers (Civil Functions), Department of the Army, dated May 23, 1972 (with an accompanying report); to the Committee on Government Operations.

PROPOSED GRANT FOR RESEARCH PROJECT

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed grant with the Pennsylvania State University, University Park, Pa., for a research project entitled "Demand for and Supply of Labor in Minerals and Mineral Fuels Industry" (with an accompanying paper); to the Committee on Interior and Insular Affairs.

PROPOSED CONTRACT WITH UNIVERSITY OF ALASKA

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with the University of Alaska, Fairbanks, Alaska, for a research project entitled "Design of a Beneficiation System for Evaluation and Recovery of Gold and Accessory Minerals from Alaskan Beach Deposits" (with an accompanying paper); to the Committee on Interior and Insular Affairs.

PROPOSED CONTRACT FOR A RESEARCH PROJECT

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with MSA Research Corporation, Pittsburgh, Pa., for a research project entitled "Experience Survey of Dust Control Methods in Non-Coal Mines" (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED CONTRACT FOR RESEARCH IN AIRBORNE DUST

A letter from the Deputy Assistant Secretary of the Interior transmitting, pursuant to law, a proposed contract for a research project entitled "Characterization of Metal and Non-Metal Mine Airborne Dust" (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED CORE DRILLING IN UTAH

A letter from the Deputy Assistant Secretary of the Interior transmitting, pursuant to law, a copy of a proposed grant with the University of Utah, Salt Lake City, Utah, for

a research project entitled "Informational Core Drilling in Utah's Tar Sand Deposits" (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED VETERANS' LEGISLATION

A letter from the Administrator of Veterans' Affairs submitting proposed legislation to amend title 38, U.S.C., to provide more equitable standards under which the Administrator of Veterans' Affairs may waive recovery of overpayments of veterans' benefits and release or waive liability with respect to certain home loans (with accompanying papers); to the Committee on Veterans' Affairs.

PROPOSED CONCESSION PERMITS

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, proposed concession permits for certain recreational areas (with accompanying papers); to the Committee on Interior and Insular Affairs.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. CHILES):

A resolution of the Senate of the State of California; to the Committee on Foreign Relations:

"SENATE RESOLUTION 47

"Relative to the Soviet Union

"Whereas, In the Soviet Union men and women are denied religious freedoms recognized as basic by all civilized countries of the world and by the Soviet Constitution itself; and

"Whereas, Jews and other religious minorities in the Soviet Union are being denied the means to exercise their religion and sustain their identity; and

"Whereas, The government of the Soviet Union is presecuting Jewish citizens by denying them the same rights and privileges accorded other recognized religions in the Soviet Union and by discriminating against Jews in cultural activities and access to higher education; and

"Whereas, The right freely to emigrate, which is denied Soviet Jews who seek to maintain their identity by moving elsewhere, is a right affirmed by the United Nations Declaration of Human Rights, adopted unanimously by the General Assembly of the United Nations; and

"Whereas, These infringements of human rights are an obstacle to the development of better understanding and better relations between the people of the United States and the people of the Soviet Union; now, there, be it

"Resolved by the Senate of the State of California, That the Members hereby respectfully memorialize the President and the Congress of the United States to call upon the Soviet government to permit the free exercise of religion by all its citizens in accordance with the Soviet Constitution, to end discrimination against religious minorities and permit its citizens to emigrate from the Soviet Union to the countries of their choice as affirmed by the United Nations Declaration of Human Rights; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

"This is to certify that the above resolution was adopted by the Senate on May 11, 1972.

"DARRYL R. WHITE,
"Secretary of the Senate."

A resolution adopted by the Joseph Priestley District of Unitarian Universalist Societies, Devon, Pa., calling upon the President to cease the bombing in Vietnam; to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIBLE, from the Committee on Interior and Insular Affairs, with an amendment:

S. 1295. A bill to establish the Amistad National Recreation Area in the State of Texas (Rept. No. 92–801).

By Mr. PASTORE, from the Joint Committee on Atomic Energy, without amendment:

S. 3607. A bill to authorize appropriations to the Atomic Energy Commission in accordance with Section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes (Rept. No. 92–802).

By Mr. BOGGS, from the Committee on Public Works, with amendments:

S. 3568. A bill to designate the Federal Bureau of Investigation Building now under construction in Washington, District of Columbia, as the "J. Edgar Hoover Federal Building" (Rept. No. 92–803).

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. RIBICOFF:

S. 3632. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Housatonic River, Connecticut, as a potential addition to the wild and scenic rivers system; and

S. 3633. A bill to establish the Housatonic River Valley Trust, to preserve and conserve the said area, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. MONDALE:

S. 3634. A bill to provide continued rail transportation in rural America. Referred to the Committee on Commerce.

By Mr. GURNEY:

S. 3635. A bill to make Level III of the Executive Schedule applicable to the Special Assistant Attorney General, and to make Level IV of the Executive Schedule applicable to the United States Attorney for the Central District of California. Referred to the Committee on Post Office and Civil Service.

By Mr. BROCK:

S. 3636. A bill to amend the Occupational Safety and Health Act of 1970 to provide technical assistance to comply with standards, to extend the time for compliance with standards, to update standards, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. HRUSKA (for himself, Mr. BAYH, Mr. BENNETT, Mr. BIBLE, Mr. BROCK, Mr. BROOKE, Mr. BURDICK, Mr. CANNON, Mr. CHILES, Mr. COOK, Mr. CURTIS, Mr. DOMINICK, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GURNEY, Mr. JORDAN of North Carolina, Mr. MANSFIELD, Mr. MATHIAS, Mr. MCGEE, Mr. MOSS, Mr. PASTORE, Mr. PERCY, Mr. PROXMIRE, Mr. SCOTT, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, and Mr. YOUNG):

S.J. Res. 236. A joint resolution to authorize and request the President to proclaim the week beginning October 15, 1972, as "National Drug Abuse Prevention Week." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. RIBICOFF:

S. 3632. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Housatonic River, Connecticut, as a potential addition to the wild and scenic rivers system; and

S. 3633. A bill to establish the Housatonic River Valley Trust, to preserve and conserve the said area, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

THE HOUSATONIC RIVER VALLEY

Mr. RIBICOFF. Mr. President, the Housatonic River Valley must be saved.

Many demographers and land use planners predict that Connecticut, now composed of urban, suburban, and rural areas, may be the first State to become one large city from border to border.

If this predicted growth is allowed to occur without sufficient controls, most of Connecticut's natural resources will disappear. In an attempt to avoid the destruction of the cultural and physical environment of the Connecticut River Valley, in 1969 I introduced legislation to create a Connecticut Historic Riverway. This measure has twice passed the Senate unanimously and is now awaiting action in the House of Representatives.

The Connecticut River is only one of the regions in Connecticut in need of restoration and protection. The Housatonic River, which flows from Massachusetts along the western edge of Connecticut to Long Island Sound, is also seriously threatened by pollution and uncontrolled development. If we do not begin to reverse these destructive trends, in a short time the important natural resources of the Housatonic will be lost.

The towns along the upper Housatonic River Valley are living reminders of Connecticut's and the Nation's early years and should be preserved for future generations to enjoy. Beginning with a settlement by a group of Puritans at the river's mouth in 1639, a number of small towns developed along the valley. Within a few years settlements spread up the valley. In 1642 a trading post was established at the junction of the Housatonic and Naugatuck Rivers. New Milford was founded in 1707 and by the start of the Revolutionary War, Litchfield County was dotted with small villages and farms.

The first half of the 19th century saw a substantial increase in manufacturing activity in the valley. By 1842 trains were running all the way to Canaan on the Massachusetts border.

This initial burst of activity quickly changed direction. After the Civil War, industry began withdrawing from the upper valley and expanded in the lower valley. As a result of this and a steady decline in population, many villages and towns and much of the upper river's shoreline remain close to the condition which existed 100 years ago. Now is the time to begin to protect this entire area.

In some sections of America, preservation is a relatively easy task. In the Far West, for example, the land is lightly populated and often Government owned. The opposite situation prevails in New England. There, most of the land is pri-

vately owned, often by descendants of the original settlers, and the local traditions are well established.

Because the Housatonic River flows across State lines and through many municipalities, no concerted effort has ever been made to preserve it. In fact, 11 towns share jurisdiction over the stretch of the river between the Massachusetts border and its confluence with the Shepaug River. These are Salisbury, North Canaan, Canaan, Sharon, Cornwall, Kent, Sherman, New Milford, Bridgewater, Brookfield, and Newtown.

The State of Connecticut has established State parks and State forests in some sections, but has been unable to preserve the entire riverway. Only Federal leadership working closely with local residents and landowners can mount the necessary effort to save the river and valley. The Federal Government can serve as the catalyst for bringing all the diverse elements of the region together for one common purpose—the preservation of the cultural and physical environment of the upper Housatonic River Valley.

While developing my Connecticut Historic Riverway legislation, I followed three basic rules. They are equally applicable to the Housatonic River Valley. First, do not rely solely on established Federal programs. Any new preservation effort should be geared to the nature of the resource to be preserved. It must reflect the needs and concerns of the local people themselves. Otherwise, progress is not possible. Second, insure that the local citizens have equal powers with Federal Government over the design, development, and operation of any program. Third, recognize that preservation takes time and that no program can or should be rushed through immediately.

I am today, with Representative ELLA GRASSO, taking three basic steps to determine what Federal action may be needed to preserve and protect the river valley. These proposals are the first step in what I hope will be a long-range project, sponsored by Housatonic River Valley residents, to save the river and the valley and protect it from future encroachments.

First, I am introducing legislation to add the Housatonic River between the Massachusetts border and the Shepaug River to the Wild and Scenic Rivers Act—Public Law 90–542. This act was designed to preserve close to their existing state certain rivers which possess remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or similar values.

Under the Wild and Scenic Rivers Act, the river itself is protected by a prohibition against the construction of power dams and other encroachments. The land alongside the river is protected in three possible ways: first, complete public ownership; second, partial public ownership through acquisition of scenic or other easements, or third, local zoning ordinances.

When the legislation was passed in 1968, eight rivers were designated for immediate inclusion in the system and 27 others were chosen for further study for possible future designation. This bill would add this section of the Housatonic River to those 27 now being studied.

If approved by Congress, the Department of the Interior will then make a survey of the river to determine whether it should be designated for permanent inclusion in the wild and scenic rivers system.

Because there is no guarantee of permanent inclusion and because the Wild and Scenic Rivers Act only protects a thin strip of land along the shore, I am introducing a second bill creating a Housatonic River Valley Trust.

The Trust would encompass a far larger area outside the river's immediate shoreline and would offer the local citizens greater control. Under the Trust three basic classifications of land would be established.

The first category is lands forever wild—those areas where scenic or ecological values are so great that no development should be permitted on them.

The second classification is scenic preservation lands—those areas in which the intensity of development should not be increased over what it is now.

The third category is town lands—those areas to which future development should be confined and in which local government would have complete authority and responsibility for any decision.

Control over the development and administration of the Trust would be shared by the Secretary of the Interior and the Housatonic River Valley Trust Commission. The Commission would be comprised of town, State and Federal representatives to insure local participation in the decisionmaking process.

I do not expect passage of the Trust bill this year; nor do I want it. Before Congress takes action on legislation of this magnitude, it should first be studied by the residents of the area who are concerned with the future of the Housatonic River Valley.

Land preservation is a delicate undertaking involving many environmental, economic, and political pressures. But, based on my experience in the Connecticut River Valley, I am confident that permanent legislation can and will be developed which will enjoy widespread community support. The final product might be based on the Trust or it could be a completely new concept. It is important, however, that each and every possible method be considered by the local citizens.

When there is a consensus—and it is agreed that the Federal Government can help—I will then introduce legislation the residents agree will be most beneficial to the region. We can succeed no other way.

Finally, preserving the land in the river valley is not the only action needed. The water quality of the Housatonic and its tributaries must also be restored. To assist in that restoration, I have asked the Senate Public Works Committee to authorize the Corps of Engineers' wastewater task force to analyze the water quality problems in the Housatonic River Basin.

With the passage of strong Federal clean-water standards, the communities and businesses along the river should know of all the options available to them. When completed, this study will provide an inventory of those choices, thus enabling area residents to choose what system best fits their needs.

Time is running out on many of our great natural resources, including the Housatonic River Valley. But those interested in preserving the valley, which lies on the edge of a rapidly urbanizing area, simply cannot wall out all future development.

What is needed is a vehicle to channel the inevitable forces of development in such a way as to protect the cultural and natural resources without disrupting the local economy and the residents' lifestyles.

I hope that in the months ahead government officials, environmental organizations, and private citizens in northwestern Connecticut will study and comment on these proposals. We must begin a dialog directed toward saving this area before it is polluted by uncontrolled progress.

Mr. President, I ask unanimous consent that the following items be printed in the RECORD at this point:

First, the text of S. 3632, adding the Housatonic River to the wild and scenic rivers study list;

Second, the text of the Wild and Scenic Rivers Act, Public Law 90–542;

Third, the text of the Agriculture and Interior Departments' guidelines for additional wild and scenic rivers;

Fourth, the text of S. 3633, a bill to create a Housatonic River Valley Trust; and

Fifth, a memorandum outlining the proposed Corps of Engineers wastewater management study.

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

S. 3632

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Housatonic River Act of 1972."

Section 5(a) of the Wild and Scenic Rivers Act is amended by adding at the end thereof the following:

"(28) HOUSATONIC, CONNECTICUT.—The segment between the Massachusetts-Connecticut boundary and the confluence of Shepaug River."

[Public Law 90–542, 90th Congress, S. 119, Oct. 2, 1968]

An act to provide for a National Wild and Scenic Rivers System, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

(b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy

of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(c) The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time.

SEC. 2. (a) The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned without expense to the United States, that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this Act and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine, and the segment of the Wolf River, Wisconsin, which flows through Langlade County.

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accesssible in places by roads.

(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

SEC. 3 (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) CLEARWATER, MIDDLE FORK, IDAHO.—The Middle Fork from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; to be administered by the Secretary of Agriculture.

(2) ELEVEN POINT, MISSOURI.—The segment of the river extending downstream from Thomasville to State Highway 142; to be administered by the Secretary of Agriculture.

(3) FEATHER, CALIFORNIA.—The entire Middle Fork; to be administered by the Secretary of Agriculture.

(4) RIO GRANDE, NEW MEXICO.—The segment extending from the Colorado State line downstream to the State Highway 96 crossing, and the lower four miles of the Red River; to be administered by the Secretary of the Interior.

(5) ROGUE, OREGON.—The segment of the river extending from the mouth of the Applegate River downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.

(6) SAINT CROIX, MINNESOTA AND WISCONSIN.—The segment between the dam near Taylors Falls, Minnesota, and the dam near Gordon, Wisconsin, and its tributary, the Namekagon from Lake Namekagon downstream to its confluence with the Saint Croix; to be administered by the Secretary of the Interior: *Provided*, That except as may be required in connection with items (a) and (b) of this paragraph, no funds available to carry out the provisions of this Act may be expended for the acquisition or development of lands in connection with, or for administration under this Act of, that portion of the Saint Croix River between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, until sixty days after the date on which the Secretary has transmitted to the President of the Senate and Speaker of the House of Representatives a proposed cooperative agreement between the Northern States Power Company and the United States (a) whereby the company agrees to convey to the United States, without charge, appropriate interests in certain of its lands between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconin, including the company's right, title, and interest to approximately one hundred acres per mile, and (b) providing for the use and development of other lands and interests in land retained by the company between said points adjacent to the river in a manner which shall complement and not be inconsistent with the purposes for which the lands and interests in land donated by the company are administered under this Act. Said agreement may also include provision for State or local governmental participation as authorized under subsection (e) of section 10 of this Act.

(7) SALMON, MIDDLE FORK, IDAHO.—From its origin to its confluence with the main Salmon River; to be administered by the Secretary of Agriculture.

(8) WOLF, WISCONSIN.—From the Langlade-Menominee County line downstream to Keshena Falls; to be administered by the Secretary of the Interior.

(b) The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of this Act, establish detailed boundaries therefor (which boundaries shall include an average of not more than three hundred and twenty acres per mile on both sides of the river); determine which of the classes outlined in section 2, subsection (b), of this Act best fit the river or its various segments; and prepare a plan for necessary developments in connection with its administration in accordance with such classification. Said boundaries, classification, and development plans shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

SEC. 4. (a) The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and from time to time submit to the President and the Congress proposals for the addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system; which, in his or their judgment, fall within one or more of the classes set out in section 2, subsection (b), of this Act; and which are proposed to be administered, wholly or partially, by an agency of the United States. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act (79 Stat. 244; 42 U.S.C. 1962 et seq.).

Each proposal shall be accompanied by a report, including maps and illustrations, showing among other things the area included within the proposal; the characteristics which make the area a worthy addition to the system; the current status of land-ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area be administered; the extent to which it is proposed that administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area as a component of the system. Each such report shall be printed as a Senate or House document.

(b) Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Chairman of the Federal Power Commission, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to receive the same. Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress. No river or portion of any river shall be added to the national wild and scenic rivers system subsequent to enactment of this Act until the close of the next full session of the State legislature, or legislatures in case more than one State is involved, which begins following the submission of any recommendation to the President with respect to such addition as herein provided.

(c) Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of a State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Federal Power Commission, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register.

SEC. 5. (a) The following rivers are hereby

designated for potential addition to the national wild and scenic rivers system:

(1) Allegheny, Pennsylvania: The segment from its mouth to the town of East Brady, Pennsylvania.

(2) Bruneau, Idaho: The entire main stem.

(3) Buffalo, Tennessee: The entire river.

(4) Chattooga, North Carolina, South Carolina, and Georgia: The entire river.

(5) Clarion, Pennsylvania: The segment between Ridgway and its confluence with the Allegheny River.

(6) Delaware, Pennsylvania and New York: The segment from Hancock, New York, to Matamoras, Pennsylvania.

(7) Flathead, Montana: The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence with the South Fork; and the South Fork from its origin to Hungry Horse Reservoir.

(8) Gasconada, Missouri: The entire river.

(9) Illinois, Oregon: The entire river.

(10) Little Beaver, Ohio: The segment of the North and Middle Forks of the Little Beaver River in Columbiana County from a point in the vicinity of Negly and Elkton, Ohio, downstream to a point in the vicinty of East Liverpool, Ohio.

(11) Little Miami, Ohio: That segment of the main stem of the river, exclusive of its tributaries, from a point at the Warren-Clermont County line at Loveland, Ohio, upstream to the sources of Little Miami including North Fork.

(12) Maumee, Ohio and Indiana: The main stem from Perrysburg, Ohio, to Fort Wayne, Indiana, exclusive of its tributaries in Ohio and inclusive of its tributaries in Indiana.

(13) Missouri, Montana: The segment between Fort Benton and Ryan Island.

(14) Moyie, Idaho: The segment from the Canadian border to its confluence with the Kootenai River.

(15) Obed, Tennessee: The entire river and its tributaries, Clear Creek and Daddys Creek.

(16) Penobscot, Maine: Its east and west branches.

(17) Pere Marquette, Michigan: The entire river.

(18) Pine Creek, Pennsylvania: The segment from Ansonia to Waterville.

(19) Prise, Idaho: The entire main stem.

(20) Rio Grande, Texas: The portion of the river between the west boundary of Hudspeth County and the east boundary of Terrell County on the United States side of the river: *Provided*, That before undertaking any study of this potential scenic river, the Secretary of the Interior shall determine, through the chanels of appropriate executive agencies, that Mexico has no objection to its being included among the studies authorized by this Act.

(21) Saint Croix, Minnesota and Wisconsin: The segment between the dam near Taylors Falls and its confluence with the Mississippi River.

(22) Saint Joe, Idaho: The entire main stem.

(23) Salmon, Idaho: The segment from the town of North Fork to its confluence with the Snake River.

(24) Skagit, Washington: The segment from the town of Mount Vernon to and including the mouth of Bacon Creek; the Cascade River between its mouth and the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the Glacier Peak Wilderness Area boundary at Milk Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the Glacier Peak Wilderness Area boundary.

(25) Suwannee, Georgia and Florida: The entire river from its source in the Okefenokee Swamp in Georgia to the gulf and the outlying Ichetucknee Springs, Florida.

(26) Upper Iowa, Iowa: The entire river.

(27) Youghiogheny, Maryland and Pennsylvania: The segment from Oakland, Maryland, to the Youghiogheny Reservoir, and from the Youghiogheny Dam downstream to the town of Connellsville, Pennsylvania.

(b) The Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, shall proceed as expeditiously as possible to study each of the rivers named in subsection (a) of this section in order to determine whether it should be included in the national wild and scenic rivers system. Such studies shall be completed and reports made thereon to the President and the Congress, as provided in section 4 of this Act, within ten years from the date of this Act: *Provided, however*, That with respect to the Suwannee River, Georgia and Florida, and the Upper Iowa River, Iowa, such study shall be completed and reports made thereon to the President and the Congress, as provided in section 4 of this Act, within two years from the date of enactment of this Act. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers with respect to which there is the greatest likelihood of developments which, if undertaken, would render them unsuitable for inclusion in the national wild and scenic rivers system.

(c) The study of any of said rivers shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, shall be carried on jointly with such agencies if request for such joint study is made by the State, and shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

(d) In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved.

SEC. 6. (a) The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 3 of this Act, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by a State may be acquired only by donation, and lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this Act. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from other sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this Act.

(b) If 50 per centum or more of the entire acreage within a federally administered wild, scenic or recreational river area is owned by the United States, by the State or States within which it lies, or by political subdivision of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this Act. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village, or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this Act. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this act, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress and, in exchange therefor, convey to the grantor any federally owned property which is under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate secretary jurisdiction over such lands for administration in accordance with the provisions of this Act. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this Act within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) The appropriate Secretary is authorized to accept donations of lands and interests in lands, funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g)(1) Any owner or owners (hereinafter in this subsection referred to as "owner") of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years or, in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair

market value on such date of the right retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reasonable cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this Act. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term "improved property", as used in this Act, means a detached, one-family dwelling (hereinafter referred to as "dwelling"), the construction of which was begun before, January 1, 1967, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonable necessary for the enjoyment of the dwelling for the sale purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

SEC. 7. (a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of approval of this Act. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(b) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 5, subsection (a), of this Act, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval—

(i) during the five-year period following enactment of this Act unless, prior to the expiration of said period, the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, on the basis of study, conclude that such river should not be included in the national wild and scenic rivers system and publish notice to that effect in the Federal Register, and

(ii) during such additional period thereafter as, in the case of any river which is recommended to the President and the Congress for inclusion in the national wild and scenic rivers system, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior for inclusion in the national wild and scenic rivers system under section (2)(a)(ii) of this Act, is necessary for the Secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of approval of this Act. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(c) The Federal Power Commission and all other Federal agencies shall, promptly upon enactment of this Act, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in shall likewise inform him of any such proceedings, studies, or other activities which section 5, subsection (a), of this Act. They are hereafter commenced or resumed before they are commenced or resumed.

(d) Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601–5 et seq.).

SEC. 8. (a) All public lands within the authorized boundaries of any components of the national wild and scenic rivers system which is designated in section 3 of this Act or which is hereafter designated for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States.

(b) All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 5, subsection (a), of this Act are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 7, subsection (b), of this Act.

SEC. 9. (a) Nothing in this Act shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that—

(i) all prospecting, mining operations, and other activities on mining claims which, in the case of a component of the system designated in section 3 of this Act, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this Act or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this Act;

(ii) subject to valid existing rights, the perfection of, or issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior or, in the case of national forest lands, by the Secretary of Agriculture; and

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this Act or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the component in question.

(b) The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 5, subsection (a) of this Act are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 7, subsection (b) of this Act. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance or leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system.

SEC. 10. (a) Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

(b) Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Act of September 3, 1964 (78 Stat. 890; 16 U.S.C., ch. 23), shall be subject to the provisions of both the Wilderness Act and this Act with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of these Acts the more restrictive provisions shall apply.

(c) Any component of the national wild

and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this Act and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict between the provisions of these Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this Act.

(d) The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this Act.

(e) The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State- or county-owned lands.

SEC. 11. (a) The Secretary of the Interior shall encourage and assist the States to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), needs and opportunities for establishing State and local wild, scenic and recreational river areas. He shall also, in accordance with the authority contained in the Act of May 28, 1963 (77 Stat. 49), provide technical assistance and advice to, and cooperate with, States, political subdivisions, and private interests, including nonprofit organizations, with respect to establishing such wild, scenic and recreational river areas.

(b) The Secretaries of Agriculture and of Health, Education, and Welfare shall likewise, in accordance with the authority vested in them, assist, advise, and cooperate with State and local agencies and private interests with respect to establishing such wild, scenic and recreational river areas.

SEC. 12. (a) The Secretary of the Interior, the Secretary of Agriculture and heads of other Federal agencies shall review administrative and management policies, regulations, contracts, and plans affecting lands under their respective jurisdictions which include, border upon, or are adjacent to the rivers listed in subsection (a) of section 5 of this Act in order to determine what actions should be taken to protect such rivers during the period they are being considered for potential addition to the national wild and scenic rivers system. Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this Act.

(b) Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party.

(c) The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Secretary of the Interior and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.

SEC. 13. (a) Nothing in this Act shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws and regulations unless, in the case of hunting, those lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoyment and shall issue appropriate regulations after consultation with the wildlife agency of the State or States affected.

(b) The jurisdiction of the States and the United States over waters of any stream included in a national wild, scenic or recreational river area shall be determined by established principles of law. Under the provisions of this Act, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes.

(d) The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration.

(e) Nothing contained in this Act shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system.

(f) Nothing in this Act shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

(g) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this Act.

SEC. 14. The claim and allowance of the value of an easement as a charitable contribution under section 170 of title 26, United States Code, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, his heirs, and assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate at its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift.

SEC. 15. As used in this Act, the term—

(a) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) "Free-flowing", as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided*, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) "Scenic easement" means the right to control the use of land (including the air space above such land) for the purpose of protecting the scenic view from the river, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement.

SEC. 16. There are hereby authorized to be appropriated such sums as may be necessary, but not more than $17,000,000, for the acquisition of lands and interests in land under the provisions of this Act.

Approved October 2, 1968.

GUIDELINES FOR EVALUATING WILD, SCENIC AND RECREATIONAL RIVER AREAS PROPOSED FOR INCLUSION IN THE NATIONAL WILD AND SCENIC RIVERS SYSTEM UNDER SECTION 2, PUBLIC LAW 90-542

FEBRUARY 1970.

PURPOSE

The following criteria supplement those listed in Section 2 of the Wild and Scenic Rivers Act, which states that rivers included in the National Wild and Scenic Rivers System shall be free-flowing streams which possess outstandingly remarkable scenic, recreational, geological, fish and wildlife, historic, cultural and other similar values.

These guidelines are intended to define minimum criteria for the classification and management of free-flowing river areas proposed for inclusion in the national system by the Secretary of the Interior or the Secretary of Agriculture, and for State rivers included in the system by the Secretary of the Interior.

In reading these guidelines and in applying them to real situations of land and water it is important to bear one important qualification in mind. There is no way for these statements of criteria to be written so as to mechanically or automatically indicate which rivers are eligible and what class they must be. It is important to understand each criterion; but it is perhaps even more important to understand their *collective* intent. The investigator has to exercise his judgment, not only on the specific criteria as they apply to a particular river, but on the river as a whole, and on their relative weights. For this reason, these guidelines are not absolutes. There may be extenuating circumstances which would lead the appropriate Secretary to recommend, or approve pursuant to Section 2 (a) (ii), a river area for inclusion in the system because it is exceptional in character and outstandingly remarkable even though it does not meet each of the criteria set forth in these guidelines. However, exceptions to these criteria should be recognized only in rare instances and for compelling reasons.

The three classes of river areas described in Section 2(b) of the Wild and Scenic Rivers Act are as follows:

"(1) Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

"(2) Scenic river areas—Those rivers or

sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

"(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past."

GENERAL CHARACTERISTICS

The Wild and Scenic Rivers Act, Section 10(a), states that, "Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area."

In order to qualify for inclusion in the national system, a State free-flowing river area must be designated as a wild, scenic, or recreational river by act of the State legislature, with land areas wholly and permanently administered in a manner consistent with the designation by any agency or political subdivision of the State at no cost to the Federal Government, and be approved by the Secretary of the Interior as meeting the criteria established by the Wild and Scenic Rivers Act and the guidelines contained herein. A river or related lands owned by an Indian tribe cannot be added to the national system without the consent of the appropriate governing body.

In evaluating a river for possible inclusion in the system or for determining its classification, the river and its immediate land area should be considered as a unit, with primary emphasis upon the quality of the experience and *overall* impressions of the recreationist using the river or the adjacent riverbank. Although a free-flowing river or river unit frequently will have more than one classified area, each wild, scenic, or recreational area must be long enough to provide a meaningful experience. The number of different classified areas within a unit should be kept to a minimum.

Any activity, use, or development which is acceptable for a wild river is also acceptable for scenic and recreational river areas, and that which is acceptable for a scenic river is acceptable for a recreation river area. Activity and development limitations discussed below should not necessarily be interpreted as the desired level to which development or management activity should be planned. Hunting and fishing will be permitted, subject to appropriate State and Federal laws.

The Wild and Scenic Rivers Act provides that rivers must be in a free-flowing natural condition, i.e., flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes which are without impoundment, diversion, straightening, rip-rapping or other modification of the waterway. However, low dams, diversion works, and other minor structures will not automatically preclude the river unit from being included in the National Wild and Scenic Rivers System, providing such structures do not unreasonably diminish the free-flowing nature of the stream and the scenic, scientific, geological, historical, cultural, recreational, and fish and wildlife values present in the area.

The river or river unit must be long enough to provide a meaningful experience. Generally, any unit included in the system should be at least 25 miles long. However, a shorter river or segment that possesses outstanding qualifications may be included in the system.

There should be sufficient volume of water during normal years to permit, during the recreation season, full enjoyment of water-related outdoor recreation activities generally associated with comparable rivers. In the event the existing supply of water is inadequate, it would be necessary to show that additional water can be provided reasonably and economically without unreasonably diminishing the scenic, recreational, and fish and wildlife values of the area.

The river and its environment should be outstandingly remarkable and, although they may reflect substantial evidence of man's activity, should be generally pleasing to the eye.

The river should be of high quality water or susceptible of restoration to that condition. A concept of nondegradation whereby existing high water quality will be maintained to the maximum extent feasible will be followed in all river areas included in the national system.

All rivers included in the national system should meet the "Aesthetics—General Criteria" as defined by the National Technical Advisory Committee on Water Quality in the Federal Water Pollution Control Administration's *Water Quality Criteria*, April 1, 1968. Water quality should meet the criteria for fish, other aquatic life, and wildlife, as defined in that document, so as to support the propagation of those forms of life which normally would be adapted to the habitat of the stream. Where no standards exist or where existing standards will not meet the objectives of these criteria, standards should be developed or raised to achieve those objectives. Wild river areas can be included in the national system only if they also meet the minimum criteria for primary contact recreation, except as these criteria might be exceeded by natural backgro·ind conditions. Scenic or recreation river areas which qualify for inclusion in the system in all respects except for water quality may be added to the system provided adequate and reasonable assurance is given by the appropriate Federal or State authority that the water quality can and will be upgraded to the prescribed level for the desired types of recreation, and support aquatic life which normally would be adapted to the habitat of the stream at the prescribed level of water quality. At such time as water quality fully meets the criteria, it may be desirable to change the classification of a river.

New public utility transmission lines, gas lines, water lines, etc., in river areas being considered for inclusion in the national system are discouraged. However, where no reasonable alternative exists, additional or new facilities should be restricted to existing rights-of-way. Where new rights-of-way are indicated, the scenic, recreational, and fish and wildlife values must be evaluated in the selection of the site in accordance with the general guidelines described in the Report of the Working Committee on Utilities prepared for the President's Council on Recreation and Natural Beauty, December 1968.

Mineral activity subject to regulations under the Act must be conducted in a manner that minimizes surface disturbance, sedimentation and pollution, and visual impairment. Specific controls will be developed as a part of each management plan.

CRITERIA FOR RIVER DESIGNATION

The following criteria for classification, designation, and administration of river areas are prescribed by the Act. These criteria are not absolutes, nor can they readily be defined quantitatively. In a given river, a departure from these standards might be more than compensated by other qualities. However, if several "exceptions" are necessary in order for a river to be classified as wild, it probably should be classified as scenic. If several "exceptions" are necessary in order for a river to be classified as scenic, it probably should be classified as recreational.

Wild River Areas

The Wild and Scenic Rivers Act states that "these represent vestiges of primitive America," and they possess these attributes:

1. "Free of impoundments"
2. "Generally inaccessible except by trail"
3. "Watersheds or shorelines essentially primitive"
4. "Waters unpolluted"

Classification criteria.

Despite some obvious similarities, the "wildness" associated with a wild river is not synonymous with the "wildness" involved in wilderness classification under the Wilderness Act of 1964. One major distinction, in contrast to wilderness, is that a wild river area also may contain recreation facilities for the convenience of the user in keeping with the primitive setting.

1. An "impoundment" is a slack water pool formed by any man-made structure. Except in rare instances in which esthetic and recreational characteristics are of such outstanding quality as to counterbalance the disruptive nature of an impoundment, such features will not be allowed on wild river areas. Future construction of such structures that would have a direct and adverse effect on the values for which that river area was included in the national system, as determined by the Secretary charged with the administration of the area, would not be permitted. In the case of rivers added to the national system pursuant to Sec.2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system.

2. "Generally inaccessible" means there are no roads or other provisions for overland motorized travel within a narrow, incised river valley, of if the river valley is broad, within ¼ mile of the riverbank. The presence, however, of one or two inconspicuous roads leading to the river area will not necessarily bar wild river classification.

3. "Essentially primitive" means the shorelines are free of habitation and other substantial evidence of man's intrusion. This would include such things as diversions, straightening, rip-rapping, and other modifications of the waterway. These would not be permitted except in instances where such developments would not have a direct and adverse effect on the values for which that river area was included in the national system as determined by the Secretary charged with the administration of the area. In the case of rivers added to the national system pursuant to Section 2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system. With respect to waterseheds, "essentially primitive" means that the portion of the watershed within the boundaries has a natural-like appearance. As with shorelines, developments within the boundaries should emphasize a natural-like appearance so that the entire river area remains a vestige of primitive America. For the purposes of this Act, a limited amount of domestic livestock grazing and pasture land and cropland devoted to the production of hay may be considered "essentially primitive." One or two inconspicuous dwellings need not necessarily bar wild river classification.

4. "Unpolluted" means the water quality of the river at least meets the minimum criteria for primary contact recreation, except where exceeded by natural background conditions, and esthetics as interpreted in the Federal Water Pollution Control Administration's *Water Quality Criteria*, April 1,

1968. In addition, the water presently must be capable of supporting the propagation of aquatic life, including fish, which normally would be adapted to the habitat of the stream. Where no standards exist or where existing standards will not meet the objectives of these criteria, standards should be developed or raised to achieve those objectives.

Management objectives.

The administration of a wild river area shall give primary emphasis to protecting the values which make it outstandingly remarkable while providing river-related outdoor recreation opportunities in a primitive setting.

To achieve these objectives in wild river areas, it will be necessary to:

1. Restrict or prohibit motorized land travel, except where such uses are not in conflict with the purposes of the Act.

2. Acquire and remove detracting habitations and other nonharmonious improvements.

3. Locate major public-use areas, such as large campgrounds, interpretive centers or administrative headquarters, outside the wild river area. Simple comfort and convenience facilities, such as fireplaces, shelters, and toilets, may be provided for recreation users as necessary to provide an enjoyable experience, protect popular sites, and meet the management objectives. Such facilities will be of a design and location which harmonize with the surroundings.

4. Prohibit improvements or new structures unless they are clearly in keeping with the overall objectives of the wild river area classification and management. The design for any permitted construction must be in conformance with the approved management plan for that area. Additional habitations or substantial additions to existing habitations will not be permitted.

5. Implement management practices which might include construction of minor structures for such purposes as improvement of fish and game habitat; grazing; protection from fire, insects, or disease; rehabilitation or stabilization of damaged resources, provided the area will remain natural appearing and the practices or structures will harmonize with the environment. Such things as trail bridges, an occasional fence, natural-appearing water diversions, ditches, flow measurement or other water management devices, and similar facilities may be permitted if they are unobtrusive and do not have a significant direct and adverse effect on the natural character of the area.

Scenic River Areas

The Wild and Scenic Rivers Act states that scenic rivers:

1. Are "free of impoundments".

2. Are "accessible in places by road".

3. Have "shorelines or watersheds still largely primitive and shorelines largely undeveloped".

Classification criteria.

1. An "impoundment" is a slack water pool formed by any manmade structure. Except in rare instances in which esthetic and recreational characteristics are of such outstanding quality as to counterbalance the disruptive nature of an impoundment, such features will not be allowed on scenic river areas. Future construction of such structures that would have a direct and adverse effect on the values for which that river area was included in the national system as determined by the Secretary charged with the administration of the area, would not be permitted. In the case of rivers added to the national system pursuant to Section 2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system.

2. "Accessible in places by road" means the roads may occasionally bridge the river area. Scenic river areas will not include long stretches of conspicuous and well-traveled roads closely paralleling the riverbank. The presence, however, of short stretches of conspicuous or longer stretches of inconspicuous and well-screened roads or screened railroads will not necessarily preclude scenic river designation. In addition to the physical and scenic relationship of the free-flowing river area to roads, consideration shouted be given to the type of use for which such roads were constructed and the type of use which would occur within the proposed scenic river area.

3. "Largely primitive" means that the shorelines and the immediate river environment still present an overall natural character, but that in places, land may be developed for agricultural puposes. A modest amount of diversion, straightening, rip-rapping, and other modification of the waterway would not preclude a river from being considered for classification as a scenic river. Future construction of such structures would not be permitted except in instances where such developments would not have a direct and adverse effect on the values for which that river area was included in the national system as determined by the Secretary charged with the administration of the area.

In the case of rivers added to the national system pursuant to Section 2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system. "Largely primitive" with respect to watersheds means that the portion of the watershed within the boundaries of the scenic river area should be scenic, with a minimum of easily discernible development. Row crops would be considered as meeting the test of "largely primitive," as would timber harvest and other resource use, providing such activity is accomplished without a substantially adverse effect on the natural-like appearance of the river or its immediate environment.

4. "Largely undeveloped" means that small communities or any concentration of habitations must be limited to relatively short reaches of the total area under consideration for designation as a scenic river area.

Management objectives.

A scenic river area should be managed so as to maintain and provide outdoor recreation opportunities in a near natural setting. The basic distinctions between a "wild" and a "scenic" river area are degree of development, type of land use, and road accessibility. In general, a wide range of agricultural, water management, silvicultural and other practices could be compatible with the primary objectives of a scenic river area, providing such practices are carried on in such a way that there is no substantial adverse effect on the river and its immediate environment.

The same considerations enumerated for wild river areas should be considered, except that motorized vehicle use may in some cases be appropriate and that development of larger scale public-use facilities within the river areas, such as moderate size campgrounds, public information centers, and administrative headquarters, would be compatible if such structures were screened from the river.

Modest facilities, such as unobtrusive marinas, also would be possible if such structures were consistent with the management plans for that area.

Recreational River Areas

The Wild and Scenic Rivers Act states that recreational rivers:

1. Are "readily accessible by road or railroad";

2. "May have some development along their shoreline";

3. May have "undergone some impoundment or diversion in the past."

Classification criteria.

1. "Readily accessible" means the likelihood of paralleling roads or railroads on one or both banks of the river, with the possibility of several bridge crossings and numerous river access points.

2. "Some development along their shorelines" means that lands may be developed for the full range of agricultural uses and could include small communities as well as dispersed or cluster residential developments.

3. "Undergone some impoundment or diversion in the past" means that there may be water resources developments and diversions having an environmental impact greater than that described for wild and scenic river areas. However, the degree of such development should not be to the extent that the water has the characteristics of an impoundment for any significant distance.

Future construction of impoundments, diversions, straightening, rip-rapping, and other modification of the waterway or adjacent lands would not be permitted except in instances where such developments would not have a direct and adverse effect on the values for which that river area was included in the national system as determined by the Secretary charged with the administration of the area. In the case of rivers added to the national system pursuant to Section 2(a)(ii), such construction could result in a determination by the Secretary of the Interior to reclassify or withdraw the affected river area from the system.

Management objectives.

Management of recreational river areas should be designed to protect and enhance existing recreational values. The primary objectives will be to provide opportunities for engaging in recreation activities dependent on or enhanced by the largely free-flowing nature of the river.

Campgrounds and picnic areas may be established in close proximity to the river, although recreational river classification does not require extensive recreational developments. Recreational facilities may still be kept to a minimum, with visitor services provided outside the river area.

Adopted:

HARRISON LOESCH,
Department of the Interior.
EDWARD P. CLIFF,
Department of Agriculture.

SUMMARY [1]

Attributes and management objectives of the three river classifications for inclusion in the National Wild and Scenic River System

FEBRUARY 1970.

Attributes

Wild

1. Free-flowing. Low dams, diversion works or other minor structures which do not inundate the natural riverbank may not bar consideration as wild. Future construction restricted.

2. Generally inaccessible by road. One or two inconspicuous roads to the area may be permissible.

3. Shorelines essentially primitive. One or two inconspicuous dwellings and land devoted to production of hay may be permitted. Watershed natural-like in appearance.

4. Water quality meets minimum criteria for primary contact recreation except where such criteria would be exceeded by natural background conditions and esthetics [2] and capable of supporting propagation of aquatic life normally adapted to habitat of the stream.

Scenic

1. Free-flowing. Low dams, diversion works or other minor structures which do not inundate the natural riverbank may not bar consideration. Future construction restricted.

2. Accessible by roads which may occasionally bridge the river area. Short stretches of conspicuous or longer stretches of inconspicuous and well-screened roads or railroads paralleling river area may be permitted.

Footnotes at end of article.

3. Shoreline largely primitive. Small communities limited to short reaches of total area. Agricultural practices which do not adversely affect river area may be permitted.

4. Water quality should meet minimum criteria for desired types of recreation except where such criteria would be exceeded by natural background conditions and esthetics[2] and capable of supporting propagation of aquatic life normally adapted to habitat of the stream, or is capable of and is being restored to that quality.

Recreation

1. May have undergone some impoundment or diversion in the past. Water should not have characteristics of an impoundment for any significant distance. Future construction restricted.

2. Readily accessible, with likelihood of paralleling roads or railroads along river banks and bridge crossings.

3. Shoreline may be extensively developed.

4. Water quality should meet minimum criteria for desired types of recreation except where such criteria would be exceeded by natural background conditions and esthetics[2] and capable of supporting propagation of aquatic life normally adapted to habitat of the stream or is capable of and is being restored to that quality.

Management objectives

Wild

1. Limited motorized land travel in area.

2. No unharmonious or new habitations or improvements permitted.

3. Only primitive-type public use provided.

4. New structures and improvement of old ones prohibited if not in keeping with overall objectives.

5. Unobtrusive fences, gauging stations and other management facilities may be permitted if no significant adverse effect on natural character of area.

6. Limited range of agriculture and other resource uses permitted.

Scenic

1. Motorized vehicles allowed on land area.

2. No unharmonious improvements and few habitations permitted.

3. Limited modern screened public use facilities permitted, i.e. campgrounds, visitor centers, etc.

4. Some new facilities allowed, such as unobtrusive marinas.

5. Unobtrusive fences, gauging stations and other management facilities may be permitted if no significant adverse effect on natural character of area.

6. Wide range of agriculture and other resource uses may be permitted.

Recreation

1. Optimum accessibility by motorized vehicle.

2. May be densely settled in places.

3. Public use areas may be in close proximity to river.

4. New structures allowed for both habitation and for intensive recreation use.

5. Management practice facilities permitted.

6. Full range of agricultural and other resource uses may be permitted.

FOOTNOTES

[1] To be used only in conjunction with the text.

[2] Federal Water Pollution Control Administration's Water Quality Criteria, April 1, 1968.

S. 3633

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

STATEMENT OF POLICY

SECTION 1. The Congress finds that the Housatonic River Valley possesses unique scenic, ecological, scientific, historic, recreational, and other values contributing to public enjoyment, inspiration, and scientific study. The Congress further finds that it is in the best interests of the citizens of the United States for the United States to take action to preserve and conserve such values for the enjoyment of present and future generations, to preserve and conserve the natural ecological environment, and improve the recreational potential of the area, and to encourage maximum complementary action by State and local governments and private individuals, groups, organizations, and associations.

HOUSATONIC RIVER VALLEY TRUST

SEC. 2. In order to provide for preservation and conservation of the scenic, ecological, scientific, historical, and other values contributing to public enjoyment consistent with the well-being of present and future residents of the area, there is hereby established the Housatonic River Valley Trust (hereinafter referred to as the "Trust"). The area comprising such Trust shall be as described hereinafter. The Secretary of the Interior (hereinafter referred to as the "Secretary") may revise the boundaries of the Trust from time to time with a view to carrying out the purposes of this Act, with the approval of a majority of the Housatonic River Valley Trust Commission, as established and described in section 3 of this Act and hereinafter referred to as the "Commission".

HOUSATONIC RIVER VALLEY TRUST COMMISSION

SEC. 3. (a) There is hereby established the Housatonic River Valley Trust Commission.

(b) Such Commission shall be composed of members appointed for a term of three years by the Secretary as follows:

(1) a member appointed to represent the State of Connecticut. Such appointments shall be made from recommendations of the Governor of the State of Connecticut.

(2) a member appointed to represent the towns of North Canaan, Canaan, Salisbury, Sharon, Cornwall, Kent, New Milford, Sherman, Bridgewater, Brookfield, and Newtown. Such appointments shall be made from recommendations of the boards of selectmen of such towns.

(3) a member to be designated by the Secretary:

(4) two members appointed to represent private nonprofit preservation or conservation groups or associations active in the Housatonic Valley. Such appointments shall be made from recommendations of the Members of the Senate and the House of Representatives of the United States from the State of Connecticut.

(c) The Chairman of the Commission shall be elected by the membership thereafter for a term of not to exceed eighteen months. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made. All members of the Commission except those appointed under paragraph (3) of subsection (b) of this section shall be either voting residents of Trust lands, or taxpaying residents of such lands for at least five years.

(d) All members of the Commisison shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the Commission in carrying out its responsibilities under this Act on the presentation of vouchers signed by the Chairman.

(e) The Secretary or his delegate shall consult regularly with the Commission with respect to all matters relating to the Trust, and with respect to carrying out the provisions of this Act, including but not limited to matters relating to the acquisition of lands, the issuance of regulations specifying standards for zoning ordinances, and the administration of the Trust.

TRUST BOUNDARIES

SEC. 4. The boundaries of the Trust shall encompass the following towns in the State of Connecticut:

(a) North Canaan;
(b) Canaan;
(c) Salisbury;
(d) Sharon;
(e) Cornwall;
(f) Kent;
(g) New Milford;
(h) Sherman;
(i) Bridgewater;
(j) Brookfield; and
(k) Newtown.

CLASSIFICATION OF TRUST LANDS

SEC. 5. (a) Lands within the boundaries of the Trust shall be assigned to one of the classifications listed in subsection (b) of this section.

(b) Classifications of Trust lands:

(1) CLASS A: LANDS FOREVER WILD.—Lands so designated shall remain forever free of development or improvements, as defined hereinafter, of any kind. If improvements or developments exist on any lands so designated on the date of enactment of this Act, then the Secretary shall permit a right of use and occupancy to the owner or owners thereof, or their successors or assigns, for a term of no longer than twenty-five years. Access to such lands shall be free and open, subject only to regulations issued by the Commission and approved by the Secretary.

(2) CLASS B: SCENIC PRESERVATION LANDS.—Lands so designated shall not be developed beyond their present intensity of use. Owners of such lands, or of improvements thereon, or of both, on the date of enactment of this Act, may transfer, sell, assign, or demise such land or improvements, or both; such owners may not, however, cause to be constructed any additional improvements on such lands. Reasonable replacement, repair, and extension shall be permitted, under regulations issued by the Commission and approved by the Secretary.

(3) CLASS C: TOWN PLANNED LANDS.—Lands so designated shall remain within the jurisdiction of the town in which located for purposes of land use planning and zoning ordinances: *Provided*, That such planning and zoning ordinances must be approved by the Commission and the Secretary as consistent with the purposes of this Act.

ACQUISITION OF LANDS

SEC. 6. (a) Within the boundaries of the Trust, the Secretary may acquire for fair market value but without the consent of the owner such privately owned lands, waters, and interests therein which he shall designate as being presently or from time to time needed to carry out the purposes of this Act: *Provided*, That the Secretary may acquire a fee title only in cases where, in his judgement, the acquisition of scenic easements or other less-than-fee interests would not be adequate to carry out the purposes of this Act. The remaining privately owned property not so designated may not be acquired by the Secretary without the consent of the owner or owners (hereinafter referred to as "owner") for one year following the date of enactment of this Act, nor thereafter for so long as an appropriate local planning or zoning agency, or the Commission, shall have in force and applicable to such a property a duly adopted, valid planning or zoning ordinance approved by the Secretary. In order to carry out the provisions of this section, the Secretary shall issue regulations specifying standards that are consistent with the purposes of this Act. Such regulations, and any amendments thereto, must receive the approval of a majority of the Commission before issuance.

(b) The standards specified in such regulations shall have the object of:

(i) regulating new commercial and in-

dustrial or other uses of such property consistent with the purposes of this Act and in the public interest; and

(ii) promoting the preservation and conservation of such property by means of acreage, frontage, setback design, and subdivision controls, and by prohibiting the cutting of timber, burning of undergrowth, quarrying, removing soil or other landfill, and dumping or storing refuse in such a manner that would detract from the natural or traditional valley scene: *Provided,* That such standards shall not discourage the constructive development and use of land for commercial and other uses which are consistent with the purposes of this Act and with the public interest.

(c) Following issuance of such regulations the Secretary and the Commission shall approve any planning or zoning ordinance or any amendment thereto submitted to them that conforms to the standards contained in the regulations in effect at the time of adoption of the ordinance or amendment. Such approval shall remain effective for so long as such ordinance or amendment remains in effect as approved, unless the regulations be changed thereafter in a substantial manner.

(d) No planning or zoning ordinance or amendment thereof shall be approved by the Secretary and the Commission which:

(i) contains any provisions that they consider adverse to the preservation and conservation and development of such property in accordance with the purposes of this Act; or

(ii) fails to have the effect of providing that the Secretary shall receive notice of any variance granted under, or any exception or amendment made to, the application of such ordinance or amendment.

(e) If any property, with respect to which the Secretary's authority to acquire by condemnation has been suspended according to the provisions of this section, is made the subject of a variance under, or becomes for any reason an exception to, such planning or zoning ordinance, or is subject to any variance, exception, or use, that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time of passage of such ordinance, the suspension of the Secretary's authority to acquire such property by condemnation is terminated: *Provided,* That the owner of such property shall have ninety days after written notification from the Secretary to discontinue the variance, exception, or use referred to in such notification.

(f) The Secretary shall furnish to any party in interest, upon request, a certificate indicating the property with respect to which the Secretary's authority to acquire by condemnation is suspended.

SEC. 7. (a) The Secretary is authorized to acquire the lands, waters, and interests therein (including scenic easements) within the trust boundaries by donation, negotiated purchase with donated or appropriated or borrowed funds, transfer, exchange, or condemnation except that such authority to acquire by condemnation shall be exercised only in the manner and to the extent specifically provided in section 6 of this Act.

(b) With the exception of any lands which the Secretary determines are presently or from time to time needed to carry out the purposes of this Act, any owner of improved property on the date of its designation for acquisition by the Secretary may elect, as a condition to such acquisition to retain a right of use and occupancy of the improved property for noncommercial residential and agricultural purposes for a period ending at the death of the owner or his spouse, or for a fixed term not to exceed twenty-five years, which ever occurs later. The Secretary shall pay to the owner the fair market value of the property on the date of its acquisition less the fair market value on such date of any right retained by the owner. Any retained right of use and occupancy may be transferred or assigned, subject to the election specified in this subsection. Whenever the Secretary finds that the property or any portion thereof has ceased to be used for noncommercial residential purposes, he may terminate the right of use and occupancy upon tendering to the holder thereof an amount equal to the fair market value of the portion of said right which remains unexpired on the date of termination.

(c) As used herein, the term "improved property" shall mean a one-family dwelling the construction of which was begun before June 1, 1972, together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling and land for noncommercial residential or agricultural purposes, together with any structures accessory to the dwelling which are situated on the land so designated: *Provided,* That the Secretary may exclude from the land so designated any water bodies together with so much of the adjacent land as he deems necessary for public access thereto.

(d) Any property or interests therein within the Trust which are owned by a State or by any political subdivision thereof may be acquired only by donation. Notwithstanding any other provision of law, any Federal property located within the Trust may, with the concurrence of the agency having custody thereof, be transferred to the administrative jursidiction of the Secretary, without transfer of funds, for administration by him as part of the Trust.

ADMINISTRATIVE PROVISIONS

SEC. 8. (a) The Secretary shall administer and protect the Trust with the primary aim of preserving and conserving the natural resources located within it and preserving the area in as nearly its natural state and condition as possible. No development or plan for the convenience of visitors shall be undertaken in the Trust which would be incompatible with the overall lifestyle of residents of the area, generally accepted ecological principles, the preservation of the physiographic conditions now prevailing, or with the preservation of such historic sites or structures as the Secretary may already have designated or may designate.

(b) The Trust shall be administered and protected by the Secretary in accordance with the provisions of this Act and the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1 et seq.), except that the Secretary may utilize any other statutory authority available to him for the conservation, preservation, and management of natural resources to the extent he finds such authority will further the purposes of this Act.

(c) The Secretary shall permit hunting, fishing, and trapping, on lands and waters under his jurisdiction within the Trust in accordance with the applicable laws of the State of Connecticut and the United States, except that the Secretary may designate zones where, and establish periods when, no hunting, no fishing, and no trapping shall be permitted for reasons of public safety, fish or wildlife management, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary prescribing any such restrictions shall be issued only after consultation with the appropriate agency of said State.

GENERAL USES

SEC. 9. (a) The Secretary shall undertake no development or plan for the convenience of visitors to Trust lands which would be incompatible with the preservation and conservation of the unique scenic, ecological, scientific, and historic features thereof: *Provided,* That the Secretary may provide for the public enjoyment and understanding of such features by establishing such trails, observation points, and exhibits, and by providing such services as he may deem desirable for such public enjoyment and understanding: *Provided further,* That the Secretary may develop such portions of Trust lands as he deems especially adaptable for public uses including but not limited to camping, swimming, boating, the appreciation of historic sites and structures, and natural features of Trust lands.

(c) In any development or plan for the convenience of visitors he undertakes, the Secretary shall not unreasonably diminish for its owners or occupants the value or enjoyment of any improved property within the Trust lands.

PRIVATE NONPROFIT ORGANIZATIONS

SEC. 11. (a) Notwithstanding the provisions of section 6 and section 7 herein, or any other provision herein or in any other provision of law, the Secretary's authority to acquire lands by condemnation shall be suspended when:

(i) lands or interests therein which he shall designate as being presently or from time to time needed to carry out the purposes of this Act are in the ownership of private nonprofit conservation, preservation, historic, or other organizations and associations, and the restrictions against development of such lands meet the standards referred to in section 7 herein; and

(ii) lands or interests therein which he shall designate as being presently or from time to time needed to carry out the purposes of this Act are, to his satisfaction and within twenty-four months after enactment of this Act, irrevocably committed to be sold, donated, demised, or otherwise transferred to such organizations or associations.

(b) The Secretary is authorized to provide technical assistance to State and local governments, private organizations, and associations, and individuals with respect to the preservation and conservation of Trust lands.

(c) The Secretary shall apply the provisions of this section only to those organizations and associations which he determines are bona fide and general purpose.

POLLUTION

SEC. 12. The Secretary shall cooperate with the appropriate State and local agencies to provide safeguards against pollution of the waters in and around Trust lands, and against unnecessary impairment of the scenery thereof.

FREEZE DATE

SEC. 13. (a) Beginning thirty days after enactment of this provision, no construction of any improvement, whether for residential, commercial, industrial, or any other purpose, shall be permitted to commence on any lands classified herein as "Forever Wild." Construction of improvements shall be permitted on any lands classified as "Town Planned Lands" only upon the granting of specific approval therefor by the governing body of the particular town, after a showing of the need therefor. Construction of improvements shall be permitted on any lands classified as "Scenic Preservation Lands" only upon the granting of specific approval therefor by the appropriate governing body, after a showing of the need therefor.

(b) In the case of any hardship caused by the provisions of subsection (a) of this section, the Secretary and the Commission shall, on the basis of rules and regulations developed and approved by the Secretary and the Commission, make a valuation thereof and shall award fair recompense to any individual for whom hardship is demonstrated.

APPROPRIATIONS

SEC. 14. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

HOUSATONIC RIVER BASIN, CONN.

WASTEWATER MANAGEMENT STUDY

The goal of the investigation that would be undertaken by the Corps is to formulate alternative wastewater management plans in order that the people of the basin may have the opportunity to choose the degree and method of treatment they themselves consider appropriate for immediate and long-term implementation. Among the alternative basin plans to be formulated and evaluated are plans (1) to achieve highest levels of wastewater treatment no later than 1990 and (2) to meet current requirements in the most cost-effective way. Both land treatment and physical, biological, and chemical processes will be considered. All alternative plans will be capable of implementing current regulations (18 CFR 601.32 and 601.33) for planning in connection with Federal grants for construction of treatment works. Area-wide plans will also be completed for portions of designated area-wide planning areas lying within the basin.

In this regard the Corps would seek to assist State, local, and other Federal agencies in identifying and planning alternatives for wastewater management which will incorporate the highest water quality goals and the most efficient uses of our resources, without limitations placed upon technologies and regional scale opportunities. The technical water quality goal would seek to reduce the added impurities in wastewater to natural background levels in the receiving water courses. There is growing evidence that we cannot solve the problem of water pollution while our standards permit waste discharges above these background levels. This planning would build upon and extend current wastewater planning efforts in the basin.

The planning would be directed toward identifying and developing the most efficient alternatives for incorporating resource reuse into wastewater management systems. It would provide for the maximum efficient reuse of the wastewater effluent and constituents in meeting the region's needs.

Plans will be formulated by considering the technological approaches that can be used in solving wastewater problems. Land treatment and treatment plants are two basic approaches. Initially, an alternative will be formulated employing each approach to identify effective means of achieving program technical goals. Additional alternatives are developed as modifications or combinations of these initial alternatives. These are subsequently reduced in number with the remaining alternatives refined in further detail. At successive stages of development of the alternatives, there will be a continued interface between planning, design, and evaluation. This will assure that the plan, in meeting its technical goals, is also achieving and contributing to the planning objectives of the region; thereby eliminating or minimizing the detrimental environmental, hygienic, social, aesthetic, and economic impacts associated with the plan.

Open planning will be employed to provide all segments of the public an opportunity to contribute to development of the alternatives. Public meetings will be held, formal coordination conducted, and advisory groups enlisted to assure that the alternatives accurately reflect the desires of the public.

Existing institutions will be identified but will not constrain the development of optimal wastewater management systems. Subsequent to the selection of a plan, the impacts of the plan on existing institutions will be analyzed and alternative implementation plans developed.

Primary emphasis will be placed upon developing complete, detailed technical systems, costs, effects, and required public involvement to gain state, and local acceptance of the optimal wastewater systems developed in these studies.

Under current guidelines developed by OMB, the study would require that non-Federal interests participate in the sharing of the costs of such a study on a 50–50 basis in terms of services and product. This is currently the basis upon which EPA planning grants are made. With the final passage of the water quality bills currently pending with the Congress, provision is made for such studies to be totally financed by the Federal government.

By Mr. MONDALE:

S. 3634. A bill to provide continued rail transportation in rural America. Referred to the Committee on Commerce.

RURAL TRANSPORTATION ADMINISTRATION

Mr. MONDALE. Mr. President, I am introducing today legislation to establish within the Department of Transportation, a Rural Rail Transportation Administration.

This legislation is an effort to provide rural community groups with a means to continue rail service when it is important to the economic growth and development of communities.

The Rural Rail Transportation Administration would have the responsibility of aiding the continuation and improvement of rail service in rural America. It authorizes loans or loan guarantees to reestablish service of an abandoned railroad line or to continue and improve service on a line to be abandoned. This type of financing program would enable cooperatives or other nonprofit organizations made up of shippers and residents to purchase and operate short line railroads. In my judgment, this is the only alternative in many cases.

In the bill I have not included a ceiling on the size of loans. This is done with the assumption that the Commerce Committee, through hearings and appropriate study, will be able to establish fair and practical limits and percentages.

Increased reliance on motor carriers is not the answer for farmers or for other residents of rural America. In my home State of Minnesota, a recent study indicates that 304 communities will lose railroad service by 1980. Of those communities, 98 now have roads which are restricted to less than 9-ton carrying capacity. The Minnesota Highway Department informed me that it would cost State and county governments $79.7 million in additional highway construction money to provide unrestricted access to those communities.

I am afraid that many rural communities would be left to die, because of the prohibitive cost of providing adequate transportation facilities to replace railroads.

Corporations which presently own the railroads want to abandon rural lines. They have shown clearly that they do not want to live up to their responsibilities. Service to rural communities has been declining for several years.

Mr. President, I recently had a first-hand look at some of the rail lines in the State of Minnesota which are slated for abandonment. The rails are old. Most being original equipment which was layed when the railroads were built during the late 1800's. Ties are rotted out. Most places, it is not evident whether there are any ties, because the entire roadbed is covered with sod. Trains have to go slow and even then derailments are common.

The railroads argue that this faulty equipment is a reason to be granted permission to abandon the branch lines.

But the poor condition of the track and roadbed are not the fault of the shippers and rural communities serviced by the lines. Who else but the companies owning the railroads is at fault?

Not too long ago railroads were allowed to abandon passenger service to all major cities. They said they needed to do that in order to run freight trains profitably. Now they want to abondon freight service in rural areas. They say this is necessary to keep main freight lines operating. And so it goes on. A dangerous trend continues and rural America is the victim.

Walter Shirra, the former astronaut, appears in a television advertisement on behalf of the railroads. He says:

Who needs the railroads? We all do.

How ironic that Shirra's former employer, NASA, plans to spend $35 billion for a space shuttle to carry a few astronauts around the earth—while the Interstate Commerce Commission silently permits rail service to be cut. A few men can orbit the world, but farmers in the Midwest cannot get their grain to market.

I think it is an astronomical irony that railroads continually are trying to get out of the railroad business. They continually ask for more Government assistance. But rail service does not improve.

In my judgment, what is needed is a transportation program similar to the Rural Electrification Administration. The REA has been one of our Nation's truly great rural development successes. Rural electric cooperatives, owned and operated by rural residents and farmers, provide services that big business cannot or will not provide. And REA's pay back every cent that they get from the Government.

Three or four decades ago opponents of the REA effort said it would never work. They said:

Farmers don't need electricity, and if they had it they couldn't pay for it.

Today rural America has electric power. All the bills get paid. And I am convinced that the labor saving accomplished by electricity on the farm has contributed greatly to the farmer's productivity which is the envy of businessmen all over the world.

I believe in investing in people and entrusting our Nation's resources to organizations run by the people. Rural electric cooperatives have a fine record showing what can be done by such organizations. The Rural Rail Transportation Administration authorized by this legislation would do so also.

Mr. President, I do not claim that this will completely solve the transportation crisis. I still strongly support efforts to declare a moratorium on the abandonment of railroad lines until after an overall national transportation plan can be developed. But the Rural Rail Transportation Administration is needed to

help continue rail service in rural communities.

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

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

S. 3634

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rural America Rail Transportation Act of 1972."

RURAL RAIL TRANSPORTATION ADMINISTRATION

SEC. 2. The Secretary of Transportation (hereinafter referred to as the "Secretary") shall establish within the Department of Transportation a Rural Rail Transportation Administration which shall be headed by an Administrator who shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate provided for level IV of the Executive Schedule in title 5, United States Code. The Secretary shall carry out his functions under this Act through such Administration.

STUDIES, RESEARCH AND DEMONSTRATION PROGRAMS

SEC. 3. (a) In order to promote the continuation and improvement of rail service in rural areas of the United States the Secretary is authorized to contract or enter into other arrangements for studies, research, and demonstration programs as may be necessary to—

(1) develop improved equipment for such service;

(2) determine means of continuing and improving such service under existing railroad management;

(3) determine means of restoring such service where it has been discontinued.

(b) In carrying out the provisions of this section the Secretary shall consult and cooperate with appropriate State and local agencies, shippers, railroads, and other appropriate organizations and groups.

LOANS AND LOAN GUARANTEES TO RESTORE ABANDONED SERVICE

SEC. 4. (a) The Secretary is authorized to make loans or loan guarantees pursuant to this section to reestablish service on an abandoned railroad line, or to continue service on a line to be abandoned, in any case in which he determines—

(1) a valid need for such service in order to maintain economic growth and development of areas along the line;

(2) that the applicant has the capability of providing such service and for the purpose of this section any applicant which is a non-profit organization made up of shippers and residents, or is a State or local government agency, of the area to be served, shall be given preference;

(3) that the applicant has complied with the provisions of the Interstate Commerce Act to provide such service; and

(4) that the provision of such service is, or can be made, economically feasible.

(b) Any such loan or loan guarantee—

(1) shall be made in accordance with the provisions applicable to loans and loan guarantees made pursuant to section 7(b)(5) of the Small Business Act (15 U.S.C. 636 (b)(5)), except as otherwise provided in this section;

(2) may be made for costs of any necessary acquisition of tracks and right-of-way and other real property and necessary acquisition and improvement of equipment;

(3) may be made for not to exceed —— per centum of such costs or $——; and

(4) may be made subject to such other terms and conditions as the Secretary determines necessary to carry out the purpose of this Act.

(c) As part of any loan guarantee under this section the Secretary shall pay such portion of the interest on the guaranteed loan as may be necessary to make the cost of such interest to the borrower equal to the interest cost of a direct loan from the Secretary.

AMENDMENT OF INTERSTATE COMMERCE ACT

SEC. 5. Part I of the Interstate Commerce Act is amended by inserting after section 13a a new section as follows:

"ABANDONMENT OF LINES

"SEC. 13b. (a) The Commission shall not consider the request of any common carrier by railroad for a certificate authorizing the abandonment of all or any portion of a line of railroad, or the operation thereof, until after a five year period following the date of such request to the Commission and during which the carrier has provided public notice of such request, in accordance with regulations of the Commission in the area affected by such abandonment. In determining whether the public convenience and necessity permit the granting of such request, the Commission shall give thorough consideration to the economic importance of such line to all areas which it serves.

"(b) As a condition to the granting of any certificate authorizing such abandonment the Commission shall require such carrier to—

"(1) cooperate to the extent possible with communities served by such line in efforts to restore operations on such line, including making the right-of-way and tracks available for lease on a reasonable basis; and

"(2) not disturb the tracks and roadbed of such line for five years after the date on which such certificate was granted.

"(c) The Commission shall notify the Secretary of Transportation of the receipt of any request for a certificate of abandonment pursuant to ths part and shall to the extent possible give priority to any proceedings initiated to continue or restore rail operations on an abandoned railroad line.

"(d) The Commission may reduce the five year period required by subsection (a) or subsection (b) (2) of this section in any case in which it determines, after notice and public hearing, that the public convenience and necessity does not require such period."

AUTHORIZATION

SEC. 6. There are authorized to be appropriated such amounts as may be necessary to carry out the provisions of this Act.

By Mr. BROCK:

S. 3636. A bill to amend the Occupational Safety and Health Act of 1970 to provide technical assistance to comply with standards, to extend the time for compliance with standards, to update standards, and for other purposes. Referred to the Committee on Labor and Public Welfare.

OCCUPATIONAL SAFETY AND HEALTH ACT AMENDMENTS OF 1972

Mr. BROCK. Mr. President, in 1970, Congress passed the Occupational Safety and Health Act to assure safe and healthful working conditions for working men and women. Although I am in total support of this national commitment to the cause of employees safety, I have been disturbed by some of the unnecessary and unrealistic requirements which have been developed by way of regulations designed by the Department of Labor.

In contrast with the action taken on the Federal level, I have been most pleased with the work done on the State level in Tennessee by the State commissioner of the Department of Labor. The commissioner of the Department of Labor of the State of Tennessee has had virtually unlimited power in the regulation of safety and general working conditions in workshops, factories, offices, retail stores, and other business establishments.

Records pertaining to industrial safety in Tennessee—and particularly those concerning manufacturers—are not as complete as might be desired—nor are they in many other States—but to the extent that they may be compared to other States, Tennessee's record is most favorable. In Tennessee great progress has been made in the past 10 years in the development of statistical information in connection with industrial health and safety.

The Tennessee General Assembly recently adjourned adopted a lengthy measure which completely revamped the occupational safety and health laws of Tennessee to the end that Tennessee will be enabled, under the Federal Occupational Safety and Health Act, to administer new and updated safety and health laws, rules, and regulations along the lines and in conformity with the Federal act on this subject. I am most pleased that the Tennessee Assembly has taken this step for I feel that much of the problem under the Federal law is the totally unrealistic approach taken by the Federal bureaucracy and its hordes of insensitive inspectors.

One of the major problems under the Federal law is the assumption that the employer is not interested in, or even aware of, the real need for safety practices. Most manufacturers and people in the construction business as well as small employers are acutely aware of the need for good safety practices not only because of the extremely high cost of workmen's compensation insurance but more especially because of the cost to employers who have lost time by trained and experienced employees. A much better approach would be in the education of employees and employers under an effective safety program by the Department of Labor.

As it now stands, if the employer seeks help and advice from the Department of Labor, he is faced instead with a prompt walk-around inspection of his premises, and a mandatory citation is issued on the spot, carrying a penalty of up to $1,000 for each violation alleged. To illustrate statistically how voluminous the citations are becoming, consider the following box score compiled by the National Safety Council:

In the 7-month period, July 1, 1971, through January 31, 1972, the OSH Administration conducted 16,162 inspections in 14,741 establishments. Of these, only 3,089—21 percent of the total—were found to be in compliance with the OSH standards. As for the remainder, 11,856 citations were issued alleging 42,942 violations. The proposed penalties amount to $1,003,250. The number of employee complaints regarding occupational safety and health hazards submitted to the OSH Administration

through the end of January totaled 1,519. The number of cases contested before the Occupational Safety and Health Review Commission is nearing 700.

The practical effect of the present law as it is being administered is to give the inspector the power to act on the spot as a policeman, judge, and jury. Although there are review procedures, so far as the small employer is concerned the expense of relief through the appeals procedure is prohibitive. If the objectives of the law are to be achieved in a fair and effective manner, it is essential that the vindicative mandatory penalty for first offenses be replaced with some mechanism for flexibility in the administration of the law to provide for cooperation between those regulated and the regulator.

Another source of concern stems from the very unwise delegation of authority by Congress to the Department of Labor to issue legally binding regulations without due process through hearings. The Occupational Safety and Health Act adopts whole bodies of preexisting criteria and guidelines, set up by private organizations and called "national consensus standards." Under the act, these were put into effect wholesale, without any review in legislative hearings or in administrative rule-making proceedings. The Administrative Procedure Act was explicitly bypassed. As a result, many employers must try to comply with requirements that have no applicability or feasibility as applied to them, and regarding which they have never had a chance to be heard.

This unrealistic and unfair approach should be corrected by requiring the Secretary of Labor to determine the applicability of each standard to each class of business in each industry. The Administrative Procedure Act should be followed to assure fairness.

Another problem has arisen from the failure to allow sufficient time for employers to become familiar with the regulations and to bring themselves into good-faith compliance. The regulations are literally too complex and voluminous for the employer, particularly the small business firm, to cope with. When published, they filled 744 columns of the Federal Register. There are seven pages dealing with stepladders alone. The Labor Department's handbook is nearly 300 pages in length, and offers no help in figuring out which regulations are applicable and which are not. Every conceivable detail is covered. The small employer has never faced any regulatory scheme so demanding and bewildering. He may not even know that the laws exist. Even if he does, he typically lacks the skill, manpower, and expertise needed to inform himself of its requirements.

It is a deplorable situation when a small businessman who is struggling to survive in a world of big business, big government, and big labor, is visited by a Federal inspector who literally throws a book of this magnitude at him with a citation and demands immediate compliance. Relief is essential in two areas. First, technical advice, assistance, and consultation, either directly or by way of grant, should be provided to employers to assist them in complying with the applicable standards when such appears to be necessary. Second, additional time should be allowed from the receipt of citation from an employer to correct a violation.

I feel that that harassment of the small employers—the farmers, the shopkeepers, the contractors, the merchants—must be ended. Many small businessmen cannot afford to make the changes required of them and may be compelled to close. And, most important, the objectives of the act to protect the employees health and safety will not be realized in the hostile environment that now exists by the enforcement approach taken under the act. It is only through true cooperation between Government and its citizens that these objectives can be achieved. I am today introducing amendments to the Occupational Safety and Health Act of 1970 to solve many of these inadequacies and to promote the goal of occupational safety and protection for all workers.

The amendments which I propose to the Occupational Safety and Health Act of 1970 are as follows:

First, section 6 of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to put the national consensus standards into effect without complying with the usual rule-making procedures. My amendment would not set aside these standards, but would require the Secretary of Labor to evaluate all of the regulations, distinguish the various facets of a given general form of business, and determine if the rule should apply to each facet. Experience shows that requirements which may be reasonable for a "hazardous" form of business can be oppressive as applied to a "nonhazardous" facet, and that current requirements often fail to make these distinctions. For example, in the construction business a distinction should be made between "heavy construction" and "light residential construction."

Second, my amendment would provide that if the provisions of the Administrative Procedure Act were not followed in adopting a safety standard, failure to comply with that standard cannot be used as evidence of negligence or wrongdoing on the part of the employer in a separate civil action. Since the usual administrative procedures for adoption of rules were not followed under the Occupational Safety and Health Act of 1970, it seems unfair and unwise to create a legal presumption based on those rules. My amendment would eliminate that inequity in the law.

Third, section 9 of the law would be amended to require that a citation would not only have to fix a reasonable time for the abatement of a violation but it would have to spell out the action that is necessary to be taken by the employer for such abatement of the violation. In view of the considerable confusion in connection with the regulations and standards which have been promulgated under the law, it seems only fair that an employer be fully and accurately informed on the steps necessary to comply with the law and regulations.

Fourth, it would amend section 10 of the law to provide that the Secretary of Labor shall allow 180 days from the receipt of a citation for an employer to correct a violation. Many employers have complained that they are faced with a citation for the violation of a regulation that is totally unintelligible and are required to comply immediately or face severe penalties. The application of the law by the Secretary of Labor in many instances has been most unfair and unreasonable and this amendment would provide for a reasonable approach to the problem. The Secretary is given authority to extend the time in which an employer shall correct a violation if he determines that the purposes of the act will be served.

Fifth, it would eliminate subsections (d) and (c) of section 17 of the act which empower the Secretary to arbitrarily assess civil penalties up to a thousand dollars based on a single inspection. One of the most serious faults with the act is that it in effect empowers an inspector to issue numerous citation violation penalties from a walk-around inspection. This arbitrary power would be eliminated.

Sixth, a new subsection to section 28 of the act would be added to empower the Secretary to provide technical advice, assistance and consultation, either directly or by way of a grant, to employers to assist them in complying with the applicable standards when such appears to be necessary. A good-faith effort to comply with all requirements of the law could literally bankrupt a small company. In addition, the present law does not provide a clear-cut channel for technical advice to employers who are attempting to understand and comply with the complex regulations. This provision would remedy both situations.

Mr. President, I ask unanimous consent that the complete text of the bill be printed in the RECORD.

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

S. 3636

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act Amendments Act of 1972."

SEC. 2. (a) Section 6 of the Occupational Safety and Health Act of 1970 is amended by adding at the end thereof the following new subsections:

"(h) The Secretary shall evaluate as soon as practicable after the date of enactment of the Occupational Safety and Health Act Amendments of 1972 existing standards established pursuant to subsection (a) or (b) of this section in order to determine the applicability of each such standard to each class of business concern within each industry or form of business. After such evaluation, the Secretary shall determine as part of each standard, the class or classes of employers to which that standard is applicable and any class of employers to be excluded from the application of that standard, after a determination that the inclusion of any such class would be unreasonable. Such evaluation and determination shall be a part of the establishment of all standards after the effective date of the Occupational Safety and Health Act Amendments of 1972.

"(1) (1) Failure of an employer or employee to comply with an occupational safety and health standard which has been adopted or promulgated without compliance with the procedures of chapter 5, title 5, United States Code, shall not in itself be used in any civil action or proceeding as evidence of negligence, or wrongdoing, on the part of said employer or employee, or give rise to a presumption, or inference thereof. This provision shall not, however, be interpreted to imply the contrary is provided by this Act even though there was compliance with said chapter 5, title 5, United States Code, with respect to a standard.

"(2) Paragraph (1) shall not be applicable in actions brought by, or against, the Secretary pertaining to the enforcement of this Act."

(b) The third sentence of section 9 of such Act is amended by inserting before the period a comma and the following: "and the action that is necessary to be taken by the employer for such abatement of the violation."

(c) Section 10 of such Act is amended to read as follows:

"SEC. 10. (a) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within 180 days of receipt of such citation the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has 15 working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not be subject to review by any court or agency.

"(b) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a), or notification issued under subsection (a) of this section, or if, within 15 working days of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

"(c) At any time the Secretary determines the purposes of this Act will be best served by so doing he shall have the authority to extend the time in which an employer shall correct a violation for which a citation or notification was issued to a reasonable time under the circumstances then prevailing. Failure of an employer to correct such violations, may be taken into account in resulting enforcement and penalty procedures."

(d) Section 11 of such Act is amended by striking out "(c)" where it appears in the first sentence of subsection (a) and inserting in lieu thereof "(b)", and by striking out "or (b)" in the third sentence of subsection (b).

(e) Section 17 of such Act is amended by striking subsections (b) and (c) and redesignating subsections (d) through (j) as subsections (b) through (h), respectively.

(f) Section 28 of such Act is amended by adding at the end thereof the following new subsections:

"(e) (1) Whenever it appears to the Secretary that it is necessary to assist employers during the preceding calendar year to comply with the applicable standards promulgated pursuant to section 6 of this Act or standards adopted by a State pursuant to section 20 of this Act, the Secretary shall provide technical advice, assistance, and consultation, either directly or by way of a grant, to such employers to assist them in so complying.

"(2) The assistance provided by this subsection shall not include the actual cost of devices or procedures required by this Act.

By Mr. HRUSKA (for himself, Mr. BAYH, Mr. BENNETT, Mr. BIBLE, Mr. BROCK, Mr. BROOKE, Mr. BURDICK, Mr. CANNON, Mr. CHILES, Mr. COOK, Mr. CURTIS, Mr. DOMINICK, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. CURNEY, Mr. JORDAN of North Carolina, Mr. MANSFIELD, Mr. MATHIAS, Mr. MCGEE, Mr. MOSS, Mr. PASTORE, Mr. PERCY, Mr. PROXMIRE, Mr. SCOTT, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, and Mr. YOUNG):

S.J. Res. 236. A joint resolution to authorize and request the President to proclaim the week beginning October 15, 1972, as "National Drug Abuse Prevention Week." Referred to the Committee on the Judiciary.

NATIONAL DRUG ABUSE PREVENTION WEEK

Mr. HRUSKA. Mr. President, on May 15 I indicated in this Chamber my intention to introduce a resolution authorizing and requesting the President to proclaim the week beginning October 15, 1972 as "National Drug Abuse Prevention Week."

I now send that resolution to the desk and ask that it be appropriately referred. In addition, I ask unanimous consent that the resolution be printed in full in the RECORD at the conclusion of my remarks.

Mr. President, I am gratified by the fact that 28 of my colleagues have joined me in cosponsoring the introduction of this proposal. Hopefully, this resolution will receive early consideration and approval in both Houses of Congress so that the executive branch and the entire Nation will have ample time to prepare for the observance of this week on October 15.

Express congressional support for the commemoration of National Drug Abuse Prevention Week will be a small but very meaningful step in the current struggle against drug abuse in America. The President and the people deserve this support, and I am hopeful that we can present this resolution to the President without undue delay.

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

SENATE JOINT RESOLUTION 236

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to heighten the awareness of the people of the United States with regard to the national threat of drug abuse, and to provide an opportunity for a period of special emphasis on this problem, the President is authorized and requested to issue a proclamation designating the week beginning October 15, 1972 as "National Drug Abuse Prevention Week", and calling upon the people of the United States and interested groups and organizations to observe such period with appropriate ceremonies and activities.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1295

At the request of Mr. BIBLE, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 1295, a bill to establish the Amistad National Recreation Area in the State of Texas.

S. 1447

At the request of Mr. CRANSTON, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 1447, the San Diego and Orange County Marine Sanctuary Act.

S. 1734

At the request of Mr. METCALF, the Senator from Oklahoma (Mr. HARRIS) was added as a cosponsor of S. 1734, the Forest Lands Restoration and Protection Act.

S. 3049

At the request of Mr. JAVITS, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Maryland (Mr. MATHIAS), the Senator from Massachusetts (Mr. BROOKE), the Senator from Delaware (Mr. BOGGS), the Senator from Ohio (Mr. TAFT) were added as cosponsors of S. 3049, a bill to provide minimum standards in connection with certain Federal financial assistance to State and local correctional, penal, and pretrial detention institutions and facilities.

S. 3050

At the request of Mr. JAVITS, the Senator from New Jersey (Mr. WILLIAMS) and the Senator from Maryland (Mr. MATHIAS) were added as cosponsors of S. 3050, a bill to authorize the Attorney General to make grants to certain cities where the need to combat crime is the greatest as determined by certain eligibility criteria and for other purposes.

S. 3051

At the request of Mr. JAVITS, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Minnesota (Mr. MONDALE) were added as cosponsors of S. 3051, a bill to encourage criminal justice professions development, particularly in regard to needs within the corrections systems professional personnel areas.

S. 3227

At the request of Mr. TUNNEY, the Senator from Nevada (Mr. CANNON) was added as a cosponsor of S. 3227, a bill

to amend the Internal Revenue Code of 1954 to allow a business deduction under section 162 for certain ordinary and necessary expenses incurred to enable an individual to be gainfully employed.

S. 3517

At the request of Mr. JAVITS, the Senator from Oklahoma (Mr. HARRIS) was added as a cosponsor of S. 3517, a bill to amend certain provisions of the Controlled Substances Act relating to Federal criminal penalties for private possession and use of marihuana.

S. 3630

At the request of Mr. TOWER, the Senator from Colorado (Mr. DOMINICK) was added as a cosponsor of S. 3630, a bill to amend the Occupational Safety and Health Act of 1970 to require the Secretary of Labor to recognize the difference in hazards to employees between the heavy construction industry and the light residential construction industry.

SENATE RESOLUTION 303—SUBMISSION OF A RESOLUTION NAMING THE ADDITIONAL SENATE OFFICE BUILDING THE "STYLES BRIDGES OFFICE BUILDING"

Mr. COTTON. Mr. President, about a week ago a measure was introduced regarding the name of the Old Senate Office Building. Shortly thereafter, I introduced a bill with reference to naming the New Senate Office Building but discovered that, by uanimous consent, the first bill was referred to the Committee on Rules and Administration; and my bill was referred to the Committee on Public Works. The resolution that I now submit is part of the bill. These two bills, Mr. President, I would hope would be considered by the same committee and, therefore, I ask unanimous consent that the resolution I am sending to the desk be referred to the Committee on Rules and Administration.

The PRESIDING OFFICER. Without objection, the resolution will be received and appropriately referred, and, without objection, will be referred to the Committee on Rules and Administration.

The resolution reads as follows:

S. RES. 303

Resolved, That insofar as concerns the Senate, the additional office building for the United States Senate constructed under the provisions of the Second Deficiency Appropriation Act of 1948, approved June 25, 1948 (62 Stat. 1028), including the extension to such building authorized by Public Law 85-591, approved August 6, 1958 (72 Stat. 495, 496), is hereby designated, and shall be known as the "Styles Bridges Office Building."

SEC. 2. Any law, rule, regulation, document, map, or record of the United States in which reference is made to the additional office building for the United States Senate referred to in the first section of this Act shall be held and considered to be a reference to the Styles Bridges Office Building.

SEC. 3. The Committee on Rules and Administration is hereby authorized and directed to place an appropriate marker or inscription at a suitable location or locations within the additional office building for the United States Senate to commemorate and designate such building as provided herein. Expenses incurred in connection therewith shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of said committee.

SENATE RESOLUTION 304—SUBMISSION OF A RESOLUTION AUTHORIZING EXPENDITURES BY THE SPECIAL COMMITTEE ON TERMINATION OF THE NATIONAL EMERGENCY

(Referred to the Committee on Foreign Relations.)

LET'S END THE NATIONAL STATE OF EMERGENCY

Mr. MATHIAS. Mr. President, on behalf of Senators PELL, HART, CHURCH, GRAVEL, EAGLETON, COOPER, STEVENSON, WILLIAMS, JAVITS, MANSFIELD, HARTKE, CASE, CHILES, CRANSTON, and myself, I submit a resolution which is 20 years overdue. As my colleagues will recall, last year, with the cosponsorship of 15 other Senators, I submitted Senate Concurrent Resolution 27 to establish a special joint committee to study the effects of terminating the state of national emergency declared by President Harry Truman in 1950. Today I am introducing a revised version of that resolution which reflects its consideration by the Senate Foreign Relations Committee, the Department of State, and a variety of concerned citizens and groups throughout the country.

It may surprise some to learn that we are still in a state of national emergency proclaimed in the depth of the Korean war. And that while the Korean war has passed into history, the emergency proclaimed to deal with that war remains in force.

Based on authority granted by the Emergency Banking Act of 1933, a President can, by the simple expedient of declaring a national emergency, assume a vast web of powers rendering the Congress expendable. This is not simply an interesting anachronism without practical force. The powers available to the President under this state of emergency are not trivial—fully some 200 special powers accrue to the President from it. In January 1968, for example, President Johnson used it to control American investments abroad in an effort to ease that year's balance-of-payments crisis. In February 1971, President Nixon invoked the same authority to suspend the provisions of the Davis-Bacon Act.

In this past year, we have witnessed a striking application of Presidential emergency powers. With a single speech on August 15, President Nixon did more than months of Senate hearings to dramatize the enormous arsenal of powers within the grasp of the Executive. Wielding authority granted him by law, the President drastically changed the economic course of the Nation and the world. By the time Congress returned 3 weeks later, it was required to legislate in a radically altered political and economic context.

While the President's new economic policies represent a bold and necessary response to a serious crisis and they have my support, the powers he was able to invoke emphasize anew the scope of authority which Congress has relinquished to the Office of the President. In thus adding power over the dollar to his command of American military forces and his influence over mass media, the President has lent support to the conclusion of Prof. Duane Lockard, chairman of the department of politics at Princeton, that—

> In essence the Presidency has become an elective kingship with decisive power in a broad range of matters . . . He can start a war or end one; he can breathe life into a domestic project or smother it.

This situation is not without legislative precedent. Alas, Congress has frequently been accomplice in its own decline, conceding initiatives to the Executive and tolerating procedural abuses when their ends were agreeable. One need only name the Formosa resolution of 1955, the Middle East resolution of 1957, the Cuba resolution of 1962, and the Gulf of Tonkin resolution of 1964 to illustrate how readily Congress delivered up to the President large elements of its constitutional jurisdiction.

Mr. President, the resolution which I am introducing today seeks to restore the constitutional balance between the Presidency and the Congress. It establishes a bipartisan Senate committee to study the problems which may arise as the result of terminating our protracted state of national emergency and to consider the necessary or desirable legislative actions toward this end. It is expected that the committee's recommendations would, among other things, have the effect of restoring to Congress its full constitutional authority to regulate commerce, and would clearly define a national emergency. Together with the war powers bill which was passed by the Senate in April, this would serve to assure that emergency powers would only be applied for the duration of genuine emergencies.

In the effort to restore the constitutional balance between the executive and legislative branches of our Government, the war powers bill and now the emergency powers resolution, represent a good start. We must press forward to see them passed this year. And we must repel any effort to bring them into the arena of partisan politics in this election year. Restoring to Congress its constitutional responsibility is an effort which must be joined by Republicans and Democrats, liberals and conservatives. Can we really afford the cavalier disdain of George Washington Plunkett, a Tammany Hall wardheeler who once asked:

> What's the Constitution among friends?

I believe not. I believe it is now our task to press on in trying to make the Constitution work—among friends.

Mr. President, upon introduction of my emergency powers resolution last year, I spoke at length about the long and lamentable history of accumulation of power in the office of the President. I do not wish to take up my colleague's time today by reiterating my remarks, but I ask unanimous consent that they be printed in the RECORD at this point, together with the text of my resolution.

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

REMARKS OF MR. MATHIAS

Mr. MATHIAS. Mr. President, last year, Congress revoked the Gulf of Tonkin Resolution of 1964. It was a first step in the long-over-

due effort to restore to Congress its responsibilities under the Constitution for questions of war and peace.

In February of this year, Senator Javits introduced S. 731, A Bill to Regulate Undeclared War. Also in February, Senator Church introduced Senate Joint Resolution 48 to repeal the Formosa Resolution of 1955. I was pleased to co-sponsor both. In the next weeks, I shall introduce legislation to repeal the Middle East Resolution of 1957 and the Cuba resolution of 1962.

Today, I rise to present a Senate Concurrent Resolution aimed at terminating the state of national emergency proclaimed by President Truman in December, 1950 in the depths of the Korean War. It is a sad paradox that this country has remained officially in a state of emergency since that time. Indeed, it may be useful at this point briefly to review how Congress—with barely a whimper—relinquished important parts of its constitutional authority to the office of the President.

On May 9, 1933, at a moment of dire Depression emergency, Franklin D. Roosevelt convened the Congress and demanded, in effect, that it revamp the Constitution before midnight. The purpose of the reform was to make Congress—and the Constitution—optional at the discretion of the President, as the national interest required.

The demand came as part of the Emergency Banking Act, an omnibus bill reorganizing the nation's then collapsing banking system and retroactively legitimizing the President's Bank Holiday proclamation of three days before. Referred to the Banking and Currency Committee—with instructions that it be reported out in an hour—the bill was not printed and was not available for Senators to read. Senator Long complained that he did not know what was in it until it was read by the clerk. Most Senators indicated that they had grave reservations about what they understood to be the bill's provisions and Senator Long protested the extraordinary powers it granted to the President. But in the extremity of the crisis at hand, Congress felt it had to act immediately as the President demanded. The bill was passed by both houses before midnight and the American constitutional Republic has been in its Damoclean shadow ever since.

The key provision, not much remarked by the Congress at the time, came in an amendment to Section 5b of the Trading with the Enemy Act of 1917. As enacted in 1917, Section 5b shifted from Congress to the President the power to regulate trade and financial transactions between Americans and foreigners *in wartime*. The 1933 amendment to 5b authorized the President—by the simple expedient of declaring a national emergency—to assume in peacetime these extensive wartime emergency powers.

By declaring in the 1933 amendment that the President could assume emergency powers by declaration in peace time, Congress established a principle with reverberations going far beyond the legislation at hand. For the courts have interpreted the principle as creating a virtually unlimited executive prerogative that now applies to some 200 laws granting special powers to the President during national emergencies. But neither Congress nor the courts have set criteria to define the kind of crisis which would justify invocation of these multifarious powers. Since 1933 they have been available essentially as the President wishes.

In accord with President Roosevelt's approach, the President is left to determine by himself when a national emergency exists and when it ends—when the executive should have access to the near dictatorial authority conveyed in emergency legislation. The President decides when he should share power with Congress as the Constitution prescribes, and when Congress can be made optional by proclamation.

This assignment of emergency powers has worked very smoothly over the years. Since that dire extremity of 1933, there have been six Presidents—four Democrats and two Republicans. They have disagreed on many issues. But they have been unanimous on the question of when the country is in a state of national emergency and when the Congress, on a wide range of issues, is optional. Their answer, quite simply put—in a word—is: always. In the last 37 years, the country has passed through many vicissitudes of war and peace. But Presidential powers have been continuously "at war." Not once during that period has a President allowed his special powers to lapse. The result, described by Jeffrey G. Miller and John R. Garson in an excellent article in the February 1970 issue of the *Boston College Industrial and Commercial Law Review*, is that "some 60 percent of the nation's population have lived their entire lives under a continuous unbroken chain of national emergencies."

A court did judicially acknowledge—in 1962—that the Depression had ended. But no authority has yet recognized the end of the Korean emergency, proclaimed by President Truman on December 16, 1950 and still in effect today. Since the President declared with reference to Korea that "world conquest by communist imperialism is the goal of the forces of aggression," the State Department has interpreted the emergency as meaning the Cold War.

This interpretation, however, has not limited the emergency powers to military matters affecting the protracted conflict with the Communists. The Korean authority, in fact, was most recently invoked in 1968 in relation to our economic competition with our European allies. President Johnson felt he would have difficulty securing from Congress the broad powers he needed to deal with the deficit which had been emerging for several years in the nation's balance of payments. Yet the Constitution clearly reserves to the Legislative branch all powers for regulating Foreign Commerce. So the President invoked the emergency powers granted in 1950 in relation to the Korean war and signed Executive Order 11387, "Governing Certain Transfers Abroad." The Department of Commerce immediately issued the Foreign Direct Investment Regulations (FDIR). The Executive Order and the FDIR restrict the amounts of capital that American investors may transfer to or accumulate in foreign affiliates and compel repatriation of short term liquid balances such as foreign bank deposits.

Without citation of the Korean war powers, these measures clearly represent an unconstitutional encroachment on legislative authority. The courts have upheld them, however, and they remain the law of the land. It is currently the law of the land, therefore; that the state of national emergency proclaimed by President Truman in 1950 in relation to the Korean conflict can be invoked in relation to a balance of payments deficit 18 years later. Similarly, regulations against gold hoarding, activated by the Depression emergency, are continued under the 1950 proclamation. Other measures invoked under 5b pursuant to the Korean proclamation include the Foreign Assets Control Regulations, the Egyptian Assets Control Regulations, and the Cuban Assets Control Regulations. The Cuban trade embargo of 1962 was also based in part on the 1950 emergency.

Among the nearly 200 other Emergency laws are measures permitting the President to sell stocks of strategic materials, revoke leases on real and personal property, suspend rules and regulations applicable to broadcasting stations, detain enlisted troops beyond the term of their enlistments, detail military men to the governments of other countries, and exercise control over consumer credit. Among hundreds of local properties available to the Executive, the President may take over parts of Howard University, and in my own state of Maryland, he may close Fort McHenry—the birthplace of the "Star Spangled Banner"—and "use it for such period thereafter as the public needs may require."

These powers infringe on so many crucial constitutional rights and principles that collectively they may be seen as placing our system of democratic government in jeopardy. Certainly the deprivation of rights and property is authorized without due process. But perhaps most important, these measures threaten the Constitutional balance of powers between the executive and legislative branches. Because a state of official emergency has obtained continuously since 1933—and has been upheld by the courts to validate actions unrelated to the original crisis—the national emergency powers have accumulated and become institutionalized in the executive. The Presidency, already enhanced by modern trends, has been further aggrandized by the paradox of the continuous emergency.

Unless we accept the principle of an optional Constitution and an optional Congress, we must reject the concept of national emergencies declarable by the President at his discretion in peace time without termination dates. Since this concept has been upheld in essence by the Courts, it is up to the Congress to recover by legislation the constitutional role that it has allowed the executive to usurp. We must reassert the principle that emergency powers are available only for brief periods when Congress is unable to act and for purposes directly related to the emergency at hand.

This is easier said than done. We discover that the continuous and cumulative and institutionalized emergency is also almost irrevocable. So many executive agencies and procedures are rooted in emergency powers that it is extremely difficult to rescind them without major administrative disruptions. With this in mind, the distinguished Majority Leader, Mr. Mansfield, joined with me during the last session in S.J. Resolution 166, a resolution which, among other things, proposed the creation of a special committee to explore with the executive the consequences of terminating the Korean Emergency. In the aftermath of the Cambodia incursion, however, our proposals were not acted upon. And so I am now re-introducing the resolution as a Senate Concurrent Resolution. It calls for the establishment of a commission to study and make recommendations terminating the state of national emergency.

It is to be expected that the commission's recommendations would, among other things, have the effect of restoring to Congress its full constitutional authority to regulate commerce, and would clearly define a national emeregency. Together with S-731, An Act to Regulate Undeclared War, which was introduced in February by the distinguished Senator from New York, Mr. Javits, this would serve to assure that emergency powers would only be applied for the duration of genuine emergencies. The Constitution did not envision a state of national emergency to be the normal state of affairs.

Under the best of circumstances, the Congress will not find it easy to maintain its historic constitutional role in the modern age. Modern communications, national interdependence, and international involvement coverage to enhance the Presidency; real emergencies continually arise requiring the kind of decisive response the executive is best equipped to give. But if the Congress allows these national executive advantages to be expanded by special emergency powers responding to unspecified emergencies without determination or limit, the balance of powers between the branches of our government may be irreparably broken.

I believe that we do face today a national

emergency—even a paradoxically continuous one. It emerged during the depression and has been with us for several decades. It is a crisis that throws our whole system of Constitutional government into jeopardy. This emergency—if I may use the term so loosely—is the atrophy of Congress. It is not an emergency which calls for the decisive exercise of executive powers. It calls for the decisive recovery of legislative powers.

Only Congress can redeem itself; but in serving itself, it can also save the Constitution. And I believe that to save the Constitution is to save the most precious heritage of our country.

S. RES. 304

Whereas, the existence of the state of national emergency proclaimed by the President on December 16, 1950, is directly related to the conduct of United States foreign policy and our national security, now, therefore, be it

Resolved, That (a) there is hereby established a special committee of the Senate to be known as the Special Committee on the Termination of the National Emergency (hereinafter referred to as the "special committee").

(b) The special committee shall be composed of eight Members of the Senate equally divided between the majority and minority parties to be appointed by the President of the Senate, four of whom shall be members of the Committee on Foreign Relations.

(c) The special committee shall select a chairman and vice chairman from among its members. A majority of the members of the special committee shall constitute a quorum thereof for the transaction of business, except that the special committee may fix a lesser number as a quorum for the purpose of taking testimony. Vacancies in the membership of the special committee shall not affect the authority of the remaining members to execute the functions of the special committee.

SEC. 2. (a) It shall be the function of the special committee to conduct a study and investigation with respect to the matter of terminating the national emergency proclaimed by the President of the United States on December 16, 1950, and announced in Presidential Proclamation Numbered 2914, dated the same date. In carrying out such study and investigation the special committee shall:

(1) consult and confer with the President and his advisers;

(2) consider the problems which may arise as the result of terminating such national emergency; and

(3) consider what administrative or legislative actions might be necessary or desirable as the result of terminating such national emergency, including consideration of the desirability and consequences of terminating special legislative powers that were conferred on the President and other officers, boards, and commissions as the result of the President proclaiming a national emergency.

SEC. 3. For the purposes of this resolution the special committee is authorized from date of agreement to this Resolution through February 28, 1973, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, (3) to hold such hearings, (4) to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, (5) to require, by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, (6) to take such testimony, (7) to procure the services of individual consultants or organizations thereof, in accordance with the provisions of Section 202(i) of the Legislative Reorganization Act of 1946, as amended, and (8) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 4. The expenses of the special committee under this resolution shall not exceed $100,000, of which amount not to exceed $15,000 shall be available for the procurement of the services of individual consultants, or organizations thereof as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended.

SEC. 5. The special committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1973.

SEC. 6. Expenses of the special committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the special committee.

ADDITIONAL COSPONSOR OF A RESOLUTION

SENATE RESOLUTION 273

At the request of Mr. HART, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of Senate Resolution 273, relating to extension of the nuclear test ban treaty to include underground testing.

FOREIGN RELATIONS AUTHORIZATION ACT—AMENDMENT

AMENDMENT NO. 1023

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

Mr. SCOTT submitted an amendment intended to be proposed by him to the bill (S. 3526) to provide authorizations for certain agencies conducting the foreign relations of the United States, and for other purposes.

FAIR LABOR STANDARDS AMENDMENTS OF 1971—AMENDMENT

AMENDMENT NO. 1204

(Ordered to be printed and referred to the Committee on Labor and Public Welfare.)

Mr. DOMINICK. Mr. President, I send to the desk an amendment in the nature of a substitute in connection with the minimum wage bill, and ask that it be printed and appropriately referred.

The PRESIDING OFFICER. The amendment will be received and printed, and appropriately referred.

Mr. DOMINICK. Mr. President, this is an effort to provide an alternative to the proposals which are presently pending before executive meetings of the full Committee on Labor and Public Welfare. The substitute bill as introduced here will provide an alternative proposal to what is now before the committee, in effect retaining present coverage and staggering the increase in minimum wages in the same manner as was carried out by the House of Representatives.

It is, in my opinion, at a time when we are both trying to fight inflation and also to give some substance to the economy, a measure which would be far more fruitful in accomplishing its goals than the one we are now considering.

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

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

AMENDMENT NO. 1204

Strike all material after the enacting clause, and in lieu thereof, insert the following:

INCREASE IN MINIMUM WAGE

Nonagricultural Employees

SEC. 2. (a) Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, is amended to read as follows:

"(1) not less than $1.80 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1972, and not less than $2.00 an hour thereafter, except as otherwise provided in this section;"

(b) Section 6(b) of such Act is amended by striking out paragraphs (1) through (5) thereof and inserting in lieu thereof the following:

"(1) not less than $1.70 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1972;

"(2) not less than $1.80 an hour during the second year from such effective date; and

"(3) not less than $2.00 an hour thereafter."

Agricultural Employees

SEC. 3. Paragraph (5) of section 6(a) is amended to read as follows:

"(5) If such employee is employed in agriculture, not less than $1.50 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1972 and not less than $1.70 an hour thereafter."

Employees in Puerto Rico and the Virgin Islands

SEC. 4. Section 6(c) of such Act is amended by substituting the following new paragraphs 2(A) and 2(B):

"(A) The rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1972 increased by 12.5 per centum unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C). Such rate or rates shall become effective sixty days after the effective date of the Fair Labor Standards Amendments of 1972, or one year from the effective date of the most recent wage order applicable to such employee theretofore issued by the Secretary pursuant to the recommendations of a special industry committee appointed under Section 5, whichever is later.

"(B) Effective one year after the applicable effective date under paragraph (A), the rate or rates prescribed by Paragraph (A), increased by an amount equal to 12.5 per centum of the rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1972 unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendation of a review committee appointed under paragraph (C)."

Employees in the Canal Zone

SEC. 5. Section 6(a) of such Act is amended by adding the following new paragraph:

"(6) if such employee is employed in the Canal Zone, not less than $1.60 per hour."

EXPANDING EMPLOYMENT OPPORTUNITIES FOR YOUTHS

Special minimum wages for employees under 18 and students

SEC. 6. Section 14(b) of the Fair Labor Standards Act of 1938, as amended, is amended to read as follows:

"(b)(1) Notwithstanding the minimum wage rates required by section 6(a)(1) or 6(b), any employer may, in compliance with

applicable child labor laws, employ any employee—

"(A) to whom such rates would apply but for this subsection, and

"(B) who is (i) under the age of 18 or (ii) a fulltime student under the age of 21,

at a wage rate which is not less than 80 per centum of the otherwise applicable minimum wage rate prescribed by such section or $1.60 per hour, whichever is higher.

"(2) Notwithstanding the minimum wage rates required by section 6(a)(5), any employer may, in compliance with applicable child labor laws, employ in agriculture any employee—

"(A) to whom such rates would apply but for this subsection, and

"(B) who is (i) under the age of 18 or (ii) a full-time student under the age of 21,

at a wage rate which is not less than 80 percentum of the otherwise applicable minimum wage rate prescribed by such section or $1.30 per hour, whichever is higher.

"(3) The special minimum wage for such employees in Puerto Rico, the Virgin Islands, and American Samoa shall be 80 per centum of the industry wage order rate otherwise applicable to them: Provided, that in no case shall such special minimum wage be less than that provided for under a wage order issued prior to the effective date of the Fair Labor Standards Amendments of 1972."

"(4) The Secretary shall by regulation prescribe standards and requirements to insure that this subsection will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this subsection is applicable."

MISCELLANEOUS

Equal Pay for Executive, Administrative or Professional Employees

SEC. 7. Section 13(a) of the Fair Labor Standards Act of 1938, as amended, is amended by inserting after "section 6" the following:

"(other than Section 6(d) in the case of paragraph (1) of this subsection)."

Child labor in Agriculture

SEC. 8. Section 13(c) (1) of such Act is amended to read as follows:

"(c)(1) Except as provided in paragraph (2) the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

"(A) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person; or

"(B) is employed on the same farm at which his parent or person standing in place of his parent is employed; or

"(C) is twelve years of age or older, and such employment is with the written consent of his parent or person standing in place of his parent; or

"(D) is fourteen years of age or older."

Resident Employees at Apartment Buildings

SEC. 9. Section 3(s) of such Act is amended by adding at the end thereof the following new paragraph:

"In determining whether an apartment building, the gross annual rentals of which are less than $250,000, is part of an 'enterprise engaged in commerce or in the production of goods for commerce' within the meaning of this subsection, the fact that the owner of such building has retained a management agent to perform management services in connection with the operation of such building shall be disregarded."

INJUNCTIVE AND OTHER EQUITABLE RELIEF

SEC. 10. Section 17 of such Act is amended to read as follows:

"INJUNCTIVE AND OTHER EQUITABLE RELIEF

"SEC. 17. The district courts, together with the United States Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947). In any claim under this section arising out of willful violation of the Act, the district courts may, in addition to restraining the withholding of payments as authorized above, award as further equitable relief an amount not to exceed the minimum wages or overtime compensation found to be due."

TECHNICAL AMENDMENTS

SEC. 11. (a) Section 6(c)(2)(C) of such Act is amended by substituting "1972" for "1966".

(b) Section 6(c)(3) of such Act is repealed and section 6(c)(4) is renumbered 6(c)(3).

(c) Section 7(a)(2) of such Act is repealed and Section 7(a(1) is renumbered 7(a).

(d) Section 14(c) of such Act is repealed and Section 14(d) is renumbered 14(c).

(e) Section 18(b) is amended by striking out "section 6(b)", and inserting in lieu thereof "section 6(a)(6)", and by striking out "section 7(a)(1)" and inserting in lieu thereof "section 7(a)."

EFFECTIVE DATE

SEC. 12. Except as otherwise provided in this Act, the amendments made by this Act shall take effect sixty days after enactment. On and after the date of enactment of this Act, the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act.

ADDITIONAL STATEMENTS

ATTEMPTED ASSASSINATION OF GOVERNOR WALLACE

Mr. SCOTT. Mr. President, I know that all Senators share my shock at the attempted assassination of Gov. George Wallace. Have they not already done so, I believe they will be interested to read the commentary on this reprehensible act by ABC's Harry Reasoner. I ask unanimous consent that the commentary be printed in the RECORD.

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

COMMENTARY BY HARRY REASONER ON THE "ABC EVENING NEWS WITH HOWARD K. SMITH AND HARRY REASONER" ON MAY 16, 1972

I'd like to say a couple of words in behalf of the country. I'm sure that a number of comments have already gotten into print about the dark streak of violence in the American soul and it's easy to understand why. After yesterday we all do come back to the question: "Are we, after all, only the world's largest banana republic?" Well, we may be, but it's not because of some dark inbred streak of violence.

What our problem is, is not that we are somehow more violent, more gun-loving, than other people—our problem is that we have something over 200 million people, that we have something less than adequate gun control legislation, that we have a greater diversity of people and aspirations than any other major nation, and that in consequence we have more than the average number of nuts running around loose. In at least two of the major political assassinations of the '60's, and apparently again in yesterday's attempt, the villain was not the employee or the embodiment of an organized hate—he was a loose screw in society's machine, working for nothing except his own pathology.

It's not an excuse, it's an explanation. And when I say I am speaking in behalf of the country, what I hope is that we would not give up our aspirations because they are profoundly difficult.

We have lost far too many people in political life out of violence in the last 50 years—dozens, I suppose, and we should be highly self-critical—self-critical, but not really interested in criticism from countries where the law has presided over the murder of millions.

No one else, ever, now, or in history, has had either our problems or our opportunities. In this state of affairs, it would be too bad for us to lapse into hypochondria and masochism, the easy way to avoid solving the problems or achieving the opportunities."

BLACK LUNG BILL

Mr. ROBERT C. BYRD. Mr. President, I am greatly pleased that President Nixon decided to sign the Black Lung Benefits Act of 1972. By signing the measure, the President helped to correct years of injustice, and he brought joy to the hearts of thousands of miners and their families.

After the bill was sent to the President, I contacted the White House on four occasions. I telegrammed the President on Wednesday, May 10; spoke to him by telephone at his Camp David, Md., retreat on Wednesday, May 17; met with three top White House aides on Thursday, May 18; and met privately with the President the afternoon of Friday, May 18.

On each of those occasions, I urged that the President sign the bill, notwithstanding the strong pressure from governmental agencies that it be vetoed.

The President, by his action last Saturday, indicated that he understands that this benefits act is necessary to provide an adequate program for miners with pneumoconiosis. It also is necessary to correct the oversights of the Coal Mine Health and Safety Act of 1969, which excluded children and orphans of miners disabled by black lung. The new bill includes such children.

I heartily commend the President for taking the humanitarian view of this bill.

DUBIOUS PREMISE FOR BUSING REFUTED

Mr. BROCK. Mr. President, on April 27, in a major policy statement on education, I referred to the well known Coleman report, which purported to indicate that black exposure to a white environment was necessary for equal educational opportunity. As a direct result of conclusions drawn from this report, massive busing was ordered in many cities.

David J. Armor, an associate professor of sociology at Harvard, was one of those who participated in the preparation of the original Coleman report. Armor has now completed an additional study on the subject based on projects in five Northern cities which concludes

that achievement scores of black students have not been raised by such measures. The report goes a step further to show that in several cases, busing experiments have led to a serious worsening of race relations rather than otherwise. Is it not time that we face facts and admit that not only is massive busing for racial balance opposed by a majority of parents, but also that it is failing to produce any of the desired results?

I ask unanimous consent that article entitled "Study Casts Doubts on Busing," published in the Washington Post, be printed in the RECORD.

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

STUDY CASTS DOUBT ON BUSING

(By Lawrence Feinberg)

A major study of school desegregation by busing in five Northern cities concludes that achievement test scores of black students have not been raised. Moreover, the busing experiments, in several cases, have led to a worsening of race relations, rather than an improvement.

The study reports that the grades of Negro students generally fell when they were transferred to predominantly white schools because grading standards were higher.

Black youngsters in these schools, the study says, have a stronger sense of racial identity and a greater desire for black separatism than do students in predominantly black schools.

The report suggests that much of the research on race and education done before the late 1960s and widely used in court integration decisions is now outdated because it fails to take into account the new militancy and pride of many black students.

The 64-page study was written by David J. Armor, an associate professor of sociology at Harvard University who previously had conducted research for the U.S. Civil Rights Commission.

It includes research on a city-suburb desegregation program in Boston, which Armor conducted himself, plus data on similar programs in Ann Arbor, Mich., Hartford, Conn., Riverside, Calif., and White Plains, N.Y.

Overall, about 5,000 students, ranging from grades one to 12, have participated in these busing programs. The data that Armor compiled from 1965 to 1971 follows the children for from one to five years.

Armor's study has been presented at a seminar at Harvard, and it is scheduled for publication this summer in The Public Interest magazine.

He said in an interview that his study is the largest showing the "before and after" effect of long-term busing projects by using the same tests to compare bused children with others.

In the mid-1960s Armor worked on a government research project, headed by James S. Coleman, which compiled a massive report on race and education. The report concluded that lower-class black students make some academic gains in predominantly middle-class white schools.

But in his new study Armor notes that the tests Coleman used were all given at the same time—in the fall of 1965. Thus, conclusions about the effect of integration were made, he said, by comparing youngsters in schools with different proportions of black and white students, rather than by following the same children after they had switched from a predominantly black school to a predominantly white one.

"NO SIGNIFICANT GAINS"

In four of the programs he studied, Armor said black children bused to suburban schools made "no significant gains" when compared to other black students who stayed in inner-city schools or to whites who took the same achievement tests.

In the fifth program, Hartford, the results were mixed. Negro children in suburban schools did better in some grades. But in others, the children in their neighborhood schools scored higher.

Armor, whose prime field of work is research methods and statistics, said he also reviewed reports on over a dozen other desegregation programs, including Berkeley, Calif., and Rochester, N.Y. All of them, he said, were seriously flawed, either by including different tests at different times or by not having a control group against which to check the progress of the students who were bused.

Besides the data on achievement, Armor's study contains the results of questionnaires and psychological tests given to measure children's attitudes toward themselves and toward other races.

Contrary to expectations based on earlier research, Armor said the aspirations of black children were slightly lower in mostly white schools than in all black ones. But in both types of schools, he said, their ambitions—for white-collar jobs and a college education—were generally high.

One factor in the slight decline, he said, may be the lower grades that many Negro students get in predominantly white schools. He said that in his study their marks averaged about half a grade lower in these schools—about C, compared to a B-minus average in the mostly black schools.

"Since black students are behind white students (on standard achievement tests)," he said, "we should expect their grades to fall when they are taken from the competition in an all-black school to the competition in a predominantly white school."

In the measures of racial attitudes, Armor said the data indicated that "integration heightens racial identity and consciousness (and) enhances ideologies that promote racial segregation."

This finding, he said, is "the converse . . . (of one of the central sociological hypotheses in integration policy . . . that integration should reduce racial stereotypes, increase tolerance, and generally improve race relations."

Instead, he said, "the effect is the opposite."

One indicator of this, he said, was the question he asked black students in Boston: "If you could be in any school you wanted, how many students would be white?"

Among those bused to suburban schools the proportion wanting a school less than half white increased from 51 per cent to 81 per cent between 1968 and 1970. For a group of their brothers and sisters who stayed in city schools, the proportion increased less markedly—from 47 per cent to 66 per cent.

The bused students also became "much more likely to support the idea of black power," Armor said, and between 1969 and 1970, they reported "less friendliness from whites, more free time spent with members of their own race, more incidents of prejudice, and less frequent dating with white students."

"In other words," he concluded, "the longer the contact with whites, the fewer the kinds of interracial experiences that might lead to a general improvement of racial tolerance."

He said the trend is "clearest" for older black students, but also occurred in the elementary grades. "It seems to be true for whites also," he said, "insofar as their support for the integration program decreases and own-race preferences increase as contact increases."

Even though "in the formal sense . . . all races are treated equally" in an integrated school, Armor said the integration itself "does very little in the short term to eliminate the socio-economic and academic status differentials." Thus, he said, stereotyped beliefs can be reinforced.

"For black students," he said, "initial stereotypes about white students as snobbish, superior, and straight may be partially confirmed by actual experience; the same may be true for white stereotypes of black students as non-intellectual, hostile, and having different moral standards."

Pride in their own culture, he said, has been one of the main elements in the change in black attitudes, especially those of young Negroes, during the past decade.

"It would be a mistake," he added "to view the increased racial solidarity of black students as a completely negative finding (for) . . . a certain amount of culture conflict (is) inevitable and even necessary if an integrated society is to be realized."

Armor, who is white and lives in a Boston suburb, said his own children attend a school to which black youngsters are bused in a voluntary program, and he urged that such programs be continued.

In his study Armor also presents data from two reports showing that black students in suburban schools are more likely to go to prestige colleges than those attending inner-city schools. This "channeling effect", he said, supports one of the hoped-for gains of integration.

But, Armor said, the "integration policy model," advanced by sociologists and courts, also contends that integration will "enhance black achievement, aspirations, and self-esteem, and (improve) race relations."

All four of these goals, he said, have "failed to be supported by the data." And this, he said, "calls into question" the value of mandatory busing programs.

HOW STUPID CAN WE BE? AND HOW WISE CAN WE BE?

Mr. ERVIN. Mr. President, some time ago Fred B. Helms, a distinguished member of the North Carolina bar from Charlotte, N.C., spoke to the Charlotte Kiwanis Club on the subject of Peace. I ask unanimous consent that the text of the talk, entitled "How Stupid Can We Be? And How Wise Can We Be?" be printed in the RECORD.

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

HOW STUPID CAN WE BE? AND HOW WISE CAN WE BE?

Fellow Kiwanians. Let's stop being stupid! Let's stop killing each other! It's as simple as that. It's as serious as that. Whether you accept the theory of evolution or the biblical story, human beings (nomo sapiens) have been killing each other from our very earliest records or histories. Human beings, in spite of being the highest form of animal life on the face of the earth, have by far the worst and most inexcusable record of killing each other of any of the forms of animal life. This business of killing each other is humanity's greatest and most expensive curse. Wars have been and are our most efficient and effective means of killing each other. This scourge of war—killing each other—is self-imposed by human beings and only human beings can stop it. So far, nations cannot or will not stop the senseless killings of war. All nations profess to earnestly desire peace but seem utterly unable to agree upon any of the basic or essential terms of peace. "Peace treaties," if any, are laboriously worked upon but the limited areas of agreement between nations—in the main—and at best—are designed to limit and humanize warfare but each succeeding war—of the global type, such as World Wars I and II—become far more efficient in killing and in destruction

and far more horrible than any of the previous wars.

In May 1958, the Federal Civil Defense Administration (the officers and Board of Trustees of the association were among the very top men in business, science, education and labor in America) estimated that by 1970 in the event of a nuclear attack upon the United States by Russia sixty percent (60%) of the population of the United States would be killed or injured. A similar or greater percentage of the people in Russia would be killed or injured by a nuclear attack upon Russia by the United States. God alone knows how much worse it would be today. Admittedly, the two superpowers, Russia and the United States, possess enough nuclear power to blast the other off the face of the earth!

Let me digress briefly to assure you (i) I am still a Baptist and have not become a Quaker or a pacifist. We Baptists are never happy unless we are in a fight or in debt—or both—and we, usually, are in both. It would probably take another Civil War to bring peace between the northern Baptists and the southern Baptists; (ii) this talk by me with you is not on the subject of "Vietnam"—except as it may be a part of the overall subject. In passing, however, I call your attention to the fact that our Vietnam policies whether right or wrong, wise or unwise, have been evolved by four Presidents of the United States, two of whom were Democrats and two of whom were Republicans. Personally, I have no doubt but that each of the four Presidents of the United States has done or will do, in Vietnam, what he regarded or regards as the best and wisest course for the United States in particular and the world in general.

I realize that the use of the term "stupid" is not in the finest tradition of diplomacy or literature. As a high school student, I paraded day and night for the re-election of Woodrow Wilson because "he kept us out of war." A few months after his re-election, I joined him as our Commander-in-Chief of our armed forces in a *"war"* to Make The World Safe for Democracy. I also heard Franklin D. Roosevelt with all of his emphasis say and repeat the statement "I hate *war*." You will, therefore, pardon me for using the word "stupid"—which I believe those of us "in the street' understand.

I shall not bore you with a lot of statistics, but a few might be helpful:

1. In all wars including World Wars I and II and in the Korean and Vietnam wars, the United States alone has sustained a total of at least 2,350,000 casualties.

2. Upon the basis of our peace time budgets, more than fifty percent of all taxes paid to the Federal government are expended for wars past, present and prospective. In war times, it has been over 70%.

3. In 1970, the reseachers at the United States Arms Control and Disarmament Agency announced that from 1963 to 1969 the world had spent over one trillion ($1,000,000,000,000) on its arms and armed forces—and that is 1000 billions!

4. In the face of the incredible waste of our resources—our finest young men and our natural resources—two out of every three members of the human race go to bed hungry at night.

5. Unless I completely misread the "signs of the times," the masses of humanity are "sick and tired" of wars and killing of each other. In the United States alone, except for the Civil War, our people have never been as sharply divided as they are on the current Vietnam war. Personally, I believe, that our leaders looked upon our part in the Korean war and in the Vietnam war as a police action to restrain or to prevent aggression and war either directly or indirectly by more powerful nations against weaker ones, but I know there is sharp division among us on these questions.

6. Under modern birth control knowledge and practicality, the old Malthusian theory that war and famine perform the desirable functions of keeping the population of the earth under control is no longer tenable—if indeed, it ever was tenable.

I could go on and on about the insanity or stupidity of the killing of human beings by human beings but let us look ahead and try to see.

HOW WISE CAN WE BE?

According to reliable estimates world population in June 1971 was 3 billion 600 million (3,631,797,000).

Approximately 2½ billion (2,500,000,000) of the inhabitants of the earth are members of the great religions of the world—both theistic and humanistic. There are more than ½ billion (500,000,000) people in the world who belong to various other religious organizations.

So far as I know all of the great religions, both humanistic and theistic, and all of the other religions are opposed to the killing of human beings by other human beings in wars or otherwise—except in self-defense.

The Supreme Court of California has held recently that the State has no right to kill—put to death—the most hardened criminal—even though he may be guilty of the most horrible crime known to man. The Supreme Court of the United States is wrestling with this very question at this time. In my opinion, there is an even chance that the Supreme Court of the United States will hold that a State government and the Federal Government have no right to kill—put to death—a human being, even though he may be a hardened criminal and guilty of the most horrible crime. Strange as it may seem, the chances are that if the Supreme Court does so hold, it may uphold the death penalty for a spy in time of war—even though the spy might turn out to be one of the finest young men in his native country but who through the fortunes of war was compelled to engage in espionage by his country against our country.

So far as I know there has never been any world wide attempt of a serious nature to marshal the moral forces of the great religions of the world in an effort to stop human beings from killing each other and in an effort to rid human kind of its self-imposed scourage and curse of war. I am fully aware of the hair-splitting debates with reference to moral force or moral forces.

The question necessarily follows how can humanity be as wise in the future as it has been unwise in the past in killing each other? First of all the leaders of and the more than 3 billion members of religious organizations in the world would simply adopt a basic declaration of morality that "we are opposed to the killing of each other, except in self-defense." This would not require the merger of any religious organization with any other. It would not require any change in the individual's relation to his particular religion. It would not require any change in any government or in the relationship between any citizen and his government. It would not require any agreement between nations. It would simply say as human beings we are going to stop killing each other and we are going to end the insanity of war, except in self-defense. It would say positively that instead of wasting the resources of the earth in men and materials in killing each other and in wars we would turn our resources in men and materials to the elimination of poverty, hunger and destituion.

Obviously, for the present and in the foreseeable future there will be necessity for a world police force. Such a force must be along the lines envisioned in the charter of the United Nations and not in, merely, a one nation or two nation police force. A one or two nation world police force can be and probably would turn out to be the old "wolf, balance of power" in the "sheep's clothing" masquerading under the guise of "world policemen."

How can humankind implement such a declaration by world religions. Fortunately, we are not without substantial experiments and experiences which can be used as guide lines among which are the following:

1. The United Nations. It has had and still has its limitations, shortcomings and handicaps. The charter of the United Nations badly needs revisions. If the charter could not be revised because of lack of agreement between the present members, a new similar organization might have to be set up. The Washington World Conference on World Peace Through Law in September 1965 was the largest and most influential international assembly of lawyers and judges in history. More than 3,200 high court justices and leading attorneys from 121 countries participated in the conference. It included the President of the United States, the President of the United Nations, the Chief Justice of the United States Supreme Court and the Chief Justices of many other Courts. Not a single member attending this conference had any suggestion of any worldwide organization other than the United Nations which held out any practical hope for world peace. I do not know of any other practical suggestion since then.

2. The International Court of Justice is one of the branches of the United Nations. This Court has never been able to function properly or adequately due to the fact that the members of the United Nations, including the United States, have severely limited its jurisdiction.

3. The World Peace Through Law Center is for the purpose of establishing and maintaining "World Peace Through Law." This amazing organization was conceived by, started by and has been promoted under the leadership of Charles S. Rhyne, a farm boy from Mecklenburg County. He started it when he was President of the American Bar Association several years ago. It has brought and brings together each year in worldwide conferences the greatest aggregation of jurists and lawyers ever assembled in the history of the world. Its basic purpose is to substitute the rule of law for war in the settlement of disputes among nations and peoples of the earth. Recently, I discussed with Charles Rhyne the proposal for mobilizing the moral forces of world religions in support of world peace under law and in stopping the killing of human beings by human beings and, of course, in stopping war except in self-defense. He feels very positively that such a movement would strongly undergird the United Nations or a similar organization, the World Court or a similar Court and the promotion of world peace under law. He has stated to me that he will be glad to attend and participate in a conference for the purpose of initiating steps to bring about the mobilization of the moral forces of the world religions. As he has stated to me, law, itself, is based upon morals.

4. A plan is underway for a convocation later this year under the sponsorship of Interpreters' House at Lake Junaluska founded by Dr. Carlyle Marney. Interpreters' House is an ecumenical organization which is nondenominational. Its Board of Directors and fellows is composed of leaders in religious organizations such as Roman Catholics, Protestants and Hebrews. The outlook and the program of Interpreters' House is ecumenical and worldwide. The plan is to have, also representatives of the great humanistic religions on the program of the convocation. Of course, all of us recognize that such a convocation is merely one step in the right direction.

5. Great foundations such as the Carnegie Peace Fund should be enlisted and assisted in their efforts to end wars and bring about peace throughout the world.

In conclusion, I am convinced that the peoples of the earth not only are tired of war

and of killing each other but also are more willing than ever to move positively to bring about the end of killings of humans by humans and the end of war. Obviously this cannot occur overnight but when killings and wars are ended, humankind can apply its resources in men and materials to the elimination of poverty and destitution and to the establishment of the more abundant life which is now possible.

HEROISM BY THE SOUTH VIETNAMESE

Mr. SCOTT. Mr. President, "Heroism at Anloc" was the title of yesterday's syndicated column by Joseph Alsop in the Washington Post. It detailed the valiant efforts put forth by the beleaguered and outnumbered South Vietnamese troops who, literally, are fighting for survival. Their heroism should be an inspiration to each of us at home.

Mr. Alsop makes many interesting points in his column, but the one that drives home so vividly the outstanding defenses that have been accomplished over these more than 43 days is the following:

If American units had been defending the wretched little town of Anloc, the whole country would now be glowing with pride.

Alsop then cites the exceptional and spirited defense these troops have made against crack armored divisions. The doughty effort by our allies should be an indicator to those disbelievers and gloom painters that this remarkable defense of Anloc will lift the morale of all the forces. Alsop says:

The story of Anloc's defense also illustrates the misleading incompleteness of the story of Hanoi's climatic offensive in South Vietnam, as that story is being told in this country.

Mr. President, all the facts apparently have not been presented. I suggest Americans do have the right to know what is going on in this miserable war so that they can have hope that our allies are fighting—and fighting well.

I ask unanimous consent that the article be printed in the RECORD.

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

HEROISM AT ANLOC

If American units had been defending the wretched little town of Anloc, the whole country would now be glowing with pride. Or at least those Americans would be glowing with pride who still admire grim courage for national ends; for the South Vietnamese defense of Anloc has been genuinely heroic.

The story of Anloc's defense also illustrates the misleading incompleteness of the story of Hanoi's climactic offensive in South Vietnam, as that story is now being told in this country. So it is probably just as well to begin at the beginning, which was COSVN's reason for ordering Anloc to be taken "at all costs."

The reason was the successful elimination of the native Vietcong by the pacification program. In the old days, the Vietcong would have been used to "prepare the battlefield" by building up all kinds of supply, providing guides and supporting units, and so on and on. In the old days, therefore, the crucial battle on the approaches to Saigon would have taken place much further forward. But now, there are almost no Vietcong.

Hence Anloc was chosen as the enemy's main target because it is at the back of beyond—a "province capital" with a population of 7,000, in a province that is almost empty of people. A road concealed under a tree canopy jungle also connects it with the Cambodian border, so an attack there could be supplied by truck.

The siege of Anloc began on April 7 with a ferocious artillery barrage followed by a tank-led infantry assault. At that time, the town was held by two regiments of one of ARVN's less admired divisions, the fifth, commanded by Brig. Gen. Le Van Hung.

The first assault came close to penetrating to the provincial headquarters, and actually reached the fringes of the fifth division command post. But for want of anything better, the ARVN troops (who included some very brave regional force companies) killed the tanks at almost point blank range with their bazooka-like anti-tank weapons. What remained of the enemy was then thrown out of town.

About 10 days later, this reporter flew over Anloc with the chief American officer in the area, the brave and picturesque Maj. Gen. James Hollingsworth. You could hear the coolly professional talk of the senior American adviser on the ground, Col. William Miller. But you could not see Anloc itself because of the never-lifting smoke of battle. By then, a brigade of South Vietnamese airborne troops had been lifted in to help the regiments of the fifth division. All the same, Gen. Hollingsworth said:

"They're taking real hell in there. I can't tell you whether they can hold."

One could understand Hollingsworth's doubts. The unit besieging Anloc was Hanoi's crack division in the South, the ninth. The ninth division was augmented with a entire regiment of T-54 tanks. The normal artillery was ferocious. Initially, too, the enemy's ninth division had some help from the enemy's fifth.

The Anloc perimeter was repeatedly penetrated. The tanks came into town again and again, only to be destroyed where they were. The American news agencies announced the fall of Anloc at least five times. But Anloc did not fall. Instead, by April 26th, Hanoi's once awe-inspiring ninth division had just about expended itself. The division commander was then allowed to pull his men out after a stinging reprimand from COSVN.

Hanoi's fifth division thereupon moved up. The fifth's commander, Col. Hai Bien, had boastfully promised to take Anloc in three days time. He tried hard, between May 10 and May 15. After the fifth North Vietnamese division also had been expended. It, too, had to be pulled back. Two whole enemy divisions had thus broken themselves in Anloc.

That leaves only one point to cover. The miserable little unfortified town has an area of perhaps three square kilometers. Even when there were no ground assaults, the enemy artillery continued—each day never less than a thousand rounds; in normal times, generally about two thousand rounds; and when an assault was coming, seven to eight thousand rounds. Often, it must have been like being on the receiving end of one of Marshal Zhukov's special barrages in the last big war.

All this time, too, there was no medical evacuation from Anloc. Yet when this reporter was on the scene, there were already a thousand wounded. So was this really "pitiful" and "craven," to quote one U.S. reporter on the subject of ARVN? And how many U.S. units would have held on as well as the South Vietnamese at Anloc?

NEW BUDGET BUREAU DIRECTOR INVITED TO TOUR RURAL AREAS IN ORDER TO UNDERSTAND THEIR NEEDS

Mr. TALMADGE. Mr. President, last Friday I sent a letter to the Honorable Caspar W. Weinberger, whom President Nixon has recently designated as the Director of the Office of Management and Budget.

In my letter, I asked Mr. Weinberger to tour some rural areas of Georgia with me so that he can get a better understanding of the needs of small-town America.

Just last week representatives of four small towns in my State met with me and officials of the Farmers Home Administration to determine what could be done to meet emergency situations that had developed in those towns insofar as water and sewer needs are concerned. Also present were Congressman JACK BRINKLEY and DAWSON MATHIS, who ably represent their districts.

The Farmers Home officials listened with sympathy and understanding, and although some means will be sought to assist these fine local officials, the basic problem is money.

I am naturally sympathetic with the needs of my own constituents. I am aware that the inadequate funding of Farmers Home water and sewer loans and grants is a major problem. I have learned that to meet existing needs throughout rural America, it would require the expenditure of $13 billion. This is a national problem.

But the administration has consistently seen fit not to fund even the amounts appropriated by this Congress. Clearly, the people who make the decisions at the Office of Management and Budget need to reexamine their priorities. While on the one hand the Environmental Protection Agency puts increasing pressure on local officials to clear up water pollution, the agency that has the power to help these small town mayors comply, the Farmers Home Administration, is continually strapped for funds.

We must either allow these towns to continue to pollute ground water supplies—which is obviously unthinkable—or we must give them the help they need to do the job.

Because I believe there is a reordering of budgetary priorities here, I have requested that Mr. Weinberger tour these four towns with me so that he can get a better understanding that the needs of these small town are emergency needs. Decent water and sewer facilities are essential if rural areas are to grow and prosper, but for many towns in our country, we are not talking about rural development. We are talking about survival.

If raw sewage regularly flowed in the gutters of Washington, D.C., if the Capital City went without water for 3 days, we would call this a major national tragedy. The press would publish it on page 1 throughout the land. But situations like these are occurring right now in the four towns of Georgetown, Talbotton, Lumpkin, and Richland in my State of Georgia, and it is occurring in hundreds of other small towns throughout rural America.

Congress has spoken on this matter many times in a positive way. Now I believe it is time for the people who control our Nation's purse strings to gain the same understanding that we in Congress have.

Mr. President, I ask unanimous con-

sent that my letter to Mr. Weinberger be printed in the RECORD.

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

MAY 18, 1972.

Hon. CASPAR W. WEINBERGER,
Director, Office of Management and Budget, Executive Office Building, Washington, D.C.

DEAR MR. WEINBERGER: I wish to congratulate you on your appointment to the position as Director of the Office of Management and Budget. I know that you bring to your new position the same qualities of dedication that you have always exhibited and I know that you will exert every effort to make more efficient use of the taxpayer's dollar.

As you know, I have been extremely interested in obtaining a larger share of our federal budget for the development and revitalization of rural areas. You participated in discussions on my amendment to the Agricultural Act of 1970, an amendment which is known as Title IX, the Rural Development Title, of that Act. As you will recall, this title commits the Congress to a sound balance between rural and urban America. It states that the Congress considers this balance so essential to the peace, prosperity and welfare of all our citizens that the highest priority must be given to the revitalization and development of rural areas.

Unfortunately, the commitment of Title IX has received no recognition in the Administration's budget. Not only has the Administration failed to request sufficient funds for rural development purposes for fiscal year 1973, it has impounded badly needed funds which Congress appropriated for rural development purposes for fiscal year 1972. There are a number of rural programs for which Congress appropriated badly needed funds, but which the Administration failed to release.

A striking example of these impoundments is the water and sewer grant program of the Farmers Home Administration. Congress appropriated $100 million for this program for fiscal 1972. The Administration has impounded $58 million of these funds. The $42 million of funds that were made available do not go very far when allocated to the states. My own state's allocation was only $1,211,000 for fiscal year 1972. All of this money has already been spent. The release of impounded funds would mean that Georgia's allocation would more than double.

This morning I met with representatives of four small towns in my state and the story they told was quite pathetic. All of these towns are very small. The city of Richland has only about 1,823 residents; the city of Georgetown has 863 residents; the city of Talbottom has 1,100 population; and the city of Lumpkin has a population of 1,500. All have extremely critical water and sewer needs.

The town of Lumpkin was forced to go without water for three days recently. The water supply continues to deteriorate and the city is faced with a real crisis. This town desperately needs a fifty percent grant from Farmers Home Administration. However, such a grant would total over $400,000, which is more than one-third of Georgia's total FHA allocation.

Another good example of desperate need is the city of Georgetown, Georgia. This town has a population of only 863 residents, but it does have a potential to grow. The town has lost an opportunity to get several new industries because of the lack of a good water and sewer system. The state health department has refused to allow the building of new federally subsidized housing because of inadequate sewage facilities.

Presently Senate and House conferees are working on important legislation designed to develop and revitalize rural America. However, the small towns that I am referring to are not just trying to develop—they are fighting for their very existence. The tax bases in these towns are extremely small. Some have a high percentage of aged and a high percentage of welfare recipients. In one town the conditions are so bad that sewage is actually running in open ditches.

It is extremely unfortunate that towns of this size receive little attention in our national press, in our national dialogue—and most importantly in national budgetary considerations. I believe that Congress means what it said when it passed Title IX. I believe that it is committed to a sound rural-urban balance. However, if the federal government feels that small towns such as Talbotton, Lumpkin, Richland, and Georgetown have no place in twentieth century America, it should say so. If it is going to continue to ignore the needs of these small towns and if it is so determined to let them die, then it should honestly say so.

However, I feel that if the people who make budgetary considerations in Washington really understand the problems of rural areas—if they understood the promise as well as the plight of rural America—they would be more receptive to providing adequate funds for rural development. Therefore, I would like to invite you, as the new Director of the Office of Management and Budget, to tour with me the four towns that I have mentioned. Hopefully, we can at a mutually convenient time take one day to examine the situation that exists in these four towns that need funds for water and sewer systems.

The towns I have mentioned have all submitted applications to the Farmers Home Administration. Some have been given false hope. Some have been led to believe that they will receive funds which are nonexistent. All are in desperate need of help.

I hope that you will apprise me of a time when it would be convenient for you to make such a tour.

With every good wish, I am
Sincerely,

HERMAN E. TALMADGE.

FEDERAL URBAN RENEWAL PROGRAM

Mr. BROCK. Mr. President, the Secretary of Housing and Urban Development recently stated that the Federal urban renewal program is an ineffective drain on the taxpayers' pocketbook.

Our total failure to provide adequate remedies to combat the housing problems of inner city areas has brought us to yet another juncture. The question now is, Do we accept the advice of the so-called experts who annually come before the Congress and tell us to deepen the involvement of the Federal Government in housing by increasing subsidies, and taxes, to individuals and groups? Or do we seek other alternatives?

The next question, of course, is, While we are seeking the alternatives, do we continue programs proven to be ineffective and in many cases tend to compound the problems at hand? The effect of greater Federal involvement in urban renewal is to raise the already overinflated value of land in core city areas. By introducing this artificial factor to land costs, the Federal Government has created a Pandora's box where people search out blight areas, purchase the properties at low cost, and hold it until they sell it for urban renewal.

Who is to blame? Not the administrative agency; they only implemented the program. Not the Executive; he only signed the bill sent to him by Congress. Not Congress; they only responded to the expertise of "authorities" in the field of housing. In truth, all must share this responsibility. Certainly all the intentions were good, but the inner city areas and the American people come out the big losers by having had an ineffectual program foisted upon them under the guise of keeping our cities viable.

Mr. President, a recent newspaper account entitled "Romney Denounces Renewal" details some of the more unbelievable statistics of the urban renewal program. I ask unanimous consent that the article, written by Mr. Eugene Meyer, be printed in the RECORD at the conclusion of my remarks.

It is important to note that the urban renewal program purports to prevent the deterioration of the inner city, yet it creates more problems than it solves, places more and more Americans in a position where they are dependent on the Federal Government, and in fact has little redeeming value whatsoever.

Mr. President, we need something more than a demonstrated concern coupled with access to the taxpayers' bank account to resolve this dilemma. We must seek alternatives which address the fundamental questions and refrain from stopgap measures. Until we can do so, it is not fair to ask why are housing problems worse each year.

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

[From the Washington Post, May 18, 1972]

ROMNEY DENOUNCES RENEWAL

(By Eugene L. Meyer)

George Romney, secretary of Housing and Urban Development, has denounced the urban renewal program that his agency administers as a waste of the taxpayers' money and a factor in the decay, rather than the salvation, of inner cities.

Romney said urban renewal has been so unsuccessful that he is considering barring subsidized housing in the future in parts of 20 central cities, including Washington, on the grounds that they are not "reasonably viable or an area of acceptable risk." He said this in testimony before the House HUD Appropriations Subcommittee that was made available yesterday.

Romney offered no specific alternatives to urban renewal, but suggested it was time for the Congress, which approved the programs in 1949, to reexamine it closely.

His remarks came in response to questions about the April 9 edition of The Washington Post. The article reported that, under urban renewal, 54 modest, low-income town houses under construction in Shaw will cost the taxpayers $52,200 each, or $76,000 if debt service is included. HUD later placed the net figure at $53,254 per unit.

The town houses are the only low-income units planned in Shaw for individuals earning from $4,000 to families earning $9,800. Other projects planned or under construction there are primarily for families with incomes of from $6,000 to $12,000. Experience with subsidized housing nationwide has not been fortuitous, however, as many units have become vacant and vandalized.

Romney said the "key" question he is facing is whether to tell Washington and other major cities that "certain parts of the city are so dead and so bad that even (HUD) is going to abandon them, and we are not going to help in those areas of the city."

Romney added, "What I am saying is the conventional urban renewal program is not working in such areas. It doesn't make sense in such areas . . ."

Romney's proposed policy change could, in effect, result in HUD's subsidizing and insuring mortgages only in the suburbs or beyond the fringes of the inner cities. The government pursued this course in the 1950s and 1960s and was criticized for contributing to urban decay.

HUD's most recent site selection policy has been aimed at avoiding concentrations of minority groups. This policy, in effect since Feb. 7, generally gives preference in the allocation of housing subsidy funds to suburban locations.

Romney has repeatedly said that the "real city" is not defined by political boundaries but includes the suburbs as well as the inner core. He has maintained that inner city problems must be solved regionally, with a dispersal of the poor across entire metropolitan areas.

On the urban renewal program generally, the HUD chief told the subcommittee: "I think we are putting money into land purchased that is unwise. I think we are wasting money doing this. I think we are keeping up land values in these central city areas at a time when, if we permitted the land to find its natural values on the market-price basis, ultimately the land would be purchased at a much lower price.

"But what the federal government is doing with its urban renewal program and its housing programs to a considerable extent in these deteriorating areas of the central city is that we are holding up the level of prices and we are creating an artificially high market for such land and for such prices.

"But it is still what Congress has told us to do . . . It doesn't look very good when you see it in operation, but that is what it is."

Romney's testimony was his most outspoken public attack on the 23-year old urban renewal program.

He has been critical of federal housing programs but, until now, has said little about renewal itself. Under this program, the government designates a neighborhood as "blighted" and then purchases land at "fair market value" for resale at a substantial discount to redevelopers.

More than half the total cost of the town houses in Shaw was for acquisition of 2.33 acres of inner city land, the largest chunk of it zoned for light industrial use. Under renewal procedures, the "fair market value" established by two government-approved appraisers was paid the property owners. The price of two parcels was increased either after threat of court action or court action.

It was to these fundamental elements of urban renewal—land acquisition, fair market value, appraisals and "writedowns," the discount to redevelopers—that the House Subcommittee addressed itself. The testimony based on the Shaw town houses consumed parts of three days of hearings, two of them closed sessions, and 87 pages of printed text.

Romney appeared on Monday, April 10, the lead-off witness on HUD's budget request for fiscal year 1973. Three days later, Assistant Secretary Floyd Hyde testified on the town houses and sought to mute Romney's attack with a defense of urban renewal. The following Monday, Hyde appeared again with officials of the D.C. Redevelopment Land Agency, and together they defended the Shaw town houses.

This came after Romney told the Subcommittee that the Shaw town houses were being built in accord with present laws, but these laws needed congressional review.

"One of the things I think Congress should properly take a look at," Romney said, "is its policy with respect to the writedown of land values (for the redeveloper) included in the urban renewal concept . . .

". . . In this case, you are dealing with something that is going on in this country quite extensively. Now, if it is wrong, Congress ought to change the policy . . ."

Romney said he agreed with Rufus Lusk, Jr., publisher of a real estate directory here and quoted in the Post article, that the city's urban renewal agency was "taken brutally" in the price it paid for part of the Shaw property.

Romney said: "I think there are people who are identifying areas of blight and going out and picking up the property at low prices and holding it until they sell it for urban renewal at high prices . . . I think the intentions (of urban renewal) were wonderful, but the results are not."

Rep. J. Edward Roush (D-Ind.) expressed shock that the total cost to the public would be $76,000 per house: "I cannot believe Congress would ever approve that."

"That is what you did," Romney said, meaning that Congress had approved both the urban renewal and the low-income housing programs.

"I do not know of a single member here who would ever vote for a program wherein we were going to pay $76,000 per house for low-income housing," Roush said.

Romney said the cost to the public has been increased by the shift away from downtown and upper-income residential renewal to housing for poor families. Much of that housing has since been abandoned and come under HUD ownership through mortgage foreclosures.

Why, then, Romney was asked, did HUD approve the Shaw town house project?

"Because this was the result of the policies that had been in being, and because the character of this problem has become apparent gradually."

That is why, Romney said, he is considering barring subsidized housing from blighted inner cities. "A block like the one you were talking about there (Shaw)," he told the Subcommittee, "is not an area that is reasonably viable or an area of acceptable risk."

"I am telling you here today that I am taking a look at the question of whether I am going to tell 20 cities in this country, 'There are certain areas of your city we are not going to put any more money in because it will be wasted, because the social conditions and other conditions do not justify it.'

"The minute I do that, I can tell you what is going to happen. They are going to be down here on your backs asking you to get me to change that because I am dictating the death of certain of these central cities."

On Thursday, after Romney testified, Assistant Secretary Hyde defended the cost of the town houses within the context of the entire 680-acre Shaw urban renewal program. A former condemnation lawyer and mayor of Fresno, Calif., Hyde noted the average cost for the 591 housing units planned for Shaw was $26,265.

Hyde said the town house project was atypical of the program and he produced figures showing the per unit land cost of the town houses to be roughly twice that of several other Shaw projects.

On the town houses, Hyde said, "That cost is an investment to preserve a greater area. . . . We have to look at the building of communities."

RLA's acquisition of the property, Hyde said, was "not only proper and appropriate, but I think in the best interests of the program and the interests of the taxpayers."

Three days later, Rep. Robert N. Giaimo (D-Conn.) told Hyde, "I have been a defender of the redevelopment program, but I am beginning to think it is not working. . . . I'm not so sure that if we spent millions of dollars in that area, for example, in helping people to rehabilitate their existing homes, that we wouldn't be better off."

Giaimo was especially critical of RLA's purchase for the town houses of 1.2 acres at 14th and S Streets NW from Westminister Investing Corp. for $755,000, six years after the firm paid $398,260 for it. The property was one of 78 Westminister bought across the country at the time. The other town house locations are 11th and M and 11th and N Streets NW.

Giaimo said he thought the RLA or the public housing authority could have bought existing town houses for less. Hyde acknowledged this possibility, but argued that they would be at scattered locations. An urban renewal plan for an entire neighborhood created stability and justified the cost, Hyde said.

THE INTENT TO COMMIT GENOCIDE

Mr. PROXMIRE. Mr. President, critics of the Treaty for the Prevention and Punishment of Genocide argue that certain aspects of the treaty are ambiguous or unreasonable. They are particularly concerned with the differentiation between genocide and homicide. How can the Government determine whether the murder of one or two individuals represents the beginning of an assault on an entire ethnic, racial, religious, or national group?

The fine point of interpretation here focuses on the intent of the belligerent. If he intends to undertake a systematic attack on a particular group, in whole or in part, then his actions can be interpreted as acts of genocide. If, however, such attacks are directed toward individuals as individuals, without consideration or violent bias against the larger group to which the victims might belong, then the charge must be homicide and handled according to the laws of the land.

Intent is the crucial factor, and it must be proven if charges of genocide are made. As always, the burden of proof lies with the accuser and not with the accused. No international treaty can alter the age-old guarantee of innocence until proven guilty. Still, if a man commits violence against others with the expressed intent of harming a specific group of people, or even if he simply acts out such an intent without articulating his goal, the crime of genocide becomes apparent.

Needless to say, the slaughter of even one human being is just as reprehensible as the slaughter of two or three or more. Our horror may increase with the number of dead, but the insanity and inhumanity of the crime is evident with each individual death. Civilized nations have long had laws to outlaw murder. It is high time that these same nations joined together to outlaw the crime of mass murders as well. One law does not preempt the other. They are differentiated by the intentions of the transgressor and these intentions will determine the charge of homicide or genocide.

This aspect of the Genocide Convention is abundantly clear, as are most of the articles of the treaty. It is a humanitarian declaration which deserves our support; therefore, I urge the Senate to move for immediate ratification.

MICHELE McDONALD, BUTLER, PA., MISS U.S.A. FOR THE PAST YEAR

Mr. SCOTT. Mr. President, the Commonwealth of Pennsylvania has had the distinction of having one of its own young ladies serve as Miss U.S.A. for the past year. Michele McDonald, from Butler, has

done an outstanding job in representing the Commonwealth and the Nation in her travels around the world. Her fresh and wholesome outlook on life should serve as an example to all the young people of Pennsylvania. I wish her much luck and success in the future.

CORPORATION FARMING

Mr. MONDALE. Mr. President, on March 28, 1972, the approximately 200 television stations in the Public Broadcasting Service—PBS—network carried the 1-hour program entitled "The Advocates." The question debated that night was: "Should large corporations be driven out of farming?" As is always the case, members of the viewing audience were invited to send in postcards showing how they would vote on the question. The result of this wholly voluntary balloting was:

Yes (81% plus)	4,111
No (18% minus)	899
Other (1% minus)	42
Total	5,052

The result of the balloting is of interest to all of us, but especially to the Senator from Wisconsin (Mr. NELSON) and the Senator from Oklahoma (Mr. HARRIS). In this Congress, Senator NELSON has introduced the Family Farming Act of 1972, frequently mentioned on the program, which would accomplish the result favored by a majority of viewers of "The Advocates," Senator HARRIS was one of the expert witnesses whose testimony helped the prevailing Advocate, Howard Miller, to win this overwhelming victory.

Senator NELSON'S bill, S. 2828, will soon be the subject of hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary. Hearings on a companion House bill, H.R. 13740, have already begun before a House Judiciary Subcommittee. Chairman EMANUEL CELLER is presiding at the House subcommittee hearings, and the principal sponsor of the House bill is the Honorable JAMES ABOUREZK, of South Dakota.

Mr. President, as a cosponsor of Senator NELSON'S bill, I wish to stress again the importance of this legislation which would allow continuation of the family farm, an institution which has done much to make our Nation great. I am looking forward to the Senate hearings on this legislation, and I urge all Senators to follow them closely.

Mr. President, I ask unanimous consent that the transcript of the March 28 session of the distinguished public television broadcast, "The Advocates," be printed in the RECORD.

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

SHOULD LARGE CORPORATIONS BE DRIVEN OUT OF FARMING?

Participants:

Advocate Howard Miller (pro); James Hightower, Director of the Agribusiness Accountability Project, Washington; Senator Fred Harris (D.-Okla.)

Advocate William Rusher (con); Russell Jeckel, Hog Farmer, Delavan, Illinois; Howard Margulas, President of Agricultural Operations, Tenneco; Williard F. Williams, Professor, Texas Tech University.

Moderator: Michael Dukakis.

ANNOUNCER. Tonight, from Boston, The Advocates. (Applause.) Howard Miller, William Rusher and the moderator, Michael Dukakis. (Applause.)

DUKAKIS. Good evening and welcome to The Advocates. Every week at this time, we look at an important public issue in terms of a practical choice and we invite you to participate in the political process by listening to our debate and then sending us your votes. Tonight's issue concerns farming, and specifically our question is this: Should large corporations be driven out of farming? Advocate Howard Miller says "yes."

MILLER. Large financial conglomerates are farming rural America for a harvest of dollars and leaving behind them enormous human costs which we all pay for. With me tonight to urge that industrial companies get out of agriculture are Jim Hightower, Director of the Agribusiness Accountability Project, Washington, and United States Senator from Oklahoma, Fred Harris. (Applause.)

DUKAKIS. Advocate William Rusher says "no."

RUSHER. Tonight's proposal is an attempt to turn back the clock of American agriculture fifty years. It will drive up your food bill, increase your taxes and not even help the small farmers it pretends to protect. With me tonight to tell you why are Russell Jeckel, corn and hog farmer from Delavan, Illinois, Howard Margulas, President for Agricultural Operations at Tenneco and Professor Willard Williams of Texas Tech University. (Applause.)

DUKAKIS. Thank you, gentlemen. And now for some background on tonight's question.

(Film).

DUKAKIS. The small farmer in America is an endangered species. In the last twenty years, two million family farmers have been driven off the land and Secretary of Agriculture, Earl Butz, predicts another million of the 2.9 million remaining will leave their farms in the next decade. The farmer, particularly the small farmer, is being squeezed out of business. Increased food prices have mostly benefited the middle man, not the farmer. While the basic price paid for farm produce has remained relatively stable, the cost of everything the farmer needs to raise that produce has increased dramatically. Farms have survived by becoming more efficient. Thirty years ago, the average farmer worked 167 acres of land, today the average farm has grown to almost 400 acres. In short, the process that sees fewer and fewer people in farming is a process that sees the land itself being concentrated in larger and larger holdings. Coincident with the decline of the small farm has been the emergence of a new agricultural institution—the giant diversified corporation with farms and non-farm holdings. Such agribusiness giants now account for a growing share of farm production in America. While that share is still relatively small, the impact of corporations able to control every aspect of food production from the field to the supermarket shelf has been profound. The cry of alarm that has arisen from the small farm in America has resulted in legislation now before Congress that would drive the diversified corporate giants out of farming. The legislation, introduced by Democratic Senator Gaylord Nelson of Wisconsin, is called the Family Farm Act of 1972. In the words of the act, it is designed to restore competition to the agricultural industry and to provide for the continuance of the family farm.

(End of film).

DUKAKIS. Specifically, the Family Farm Act of 1972 would require any individual or corporation that owned more than three million dollars of non-farm assets to divest itself of all of its agricultural holdings. It would prohibit certain contractual arrangements between individual farmers and farm processors and it would encourage individual farmers to market or sell their products through farmer cooperatives. Senator Nelson and others supporting the bill believe that it is an important and necessary first step in reversing American farm policy, particularly as it affects the family farmer. The bill is now in committee, but sponsors of the bill hope to have it on the floor for debate during this session of Congress. And now to the cases. Mr. Miller, why should large corporations be driven out of farming?

MILLER. The family farm, according to agricultural efficiency studies of the Department of Agriculture, is happily the most efficient farm in the country; the one to two man farm, no matter what it is—dairy, peaches, vegetables or anything else. That farm, agriculturally efficient, cannot compete against the non-farming industrial company that is today coming into agriculture. Pyrex growing strawberries ad Boeing potatoes. Why not? Because the non-agricultural company can use financial tax benefits that have nothing to do with agricultural efficiency. Tax write-offs, make little profit but hold on to the land for capital gains, bargain for volume discounts—what the small farm cannot do, and so the small farmer is threatened and the balance sheet of the large industrial company may, on occassion show a profit. But it's profit without value, because in its wake the large industrial company that drives small farmers out of business leaves behind human costs that are on no one's balance sheet—our system of accounting does not tell us how true the cost is when people must leave the farm, even though they're efficient, and move to cities. What's happened to Ellis Hail and Joe Weisshaar does not appear on any corporate balance sheet, but nevertheless, it is a human loss to all of us and to the United States.

(Film).

ANNOUNCER. Here in Arkansas, Ellis Hale tells us how he used to have a chicken farm but got driven out by the big corporations.

HALE. This is broiler house number one, over there is number two—number three and four was located down over the hill. We were putting out about a quarter of a million birds out of these buildings every year. Since 1962, we haven't grown one single solitary broiler. Not one chicken has come off this place since 1962. And the reason that no chickens have come off our farm since 1962 is because the big corporations blacklisted us, and were in conspiracy among themselves to stop a broiler growers organization that we were instrumental in forming. I think that the farmer is definitely the most exploited man in the country. And he's being exploited not only by the corporations, but he's being exploited by the Department of Agriculture. I didn't contribute to any political fund. I'm just an individual farmer and that's where the difference is. The corporations have the money, they have the power, they have the politicans. They have enough politicians bought and paid for that they can control the laws that are enacted and the administration of those laws.

ANNOUNCER. Up in Iowa, Joe Weisshaar can see that the big corporations are about to move into the hog raising area. He told us about the danger he sees.

WIESSHAAR. The way corporations are going to get into hog farming is . . . many of them start in this way now . . . They offer breeding stock to put out for shares or contract and at first you're not tied down to a contract of where you have to sell the product. This is going to come later. It's kind of a creeping thing and the contracts get tighter and tighter just like they did in the poultry industry. And after a while, you're going to be told where you have to market your products. You're going to be told what feed have to be fed if your contract's tied

in with a feed company. And, in effect, what you're going to be is just a laborer for them. You're going to lose all your management decisions. They'll be made by someone else. I don"t see how corporations with hired labor can do as good a job as the family farmer who's willing to sacrifice all these things. He's using family labor, hours mean nothing to him. He's willing to make these sacrifices.

ANNOUNCER. Ellis Hale is one of millions of farmers who've been forced off the land in the past thirty years. That fact gives Joe Weisshaar a lot to think about.
(end of film)

MILLER. That can happen all over the United States, and to tell us why we must try and stop it now, I've asked to join us tonight Jim Hightower. (applause)

DUKAKIS. Welcome to The Advocates, Mr. Hightower.

MILLER. Jim Hightower is Director of the Agribusiness Accountability Project in Washington, D.C. Mr. Hightower, is there a threat to the family farmer today? What is it?

HIGHTOWER. Well, there certainly is. The threat essentially is, since about 1945 the rise of corporate power in rural America. Involved here are not just family corporations and minor corporations, but literally the corporate strength in America, the same giant conglomerates that sit on Wall Street in New York City, all across the country right across to Montgomery Street in San Francisco. I.T.T., for example, is involved, Boeing Aircraft is involved, Tenneco. Just the giant corporations, the conglomerates that are moving into agriculture. In addition to the conglomerates, there is an enormous rise in vertically integrated agribusinesses. Involved here are the giant processing corporations, the brand names that you find on your grocery store shelves. You can literally just go down a grocery store shelf and practically for every brand name there—Delmonte, Heinz, Campbell Soups, Swift—you can assume that most of those are vertically integrating production.

MILLER. But don't those large companies bring efficiency to agriculture, or do they just bring the advantages of their money?

HIGHTOWER. Well, they do mostly bring the advantages of their money. Efficiency is a myth that has been perpetrated by agribusiness and by its apologists both in Congress and elsewhere. Efficiency is—for years we've had in this country a family farm system that produced food as efficiently as anybody can produce it. It produced good food and food at a relatively cheap price. Corporate efficiency can be more a matter of business than it is a matter of farming. Business and farming are two separate pursuits. A corporation like I.T.T. might be good at getting the telephone installed but it's not terribly good at getting farms.

MILLER. What about this remedy that the bill suggests—having the large industrial companies divest themselves of their agricultural holding? Is that unusual for us in this country?

HIGHTOWER. No, it's not unusual at all. I think it's a very appropriate step at this time to take. Essentially, we're dealing with the Clayton Act which is the basic antitrust document in this country. When the Clayton Act was passed, agriculture was exempt and essentially what this bill does is just put agriculture back in there.

DUKAKIS. I think I'll have to break in at this point. Mr. Rusher has some questions to ask you Mr. Hightower and in the course of your answering them, would you tell us what it means to be a vertically integrated corporation?

Mr. RUSHER. Would you do that briefly to begin with?

HIGHTOWER. Yes, vertically integrated corporations of agriculture simply means a nonfarming corporation that is controlling production.

RUSHER. Why doesn't it also mean a farming corporation that's controlling production? What is there about vertical integration that exclusively pertains to non-farming corporations?

HIGHTOWER. Well, it's the non-farming corporations that are vertically integrating backwards and forwards into the production of food. Now some farm corporations might move forward themselves——

RUSHER. How about co-ops? There are a lot of co-ops that are vertically integrated aren't there?

HIGHTOWER. Co-ops, though, are only controlled by farmers.

RUSHER. Yes, but they're monopolies in their field. Citrus juice co-ops control 70% of the American production of citrus juice. Why are they not mentioned in the Nelson bill?

HIGHTOWER. Because those are co-ops of farmers, those are producers, and not vertically integrated.

RUSHER. A monopoly conducted by farmers themselves is good?

HIGHTOWER. Well they're not monopolies, the issue tonight is not co-op power, the issue tonight is corporate power.

RUSHER. Well, the issue tonight is maybe comparing corporate and co-op power and why you exclude one from the bill and include the other.

HIGHTOWER. Well if you can show me a co-op that has the resources of I.T.T. then I think we'll be talking at the same level.

RUSHER. I would have thought that Sunkist had plenty of resources——

HIGHTOWER. Not on the level of I.T.T.

RUSHER. Oh well, come on, I.T.T. has the resources for what it does. Let's ask you this, the Nelson bill to begin with doesn't just apply to large corporations at all, does it?

HIGHTOWER. It applies to corporations with assets of over three million dollars.

RUSHER. Not just to corporations does it?

HIGHTOWER. Persons, partnerships——

RUSHER. Persons too.

HIGHTOWER. Corporations, conglomerates.

RUSHER. Partnerships also. As well as corporations. In point of fact then, the Nielson bill is not aimed exclusively at large corporations at all, is it?

HIGHTOWER. It is aimed at persons, conglomerates, corporations, partnerships, with assets of more than three million dollars.

RUSHER. A great deal more, yes. Suppose a large corporation, or a bigger individual farmer for that matter, does have advantages from the size of his operation, either efficiency advantages or simply, from size, getting credit, things like that, and suppose further that he does pass along his savings to the consumer in the form of lower prices? Are you saying or suggesting that we should pay higher prices to the small farmer in order to preserve the values of the small farm?

HIGHTOWER. No, I'm not saying that at all. I've said in my opening statement that efficiency is not a factor of bigness.

RUSHER. Well, I'm coming to efficiency, but but assuming that there were an advantage to bigness, even just getting credit for example, as there sometimes is, should the consumer be willing to pay the higher price to the small farmer?

HIGHTOWER. There are values on the small farm that are worth preserving.

RUSHER. That's what I was getting at. And you do feel that it would be appropriate to pay a slightly higher price in order to preserve those values?

HIGHTOWER. I'm not sure that we have to pay a slightly higher price to do that. I'm not willing to concede that you do have to pay a slightly higher price.

RUSHER. If you're not willing to concede, well let's examine that question. If you don't want to concede that, you spoke and Mr. Miller did, of the larger operations not in fact being more efficient. But, in the broiler chicken industry which Mr. Miller's first farmer had been in which was shown to us on film, Ralph Nader's Task Force in 1971 reported that, thanks to the new technology, chickens used to cost in 1960 60¢ a pound, in 1970 the price was 42¢ a pound.

HIGHTOWER. The price, though, is a good deal more than 42¢ a pound. The price is also several thousand small farmers, like Mr. Hale in the south that are devastated.

RUSHER. Now, that's what I'm asking you. Should we be paying higher prices for chickens in order for Mr. Hale to continue?

HIGHTOWER. But that the price has gone down is not a function of efficiency.

RUSHER. Well, it certainly was sufficient to get Mr. Hale out of the business—the price——

HIGHTOWER. If that's the efficiency you're after——

RUSHER. Well, it certainly is a human value of sorts isn't it? Isn't it a human value if we're able to pay 42¢ instead of 60¢ a pound for chicken.

HIGHTOWER. But you pay on April 15th as well as you pay at the supermarket.

RUSHER. Exactly, and Mr. Hale is not on—as I understood it he has another business, he is not on welfare, so that isn't a question. He's probably paying taxes like the rest of us.

Tell me, can't the Sherman and the Clayton antitrust acts and the Federal Trade Act be used to prevent the kind of conspiracy and blacklisting that Mr. Hale accused, Mr. Hale, the farmer who had been in the chicken broiler business—he accused unnamed people there of conspiracies and blacklisting, why can't the acts that I have mentioned, Sherman, Clayton and Federal Trade Act be used to go after those people?

HIGHTOWER. I don't know why they haven't done it before, but the regulatory agencies generally have not been very effective and have certainly not been involved in agriculture. You take the F.T.C., which finally has filed an action against United Brands. But with two thousand farmers a week leaving the land, I don't think that the farmers of this country are going to be willing to wait.

RUSHER. I don't know. Are you saying that people are not enforcing the laws—the laws would work if they were enforced?

HIGHTOWER. It sounds like it to me.

RUSHER. You think they're going to enforce then the law that you want passed?

HIGHTOWER. I think that there will be actions under this law that are not now being taken. It's an emphasis, a focus that we need on the family farm system in the country.

RUSHER. What about farmers who want to sign up with non-farm corporations like Tenneco?

HIGHTOWER. The bill does not prevent them.

RUSHER. The bill does not prohibit them from signing up with Tenneco?

HIGHTOWER. Not at all.

RUSHER. I think what you mean is that it does not prevent them from selling to Tenneco.

HIGHTOWER. It does not prevent them from selling——

RUSHER. I said signing up with—actually becoming a part of the Tenneco operation. For example, Tenneco harvests the crops in large areas of California.

HIGHTOWER. Why should Tenneco be allowed to harvest the crops?

RUSHER. Why shouldn't the farmer let them harvest them if he wants to?

HIGHTOWER. Because the farmer—because one farmer is not the issue, the issue is productivity and the entire agricultural economy. That's how Ralston Purina began, with one farmer. I think the lesson is in Ralston Purina.

RUSHER. So that's the answer——

DUKAKIS. I think I have to break in at this point gentlemen. Thank you very much, Mr. Hightower, for being with us. (Applause.) Mr. Miller.

MILLER. The bill prohibits an industrial concern from controlling agricultural production, whatever that involves. Prices of broilers fell. But there's no evidence that it fell because of Ralston Purina or other companies assumed ownership. We do know that Ralston Purina and other companies were found by the Department of Agriculture to have done that illegally, to have violated many acts in the process. In fact, the one family farm, the one or two man family farm *is* the most efficient in the country. Its productivity rose twice as fast as that of industrial concerns. The only reason larger companies can enter agriculture is because of the accidents of their financial and tax abilities. Nothing to do with agricultural efficiency. Let's protect agricultural efficiency and the human values of the family farm.

DUKAKIS. Thank you, Mr. Miller, we'll be coming back to you later for your rebuttal case, but now let's turn to Mr. Rusher to find out why large corporations should not be driven out of farming.

RUSHER. Once upon a time, the small family farm was the perfect way to carry out agricultural production. In some cases, it still is. But in many others, the small farmers have had to incorporate and enlarge their own operations or band together in big co-operatives to process and market their products efficiently. In a few instances, corporations in other lines of business have thought it might be worth while to go into farming. From the seed to the consumer, so to speak. Using their capital and their marketing know-how to do what the average farmer could not reasonably be expected to do. Tonight's proposal pretends to concentrate on running those few large corporations out of farming, supposedly to help the small farms.

But the truth is that this bill would create chaos in a huge section of American agriculture, including all the most productive parts of it. And the irony is that it would still not do a blessed thing for the large part of American agriculture that really needs help—the 60% of American farms that make less than $1,700 a year. In short, the Nelson bill might be called the "Farm State Politicians Scapegoat Act of 1972." Let's hear first from an independent hog farmer who competes with corporations quite successful, Mr. Russel Jeckel. (applause)

(film)

JECKEL. Well, I was married during my last year at the University of Illinois and I graduated in vocational agriculture, and I came back to the farm in 1950. And at that time, the farm was a general farm. We had a number of different kinds of livestock, pigs and cows, milk cows, chickens, and so it became fairly obvious that if this farm was to support two families that we were going to have to specialize and raise a good deal of livestock. So we decided to go into the hog business and from that point, the farm has grown from a 135 acre rented farm to something over 500 acres now. We have title to this land, and we also have a pork production unit which is capable of producing in excess of 5,000 hogs per year.

(end of film)

RUSHER. Mr. Jeckel has left the farm in the hands of his father and one assistant to be with us tonight. Mr. Jeckel. (applause)

DUKAKIS. Welcome to The Advocates, Mr. Jeckel.

RUSHER. As I said before, Mr. Jeckel is a corn and hog farmer from Delavan, Illinois. Mr. Jeckel, your farm, as we saw, started rather small and has prospered. How did that come about?

JECKEL. Well, for the last two generations, almost two generations, it's being operated as a family enterprise. We've tried to adopt new and better methods and ideas as they've come along. We've taken the profits from the business and, along with borrowed money, put this back into the business to help it grow. We've tried to adopt efficient business management ideas and along with what we think is a good deal of enthusiasm and optimism and plain hard work, we've tried to make a real go of it.

RUSHER. Mr. Jeckel, you saw Mr. Miller's hog farmer on film expressing his fear of the corporations moving in on hog farmers. How do you feel? Do you fear the competition of the corporations?

RUSHER. Why not?

JECKEL. Well, we've seen some large corporations try to get into this business, especially our type of business, and very frankly, the management know-how is just not available and they seem to have all sorts of difficulties. It takes a good deal of experience to sort of put this know-how together.

RUSHER. One last question. Would the Nelson bill, if it were passed, help you or hurt you?

JECKEL. No, I don't think it would hurt us too much. I can see maybe in the future that the possibility might exist, if we needed large amounts of capital, that some of the sources of capital would not be available to us.

RUSHER. And I take it it would not help you, you feel?

JECKEL. Right.

RUSHER. I have no further questions.

DUKAKIS. Mr. Miller has some questions for you, Mr. Jeckel.

MILLER. Mr. Jeckel, you run a successful operation and you think there's value in the family farm in the United States?

JECKEL. Right.

MILLER. A great value in it. And, I take it you agree with the Department of Agriculture reports which you told us that the family farm not only can be but is as efficient as a large corporate farm.

JECKEL. I think so.

MILLER. Now, you talk about competing with the large corporate non-farming corporation. Now there are non-farming corporations that have entered agriculture not for the return from agriculture for example, but simply to hold on to the land and wait for capital appreciation. They don't care much about that immediate profit return. Do you think you could compete with such a corporation?

JECKEL. Sir, I've got to primarily tell you about my own experiences, and those that I've seen in cases where they've tried to get into our type of business where sizeable knowledge and where a lot of technology and know-how is needed, they just haven't been able to put this together.

MILLER. We're going to hear from a subsequent witness who I think thinks large corporations can do very well. *The Farm Quarterly Journal* reports in 1969 that the size of corporations makes a real difference. It reports cases of up to a 10% discount for large industrial corporations in buying farm equipment when they order over a quarter of a million dollars or more. That is, the amount of the purchase gives them enormous discounts on farm equipment. That's true isn't it?

JECKEL. Well, I would think it would help, yes.

MILLER. Would you think, Mr. Jeckel—a very interesting question that Mr. Rusher raised and I'm interested in your view of—suppose that large corporations could enter and, for whatever advantage, lower prices somewhat, let's not talk about the amount but a bit, do you think it's worth it for the country, because of the value of the family farm, the family farms that now exist, do you think it worth it for the country to preserve it because of the social values, because of preserving rural life, preserving the kind of life you lead?

JECKEL. I rather feel that it's the kind of efficient system that's going to evolve that's real important part of this thing and I'm not sure who's exactly going to get to do this, whether it's an individual, a corporation, the family farm, but I think that if we continue with a free enterprise system, as we would all hope that we would, the real efficient unit will prevail.

MILLER. So it wouldn't bother you if large, even non-farming corporations that could get discounts on farm machinery, get lower rates on bank loans, get tax write-offs against non-farm profits, if those organizations came in and hurt family farmers, that wouldn't bother you?

JECKEL. Sir, the real measure is going to be whether they do an efficient job out on the farm. I think that the things you mention may be incidental.

MILLER. But their tests of efficiency are quite different. I mean, they may have lower costs having nothing to do with farm efficiency because of their ability to get money, equipment and write-off against other profits. They may simply have a different balance sheet from you because they have lots of non-farm business. So, what's profit to them may not be profit to you.

JECKEL. But it's an interesting thing—we've not seen these things materialize and——

MILLER. It's happened all over the south in the broiler industry, that's exactly what happened. The industrial concerns going in with the capacity to tie up farmers by selling them seed, tie them up on long-term contracts and simply because they didn't care. They had other profits so they could stand farm losses. How can you compete against the company that looks at losses differently? You have to make a profit to survive. A company that can write farm losses off against its profits—how can you compete against that?

DUKAKIS. Gentlemen, I'm sorry, but I have to interrupt and say thank you very much for being with us and keep the cost of pork chops down, would you please. Mr. Jeckel. Thank you. (applause) Mr. Rusher.

RUSHER. Now, what about those farmers who have chosen to work with the so-called conglomerates? In Indio, California, the date capital of the United States, the date growers were in trouble. In 1969, they made a contract with H.M.T., a subsidiary of Tenneco, to buy, process and market their dates. Today, the date processing plant in Indio is in full swing. Sales are up, prospects are bright. Here is what date grower, Don Mitchell thinks of the new arrangement with H.M.T.

(Film).

MITCHELL. H.M.T. has been in the date business for two years. The big carry-over that was breaking our backs is now gone. We do have a more hopeful picture of the future.

ANNOUNCER. You had a big inventory a couple of years ago before H.M.T. came in?

MITCHELL. We had a carry-over that had accumulated over a number of years that we couldn't sell without giving it away, and the change has been very healthy.

ANNOUNCER. How has your income been affected by your relationship with them?

MITCHELL. Well, there's been not an enormous increase but enough better so that I feel far happier about the future than I did before.

ANNOUNCER. Do you feel that they're competing with you in any way?

MITCHELL. Well, they're selling my fruit, why should they compete with me?

ANNOUNCER. They're not buying date gardens or buying property?

MITCHELL. No, but I don't think I'd object if they did if we got a fair deal from them.

ANNOUNCER. They're not putting anybody out of business or driving the family farmer off his land?

MITCHELL. No, they've improved the picture here for the date growers. There's no question about that. (end of film)

RUSHER. And now, let's hear from the chief executive of H. M. T., that very large corporation, Mr. Howard Marguleas. (applause)

DUKAKIS. Welcome to The Advocates, Mr. Marguleas.

RUSHER. Now Mr. Marguleas, as I said, is President of H. M. T. which is the agricultural division of Tenneco. Mr. Marguleas, you are the president of a very large corporation engaged in agriculture. Does your operation represent a threat to the small farmers?

MARGULEAS. Not at all, in fact, just the opposite. We depend greatly on the small farmer. 80% of our sales of fresh fruits and vegetables are derived from small farmers and only 20% are derived from our own farmlands, so without the small farmer, we would find ourselves without a product and virtually out of business.

RUSHER. What do you provide for them?

MARGULEAS. We provide a vehicle, in reality, to them or for them in order to market their crops. We provide marketing expertise, we provide advertising, promotions, we provide packing houses for them. If it were not for our providing this, the small farmer who has got twenty or forty acres would find himself in a position of frankly not knowing what to do with his products.

RUSHER. I wanted to ask you, what if the Nelson bill became law and your corporation was forced out of the farming business altogether? What would happen to the farmers like Don Mitchell, the date grower from Indio?

MARGULEAS. I think Mr. Mitchell pretty well answered it, and I think there's plenty of Mr. Mitchells all over the State or California, in that not only would we be put out of business, I think that the small farmer, he too, would be put out of business because of the passage of the Nelson bill.

RUSHER. Has Tenneco, to your knowledge, ever been accused of squeezing out a small farmer?

MARGULEAS. Frankly, Tenneco is accused of a lot of things every day and I would imagine that some of the accusations are part of driving the small farmer out of business, but to the best of my knowledge, this is untrue, completely so.

RUSHER. In other words, to your knowledge, there has not been such a case.

MARGULEAS. None whatsoever, no.

RUSHER. What benefits does Tenneco's operation provide for consumers, lastly?

DUKAKIS. This will have to be a very short answer.

MARGULEAS. We feel that the—our Sun Giant program which will be a national brand, quality control, high-flavored attempt on our part to distribute fresh fruits and vegetables throughout the United States, similar to what Delmonte is doing in the canned food area, we feel that this is going to be a real asset to the consumer and that we're going to make available to her high quality fresh fruits and vegetables.

RUSHER. No further questions.

DUKAKIS. Thank you, Mr. Miller has some questions for you.

MILLER. Mr. Marguleas, up until 1970, you weren't part of Tenneco, it was your own company.

MARGULEAS. Correct.

MILLER. And you just became a member of Tenneco. And would you have been barred, if you were not part of Tenneco? Does your operation require more than three million dollars in nonfarm assets?

MARGULEAS. In non-farm assets?

MILLER. Yes.

MARGULEAS. No.

MILLER. No, so that just as you were doing before 1970, you would simply not be a part of Tenneco, you would continue to do everything—

MARGULEAS. Except, Mr. Miller, one point and that is that we would only be about 10% as effective as I think we are today, because we need the capital with which to advertise and to promote and distribute, and without Tenneco and without the resources behind us, we wouldn't be able to do what we are doing for Mr. Mitchell on his dates.

MILLER. Well let's see if that's true. The bill says you can't control production. You don't have to control date production to advertise it and sell it throughout the United States. Throughout this country there are dozens of companies that buy and sell, as wholesalers—you don't need to control the date production do you?

MARGULEAS. True, but, by the same token, we provide many other services other than just sales and promotion to him.

MILLER. But you don't need to control the date production to do what you do. You do it very well and you have no need to control the date production.

MARGULEAS. Well, we feel we're doing a more effective job for Mr. Mitchell by controlling it for him.

MILLER. Do you control it? Do you have to control it? That's what I'm asking you, do you have to control it?

MARGULEAS. Control? What do you mean by control?

MILLER. Well, tell me what you do. What do you have to do? Everything that you have told me is permitted. Buying from him, advertising, selling, as long as you don't control the production.

MARGHLEAS. Right. Well, along with dates, we harvest his crop for instance and harvest the crop of many others. We provide the equipment and machinery and tools with which to do it.

MILLER. He could do that himself.

MARGULEAS. No, the ten acre grower, I'm sorry, he couldn't do it.

MILLER. He could form a cooperative and do that.

MARGULEAS. He had a co-op and the co-op went broke, that's why we're there now.

MILLER. Before you did his selling for him, of course. But you could make an arrangement with him.

MARGULEAS. I don't know, all I know is prior to our entry into it, the co-op was bankrupt and they asked us to come in and I think we've saved the industry.

MILLER. I think you've done very well and I think you could do well with Nelson bill and I congratulate you.

MARGULEAS. Thank you.

MILLER. You do more than market, Tenneco also owns land, doesn't it?

MARGULEAS. Yes, we do.

MILLER. It owns lots of land.

MARGULEAS. Yes, we do.

MIEEER. It owns 130,000 acres?

MARGULEAS. Approximately 100,000 acres in Kern County—

MILLER. In Kern County and San Joaquin Valley?

MARGULEAS. Yes.

MILLER. And you've recently sold some also?

MARGULEAS. Yes, we've just recently sold a substantial amount of acres.

MILLER. There's a real difference in the San Joaquin Valley between towns that are near large landholdings and small landholdings, aren't there? Are you familiar with the classic study of two towns in the valley, the town of Arvin and the town of Dinuba and the impact of being near a large or small holding?

MARGULEAS. You mean of Dinuba?

MILLER. Yes. And that the study found that Dinuba which was near the small towns had twice as many retail stores, twice as large retail sales. Whereas in the large landholding town two thirds were employed as farm laborers and in the small town only one-third. Their social costs, the question I'm getting to, do your balance sheets reflect the cost you put on a community near your landholding?

MARGULEAS. No, but our balance sheets also reflect that we spend over twelve million dollars in two plants in Bakersfield alone to take care of small growers' products and we're employing in excess of twelve hundred people. That without the infusion of our capital there, these people would be without a job.

MILLER. No, no. The contrasting study, because that was the purpose of the Arvin-Dinuba study, the classic study of towns near small landholdings, near large landholdings, the purpose was that the towns near small landholdings were economically healthier, provided more retail trade, had more self-employed people than the towns near large landholdings. Now that impact on the towns near you, you don't really care about it.

MARGULEAS. Well, they are near us, both of them.

MILLER. Yes, both of them are near you.

MARGULEAS. Right. We do care.

MILLER. You do care?

MARGULEAS. Certainly we care.

MILLER. And if there were small landholdings, if you didn't own 100,000 acres, if those were broken up, perhaps even as the reclamation act might require, into twenty acre parcels, perhaps all those towns would be healthier.

MARGULEAS. Oh, I think that's just a supposition on your part.

DUKAKIS. On that note we'll have to end it. Thank you very much, Mr. Marguleas.

MARGULEAS. Thank you very much. (applause)

DUKAKIS. Mr. Rusher, another witness.

RUSHER. Now let's hear a view of this from the standpoint of agricultural economics. I call upon Professor Willard Williams. (applause)

DUKAKIS. Welcome to The Advocates, Professor Williams.

RUSHER. Professor Williams is Professor of Agricultural Economics at Texas Tech University in Lubbock, I believe.

WILLIAMS. Yes.

RUSHER. Professor, we've heard a lot about the threat of giant corporations to the small farmer. Just how serious is it?

WILLIAMS. In my view it's unadulterated exaggeration that is designed to take the attention off the real problems that are faced in agriculture today.

RUSHER. I take it there are real problems in American agriculture.

WILLIAMS. There are and there have been for a half century or more. These have nothing to do with corporations today.

RUSHER. What are those problems?

WILLIAMS. The matter of substantial improvements in technology over the years, the absolute demand to have larger farmers and fewer farms. This was coming regardless of the issues here today. These are the problems that are affecting the giants today as well as the small ones. The matter of highly varying prices, the matter of persistently low returns to resources invested in agriculture, the need for a great deal more capital.

RUSHER. Now, suppose the Nelson bill were passed. Would it help this situation in any serious way?

WILLIAMS. In fact, I agree with you, it would cause chaos in a great part of the agriculture that I know about. We have a great many large-scale partnerships, individuals who own more than three million dollars outside agriculture—these are some of the white hope we have for agriculture that perhaps will be able to cause it to survive under the low price food policy of the government today.

RUSHER. And the affect of the Nelson bill would then be what with respect to the farming?

WILLIAMS. Well, it would disrupt the structure, the organization of a good part of agriculture, and cause sort of a caste system to develop in agriculture. You would be saying to agriculture, you must stay there, you can't be anything else.

RUSHER. But, don't giant corporations drive out the small farmer, as Mr. Miller and his witnesses have suggested?

WILLIAMS. No, in more cases than otherwise—and this is widely recognized by the

farm papers and by producers—they are helping producers more than otherwise and some of the larger ones are investing in large acreage in, let's say, northern Florida, that need to be drained, have heavy capital investments, in the desert areas of California, in eastern Oregon, areas that need enough capital that no individual farmer can possibly afford.

DUKAKIS. Mr. Williams, I'm going to have to break in and let Mr. Miller ask you some searching questions on these subjects. Mr. Miller.

Mr. MILLER. Professor Williams, as an agricultural economist, do you think there is a value for the country in preserving the family farm?

WILLIAMS. Well, we've always had the argument about what the value of a family farm is. I know a family farm that owns three million dollars.

MILLER. No, well, you know what we're talking about.

WILLIAMS. Yes, I do——

MILLER. It's a hot debate in agricultural policy.

WILLIAMS. If you're talking about the family farm of the 1920's, it's gone——

MILLER. No. I'm talking about the family farm that exists today, the 400-acre, one- or two-man farm.

WILLIAMS. What is the family farm today?

MILLER. What *is* the family farm today?

WILLIAMS. Yes.

MILLER. Let me give you the size that it's gone to—380, 400 acres——

WILLIAMS. That is a mid-west farm. I know many family farms in the mid-west, grain farmers that are three or four or five thousand acres. I know some in Texas that are several hundred sections.

MILLER. You know what I'm asking you and I'd like the answer. The question is, given the average size farm that exists, that's farmed by one family—the kind of farm that Mr. Hale had, the kind of farm that Mr. Weisshaar had, the kind of farm that Mr. Jeckel has—is there a virtue to the country in having policies trying to preserve that family farmer?

WILLIAMS. I grew up on such a farm and I was told what prices I would pay and I was told what prices I would receive and I was told by the bank how we would live and I moved out of agriculture because I didn't want that kind of freedom.

MILLER. I have to just ask you the question again—just have to ask you the question again. Is the kind of farm that Mr. Jeckel has and that we've heard about worth preserving, assuming that there are a great many more like him and there are?

WILLIAMS. If you agree that if we permit him to grow and develop to the kind of industrialized and commercialized agriculture that we must have to fit your supermarkets, to fit your consumer requirements, to fit the kind of society we've developed today, then I agree with you. But if you do not, that is if you're saying let's keep him the same size he is or let's keep these small farmers out here struggling and living the same way I've seen a great many live——

MILLER. Oh, but you know no one's saying that, that's not what the bill says and——

WILLIAMS. Yes I do, it's my business to know.

MILLER. Of course you know no one's saying that. Do you agree with the Department of Agriculture that the most efficient farming unit in the country generally is the one to two man farm?

WILLIAMS. This is changing very rapidly. A one to two man farm can operate several thousand acres.

MILLER. I know that but that's what the studies conclude, isn't it.

WILLIAMS. I know many that own elevators, that own feed lots. We have multi-million dollar feed lots operated by families.

MILLER. What is the virtue then of permitting non-farming corporations who have to have assets of over three million dollars, after all, to come in the Nelson bill, what's the virtue of permitting them to farm?

WILLIAMS. The virtue is this, that the big problem of agriculture is acquiring enough capital in some way or other to survive. In no area of the country is the average size farm equal to the optimum, to the size that can operate efficiently. They've always been behind.

MILLER. We can help the farms acquire capital, can't we?

WILLIAMS. And the big corporations have been able to help, in many instances, farmers develop the kind of capital, by drilling the wells, by developing the land, by putting in the drainage and many of them have then turned the land over to farmers to use.

MILLER. Yes, and there's no other way the capital could be acquired?

WILLIAMS. They've had a big problem. They have had the government trying to help for fifty years now.

MILLER. Very succesesfully. I mean farm productivity is much greater in terms of rise in industrial productivity.

WILLIAMS. We haven't solved these problems where we get thirty dollar hogs one year and sixteen dollar hogs the next.

MILLER. How do you——

DUKAKIS. Gentlemen, I have to interrupt. Professor Williams, thanks for being with us. (applause) Mr. Rusher.

RUSHER. It isn't altogether clear, but if I understand what Mr. Miller is probing at, he seems to be saying that because there is a certain virtue or mystique in the family farm as he imagines it—as Professor Williams said, about fifty years ago—that there should be some sort of subsidy by the government or by someone to keep it there. I don't think that the farmers of America themselves want that. I think they're too individualistic to ask it.

DUKAKIS. Thank you, Mr. Rusher and now let's return to Mr. Miller for his rebuttal argument in favor of driving large corporations out of farming.

MILLER. There's no need for a subsidy, though I think if one were required to preserve the family farm and the kind of advantages and the towns surrounding the family farms, it would be worth paying. There's no need for a subsidy because the one to two man farm *is* the most efficient farm. What's happening is that others that simply know how to manage money better are affecting it. And it's justified in the name of competition. But for the father of United States Senator, Fred Harris, it's not competition, it's a stacked deck.

(film)

ANNOUNCER. From Oklahoma, the father of Senator Harris talks about his smalll farm and what the big corporations are doing to him.

HARRIS, SR. Well I think they're cutting us plum out because the big corporations can operate cheaper than the little farmer can operate. Just like your chain stores, your big chain stores, can buy—they can sell groceries cheaper than the little operations. And that's what your big corporations are doing, they're cutting the little guys plum out. We can't live on what we're doing. Well, they can take the volume of business and they can make money out of it, but look at the poor people they're cutting plum out. Well, what I'm trying to get at now is that I think that every man was created equal and if you give him a chance to do what he wants to do I think every man has got enough pride in all to want to do it by himself. And he don't want nobody to tell him how to do it, he needs to be smart enough to do it himself. But the big corporations that think well, hell, he can't make it and we'll just help him make it, we'll give him two dollars a day or three dollars a day and we'll run it and we'll make the damn money. And that's the way it looks to me and I don't want nobody to tell me how to do it or when to do it. I'm too old for that, I'm sixty-four years old, I've always made my own living, I've never been on relief, I've never drawn no commodities, don't have no education, and I think if you give people a chance they will do the same thing. I'm no smarter than anybody else. I just try to make my own living. I've lived on this place all my life. When I was raised up, there was a family owned every quarter of the land there was in this country and everybody was happy and everybody was making a living. They didn't have a lot of money but they was all living, they was happy. There was a family on every quarter. Now then, there's a family on about every eight or ten miles. (end of film)

MILLER. We have with us Mr. Harris' son, United States Senator Fred Harris. (applause)

DUKAKIS. Welcome to the Advocates, Senator Harris. If anybody who has been watching us has been counting, I think this is your third appearance in as many months and we really appreciate your coming to us again and sharing your thoughts and concerns in these issues with us.

HARRIS. Thank you Mr. Dukakis.

MILLLER. Senator Harris, is it in the natural order of things that industrial companies get into agriculture, that Ralston Purina grow chickens and Dow grows lettuce and Pyrex grow strawberries?

HARRIS. No, it's really unnatural. They're not more efficient at farming. They're more efficient at harvesting from us, the federal taxpayers, with tax subsidies and labor law subsidies, irrigation water law subsidies. Even college agricultural economists help them out sometimes with federal money.

MILLER. We've talked about the effect on rural America, but when farmers leave the land and come to the cities, does that have an effect on urban America as well?

HARRIS. Yes, I served on the Kerner Commission as you probably know, which made that study of the cities back in 1967. And one of the things we found was absolutely true, that if you to continue to have, as we do now, 800,000 people a year coming on into these cities, you simply can't catch up with what are already insoluble problems.

MILLER. Is there a virtue in farming or in any place else simply in being bigger? Is that something we ought to promote?

HARRIS. No, I think that generally you'd say that bigness is bad if it's for private profit and if it means that you're exploiting labor, if it means that you get control of markets so that you can drive up prices. I think by and large that's what's happened and I don't think that's good in America.

MILLER. Tell us about the affect on the country. I've spoken about the Arvin-Dinuba study—is there a value in preserving the family farm and the country that surrounds it, the community?

HARRIS. Yes. Thomas Jefferson thought so. And a lot of other smart people have felt that our kind of democracy probably thrives better where people can be small enough, are in a small enough community to belong to things, to have organizations, to have smaller retailers, to have churches, and so forth. The Arvin-Dinuba study is just a landmark study and it shows in California one town with a big corporation owning nearly everything and one with a lot of small farmers. There was twice as many political and social organizations and so forth in the place where there were small farmers. I think that's good for America.

MILLER. What should our national policy be? Should we encourage large companies to take over or should we really be promoting other things in rural America?

DUKAKIS. A very short answer to this, Senator.

HARRIS. We should stop subsidizing their take-over of agriculture.

MILLER. Thank you, Senator.

DUKAKIS. Your old friend, Mr. Rusher is going to ask you some questions.

RUSHER. Senator, am I correct in believing that from 1954 to 1969 under Section 22, the State Constitution of Oklahoma, corporations were prohibited from farming in the State of Oklahoma?

HARRIS. Yes, but it is my impression, though I haven't been in the Attorney General's office or anything, that that was not a self executing provision in our law.

RUSHER. No, but it was however, the uniform interpretation. Then, in 1969, the court ruled that they could farm, is that correct?

HARRIS. I'm not familiar with the exact details of it, but by and large——

RUSHER. By and large that will be true?

HARRIS. No, well, I don't know whether that's true. I was just going to say, Oklahoma, North Dakota and Kansas, I think rightly, said a long time ago that corporate agriculture is bad. We haven't enforced that as well as we ought to though.

RUSHER. Well, what I'm getting at is how could your old pappy tell us about his small farm and what the big corporations did to it and how they're just driving the little fellows plum out of it, if corporations were not even permitted under the State Constitution of Oklahoma?

HARRIS. Well, that's exactly what *is* happening. For example, in vertical integration——

RUSHER. Was it just the thought of them that drove him out of it or——

HARRIS. No, the vertical integration of the livestock industry, for example, has not been prohibited. It isn't under the Kansas anti-corporate law. So, you're getting a lot of oil companies, for example, now getting into huge livestock production operations which ought to be prohibited in my view.

RUSHER. Mr. Miller seems to think that the Nelson bill, if passed into law, wouldn't affect Tenneco's operations. Do you agree? And do you approve?

HARRIS. Well, why are you against it if it doesn't, then?

RUSHER. I'm not sure that I consider Tenneco what I am here to defend. I am here to defend higher values. But tell me, Mr. Miller went through quite an elaborate elocution to prove that Tenneco wouldn't be put out of the farming business. Do you think it should be?

HARRIS. No, I think he was asking——

RUSHER. Are you for Tenneco being in its farming operations?

HARRIS. I'm strongly opposed to that. I think that's really bad for America. Terrible for California too.

RUSHER. Don't you think Senator Nelson ought to re-draft his bill to include something about that?

HARRIS. Well I think it already applies to them, and if he doesn't——

RUSHER. Do you disagree with Mr. Miller about the interpretation?

HARRIS. No, and I think Mr. Miller doesn't take any different position from what I do.

RUSHER. Well, maybe not. I don't know. It seemed to me he did.

HARRIS. Your man from Tenneco you brought on as a witness should be in favor of the Nelson bill. I took it he was against it.

RUSHER. He is, but he's fascinated by Mr. Miller's interpretation that it doesn't apply to him.

DUKAKIS. Mr. Rusher, let me break in for a second. Senator, nobody has mentioned farm laborers here and it's my impression that Cesar Chavez and his people have had an easier time organizing big farmers, big corporate farmers, than small farmers. They can get collective bargaining with them much more easily. Now you're a man who's concerned about farm labor, isn't one argument for big corporate farms that the farm laborer can be treated better because he can bargain collectively with him?

HARRIS. No, I don't think that's so. First of all, the biggest part of corporate agriculture is totally unorganized and wildly opposed to being organized. But if you're a small grower, you're worried about having to compete with all these big subsidies that these corporations get and so you don't want to be organized as one more disadvantage as against those big corporations. If we could break them up, then I think it would be easier for everybody to be organized, and I'm for them being organized and for a minimum wage in agriculture across the board, small or large.

RUSHER. I might add that if Senator Harris is on The Advocates much more, we'll have to get him a card in AFTRA so that he can be organized too. Senator tell me, back to efficiency, I have here a report of the United States Department of Agriculture's Economics Research Survey dated November 1971 entitled *Midwestern Corn Farms*, with which I assume you might be to some degree familiar. It says in the abstract at the top of it: "Rates of return on investment are greater for the large operations because of economies of size."

HARRIS. Are you arguing with the United States Department of Agriculture?

RUSHER. Are you?

HARRIS. No. And your agricultural economist, as I understood, said yes, the USDA is right. At least he didn't disagree with it as far as the present situation.

RUSHER. I don't think he said the USDA was right in this, I don't think he said that the USDA was right in saying that small farms were necessarily as efficient. What about the statement? "Rates of return on investment are greater for the large operations because of economies of size." Is that right or wrong?

HARRIS. Show me the balance sheet, but you cannot deny that one or two——

RUSHER. Well come on! (laughter)

HARRIS. —one or two family farms, one or two man farms, according to the USDA, you surely don't discount that source, are just as efficient as the larger farms.

RUSHER. Far from discounting that source, I am holding its report in my hand and trying to get you to agree with it.

HARRIS. Well, you're trying to pick up an isolated example.

RUSHER. An isolated example like midwest corn farms?

HARRIS. Well that certainly is an isolated example.

RUSHER. I see.

HARRIS. Do you disagree with the USDA's figures for——

RUSHER. I agree exactly with what they have said. Tell me, should we favor corner grocery stores over supermarkets?

HARRIS. In what capacity, in what way?

RUSHER. In any capacity.

HARRIS. We ought not to subsidize——

RUSHER. Do they have a value—do they have a value to preserve? Isn't it in the interest, really of all the people in the United States, including in the very long run the little old corner grocer who is running a small operation, that we should eventually get more efficient larger operations?

HARRIS. Listen, if the little one is driven out, like they are in agriculture, by tax subsidies, labor law subsidies, irrigation water law subsidies——

RUSHER. Aside from that.

HARRIS. —and are in violation of antitrust.

RUSHER. I'm talking about the value.

HARRIS. Well, you're not either. The antitrust laws are being violated and they ought to be enforced. I would just want to make those antitrust laws available in agriculture.

RUSHER. Why aren't they available now?

HARRIS. Well, they're not, the law doesn't allow it. That's what we're trying to do.

RUSHER. What do you mean, it doesn't allow it?

HARRIS. That's what the whole argument is about.

RUSHER. The Sherman Antitrust Act and the Clayton Act don't exclude farming by any means.

HARRIS. Why, they certainly do.

RUSHER. Where and when?

HARRIS. When the Clayton Act, which is the basic act, was written——

RUSHER. The Sherman Act is the basic act.

HARRIS. Well, talk about the Clayton Act because that's what the Nelson bill goes to. It applies in industry, it ought to apply in agriculture.

RUSHER. Yes, so what about the Sherman Act? Why can't the laws we have be used?

HARRIS. Well, if you like the laws, what's the matter with the Nelson law?

RUSHER. Because we don't need it. It's going to hurt all sorts of people in an attempt to reap vengeance on a few large corporations, it's going to hurt an awful lot of small people.

HARRIS. Yes, obviously that's where I and my dad, who's a farmer, disagree with you and others——

RUSHER. I'm not worried about him as long as that Constitution of the State of Oklahoma stays there and keeps them at it. You suggest——

HARRIS. I would enforce the Constitution of Oklahoma.

RUSHER. Well, why don't you. I think that's not a bad idea. Do you mear to tell me that unenforced corporations drove your dad to these straits that he told us about?

HARRIS. It's a big part of it, that's true. All around America, that's exactly right.

RUSHER. You suggested——

HARRIS. And they're getting all these big farm subsidies and tax subsidies to do it.

RUSHER. You suggested, at one point, that farming should be made attractive to keep people from moving to our crowded cities.

HARRIS. Exactly.

RUSHER. Wouldn't it be more sensible to make it attractive for business and industry, light industries appropriately, to move out into what is now strictly rural territory and so thin out the ghettos just a little bit? Isn't that the appropriate direction rather than subsidizing some kind of a green rural Arcadia where people will stay and therefore not——

DUKAKIS. Senator Harris, I can't, I can't——

HARRIS. You're subsidizing a take-over——

DUKAKIS. I can't let you answer that question. It's nice to know where you get that accent. Obviously it was from your dad. Thanks very much for being on The Advocates again. (applause) Mr. Miller, you have one minute to summarize your case.

MILLER. The case of Tenneco is instructive, because it does different things. It owns 130,000 acres of land in the San Joaquin Valley and its large landholdings contribute to a more depressed economic pattern for all the towns around these large landholdings. It would have to sell those landholdings under the bill. It could however, like any other corporation, buy produce and sell it and market it and advertise it. The bill doesn't stop that. What the bill goes to is the effect on rural America, the harmful effect of the large landholdings, subsidized not because they are more efficient, not like the supermarket that drives the corner grocery store out of business, that is on a level of competition, but because the large corporations work on a different balance sheet. They can afford losses, they get the tax write-off. Let's have genuine competition based on what agriculture can do.

DUKAKIS. Thank you, Mr. Miller. Mr. Rusher, you too have one minute to summarize your case.

RUSHER. To hear Mr. Miller talk, you would think that tonight's proposal will chase Wall Street out of farming, reduce tensions in our cities and transform rural America into a bucolic landscape of small, green, family farms. But the real affect of this bill, as

Professor Williams pointed out, would be to create havoc among thousands of partnerships and similar enterprizes which, by no stretch of the imagination can be called giant conglomerates, but which produce two thirds of America's food. And even driving out the few conglomerates would only force farmers like Don Mitchell, the date farmer who you saw earlier who works with the conglomerates, back to uneconomic methods. Ultimately into bankruptcy. Is that progress? Wouldn't it be far better for Mr. Miller and Senator Nelson and Senator Harris to devote their talents to helping to train or relocate the 60% of America's farmers who earn less than $1,700 a year. Perhaps there are votes to be had by blaming the ills of American agriculture on the larger operations that inevitably accompany progress. But in the long run, everybody pays for such demagoguery. The taxpayer, the consumer and even the small farmer himself. I urge you to vote no on tonight's question.

DUKAKIS. Thank you, gentlemen. And now it's time for you at home to act and to express your views on tonight's question. And it's important that you do so because Senators and Congressmen and others who are in government have told us how closely they follow THE ADVOCATES and particularly THE ADVOCATES poll. Those opinions that you, our viewers send in. Over half a million letters have been received since THE ADVOCATES poll first started two and a half years ago. So, write us. THE ADVOCATES, Box 1972, Boston 02134. And, as week in and week out THE ADVOCATES debate questions calling for action by the people who represent us in government, it is a way for you at home to register your views on what America should be doing and to know that these views will be counted and that the results will be passed on to the people who represent you in Washington. So, we urge you to write for the common good that results when a government knows how the citizens feel about the vital issues of the day. Yes or no—what do you think? The question on which you'll be voting: Should large corporations be driven out of farming? Remember that address: THE ADVOCATES, Box 1972, Boston 02134. Recently, THE ADVOCATES debated the question: Should the states raise all public school funds and distribute them equally? Of the more than 2,700 viewers across the country who sent us their votes, 1,562 or 57% were in favor of the proposal, and 1,151 or 42% were opposed. 24 expressed other views. And now, let's look ahead to next week.

(Film.)

ANNOUNCER. The sale of sex is estimated to be a two and a half billion dollar a year business. It is viewed by many as not only a tragedy, but an affront to any decent society. Some sociologists, however, feel that while prostitution may be both degrading and exploitive, it is, at worst, a victimless crime and law enforcement could better spend its time and energies in combatting more serious problems of violence and robbery, as well as white collar embezzlement and government corruption. Should prostitution be legalized? A question next time for THE ADVOCATES.

DUKAKIS. Thanks to our advocates and to our witnesses. I'm Michael Dukakis. Please join us again next week at the same time. Thank you and goodnight. (applause)

CONSUMERS MISLED ON FARM COSTS

Mr. CURTIS. Mr. President, in recent months the agricultural interests of our country have been grossly maligned. One of the most outstanding cases was that conducted by Esther Peterson in behalf of Giant Food Stores. Because the off-the-farm costs in reference to many foods are unreasonably high, these deceivers attempt to mislead the consumers. Mr. Lacey Fosburgh has written an article, entitled "High Meat Prices Laid to Rackets," which was published in the New York Times of May 9, 1972. Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

HIGH MEAT PRICES LAID TO RACKETS

(By Lacey Fosburgh)

The infiltration of organized crime into key positions in the New York City meat industry has artificially inflated the retail prices for fresh meat in supermarkets by 15 per cent, according to information developed by the Manhattan District Attorney's Office and other law-enforcement agencies here and in Washington.

Consumers buying meat in the New York-New Jersey area, they say, are putting at least a million dollars a week directly into the coffers of organized crime.

YEARS OF COLLUSION ALLEGED

Racketeers—both in the industry and in the unions that service it—have reportedly been in collusion for at least two years "systematically" extorting "week by week, month by month," as one source put it, "vast sums of money" from the supermarket chains and the wholesale suppliers.

"This is the price they pay to stay in business," another source said, "the price of labor peace."

This picture of extortion, bribery and the ultimate victimization of the consumer emerged from a series of interviews in the last few weeks with Federal and state law-enforcement officials, members of a Congressional subcommittee investigating the meat industry and experts on organized crime in general.

Possible collusion between key figures in the industry and the unions—principally Local 174 of the Amalgamated Meat Cutters and Butchers Workmen's Union—has been the focus of an investigation by the Manhattan District Attorney's office for more than a year.

Several weeks ago a grand jury was convened to hear evidence on such crimes as extortion, coercion, grand larceny, bribe receiving by labor officials and commercial bribery.

Through the years racketeers have gained control periodically of various branches of the food industry, such as trucking operations, and have been implicated in crimes involving processed and kosher meats. The sources generally agreed, however, that the system operating in New York now was far more pervasive.

Sources have disclosed that the daily operation is rather straightforward. Representatives of both the retail and wholesale outfits are approached by racketeers who make it clear that unless they inflate their prices and hand over the extra money, their companies will no longer be able to stay in business because of severe labor troubles.

'THEY'RE BUYING PROTECTION'

"It's really very scary," said one Federal source. "They're threatened, and they pay off. They have to, I suppose. They're buying protection."

Representative John Melcher, Democrat of Montana, whose House Subcommittee on Livestock and Grain has been looking into the meat industry for more than a year, said:

"The activity of organized crime in meat sales in New York is much broader than anything uncovered before. We're talking about quarters and sides of meat, vast volumes of beef sold every day of the week. We're talking about a drain from the consumers that runs into over a million a week."

Alfred J. Scott, the Chief Assistant District Attorney for New York County, and Assistant District Attorney Franklyn Snitow are in charge of the investigation, here, but they have refused to comment on the case.

The key question disturbing most officials aware of the dimensions of the problem is precisely how much the consumer is being affected. Virtually all sources questioned said New York prices were inflated approximately 15 per cent.

They said they had arrived at the 15 per cent average in two ways. In the first place, they said, the evidence uncovered by the Manhattan prosecutors and various Federal agencies—with the use of electronic surveillance, informants and cooperative witnesses—indicates that the racketeers' take ranges from 2 to 3 cents a pound on some items to as much as 30 or 35 on others.

Secondly, the point to the consistent discrepancy in meat prices here and in Chicago where, according to the Bureau of Labor Statistics, during the last year virtually all meat sold was 30 to 60 cents a pound cheaper than here.

As Representative Melcher put it: "It's out of whack." A study of both cities, he said, shows that they have comparable costs for transportation and distribution and that wages are lower here than in Chicago.

"There's no logical reason for such a discrepancy," he said. "Somebody is getting a big bite of it somewhere."

The year-long investigation by the Manhattan District Attorney's office came to light about a month ago, when Mr. Snitow appeared in State Supreme Court to ask that Herbert Newman, president of Transworld Fabricators, a meat brokerage concern at 40 Gransevoort Street, be ordered to testify before the grand jury.

Several principals in the company had close contact in the past with organized-crime figures, and individuals indirectly associated with the concern are among the targets of the District Attorney's inquiry.

LINKS TO ORGANIZED CRIME

One of the leading credit-clearing houses for the food industry, Market Services, Inc., lists Sol Steinman as its vice president. A source there described him as the brother of Moe Steinman, who is the director of labor relations for Daitch-Shopwell.

Moe Steinman was a key witness at the State Commission of Investigation's 1969 hearings into the infiltration of organized crime into legitimate business. He admitted during the hearings that he had a close social relationship with John Dioguardi, who is known as Johnny Dio and is described by law-enforcement officials as a captain in the crime-syndicate family operated by the late Thomas Luchese.

In addition Mr. Newman, who has been given immunity to testify before the grand jury, and Mr. Steinman were formerly the owners of another meat-brokerage concern, Kaylo Associates of 408 West 14th Street.

In 1969, however, according to sources in the meat industry, ownership of Kaylo was transferred, for unknown reasons, to Charles Anselmo, a man described by officials as a major loanshark with strong organized-crime connections. In 1966 he was convicted here on a number of charges involving conspiracy, extortion and bribery in the meat industry and was sentenced to 18 months in prison.

PROBLEMS OF THE ENVIRONMENT

Mr. BENTSEN. Mr. President, I am sure we are all well aware of our Nation's concern over problems of the environment. One of the most crucial dilemmas facing our Nation at the present

time is the growing conflict over meeting ever-increasing energy needs, while at the same time protecting the environment and conserving our precious natural resources. The Nation faces an energy crisis which has been compounded by our environmental concern.

Looking into the future, our society's energy demands are expected to double by the mid-1980's. This means our Nation must not only improve its ability to meet present energy needs, but must also develop new means which can supplement our needs in the future. Yet, these energy needs must be recounciled to the delicate balance of our environment. This is where the dilemma ties, and where our concern should be directed.

We must continue our present course of developing rigid standards for curbing the pollution of our environment, yet we must not lose sight of certain economic priorities which are necessary for the continued growth and development of our Nation.

I ask unanimous consent to have printed in the RECORD a speech delivered recently by M. Frederik Smith to the conference board's meeting on energy and public policy in New York City which outlines this national problem. Mr. Smith, an associate of Laurance S. Rockefeller and consultant to the Rockefeller family, has been widely recognized for over 40 years for his work in the related fields of conservation and outdoor recreation.

Mr. Smith's remarks reveal a clear understanding of our Nation's energy-environment problems.

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

PROBLEMS OF THE ENVIRONMENT

(By M. Frederik Smith)

In the entire environmental phenomenon, nothing provides so effective a rallying point as the production and use of energy.

In any widespread movement, a villain is an essential requirement—and here is a handy-dandy, ready-made, prepackaged concentration of villains. The energy producers spill oil on beaches and kill ducks. They lay pipelines that threaten ecology and disturb wildlife. They frighten the universe with wayward atoms that might get out of hand. They pollute the air, heat the waters, massacre fish, and clutter the landscape. They attempt to build new generating plants that will encourage more factories and thereby increase pollution. They don't supply enough power to prevent brownouts, and occasionally cause blackouts. Those poor souls involved in energy production are the World's Champion Universal Villains: they can't be right for being wrong, and everything they do becomes a propagandized crime against the public interest.

Somewhere along the line we need far less rhetoric, not so many dramatic accusations, a vacation from headlines, and fewer lawsuits in which the plaintiffs have no responsibility for the ultimate impact of their actions. Instead, we could use more hard-headed analysis that would reveal the dangers of simplistic, instant solutions. Sooner or later a few homely but essential truths need to be surfaced.

Somehow the public must come to recognize that we can't develop or grow—or even stay where we are—without a reasonable increase in energy resources. Development and growth may not be an essential objective of the Republic, but the Republic cannot continue to exist without enough economic growth to generate the increasing funds necessary to keep the show on the road. Whether or not to curb growth is far from an academic question.

This is particularly true in the case of electrical energy, because that's the only kind we can produce expeditiously where we want it when we want it in necessary quantities. If one of our basic needs is to disperse industry in an effort to decentralize population—and it is—we need first to disperse power availability, and this means new systems and growth of existing systems. We will need more power in more places.

Community and industrial pollution have serious consequences, and practical solutions are necessary. There are two possible approaches: one is to eliminate industries and communities; the other is to apply new power-devouring equipment to reduce pollution or dispose of the spoil. Only a handful of extremists with stars in their eyes and little else in their heads would suggest the first alternative, so we are left with the second. I said this in a conference once, and a little man in the second row jumped up and said my trouble was that I didn't have a population policy. That of course is a third alternative: get rid of people. But even zero population growth would take a couple of generations to produce effective results, and I doubt that anyone really wants to spend two generations in the dark, tottering on the edge of economic disaster.

We have a problem, and it is a humdinger. There is an irreducible, inescapable need for reasonable growth—which translates into power production—and we must find ways to reconcile supplying this need with the undeniably fragile aspects of the environment. It cannot be done with rhetoric or political incantations. We simply have to get down to cases:

1) We must all agree that protection of the environment is a commanding consideration in virtually all the plans we make in the public and private sectors. It is an unavoidable factor in all social and economic accounting. I think all but a few unreconstructed industrial rebels—fortunately a vanishing race—are agreed on that.

2) There are three variables that need to be balanced if the essential job is to be done effectively and with all due dispatch: these variables are time, money, and the degree of purity that must be achieved both in the short term and over a longer period of time. It makes no cost-benefit sense to launch a crash program designed to meet an unnecessary degree of purity too fast, even if all social and ethical affects are fully accounted for in the benefit end of the equation.

3) Searching for a greater quality of life does not start and stop with treating dirty water, unpolluting air, stopping annoying noise, or preserving wildlife, landscape and green space; it also involves economic stability, the capacity of poor people to escape poverty, the restoration of personal independence and pride, the availability of employment, the capacity to buy and own material things, and the fiscal viability of cities. History proves beyond question that the availability of economical power, of energy, is the source from which all these other blessings flow. Sabotage power, and you sabotage the future.

So what do we do about it? We stop confusing ultimate, idealistic objectives with means to a desirable end Federal administrators and officials—and those in states, too, for that matter—must stop seeking notoriety and inviting editorial kudos by espousing impossible immediate standards of purity wrapped in rhetorical emperor's clothes. They'd better roll up their sleeves and get to the point: what is really necessary, how fast, and how can a feasible, workable system be set up to achieve the essential ends? This of course calls for constructive thinking and planning before governmental edicts are pronounced or appropriations called for, and governments so far have displayed no talent for that. Somehow cost-benefit analysis, realistic planning and sound organization must be injected into the democratic system if that system is to survive and we are to achieve anything of importance.

Everybody—in Abe Lincoln's' concept of everybody being smarter than anybody—must raise a voice above the din of the simplistic vocal minority; because about how far, how fast, at what cost, than the anybodies being nourished so lavishly by the controversy-hungry media.

And there is evidence that the Everybodies are beginning at last to be heard.

We are over the hump. The time has come to get on with the job.

NATIONAL AGRICULTURAL INSTITUTE TOUR "OPERATION FACT"

Mr. FANNIN. Mr. President, on April 18, 1972, the National Agricultural Institute, an organization headquartered here in Washington, devoted to the goal of presenting agriculture's true story to the American public, launched an 11 day tour under the theme "Operation Fact."

The tour team was composed of four farmers: John Barringer, a cattleman from Tennessee; Gene Moos, a wheat-grower from Washington; Thurman Gaskill, a soybean-hog farmer from Iowa; and Jack Francis, a cotton producer from Peoria, Ariz.

These four men visited with consumer groups, students, housewives, and media representatives in Washington, Chicago, Seattle, Houston, Atlanta, Boston, and New York.

Such a program has been needed for many years and I am encouraged by reports I have received on the results of "Operation Fact." I also know that Senator CURTIS from Nebraska and Representative GEORGE MAHON of Texas were instrumental in organizing and encouraging this group, and I want to extend my compliments and contratulations to them as well as to Secretary of Agriculture Earl Butz, who participated in the Washington kickoff press conference on Operation Fact.

I feel that Senators will be most interested in the results of the tour as well as some of the information gathered by the four farmers who made the trip.

For that reason, I ask unanimous consent to have printed in the RECORD a statement by my good friend and fellow Arizonian, Jack Francis, which sets forth his impressions of the 11-day trip. Jack is a longtime agricultural leader from my home State. He has been active in many agricultural organizations, both on the State and national levels. He is regarded by all who know him as an intelligent, progressive, forthright spokesman for American and Arizona agriculture. In presenting his statement which appeared in the May issue of the National Agricultural Institute's Newsletter entitled, "Agriculture, USA," I want to commend Jack and his colleagues for taking on such a job and for carrying it out in the manner in which they did.

There being no objection, the state-

ment was ordered to be printed in the RECORD, as follows:

NEVER PREJUDGE THE PUBLIC

I've never had that lesson hammered home more clearly than during 11 days of talking with housewives, students, consumer spokesmen and media representatives all across the country.

The consumer's attitudes toward the farmer must be pretty fuzzy—maybe even downright antagonistic. That's how I felt at the outset: uncertain, not knowing what to expect, resigned to the seemingly inevitable confrontation. I had prejudged the public and I'm glad to say, to a quite erroneous degree.

Consumers are much more accessible and willing to listen and much less hostile and antagonistic than I had expected. They are interested; they want to hear what we have to say; and they are more than willing to give American agriculture a fair hearing.

But does that mean all goes well for the farmer in megalopolis? Hardly; it merely means that there is much more potential for genuine, effective communication than many of us had dared to realize. We still have problems; the encouraging thing is that our problems have satisfactory and workable solutions. We can help the public become more accurately and completely informed about American agriculture.

How do we go about it? In my opinion, while consumers do have a generally favorable attitude toward farmers, they do not have enough information about agriculture. They seem generally unaware of what agriculture contributes to the economy of the United States, which really gives them very little direct incentive for wanting that contribution continued.

Because of consumer concern about food prices, there seems to be an increasing tendency to pin the blame on someone. That approach, of course, implies that someone is guilty of making exorbitant profits—which runs contrary to most available evidence. This approach—if permitted to gain sufficient momentum—would divert tremendous public attention and energy away from the more responsible approach of improving the system.

And finally, consumers are perplexed about farm programs. Generally they see the programs as a misguided form of welfare for people who don't need welfare. If the programs serve their intended purpose of contributing toward economic stability, then they need to be explained and debated in that context. Then it becomes possible—just possible—for the consumer to change his view.

His mind is not closed. That, after all, is the real lesson about prejudging the public; it's up to us to do the convincing.

VISION SCREENING OF CHILDREN AND YOUTH

Mr. MONDALE. Mr. President, I ask unanimous consent to have printed in the RECORD materials concerning the importance of vision screening for children and youth.

The first document, entitled "Why the Need for Early and Periodic Screening, Diagnosis, and Treatment of Individuals Under 21," is a statement prepared by the American Optometric Association. This professional organization developed the statement in response to the recent decision of the Committee on Finance to postpone and dilute implementation of the "early and periodic screening" program under medicaid. The AOA statement outlines clearly the possible effects of undiagnosed visual defects upon the school performance as well as the health of a child. The statement further notes that late detection of visual disabilities is particularly harmful to youngsters who come from disadvantaged families—the same group which the "early screening" program is designed to aid.

Following the AOA statement, I ask unanimous consent to have printed in the RECORD a series of excerpts from "Vision Screening of Children," a publication of the Public Health Service of the U.S. Department of Health, Education, and Welfare. This publication too notes that:

Visual defects are reported to occur more frequently among children . . . of low socioeconomic levels.

It points out also that—

All children should be tested periodically, regardless of whether signs of possible visual problems are present or not, and that it is important to provide adequate followup of children referred for diagnosis.

This information is being placed in the RECORD in support of my previously announced intention to attempt to reverse the restrictive actions of the Finance Committee on this important program. Specifically, the committee voted to postpone full implementation of the program by 2 years—to July 1, 1975—and not to require all States to provide certain services within the program. Children in as many as 18 States, for example, could be deprived of eyeglasses they need if the Finance Committee's action is allowed to stand.

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

WHY THE NEED FOR EARLY AND PERIODIC SCREENING DIAGNOSIS AND TREATMENT OF INDIVIDUALS UNDER 21

Good vision is critical to the intellectual and social development of our children and should be given a high priority in any child development program. Vision is at the heart of the learning process and any impairment of this precious resource can seriously impede a child's learning and maturation process.

Because reading is the primary educational skill, it is estimated that over 80% of all learning takes place through the visual process, resulting in a direct relationship between reading skills and adequate vision. Yet, millions of children suffer from child related visual defects such as binocular visual impairment, amblyopia or lazy eye blindness, strabismus or cross vision, and unsatisfactory muscle coordination all of which, if undetected and untreated, have an adverse effect upon his reading skills and, consequently, his educational development.

Proper binocular vision is especially critical for the achievement, of a child's maximum reading potential. Yet, thousands of children, even those with so-called "perfect vision" of 20/20 visual acuity, have not learned to maintain binocular visual performance so as to make effective use of the impulse signaled by the eyes to the brain. This impairment, according to a study by the *U.S. Public Health Service* in 1965, affects 7.4% of the American children at age 6 and grows to 17.2% at age 11.

Another child related visual defect is amblyopia or what is commonly known as "lazy eye blindness." This visual defect which is a result many times of nutritional deficiencies and is therefore prevalent in economically and socially deprived areas, leads to a general dimming of vision in the child. Unfortunately, it occurs without any external manifestation so, unless a child's behavior is radically affected, it usually is undetected until it reaches an advanced stage. An article in the *American Journal of Public Health* in 1965 estimated that amblyopia may affect 6% of the American children, with the majority affected being of pre-school age.

These particular disorders, along with strabismus and unsatisfactory muscle coordination do not necessarily have to result in the tragedy of impeding a child's educational and social development. All of these visual disorders, if detected early, can very often be corrected or at least ameliorated by the techniques and devices of modern visual science.

Vision care practitioners, such as optometrists, have long pioneered in the area of learning theory as it relates to visual disorders and from this long involvement has developed techniques and instruments to treat these damaging defects.

The tragedy, then, of child visual disorders and their consequent effect upon learning and development, lies not in the fact that they can be detected and corrected, but in the fact that, for thousands of our children, such disorders go undetected, particularly in children of pre-school and early school ages and especially in children from economically and socially deprived circumstances. Although this tragedy is an individual one for the particular child suffering from a visual disorder and stunted development, it is easily translated into a larger social tragedy when these children experience the frustrations of impeded intellectual and emotional development.

For the child or youth hampered with a vision problem which adversely affects his ability to read or learn becomes, quite naturally, frustrated, and more often than not, he vents this frustration on his teachers, school, parents, community and general society. It is not coincidental that up to 80% of delinquents and semi-delinquents studied by the White House Conference on Juvenile Delinquency had learning difficulties, especially in reading, and poor vision was found to be a contributing labor in 50% of these cases.

Nor is it coincidental that the same White House Conference found that inner-city ghetto children appear to have a much higher—in some cases almost twice as high—incidence of learning disabilities, perceptual difficulties, and developmental visual problems than do the more advantaged children in other parts of the city.

Clearly, the dimensions of childhood visual disorders should represent a challenge to all of us. If it is so acceptable to state that every American has a right to adequate health care, then it should be acceptable to state that every American child has a right to the unimpeded attainment of his educational potential, and, where anything interferes with this attainment, a child should have a right to services which can correct such interferences.

IMPORTANCE OF VISION SCREENING

Impaired vision in children can seriously impede learning and contribute to the development of emotional and behavior problems. If vision defects are discovered and treated early, however, serious impairment and its consequences can often be prevented. In recent years a considerable amount of knowledge has accumulated on vision problems and their early detection through vision screening. This report summarizes the main principles, problems, and methods in vision screening and briefly reviews the estimated prevalance of eye problems among children.

Unlike adults, children with impaired vision are often unaware of their handicap and so do not complain or seek help. It is up

to the adults responsible for their health care and supervision to uncover these problems. Ideally, each child should have a professional eye examination in infancy and at regular intervals thereafter throughout childhood. But lack of public awareness of the value of such examinations, insufficient trained personnel, and the high cost of professional care are some reasons why this goal is more ideal than practical.

Vision screening is less satisfactory but it will identify children who are in need of professional eye care. Screening of preschool children is especially important because amblyopia ("lazy-eye blindness"), which is reported to occur in 1–6 percent of children can often be prevented if the condition is detected and treated in the first years of life.

Screening activities have expanded considerably, particularly in regard to preschool children, for whom there was little screening being done a few years ago. Vision screening in the Head Start projects, for example, means many more thousands of children are being reached (about 650,000 children were in Head Start in 1968, of whom most were screened for visual acuity). Preschool screening programs that are reported to the National Society for Prevention of Blindness have been growing rapidly (from 86 projects screening 52,500 children in 1963–64 to 289 projects screening 156,000 children in 1965–66). Nevertheless, in relation to the total 3- to 6-year-old population, it would appear that only a small fraction is being screened.

Vision tests should be a part of the periodic physical examination, and vision screening should be incorporated into any program undertaking the total health care of children. Vision screening should also be conducted in those places where children can be reached as captive groups, such as day care centers, nursery schools, and elementary and high schools.

When vision screening programs are established in a community, every effort should be made to call the public's attention to their existence and to encourage their use. It is also important that the difference between a professional eye examination and a vision screening test be explained to the parents of children tested. Parents should be instructed to seek professional help whenever they have any doubt about their children's vision, regardless of how recently the child has had a vision screening test with normal results.

Prevalence and Types of Vision Problems

A survey by Crane et al. in St. Louis found that 27 percent of the school children had eye problems which required treatment or observation. On the basis of this study, the Children's Bureau estimated that, in 1960, 10,200,000 children between 5–17 years of age had eye conditions requiring special care. The number projected for 1970 is 12,500,000.

The prevalence of visual problems among preschool children is more difficult to determine, for there has been no entirely satisfactory means of screening children in this age group, and what constitutes normal vision in the preschool years has remained to some extent a controversial subject. The rate of referrals from various screen programs among preschool children ranges from 1 to 30 percent.

Of the 156,252 preschool children who were screened during July 1965—June 1966 in projects reported to the National Society for the Prevention of Blindness, more than 8,700, or about 5.5 percent, were referred for professional eye care. Analysis of the results of professional examinations of the children referred from 109 projects revealed that 75 percent of those examined were in need of eye care, giving a defect rate of 29 per 1,000 screened. Of the children for whom a specific abnormal condition was reported, refractive errors were diagnosed in 87 percent, muscle imbalance in 22 percent, and amblyopia in 11 percent. Since these findings are based on incomplete reporting of results, they probably underestimate the proportion of preschool children with visual problems. The rapidly expanding vision screening programs for preschool children should result in better knowledge about vision in this age group.

Visual problems are more prevalent among older children than among younger children. In the St. Louis study, 31 percent of the sixth grade students required eye care or observation, while only 23 percent of the first grade students needed such attention. In the Orinda (Calif.) study visual problems were found in 18 percent of the children between 5 and 7 years of age and in 31 percent of the 13-15-year-old-group. Partially seeing children, defined as those with a visual acuity of 20/70 or less in the better eye after the best correction possible, are estimated to number 1 in 500 in both the preschool and school-age groups. Children who are legally blind (defined as visual acuity of 20/200 or less in the better eye after correction, or acuity better than 20/200 but visual field in the better eye restricted to less than 20 degrees in the widest diameter) number about 1 in 8,000 in the preschool group and 1 in 1,400 in the school-age group.

The two major correctable visual defects among preschool and school age children in the United States are refractive errors and muscle imbalance, both of which are considered causative factors of amblyopia. In the St. Louis study, refractive errors were found in 20.5 percent of the children examined (hypermetropia, hypermetropic astigmatism or both in 12.3 percent, and myopia or myopic astigmatism or both in 8.2 percent), and muscle imbalance in 4.4 percent.

Visual defects are reported to occur more frequently among children with mental retardation, cerebral palsy, or hearing loss, and among children of low socioeconomic levels. Fletcher et al. reported that 76 percent of 102 mentally retarded children who were given a complete eye examination had abnormal findings. The rate of referral in a vision screening program conducted by the Michigan Health Department among a group of mentally retarded children was three times that found among regular classroom children. In a group of 98 children with cerebral palsy, age 4 to 10 years, Schachat et al. found that 68 percent had either an ocular defect or a refractive error, or both. Suchman reported that 58 percent of a group of 103 children with impaired hearing had some visual abnormality. Of considerable significance is the fact that although 90 percent of the visual defects found in this group of children were considered correctable by the authors, 87 percent were not even partially corrected. A study conducted by the Michigan Health Department indicated that children from low socioeconomic areas have twice as many visual defects as children from high socioeconomic areas.

Defective color vision, which is hereditary in most cases, occurs with much greater frequency among boys than girls in the general population. The reported prevalence varies considerably among the surveys. According to "Services for Children with Eye Problems" published by the American Public Health Association, about 8 percent of boys and one-half of 1 percent of girls in the average school population have evidence of defective color vision. Higher and lower figures have been quoted by other sources. Color blindness varies with race; for example, red-and-green blindness is reported by Pickford to be more frequent among whites than among Negroes.

Until recently the prevalence of color blindness and the male-female ratio of cases were thought to be the same for the mentally retarded as for the general population. Studies now indicate a substantially higher prevalence in the retarded and a nearly even male-female ratio among the cases. It is possible, however, that the higher rate found among the retarded derives from their difficulty in comprehending the test and in following the directions, and further studies are needed of this question.

Basic Principles of Vision Screening Programs

Purpose and Scope

The main purpose of a vision screening program is to identify children who are in need of special eye care and to refer them for diagnosis and therapy.

Although it is not included in the definition of screening per se and not discussed here in detail, a referral system through which children who are found to require eye care can be properly channeled should be included in all vision screening programs. Of equal importance is a followup system to ensure that recommendations made for children who need eye care are carried out. Followup will also indicate the efficiency of the screening procedures in terms of the number of over-referrals and under-referrals. A vision screening program which does not include referral and followup procedures cannot be considered complete, for without them much of the effort directed at screening will be wasted.

Vision screening procedures should thus be regarded only as part of an overall program, the ultimate aim of which is the provision of complete diagnostic and therapeutic eye care services for those who need them.

Components of Screening

Vision screening should consist of two parts: screening by clinical history and screening by vision test or tests.

Clinical History

A carefully taken history will often provide invaluable clues to the diagnosis of visual problems in children. The Michigan Health Department reported that half of the preschool children who failed its vision screening tests had either a family history of eye disease or clinical signs or symptoms suggestive of eye problems. Yet clinical history is sometimes overlooked as part of a screening program. While histories taken by trained personnel may be more accurate, where this is not feasible questionnaires may be distributed to parents to be answered before vision screening tests are conducted.

Clinical histories which include any of the following circumstances would classify a child as high risk: (1) family history of visual defects such as defective color vision, refractive errors, strabismus, and congenital cataract, of inborn errors of metabolism like diabetes, galactosemia, lipidoses, albinism, and retinoblastoma; (2) a history during pregnancy of the mother of rubella, toxoplasmosis, syphillis, or taxemia; (3) birth history of prolonged or difficult labor or low birth weight; (4) difficulties in the neonatal period, particularly respiratory difficulty which required prolonged oxygen therapy; and (5) evidence of mental retardation, deafness, or cerebral palsy.

Complaints such as frequent headaches, dizziness, sensitivity to light, and blurred vision, or actual signs such as crossed eyes, eyes turned out, constant rapid movements of the eyes (nystagmus), red, swollen, or encrusted eyelids, watery eyes or discharges, haziness in the pupils, etc., should of course be given professional attention.

Certain types of behavior are suggestive of visual problems: holding books unusually close to or far from the eyes while reading, frequent blinking, squinting, or rubbing of the eyes, abnormal head tilting or turning inattention in blackboard, wall-chart or map lessons, poor alignment in written work, unusual choice of colors in art work, confusion of certain letters of the alphabet in reading such as o's and a's, e's and c's, b's and h's, n's and r's, inability or reluctance to participate in games requiring distance vision or visual accuracy, irritability when doing

close work, or difficulty in doing work which requires visual accuracy, etc. Teacher observations are often valuable and should be included in the history as available.

Vision testing

Theoretically, many components of the visual sense should be tested—central visual acuity (distance and near), peripheral vision, binocular vision, color sense, etc. However, procedures which cover numerous visual components are too time consuming and complicated to be practical for mass application. Many authorities agree that a test for central distance visual acuity is the single most important test of visual ability in children. Programs based on this test have identified more children in need of eye care than those based on any other vision test. This test and a clinical history should be considered the basic *minimum* procedures in any screening program. Whenever possible, tests for accommodative ability, muscle balance, and color vision should also be given. It should be noted, however, that tests of accommodative ability are considered by some to be not very useful for the early years of childhood, when almost all children have great powers of accommodation and are characteristically still somewhat hyperopic. The investigators in the Orinda study concluded that the Modified Clinical Technique was the most accurate means of screening. However, this technique consists of a battery of tests ("visual acuity, objective estimate of refractive error by means of skiametry and lens bar with motion-picture cartoon for fixation, cover test far and near, observation and internal examination for pathology and anomalies is indicated") that must be administered by professional examiners.

To be applicable as a screening procedure, a vision test should be relatively simple so that it can be reliably administered by nonprofessional personnel after appropriate training and supervised practice. The test should not be time-consuming, since a relatively large population is to be screened within a short period of time. It must nevertheless be sufficiently sensitive so that neither over-referrals nor under-referrals occur with undue frequency, although some such referrals are unavoidable. Between over-referrals and under-referrals, the latter have a more serious implication. On the other hand, too many over-referrals are likely to diminish public confidence in such screening programs and result in poor cooperation. In order to reduce the number of over-referrals, it has been suggested that children who do not pass a vision screening test be retested on another day, and that only those who fail the screening test twice be referred. Spot checks of the screening might be done by an optometrist or ophthalmologist acting as consultant for the program. Lastly, equipment used in screening should be relatively inexpensive and simple. In short, vision screening tests should be reasonably accurate and yet permit economy in manpower, time, and money.

SCHEDULE FOR SCREENING

Although it is desirable that screening programs provide each child with a thorough vision screening every year, this is often not possible. It has therefore been suggested that each child be given the basic minimum screening procedure once a year, and a more comprehensive screening every 2 or 3 years. Where a lack of resources makes such a schedule impossible, a schedule aimed at screening children during certain critical periods may have to be adopted. After an initial screening in the preschool years, the children should be tested again at 9–10 years of age because refraction in many school children gradually changes from slight hyperopia to myopia at this age, and the rate of referral in most school screening programs increases abruptly at the fifth grade level. Adolescence, a time of rapid growth and development, is another period when vision screening should be done. Color vision should be tested, preferably in the preschool years, but at least before the end of the intermediate grades (4th to 6th). Although defective color vision is not correctable, those affected should be aware of their limitation. Awareness of the defect is especially important when children begin considering occupations to prepare for.

NEED FOR COOPERATIVE EFFORT AND PUBLIC EDUCATION

A successful large-scale vision screening program for children requires the coordinated effort of ophthalmologists, optometrists, pediatricians, nurses, social workers, school authorities, teachers, public educators, interested public and voluntary agencies and groups such as local health departments, education departments, and PTA's. The various professions and groups will need to work together in planning screening programs that will be readily available to all children in the community. Attention must be given not only to the actual screening procedures, but also to careful selection and training of the testers, preparation of the public for such a program beforehand, and adequate followup of children referred for diagnosis.

The public, particularly parents, should be made aware of the fact that all children should be tested periodically, regardless of whether signs of possible visual problems are present or not. The importance of early diagnosis of visual defects should be explained. The public's attention should be called to the existence of vision screening programs in the community, and the purpose, meaning, and limitations of these programs should be made clear. Parents and others should be acquainted with the common signs and symptoms of visual problems, and be advised to seek help whenever suspicions of such problems arise, even if the children have just passed a vision screening test. Dissemination of information on what circumstances indicate high risk insofar as vision is concerned will further increase their index of suspicion.

With improved organized effort directed toward large-scale vision screening and increased public interest in such programs, we can expect significant reduction among children of vision loss and impairment from preventable causes.

FEDERAL ELECTIONS CAMPAIGN ACT OF 1971

Mr. MATHIAS. Mr. President, President Nixon recently signed into law the Federal Elections Campaign Act of 1971. This landmark legislation came about, largely, because of a veto and a promise.

The veto—President Nixon's—was given to a bill which was admittedly inadequate and unfair. It purported to cut down on campaign spending but applied only to broadcasting in general elections. It was unfair because it discriminated against broadcasters and, because of its unrealistically low limits, tended to favor incumbent candidates.

The promise—Senator HUGH SCOTT'S—was given to the Senate at the time the President's veto was sustained. The Republican Leader pledged to introduce a comprehensive bill in the next Congress which would meet all the problems of modern day election campaigns. That bill dealt with full reporting and disclosure of campaign funds, tax incentives for political contributions and reduced-rate broadcasting and newspaper advertisements. Each of those components was to be included in the bill which Congress finally passed almost 1 year later.

This is only one example of Senator SCOTT'S support for clean, honest election laws. I ask unanimous consent to place a list of some of his other accomplishments in the RECORD.

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

92D CONGRESS

Legislation

S. 956—To revise the Federal Election laws.

S. 1385—To provide for a uniform closing time for polling places in Federal Elections.

S. 3056—To amend Public Law 92–178, the "Revenue Act of 1971."

S.J. Res. 7—Proposing an amendment to the Constitution of the U.S., extending the right to vote to citizens 18 years of age or older.

Amdt. 321 to S. 382 Federal Elections Campaign Act of 1971. To prohibit the extension of unsecured credit, by certain federally regulated industries, to candidates for Federal office.

Amdt. 340 to S. 382 Federal Elections Campaign Act of 1971. To create an independent Federal Elections Commission to oversee campaign spending.

Amdt. 359 to S. 382 Federal Election Campaign Act of 1971. To establish qualification for membership on the FEC.

Votes

Voted to extend the right to vote to citizens age 18 or older—proposed Constitutional Amendments.

Voted for the Federal Elections Campaign Act of 1971.

91ST CONGRESS

Legislation

S.J. Res. 59—To amend the Constitution of the U.S. to provide that U.S. citizens shall be entitled to vote nationally without excessive residence or physical presence requirements.

S.J. Res. 147—To amend the Constitution of the U.S. to extend the voting rights to citizens age 18 or older.

S. 2876—To provide Congressional candidates with opponents the opportunity to purchase communications broadcast time at low cost.

Votes

Voted to abolish restrictive residency requirements as a precondition to voting for President and Vice President, and to establish uniform nationwide standards relative to absentee registration and voting in presidential elections.

Voted to reduce the voting age from 21 to 18 years of age, effective January 1, 1971.

Voted to sustain veto of the Political Broadcasting amendment to the Federal Comunications Act, which would have discriminated against challengers in elections.

Voted for direct popular election of the President and Vice President.

90TH CONGRESS

Votes

Voted to broaden the prohibition against soliciting political contributions from Federal employees, under the Elections Reform Act of 1967.

Voted to require disclosure of gifts and certain compensation by any Senator or by any candidate seeking nomination or election as Senator.

89TH CONGRESS

Legislation

S. 3435—Election Reform Act—To require all candidates and all committees supporting candidates to fully disclose details of all contributions and expenses over $100; to limit to $5,000 the total amount that can come from any single source to the campaigning of any candidate; to provide for

special tax deductions of up to $100 for contributions to candidates.

Votes

Voted for proposed constitutional amendment regarding Presidential succession and inability.

Voted for proposed constitutional amendment permitting apportionment of one house of a bicameral State legislature using population, geography, and political subdivisions as factors.

87TH CONGRESS

Legislation

S. 480—To prohibit application of unreasonable literacy requirements to right to vote.

S. Res. 311—To authorize the Senate Judiciary Committee to examine and investigate the establishment of congressional and State election districts to ensure against any unfair practices.

86TH CONGRESS

Legislation

S. 957—To provide for retention and preservation of Federal election records.

S. 2868—To eliminate poll tax as prerequisite to voting in national elections.

Votes

Voted to make Federal election laws applicable to primary elections.

Voted to revise the Federal election laws.

Voted to provide that the right to vote in national elections shall not be denied because of failure to pay poll tax.

HEALTH SCIENCE AND SOCIETY

Mr. MONDALE. Mr. President, the Senator from California (Mr. TUNNEY) recently gave an excellent talk at a conference on "The Impact of Genetic Engineering on Society." He wisely called attention to the danger that—

When complex problems appear too terrifying or too mysterious, some people seek simple solutions which are inadequate or improper.

The Senator reviewed the state of the art in genetic engineering and thoughtfully pointed out the challenges which are presented by progress in this field. Then he recommended a number of steps which we must take. I am very pleased that, among them, was a call for action by the House on my proposed resolution, Senate Joint Resolution 75, passed by the Senate last December.

The resolution authorizes a 2-year study of the ethical, social and legal implications of advances in biomedical research aid technology.

I fully endorse the opinion about these implications with which the Senator concluded his address:

We cannot begin too soon to consider them.

Mr. President, I commend this illuminating talk to Members of the Senate and the House. I ask unanimous consent that it be printed in the RECORD.

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

ADDRESS BY SENATOR JOHN V. TUNNEY—GIVEN AT CONFERENCE ON "THE IMPACT OF GENETIC ENGINEERING ON SOCIETY, CALIFORNIA INSTITUTE OF TECHNOLOGY

Many of you here today have dedicated your lives to expanding and perfecting man's knowledge. You do this in part because of a desire to satisfy your curiosity about how things hang together, in part to make a living, and in part because you desire to make the world a little better or a little more interesting for your having been here.

Now, today, the impact of science and applied science has raised for many the cry that our science has been too fruitful. This cry has been raised with regard to the nuclear sciences. It could well be raised in the near future with regard to the biomedical sciences.

As a lawyer and a legislator I, too, am concerned about the possibilities inherent in the biomedical sciences. I am concerned about these possibilities both because of their potential scientific impact and because of their potential social impact.

Any science which has within its potential the alteration or the modification of human genes has awesome implications. Any responsible citizen would be concerned about such potential.

The political impact of these possibilities, however, might be just as powerful as the scientific impact. For when powerful ideas and dramatic concepts threaten popular attitudes about order or security, the social response can be fashioned out of fear and directed toward repression.

When complex problems appear too terrifying or too mysterious, some people seek simple solutions which are inadequate or improper. When people get scared, they might seek panaceas.

That is the climate which produces demagogues and despots. It is fertile ground for repression. For there will be political charlatans who will be willing to offer these simple solutions because they offer security, not because they are right.

If these charlatans are successful, we might witness the erosion of our most precious freedoms. Once freedoms are lost, they might never be recovered. Political alteration—just like genetic alteration—might be irreversible.

Consequently, the most important and enduring of our political freedoms are, in my mind, linked with the manner in which the biomedical sciences are understood and applied by our political system.

Today we share a common interest: How can we put to their best use the fruits of your efforts as scientists?

As scientists, your task is to provide new and dependable knowledge. As members of society, each of us has an obligation to help make the best possible use of the knowledge you have provided.

I hope that my experience and background in law and government will enable me to be of some help in the discussions here today.

The experience and background of Professor Sinsheimer has clearly enabled him to describe and discuss the provocative—and vitally important—developments in the general area of genetic engineering. Even as a scientist, however, Professor Sinsheimer has touched upon some of the most important ethical considerations which face society as it begins to consider the technical possibilities inherent in the biomedical sciences.

The very existence of this conference, and the fact that you have invited me to participate, indicates that the issues raised by the biomedical sciences and genetic engineering cut across several disciplines. They raise questions which are legal, medical, philosophical, social, religious, ethical—and profoundly political.

I am pleased that you have provided me with the opportunity to consider some of these concerns. In approaching these questions, I find myself wearing several hats. The first "hat," if you will, is a multifaceted one, and is fashioned around my own personal background; my own social, philosophical, and ethical beliefs.

The second "hat" is a legal one, obtained after studying the law and participating in it over a period of years.

The third "hat" is a legislative one, obtained from the unique perspective to which I am privileged as a United States Senator, helping to propose, evaluate, and create the laws of this land.

It is important to recognize that all political figures will bear "hats" of this nature. They will all be different, depending upon the individual background and experience of the politician, but they will influence him as he evaluates and determines policy in an area as sensitive and as potentially explosive as genetic engineering.

Before discussing the ethical, legal, or legislative view, however, it is important to set forth what I believe are the most salient espects of genetic engineering. These are concerns upon which my ethical, legal, and legislative analysis will focus.

Where are we technically? What is the genetic state of the art?

I have delineated six general classifications of what we might broadly refer to as the technology of genetic engineering.

First, Abortion and Amniocentesis. I understand that the technique of amnicentesis, frequently used to provide advice on therapeutic abortions, is available, and that the procedure is *relatively* safe, but that we do not yet have the ability, with amnicentesis, to detect all genetic defects. I have been advised that within five years, most monogenic gene defects that we understand will be detectable thereby, but that even then, questions will remain unanswered as to whether amniocentesis affects the eventual intelligence of the child.

Second, Mass Genetic Screening. Here, too, we appear to be on the threshold. The technique is available for many diseases and not yet available for others. For those defects which we understand, we can do mass genetic screening, but it has already become evident that many people will oppose mass genetic screening—whether of children or of adults—for a variety of personal reasons. Some feel it is an invasion of personal rights; others do not want children with genetic defects to know that they have them. Again, however, the technology is increasingly available.

Third, Modification of Certain Cells in Terms of Their Genes, or Monogenic Gene Therapy. Monogenic gene therapy, I have been advised, has not yet been performed successfully. I understand, however, that it should be a possibility for certain diseases within five years and that as we gain more knowledge about monogenic defects the possibility of monogenic gene therapy will become more of a reality in broader areas.

Fourth, in Vitro Fertilization. I understand that both in vitro fertilization and reimplantation in the uterus of the female have been performed successfully in experimental animals. I have learned that, if the research in this area is not seriously inhibited by external controls, the technology for in vitro fertilization and forre-implantation in human beings should be available within five to ten years, or even earlier. I read last week that a Yugoslavian scientist has advised a conference in Tokyo that he had developed an instrument for oocyte (or egg) transplant into the uterus.

Fifth, Cloning. Cloning of frogs has already been successful. I have been told that the technology for the cloning of mammals will be available within five years and that, if it is not stopped, the technology for the cloning of human beings could be available within anywhere from ten to twenty-five years.

Sixth, Polygenic Gene Therapy. I have been advised that, in comparison to the other techniques just mentioned, we are very far away—perhaps fifty to one hundred years still—from achieving polygenic gene therapy. Our understanding of polygenic gene defects is still extremely primitive. The ability to isolate and trace a polygenic trait, I am told,

is considerably more complicated than the isolation and comparable ability with regard to monogenic traits.

Qualitative distinctions exist between certain of the technologies I have just mentioned. Despite these distinctions, I have mentioned all of those technologies because they have all been discussed in some parts of the literature as aspects of the broad field of genetic engineering. Certain implications of each must be evaluated independently of the others. Yet, I believe that all of them—almost as a generic group, even if one with a myriad of possible internal distinctions—raise ethical, legal, and legislative considerations which, in some very important ways, can be approached together.

One of the most powerful arguments presented in favor of employing one or more of the technologies of genetic engineering in the direction of genetic intervention is that man's genetic load is increasing. In other words, the total number of genetic defects carried by man has been increasing. This has been occurring as a result of the increased mutation rate and the decreased natural selection rate occasioned by modern medicine and technology. About one child in twenty is said to be born with a discernible genetic defect.

The question then arises: should the human species attempt to employ these new technologies to deal with this increased genetic load? Paul Ramsey of Yale has stated that "It is no answer to say that changes are already taking place in human kind, or that men are constantly modifying themselves by changes now consciously or unconsciously introduced. . . ." He argues, as a Protestant theologian, that scientific intervention in this area is a questionable human aspiration, as he puts it, "To Godhood."

Regardless of the merits of Ramsey's position, the very vigor with which he defends it suggests the extent to which ethical issues are at stake.

The ethical questions raised by the possibilities implicit in genetic engineering are no less fundamental than the issues of free choice, the quality of life, the community of man, and the future of man himself.

Thus, it becomes evident that one's own sense of ethics, one's personal view of right and wrong, one's own standards of conduct or moral code, are essential components of decision-making in this extremely sensitive area.

Many political scientists like to believe that political decisionmaking can be objectified, that a process can be delineated by which political decisions are made. Through such a process, it is assumed, decisions and actions can be predicted.

I question the wisdom of these political scientists. I question it for a variety of reasons. One of the most important of these reasons is the significant subjective component of political decision-making—the large realm left to one's own values and ethics.

This realm affects all aspects of law-making. It is especially important in any political or even legal approach to genetic engineering. One's own values or ethics must inevitably be brought to bear upon a variety of important questions in this area which can only be evaluated by subjective criteria. In an effort to rationalize some of the issues involved, I will attempt to draw some distinctions, and to articulate some criteria for analysis. Some of these criteria have been suggested by Professor Sinsheimer and others, and some of them are my own. I suggest them not as a definitive list but as a reminder that it will be very important to apply some criteria such as these to any legislative or legal analysis of the implications of genetic engineering.

Let me posit a list of ten general considerations suggesting possible ethical distinctions:

First, if we are to engage in any eugenics, negative or positive, we must confront three vital questions which pervade this entire subject:

(A) What traits are to be considered desirable?

(B) Who is to make that determination? and

(C) When in the course of human development will the choice be made?

These questions cannot be under-estimated in their importance to the future of man, particularly when we are considering biological alternatives which might not be reversible.

Second, and related to the first concern, we must ask whether the genetic engineering or "improvement" of man would affect the degree of diversity among men. Does it presume a concept of an "optimum" man? Is diversity important as a goal in itself? Does—or should—man seek an "optimum" or does he seek a "unique"? What would the quest for an "optimum" do for our sense of tolerance of the imperfect? Is "tolerance" a value to be cherished?

Third, and also related to the first question, we should consider whether it might be appropriate to delineate different biological times or moments—at least in humans—during which experimentation might occur. Do different ethical considerations apply if we attempt to distinguish between experimentation on (A) an unfertilized sperm or egg; (B) a fertilized sperm or egg; (C) a fetus; (D) an infant; (E) a child, perhaps until it becomes an adult; (F) an adult, or at any particular moment during any of those stages? Might the factors to be balanced in making a decision as to whether experimentation is proper vary at different stages of human development?

A fourth and related concern is this: is there a workable difference between genetic "therapy", defined as therapy to correct genetic factors known to cause somatic disease, and genetic "engineering", defined as techniques to alter man in terms of some parameters other than somatic disease? Might it be appropriate to attempt such a distinction in definitions in this emotionally-charged area? Might the term "genetic therapy" evoke less emotionally charged reactions than the term "genetic engineering"? Might it, in fact, be preferable to respond more receptively to those areas of genetic work which are primarily "therapeutic"? Or is such a distinction unworkable?

Fifth, it would seem to me to be advisable to ask whether a particular technique or technology is devised for the therapeutic treatment of an individual—or whether it is designed to have a broader societal impact. That potential distinction has a variety of ramifications. For example, it should be asked whether techniques developed for the therapy of an individual patient automatically diffuse into the general public for purposes other than this therapy. Are physicians in fact operationally capable of restricting the use to one group, or does societal pressure in fact make them semiautomatic dispensers of seemingly desirable technologies?

Sixth, we might ask whether any eugenics program—whether it is positive or negative, voluntary or compulsory—does not imply a certain attitude toward "normalcy": toward a proper norm for human activity and behavior; and toward expectations with regard to the behavior of future generations of human beings. Implicit in that question are distinctions with regard to positive versus negative eugenic programs and also with regard to compulsory versus voluntary eugenics programs.

Seventh, and related to the above consideration, is the following: how are words such as "normal", "abnormal", "health", "disease" and "improvement" defined? Are they words which can be operationally used to determine what should be done?

Eighth, we must ask if the quest for genetic improvement would be continuous. Would it invariably make all children "superior" to their parents? What would be the social consequences of this? Would it institutionalize generation gaps and isolate communities by generations as education may have done?

Ninth, we should consider whether the institutionalization of a quest for genetic improvement of man is likely to lead to his perception of himself as lacking any worth in the state in which he is. What does this do to the concept of the dignity of man in his or her own right and regardless of some "index of performance?"

Tenth, if we have a well-developed ability to perform genetic therapy as an assault upon certain diseases and such therapy is not available for all who have the affliction or who desire the "cure", the question will immediately arise as to how to determine which patients will receive the cure. Are some classes or groups of people more desirable patients or more worthy of treatment? How will selection be made? By what criteria will those decisions be reached?

Questions such as those ten can be answered only by appealing to ethical or so-called moral arguments. When we enter this realm, it is important to remember that no one has a greater claim to wisdom than anyone else. All men have a stake in this area and all men have a right to be heard.

I would like to offer three additional thoughts in this area, which might affect all of the ethical judgments involved. Two are caveats and one might be a preliminary guide for analysis.

The two caveats are reminders of the imprecision of measurement and the difficulty of meaningful analysis in this area. As for the imprecision of measurement, caveat number one, Ramsey states that "many or most of the proposals we are examining are exercises in 'what to do when you don't know the names of the variables.'" While that might be somewhat harsh, he is accurate in his suggestion that prediction of behavior or even of most genetic disease will be very difficult, due not only to polygenic factors, but also to such other imponderables as pinpointing a recessive trait in its heterozygous state and predicting the influence of environmental factors.

The second caveat is the difficulty of meaningful analysis. Some values we will be asked to compare will be like comparing apples and oranges. How can one compare the possible deep satisfaction for an infertile woman of carrying and bearing a child which was fertilized *in vitro* and reimplanted in her uterus with the one or two or five percent chance that it will be deformed? In measuring eugenic traits to be cherished, how can one compare intelligence (even assuming it can be defined) with love?

In making genetic choices—and in selecting those who will make them—such caveats should not be forgotten.

The last of these attempts at ethical classification is an effort to ask the question of just *where* in the process of the broad field of "Genetic Engineering" the ethical issues will arise. At what level in the process? Professor Abram Chayes of the Harvard Law School has suggested that at least three levels can be discerned at which the questions posed above might arise:

First, the general level of research. Should research be pursued which might lead to technologies which will give science the capacity to genetically engineer human beings?

Second, the level of treating human disease. Questions will, of course, be raised as to what exactly *is* a human disease—and how it is defined. But, assuming that those questions can be answered, ethical considerations will arise with regard to the issue of whether the disease should be treated with a newly available genetic technique.

Third, at the broad level of attempting to affect society or at the level of what some will consider an improvement of the human species.

These levels overlap to some degree with the questions that I have already raised; and it would appear clear to me that the ethical pressures which will be directed against the continuation of the activity will become increasingly strong as we move from the first to the second and then to the third level.

While these considerations by no means exhaust the ethical realm, they do suggest the enormity of the problems with which we are attempting to deal. Perhaps also the attempt—however primitive—at ethical classification might also offer the lawyer some general guidance.

It might be asked, for example, whether there are legal as well as ethical distinctions between negative and positive eugenics. Are there legal differences between an attempt, on the one hand, to treat an individual for disease by either monogenic or polygenic gene therapy, versus an attempt, on the other hand, to control behavior or otherwise alter society's norms or its inhabitants? Does it matter—legally—when in the state of human development the therapy or the engineering is conducted: whether in the stage of birth control, in the realm of abortion, in treating a minor or an adult? Does it matter—legally—how the therapy or the engineering is conducted, whether it is voluntary or compulsory, whether for punitive or eugenic reasons, or whether the physician has freely and openly obtained the consent of the patient?

Clearly, these distinctions ought to be important—legally as well as ethically. They touch upon fundamental and traditional legal principles, principles which have been applied in Anglo-American jurisprudence in a variety of situations for a number of years. They offer the lawyer a variety of factors which will help in his analysis.

Let us examine the manner in which the American legal system is likely to deal with the subject.

Law, at least in the United States, can be said to operate on three broad tiers or levels. First, we have Constitutional law, or the legal framework which is set forth by the Constitution of the United States and by the courts in interpreting the Constitution. Second, we have statutory law, or law which is enacted by statute—either of a state or of the federal government. No statute can contravene a constitutional requirement. But in the absence of a constitutional prohibition or pre-emption, federal and state legislatures can enact statutory standards for concerns such as health and welfare. Third, in the absence of a controlling constitutional or statutory provision, the courts rely upon the body of law which is known as the common law—those legal principles which have emerged from judicial decisions.

The issues raised by the technology of genetic engineering affect constitutional, statutory, and common law principles. I shall consider briefly each of these legal tiers. At least three constitutional factors clearly emerge when one considers the general subject of genetic engineering. The first issue is the right to privacy. The fourth amendment to the Constitution declares that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . ." This language has been interpreted to guarantee to the individual a constitutional right of privacy. This entire subject raises questions with regard to the extent and inviolability of that right.

Second, questions might be raised with regard to the rights protected in the fifth and fourteenth amendments which guarantee that no person shall be deprived of life, liberty, or property, without due process of law.

Third, and perhaps the most important factor which the Constitution brings to bear upon genetic engineering is the approach of Constitutional law—the method of analysis which courts have developed for dealing with constitutional issues. Apart from the technicalities inherent in whether state action is or is not involved and that is a threshold question in any constitutional analysis—constitutional law requires the government to show a more compelling governmental need when the abridgement of fundamental freedoms is involved.

Let us take two examples. Contrast, for example, a governmentally-sponsored program of negative eugenics, made compulsory, designed to eliminate a certain genetic disease with a governmentally-sponsored program of positive eugenics, made compulsory, designed to control behavior. As both programs are compulsory, both could infringe the fundamental freedoms of procreation and possibly marriage. But a more compelling state interest could arguably be demonstrated in eliminating a disease than in controlling or altering behavior. I do not offer this dichotomy in an effort to support the negative eugencis program. In fact, I would probably oppose it. But I do think that a constitutional analysis of the two approaches would bring different factors into being—and might yield different results in the two cases.

Moving from constitutional law to statutory law, it should be noted at the outset that a variety of statutes in numerous American jurisdictions have attempted to impose eugenics controls. Professor William Vukowich of Georgetown has written that:

"In the early 1895s, many states enacted laws that prohibited marriage by criminals, alcoholics, imbeciles, feebleminded persons, and the insane. Today most states prohibit marriage by persons with venereal disease, but only a few states have laws which are similar to those of the early 1900's. Washington and North Dakota, however, still prohibit marriage by women under forty-five and men of any age, unless they marry women over forty-five, if they are an imbecile, insane, an habitual criminal, a common drunkard, feebleminded, or (a) person who has . . . been afflicted with hereditary insanity."

A number of the more recent developments in the field of genetic engineering, however, go entirely unregulated. Sperm banks which may be used as a source of sperm for artificial insemination by third party donors, for example, are an excellent example of an area in which statutes do not exist and which, therefore, are left in their administration entirely up to the persons operating the sperm banks.

That is an example of an instance in which our third legal tier, the tier of the common law, must be our guide. In the absence of constitutional or statutory guidance, we must turn to the common law for our standards. Here again, the law is neither silent nor comprehensive. It falls somewhere in between. Assume this set of possibilities: Amniorcentesis is an everyday practice, and is held by most doctors to be free of harmful effects, such as infection. A lady, who has not been offered amniocentesis, gives birth to a mongoloid child. Is her obstetrician liable for malpractice?

Common law tort principles of malpractice would probably hold that the doctor is, in fact, liable. That is because the common law tends to follow whatever is the accepted medical practice for a particular community in determining negligence.

Is this an appropriate result? Would it be appropriate to require amniocentesis even if the mother—or the doctor—has strong religious convictions which preclude the consideration of an abortion under any circumstances? What about *offering* amniocentesis under those circumstances?

What about the the legal rights to an egg which has been fertilized and grown in a test tube? Does the "father" have any rights? What rights does the "mother" have? Or the doctor? Do common law tort or property rights apply to this question?

However you come out on these issues, you must recognize that the issues must be faced. And if you do not wish to face them with the guidance only of the common law, the result will be the consideration of new legislation. To the extent that current law is inadequate, legislation must be developed.

In considering that possibility—the possibility that legislation must be developed—I am painfully aware of the potential inadequacy of the legal and the legislative process to respond to the issues presented by science.

Science may be, in the area of genetic engineering, outpacing the legal and legislative process. It might be presenting challenges to which our lawyers and legislators are ill-equipped to respond.

The legislative system might be poorly equipped to respond to these problems because of at least two inherent difficulties: its speed and its scope.

Our legislative process generally works slowly. Senator Mondale, for example, first introduced legislation which called for a commission to study the effects of genetic engineering—almost five years ago. That bill passed the Senate unanimously last year, but it has not yet been acted upon by the House of Representatives. Just initiating a study commission on so momentous a subject has already, then, taken over five years and has still not been enacted into law.

Our political system is not only slow. It is, obviously, only national in scope. Generally, that is not a significant problem to the people in Washington who are considering different legislative proposals. Most of those proposals are only national in scope—or less. But, genetic engineering is clearly an international concern. It will require, if any controls or guidelines are to be effectively suggested, international agreements. That also will serve as a political or legislative constraint.

Understanding these constraints, however, I believe that certain constructive steps can be taken—steps that will begin to offer legislative rationalization to the field. If the legislative system begins to consider these problems now, it might be possible to respond politically and legislatively before it is too late.

On the other hand, I fear the consequences which could be wrought if informed legislative consideration of the issues inherent in genetic engineering does not soon begin. If the legislative response comes as a result of dramatic scientific breakthroughs—developments which scare the public—the result might be hasty and unwise political action predicated upon inadequate information and fear. If debate and discussion begins now, legislative decisions might emanate from deliberate political action predicated upon reasoned analysis.

I do not believe that at this point it would be appropriate to suggest answers to the momentous issues that are raised by genetic engineering. But I do believe that we know enough to undertake certain legislative initiatives. Let me suggest three.

First, the Congress should enact the "Mondale Bill", S.J. Res. 75, providing for a study and evaluation of the ethical, social, and legal implications of advances in biomedical research and technology. The proposed study commission could serve as a preliminary vehicle for educating the public into the foreseeable social consequences of biological advances. I might add that such a commission might best be an international one, but that is logically a second step.

Second, and perhaps equally important, is the initiation of technology assessment in all

institutions which disburse funds, direct research, or provide grants which are related to biomedical concerns. It has long ago become obvious that technological developments have implications which affect society in a variety of ways, and that their impact cannot be limited to an analysis of the technical aspects of the product or of the innovation. Similarly, the myriad implications of the developments of biomedical research reach out to all segments of society. Technology assessment should be a part of any analysis of any project which involves a potential new biomedical development.

Third, it might be appropriate for the Congress to earmark a small proportion of health research funds (say one quarter or one half of one per cent) for research into the possible social consequences of biological technologies presently available or to be foreseen.

It should be evident that these potential legislative proposals include a common underlying thread: bringing science and society closer together; bringing the scientific community, particularly that aspect of it which is involved in the biomedical sciences, closer to the general public and making the general public more aware of the dramatic potential inherent in the biomedical sciences.

This might be done in a variety of other ways as well. For it is not only the legislature which can initiate this improvement in communication and this expansion of public awareness and of concern with these issues. Four other suggestions might be worthy of consideration:

1. Private foundations might be urged to initiate programs to bridge presently existing gaps between the sciences and the humanities, exposing people in each area to people in the other, and making the ideas of each readily available and understandable to the other.

2. Universities should consider establishing additional programs whereby students in the humanities may be exposed to scientific methodologies and vice versa. The two general groups should feel a closer relation to and understanding of each other in universities as well as elsewhere. The effective separation of these two groups in universities, particularly at the graduate level, but even at the undergraduate level (especially once the students have reached their Junior year) helps to begin the line of demarcation between those in the sciences and those in the humanities, with very inadequate and narrow bridges to unite the two general areas.

3. Research proposals in the biological area should perhaps be assessed by institutional research review committees which include non-scientists. Some form of technological assessment, in other words, or a consideration of the ethical, moral, and social implications of biological projects—by non-scientists—should be considered at the level of all research proposals in this general area.

4. It might be appropriate for the medical profession itself to study how far the technologies which it uses for the benefit of individual patients may affect society as a whole if used for purposes other than the cure of individual patients. The individual treatment versus social engineering dichotomy should be considered clearly and carefully by the medical profession and should probably be emphasized more strongly than it currently is.

These efforts to bring society and the biomedical sciences closer together are, in my opinion, essential. Dr. Andre Hellegers has testified before the United States Senate that:

"Nothing could be worse than that society should come to fear scientific progress . . . I can foresee that the occasional seemingly sensational scientific episode will so frighten society as to undermine the very support which science needs to continue to make the vast contributions which it has to improve the lot of mankind . . . It is high time that there be started an educative process which explains to the country the precise nature and the limitations of the scientific process and the place which it occupies in man's control of his environment, which in one form or another has gone on since the beginning of time. No segment of society can stand apart in this interdependent society. If it attempts to do so it is bound to cease being supported. The sooner the relationship of science to society is examined and explained for all to see, the better it will be both for science and society."

That testimony touches upon two very important facts of American political life, neither of which should be forgotten: First, the theory of political accountability. If the public supports something financially, the public is entitled to know what it is supporting. Second, the foundation of political democracy. Thoughts, suggestions, proposals, and policies should be scrutinized in the marketplace of ideas. Political debate and public discussion is healthy and is conducive to the best analysis of any position.

Particularly in an area as fraught with subjectivity as this one, it is important that the issues raised be aired, discussed, and debated. It is important to recognize that we are dealing with an area in which there is no monopoly of expertise—where men trained in a variety of different areas, or even in no special area, bring to bear their own special perspective or, if you will, "expertise." We are dealing with a subject in which morality or one's own subjective sense of ethics is pervasive. We are, therefore, dealing with an area in which all persons have a right and a special claim to be heard.

There are certain suggestions that I would offer in any debate on this subject. I would suggest that among the values which man ought to protect most fully are the values of humility, of compassion, of diversity, and of skepticism. I would suggest that any scientific or technical initiatives in one generation which would foreclose or eliminate the options of future generations—any decision today that implies an ability to predict the human traits that will be most cherished tomorrow—smacks of arrogance and should be avoided. I would suggest that man should exercise the utmost caution in this sensitive field and that decisions which will be genetically irreversible might require a wisdom which we do not possess.

I would also suggest that there is no reason why the ethics or morality of any one of us are better than those of another. Each of us has an equal claim to wisdom in the realm of morality.

Therefore, the issues raised by the biomedical sciences must be debated. The debate must begin now. If we postpone debate in this area, we might find irreversible trends not only in genetics but also in political freedoms. For, if the polity responds to the scientific community through fear and mistrust it might delegate authority to a despot or a demagogue who appeals to the people with the promise of "curbing scientific abuses". If people are sufficiently frightened—if they feel they need to be rescued from a menace they do not understand—they are more likely to delegate freedoms and less likely to respond with restraint.

All segments of society should be involved in the debate which these new technologies demand. The techniques must be discussed and debated among lawyers, doctors, theologians, legislators, scientists, journalists, and all other segments of society. The issues raised require interdisciplinary attention.

I hope that, as a lawyer, a legislator, and a citizen with my own personal values and ethics, I have been able to raise some of the important issues here today. We cannot begin too soon to consider them.

Thank you very much.

TUCSON DAILY CITIZEN'S HIGH SCHOOL PUBLIC OPINION POLL

Mr. FANNIN. Mr. President, the Tucson Daily Citizen recently conducted its fifth annual metropolitan high school public opinion poll.

The results of this poll, printed in the Citizen on May 15, 1972, are very interesting.

It shows that President Nixon has very strong support among the students. It shows that the students have high respect for law enforcement officers, that many of them believe religion is a very important force in their lives, and that two out of three students are opposed to busing as a means of achieving racial balance in schools.

Mr. President, I ask unanimous consent that the Citizen article and results of this poll be printed in the RECORD.

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

HIGH SCHOOL OPINION POLL GIVES NIXON VOTE OF CONFIDENCE

(By Kathleen MacDonald)

Tucson area high school students have given President Nixon a thumping vote of confidence.

They also:

Disapprove of busing as a means of achieving racial balance in schools.

Overwhelmingly respect policemen in their role as defenders of law and order.

These were the highlights of the results of the 1972 Metropolitan High School Opinion Poll in which a record 12,322 students from 15 Tucson area schools voted. In its fifth year and sponsored by the Tucson Daily Citizen, the poll was conducted in April and early May.

Seven presidential candidates—Shirley Chisholm, Hubert H. Humphrey, Henry M. Jackson, George S. McGovern, Edmund S. Muskie, Richard M. Nixon and George C. Wallace—were listed on the computerized ballot. Nixon drew an even 37 per cent of the vote. Runner-up was McGovern with 20.72 per cent.

Reached by telephone in Washington today, Ken W. Clawson deputy director of communications for the White House, said Nixon was "gratified that the young potential voters of Tucson enjoy his leadership and think it's meaningful."

Clawson said he felt that the "many substantive decisions" the President has made, including requests for changes in the draft laws, "should endear him to the younger citizenry of the country."

The student vote against busing hit 66 per cent. Only 20.73 approved.

Fifty-seven per cent of the students expressed their respect for police officers, while 12 per cent indicated a dislike for them.

Legalization of marijuana, a much-debated topic among young people everywhere, got a favorable response. Seventy-four per cent voted for making legal or relaxing the punishment for its possession. Another 26 per cent thought it should remain as a felony offense.

On amnesty for draft evaders and capital punishment, feelings were almost evenly split.

The near-draw in the amnesty question—44 per cent for and 39 per cent against—prompted U.S. Rep. Morris K. Udall, who furnished the question for the poll, to say:

"Students in Tucson high schools are obviously widely split. I would guess that this split prevails in the adult population as well."

He added, "I think the question of amnesty

is not easily answerable by 'yes' or 'no'. I suspect students and the general public are quite sophisticated on this controversial and complex issue and are inclined to view questions of amnesty on a case-by-case basis."

The other two guest questions, from Mayor Lew Murphy and Supt. of Public Instruction Weldon P. Shofstall, concerned students' confidence in city officials and the relevancy of history in daily life.

Murphy said he was pleased that 23 per cent of the students feel Tucson public officials do a good or excellent job conducting city business. Forty-four per cent indicated, however, that their confidence in city officialdom is ONLY "fair."

Murphy said he hopes to improve the percentage during the next years of his administration.

"I think it is significant, too, that the students voiced more approval for this administration than they did in 1970."

In 1970 when Mayor James N. Corbett was in office, nearly 50 per cent of the students cast negative votes in answer to a question on confidence in the integrity and competence of city officials.

Shofstall said he wasn't "disappointed" in the results that about 52 per cent of the students feel history is important—the other 48 per cent do not—but it "does confirm a hunch of mine."

"I have believed for a long time that history is considered by most students to be fairly irrelevant. I believe we're too much making our decisions based on present day thinking. I don't think we've taught our kids to respect the experience of mankind."

This year's record vote of nearly 12,500 compares with last year's 11,950. Tucson has about 25,000 high school students, so about 50 per cent responded in the voluntary balloting. In the five years of the poll's existence, 59,259 students have cast ballots.

Two questions that appeared on the 1971 ballot came up for a vote again this year, though in somewhat different form.

In 1971, about 35 per cent of the students voted for legalization of marijuana.

This year 43 per cent favored abolishing punishment for possession of the drug.

Last year 22 per cent thought laws governing abortions should be abolished and 42 per cent believed in liberalizing the current law.

This year, in answer to a slightly different question, students voiced nearly 34 per cent support for legal abortions and about 55 per cent for voluntary birth control.

Differences between freshmen and seniors were marked, indicating that attitudes change a great deal during high school years.

On the subject of marijuana legalization, 39 per cent of the freshmen endorsed it but 12 per cent more, 47 per cent, of the senior class favor legalization.

The older students were more opinionated on every issue, tallying fewer "no opinion" answers than the younger students.

For instance, in the question about whether interscholastic sports should be de-emphasized, 24.9 per cent of the freshmen had no opinion, but only 13.6 of the seniors failed to register feelings about the issue.

Older students also were more determined against busing to achieve racial balance.

A total of 57 per cent of the freshmen voted against busing, but a resounding 72 per cent of the seniors opposed it.

The importance of organized religion seems to shrink as students get older.

Nearly 50 per cent of the seniors felt religion is not important. But only 36 per cent of the freshmen expressed that opinion.

The opinions of Tucson's high school students might be a surprise to some adults.

The youngsters have reinforced the long-held belief that the American voting public is unpredictable.

If that is true, young people are following their parents' example.

RESULTS—FIFTH ANNUAL METROPOLITAN HIGH SCHOOL OPINION POLL

	Vote	Percent
Guest question—Tucson Mayor Lew Murphy wants to know: How would you rate your confidence in present Tucson city officials?		
Excellent	250	2.06
Good	2,624	21.71
Fair	5,382	44.54
Poor	2,291	18.96
Don't know	1,535	12.70
Guest question—Representative Morris K. Udall wants to know: Do you feel that we should grant amnesty to those Americans who left the country, or were imprisoned, in order to avoid serving in the armed forces during the Vietnam war?		
Yes	5,427	44.94
No	4,815	39.87
Don't know	1,833	15.18
Guest question—State Superintendent of Instruction W. P. Shofstall wants to know: Does the time-tested basic knowledge recorded in books, art, etc. (history), help people in the solution of the modern, practical, complex, and personal problems we all face today and will face in the future?		
Yes, in most situations	1,019	8.42
Yes, in some situations	5,372	44.42
Yes, but seldom	2,375	19.64
No, but interesting	858	7.09
No, turns me off	1,029	8.51
Don't know	1,438	11.89
If you were voting in the presidential election today, who would be your choice for President?		
Shirley Chisholm	871	7.35
Hubert H. Humphrey	2,045	17.27
Henry M. Jackson	166	1.40
George S. McGovern	2,453	20.72
Edmund S. Muskie	1,159	9.79
Richard M. Nixon	4,380	37.00
George C. Wallace	761	6.43
The best way to control overpopulation of the future is by:		
Voluntary limit through birth control	6,616	55.70
Legalized abortions	3,984	33.54
Legislation making abortion or sterilization mandatory	1,277	10.75
Would you favor a staggered 12-month school year if you were required to attend only 9 months, as you do now?		
Yes	4,729	39.28
No	7,309	60.71
Do you believe interscholastic sports should be de-emphasized in the Tucson schools?		
Yes	2,567	21.29
No	7,225	59.92
No opinion	2,264	18.77
Do you approve of busing as a means of achieving racial balance in schools?		
Yes	2,512	20.73
No	7,996	66.00
No opinion	1,606	13.25
The educational level I plan to complete is:		
High school	2,520	20.90
Junior college	1,766	14.64
4-year college	4,090	33.92
More than 4-year college	2,825	23.43
Vocational	854	7.08
If you thought you had venereal disease, which would you do first?		
Secretly go to a free clinic	6,336	52.56
Tell my parents	2,813	23.33
Go to my family doctor	2,254	18.69
Wait for further symptoms	651	5.40
Should women be exempted from military draft?		
Boys answer:		
Yes	2,606	22.75
No	2,235	19.51
Girls' answer:		
Yes	3,970	34.66
No	2,641	23.06
What is your attitude toward police officers?		
I dislike them	1,439	12.00
I respect them	6,927	57.77
Too great an expense to taxpayers	289	2.41
Worthy of greater tax support	1,233	10.28
Indifferent	2,102	17.53
Do you think church (or organized religion) plays an important part in your life?		
Yes	5,641	46.66
No	5,305	43.88
No opinion	1,142	9.44
In order to avoid urban sprawl, should future growth be restricted to the present limits of Tucson?		
Yes	4,813	39.93
No	4,888	40.55
No opinion	2,351	19.50
Should individual Americans alter or change their life styles in order to preserve their ecological environment?		
Yes	8,769	72.49
No	1,875	15.50
No opinion	1,452	12.00
Archie Bunker, the "friendly bigot" of Television, is:		
A disgrace to thinking persons	792	6.55
Reflects human attitudes	5,775	47.81
Harmless fun	3,913	32.39
No opinion	1,598	13.23
Should juvenile offenders have the right to trial by a jury of their peers?		
Yes	7,770	63.97
No	2,860	23.54
No opinion	1,516	12.48
Should the possession of marihuana—		
Be legalized?	5,225	43.11
Remain as a felony?	3,115	25.70
Be reduced in penalty to a misdemeanor?	3,779	31.18
Should capital punishment be abolished in Arizona?		
Yes	5,473	44.98
No	5,033	41.36
No opinion	1,661	13.65
Has the counseling service offered at your school benefited you in ways other than schedule changes and paperwork?		
Yes	4,756	39.36
No	7,326	60.63
Should the electoral college be abolished and the President and Vice President be chosen by popular vote?		
Yes	7,288	59.96
No	2,837	23.34
No opinion	2,029	16.69

SAM ERVIN: CONSTITUTIONALIST

Mr. ALLEN. Mr. President, sometime ago the well known columnist Mr. Marquis Childs wrote an article entitled "Sam Ervin: Constitutionalist." The article pays high tribute to our colleague the able and distinguished Senator from North Carolina (Mr. ERVIN).

I ask unanimous consent that the article be printed in the RECORD.

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

SAM ERVIN: CONSTITUTIONALIST

(By Marquis Childs)

As the foremost constitutional lawyer in the Senate, Sam Ervin of North Carolina is a good man to have on your side. It follows, as the inquiry into Richard Kleindienst and ITT is now demonstrating, that he is a formidable adversary.

Ervin says that unless the White House relents and allows Peter Flanigan to testify on the role he played in the ITT antitrust settlement he will block Kleindienst's confirmation to be attorney general. If the Judiciary Committee simply closes the hearings with no resolution of the Flanigan matter, he will carry the fight to the Senate floor. And there he seems to be rapidly gaining recruits.

The craggy, stern-voiced North Carolinian will this week go before the Supreme Court to challenge the administration on another constitutional issue. For he believes beyond mere lip service, profoundly and without equivocation, in the freedom guaranteed by the Constitution and in the independence of the three separate and coordinate branches of government.

Ervin will speak for a committee of senators, both Republicans and Democrats, as friend of the court in the case of Sen. Mike Gravel of Alaska. While the administration holds to the right to keep an executive agent (Flanigan) from speaking out, the Department of Justice tried to force a Gravel aide to talk to a federal grand jury on the charge that the senator had violated national security by releasing and bringing about the publication of a greatly amplified version of the Pentagon Papers.

A Federal District Court and later a Court of Appeals upheld the right of both Gravel and his aide to refuse to testify. The appeal to the Supreme Court is on the publication of the papers as read by Gravel into the record of his subcommittee.

In a brief filed with the Supreme Court

Ervin cited Article I, Section 6, of the Constitution which declared that "for any speech or debate in either house, they (members of Congress) shall not be questioned in any other place." While making it plain that they have no brief for Gravel, the senators intend to protect the independence of the Senate. If any discipline is due Gravel for reading the secret papers into the record, the Senate itself must administer that discipline.

That Ervin should be a Daniel come to judgment in the Kleindienst ITT affairs is hardly surprising. Along with his respect for the Constitution goes a healthy regard for the common or garden variety of honesty. The mishmash of half-truths, lies skirting on perjury and just plain obfuscation developed during the hearings persuaded a normally conservative Southerner that something was very wrong and only the testimony of Flanigan as to his part in the settlement could sort truth from falsehood.

The performance of ITT's executives has shocked not only conservatives in the Senate but the business community. W. R. Merriam, head of the company's Washington office, appeared to be openly contemptuous of the Judiciary Committee in the course of his meandering testimony covering when he would lie and what he would not. The company's chief executive, Harold Geneen, came off rather better, but only because he pleaded ignorance of much of what had gone on.

Corporate executives are privately wringing their hands over the damage they believe the ITT affair has done to the corporate image. The maladroit way the company's public relations have been handled—above all, the buffoonery surrounding the hapless Dita Beard—seemed an invitation to committee wrath. All the old prejudice against the business giants out of the early New Deal days has been aroused, countering the long campaign of propaganda aimed at picturing the beneficence of the false enterprise system.

Senate passage of the war powers bill by a majority of 63 to 16 shows the acute sensitivity to the independence of the three separate branches of government. In the view of many critics the measure is a serious infringement of the powers of the chief executive to protect the nation. But, with the power of the executive so great, the other two branches of government are fearful of being crowded out entirely.

RAIZA PALATNIK, HEROINE OF ODESSA

Mr. MATHIAS. Mr. President, there has come to my attention an article entitled "Raiza Palatnik, Heroine of Odessa," published by the Student Struggle for Soviet Jewery. It is a revealing and touching chronology of events leading to the arrest and imprisonment of Raiza Palatnik, a Soviet Jew who became disenchanted with the Soviet Union and whose crime was to desire to emigrate to Israel. I recommend her story to the Senate and ask unanimous consent that it be printed in the RECORD.

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

RAIZA PALATNIK, HEROINE OF ODESSA

Raiza Palatnik, a product of the miraculous Jewish renaissance in the Soviet Union today, was arrested on December 1, 1970. Her real "crime" is that she sought to be a Jew and to leave for the Jewish Homeland.

Before her arrest, Raiza Palatnik wrote the following letter which she left with her friends.

AN OPEN LETTER FROM RAIZA PALATNIK

After the latest questioning at the KGB, where I was again threatened with arrest, I decided to write this letter because I am afraid that I won't have the time to tell my friends and my near ones of what I have lived through in the 35 years of my life.

I was born in a small town in a Jewish family. I was taught the Jewish language and customs at home. There were no Jewish schools there, and I therefore went to a Russian school. From childhood, I always felt myself Jewish and subconsciously looked for a possibility of a national self-determination. In the eighth grade I refused to study the Ukrainian language, stating that my native tongue was Jewish, and by this I brought the school directors to a great confusion.

I was 14 years old when there began the unbridled campaign of anti-semitism, known as the struggle against cosmopolitans without kith or kin. I remember the atmosphere of fear and confusion at home, in expectation of something terrible and inevitable. At that time I wrote a diary. Now, looking through it again before destroying it so that it should not fall into the hands of the KGB, I live again through the pain of those times, through the bitterness, the indignation and the anger. Even at that time I could not understand why it was enough to be a Jew to be rejected.

But Stalin died. The physicians were rehabilitated. Beria was shot. With childish naivite I rejoiced and I believed that justice had triumphed. I entered the Moscow Library Institute. I remember with what enthusiasm I accepted the condemnation of the cult of Stalin at the 20th Congress of the CPSU. But why had not a word been said about the physical annihilation of the best representatives of the Jewish intelligentsia in the post-war years? Why had anti-semitism, which had been raised to the level of domestic state policy, not been condemned? Why did they not open Jewish schools, theaters, newspapers and magazines? These and other questions confused me. I understood how illusory was my belief in the elimination of anti-semitism when I graduated from the Institute and began to look for work. Nobody was interested in my knowledge and my professional qualities. My attachment to the Jewish nationality tightly closed before me any possibility of working in a library of high standard. With difficulty, I managed to get work in Odessa, in a library of the lowest grade, where I am still working. Dozens of questions arose before me with a new force and answers to them were given to me by life itself—a life full of bitterness and disappointment. Not finding an answer in the official literature, I began to read the Samizdat (the unofficial secretly-printed Russian literature). The judicial violence against Yosef Brodsky I understood as a new phase of Soviet anti-semitism. The poet was sentenced on the basis of clearly anti-semitic testimonies of the witnesses, who were not even acquainted with him. Samuel Marshak, Korany Chukovsky, Konstantin Paustovsky and others, who raised their voices in Brodsky's defense, found themselves powerless.

In my searching for a way out, I began to think about Israel more and more often. The beginning of the Six-Day war shocked me. It seemed to me that the entire world was looking with indifference while millions of well-armed armies were preparing to finish the work of Hitler—to destroy the Jewish people, and to erase from the face of the earth the State of Israel, resurrected after two thousand years. On the eve of the war, when the Aqaba Straits were closed, when the U.N. troops were withdrawn and the Arab armies came to the borders of Israel and Federenko was cynically saying in the U.N., "Don't dramatize events", I suddenly felt my personal responsibility for the fate of the Jewish State. I felt that I was a living cell of this united organism, the name of which is the Jewish people. Then I understood the entire groundlessness of my connection with the land where I was born, and that I have no other way but the one with my much-suffering people, in the ancient land of my ancestors. I remember my feeling of unbounded pride and joy when the resurrected David again overthrew Goliath. The currents of vilification the anti-Israel hysteria in the Soviet press, radio and television raised in me a storm of outrage. I felt an almost physical pain because I had no possibility of saying to all that in this difficult moment—"I was with you, my people, my Homeland, my Israel."

I began to be actively interested in everything pertaining to Israel, to Jewish history and culture. I acquired friends who thought like me, with whom we discussed the possibility of going to Israel. The notorious press conference organized in March 1970 by the authorities, at which Jewish loyal subjects condemned Israel in the name of the Soviet Jews—and therefore in my name too—raised a decisive protest in me. How could one say that this was a lie, that the majority thought otherwise? And suddenly, I heard over the radio the letter of the 39 Moscow Jews, who stated to the whole world that the people who had come out at this press conference with anti-Israel slogans, had no right to come out in the name of all the Soviet Jews, that nobody empowered them to do this and that they, the 39, consider Israel their sole historical Homeland. How sorry I was that I had not been able to put my signature as well under that letter! I recorded it on tape and typed it out, so that my friends should also be able to know about it.

I applied to (Israel's) Post Office Box 92 with the request to look for my relatives in Israel. And this was when the agencies of State Security became interested in me. A search was made in my home and material about Israel, its economy, culture and politics and simply books in the Jewish language were confiscated. I am constantly being called for questioning and threatened with arrest. My friends, relatives and fellow-workers are also called for questioning and asked to testify to some sort of an "anti-Soviet activity" on my part.

I understand that arrest and perhaps many years of imprisonment await me. But I know one thing firmly—my fate is tied fast with Israel and no deprivations will part me from you, my people. I am certain that the arrests in Leningrad, Riga and Kishinev will not stop the struggle of the Jews of the USSR for their immigration to Israel.

Unfortunately, I don't know the language of my people—Hebrew—but at the trial I shall aim an accusation against all anti-semites in Yiddish, a language that my father and mother had taught me.

(signed) RAIZA PALATNIK,
November 1970.

In the spring of 1971, a document chronicling Raiza Palatnik's remarkable heroism was brought from the USSR. Following are essential excerpts:

In the afternoon of October 14, 1970, two men entered the library in Odessa where Raiza Palatnik was in charge of the subscription section. They introduced themselves as officials of the Criminal Investigation Department and asked Raiza to follow them. They put her into a car and drove her home. Near her house, four people were waiting—three men and a woman. The latter introduced herself as Rymova, an investigator from the Criminal Investigation Department.

Rymova showed to Raiza a search order for "finding and confiscating property stolen from school no. 56"

The search took five hours concluding with the removal of a typewriter and a number of articles on Israel and on Russian life.

Raiza refused to sign the document of the search, stating that all the above items were her personal property and had no relation whatsoever to the "stolen property" of school no. 56.

On October 15, 1970, a KGB investigator, Alekseyev, came to her at her place of work and ordered her to follow him. He put her into a car and took her to the KGB. In the office there were several persons, the oldest of whom introduced himself as Ponomarev. The cross-examination lasted six hours. Raiza refused to answer the questions and stated that the literature confiscated was not anti-Soviet and that she considered the search and the interrogation as persecution because of her desire to go to Israel.

During her interrogation, there was a parallel interrogation of the persons employed in the library where Raiza worked—five Jewish women and one Russian. They were asked whether Palatnik had given them Zionist literature to read, whether she agitated among them to go to Israel, whether Raiza had met with Chaplia (her husband) and with the Averbuch brothers, whether she had met any of those arrested in Leningrad, Kishinev and Riga (photographs were shown to them) etc.

The interrogation of Raiza continued for 2–3 days, for many hours. Each time they threatened her: "Today you won't go out from here." Raiza refused to give them any answers to these questions and demanded that, in accordance with the Soviet legislation, she should be informed what was the charge against her and also stated that she would answer only in her own language—Yiddish.

After the first interrogation, Raiza wrote a complaint against the illegal persecution to which she was subjected by the KGB because of her desire to go to Israel and addressed it to the First Secretary of the Odessa Regional Committee of the Communist Party of the Ukraine, Kozyr, and to Leonid Brezhnev. Raiza received confirmation that the complaints had been handed to them, but no answers to the complaints came.

On November 20th, the KGB authorities also made a search in the home of Raiza's aged parents in the town of Balta, with the object of "confiscating literature of slanderous anti-Soviet contents." The search was accompanied with humiliating actions with the aim of discrediting Raiza's father in the eyes of his neighbors and at his place of work. Nothing was found during the search.

Meanwhile, the KGB called for interrogation of dozens of persons in connection with the "Palatnik case"—relatives, acquaintances, friends and complete strangers.

On December 1, 1970, the agents of the KGB of the Odessa region arrested Raiza Palatnik.

On the day following Raiza's arrest, Katia, Raiza's 22 year old sister, went to the KGB together with Raiza's husband, Alexander Chaplia, and demanded that the investigator Larionov should show them the warrant for the arrest and should explain what was the charge against her. Larionov answered that he was not obliged to render accounts to Katia. Katia, excited, exclaimed: "This means that you can do what you like to her, beat her and kill her and you don't have to render account?" Larionov answered mockingly: "If it will be necessaary, we shall beat her and we can also kill her."

Katia and Chaplia applied to the Procurator for Supervision over the KGB Dubrovin with a complaint against Larionov. Dubrovin said that this could not be, that Larionov was an experienced investigator and that even had he thought so, he would not have said it out loud. He said that Raiza was suspected of spreading deliberately slanderous fabrications, vilifying the Soviet government and the social system, corresponding to section 187 of the Penal Code of the Ukrainian SSR. To Chaplias' reply that a person could not be arrested for wanting to know and to say the truth, and that this was merely a pretext for the arrest, while the real reason was Raiza's desire to go to Israel, the procurator answered nothing convincing.

After Raiza's arrest, her parents were also summoned for questioning. Raiza's father, Anatoly Solomonovich Palatnik, who had been a political prisoner himself in the past, came alone to the KGB. He made a resolute protest against the summoning of Raiza's mother for questioning. He said that she had already been caused great suffering by the arrest of her innocent daughter and that it was inhuman to torture her with questionings. The investigators tried to make the father admit that his daughter had fallen under the influence of criminal Zionist elements. Anatoly Solomonovich answered that he had always been proud of his daughter's principles, honesty and humaneness, and that, consequently, she could not have bad frineds. He demanded to be shown on the basis of what evidence his daughter was charged. The investigator answered that he was not obliged to show anything and would not do so. Anatoly Solomonovitch then stated that he was completely convinced with his daughter's innocence and that she was being subjected to persecution only because of her desire to go to Israel. He said that he considered the bringing of a criminal charge against Raiza as a new Beilis case.

In March 1971 Chaplia requested permission to see Raiza. The investigator Larionov explained to him that he doubted Raiza's mental normalcy—because "normal people" cannot behave and think like Raiza. This attempt to fabricate psychiatric illness, was unsuccessful. The conclusion of the psychiatrists' examinations in March was unanimous; and absolute normal mentality.

Having failed with this invention, Katia was then subjected to a three-hour brainwashing on March 17, so that she should denounce her sister and Zionist delusions, that Raiza was a "criminal against the State", that "Israel was a festering boil on the healthy neck of mankind", etc. The investigator refused to give his name.

After the arrest, there arose the insoluble problem of finding a lawyer for Raiza. Those few lawyers in Moscow who had a reputation of taking risks were unable to accept the case. Some of them said outright that they are willing to defend Raiza, but are not permitted to do so (Kalistratova and Kaminskaya). Others refused under various pretexts.

Chaplia then applied to the Chairman of the Presidium of the college of Moscow Lawyers with the request to permit one of the Moscow lawyers mentioned by him to defend Raiza. The chairman replied that in regard to such cases, no Moscow lawyer would receive permission to undertake defense. When Chaplia objected that this was a crude violation of the rules of the legal profession, the chairman answered that he would be responsible for the violation of the rules to the person concerned. As for the Odessa lawyers, they agreed to undertake the defense only on condition that at the trial they would ask only for a more lenient punishment, but would not argue that there had been no crime.

On April 22, 1971, Raiza Palanik declared a hunger strike in prison, protesting against her unlawful detention in custody and against brutality of her interrogators.

CLEARCUTTING

Mr. STEVENS. Mr. President, the issue of clearcutting is being debated throughout the Nation with well-meaning advocates on both sides. In 1965 an article appeared in a national magazine which declared that a 1,500-acre clearcut logging operation on Admiralty Island had created a "desolate, obscene ruin" that resembles a "battlefield somewhere near the gates of hell."

The article went on to say that—

No honest witness can believe anything more substantial than devil's club will ever again grow in that eroded wasteland.

Herbert E. McLean, a freelance magazine writer from Provo, Utah, traveling with a group of Brigham Young University students, recently visited Admiralty Island to make an up-to-date report on that "desolate, obscene ruin" that would never grow anything more substantial than devil's club.

What did he find? He found vigorous stands of sitka spruce, 6 to 8 feet high. Hemlocks by the thousands. Blueberry, huckleberry, salmonberry, wild current, and others. Birds and bears. Black bears and brown bears.

The Alaska Department of Fish and Game reported that the salmon yield had increased fourfold.

The forest is there again, 7 years later, newer but stronger.

Mr. President, I ask unanimous consent that Mr. McLean's article published in a recent issue of the New Alaskan, be printed in the RECORD.

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

CLEARCUTTING

The Forest Service reeled as hundreds of letters flooded their Washington and Juneau offices six years ago. At issue: Admiralty Island, where a 1500-acre clearcut logging operation had triggered the ire of Field and Stream.

The Tongass National Forest had created a "desolate, obscene ruin" that resembles a "battlefield somewhere near the gates of hell."

Had caused a "rape of the land."

Had made a "barren, wet Appalachia" out of the nation's greatest remaining wilderness.

Had, in short, ruined Admiralty Island's Whitewater Bay to the point that "no honest witness . . . can believe anything more substantial than devil's club will ever again grow in that eroded wasteland."

So said Richard Starnes, writing in the August, 1965 issue of Field and Stream in an article titled "Night Comes to Admiralty."

Starnes, in copy calculated to move the most laconic armchair bear hunter to his typewriter, was shouting about a logging project which, he undoubtedly believed, would totally destroy not only Admiralty's forests, but her superb bear hunting as well.

The clearcutting issue being what it is, I decided to check up on Starnes-the-prophet last June. I was in Southeast Alaska with a group of Brigham Young University writing students, and I took my assistant instructor and one of my student photographers in a chartered float plane.

We zoomed off in Ken Loken's Turbo-Beaver from Gastinau channel in Juneau, prepared for the worst.

The water sparkled under a perfectly brilliant summer day—the kind that make Juneauites dance. As we rose into the air the whiteness of the immense Juneau Ice Cap to the east glimmered and bounced back the early morning sun. Gill netters, seiners and Salmon Derby pleasure boats bobbed in the deep blue waters of Gastinau and Stephens Passage as the Admiralty's velvet greenness loomed in front of us to the south. High in the watershed above Pack Creek, Sitka spruce and hemlock climbed high on rocky flanks, then gave way to barren rock and spring-melting snow.

We cleared the crest of Admiralty's 70-mile-long backbone, then Ken nosed down a couple of degrees for our descent into Whitewater.

There it lay on the shores of Chatham Strait—a delightful snug-harbor inlet surrounded by deep, deep greenness.

But where were the scars?

Where the "barren . . . Appalachia?"

Where the "sullen garbage dumps," the "eroded gullies," the rape stains so vividly defined and convincingly photographed by Starnes?

Ken banked deep for a tight turn over the bluewater bay, then dipped for a glassy-smooth approach on a lagoon so clear I could see bottom, in all but the dark blue depths of the center of the lagoon. We skimmed across the inlet, then sided up to a mooring spot. We jumped ashore.

Minutes later, with a 30.06 in one hand and a copy of Starnes' article in the other, I set out on a walking tour to find our "desolate ruin" with Wally Barrus and Mike Nielson.

We never found it.

Because it doesn't exist.

Instead we found a vibrant, lush forest literally springing to life on the 1500 acres of the Whitewater Bay tract logged between 1963 and 1967.

Throughout the clearcut area, vigorous Sitka spruce were rearing their heads six and eight feet high. Hemlocks by the thousands, and a whole year-by-year progression of saplings and younger trees, were coming along right behind them. Blueberry and huckleberry, salmonberry and wild currant, elderberry, alder and wild columbine provide a carpet so thick we could scarcely make our way through. Birds of all descriptions chirped and chattered as we approached.

What once were logging roads are now nearly closed in by alder overgrowth, making them trails for the most part. At the site of a logging road bridge (removed by the loggers as required by the Forest Service following operations), we waded thigh-deep across the chill waters of the Whitewater river-waters as clear as any I'd ever seen in Alaska. Looking across a grassy meadow, we gazed at a magnificent unnamed falls surrounded by a spruce-hemlock forest which, I learned later, had sprung up following a clearcut operation 43 years before.

But what of the bears? We saw four brown bear cubs skittering down a snowbank as we flew in that morning. Everywhere along the trail was fresh evidence of bear, and Pilot Ken reported seeing both black and brown bear often in the grown-over clearcut area.

Otter and mink were thick here, as evidenced by the mussel and cockle shells they'd carried from salt water some distance inland.

Unfolding Starnes' article, I searched until I found the huge stump of a "murdered Admiralty monarch." It was literally surrounded by lush hemlock, alder and spruce trees.

The garabage dumps? Only a barely recognizable, overgrown depression was left to suggest their past presence.

It was a little early in the season to find any salmon in the river, but when I returned to Juneau I checked official Alaska Department of Fish and Game counts for that area, and learned that peak counts for last year, 15,000, show an almost four-fold increase over the years 1960–63 before logging commenced—making it all most difficult for me to understand why Starnes had stated: "It is impossible . . . to believe that the Whitewater watershed will ever again produce any substantial harvet of trees, salmon, or brown bear."

Our hike up the little valley was memorable for its placid beauty—if you can appreciate what happens when a whole new forest springs to life. The rushing clear water, the sounds of innumerable birds, the mature stands of conifers left here and there for landscape effect and as a seed source—they all worked with the new forest to produce a picture of harmony, of rebirth, of regeneration in the Alaskan rainforest.

That last word—"rainforest"—is of course the key.

Upward of 100 inches of rain per year will bring up new forests like the Whitewater regrowth. They'll bring along a harvest of Sitka spruce and hemlock in less than 100 years. How do I know? One little spin over the area immediately adjacent to Whitewater with a logger's map shows clearcuts dated 1965, 1942, 1928, 1924, 1920—in fact all the way back to 1860. If you didn't have that map you couldn't locate most of the cuts. All you see is thick, vigorous forest—a little healthier than the surrounding older stands with their dominant snap-topped trees.

Nevertheless I'm sorry we can't bring back Starnes' magnificent monarchs—this year.

I'm sorry that roads are necessary for logging.

I'm sorry, in a way, that people use so much paper, so much lumber.

But if Mr. Starnes will just climb into a plane and hop out to Whitewater one of these days, he'll find a whole new morning on Admiralty to replace the night he so darkly described.

If he has a genuine concern for the needs of future generations for "magnificent monarchs," and for paper, for lumber, for places to hunt bear and catch salmon—he might look at the new Whitewater forest, and even manage a forced little nod of assent to the Forest Service and gruff Alaska loggers.

PROFILES OF CHILDREN

Mr. MONDALE. Mr. President, on March 7 the Committee on Finance voted to postpone and dilute a program that would provide health services to millions of poor children—the "early and periodic screening, diagnosis, and treatment" program under medicaid.

After a 4-year delay in issuing guidelines, the Department of Health, Education, and Welfare ordered States to offer these health services to eligible children under 6 starting in February of this year; and gave States until July 1, 1973, to phase in programs for children and youth from 6 through 21.

The Committee on Finance, however, voted to postpone the requirement for services to 6 through 21-year-olds by 2 years—until July 1, 1975. In addition, the committee announced that under an amendment it adopted States would not be required to offer additional medical treatment for diseases discovered in the screening process. The effect of this could be to deny needed eyeglasses, dental care and hearing aids to an unknown number of children.

I have previously announced that when this legislation comes to the floor of the Senate, I will do all I can to see that the program is implemented as soon and as fully as possible. In the meantime, I would like to insert in the RECORD for the information of my colleagues some data which I believe bear on the Finance Committee's action.

This information consists of excerpts and paraphrases from "Profiles of Children," a publication of the White House Conference on Children. These statistics show that many youngsters have health problems which go untreated, including nutritional deficiencies which can cause serious health problems in later life. It portrays concisely why it is so important to bring the "early and periodic screening, diagnosis, and treatment" program to fruition as soon as possible. The information is as follows:

These diseases are still a threat to the health of children: syphillis, hepatitis, gonorrhea, and tuberculosis. Twenty-six percent of reported cases of hepatitis occur in children under 14; three percent of reported cases of syphillis and one percent of cases of gonorrhea occur in children under 14; and 11 percent of reported cases of tuberculosis are found in children under 15.

One out of every 12 children between the ages of 6 and 11 has a speech defect.

One out of 4 children between the ages of 5 and 14 has never seen a dentist.

Poor children have greater dental needs than children in more affluent families. In families with an income of under $3,000, children aged 6 to 11 have an average of less than one tooth filled each year. In families with an income of $3,000 to $4,999 per year, children of the same age have an average of a little more than one tooth filled; while three decayed teeth go untreated.

Proper nutrition is basic to the good health of the child. Pre-schooler's diets often lack adequate amounts of important nutrients. Fifty-one percent of boys under six and 56 percent of girls the same age receive inadequate amounts of Vitamin A. Twenty-one percent of boys under six and 27 percent of girls in the same age group receive inadequate amounts of Riboflavin.

ADDRESS BY SENATOR JAVITS BEFORE UNITED STATES CHAMBER OF COMMERCE

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD the text of an address delivered by me before the 26th Annual Hemispheric Insurance Day Luncheon of the Chamber of Commerce of the United States on May 16, 1972.

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

THE CRISIS FACING REGIONAL INTEGRATION IN THE AMERICAS

I welcome this opportunity the U.S. Chamber of Commerce has provided me to talk about Western Hemisphere affairs. While the attention of our policy makers and the press is directed towards the more vivid threats to world peace, to our constitutional processes and to our system of checks and balances—it is nevertheless likely that the future shape of world society may be influenced as much by what happens in Latin America over the next decade.

The topic of my address is: The Crisis Facing Regional Integration in the Americas. I am aware that continent-wide regional economic integration for Latin America is a subject that is not being pursued actively at this time either by major Latin American governments or by the United States. By economic integration of Latin America, I mean significantly closer economic cooperation between the countries of Latin America leading to the establishment of a Latin American Common Market, actually a customs union with relatively free movement of labor and capital.

While Canada's decision of last week to join the Inter-American Development Bank (IDB) is welcome, Canada continues to tiptoe around the edges of a significant involvement in matters of the hemisphere. One must note that this decision took years and also

that Canada still is not a member of the Organization of American States (OAS). Canada is a productive nation—a mature democracy—and needs to play a more significant role in inter-American affairs. With British Commonwealth ties loosening as Britain joins the European Common Market, Canada could play a major and vital role in the affairs of the Western Hemisphere aside from joining the Inter-American Development Bank. A Canadian commitment to the Western Hemisphere is now needed; in bilateral U.S.-Canadian relations, revision of the safeguards in the Automotive Products Agreement and other steps to achieve a proper balance in trade agreements and monetary matters between the two countries are increasingly urgent.

As to Latin American integration, my concern is that a mood may be growing that regards the solemn commitment that the Presidents of the Americas entered into at Punte Del Este in April, 1967, "to create progressively, beginning in 1970, the Latin American Common Market, which shall be substantially in operation in a period of no more than fifteen years" as somewhat of a dead letter.

If this were to happen, it would be a most regrettable development. If this regional integration goal is not pursued at the very time that Western Europe is moving toward a strengthened Common Market and Japan into economic super power status, it is my view that Latin America will have relegated itself to an almost permanent position of economic and political weakness.

In my mind, arguments for Latin American integration remain valid. These include:

1. Integration would make Latin American industry more competitive in relation to the rest of the world, thereby strengthening the Latin American export base for semi-manufactured and manufactured goods where world demand will be buoyant in the years ahead;

2. Integration would justify certain infrastructure projects in Latin America that otherwise would not be justified;

3. Integration would cause import substitution to be looked at on a regional basis and could lead to efficient continent-wide industrial planning which would give a considerable impulse to industrialization;

4. Integration would strengthen Latin America's bargaining power re the rest of the world;

5. Integration would permit working toward a multilateral payments union in Latin America; and

6. Integration's above mentioned economic benefits could give an impulse to job creation, political stability and social justice—problems that have plagued Latin America in the modern era.

And, of course, the summation of these preceding benefits—if successfully nurtured—could provide a giant step for Latin America in approaching its century old dream of some day achieving a Latin American political union.

For those of us interested in a broader scheme of Latin American economic integration, the evolution of the Andean Pact grouping to date, while causing some disquiet, also gives grounds for hope. I realize that in Latin America, as well as in the United States, the Andean Pact is controversial, particularly as it relates to the "code of behavior" for private foreign investment. The Andean Pact is also controversial in terms of the effect it will have on the possibility of the broader economic integration of Latin America.

Regarding this latter point, one school of thought strongly questions the economic compatibility of this grouping and is concerned that as the Pact grows and strengthens, it will be increasingly difficult to work out smooth relations between the Andean Pact countries and the rest of Latin America. Concern is expressed that industries may be established that—while being optimal in terms of the economic needs of this specific regional grouping—clearly are not optimal in terms of a broader Latin American integration. In other words, it is argued that if the Andean Pact gets in the way of economies of scale, this could be a disastrous development for Latin America.

The optimists—and I include myself as one—are hopeful that Venezuela soon will accede to the Pact and that this act will soften some of the Pact's present rigidities. The accession of Venezuela could help trigger the application of Argentina. As the Pact strengthens, negotiations with the "giants" of the area—Mexico and Brazil—would become mutually desirable and mutually profitable as would negotiations with the Central American Common Market. The evolution of the Andean Pact thus could become the linchpin of a broader integration plan which would replace the relatively defunct Latin America Free Trade Area (LAFTA). This optimistic assessment is clouded by the immense political diversity of the countries making up the Andean grouping. It cannot be doubted that Chile is the present weak link.

The self-made economic problems of Chile are staggering, and the deterioration of the economic situation unfortunately does not seem to have run its course. This rapid economic deterioration is characterized by persistent production problems in both the agricultural and manufacturing sector; accelerating inflationary pressures, mounting product scarcities including essential food items, and a serious foreign exchange crisis aggravated by continuing labor difficulties fomented by the Marxist unions in the major Chilean copper mines. These are the kinds of problems that have political consequences.

I realize that the alleged inappropriate behavior of one major American corporation in Chile—behavior which was not supported by other American corporations in Chile or by the U.S. Government as the Anderson papers made clear—makes it all too easy for political leaders facing a difficult situation to point the finger at a foreign scapegoat. This is a favorite political tactic the world over. But, the tactic must not be allowed to obscure the root causes of the present Chilean economic, social and political problems.

Leaving aside the unique problems Chile is causing the Andean grouping, the whole question of the relationship of the Andean Pact countries to the LAFTA and the Central American Common Market—which is recovering nicely from the disastrous war between Honduras and El Salvador—is an open question. The shape of future relations first with Venezuela and then with Argentina, Mexico and Brazil is also relatively undefined. Beyond this is the question of the future of the relations of the Andean Pact countries and/or a broader economic unit with the other nations and major trading blocs of the world.

Regarding the present role of the United States, Latin America under President Nixon's "low profile" policy, we can no longer be seen as the colossus of the North, and paradoxically, this now seems to be causing some resentment.

Over the short-term, I share the view that Dr. Joseph Grunwald puts forward in his perceptive new book, *Latin American Economic Integration and U.S. Policy*, that "the United States, because of the Vietnam war and the Congress's attitude towards foreign aid, was in no position to make substantial and definite commitments in support of Latin American integration." I would add that these factors constraining U.S. policy are not likely to alter significantly over at least the short run. New bilateral and multilateral aid programs remain in deep trouble in the Congress, trade preferences remain down the road as long as the present protectionist mood persists and there is an emphasis in the Administration on bilateral relations rather than more ambitious integration plans. It would be my hope that the larger nations of Latin America—Brazil, Mexico and Argentina—would take up the slack and make a more definite commitment to a broader Latin American integration along with Canada and that these relative giants would make the concessions that would be necessary to get a broader integration movement back on the tracks.

Any speech on Latin American integration would be remiss if it did not mention the role of private foreign investment. The fear of foreign domination has had a deterrent effect on the forward movement of regional integration schemes. In my order of priorities, I feel that the protection of U.S. business interests should be subordinate to the U.S. broader economic objectives which hopefully again will include the promotion of Latin American integration as a priority objective.

In viewing the future role of private foreign investment, I think that there are some points on which almost everyone can agree. The first of these areas of agreement is that the developing world will require the transfers of technology that are an inherent element of private foreign investment for a long time to come. Increasingly, I feel the developing world is regarding such transfers of technology as being more important than transfers of capital.

Equally acceptable I hope is the fact that the developing world will have to pay for the technology and capital they receive as these transfers will not descend on the developing world as "manna from heaven." In turn, it is incumbent on the developing world to make a better definition of the areas in which they want technological transfers—and capital transfers.

In viewing new private foreign investment, acceptance also seems to be growing that a joint venture or multinational venture arrangement in many cases is preferable to a 100 percent ownership position. A joint venture immediately creates a vital interest by nationals of the country in the project. The idea of foreign ownership extending into perpetuity is also becoming a casualty of our age. I note that the ADELA and some U.S. corporations have adopted disinvestment policies. Also, it is clear that if takeover situations stir concern in Western Europe and Canada, this concern undoubtedly is heightened in the developing world including Latin America. The recent promulgation of Canadian policy concerning takeovers will not be lost on the nations of the developing world.

Heightened American business sensitivity on matters such as these could go a long way toward alleviating tension between the foreign investor and Latin American nations.

On the legislative front, I do not feel that the broad purposes of any group have been well served by Hickenlooper-type amendments—be they tacked on to our bilateral assistance or multilateral assistance programs.

In my view, just as the Hickenlooper amendment, which affects our bilateral aid has not been an effective policy instrument in our relations with Latin America, I cannot see why the Gonzales amendment affecting our multilateral lending programs should be any more effective.

Finally, in reviewing the foreign investment area, I remain concerned that there are still too many grey areas and a lack of definition continues to lead to unnecessary conflict and at times unnecessary legislation. There are intensive discussions going forward regarding the rules of the game as regards

international trade and international monetary matters; but, discussions of similar intensity are not going forward—and they should be—as regards private foreign investment with the exception of the Burke-Hartke bill, and this is solely a domestic battle which must be fought and won at home.

I reiterate the suggestion I made in Mexico City approximately one year ago that the United States and Latin America should convene a high-level meeting that would look toward the evolution of a continent-wide private foreign investment policy which would safeguard the sovereign rights of each country. Perhaps such a meeting could then commission a small group of men, representative of the Western Hemisphere, thoroughly to review this matter with a view toward defining the role of private foreign investment and foreign capital and technological and managerial inputs required by Latin America over the next decade. Review of the adequacy of present institutional structures in the private foreign investment area could also fall within their mandate.

It is my view that a multilateral mechanism—a GATT for private foreign investment—to set forth guidelines of behavior both as to obligations and rights by investor and host has never been more essential if the law of the jungle is not to take over in private foreign investment matters, with all the sad consequences this would entail for international and inter-American relations. I will continue working to promote these ideas.

WASHINGTON EDUCATORS RETIRE

Mr. JACKSON. Mr. President, the future of the United States of America will greatly depend upon a population well educated in the moral and social values, as well as the technical skills, which have become a part of our history and birthright.

These values and skills are being imparted to the youth of the United States every day by dedicated classroom teachers in our public schools.

This school year Skamania County School District 303, Stevenson-Carson Public Schools in the State of Washington will retire six teachers who have spent a total of 187½ years in public education. They are Mrs. Dorothy Hoffman, librarian, 20 years; Margaret Heller, elementary, 18 years; Harold Grossie, commercial, 24 years; Ted Vaux, mathematics, 41 years; Harry Cameron, social science, 44 years; Donald E. Leer, director, vocational and industrial arts program, 40½ years. Mr. Leer retired December 30, 1971. The others will retire in June 1972.

The dedication of these individuals to the youth of this one part of our State, and to youth whom they served in other parts of these United States is beyond measure. They have not only been fine educators, but have provided leadership and example. Their efforts have made a major contribution to their fellow men and the communities in which they have lived.

It is in recognition of their outstanding service to the people of Washington State that I ask Senators to share with us in honoring these teachers and their thousands of colleagues throughout the country who are retiring this year, and to join me in honoring these teachers who have contributed so much.

FOREIGN FISHING OFF U.S. SHORES

Mr. STEVENS. Mr. President, the intensification of foreign fishing off our shores in the last decade presents severe complications as our representatives prepare for the 1973 Law of the Seas Conference.

Many communities in the United State depend entirely on fishing for their total economic support. At the annual fisherman's forum held at Point Judith Rhode Island recently, the statement was made that "Everything depends on the fishing industry directly or indirectly in Provincetown, Mass." I have repeatedly stated that many Alaskans depend entirely on the sea for their livelihood. It is no exaggeration, then, to say that the fleets that are taking fish off the shores of the United States must be brought under the same restrictions that apply to our own fishermen if we are to conserve this resource and protect the rights of Americans.

Today, 309 foreign vessels are fishing in waters just off Alaska's shores: 97 Russians are fishing for groundfish, black cod and perch; 211 Japanese are fishing for crab, herring, black cod and perch; and one Korean is fishing herring. These alien vessels are in waters close to Alaska in the Bering Sea, along the Aleutian chain and around the shores of the Gulf of Alaska.

If we are to stop the decline of the United States as a fishing power, the rights of the United States fishermen must be enforced and protected over the interests of foreign fishermen.

MISSOURI BOTANICAL GARDEN

Mr. EAGLETON. Mr. President, on May 12, 1972, Dr. H. Guyford Stever, Director of the National Science Foundation, took part in the dedication of a building at the Missouri Botanical Garden, a building made possible in part through the generous help of the Foundation.

The city of St. Louis and the State of Missouri have always been justly proud of its Missouri Botanical Garden, an excellent research institution located in St. Louis which has been supported mainly by the contributions of private citizens.

The National Science Foundation has recently awarded a 5-year grant totaling $668,000 to the Missouri Botanical Garden. This grant will help support the garden's herbarium, one of the Nation's largest with 2.2 million specimens from all over the world.

The grant will be used so that scientists and students throughout the world will be able to work in St. Louis at the garden or borrow materials for study elsewhere.

The National Science Foundation is to be congratulated for its generosity and the recognition of the importance of institutions such as the Missouri Botanical Garden.

I ask unanimous consent that the pertinent and illuminating remarks of Dr. H. Guyford Stever concerning the problems facing science and the cities delivered at the Missouri Botanical Garden on May 12, 1972, be printed in the RECORD.

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

SCIENCE AND THE CITY

It is an honor to join with you in dedicating this beautiful structure in memory of John S. Lehmann. The Missouri Botanical Garden, known far and wide both as an excellent research institution and an outstanding amenity for the city of St. Louis, is greatly enhanced by the addition of this multipurpose building. While the National Science Foundation contributed to the project, it was mainly your efforts as public-spirited citizens that were responsible for getting it built.

By your dedication to this great civic asset, you have again set a valuable example for other cities of our nation. As a trustee of the Pittsburgh Symphony Society, I visited another of St. Louis' amenities, the Powell Symphony Hall, which inspired Pittsburgh to renovate one of its theaters into the impressive Heinz Hall for the Performing Arts.

I think examples such as these tend to highlight the recognition that the second half of the 20th century may go down in history books as a period of both great crisis and renewal for American cities. If that chapter is to have the happy ending I think is coming, it will be owed largely to concerned, influential citizens who cared enough about cities to preserve and enhance them. Certainly the economic and demographic forces at work in our cities cannot continue unchecked if we are to avert ever-growing trouble. Inward migration of the poor, outward migration of the afluent, declining tax base coupled with increased demand for services, breakdowns of services, breakdowns of traffic, ever-dirtier air—these are some of the familiar dynamics of urban decay.

Governments—Federal, State, and local—are taking steps to reverse these processes. However effective these steps may be, the key to urban rejuvenation lies with individual citizens, in private capacities as well as in public offices, who care about the future of our cities.

Increasingly, it is our urban areas that provide an indication of how well or how poorly man is doing as an inhabitant of the earth and the master of its resources. In the 20th century, the so-called population explosion has been accompanied by what Philip Hauser calls the "population implosion"—that is, the increasing concentration of the peoples of the world on relatively small portions of the earth's surface. Hauser estimates that the 20 percent of the world's people who lived in urban areas in 1950 will increase to perhaps 50 percent by the end of the century. In the United States, the pace of this urbanization has been spectacular. When our first census was taken in 1790, 95 percent of the American people lived on farms or in small villages. Half a century ago, about 50 percent of our population lived in urban areas. Today, about three out of four Americans do. And, incidentally, in that 80 years, the center of population in the United States has marched steadily from the East to a location not too far from St. Louis.

What's more, our new-found concern for how mankind manages the earth's resources—using them with minimum waste or pollution—is increasingly an urban matter. In our own country, urban areas account for about 80 percent of the annual consumption of raw materials. Problems associated with that consumption are found everywhere in our cities.

I think a word is appropriate here about a proper perspective on mankind the prodigal consumer of resources. As much as we deplore waste—and there are sound reasons for

doing so—it is constructive to accept as unchangeable the fundamental fact that man is a different kind of agent of change than other forms of nature on this planet. By virtue of his superior abilities, man is at the top of the predatory pyramid. If we are to convert the vast majority of human beings to conservation causes—saving endangered species, for example—we must do so on sound and persuasive arguments that promotion of the cause benefits man himself.

By the same token, it does not seem a realistic strategy to plan to have people sacrifice certain conveniences they have come to know in our technological culture when such sacrifice would contribute little to the solution of our problems. Recently, I read in a newspaper about a group of ecology-minded high school girls in Cleveland who have stopped using electric hair dryers. While that is a touching gesture to save a small amount of electricity, it would not seem to be, pardon the pun, the wave of the future. Rather, the solution lies in more efficient use of materials and energy in the process of transforming raw material into finished product, building products that have greater usefulness—whether it is cars that last longer or urban transit systems that make cars undesirable for commuting—and then recycling products at the end of their lives of usefulness.

Likewise, the answer to city problems is not to disperse the urban population among villages—which is what suburbs would be if there were no "urbs." In many ways, suburbs are more prodigal consumers of materials and energy than central cities are. The central city, on the other hand, was created for the purpose of processing and distributing resources efficiently and as a concentrated pool of human resources—and the city, when well managed, is still the best place for effecting economies.

Moreover, there is a sense in which cities are like those rich and variegated environments that Darwin found much better suited for adaptation to change than small islands with limited variety among species. Just as diversity in genetic makeup increases the chances for survival of a species under environmental change, so the diversity of human talents one finds in a city lends itself to innovation and experiment. New enterprises find customers, new commodities find a market, and new ideas find an audience more readily in a city than in smaller communities.

But cities can also become overly rich environments—too many people, too much noise, too many sensory inputs of all kinds. Those impassive, almost growling faces one observes in overcrowded cities often belong to people suffering sensory overload. There is a need to provide in our urban environments space to move around in, places for solitude, places that offer refuge from noise and bustle. I think St. Louis suffers this deficiency far less than many other cities. Certainly there is no more tranquil patch of city land, meant for escape from urban pressures and appreciation of nature's handiwork, than the Missouri Botanical Garden.

Our cities are worth saving. They are sensible environments for the human inhabitants of technologically advanced societies. They must be made pleasant, safe, and fulfilling environments for those who live there, and restored as an appealing habitat for those who have sought escape from cities.

To develop urban environments in ways that will allow continuing exploitation of natural resources, but with responsibility for using those resources wisely, will require the help of science and technology. I know it is customary these days to castigate science and technology as the handmaidens of waste and pollution, since it is upon scientific and technological accomplishments that so much modern industry is based.

Yet, it is clear that we could not have come this far in our journey through history without the help of science and technology. And we will not continue much further without the wisest development and application of new science and technology. Natural resources are characterized by greater scarcity and inaccessibility as time goes on, since the most accessible sources are always exploited first. It is progress in scientific understanding and ingenuity in technology that permits man to progress to lower-grade sources and to alternative raw materials when a resource is approaching exhaustion. As minerals become scarce at the earth's surface, mankind invents machines to dig deep into the earth to find new sources. He finds new processes for handling lower-grade ores. He discovers ways to make refining more efficient. To lower costs of processing, he finds ways to utilize by-products. When resources must be carried ever-greater distances to the point of ultimate consumption, man puts his ingenuity to work to find new and cheaper modes of transport.

Notice that fresh air, which used to be of such abundance as to be labeled a "free good," is now a natural resource of increasing rarity, and hence increasingly a product of technology—that is, of air conditioners and pollution control devices in factory chimneys and cars.

Increasing scarcity is a goad to technological innovation, but often man's restless spirit is creating new resources far ahead of need. Nuclear power generation is being perfected and implemented far in advance of the day when our fossil fuel supplies will be exhausted. Under sponsorship of the National Science Foundation, a number of scientists are investigating alternative sources of useful energy, such as waste heat from power plants, oil separated from low-grade oil shale by biochemical means, methane produced through photosynthesis, and solar energy used to produce synthetic fuels or converted to heat energy that can then be used to produce electricity.

Man's quest for scientific understanding and technological innovation thus are grounds for optimism. With ingenuity, we will make do with the earth's endowments for the lifetime of the planet. Unquestionably, some of our needs, and some of the luxuries we come to call needs, will become more costly. Over time, the possible increments of greater efficiency in processing a natural resource become smaller, and the alternative sources of a raw material become fewer; hence, the possibilities for new cost savings become circumscribed. Moreover, costs of energy and finished products will rise as we implement our determination to make waste treatment an integral part of processing natural resources.

Through scientific and technological research, we can also improve our urban environments, so that they become more pleasant habitats as well as more responsible consumers of natural resources. Again, let me cite some examples under NSF sponsorship. In cooperation with the Department of Housing and Urban Development, we are supporting studies of a more efficient way to supply electricity, water, heating, and other services—and to handle residential wastes—under a concept called the Integrated Utility System. Another project is seeking to improve instrumentation for use in measuring environmental pollutants that is more rapid, accurate, and economical than present devices and sensitive to a broader range of polluting substances. Here in St. Louis, NSF is sponsoring a study of the influence of pollutants and waste heat from the city on local weather patterns. Also under way in St. Louis, is a study of the effects of carbon monoxide on inner city inhabitants. Other studies are applying a systems approach toward the improvement of municipal services such as refuse collection, utilities, and transportation. Last year, a team of researchers from the State University of New York at Stony Brook saved the city of New York millions of dollars through a rescheduling of garbage collection—and developed new mathematical insights in the process. They were able to match manpower on the streets to the peaks and ebbs of garbage accumulation in the city without hiring additional men and in a way that was fair and acceptable to the employees of the sanitation department.

Science and technology can contribute to the rescue of our cities, but I return to my opening contention—that it will take active, concerned citizens to effect the renewal and rejuvenation of urban environments. St. Louis is fortunate to have a tradition of civic pride and leadership among its most successful and influential citizens. This new building, and the magnificent gardens that surround it, are testimony to their dedication. On an occasion like this, there are no grounds for pessimism about the future of your city.

EARTH DAY 1970

Mr. BAKER. Mr. President, Earth Day 1970 was an event of national importance. It focused clearly on the very serious threats to our existence which we have ignored for too long. Clean air, clean water, and a healthier environment are the goals toward which we must continually strive.

But now that Earth Day is but a mere remembrance of things past, where do we go now? What lies ahead? For one thing, we must look to our elected representatives for the guidance and wisdom to restore our environment. One man who has always lent his help is Senator HUGH SCOTT.

Every day is Earth Day for our esteemed minority leader and Pennsylvania's senior Senator, HUGH SCOTT. His enviable record on environment and conservation matters should be an example for all of us to follow. I ask unanimous consent that a statement of his achievements be printed in the RECORD.

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

CONSERVATION AND ENVIRONMENT

92D CONGRESS—LEGISLATION

S. 391—Consolidated Farmers Home Administration Act to increase the aggregate annual limit on grants for water and waste facilities constructed to serve rural areas and to increase the aggregate annual limits on grants for plans for the development of such facilities.

S. 745—Federal Environmental Pesticide Control Act of 1971, to protect the public health and welfare and the environment through improved regulation of pesticides.

S. 1012—To amend the Federal Water Pollution Control Act, to increase appropriations for purposes of State and interstate water pollution control programs.

S. 1015—To establish an Environmental Financing Authority to assist in the financing of waste treatment facilities.

S. 1016—To control the generation and transmission of noise detrimental to the human environment.

S. 1116—To require the protection, management, and control of wild free roaming horses and burros on public lands.

S. 1156—To provide for a Great Lakes Basin conservation program.

S. 1238—To regulate the dumping of material in the oceans, coastal and other waters.

S. 1431—To promote more effective management of certain related functions of the executive branch by reorganizing and consolidating functions in a new Department of Natural Resources.

S. 1841—To provide for the establishment of the Tinicum Environmental Center in the Commonwealth of Pennsylvania.

S. 2981—To provide for environmental improvement in rural America.

S. 3000—To provide for a program for the regulation of surface mining of coal to protect the environment.

S.J. Res. 15—Designating the third week of April of each year as "Earth Week."

S.J. Res. 115—To instruct the Secretary of State to call for an additional moratorium of 10 years on the killing of all species of whales.

Amdt. 477—An amendment permitting taxpayers to obtain the investment tax credit for anti-pollution and mine safety devices as well as the amortization deductions now available under present law.

92D CONGRESS—VOTES

Voted to establish a joint committee on the environment.

Voted to regulate public exposure to sonic booms.

Voted for the Marine Protection and Research Act of 1971.

Voted for the Alaska Native Claims Settlement Act of 1971.

Recorded in favor of the Federal Water Pollution Control Act Amendments of 1971.

1970

LEGISLATION

Environmental quality package for the 1970's

Senator Scott introduced the Administration's 7 environmental quality bills in the Senate on February 18. These bills would amend the Clean Air Act to provide national air quality standards, regulate dangerous emissions from stationary sources, and improve controls over motor vehicle emisisons. They would establish an Environmental Financing Authority to aid financing of water treatment facilities, authorize the Council on Environmental Quality to make recommendations concerning the reclamation and recycling of solid waste materials and amend the Federal Water Pollution Control Act to clean up the nation's waterways.

Environmental quality administration act

Senator Scott introduced S. 3388 on Februaary 4. This bill would consolidate Federal programs in the three basic areas of air, water, and solid waste disposal by transfering programs now administered by the Departments of Health, Education and Welfare, Housing and Urban Development and Interior into a new Environmental Quality Administration.

Health hazards of Pollution Act

Senator Scott, on January 25, co-sponsored S. 3316, which would require an immediate in-depth study by the Department of Health, Education and Welfare of the hazards posed by pollution to the Nation's health to determine what *immediate* steps can be taken to reduce these hazards while longer term programs are being developed.

Resource conservation amendments

Senator Scott, on March 17, co-sponsored S. 3598, which would authorize Federal assistance through the Department of Agriculture for land utilization programs to promote fish, wildlife, and recreation development. The Senate has passed S. 3598 and sent it to the House of Representatives for action.

Federal low emission vehicle procurement act

Senator Scott co-sponsored S. 3261 on March 9. This bill would stimulate the development, production and distribution in interstate commerce of low-emission motor vehicles in order to provide the public with increased protection against the hazards of vehicular exhaust.

Environmental financing authority

Senator Scott co-sponsored S. 3468. This bill established an Environmental Financing Authority to assist in the financing of waste treatment facilities.

Wildlife Restoration Act

Senator Scott co-sponsored S. 3860. This bill revised and clarified the Federal aid in Wildlife Restoration Act and the Federal aid in Fish and Restoration Act.

Small business environment action

Senator Scott co-sponsored S. 3528 on March 2. This bill would help small business concerns to effect conversions required to meet Federal or State pollution control standards.

Great Lakes Disposal Act

Senator Scott co-sponsored S. 3763 on April 23. This bill prohibits open water disposal of pollution dredge spoil which is destroying the few remaining fresh water fishery sources in the Great Lakes.

VOTES

Senator Scott voted for water, air, and solid wastes pollution controls.

Senator Scott voted for an increase from $200 to $500 million funds for grants for basic water and sewer facilities in metropolitan areas.

Senator Scott voted to ban disposal of any chemical or biological warfare agent unless rendered harmless to man or his environment, except in an emergency to safeguard life.

1969

LEGISLATION

Susquehanna River Basin Compact

Senator Scott, on February 19, introduced a bill to develop the Susquehanna River Basin. This bill creates a Commission composed of representatives of Pennsylvania, New York, and Maryland plus a direct representative of the President. This Commission would be charged with the responsibility of developing comprehensive water resources programs. These programs would deal with such matters as water supply, water quality management and control, recreation, fish and wildlife protection, and the preservation of scenic sites. Senator Scott has been named as Republican member of a special subcommittee to expedite hearings.

Amendment to Federal Water Pollution Control Act

Senator Scott co-sponsored a bill to provide tough policing and penalty provisions for owners of offshore facilities, vessels, and onshore facilities that discharge oil into navigable waters. The final bill included the Scott Amendment, providing for training of waste treatment plant operators. Enacted into law as P.L. 91–224.

Endangered Species Preservation Act

Senator Scott co-sponsored and testified in support of a bill to protect fish and wildlife in danger of extinction. Enacted into law as P.L. 91–135.

Environmental Quality Improvement Act

Senator Scott co-sponsored S. 2391 on June 12. This bill provides for the more effective coordination of Federal air quality, water quality, and solid waste disposal programs. It would coordinate all Federal research programs which improve knowledge of environmental modifications resulting from increased urban concentration.

Environmental Reclamation Education Act of 1969

Senator Scott co-sponsored S. 3237 on December 11. The bill would authorize the Secretary of Health, Education, and Welfare to make grants to conduct special educational programs and activities concerning ecological-environmental education and to establish a National Advisory Commission on Technology and the Environment.

VOTES

Senator Scott voted for a top level *Council on Environmental Quality* to review national resources and the environment. Conservationist Russell Train has been appointed Chairman of this Council. Enacted into law as P.L. 91–190.

Senator Scott voted for an amendment to the *Clean Air Act* to extend research activities to curb air pollution from motor vehicles. Enacted into law as P.L. 91–137.

Senator Scott voted for a full $1 billion appropriation for the *Federal Clean Water Program*. The final appropriation of $800 million is almost four times that for 1968 and the $47.5 million allocated for Pennsylvania should guarantee funds for all 73 pollution-control projects pending in the Commonwealth. Enacted into law as P.L. 91–144.

1968

LEGISLATION

Potomac National River

Senator Scott co-sponsored S–3157 to establish the Potomac National River Basin. This bill would have increased water pollution control efforts along the length of the river by giving the Department of the Interior greater authority in this area.

VOTES

Senator Scott voted against amendments to the Land Water Conservation Fund Act which would have stripped the program of funds and crippled its effectiveness.

Senator Scott voted to allow farmers in amortized tax deduction for assessments levied by soil and water conservation districts.

1967

LEGISLATION

National mining and minerals policy

Senator Scott co-sponsored S–522 to establish a national mining and minerals policy.

Land and Water Conservation Act Amendments

Senator Scott co-sponsored a bill to use fees collected for the use of outdoor recreation facilities in the Land and Water Conservation Fund Program. Enacted into law as P.L. 90–401.

Delaware's Water Gap National Recreation Area

Senator Scott co-sponsored S–729 to give the Secretary of the Interior the authority to acquire additional land in the Delaware Water Gap area.

Pollution Abatement Incentive Act of 1967

Senator Scott co-sponsored S–734 to allow a tax credit for expenditures incurred in the construction of air and water pollution control facilities.

Great Lakes River Basin Compact

Senator Scott co-sponsored a bill to register the consent of Congress to the Great Lakes Basin Compact. Enacted into law as P.L. 90–419 it established a Great Lakes Commission to study water conservation problems.

National Water Commission Act

Senator Scott co-sponsored S–20 to establish a Commission composed of 7 members to study water pollution problems and coordinate the activities of existing Federal agencies. Enacted into law as P.L. 90–515.

U.S. tidal and Great Lakes shoreline authorization for appraisal

Senator Scott co-sponsored S–1262 authorizing the Army Corps of Engineers to initiate a 3-year appraisal report of our national tidal and Great Lakes shoreline.

National Park Service Natural Science Research Act

Senator Scott co-sponsored S–1684 to establish an office of Natural Science Research

in the National Park Service and to create a system of fellowships for the support of research in the natural sciences.

Wild and Scenic Rivers Act

Senator Scott co-sponsored the Wild and Scenic Rivers Act. Enacted into law October 2, 1966. It designates certain rivers as "scenic" rivers. These rivers are to be preserved in their free flowing state. The act also authorizes the Secretary of the Interior to study other rivers with the object of including them in the program at some future date. Pennsylvania rivers designated for this study are the Allegheny, Clarion, Delaware, Youghiogheny, and Pine Creek.

Research in the Great Lakes

Senator Scott introduced S–2344 to provide for research to devise means of control over those species of aquatic life which adversely affect the fish resources and ecological balance of the Great Lakes.

Redwood National Park

Senator Scott co-sponsored a bill to provide for the establishment of the Redwood National Park in California. Enacted into law as P.L. 90–545.

VOTES

Senator Scott voted for increased appropriations for the Interior Department.

Senator Scott voted in favor of the Air Quality Act of 1967.

1966

LEGISLATION

Water and air pollution—investment credit for private industry

Senator Scott co-sponsored S–2857 to increase the investment credit allowed to private industry for their air and water pollution control expenditures. This bill was designed to encourage private air and water pollution control efforts.

Great Lakes Basin Compact

Senator Scott co-sponsored S–2922 granting the consent of Congress to the Great Lakes Basin Compact.

Amendment to the Water Quality Act of 1965

Senator Scott co-sponsored S–2947 to improve the "Clean Water" program. Enacted into law as P.L. 89–753.

Redwood National Park in California

Senator Scott co-sponsored S–2962 to establish the Redwood National Park.

Independence National Historical Park

Senator Scott co-sponsored S–3095 to authorize the acquisition of property for the Independence National Historical Park.

National Water Commission

Senator Scott co-sponsored S–3107 to provide a comprehensive review of national water resources problems and programs.

Extension of Independence National Historical Park

Senator Scott co-sponsored a bill to extend the Independence National Historical Park.

Mining and Minerals Policy Act of 1966

Senator Scott co-sponsored S–3636 to establish a national mining and minerals policy.

Acquisitions of land for the Delaware Gap Recreation Area

Senator Scott co-sponsored S–3717 to provide authority for the acquisition of land in the Delaware Water Gap area.

VOTES

Senator Scott voted for the Wild Rivers Act.

Senator Scott supported passage of the Clean Air Act Amendments.

Senator Scott voted for the Federal Water Pollution Control Act Amendments and the Clean Rivers Restoration Act of 1966.

1965

LEGISLATION

Appalachian Region Development Act

Senator Scott co-sponsored S–3 to stimulate the economic development of the Appalachian Region. Enacted into law as P.L. 89–195. Pennsylvania has received $20 million for land restoration under this act.

Assateague Island National Seashore

Senator Scott co-sponsored S–20 to establish the Assateague Island National Seashore in Maryland and Virginia. Enacted into law.

Tocks Island National Recreation Area

Senator Scott co-sponsored S–36 to establish the Tocks Island National Recreation Area in Pennsylvania and New Jersey. Enacted into law as P.L. 89–158.

Appalachian Trail

Senator Scott co-sponsored S–622 to promote Federal, State, local, and private cooperation for the Maintenance and preservation of the scenic Appalachian Trail.

Highways coordinated for protection of fishing, hunting and recreation

Senator Scott introduced S–2074 to establish a procedure for the protection of wildlife and recreation areas threatened by Federal highway construction programs.

Scenic development and road beautification

Senator Scott co-sponsored S–2084 to provide for the scenic development and road beautification of the Federal-aid highway systems. Enacted into law.

Water pollution construction reimbursement

Senator Scott co-sponsored S–2636 to make construction grants available for State and local water pollution control construction. Enacted into law as Public Law 89–753.

VOTES

Senator Scott voted for the Water Quality Act of 1965.

Senator Scott supported passage of the Appalachian Region Development Act of 1965.

Senator Scott supported the passage of S–2084 providing funds for scenic development and beautification of the Federal-aid highway system.

1964

VOTES

Senator Scott voted in favor of conservation amendments to the Interim Convention on Conservation of North Pacific Fur Seals.

Senator Scott voted for ratification of the International Convention for Prevention of Pollution of the Sea by Oil.

Senator Scott voted for passage of the Appalachian Region Development Act.

1963

LEGISLATION

Tocks Island national recreation area

Senator Scott co-sponsored S–606 to establish the Tocks Island National Recreation Area.

Prohibit foreign fishing in U.S. waters

Senator Scott co-sponsored S–1988 to prohibit foreign fishing interest from diminishing the supply of fish in U.S. territorial waters.

Johnstown Flood National Monument

Senator Scott introduced S–3305 to establish the Allegheny National Historic Site and the Johnstown Flood National Memorial.

Wildlife agencies consultation

Senator Scott co-sponsored S–2150 to provide for advance consultation with the Fish and Wildlife Service and with State Wildlife agencies before the beginning of any Federal program involving the use of pesticides or other chemicals designed for mass biological control.

VOTES

Senator Scott supported passage of the Wilderness Act of 1963.

Senator Scott voted for the Federal Water Pollution Control Act Amendments.

1962

LEGISLATION

Anthracite conservation

Senator Scott introduced a bill to amend the 1955 act and increase the effectiveness of national anthracite coal resources programs.

Tocks Island national recreation area

Senator Scott co-sponsored S–3530 to authorize the establishment of the Tocks island National Recreation Area. The bill was introduced in a subsequent Congress enacted into law 1965.

Susquehanna River basin

Senator Scott co-sponsored this bill to create a regional intergovernmental compact relating to the Susquehanna River Basin.

1961

LEGISLATION

National wilderness preservation system

Senator Scott co-sponsored S–174 to establish a National Wilderness Preservation System.

Public hearings on air pollution

Senator Scott co-sponsored S–455 to provide for public hearings on air pollution problems.

Delaware River Basin

Senator Scott co-sponsored S–856 to create a regional inter-governmental compact for the Delaware River Basin.

National fuels study

Senator Scott co-sponsored S. Res. 105 to create a special committee to study the national fuels picture.

Water resources planning

Senator Scott co-sponsored S–1629 to provide financial assistance to the States for comprehensive water resources planning.

VOTES

Senator Scott voted for ratification of the Columbia River Basin Treaty.

Senator Scott voted to ratify the International Convention for the Prevention of Pollution of the Sea by Oil.

Senator Scott supported passage of a bill authorizing the purchase of wetlands for the conservation of migratory birds.

Senator Scott voted in favor of S–174 which established a National Wilderness Preservation System.

1960

LEGISLATION

Air pollution

Senator Scott co-sponsored S–3108 to provide for public hearings on air pollution problems of more than local significance, and to extend the duration of the Federal Air Pollution Control Law.

Fort Necessity battlefield site

Senator Scott introduced S–3438 to provide additional land for the battlefield site.

VOTES

Senator Scott voted to increase Interior Department appropriations and provide more funds for the improvement of wildlife preservation and public recreation facilities.

1959

LEGISLATION

Great Lakes Basin Compact

Senator Scott co-sponsored S–548 to grant the consent of Congress to the Great Lakes River Basin Compact.

Study of strip mining in the United States

Senator Scott introduced S–1097 to authorize the Secretary of the Interior to study strip mining operations and report his findings to Congress.

Marine sciences

Senator Scott co-sponsored S–2692 to provide a 10 year program of research and construction designed to advance the marine sciences.

LEGAL RIGHTS FOR NATURAL OBJECTS

Mr. HART. Mr. President, having just read through a most enjoyable and informative law review article, I take this opportunity to share it with the Senate.

In "Should Trees Have Standing?—Toward Legal Rights for Natural Objects," reprinted from the Southern California Law Review, vol. 45, No. 2, 1972, the author, Prof. Christopher D. Stone, presents several thought-provoking arguments for expanding the concept of standing to sue in environmental protection cases. Among other readers, Justice Douglas has found the article persuasive, citing it with approval in his eloquent dissent in the recently decided Sierra Club against Morton.

Several of the problems of existing environmental litigation discussed by Professor Stone are also addressed in S. 1032, the Environmental Protection Act of 1971. Two weeks ago the Subcommittee on the Environment of the Committee on Commerce reported to the full committee an amended version of the bill. While the solutions of the bill and those advocated by Professor Stone differ to some degree, the thrust of the two approaches is similar.

I ask unanimous consent that Professor Stone's article be printed in the RECORD for the purpose of promoting discussion of these concepts and of providing for anyone who wishes it a most delightful reading experience.

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

SHOULD TREES HAVE STANDING?—TOWARD LEGAL RIGHTS FOR NATURAL OBJECTS

(By Christopher D. Stone*)

INTRODUCTION: THE UNTHINKABLE

In *Descent of Man*, Darwin observes that the history of man's moral development has been a continual extension in the objects of his "social instincts and sympathies." Originally each man had regard only for himself and those of a very narrow circle about him; later, he came to regard more and more "not only the welfare, but the happiness of all his fellowmen"; then "his sympathies became more tender and widely diffused, extending to men of all races, to the imbecile, maimed, and other useless members of society, and finally to the lower animals. . . ."[1]

The history of the law suggests a parallel development. Perhaps there never was a pure Hobbesian state of nature, in which no "rights" existed except in the vacant sense of each man's "right to self-defense." But it is not unlikely that so far as the earliest "families" (including extended kinship groups and clans) were concerned, everyone outside the family was suspect, alien, rightless.[2] And even within the family, persons we presently regard as the natural holders of at least some rights had none. Take, for example, children. We know something of the early rights-status of children from the widespread practice of infanticide—especially of the deformed and female.[3] (Senicide,[4] as among the North American Indians, was the corresponding rightlessness of the aged).[5] Maine tells us that as late as the Patria Potestas of the Romans, the father had *jus vitae necisque*—the power of life and death—over his children. A fortiori, Maine writes, he had power of "uncontrolled corporal chastisement; he can modify their personal condition at pleasure; he can give a wife to his son; he can give his daughter in marriage; he can divorce his children of either sex; he can transfer them to another family by adoption; and he can sell them." The child was less than a person: an object, a thing.[6]

The legal rights of children have long since been recognized in principle, and are still expanding in practice. Witness, just within recent time, *In re Gault*,[7] guaranteeing basic constitutional protections to juvenile defendants, and the Voting Rights Act of 1970.[8] We have been making persons of children although they were not, in law, always so. And we have done the same, albeit imperfectly some would say, with prisoners,[9] aliens, women (especially of the married variety), the insane,[10] Blacks, foetuses,[11] and Indians.

Nor is it only matter in human form that has come to be recognized as the possessor of rights. The world of the lawyer is peopled with inanimate right-holders: trusts, corporations, joint ventures, municipalities, Subchapter R partnerships,[12] and nation-states, to mention just a few. Ships, still referred to by courts in the feminine gender, have long had an independent jural life, often with striking consequences.[13] We have become so accustomed to the idea of a corporation having "its" own rights, and being a "person" and "citizen" for so many statutory and constitutional purposes, that we forget how jarring the notion was to early jurists. "That invisible, intangible and artificial being, that mere legal entity" Chief Justice Marshall wrote of the corporation in *Bank of the United States v. Deveaux*[14]—could a suit be be brought in *its* name? Ten years later, in the *Dartmouth College* case,[15] he was still refusing to let pass unnoticed the wonder of an entity "existing only in contemplation of law."[15a] Yet, long before Marshall worried over the personifying of the modern corporation, the best medieval legal scholars had spent hundreds of years struggling with the notion of the legal nature of those great public "corporate bodies," the Church and the State. How could they exist in law, as entities transcending the living Pope and King? It was clear how a king could bind *himself*—on his honor—by a treaty. But when the king died, what was it that was burdened with the obligations of, and claimed the rights under, the treaty *his* tangible hand had signed? The medieval mind saw (what we have lost our capacity to see)[17] how *unthinkable* it was, and worked out the most elaborate conceits and fallacies to serve as anthropomorphic flesh for the Universal Church and the Universal Empire.[18]

It is this note of the *unthinkable* that I want to dwell upon for a moment. Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable. We are inclined to suppose the rightlessness of rightless "things" to be a decree of Nature, not a legal convention acting in support of some status quo. It is thus that we defer considering the choices involved in all their moral, social, and economic dimensions. And so the United States Supreme Court could straight-facedly tell us in *Dred Scott* that Blacks had been denied the rights of citizenship "as a subordinate and inferior class of beings, who had been subjugated by the dominant race. . . ."[19]

In the nineteenth century, the highest court in California explained that Chinese had not the right to testify against white men in criminal matters because they were "a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point . . . between whom and ourselves nature has placed an impassable difference."[20] The popular conception of the Jew in the 13th Century contributed to a law which treated them as "men *ferae naturae*, protected by a quasi-forest law. Like the roe and the deer, they form an order apart."[21] Recall, too, that it was not so long ago that the foetus was "like the roe and the deer." In an early suit attempting to establish a wrongful death action on behalf of a negligently killed foetus (now widely accepted practice), Holmes, then on the Massachusetts Supreme Court, seems to have thought it simply inconceivable "that a man might owe a civil duty and incur a conditional prospective liability in tort to one not yet in being."[22] The first woman in Wisconsin who thought she might have a right to practice law was told that she did not, in the following terms:

"The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world . . . . [A]ll life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of the law, are departures from the order of nature; and when voluntary, treason against it . . . . The peculiar qualities of womanhood, its gentle graces, its quick sensibility, its tender susceptibility, its purity, its delicacy, its emotional impulses, its subordination of hard reason to sympathetic feeling, are surely not qualificaitons for forensic strife. Nature has tempered woman as little for the juridical conflicts of the court room, as for the physical conflicts of the battle field . . . ."[23]

The fact is, that each time there is a movement to confer rights onto some new "entity," the proposal is bound to sound odd or frightening or laughable.[23a] This is partly because until the rightless thing receives its rights, we cannot see it as anything but a *thing* for the use of "us"—those who are holding rights at the time.[24] In this vein, what is striking about the Wisconsin case above is that the court, for all its talk about women, so clearly was never able to see women as they are (and might become). All it could see was the popular "idealized" version of *an object it needed*. Such is the way the slave South looked upon the Black.[25] There is something of a seamless web involved: there will be resistance to giving the thing "rights" until it can be seen and valued for itself; yet, it is hard to see it and value it for itself until we can bring ourselves to give it "rights"—which is almost inevitably going to sound inconceivable to a large group of people.

The reason for this little discourse on the unthinkable, the reader must know by now, if only from the title of the paper. I am quite seriously proposing that we give legal rights to forests, oceans, rivers and other so-called "natural objects" in the environment—indeed, to the natural environment as a whole.[26]

As strange as such a notion may sound, it is neither fanciful nor devoid of operational content. In fact, I do not think it would be a misdescription of recent developments in the law to say that we are already on the verge of assigning some such rights, although we have not faced up to what we are doing in those particular terms.[27] We should do so now, and begin to explore the implications such a notion would hold.

TOWARD RIGHTS FOR THE ENVIRONMENT

Now, to say that the natural environment should have rights is not to say anything as silly as that no one should be allowed to cut down a tree. We say human beings have rights, but—at least as of the time of this

Footnotes at end of article.

writing—they can be executed.[28] Corporations have rights, but they cannot plead the fifth amendment;[29] *In re Gault* gave 15-year-olds certain rights in juvenile proceedings, but it did not give them the right to vote. Thus, to say that the environment should have rights is not to say that it should have every right we can imagine, or even the same body of rights as human beings have. Nor is it to say that everything in the environment should have the same rights as every other thing in the environment.

What the granting of rights does involve has two sides to it. The first involves what might be called the legal-operational aspects; the second, the psychic and socio-psychic aspects. I shall deal with these aspects in turn.

THE LEGAL-OPERATIONAL ASPECTS

What it means to be a holder of legal rights

There is, so far as I know, no generally accepted standard for how one ought to use the term "legal rights." Let me indicate how I shall be using it in this piece.

First and most obviously, if the term is to have any content at all, an entity cannot be said to hold a legal right unless and until *some public authoritative body* is prepared to give *some amount of review* to actions that are colorably inconsistent with that "right." For example, if a student can be expelled from a university and cannot get any public official, even a judge or administrative agent at the lowest level, either (i) to require the university to justify its actions (if only to the extent of filling out an affidavit alleging that the expulsion "was not wholly arbitrary and capricious") or (ii) to compel the university to accord the student some procedural safeguards (a hearing, right to counsel, right to have notice of charges), then the minimum requirements for saving that the student has a legal right to his education do not exist.[30]

But for a thing to be *a holder of legal rights*, something more is needed than that some authoritative body will review the actions and processes of those who threaten it. As I shall use the term, "holder of legal rights," each of three additional criteria must be satisfied. All three, one will observe, go towards making a thing *count* jurally—to have a legally recognized worth and dignity in its own right, and not merely to serve as a means to benefit "us" (whoever the contemporary group of rights-holders may be). They are, first, that the thing can institute legal actions *at its behest;* second, that in determining the granting of legal relief, the court must take *injury to it* into account; and, third, that relief must run to the *benefit of it.*

To illustrate, even as between two societies that condone slavery there is a fundamental difference between S_1, in which a master can (if he chooses), go to court and collect reduced chattel value damages from someone who has beaten his slave, and S_2, in which the slave can institute the proceedings *himself* for *his* own recovery, damages being measured by, say, *his* pain and suffering. Notice that neither society is so structured as to leave wholly unprotected the slave's interests in not being beaten. But in S_2 as opposed to S_1 there are three operationally significant advantages that the slave has, and these make the slave in S_2, albeit a slave, a holder of rights. Or, again, compare two societies, S_1, in which pre-natal injury to a live-born child gives a right of action against the tortfeasor at the mother's instance, for the mother's benefit, on the basis of the mother's mental anguish, and S_2, which gives the child a suit in its own name (through a guardian *ad litem*) for its own recovery, for damages to it.

When I say, then, that at common law "natural objects" are not holders of legal rights, I am not simply remarking what we would all accept as obvious. I mean to emphasize three specific legal-operational advantages that the environment lacks, leaving it in the position of the slave and the foetus in S_1, rather than the slave and foetus of S_2.

The rightlessness of natural objects at common law

Consider, for example, the common law's posture toward the pollution of a stream. True, courts have always been able, in some circumstances, to issue orders that will stop the pollution—just as the legal system in S_1 is so structured as incidentally to discourage beating slaves and being reckless around pregnant women. But the stream itself is fundamentally rightless, with implications that deserve careful reconsideration.

The first sense in which the stream is not a rights-holder has to do with standing. The stream itself has none. So far as the common law is concerned, there is in general no way to challenge the polluter's actions save at the behest of a lower riparian—another human being—able to show an invasion of *his* rights. This conception of the riparian as the holder of the right to bring suit has more than theoretical interest. The lower riparians may simply not care about the pollution. They themselves may be polluting, and not wish to stir up legal waters. They may be economically dependent on their polluting neighbor.[31] And, of course, when they discount the value of winning by the costs of bringing suit and the chances of success, the action may not seem worth undertaking. Consider, for example, that while the polluter might be injuring 100 downstream riparians $10,000 a year *in the aggregate*, each riparian separately might be suffering injury only to the extent of $100—possibly not enough for any one of them to want to press suit by himself, or even to go to the trouble and cost of securing co-plaintiffs to make it worth everyone's while. This hesitance will be especially likely when the potential plaintiffs consider the burdens the law puts in their way,[32] proving *e.g.*, specific damages, the "unreasonableness" of defendant's use of the water, the fact that practicable means of abatement exist, and overcoming difficulties raised by issues such joint casuality, right to pollute by prescription, and so forth. Even in states which, like California, sought to overcome these difficulties by empowering the attorney-general to sue for abatement of pollution in limited instances, the power has been sparingly invoked and, when invoked, narrowly construed by the courts.[33]

The second sense in which the common law denies "rights" to natural objects has to do with the way in which the merits are decided in those cases in which someone is competent and willing to establish standing. At its more primitive levels, the system protected the "rights" of the property owning human with minimal weighing of any values: *"Cujus est solum, ejus est usque ad coelum et ad infernos."*[34] Today we have come more and more to make balances—but only such as will adjust the economic best interests of identifiable humans. For example, continuing with the case of streams, there are commentators who speak of a "general rule" that "a riparian owner is legally entitled to have the stream flow by his land with its quality unimpaired" and observe that "an upper owner has, prima facie, no right to pollute the water."[35]

Such a doctrine, if strictly invoked, would protect the stream absolutely whenever a suit was brought; but obviously, to look around us, the law does not work that way. Almost everywhere there are doctrinal qualifications on riparian "rights" to an unpolluted stream.[36] Although these rules vary from jurisdiction to jurisdiction, and upon whether one is suing for an equitable injunction or for damages, what they all have in common is some sort of balancing. Whether under language of "reasonable methods to use," "balance of convenience" or "the public interest doctrine,"[37] what the courts are balancing, with varying degrees of directness, are the economic hardships on the upper riparian (or dependent community) of abating the pollution vis-a-vis the economic hardships of continued pollution on the lower riparians. What does not weigh in the balance is the damage to the stream, its fish and turtles and "lower" life. So long as the natural environment itself is rightless, these are not matters for judicial cognizance. Thus, we find the highest court of Pennsylvania refusing to stop a coal company from discharging polluted mine water into a tributary of the Lackawana River because a plaintiff's "grievance is for a mere personal inconvenience; and . . . mere private personal inconveniences . . . must yield to the necessities of a great public industry, which although in the hands of a private corporation, subserves a great public interest."[38] The stream itself is lost sight of, "a quantitative compromise between *two* conflicting interests."[39]

The third way in which the common law makes natural objects rightless has to do with who is regarded as the beneficiary of a favorable judgment. Here, too, it makes a considerable difference that it is not the natural object that counts in its own right. To illustrate this point, let me begin by observing that it makes perfectly good sense to speak of, and ascertain, the legal damage to a natural object, if only in the sense of "making it whole" with respect to the most obvious factors.[40] The costs of making a forest whole, for example, would include the costs of reseeding, repairing watersheds, restocking wildlife—the sorts of costs the Forest Service undergoes after fire. Making a polluted stream whole would include the costs of restocking with fish, water-fowl, and other animal and vegetable life, dredging, washing out impurities, establishing natural and/or artificial aerating agents, and so forth. Now, what is important to note is that, under our present system, even if a plaintiff riparian wins a water pollution suit for damages, no money goes to the benefit of the stream itself to repair its damages.[41] This omission has the further effect that, at most, the law confronts a polluter with what it takes to make the plaintiff riparians whole; this may be far less than the damages to the stream,[42] but not so much as to force the polluter to desist.

For example, it is easy to imagine a polluter whose activities damage a stream to the extent of $10,000 annually, although the aggregate damage to all the riparian plaintiffs who come into the suit is only $3000. If $3000 is less than the cost to the polluter of shutting down, or making the requisite technological changes, he might prefer to pay off the damages (i.e., the legally cognizable damages) and continue to pollute the stream. Similarly, even if the jurisdiction issues an injunction at the plaintiffs' behest (rather than to order payment of damages), there is nothing to stop the plaintiffs from "selling out" the stream, i.e., agreeing to dissolve or not enforce the injunction at some price (in the example above, somewhere between plaintiffs' damages—$3000—and defendant's next best economic alternative). Indeed, I take it this is exactly what Learned Hand had in mind in an opinion in which, after issuing an anti-pollution injunction, he suggests that the defendant "make its peace with the plaintiff as best it can."[43] What is meant is a peace between *them,* and not amongst them and the river.

I ought to make clear at this point that the common law as it affects streams and rivers, which I have been using as an example so far, is not exactly the same as the law affecting other environmental objects. Indeed, one

Footnotes at end of article.

would be hard pressed to say that there was a "typical" environmental object, so far as its treatment at the hands of the law is concerned. There are some differences in the law applicable to all the various resources that are held in common: rivers, lakes, oceans, dunes, air, streams (surface and subterranean), beaches, and so forth.[44] And there is an even greater difference as between these traditional communal resources on the one hand, and natural objects on traditionally private land, e.g., the pond on the farmer's field, or the stand of trees on the suburbanite's lawn.

On the other hand, although there be these differences which would make it fatuous to generalize about a law of the natural environment, most of these differences simply underscore the points made in the instance of rivers and streams. None of the natural objects, whether held in common or situated on private land, has any of the three criteria of a rights-holder. They have no standing in their own right; their unique damages do not count in determining outcome; and they are not the beneficiaries of awards. In such fashion, these objects have traditionally been regarded by the common law, and even by all but the most recent legislation, as objects for man to conquer and master and use—in such a way as the law once looked upon "man's" relationships to African Negroes. Even where special measures have been taken to conserve them, as by seasons on game and limits on timber cutting, the dominant motive has been to conserve them for us—for the greatest good of the greatest number of human beings. Conservationists, so far as I am aware, are generally reluctant to maintain otherwise.[45] As the name implies, they want to conserve and guarantee our consumption and our enjoyment of these other living things. In their own right, natural objects have counted for little, in law as in popular movements.

As I mentioned at the outset, however, the rightlessness of the natural environment can and should change; it already shows some signs of doing so.

Toward having standing in its own right

It is not inevitable, nor is it wise, that natural objects should have no rights to seek redress in their own behalf. It is no answer to say that streams and forests cannot have standing because streams and forests cannot speak. Corporations cannot speak either; nor can states, estates, infants, incompetents, municipalities or universities. Lawyers speak for them, as they customarily do for the ordinary citizen with legal problems. One ought I think, to handle the legal problems of natural objects as one does the problems of legal incompetents—human beings who have become vegetable. If a human being shows signs of becoming senile and has affairs that he is de jure incompetent to manage, those concerned with his well being make such a showing to the court, and someone is designated by the court with the authority to manage the incompetent's affairs. The guardian [46] (or "conservator" [47] or "committee" [48]—the terminology varies) then represents the incompetent in his legal affairs. Courts make similar appointments when a corporation has become "incompetent"—they appoint a trustee in bankruptcy or reorganization to oversee its affairs and speak for it in court when that becomes necessary.

On a parity of reasoning, we should have a system in which, when a friend of a natural object perceives it to be endangered, he can apply to a court for the creation of a guardianship.[49] Perhaps we already have the machinery to do so. California law, for example, defines an incompetent as "and person, whether insane or not, who by reason of old age, disease, weakness of mind, or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and by reason thereof is likely to be deceived or imposed upon by artful or designing persons." [50] Of course, to urge a court that an endangered river is "a person" under this provision will call for lawyers as bold and imaginative as those who convinced the Supreme Court that a railroad corporation was a "person" under the fourteenth amendment, a constitutional provision theretofore generally thought of as designed to secure the rights of freedmen.[51] (As this article was going to press, Professor Byrn of Fordham petitioned the New York Supreme Court to appoint him legal guardian for an unrelated foetus scheduled for abortion so as to enable him to bring a class action on behalf of all foetuses similarly situated in New York City's 18 municipal hospitals. Judge Holtzman granted the petition of guardianship.[52]) If such an argument based on present statutes should fail, special environmental legislation could be enacted along traditional guardianship lines. Such provisions could provide for guardianship both in the instance of public natural objects and also, perhaps with slightly different standards, in the instance of natural objects on "private" land.[53]

The potential "friends" that such a statutory scheme would require will hardly be lacking. The Sierra Club, Environmental Defense Funds, Friends of the Earth, Natural Resources Defense Counsel, and the Izaak Walton League are just some of the many groups which have manifested unflagging dedication to the environment and which are becoming increasingly capable of marshaling the requisite technical experts and lawyers. If, for example, the Environmental Defense Fund should have reason to believe that some company's strip mining operations might be irreparably destroying the ecological balance of large tracts of land, it could, under this procedure, apply to the court in which the lands were situated to be appointed guardian.[54] As guardian, it might be given rights of inspection (or visitation) to determine and bring to the court's attention a fuller finding on the land's condition. If there were indications that under the substantive law some redress might be available on the land's behalf, then the guardian would be entitled to raise the land's rights in the land's name, i.e., without having to make the roundabout and often unavailing demonstration, discussed below, that the "rights" of the club's members were being invaded. Guardians would also be looked to for a host of other protective tasks, *e.g.*, monitoring effluents (and/or monitoring the monitors), and representing their "wards" at legislative and administrative hearings on such matters as the setting of state water quality standards. Procedures exist, and can be strengthened, to move a court for the removal and substitution of guardians, for conflicts of interest or for other reasons,[55] as well as for the termination of the guardianship.[56]

In point of fact, there is a movement in the law toward giving the environment the benefits of standing, although not in a manner as satisfactory as the guardianship approach. What I am referring to is the marked liberalization of traditional standing requirements action groups have challenged federal government action. *Scenic Hudson Preservation Conference v. FPC* [57] is a good example of this development. There, the Federal Power Commission had granted New York's Consolidated Edison a license to construct a hydroelectric project on the Hudson River at Storm King Mountain. The grant of license had been opposed by conservation interests on the grounds that the transmission lines would be unsightly, fish would be destroyed, and nature trails would be inundated. Two of these conservation groups, united under the name Scenic Hudson Preservation Conference, petitioned the Second Circuit to set aside the grant. Despite the claim that Scenic Hudson had no standing because it had not made the traditional claim "of any personal economic injury resulting from the Commission's actions," [58] the petitions were heard, and the case sent back to the Commission. On the standing point, the court noted that Section 313(b) of the Federal Power Act gave a right of instituting review to any party "aggrieved by an order issued by the Commission"; [59] it thereupon read "aggrieved by" as not limited to those alleging the traditional personal economic injury, but as broad enough to include "those who by their activities and conduct have exhibited a special interest" in "the aesthetic, conservational, and recreational aspects of power development. . . ." [60] A similar reasoning has swayed other circuits to allow proposed actions by the Federal Power Commission, the Department of Interior, and the Department of Health, Education and Welfare to be challenged by environmental action groups on the basis of, *e.g.*, recreational and esthetic interests of members, in lieu of direct economic injury.[61] Only the Ninth Circuit has balked, and one of these cases, involving the Sierra Club's attempt to challenge a Walt Disney development in the Sequoia National Forest, is at the time of this writing awaiting decision by the United States Supreme Court.[62]

Even if the Supreme Court should reverse the Ninth Circuit in the Walt Disney-Sequoia National Forest matter, thereby encouraging the circuits to continue their trend toward liberalized standing in this area, there are significant reasons to press for the guardianship approach notwithstanding. For one thing, the cases of this sort have extended standing on the basis of interpretations of specific federal statutes—the Federal Power Commission Act,[63] the Administrative Procedure Act,[64] the Federal Insecticide, Fungicide and Rodenticide Act,[65] and others. Such a basis supports environmental suits only where acts of federal agencies are involved; and even there, perhaps, only when there is some special statutory language, such as "aggrieved by" in the Federal Power Act, on which the action groups can rely. Witness, for example, *Bass Angler Sportsman Society v. United States Steel Corp.*[66] There, plaintiffs used 175 corporate defendants located throughout Alabama, relying on 33 U.S.C. § 407 (1970), which provides:

"It shall not be lawful to throw, discharge, or deposit . . . any refuse matter . . . into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water . . ." [67]

Another section of the Act provides that one-half the fines shall be paid to the persons or persons giving information which shall lead to a conviction.[68] Relying on this latter provision, the plaintiff designated his action a *qui tam* action [69] and sought to enforce the Act by injunction and fine. The District Court ruled that, in the absence of express language to the contrary, no one outside the Department of Justice had standing to sue under a criminal act and refused to reach the question of whether violations were occurring.[70]

Unlike the liberalized standing approach, the guardianship approach would secure an effective voice for the environment even where federal administrative action and public-lands and waters were not involved. It would also allay one of the fears courts—such as the Ninth Circuit—have about the extended standing concept: if any ad hoc group can spring up overnight, invoke some "right" as universally claimable as the esthetic and recreational interests of its members and thereby get into court, how can a flood of litigation be prevented? [71] If an ad hoc committee loses a suit brought *sub nom.* Committee to Preserve our Trees, what happens when its very same members reorganize two years later and sue *sub nom.* the Massa-

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pequa Sylvan Protection League? Is the new group bound by res judicata? Class action law may be capable of ameliorating some of the more obvious problems. But even so, court economy might be better served by simply designating the guardian de jure representative of the natural object, with rights of discretionary intervention by others, but with the understanding that the natural object is "bound" by an adverse judgment.[72] The guardian concept, too, would provide the endangered natural object with what the trustee in bankruptcy provides the endangered corporation: a continuous supervision over a period of time, with a consequent deeper understanding of a broad range of the ward's problems, not just the problems present in one particular piece of litigation. It would thus assure the courts that the plaintiff has the expertise and genuine adversity in pressing a claim which are the prerequisites of a true "case or controversy."

The guardianship approach, however, is apt to raise two objections, neither of which seems to me to have much force. The first is that a committee or guardian could not judge the needs of the river or forest in its charge; indeed, the very concept of "needs," it might be said, could be used here only in the most metaphorical way. The second objection is that such a system would not be much different from what we now have: is not the Department of Interior already such a guardian for public lands, and do not most states have legislation empowering their attorneys general to seek relief—in a sort of *parens patriae* way—for such injuries as a guardian might concern himself with?

As for the first objection, natural objects *can* communicate their wants (needs) to us, and in ways that are not terribly ambiguous. I am sure I can judge with more certainty and meaningfulness whether and when my lawn wants (needs) water, than the Attorney General can judge whether and when the United States wants (needs) to take an appeal from an adverse judgment by a lower court. The lawn tells me that it wants water by a certain dryness of the blades and soil—immediately obvious to the touch—the appearance of bald spots, yellowing, and a lack of springiness after being walked on; how does "the United States" communicate to the Attorney General? For similar reasons, the guardian-attorney for a smog-endangered stand of pines could venture with more confidence that his client wants the smog stopped, than the directors of a corporation can assert that "the corporation" wants dividends declared. We make decisions on behalf of, and in the purported interests of, others every day; these "others" are often creatures whose wants are far less verifiable, and even far more metaphysical in conception, than the wants of rivers, trees, and land.[73]

As for the second objection, one can indeed find evidence that the Department of Interior was conceived as a sort of guardian of the public lands.[74] But there are two points to keep in mind. First, insofar as the Department already is an adequate guardian it is only with respect to the federal public lands as per Article IV, section 3 of the Constitution.[75] Its guardianship includes neither local public lands nor private lands. Second, to judge from the environmentalist literature and from the cases environmental action groups have been bringing, the Department is itself one of the bogeys of the environmental movement. (One thinks of the uneasy peace between the Indians and the Bureau of Indian Affairs.) Whether the various charges be right or wrong, one cannot help but observe that the Department has been charged with several institutional goals (never an easy burden), and is currently looked to for action by quite a variety of interest groups, only one of which is the environmentalists. In this context, a guardian outside the institution becomes especially valuable. Besides, what a person wants, fully to secure his rights, is the ability to retain independent counsel even when, and perhaps especially when, the government is acting "for him" in a beneficent way. I have no reason to doubt, for example, that the Social Security System is being managed "for me"; but I would not want to abdicate my right to challenge its actions as they affect me, should the need arise.[76] I would not ask more trust of national forests, vis-a-vis the Department of Interior. The same considerations apply in the instance of local agencies, such as regional water pollution boards, whose members' expertise in pollution matters is often all too credible.[77]

The objection regarding the availability of attorneys-general as protectors of the environment within the existing structure is somewhat the same. Their statutory powers are limited and sometimes unclear. As political creatures, they must exercise the discretion they have with an eye toward advancing and reconciling a broad variety of important social goals, from preserving morality to increasing their jurisdiction's tax base. The present state of our environment, and the history of cautious application and development of environmental protection laws long on the books,[78] testifies that the burdens of an attorney-general's broad responsibility have apparently not left much manpower for the protection of nature. (*Cf. Bass Anglers*, above.) No doubt, strengthening interest in the environment will increase the zest of public attorneys even where, as will often be the case, well-represented corporate pollutors are the quarry. Indeed, the United States Attorney General has stepped up anti-pollution activity, and ought to be further encouraged in this direction.[79] The statutory powers of the attorneys-general should be enlarged, and they should be armed with criminal penalties made at least commensurate with the likely economic benefits of violating the laws.[80] On the other hand, one cannot ignore the fact that there is increased pressure on public law-enforcement offices to give more attention to a host of other problems, from crime "on the streets" (why don't we say "in the rivers"?) to consumerism and school bussing. If the environment is not to get lost in the shuffle, we would do well, I think, to adopt the guardianship approach as an additional safeguard, conceptualizing major natural objects as holders of their own rights, raisable by the court-appointed guardian.

Toward recognition of its own injuries

As far as adjudicating the merits of a controversy is concerned, there is also a good case to be made for taking into account harm to the environment—in its own right. As indicated above, the traditional way of deciding whether to issue injunctions in law suits affecting the environment, at least where communal property is involved, has been to strike some sort of balance regarding the economic hardships *on human beings*. Even recently, Mr. Justice Douglas, our jurist most closely associated with conservation sympathies in his private life, was deciding the propriety of a new dam on the basis of, among other things, anticipated lost profits from fish catches, some $12,000,000 annually.[81] Although he decided to delay the project pending further findings, the reasoning seems unnecessarily incomplete and compromising. Why should the environment be of importance only indirectly, as lost profits to someone else? Why not throw into the balance the cost *to the environment?*

The argument for "personifying" the environment, from the point of damage calculations, can best be demonstrated from the welfare economics position. Every well-working legal-economic system should be so structured as to confront each of us with the full costs that our activities are imposing on society.[82] Ideally, a paper-mill, in deciding what to produce—and where, and by what methods—ought to be forced to take into account not only the lumber, acid and labor that its production "takes" from other uses in the society, but also what costs alternative production plans will impose on society through pollution. The legal system, through the law of contracts and the criminal law, for example, makes the mill confront the costs of the first group of demands. When, for example, the company's purchasing agent orders 1000 drums of acid from the Z Company, the Z Company can bind the mill to pay for them, and thereby reimburse the society for what the mill is removing from alternative uses.

Unfortunately, so far as the pollution costs are concerned, the allocative ideal begins to break down, because the traditional legal institutions have a more difficult time "catching" and confronting us with the full social costs of our activities. In the lakeside mill example, major riparian interests might bring an action, forcing a court to weigh *their* aggregate losses against the costs to the mill of installing the anti-pollution device. But many other interests—and I am speaking for the moment of recognized homocentric interests—are too fragmented and perhaps "too remote" casually to warrant securing representation and pressing for recovery: the people who own summer homes and motels, the man who sells fishing tackle and bait, the man who rents rowboats. There is no reason not to allow the lake to prove damages to them as the prima facie measure of damages to it. *By doing so, we in effect make the natural object, through its guardian, a jural entity competent to gather up these fragmented and otherwise unrepresented damage claims, and press them before the court even where, for legal or practical reasons, they are not going to be pressed by traditional class action plaintiffs.*[83] Indeed, one way—the homocentric way—to view what I am proposing so far, is to view the guardian of the natural object as the guardian of unborn generations, as well as of the otherwise unrepresented, but distantly injured, contemporary humans.[84] By making the lake itself the focus of these damages, and "incorporating" it so to speak, the legal system can effectively take proof upon, and confront the mill with, a larger and more representative measure of the damages its pollution causes.

So far, I do not suppose that my economist friends (unremittent human chauvinists, every one of them!) will have any large quarrel in principle with the concept. Many will view it as a *trompe l'oeil* that comes down, at best, to effectuate the goals of the paragon class action, or the paragon water pollution control district. Where we are apt to part company is here—I propose going beyond gathering up the loose ends of what most people would presently recognize as economically valid damages. The guardian would urge before the court injuries not presently cognizable—the death of eagles and inedible crabs, the suffering of sea lions, the loss from the face of the earth of species of commercially valueless birds, the disappearance of a wilderness area. One might, of course, speak of the damages involved as "damages" to us humans, and indeed, the widespread growth of environmental groups shows that human beings do feel these losses. But they are not, at present, economically measurable losses: how can they have a monetary value for the guardian to prove in court?

The answer for me is simple. Wherever it carves out "property" rights, the legal system is engaged in the process of *creating* monetary worth. One's literary works would have minimal monetary value if anyone could copy them at will. Their economic value to the author is a product of the law of copyright; the person who copies a copyrighted book has to bear a cost to the copyright-holder because the law says he must. Similarly, it is through the law of torts that

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we have made a "right" of—and guaranteed an economically meaningful value to—privacy. (The value we place on gold—a yellow inanimate dirt—is not simply a function of supply and demand—wilderness areas are scarce and pretty too—but results from the actions of the legal systems of the world, which have institutionalized that value; they have even done a remarkable job of stabilizing the price). I am proposing we do the same with eagles and wilderness areas as we do with copyrighted works, patented inventions, and privacy: *make* the violation of rights in them to be a cost by declaring the "pirating" of them to be the invasion of a property interest.[85] If we do so, the net social costs the polluter would be confronted with would include not only the extended homocentric costs of his pollution (explained above) but also costs to the environment *per se*.

How, though, would these costs be calculated? When we protect an invention, we can at least speak of a fair market value for it, by reference to which damages can be computed. But the lost environmental "values" of which we are now speaking are by definition over and above those that the market is prepared to bid for: they are priceless.

One possible measure of damages, suggested earlier, would be the cost of making the environment whole, just as, when a man is injured in an automobile accident, we impose upon the responsible party the injured man's medical expenses. Comparable expenses to a polluted river will be the costs of dredging, restocking with fish, and so forth. It is on the basis of such costs as these, I assume, that we get the figure of $1 billion as the cost of saving Lake Erie.[86] As an ideal, I think this is a good guide applicable in many environmental situations. It is by no means free from difficulties, however.

One problem with computing damages on the basis of making the environment whole is that, if understood most literally, it is tantamount to asking for a "freeze" on environmental quality, even at the costs (and there will be costs) of preserving "useless" objects.[87] Such a "freeze" is not inconceivable to me as a general goal, especially considering that, even by the most immediately discernible homocentric interests, in so many areas we ought to be cleaning up and not merely preserving the environmental status quo. In fact, there is presently strong sentiment in the Congress for a total elimination of all river pollutants by 1985,[88] notwithstanding that such a decision would impose quite large direct and indirect costs on us all. Here one is inclined to recall the instructions of Judge Hays, in remanding Consolidated Edison's Storm King application to the Federal Power Commission in *Scenic Hudson:*

"The Commission's renewed proceedings must include as a basic concern the preservation of natural beauty and of natural historic shrines, keeping in mind that, in our affluent society, the cost of a project is only one of several factors to be considered." [89]

Nevertheless, whatever the merits of such a goal in principle, there are many cases in which the social price tag of putting it into effect are going to seem too high to accept. Consider, for example, an oceanside nuclear generator that could produce low cost electricity for a million homes at a savings of $1 a year per home, spare us the air pollution that comes of burning fossil fuels, but which through a slight heating effect threatened to kill off a rare species of temperature-sensitive sea urchins; suppose further that technological improvements adequate to reduce the temperature to present environmental quality would expend the entire one million dollars in anticipated fuel savings. Are we prepared to tax ourselves $1,000,000 a year on behalf of the sea urchins? In comparable problems under the present law of damages, we work out practicable compromises by abandoning restoration costs and calling upon fair market value. For example, if an automobile is so severely damaged that the cost of bringing the car to its original state by repair is greater than the fair market value, we would allow the responsible tortfeasor to pay the fair market value only. Or if a human being suffers the loss of an arm (as we might conceive of the ocean having irreparably lost the sea urchins), we can fall back on the capitalization of reduced earning power (and pain and suffering) to measure the damages. But what is the fair market value of sea urchins? How can we capitalize their loss to the ocean, independent of any commercial value they may have to someone else?

One answer is that the problem can sometimes be sidestepped quite satisfactorily. In the sea urchin example, one compromise solution would be to impose on the nuclear generator the costs of making the ocean whole somewhere else, in some other way, *e.g.*, reestablishing a sea urchin colony elsewhere, or making a somehow comparable contribution.[90] In the debate over the laying of the trans-Alaskan pipeline, the builders are apparently prepared to meet conservationists' objections half-way by re-establishing wildlife away from the pipeline, so far as is feasible.[91]

But even if damage calculations have to be made, one ought to recognize that the measurement of damages is rarely a simple report of economic facts about "the market," whether we are valuing the loss of a foot, a foetus, or a work of fine art. Decisions of this sort are always hard, but not impossible. We have increasingly taken (human) pain and suffering into account in reckoning damages, not because we think we can ascertain them as objective "facts" about the universe, but because, even in view of all the room for disagreement, we come up with a better society by making rude estimates of them than by ignoring them.[92] We can make such estimates in regard to environmental losses fully aware that what we are really doing is making implicit normative judgments (as with pain and suffering) laying down rules as to what the society is going to "value" rather than reporting market evaluations. In making such normative estimates decision-makers would not go wrong if they estimated on the "high side," putting the burden of trimming the figure down on the immediate human interests present. All burdens of proof should reflect common experience; our experience in environmental matters has been a continual discovery that our acts have caused more long-range damage than we were able to appreciate at the outset.

To what extent the decision-maker should factor in costs such as the pain and suffering of animals and other sentient natural objects, I cannot say; although I am prepared to do so in principle.[93] Given the conjectural nature of the "estimates" in all events, and the roughness of the "balance of conveniences" procedure where that is involved, the practice would be of more interest from the socio-psychic point of view, discussed below, than from the legal-operational.

Toward Being a Beneficiary in its Own Right

As suggested above, one reason for making the environment itself the beneficiary of a judgment is to prevent it from being "sold out" in a negotiation among private litigants who agree not to enforce rights that have been established among themselves.[94] Protection from this will be advanced by making the natural object a party to an injunctive settlement. Even more importantly, we should make it a beneficiary of money awards. If, in making the balance requisite to issuing an injunction, a court decides *not* to enjoin a lake polluter who is causing injury to the extent of $50,000 annually, then the owners and the lake ought both to be awarded damages. The natural object's portion could be put into a trust fund to be administered by the object's guardian, as per the guardianship recommendation set forth above. So far as the damages are proved, as suggested in the previous section, by allowing the natural object to cumulate damages to others as prima facie evidence of damages to it, there will, of course, be problems of distribution. But even if the object is simply construed as representing a class of plaintiffs under the applicable civil rules,[95] there is often likely to be a sizeable amount of recovery attributable to members of the class who will not put in a claim for distribution (because their pro rata share would be so small, or because of their interest in the environment). Not only should damages go into these funds, but where criminal fines are applied (as against water polluters) it seems to me that the monies (less prosecutorial expenses, perhaps) ought sensibly to go to the fund rather than to the general treasuries. Guardians fees, including legal fees, would then come out of this fund. More importantly, the fund would be available to preserve the natural object as close as possible to its condition at the time the environment was made a rights-holder.[96]

The idea of assessing damages as best we can and placing them in a trust fund is far more realistic than a hope that a total "freeze" can be put on the environmental status quo. Nature is a continuous theatre in which things and species (eventually man) are destined to enter and exit.[97] In the meantime, co-existence of man and his environment means that *each* is going to have to compromise for the better of both. Some pollution of streams, for example, will probably be inevitable for some time. Instead of setting an unrealizable goal of enjoining absolutely the discharge of all such pollutants, the trust fund concept would (a) help assure that pollution would occur only in those instances where the social need for the pollutant's product (via his present method of production) was so high as to enable the polluter to cover *all* homocentric costs, plus some estimated costs to the environment *per se*, and (b) would be a corpus for preserving monies, if necessary, while the technology developed to a point where repairing the damaged portion of the environment was feasible. Such a fund might even finance the requisite research and development.

(Incidentally, if "rights" are to be granted to the environment, then for many of the same reasons it might bear "liabilities" as well—as inanimate objects did anciently.[98] Rivers drown people, and flood over and destroy crops; forests burn, setting fire to contiguous communities. Where trust funds had been established, they could be available for the satisfaction of judgments *against* the environment, making it bear the costs of some of the harms it imposes on other right holders. In effect, we would be narrowing the claim of Acts of God. The ontological problem would be troublesome here, however; when the Nile overflows, is it the "responsibility" of the river? the mountains? the snow? the hydrologic cycle?[99]

Toward Rights in Substance

So far we have been looking at the characteristics of being a *holder of rights*, and exploring some of the implications that making the environment a holder of rights would entail. Natural objects would have standing in their own right, through a guardian; damage to and through them would be ascertained and considered as an independent factor; and they would be the beneficiaries of legal awards. But these considerations only give us the skeleton of what a meaningful rights-holding would involve.

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To flesh out the "rights" of the environment demands that we provide it with a significant body of rights for it to invoke when it gets to court.

In this regard, the lawyer is constantly aware that a right is not, as the layman may think, some strange substance that one either has or has not. One's life, one's right to vote, one's property, can all be taken away. But those who would infringe on them must go through certain procedures to do so; these procedures are a measure of what we value as a society. Some of the most important questions of "right" thus turn into questions of degree: how much review, and of which sort, will which agencies of state accord us when we claim our "right" is being infringed?

We do not have an absolute right either to our lives or to our driver's licenses. But we have a greater right to our lives because, if even the state wants to deprive us of that "right," there are authoritative bodies that will demand that the state make a very strong showing before it does so, and it will have to justify its actions before a grand jury, petit jury (convincing them "beyond a reasonable doubt"), sentencing jury, and, most likely, levels of appellate courts. The carving out of students "rights" to their education is being made up of this sort of procedural fabric. No one, I think, is maintaining that in no circumstances ought a student to be expelled from school. The battle for student "rights" involves shifting the answers to questions like: before a student is expelled, does he have to be given a hearing; does he have to have prior notice of the hearing, and notice of charges; may he bring counsel, (need the state provide counsel if he cannot?); need there be a transcript; need the school carry the burden of proving the charges; may he confront witnesses; if he is expelled, can he get review by a civil court; if he can get such review, need the school show its actions were "reasonable," or merely "not unreasonable," and so forth?[100]

In this vein, to bring the environment into the society as a rights-holder would not stand it on a better footing than the rest of us mere mortals, who every day suffer injuries that are *damnum absque injuria*. What the environment must look for is that its interests be taken into account in subtler, more procedural ways.

The National Environmental Policy Act is a splendid example of this sort of rights-making through the elaboration of procedural safeguards. Among its many provisions, it establishes that every federal agency must:

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

(i) the environmental impact of the proposed action,

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

(iii) alternatives to the proposed action,

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

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

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment . . .[101]

These procedural protections have already begun paying off in the courts. For example, it was on the basis of the Federal Power Commission's failure to make adequate inquiry into "alternatives" (as per subsection (iii)) in *Scenic Hudson*, and the Atomic Energy Commission's failure to make adequate findings, apparently as per subsections (i) and (ii), in connection with the Amchitka Island underground test explosion,[102] that Federal Courts delayed the implementation of environment-threatening schemes.

Although this sort of control (remanding a cause to an agency for further findings) may seem to the layman ineffectual, or only a stalling of the inevitable, the lawyer and the systems analyst know that these demands for further findings can make a difference. It may encourage the institutions whose actions threaten the environment to really *think about* what it is doing, and that is neither an ineffectual nor a small feat. Indeed, I would extend the principle beyond federal agencies. Much of the environment is threatened not by them, but by private corporations. Surely the constitutional power would not be lacking to mandate that all private corporations whose actions may have significant adverse effect on the environment make findings of the sort now mandated for federal agencies. Further, there should be requirements that these findings and reports be channeled to the Board of Directors; if the directors are not charged with the knowledge of what their corporation is doing to the environment, it will be all too easy for lower level management to prevent such reports from getting to a policy-making level. We might make it grounds for a guardian to enjoin a private corporation's actions if such procedures had not been carried out.

The rights of the environment could be enlarged by borrowing yet another page from the Environmental Protection Act and mandating comparable provisions for "private governments." The Act sets up within the Executive Office of the President a Council on Environmental Quality "to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment."[103] The Council is to become a focal point, within our biggest "corporation"—the State—to gather and evaluate environmental information which is to pass on to our chief executive officer, the President. Rather than being ineffectual, this may be a highly sophisticated way of steering organizational behavior. Corporations—especially recidivist polluters and land despoilers—should have to establish comparable internal reorganization, *e.g.*, to set up a Vice-President for Ecological Affairs. The author is not offering this suggestion as a cure-all, by any means, but I do not doubt that this sort of control over internal corporate organization would be an effective supplement to the traditional mechanisms of civil suits, licensing, administrative agencies, and fines.[104]

Similarly, courts, in making rulings that may affect the environment, should be compelled to make findings with respect to environmental harm—showing how they calculated it and how heavily it was weighed—even in matters outside the present Environmental Protection Act. This would have at least two important consequences. First, it would shift somewhat the focus of courtroom testimony and concern; second, the appellate courts, through their review and reversals for "insufficient findings," would give content to, and build up a body of, environmental rights, much as content and body has been given over the years, to terms like "Due Process of Law."

Beyond these procedural safeguards, would there be any rights of the environment that might be deemed "absolute," at least to the extent of, say, Free Speech? Here, the doctrine of irreparable injury comes to mind. There has long been equitable support for an attorney-general's enjoining injury to communal property if he can prove it to be "irreparable." In other words, while repairable damage to the environment might be balanced and weighed, irreparable damage could be enjoined absolutely. There are several reasons why this doctrine has not been used effectively (witness Lake Erie).[105] Undoubtedly, political pressures (in the broadest sense) have had an influence. So, too, has the failure of all of us to understand just how delicate the environmental balance is; this failure has made us unaware of how early "irreparable" injury might be occurring, and, if aware, unable to prove it in court. But most important I think, is that the doctrine simply is not practical as a rule of universal application. For one thing, there are too many cases like the sea urchin example above, where the marginal costs of abating the damage seem too clearly to exceed the marginal benefits, even if the damage to the environment itself is liberally estimated. For another, there is a large problem in how one defines "irreparable." Certainly the great bulk of the environment in civilized parts of the world has been injured "irreparably" in the sense of "irreversably"; we are not likely to return it to its medieval quality. Despite the scientific ring to the term, judgments concerning "irreparable injury" are going to have to subsume questions both of degree of damage and of value—to all of "us" including the environment, *i.e.*, to "spaceship earth"—of the damaged object. Thus, if we are going to revitalize the "irreparable damages" doctrine, and expect it to be taken seriously, we have to recognize that what will be said to constitute "irreparable damage" to the ionosphere, because of its importance to all life, or to the Grand Canyon, because of its uniqueness, is going to rest upon normative judgments that ought to be made explicit.

This suggests that some (relatively) absolute rights be defined for the environment by setting up a constitutional list of "preferred objects," just as some of our Justices feel there are "preferred rights" where humans are concerned.[106] Any threatened injury to these most jealously-to-be-protected objects should be reviewed with the highest level of scrutiny at all levels of government, including our "counter-majoritarian" branch, the court system. Their "Constitutional rights" should be implemented, legislatively and administratively, by, *e.g.*, the setting of environmental quality standards.

I do not doubt that other senses in which the environment might have rights will come to mind, and, as I explain more fully below,

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would be more apt to come to mind if only we should speak in terms of their having rights, albeit vaguely at first. "Rights" might well lie in unanticipated areas. It would seem, for example, that Chief Justice Warren was only stating the obvious when he observed in *Reynolds v. Sims* that "legislators represent people, not trees or acres." Yet, could not a case be made for a system of apportionment which *did* take into account the wildlife of an area?[107] It strikes me as a poor idea that Alaska should have no more congressmen than Rhode Island primarily *because there are in Alaska all those trees and acres, those waterfalls and forests.*[108] I am not saying anything as silly as that we ought to overrule *Baker v. Carr* and retreat from one man-vote to a system of one man-or-tree one vote. Nor am I even taking the position that we ought to count each acre, as we once counted each slave, as three-fifths of a man. But I am suggesting that there is nothing unthinkable about, and there might on balance even be a prevailing case to be made for, an electoral apportionment that made some systematic effort to allow for the representative "rights" of non-human life. And if a case can be made for that, which I offer here mainly for purpose of illustration, I suspect that a society that grew concerned enough about the environment to make it a holder of rights would be able to find quite a number of "rights" to have waiting for it when it got to court.

Do we really have to put it that way?

At this point, one might well ask whether much of what has been written could not have been expressed without introducing the notion of trees, rivers, and so forth "having rights." One could simply and straight forwardly say, for example, that (R_1) "the class of persons competent to challenge the pollution of rivers ought to be extended beyond that of persons who can show an immediate adverse economic impact on themselves," and that (R_2), "judges, in weighing competing claims to a wilderness area, ought to think beyond the economic and even esthetic impact on man, and put into the balance a concern for the threatened environment as such." And it is true, indeed, that to say trees and rivers have "rights" is not in itself a stroke of any operational significance—no more than to say "people have rights." To solve any concrete case, one is always forced to more precise and particularized statements, in which the word "right" might just as well be dropped from the elocution.

But this is not the same as to suggest that introducing the notion of the "rights" of trees and rivers would accomplish nothing beyond the introduction of a set of particular rules like (R_1) and (R_2), above. I think it is quite misleading to say that *"A* has a right to . . ." can be fully explicated in terms of a certain set of specific legal rules, and the manner in which conclusions are drawn from them in a legal system. That is only part of the truth. Introducing the notion of something having a "right" (simply *speaking* that way), brings into the legal system a flexibility and open-endedness that no series of specifically stated legal rules like R_1, R_2, R_3, . . . R_n can capture. Part of the reason is that "right" (and other so-called "legal terms" like "infants," "corporation," "reasonable time") have meaning—vague but forceful—in the ordinary language, and the force of these meanings, inevitably infused with our thought, becomes part of the context against which the "legal language" of our contemporary "legal rules" is interpreted.[109] Consider, for example, the "rules" that govern the question, on whom, and at what stages of litigation, is the burden of proof going to lie? Professor Krier has demonstrated how terribly significant these decisions are in the trial of environmental cases, and yet, also, how much discretion judges have under them.[110] In the case of such vague rules, it is *context*—senses of direction, of value and purpose—that determines how the rules will be understood, every bit as much as their supposed "plain meaning." In a system which spoke of the environment "having legal rights," judges would, I suspect, be inclined to interpret rules such as those of burden of proof far more liberally from the point of the environment. There is, too, the fact that the vocabulary and expressions that are available to us influence and even steer our thought. Consider the effect that was had by introducing into the law terms like "motive," "intent," and "due process." These terms work a subtle shift into the rhetoric of explanation available to judges; with them, new ways of thinking and new insights come to be explored and developed.[111] In such fashion, judges who could unabashedly refer to the "legal rights of the environment" would be encouraged to develop a viable body of law—in part simply through the availability and force of the expression. Besides, such a manner of speaking by courts would contribute to popular notions, and a society that spoke of the "legal rights of the environment" would be inclined to legislate more environment-protecting rules by formal enactment.

If my sense of these influences is correct, then a society in which it is stated, however vaguely, that "rivers have legal rights" would evolve a different legal system than one which did not employ that expression, even if the two of them had, at the start, the very same "legal rules" in other respects.

THE PSYCHIC AND SOCIO-PSYCHIC ASPECTS

There are, as we have seen, a number of developments in the law that may reflect a shift from the view that nature exists *for men*. These range from increasingly favorable procedural rulings for environmental action groups—as regards standing and burden of proof requirements, for example—to the enactment of comprehensive legislation such as the National Environmental Policy Act and the thoughtful Michigan Environmental Protection Act of 1970. Of such developments one may say, however, that it is not the environment *per se* that we are prepared to take into account, but that man's increased awareness of possible long range effects on himself militate in the direction of stopping environmental harm in its incipiency. And this is part of the truth, of course. Even the far-reaching National Environmental Policy Act, in its preambulatory "Declaration of National Environmental Policy," comes out both for "restoring and maintaining environmental quality *to the overall welfare and development of man*" as well as for creating and maintaining "conditions under which *man and nature can exist in productive harmony.*"[112] Because the health and well-being of mankind depend upon the health of the environment, these goals will often be so mutually supportive that one can avoid deciding whether our rationale is to advance "us" or a new "us" that includes the environment. For example, consider the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which insists that, *e.g.*, pesticides, include a warning "adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals."[113] Such a provision undoubtedly reflects the sensible notion that the protection of humans is best accomplished by preventing dangerous accumulations in the food chain. Its enactment does not necessarily augur far-reaching changes in, nor even call into question, fundamental matters of consciousness.

But the time is already upon us when we may have to consider subordinating some human claims to those of the environment *per se*. Consider, for example, the disputes over protecting wilderness areas from development that would make them accessible to greater numbers of people. I myself feel disingenuous rationalizing the environmental protectionist's position in terms of a utilitarian calculus, even one that takes future generations into account, and plays fast and loose with its definition of "good." Those who favor development have the stronger argument—they at least hold the protectionist to a standstill—from the point of advancing the greatest good of the greatest number of people. And the same is true regarding arguments to preserve useless species of animals, as in the sea urchin hypothetical. *One* can say that we never know what is going to prove useful at some future time. *In order* to protect ourselves, therefore, we ought to be conservative now in our treatment of nature. I agree. But when conservationists argue this way to the exclusion of other arguments, or find themselevs speaking in terms of "recreational interests" so continuously as to play up to, and reinforce, homocentrist perspectives, there is something sad about the spectacle. One feels that the arguments lack even their proponent's convictions. I expect they want to say something less egotistic and more emphatic but the prevailing and sanctioned modes of explanation in our society are not quite ready for it. In this vein, there must have been abolitionists who put their case in terms of getting more work out of the Blacks. Holdsworth says of the early English Jew that while he was "regarded as a species of res nullius . . . [H]e was valuable for his acquisitive capacity and for that reason the crown took him under its protection."[114] (Even today, businessmen are put in the position of insisting that their decent but probably profitless acts will "help our company's reputation and be good for profits."[115]

For my part, I would prefer a frank avowal that even making adjustments for esthetic improvements, what I am proposing is going to cost "us," *i.e.*, reduce our standard of living as measured in terms of our present values.

Yet, this frankness breeds a frank response—one which I hear from my colleagues and which must occur to many a reader. Insofar as the proposal is not just an elaborate legal fiction, but really comes down in the last analysis to a compromise of *our* interests for *theirs*, why should we adopt it? "What is in it for 'us'?"

This is a question I am prepared to answer, but only after permitting myself some observations about how *odd* the question is. It asks for me to justify my position in the very anthropocentric hedonist terms that I am proposing we modify. One is included to respond by a counter: "couldn't you (as a white) raise the same questions about compromising your preferred rights-status with Blacks?"; or "couldn't you (as a man) raise the same question about compromising your preferred rights-status with women?" Such counters, unfortunately, seem no more responsive than the question itself. (They have a nagging ring of "yours too" about them.) What the exchange actually points up is a fundamental problem regarding the nature of philosophical argument. Recall that Socrates, whom we remember as an opponent of hedonistic thought, confutes Thrasymachus by arguing that immorality makes one miserably unhappy! Kant, whose moral philosophy was based upon the categorical imperative ("Woe to him who creeps through the serpent windings of Utilitarianism"[116]) finds himself justifying, *e.g.*, promise keeping and truth telling, on the most prudential—one might almost say, commercial—grounds.[117] This "philosophic irony" (as Professor Engel calls it) may owe to there being something unique about ethical argument.[118] "Ethics cannot be put into words", Wittgenstein puts it; such matters "make themselves manifest."[119] On the other hand,

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perhaps the truth is that in any argument which aims at persuading a human being to action (on ethical or any other bases), "logic" is only an instrument for illuminating positions, at best, and in the last analysis it is psycho-logical appeals to the listener's self-interest that hold sway, however "principled" the rhetoric may be.

With this reservation as to the peculiar task of the argument that follows, let me stress that the strongest case can be made from the perspective of human advantage for conferring rights on the environment. Scientists have been warning of the crises the earth and all humans on it face if we do not change our ways—radically—and these crises make the lost "recreational use" of rivers seem absolutely trivial. The earth's very atmosphere is threatened with frightening possibilities: absorption of sunlight, upon which the entire life cycle depends, may be diminished; the oceans may warm (increasing the "greenhouse effect" of the atmosphere), melting the polar ice caps, and destroying our great coastal cities; the portion of the atmosphere that shields us from dangerous radiation may be destroyed. Testifying before Congress, sea explorer Jacques Cousteau predicted that the oceans (to which we dreamily look to feed our booming populations) are headed toward their own death: "The cycle of life is intricately tied up with the cycle of water . . . the water system has to remain alive if we are to remain alive on earth." [120] We are depleting our energy and our food sources at a rate that takes little account of the needs even of humans now living.

These problems will not be solved easily; they very likely can be solved, if at all, only through a willingness to suspend the rate of increase in the standard of living (by present values) of the earth's "advanced" nations, and by stabilizing the total human population. For some of us this will involve forfeiting material comforts; for others it will involve abandoning the hope someday to obtain comforts long envied. For all of us it will involve giving up the right to have as many offspring as we might wish. Such a program is not impossible of realization, however. Many of our so-called "material comforts" are not only in excess of, but are probably in opposition to, basic biological needs. Further, the "costs" to the advanced nations is not as large as would appear from Gross National Product figures. G.N.P. reflects social gain (of a sort) without discounting for the social *cost* of that gain, *e.g.*, the losses through depletion of resources, pollution, and so forth. As has well been shown, as societies become more and more "advanced," their real marginal gains become less and less for each additional dollar of G.N.P.[121] Thus, to give up "human progress" would not be as costly as might appear on first blush.

Nonetheless, such far-reaching social changes are going to involve us in a serious reconsideration of our consciousness towards the environment. I say this knowing full well that there is something more than a trifle obscure in the claim: is popular consciousness a meaningful notion, to begin with? If so, what is our present consciousness regarding the environment? Has it been casually responsible for our material state of affairs? Ought we to shift our consciousness (and if so, to what exactly, and on what grounds)? How, if at all, would a shift in consciousness be translated into tangible institutional reform? Not one of these questions can be answered to everyone's satisfactions, certainly not to the author's.

It is commonly being said today, for example, that our present state of affairs—at least in the West—can be traced to the view that Nature is the dominion of Man, and that this attitude, in turn, derives from our religious traditions.

"Whatever the origins, the text is quite clear in Judaism, was absorbed all but unchanged into Christianity, and was inflated in Humanism to become the implicit attitude of Western man to Nature and the environment. Man is exclusively divine, all other creatures and things occupy lower and generally inconsequential stature; man is given dominion over all creatures and things; he is enjoined to subdue the earth. . . . This environment was created by the man who believes that the cosmos is a pyramid erected to support man on its pinnacle, that reality exists only because man can perceive it, that God is made in the image of man, and that the world consists solely of a dialogue between men. Surely this is an infantalism which is unendurable. It is a residue from a past of inconsequence when a few puny men cried of their supremacy to an unhearing and uncaring world. One longs for a psychiatrist who can assure man that his deep seated cultural inferiority is no longer necessary or appropriate. . . . It is not really necessary to destroy nature in order to gain God's favor or even his undivided attention." [122]

Surely this is forcibly put, but it is not entirely convincing as an explanation for how we got to where we are. For one thing, so far as intellectual influences are to be held responsible for our present state of affairs, one might as fairly turn on Darwin as the Bible. It was, after all, Darwin's views—in part through the prism of Spencer—that gave moral approbation to struggle, conquest, and domination; indeed, by emphasizing man's development as a product of chance happenings, Darwin also had the effect—intended or not—of reducing our awareness of the mutual interdependency of everything in Nature. And besides, as Professor Murphy points out, the spiritual beliefs of the Chinese and Indians "in the unity between man and nature had no greater effect than the contrary beliefs in Europe in producing a balance between man and his environment"; he claims that in China, *tao* notwithstanding, "ruthless deforestation has been continuous." [123] I am under the impression, too, that notwithstanding the vaunted "harmony" between the American Plains Indians and Nature, once they had equipped themselves with rifles their pursuit of the buffalo expanded to fill the technological potential.[124] The fact is, that "consciousness" explanations pass too quickly over the less negative but simpler view of the situation: there are an increasing number of humans, with increasing wants, and there has been an increasing technology to satisfy them at "cost" to the rest of nature. Thus, we ought not to place too much hope that a changed environmental consciousness will in and of itself reverse present trends. Furthermore, societies have long since passed the point where a change in human consciousness on any matter will rescue us from our problems. More than ever before we are in the hands of institutions. These institutions are not "mere legal fictions" moreover—they have wills, minds, purposes, and inertias that are in very important ways their own, *i.e.*, that can transcend and survive changes in the consciousness of the individual humans who supposedly comprise them, and whom they supposedly serve. (It is more and more the individual human being, with his consciousness, that is the legal fiction.[125])

For these reasons, it is far too pat to suppose that a western "environmental consciousness" is solely or even primarily responsible for our environmental crisis. On the other hand, it is not so extravagant to claim that it has dulled our resentment and our determination to respond. For this reason, whether we will be able to bring about the requisite institutional and population growth changes depends in part upon effecting a radical shift in our feelings about "our" place in the rest of Nature.

A radical new conception of man's relationship to the rest of nature would not only be a step towards solving the material planetary problems; there are strong reasons for such a changed consciousness from the point of making us far better humans. If we only stop for a moment and look at the underlying human qualities that our present attitudes toward property and nature draw upon and reinforce, we have to be struck by how stultifying of our own personal growth and satisfaction they can become when they take rein of us. Hegel, in "justifying" private property, unwittingly reflects the tone and quality of some of the needs that are played upon:

"A person has as his substantive end the right of putting his will into any and every thing and thereby making it his, because it has no such end in itself and derives its destiny and soul from his will. This is the absolute right of appropriation which man has over all things." [126]

What is it within us that gives us this need not just to satisfy basic biological wants, but to extend our wills over things, to objectify them, to make them ours, to manipulate them, to keep them at a psychic distance? Can it all be explained on "rational" bases? Should we not be suspect of such needs within us, cautious as to why we wish to gratify them? When I first read that passage of Hegel, I immediately thought not only of the emotional contrast with Spinoza, but of the passage in Carson McCullers' *A Tree, A Rock, A Cloud*, in which an old derelict has collared a twelve year old boy in a streetcar cafe. The old man asks whether the boy knows "how love should be begun?"

The old man leaned closer and whispered: "A tree. A rock. A cloud."

"The weather was like this in Portland," he said. "At the time my science was begun. I meditated and I started very cautious. I would pick up something from the street and take it home with me. I bought a goldfish and I concentrated on the goldfish and I loved it. I graduated from one thing to another. Day by day I was getting this technique. . . .

. . . "For six years now I have gone around by myself and built up my science. And now I am a master. Son. I can love anything. No longer do I have to think about it even. I see a street full of people and a beautiful light comes in me. I watch a bird in the sky. Or I meet a traveler on the road. Everything, Son. And anybody. All stranger and all loved! Do you realize what a science like mine can mean?" [127]

To be able to get away from the view that Nature is a collection of useful senseless objects is, as McCullers' "madman" suggests, deeply involved in the development of our abilities to love—or, if that is putting it too strongly, to be able to reach a heightened awareness of our own, and others' capacities in their mutual interplay. To do so, we have to give up some psychic investment in our sense of separateness and specialness in the universe. And this, in turn, is hard giving indeed, because it involves us in a flight backwards, into earlier stages of civilization and childhood in which we had to trust (and perhaps fear) our environment, for we had not then the power to master it. Yet, in doing so, we—as persons—gradually free ourselves of needs for supportive illusions. Is not this one of the triumphs for "us" of our giving legal rights to (or acknowledging the legal rights of) the Blacks and women? [128]

Changes in this sort of consciousness are already developing, for the betterment of the planet and us. There is now federal legislation which "establishes by law" [129] the human ethic that animals should be accorded the basic creature comforts of adequate housing, ample food and water, reasonable handling, decent sanitation, sufficient ventilation, shelter from extremes of weather and temperature, and adequate veterinary

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care including the appropriate use of pain-killing drugs. . . .[120]

The Vietnam war has contributed to this movement, as it has to others. Five years ago a Los Angeles mother turned out a poster which read "War is not Healthy for children and other living things."[121] It caught on tremendously—at first, I suspect, because it sounded like another clever protest against the war, *i.e.*, another angle. But as people say such things, and think about them, the possibilities of what they have stumbled upon become manifest—in its suit against the Secretary of Agriculture to cancel the registration of D.D.T., Environmental Defense Fund alleged "biological injury to man and other living things."[122] A few years ago the pollution of streams was thought of only as a problem of smelly, unsightly, unpotable water *i.e.*, to us. Now we are beginning to discover that pollution is a process that destroys wondrously subtle balances of life within the water, and as between the water and its banks. This heightened awareness enlarges our sense of the dangers to us. But it also enlarges our empathy. We are not only developing the scientific capacity, but we are cultivating the personal capacities *within us* to recognize more and more the ways in which nature—like the woman, the Black, the Indian and the Alien—is like us (and we will also become more able realistically to define, confront, live with and admire the ways in which we are all different).[123]

The time may be on hand when these sentiments, and the early stirrings of the law, can be coalesced into a radical new theory or myth—felt as well as intellectualized—of man's relationships to the rest of nature. I do not mean "myth" in a demeaning sense of the term, but in the sense in which, at different times a history, our social "facts" and relationships have been comprehended and integrated by reference to the "myths" that we are co-signers of a social contract, that the Pope is God's agent, and that all men are created equal. Pantheism, Shinto and Tao all have myths to offer. But they are all each in its own fashion, quaint, primitive and archaic. What is needed is a myth that can fit our growing body of knowledge of geophysics, biology and the cosmos. In this vein, I do not think it too remote that we may come to regard the Earth, as some have suggested, as one organism, of which Mankind is a functional part—the mind, perhaps: different from the rest of nature, but different as a man's brain is from his lungs.

Ever since the first Geophysical Year, international scientific studies have shown irrefutably that the Earth as a whole is an organized system of most closely interrelated and indeed interdependent activities. It is, in the broadest sense of the term, an "organism." The so-called life-kingdoms and the many vegetable and animal species are dependent upon each other for survival in a balanced condition of planet-wide existence; and they depend on their environment, conditioned by oceanic and atmospheric currents, and even more by the protective action of the ionosphere and many other factors which have definite rhythms of operation. Mankind is part of this organic planetary whole; and there can be no truly new global society, and perhaps in the present state of affairs no society at all, as long as man will not recognize, accept and enjoy the fact that mankind has a definite function to perform within this planetary organism of which it is an active part.

In order to give a constructive meaning to the activities of human societies all over the globe, these activities—physical and mental—should be understood and given basic value with reference to the wholesome functioning of the entire Earth, and we may add of the entire solar system. This cannot be done (1) if man insists on considering himself an alien Soul compelled to incarnate on this sorrowful planet, and (2) if we can see in the planet, Earth, nothing but a mass of material substances moved by mechanical laws, and in "life" nothing but a chance combination of molecular aggregations.

. . . As I see it, the Earth is only one organized "field" of activities and so is the *human person*—but these activities take place at various levels, in different "spheres" of being and realms of consciousness. The lithosphere is not the biosphere, and the latter not the . . . ionosphere. The Earth is not *only* a material mass. Consciousness is not only "human"; it exists at animal and vegetable levels, and most likely must be latent, or operating in some form, in the molecule and the atom; and all these diverse and in a sense hierarchical modes of activity and consciousness should be seen integrated in and perhaps transcended by an all-encompassing and "eonic" planetary Consciousness.

Mankind's function within the Earth-organism is to extract from the activities of all other operative systems within this organism the type of consciousness which we call "reflective" or "self"-consciousness—or, we may also say to *mentalize* and give meaning, value, and "name" to all that takes place anywhere within the Earth-field. . . .

This "mentalization" process operates through what we call culture. To each region of, and living condition in the total field of the Earth-organism a definite type of culture inherently corresponds. Each region is the "womb" out of which a specific type of human mentality and culture can and sooner or later will emerge. All these cultures—past, present and future—and their complex interrelationships are the collective builders of the Mind of humanity; and this means of the *conscious Mind of the Earth*.[124]

As radical as such a consciousness may sound today, all the dominant changes we see about us point in its direction. Consider just the impact of space travel, of world-wide mass media, of increasing scientific discoveries about the interrelatedness of all life processes. Is it any wonder that the term "spaceship earth" has so captured the popular imagination? The problems we have to confront are increasingly the world-wide crises of a global organism: not pollution of a stream, but pollution of the atmosphere and of the ocean. Increasingly, the death that occupies each human's imagination is not his own, but that of the entire life cycle of the planet earth, to which each of us is as but a cell to a body.

To shift from such a lofty fancy as the planetarization of consciousness to the operation of our municipal legal system is to come down to earth hard. Before the forces that are at work, our highest court is but a frail and feeble—a distinctly human—institution. Yet, the Court may be at its best not in its work of handing down decrees, but at the very task that is called for: of summoning up from the human spirit the kindest and most generous and worthy ideas that abound there, giving them shape and reality and legitimacy.[125] Witness the School Desegregation Cases which, more importantly than to integrate the schools (assuming they did), awakened us to moral needs which, when made visible, could not be denied. And so here, too, in the case of the environment, the Supreme Court may find itself in a position to award "rights" in a way that will contribute to a change in popular consciousness. It would be a modest move, to be sure, but one in furtherance of a large goal: the future of the planet as we know it.

How far we are from such a state of affairs, where the law treats "environmental objects" as holders of legal rights, I cannot say. But there is certainly intriguing language in one of Justice Black's last dissents, regarding the Texas Highway Department's plan to run a six-lane expressway through a San Antonio Park.[126] Complaining of the Court's refusal to stay the plan, Black observed that "after today's decision, the people of San Antonio and the birds and animals that make their home in the park will share their quiet retreat with an ugly, smelly stream of traffic. . . . Trees, shrubs, and flowers will be mown down."[127] Elsewhere he speaks of the "burial of public parks," of segments of a highway which "devour parkland," and of the park's heartland.[128] Was he, at the end of his great career, on the verge of saying—just saying—that "nature has 'rights' on its own account"? Would it be so hard to do?

FOOTNOTES

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[1] C. DARWIN, DESCENT OF MAN, 119, 120–21 (2d ed. 1874). *See also* R. WAELDER, PROGRESS AND REVOLUTION 39 *et seq.* (1967).

[2] *See* DARWIN, *supra* note 1, at 113–14:

. . . No tribe could hold together if murder, robbery, treachery, etc., were common; consequently such crimes within the limits of the same tribe "are branded with everlasting infamy"; but excite no such sentiment beyond these limits. A North-American Indian is well pleased with himself, and is honored by others, when he scalps a man of another tribe; and a Dyak cuts off the head of an unoffending person, and dries it as a trophy . . . It has been recorded that an Indian Thug conscientiously regretted that he had not robbed and strangled as many travelers as did his father before him. In a rude state of civilization the robbery of strangers is, indeed, generally considered as honorable.

See also Service, *Forms of Kinship* in MAN AN ADAPTATION 112 (Y. Cohen ed. 1968).

[3] *See* DARWIN, *supra* note 1, at 113. *See also* E. WESTERMARCK, 1 THE ORIGIN AND DEVELOPMENT OF THE MORAL IDEAS 406–12 (1912).

The practice of allowing sickly children to die has not been entirely abandoned, apparently, even at our most distinguished hospitals. *See Hospital Let Retarded Baby Die, Film Shows*, L. A. Times, Oct. 17, 1971, § A, at 9, col. 1.

[4] There does not appear to be a word "gericide" or "geronticide" to designate the killing of the aged. "Senicide" is as close as the Oxford English Dictionary comes, although, as it indicates, the word is rare. 9 OXFORD ENGLISH DICTIONARY 454 (1933).

[5] *See* DARWIN, *supra* note 1, at 386–93. WESTERMARCK, *supra* note 3, at 387–89, observes that where the killing of the aged and infirm is practiced, it is often supported by humanitarian justification; this, however, is a far cry from saying that the killing is *requested* by the victim as his right.

[6] H. MAINE, ANCIENT LAW 153 (Pollock ed. 1930). Maine claimed that these powers of the father extended to all regions of private law, although not to the Jus Publicum, under which a son, notwithstanding his subjection in private life, might vote alongside his father. *Id.* at 152. WESTERMARCK, *supra* note 3, at 393–94, was skeptical that the arbitrary power of the father over the children extended as late as into early Roman law.

[7] 387 U.S. 1 (1967).

[8] 42 U.S.C. §§ 1973 *et seq.* (1970).

[9] *See* Landman v. Royster, 40 U.S.L.W. 2256 (E.D. Va., Oct. 30, 1971) (eighth amendment and due process clause of the fourteenth amendment require federal injunctive relief, including compelling the drafting of new prison rules, for Virginia prisoners against prison conduct prohibited by vague rules or no rules, without disciplinary proceedings embodying rudiments of procedural due process, and by various penalties that constitute cruel and unusual punishment). *See* Note, *Courts, Corrections and the Eighth Amendment: Encouraging Prison Reform by*

Releasing Inmates, 44 S. CAL. L. REV. 1060 (1971).

[10] *But see* T. SZASZ, LAW, LIBERTY AND PSYCHIATRY (1963).

[11] *See* notes 22, 52 and accompanying text *infra*. The trend toward liberalized abortion can be seen either as a legislative tendency back in the direction of rightlessness for the foetus—or toward increasing rights of women. This inconsistency is not unique in the law of course; it is simply support for Hohfeld's scheme that the "jural opposite" of someone's right is someone else's "no-right." W. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS (1923).

Consider in this regard a New York case in which a settlor S established a trust on behalf of a number of named beneficiaries and "lives in being." Desiring to amend the deed of trust, the grantor took steps pursuant to statute to obtain "the written consent of all persons beneficially interested in [the] trust." At the time the grantor was pregnant and the trustee Chase Bank advised it would not recognize the proposed amendment because the child *en ventre sa mere* might be deemed a person beneficially interested in the trust. The court allowed the amendment to stand, holding that birth rather than conception is the controlling factor in ascertaining whether a person is beneficially interested in the trust which the grantor seeks to amend. *In re* Peabody, 5 N.Y. 2d 541, 158, N.E.2d 841 (1959).

The California Supreme Court has recently refused to allow the deliberate killing of a foetus (in a non-abortion situation) to support a murder prosecution. The court ruled foetuses not to be denoted by the words "human being" within the statute defining murder. Keeler v. Superior Court, 2 Cal. 3d 619, 87 Cal. Rptr. 481, 470 P.2d 617 (1970). But see note 52 and accompanying text *infra*.

Some jurisdictions have statutes defining a crime of "feticide"—deliberately causing the death of an unborn child. The absence of such a specific feticide provision in the California case was one basis for the ruling in *Keeler*. *See* 2 Cal. 3d at 633 n.16, 87 Cal. Rptr. at 489 n.16, 470 P.2d at 625 n.16.

[12] INT. REV. CODE of 1954, § 1361 (repealed by Pub. L. No. 89–389, effective Jan. 1, 1969).

[13] For example, *see* United States v. Cargo of the Brig Malek Adhel, 43 U.S. (2 How.) 210 (1844). There, a ship had been seized and used by pirates. All this was done without the knowledge or consent of the owners of the ship. After the ship had been captured, the United States condemned and sold the "offending vessel." The owners objected. In denying release to the owners, Justice Story cited Chief Justice Marshall from an earlier case: "This is not a proceeding against the owner; it is a proceeding against the vessel for an offense committed by the vessel; which is not the less an offense . . . because it was committed without the authority and against the will of the owner." 43 U.S. at 234, quoting from United States v. Schooner Little Charles, 26 F. Cas. 979 (No. 15,612) (C.C.D. Va. 1818).

[14] 9 U.S. (5 Cranch) 61, 86 (1809).

[15] Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819).

[16] *Id.* at 636.

[17] Consider, for example, that the claim of the United States to the naval station at Guantanamo Bay, at $2000-a-year rental, is based upon a treaty signed in 1903 by José Montes for the President of Cuba and a minister representing Theodore Roosevelt; it was subsequently ratified by two-thirds of a Senate no member of which is living today. Lease [from Cuba] of Certain Areas for Naval or Coaling Stations, July 2, 1903, T.S. No. 426; C. BEVANS, 6 TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES 1776–1949, at 1120 (U.S. Dep't of State Pub. 8549, 1971).

[18] O. GIERKE, POLITICAL THEORIES OF THE MIDDLE AGE (Maitland transl. 1927), especially at 22–30. The reader may be tempted to suggest that the "corporate" examples in the text are distinguishable from environmental objects in that the former are comprised by and serve humans. On the contrary, I think that the more we learn about the sociology of the firm—and the realpolitik of our society—the more we discover the ultimate reality of these institutions, and the increasingly legal fictiveness of the individual human being. *See* note 125 and accompanying text *infra*.

[19] Dred Scott v. Sandford, 60 U.S. (19 How.) 396, 404–05 (1856). In Bailey v. Poindexter's Ex'r, 56 Va. (14 Gratt.) 132, 142–43 (1858) a provision in a will that testator's slaves could choose between emancipation and public sale was held void on the ground that slaves have no legal capacity to choose:

"These decisions are legal conclusions flowing naturally and necessarily from the one clear, simple, fundamental idea of chattel slavery. That fundamental idea is, that, in the eye of the law, so far certainly as civil rights and relations are concerned, the slave is not a person, but a thing. The investiture of a chattel with civil rights or legal capacity is indeed a legal solecism and absurdity. The attribution of legal personality to a chattel slave—legal conscience, legal intellect, legal freedom, or liberty and power of free choice and action, and corresponding legal obligations growing out of such qualities, faculties and action—implies a palpable contradiction in terms."

[20] People v. Hall, 4 Cal. 399, 405 (1854). The statute there under interpretation provided that "no Black or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a white man," but was silent as to Chinese. The "policy" analysis by which the court brings Chinese under "Black . . . or Indian" is a fascinating illustration of the relationship between a "policy" decision and a "just" decision, especially in light of the exchange between Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958) and Fuller, *Positivism and Fidelity to Law—A Reply to Professor Hart*, *id.* at 630.

[21] Schechter, *The Rightlessness of Mediaeval English Jewry*, 45 JEWISH Q. REV. 121, 135 (1954) quoting from M. BATESON, MEDIEVAL ENGLAND 139 (1904). Schechter also quotes Henry de Bracton to the effect that "a Jew cannot have anything of his own, because whatever he acquires he acquires not for himself but for the king. . . ." *Id.* at 128.

[22] Dietrich v. Inhabitants of Northampton, 138 Mass. 14, 16 (1884).

[23] *In re* Goddell, 39 Wisc. 232, 245 (1875). The court continued with the following "clincher":

"And when counsel was arguing for this lady that the word, person, in sec. 32, ch. 119 [respecting those qualified to practice law], necessarily includes females, her presence made it impossible to suggest to him as *reductio ad absurdum* of his position, that the same construction of the same word . . . would subject woman to prosecution for the paternity of a bastard, and . . . prosecution for rape."

Id. at 246.

The relationship between our attitudes toward woman, on the one hand, and, on the other, the more central concern of this article—land—is captured in an unguarded aside of our colleague, Curt Berger: " . . . after all, land, like woman, was meant to be possessed. . . ." LAND OWNERSHIP AND USE 139 (1968).

[23a] Recently, a group of prison inmates in Suffolk County tamed a mouse that they discovered, giving him the name Morris. Discovering Morris, a jailer flushed him down the toilet. The prisoners brought a proceeding against the Warden complaining, *inter alia*, that Morris was subjected to discriminatory discharge and was otherwise unequally treated. The action was unsuccessful, on grounds that the inmates themselves were "guilty of imprisoning Morris without a charge, without a trial, and without bail," and that other mice at the prison were not treated more favorably. "As to the true victim the Court can only offer again the sympathy first proffered to his ancestors by Robert Burns. . . ." The Judge proceeded to quote from Burns' "To a Mouse." Morabito v. Cyrta, 9 CRIM. L. REP. 2472 (N.Y. Sup. Ct. Suffolk Co. Aug 26, 1971).

The whole matter seems humorous, of course. But what we need to know more of is the function of humor in the unfolding of a culture, and the ways in which it is involved with the social growing pains to which it is testimony. Why do people make jokes about the Women's Liberation Movement? Is it not on account of—rather than in spite of—the underlying validity of the protests, and the uneasy awareness that a recognition of them is inevitable? A. Koestler rightly begins his study of the human mind, ACT OF CREATION (1964), with an analysis of humor, entitled "The Logic of Laughter." And *cf.* Freud, *Jokes and the Unconscious*, A STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD (J. Strachey transl. 1905). (Query too: what is the relationship between the conferring of proper *names*, *e.g.*, Morris, and the conferring of social and legal *rights?*)

[24] Thus it was that the Founding Fathers could speak of the inalienable rights of all men, and yet maintain a society that was, by modern standards, without the most basic rights for Blacks, Indians, children and women. There was no hypocrisy; emotionally, no one *felt* that these other things were men.

[25] The second thought streaming from . . . the other South [is] the sincere and passionate belief that somewhere between men and cattle, God created a *tertium quid*, and called it a Negro—a clownish, simple creature, at times even lovable within its limitations, but straitly foreordained to walk within the Veil. W. E. B. DuBois, The Souls of Black Folk 89 (1924).

[26] In this article I essentially limit myself to a discussion of non-animal but natural objects. I trust that the reader will be able to discern where the analysis is appropriate to advancing our understanding of what would be involved in giving "rights" to other objects not presently endowed with rights—for example, not only animals (some of which already have rights in some senses) but also humanoids, computers, and so forth. *Cf.* the National Register for Historic Places, 16 U.S.C. § 470 (1970), discussed in Ely v. Velde, 321 F. Supp. 1088 (E.D. Va. 1971).

As the reader will discover, there are large problems involved in defining the boundaries of the "natural object." For example, from time to time one will wish to speak of that portion of a river that runs through a recognized jurisdiction; at other times, one may be concerned with the entire river, or the hydrologic cycle—or the whole of nature. One's ontological choices will have a strong influence on the shape of the legal system, and the choices involved are not easy. *See* notes 49, 73 and accompanying text *infra*.

On the other hand, the problems of selecting an appropriate ontology are problems of all language—not merely of the language of legal concepts, but of ordinary language as well. Consider, for example, the concept of a "person" in legal or in everyday speech. Is each *person* a fixed bundle of relationships, persisting unaltered through time? Do our molecules and cells not change at every moment? Our hypostatizations always have a pragmatic quality to them. *See* D. HUME, *Of Personal Identity*, in TREATISE OF HUMAN NATURE bk. 1. pt. IV, in THE PHILOSOPHICAL WORKS OF DAVID HUME 310–18, 324 (1854); T. MURTI, THE CENTRAL PHILOSOPHY OF BUDDHISM 70–73 (1955). In LOVES BODY 146–47 (1966) Norman O. Brown observes:

The existence of the "let's pretend" boundary does not prevent the continuance of the

real traffic across it. Projection and introjection the process whereby the self as distinct from the other is constituted, is not past history, an event in childhood, but a present process of continuous creation. The dualism of self and external world is built up by a constant process of reciprocal exchange between the two. The self as a stable substance enduring through time, an identity, is maintained by constantly absorbing good parts (or people) from the outside world and expelling bad parts from the inner world. "There is a continual 'unconscious' wandering of other personalities into ourselves."

Every person, then, is many persons; a multitude made into one person; a corporate body; incorporated, a corporation. A "corporation sole"; every man a parson-person. The unity of the person is as real, or unreal, as the unity of the corporation.

See generally, W. BISHIN & C. STONE, LAW, LANGUAGE AND ETHICS Ch. 5 (1972)

In different legal systems at different times, there have been many shifts in the entity deemed "responsible" for harmful acts: an entire clan was held responsible for a crime before the notion of individual responsibility emerged; in some societies the offending hand, rather than an entire body, may be "responsible." Even today, we treat father and son as separate jural entities for some purposes, but as a single jural entity for others. I do not see why, in principle, the task of working out a legal ontology of natural objects (and "qualities," *e.g.,* climatic warmth) should be any more unmanageable Perhaps someday all mankind shall be, for some purposes, one jurally recognized "natural object."

[27] The statement in text is not quite true; *cf.* Murphy, *Has Nature Any Right to Life?,* 22 HAST. L.J. 467 (1971). An Irish court, passing upon the validity of a testamentary trust to the benefit of someone's dog, observed in dictum that " 'lives' means lives of human beings, not of animals or trees in California." Kelly v. Dillon, 1932 Ir. R. 255, 261. (The intended gift over on the death of the last surviving dog was held void for remoteness, the court refusing "to enter into the question of a dog's expectation of life," although prepared to observe that "in point of fact neighbor's [sic] dogs and cats are unpleasantly long-lived. . . ." *Id.* at 260–61).

[28] Four cases dealing with the Constitutionality of the death penalty under the eighth and fourteenth amendments are pending before the United States Supreme Court. Branch v. Texas, 447 S.W.2d 932 (Tex. 1969), *cert. granted,* 91 S. Ct. 2287 (1970); Aikens v. California, 70 Cal. 2d 369, 74 Cal. Rptr. 882, 450 P.2d 258 (1969); *cert. granted,* 91 S. Ct. 2280 (1970); Furman v. Georgia, 225 Ga. 253, 167 S.E.2d 628 (1969); *cert. granted,* 91 S. Ct. 2282 (1970); Jackson v. Georgia, 225 Ga. 790, 171 S.E.2d 501 (1969), *cert. granted,* 91 S. Ct. 2287 (1970).

[29] *See* George Campbell Painting Corp. v. Reid, 392 U.S. 286 (1968); Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186 (1946); Baltimore & O.R.R. v. ICC, 221 U.S. 612 (1911); Wilson v. United States, 221 U.S. 361 (1911); Hale v. Henkel, 201 U.S. 43 (1906).

[30] *See* Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir.), *cert denied,* 368 U.S. 930 (1961).

[31] For example, *see* People *ex rel.* Ricks Water Co. v. Elk River Mill & Lumber Co., 107 Cal. 221, 40 Pac. 531 (1895) (refusing to enjoin pollution by an upper riparian at the instance of the Attorney General on the grounds that the lower riparian owners, most of whom were dependent on the lumbering business of the polluting mill, did not complain).

[32] The law in a suit for injunctive relief is commonly easier on the plaintiff than in a suit for damages. *See* J. GOULD, LAW OF WATERS 958: § 206 (1883).

[33] However, in 1970 California amended its Water Quality Act to make it easier for the Attorney General to obtain relief, *e.g.,* one must no longer allege irreparable injury in a suit for an injunction. CAL. WATER CODE § 13350(b) (West 1971).

[34] To whomsoever the soil belongs, he owns also to the sky and to the depths. *See* W. BLACKSTONE, 2 COMMENTARIES *18.

At early common law, the owner of land could use all that was found under his land "at his free will and pleasure" without regard to any "inconvenience to his neighbour." Acton v. Blundell, 12 Meeson & Welsburg 324, 354, 152 Eng. Rep. 1223, 1235 (1843). "He [the landowner] may waste or despoil the land as he pleases. . . ." R. MEGARRY & H. WADE, THE LAW OF REAL PROPERTY 70 (3d ed. 1966). *See* R. POWELL, 5 THE LAW OF REAL PROPERTY ¶725 (1971).

[35] *See* Note, *Statutory Treatment of Industrial Stream Pollution,* 24 GEO. WASH. L. REV. 302, 306 (1955); H. FARNHAM, 2 LAW OF WATERS AND WATER RIGHTS § 461 (1904); GOULD, *supra* note 32, at § 204.

[36] For example, courts have upheld a right to pollute by prescription, Mississippi Mills Co. v. Smith, 69 Miss. 299, 11 So. 26 (1882), and by easement, Luama v. Bunker Hill & Sullivan Mining & Concentrating Co., 41 F.2d 358 (9th Cir. 1930).

[37] *See* Red River Roller Mills v. Wright, 30 Minn. 249, 15 N.W. 167 (1883) (enjoyment of stream by riparian may be modified or abrogated by reasonable use of stream by others); Townsend v. Bell, 167 N.Y. 462, 60 N.E. 775 (1901) (riparian owner not entitled to maintain action for pollution of stream by factory where he could not show use of water was unreasonable); Smith v. Staso Milling Co., 18 F.2d 736 (2d Cir. 1927) (in suit for injunction, right on which injured lower riparian stands is a quantitative compromise between two conflicting interests); Clifton Iron Co. v. Dye, 87 Ala. 468, 6 So. 192 (1889) (in determining whether to grant injunction to lower riparian, court must weigh interest of public as against injury to one or the other party). *See also* Montgomery Limestone Co. v. Bearder, 256 Ala. 269, 54 So. 2d 571 (1951).

[38] Pennsylvania Coal Co. v. Sanderson, 113 Pa. 126, 149, 6 A. 453, 459 (1886).

[39] Hand. J. in Smith v. Staso Milling Co., 18 F.2d 736, 738 (2d Cir. 1927) (emphasis added). *See also* Harrisonville v. Dickey Clay Co., 289 U.S. 334 (1933) (Brandeis, J.).

[40] Measuring plantiff's damages by "making him whole" has several limitations; these and the matter of measuring damages in this area generally are discussed more fully at notes 83–93 and accompanying text *infra.*

[41] Here, again, an analogy to corporation law might be profitable. Suppose that in the instance of negligent corporate management by the directors, there were no institution of the stockholder derivative suit to force the directors to make *the corporation* whole, and the only actions provided for were direct actions by stockholders to collect for damages *to themselves qua* stockholders. Theoretically and practically, the damages might come out differently in the two cases, and not merely because the creditors' losses are not aggregated in the stockholders' direct actions.

[42] And even far less than the damages to all human economic interests derivatively through the stream; *see* text accompanying notes 83–84, 120 *infra.*

[43] Smith v. Staso, 18 F.2d 736, 738 (2d Cir. 1927).

[44] Some of these public properties are subject to the "public trust doctrine," which, while ill-defined, might be developed in such fashion as to achieve fairly broad-ranging environmental protection. *See* Gould v. Greylock Reservation Comm'n, 350 Mass. 410, 215 N.E.2d 114 (1966), discussed in Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention,* 68 MICH. L. REV. 471, 492–509 (1970).

[45] By contrast, for example, with humane societies.

[46] *See, e.g.,* CAL. PROB. CODE §§ 1460–62 (West Supp. 1971).

[47] CAL. PROB. CODE § 1751 (West Supp. 1971) provides for the appointment of a "conservator."

[48] In New York the Supreme Court and county courts outside New York City have jurisdiction to appoint a committee of the person and/or a committee of the property for a person "incompetent to manage himself or his affairs." N.Y. MENTAL HYGIENE LAW § 100 (McKinney 1971).

[49] This is a situation in which the ontological problems discussed in note 26 *supra* become acute. One can conceive a situation in which a guardian would be appointed by a county court with respect to a stream, bring a suit against alleged polluters, and lose. Suppose now that a federal court were to appoint a guardian with respect to the larger river system of which the stream were a part, and that the federally appointed guardian subsequently were to bring suit against the same defendants in state court, now on behalf of the river, rather than the stream. (Is it possible to bring a still subsequent suit, if the one above fails, on behalf of the entire hydrologic cycle, by a guardian appointed by an international court?)

While such problems are difficult, they are not impossible to solve. For one thing, pretrial hearings and rights of intervention can go far toward their amelioration. Further, courts have been dealing with the matter of potentially inconsistent judgment for years, as when one state appears on the verge of handing down a divorce decree inconsistent with the judgment of another state's courts. Kempson v. Kempson, 58 N.J. Eg. 94, 43 A. 97 (Ch. Ct. 1899). Courts could, and of course would, retain some natural objects in the res nullius classification to help stave off the problem. Then, too, where (as is always the case) several "objects" are interrelated, several guardians could all be involved, with procedures for removal to the appropriate court—probably that of the guardian of the most encompassing "ward" to be acutely threatened. And in some cases subsequent suit by the guardian of more encompassing ward, not guilty of laches, might be appropriate. The problems are at least no more complex than the corresponding problems that the law has dealt with for years in the class action area.

[50] CAL. PROB. CODE § 1460 (West Supp. 1971). The N.Y. MENTAL HYGIENE LAW (McKinney 1971) provides for jurisdiction "over the custody of a person and his property if he is incompetent to manage himself or his affairs by reason of age, drunkenness, mental illness or other cause. . . ."

[51] Santa Clara County v. Southern Pac. R.R., 118 U.S. 394 (1886). Justice Black would have denied corporations the rights of "persons" under the fourteenth amendment. *See* Connecticut Gen. Life Ins. Co. v. Johnson, 303 U.S. 77, 87 (1938) (Black, J. dissenting): "Corporations have neither race nor color."

[52] *In re* Byrn, L. A. Times, Dec. 5, 1971, § 1, at 16, col. 1. A preliminary injunction was subsequently granted, and defendant's crossmotion to vacate the guardianship was denied. Civ. 13113/71 (Sup. Ct. Queens Co., Jan. 4, 1972) (Smith, J.). Appeals are pending. Granting a guardianship in these circumstances would seem to be a more radical advance in the law than granting a guardianship over communal natural objects like lakes. In the former case there is a traditionally recognized guardian for the object—the mother—and her decision has been in favor of aborting the foetus.

[53] The laws regarding the various communal resources had to develop along their own lines, not only because so many different persons' "rights" to consumption and usage were continually and contemporaneously involved, but also because no one had to bear the costs of his consumption of pub-

lic resources in the way in which the owner of resources on private land has to bear the costs of what he does. For example, if the landowner strips his land of trees, and puts nothing in their stead, he confronts the costs of what he has done in the form of reduced value of his land; but the river polluter's actions are costless, so far as he is concerned—except insofar as the legal system can somehow force him to internalize them. The result has been that the private landowner's power over natural objects on his land is far less restrained by law (as opposed to economics) than his power over the public resources that he can get his hands on. If this state of affairs is to be changed, the standard for interceding in the interests of natural objects on traditionally recognized "private" land might well parallel the rules that guide courts in the matter of people's children whose upbringing (or lack thereof) poses social threat. The courts can, for example, make a child "a dependent of the court" where the child's "home is an unfit place for him by reason of neglect, cruelty, or depravity of either of his parents. . . ." CAL. WELF. & INST. CODE § 600(b) (West 1966). *See also id* at § 601: any child "who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life [may be adjudged] a ward of the court."

[54] *See* note 53 *supra*. The present way of handling such problems on "private" property is to try to enact legislation of general application under the police power, *see* Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922), rather than to institute civil litigation which, though a piecemeal process, can be tailored to individual situations.

[55] CAL. PROB. CODE § 1580 (West Supp. 1971) lists specific causes for which a guardian may, after notice and a hearing, be removed.

Despite these protections, the problem of overseeing the guardian is particularly acute where, as here, there are no immediately identifiable human beneficiaries whose self-interests will encourage them to keep a close watch on the guardian. To ameliorate this problem, a page might well be borrowed from the law of ordinary charitable trusts, which are commonly placed under the supervision of the Attorney General. *See* CAL. CORP. CODE §§ 9505, 10207 (West. 1955).

[56] *See* CAL. PROB. CODE §§ 1472, 1590 (West 1956 and Supp. 1971).

[57] 354 F.2d 608 (2d Cir. 1965), *cert. denied*, Consolidated Edison Co. v. Scenic Hudson Preservation Conf., 384 U.S. 941 (1966).

[58] 354 F.2d 608, 15 (2d Cir. 1965).

[59] Act of Aug. 26, 1935, ch. 687, Title II, § 213, 49 Stat. 860 (*codified* in 16 U.S.C. § 8251 (b) (1970).

[60] 354 F.2d 608, 616 (2d Cir. 1965). The court might have felt that because the New York-New Jersey Trial Conference, one of the two conservation groups that organized Scenic Hudson, had some 17 miles of trailways in the area of Storm King Mountain, it therefore had sufficient economic interest to establish standing; Judge Hay's opinion does not seem to so rely, however.

[61] Road Review League v. Boyd, 270 F. Supp. 650 (S.D.N.Y. 1967). Plaintiffs who included the Town of Bedford and the Road Review League, a non-profit association concerned with community problems, brought an action to review and set aside a determination of the Federal Highway Administrator concerning the alignment of an interstate highway. Plaintiffs claimed that the proposed road would have an adverse effect upon local wildlife sanctuaries, pollute a local lake, and be inconsistent with local needs and planning. Plaintiffs relied upon the section of the Administrative Procedure Act, 5 U.S.C. § 702 (1970), which entitles persons "aggrieved by agency action within the meaning of a relevant statute" to obtain judicial review. The court held that plaintiffs had standing to obtain judicial review of proposed alignment of the road:

"I see no reason why the word 'aggrieved' should have different meaning in the Administrative Procedure Act from the meaning given it under the Federal Power Act. . . . The 'relevant statute,' i.e., the Federal Highways Act, contains language which seems even stronger than that of the Federal Power Act, as far as local and conservation interests are concerned."

Id. at 661.

In Citizens Comm. for the Hudson Valley v. Volpe, 425 F. 2d 97 (2d Cir. 1970), plaintiffs were held to have standing to challenge the construction of a dike and causeway adjacent to the Hudson Valley. The Sierra Club and the Village of Tarrytown based their challenge upon the provisions of the Rivers and Harbors Act of 1899. While the Rivers and Harbors Act does not provide for judicial review as does the Federal Power Act, the court stated that the plaintiffs were "aggrieved" under the Department of Transportation Act, the Hudson River Basin Compact Act, and a regulation under which the Corps of Engineers issued a permit, all of which contain broad provisions mentioning recreational and environmental resources and the need to preserve the same. Citing the *Road Review League* decision, the court held that as "aggrieved" parties under the Administrative Procedure Act, plaintiffs similarly had standing. Others decisions in which the court's grant of standing was based upon the Administrative Procedure Act include: West Virginia Highlands Conservancy v. Island Creek Coal Co., 441 F. 2d 231 (4th Cir. 1971); Environmental Defense Fund, Inc. v. Hardin, 428 F. 2d 1093 (D.C. Cir. 1970); Allen v. Hickel, 424 F. 2d 944 (D.C. Cir. 1970); Brooks v. Volpe, 329 F. Supp. 118 W.D. Wash. 1971); Delaware v. Pennsylvania N.Y. Cent. Transp. Co., 323 F. Supp. 487 (D. Del. 1971); Izaak Walton League of America v. St. Clair, 313 F. Supp. 1312 (D. Minn. 1970); Pennsylvania Environmental Council, Inc. v. Bartlett, 315 F. Supp. 238 (M.D. Pa. 1970).

[62] Sierra Club v. Hickel, 433 F.2d 24 (9th Cir. 1970), *cert. granted sub nom.* Sierra Club v. Morton, 401 U.S. 907 (1971) (No. 70–34). The Sierra Club, a non-profit California corporation concerned with envirnomental protection, claimed that its interest in the conservation and sound management of natural parks would be adversely affected by an Interior permit allowing Walt Disney to construct the Mineral King Resort in Sequoia National Forest. The court held that because of the Sierra Club's failure to assert a direct legal interest, that organization lacked standing to sue. The court stated that the Sierra Club had claimed an interest only in the sense that the proposed course of action was displeasing to its members. The court purported to distinguish *Scenic Hudson* on the grounds that the plaintiff's claim of standing there was aided by the "aggrieved party" language of the Federal Power Act.

[63] 16 U.S.C. §§ 91(a) *et seq.* (1970). *See* note 59 and accompanying text *supra*.

[64] 5 U.S.C. §§ 551 *et seq.* (1970). Decisions relying upon 5 U.S.C. § 702 are listed in note 56 *supra*.

[65] 7 U.S.C. §§ 135 *et seq.* (1970). Section 135b(d) affords a right of judicial review to anyone "adversely affected" by an order under the Act. *See* Environmental Defense Fund, Inc. v. Hardin, 428 F.2d 1093, 1096 (D.C. Sir. 1970).

[66] 324 F. Supp. 412 (N.D., M.D. & S.D. Ala. 1970), *aff'd mem., sub nom.* Bass Anglers Sportsman Soc'y of America, Inc. v. Koppers Co., 447 F.2d 1304 (5th Cir. 1971).

[67] Section 13 of Rivers and Harbors Appropriation Act of 1899.

[68] 33 U.S.C. § 411 (1970) reads:

"Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections 407, 408, and 409 of the title shall . . . be punished by a fine . . . or by imprisonment . . . in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction."

[69] This is from the Latin, "who brings the action as well for the King as for himself," referring to an action brought by a citizen for the state as well as for himself.

[70] These sections create a criminal liability. No civil action lies to enforce it; criminal statutes can only be enforced by the government. A qui tam action lies only when expressly or impliedly authorized by statute to enforce a penalty by civil action, not a criminal fine.

324 F. Supp. 412, 415–16 (N.D., M.D. & S.D. Ala. 1970). Other *qui tam* actions brought by the Bass Angler Sportsman Society have been similarly unsuccessful. *See* Bass Anglers Sportsman Soc'y of America v. Scholze Tannery, 329 F. Supp. 339 (E.D. Tenn. 1971); Bass Anglers Sportsman's Soc'y of America v. United States Plywood-Champion Papers, Inc, 324 F. Supp. 302 (S.D. Tex. 1971).

[71] Concern over an anticipated flood of litigation initiated by environmental organizations is evident in Judge Trask's opinion in Alameda Conservation Ass'n v. California, 437 F.2d 1087 (9th Cir.), *cert. denied*, Leslie Salt Co. v. Alameda Conservation Ass'n, 402 U.S. 908 (1971), where a non-profit corporation having as a primary purpose protection of the public's interest in San Francisco Bay was denied standing to seek an injunction prohibiting a land exchange that would allegedly destroy wildlife, fisheries and the Bay's unique flushing characteristics:

"Standing is not established by suit initiated by this association simply because it has as one of its purposes the protection of the 'public interest' in the waters of the San Francisco Bay. However well intentioned the members may be, they may not by uniting create for themselves a super-administrative agency or a *parens patriae* official status with the capability of over-seeing and of challenging the action of the appointed and elected officials of the state government. Although recent decisions have considerably broadened the concept of standing we do not find that they go this far. [Citation.]

"Were it otherwise the various clubs, political, economic and social now or yet to be organized, could wreak havoc with the administration of government, both federal and state. There are other forums where their voices and their views may be effectively presented, but to have standing to submit a 'case or controversy' to a federal court, something more must be shown."

437 F.2d at 1090.

[72] *See* Note 49 *supra*.

[73] Here, too, we are dogged by the ontological problem discussed in note 26 *supra*. It is easier to say that the smog-endangered stand of pines "wants" the smog stopped (assuming that to be a jurally significant entity) then it is to venture that the mountain, or the plane earth, or the cosmos, is concerned about whether the pines stand or fall. The more encompassing the entity of concern, the less certain we can be in venturing judgments as to the "wants" of any particular substance, quality, or species within the universe. Does the cosmos care if we humans perists or not? "Heaven and earth . . . regard all things as insignificant, as though they were playthings made of straw." LAO-TZU, TAO TEH KING 13 (D. Goddard transl. 1919).

[74] *See* Knight v. United States Land Ass'n, 142 U.S. 161, 181 (1891).

[75] Clause 2 gives Congress the power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

[76] *See* Flemming v. Nestor, 363 U.S. 603 (1960).

[77] *See* the L. A. Times editorial *Water: Public. vs. Polluters* criticizing:

. . . the ridiculous built-in conflict of interest on Regional Water Quality Control Board. By law, five of the seven seats are given to

spokesmen for industrial, governmental, agricultural or utility users. Only one representative of the public at large is authorized along with a delegate from fish and game interests.

Feb. 12, 1969, Part II, at 8, cols. 1–2.

[78] The Federal Refuse Act is over 70 years old. Refuse Act of 1899, 33 U.S.C. § 407 (1970).

[79] *See* Hall, *Refuse Act of 1899 and the Permit Program*, 1 NAT'L RES. DEFENSE COUNCIL NEWSLETTER 1 (1971).

[80] To be effective as a deterrent, the sanction ought to be high enough to bring about an internal reorganization of the corporate structure which minimizes the chances of future violations. Because the corporation is not necessarily a profit-maximizing "rationally economic man," there is no reason to believe that setting the fine as high as—but no higher than—anticipated profits from the violation of the law, will bring the illegal behavior to an end.

[81] Udall v. FPC, 387 U.S. 428, 437 n.6 (1967). *See also* Holmes, J. in New Jersey v. New York, 283 U.S. 336, 342 (1931): "A river is more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it."

[82] To simplify the description, I am using here an ordinary language sense of causality, *i.e.*, assuming that the pollution causes harm to the river. As Professor Coase has pointed out in *The Problem of Social Cost*, 3 J. LAW & ECON. 1 (1960), harm-causing can be viewed as a reciprocal problem, *i.e.*, in the terms of the text, the mill wants to harm the river, and the river—if we assume it "wants" to maintain its present environmental quality—"wants" to harm the mill. Coase rightly points out that at least in theory (if we had the data) we ought to be comparing the alternative social product of different social arrangements, and not simply imposing full costs on the party who would popularly be identified as the harm-causer.

[83] I am assuming that one of the considerations that goes into a judgment of "remoteness" is a desire to discourage burdensome amounts of petty litigation. This is one of the reasons why a court would be inclined to say—to use the example in the text—that the man who sells fishing tackle and bait has not been "proximately" injured by the polluter. Using proximate cause in this matter, the courts can protect themselves from a flood of litigation. But once the guardian were in court anyway, this consideration would not obtain as strongly, and courts might be more inclined to allow proof on the damages to remotely injured humans (although the proof itself is an added burden of sorts).

[84] *Cf.* Golding, *Ethical Issues in Biological Engineering*, 15 U.C.L.A. L. REV. 443, 451–63 (1968).

[85] Of course, in the instance of copyright and patent protection, the creation of the "property right" can be more directly justified on homocentric grounds.

[86] *See* Schrag, *Life on a Dying Lake*, in THE POLITICS OF NEGLECT 167, at 173 (R. Meek & J. Straayer eds. 1971).

[87] One ought to observe, too, that in terms of real effect on marginal welfare, the poor quite possibly will bear the brunt of the compromises. They may lack the wherewithal to get out to the countryside—and probably want an increase in material goods more acutely than those who now have riches.

[88] On November 2, 1971, the Senate, by a vote of 86–0, passed and sent to the House the proposed Federal Water Pollution Control Act Amendments of 1971, 117 CONG. REC. S17464 (daily ed. Nov. 2, 1971). Sections 101 (a)(and (a)(1) of the bill declare it to be "national policy that, consistent with the provisions of this Act—(1) the discharge of pollutants into the navigable waters be eliminated by 1985." S.2770, 92d Cong., 1st Sess., 117 CONG. REC. S17464 (daily ed. Nov. 2, 1971).

[89] 354 F.2d 608, 624, (2d Cir. 1965).

[90] Again, there is a problem involving what we conceive to be the injured entity. *See* notes 26, 73 *supra*.

[91] N.Y. Times, Jan. 14, 1971, § 1, col. 2, and at 74, col. 7.

[92] Courts have not been reluctant to award damages for the destruction of heirlooms, literary manuscripts or other property having no ascertainable market value. In Willard v. Valley Gas Fuel Co., 171 Cal. 9, 151 Pac. 286 (1915), it was held that the measure of damages for the negligent destruction of a rare old book written by one of plaintiff's ancestors was the amount which would compensate the owner for all detriment including sentimental loss proximately caused by such destruction. The court, at 171 Cal. 15, 151 Pac. 289, quoted approvingly from Southern Express Co. v. Owens, 146 Ala. 412, 426, 41 S. 752, 755 (1906):

"Ordinarily, where property has a market value that can be shown, such value is the criterion by which actual damages for its destruction or loss may be fixed. But it may be that property destroyed or lost has no market value. In such state of the case, while it may be that no rule which will be absolutely certain to do justice between the parties can be laid down, it does not follow from this, nor is it the law, that the plaintiff must be turned out of court with nominal damages merely. Where the article or thing is so unusual in its character that market value cannot be predicated of it, its value, or plaintiff's damages, must be ascertained in some other rational way and from such elements as are attainable."

Similarly, courts award damages in wrongful deaths actions despite the impossibility of precisely appraising the damages in such cases. In affirming a judgment in favor of the administrator of the estate of a child killed by defendant's automobile, the Oregon Supreme Court, in Lane v. Hatfield, 173 Or. 79, 88–89, 143 P.2d 230, 234 (1943), acknowledged the speculative nature of the measure of damages:

"No one knows or can know when, if at all, a seven year old girl will attain her majority, for her marriage may take place before she has become twenty-one years of age. . . . Moreover, there is much uncertainty with respect to the length of time anyone may live. A similar uncertainty veils the future of a minor's earning capacity or habit of saving. Illness or a non-fatal accident may reduce an otherwise valuable and lucrative life to a burden and liability.

"The rule, that the measure of recovery by a personal representative for the wrongful death of his decendent is the value of the life of such decendent, if he had not come to such an untimely end, has been termed vague, uncertain and speculative if not, conjectural. It is, however, the best that judicial wisdom has been able to formulate."

[93] It is not easy to dismiss the idea of "lower" life having consciousness and feeling pain, especially since it is so difficult to know what these terms mean even as applied to humans. *See* Austin, *Other Minds*, in *Logic and Language* 342 (S. Flew ed. 1965); Schopenhauer, *On the Will in Nature*, in Two ESSAYS BY ARTHUR SCHOPENHAUER 193, 281–304 (1889). Some experiments on plant sensitivity—of varying degrees of extravagance in their claims—include Lawrence, *Plants Have Feelings, Too* . . . ORGANIC GARDENING & FARMING 64 (April 1971); Woodlief, Royster & Huang, *Effect of Random Noise on Plant Growth*, 46 J. ACOUSTICAL SOC. AM. 481 (1969); Backster, *Evidence of a Primary Perception in Plant Life*, 10 INT'L J. PARAPSYCHOLOGY 250 (1968).

[94] *See* note 39 *supra*, and Coase, note 82 *supra*.

[95] *See* FED. R. CIV. P. 23 and note 49 *supra*.

[96] This is an ideal, of course—like the ideal that no human being ought to interfere with any other human being. *See* Dyke, *Freedom, Consent and the Costs of Interaction*, and Stone, *Comment*, in IS LAW DEAD? 134–67 (E. Rostow ed. 1971). Some damages would inevitably be *damnum absque injuria*. *See* note 93 *supra*.

[97] The inevitability of some form of evolution is not inconsistent with the establishment of a legal system that attempts to interfere with or ameliorate the process: is the same not true of the human law we now have, *e.g.*, the laws against murder?

[98] Holmes, *Early Forms of Liability*, in THE COMMON LAW (1881), discusses the liability of animals and inanimate objects in early Greek, early Roman and some later law. Alfred's Laws (A.D. 871–901) provided, for example, that a tree by which a man was killed should "be given to the kindred, and let them have it off the land within 30 nights." *Id.* at 19. In Edward I's time, if a man fell from a tree the tree was deodand. *Id.* at 24. Perhaps the liability of non-human matter is, in the history of things, part of a paranoid, defensive phase in man's development; as humans become more abundant, both from the point of material wealth and internally, they may be willing to allow an advance to the stage where non-human matter has rights.

[99] *See* note 26 *supra*. In the event that a person built his house near the edge of a river that flooded, would "assumption of the risk" be available on the river's behalf?

[100] *See* Dixon v. Alabama State Bd. of Educ., 294 F. 2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961); Comment, *Private Government on the Campus—Judicial Review of University Expulsions*, 72 YALE L.J. 1362 (1963).

[101] National Environmental Policy Act, 92 U.S.C. § 4332 (1970).

[102] *See* Committee for Nuclear Responsibility Inc. v. Schlesinger, 40 U.S.L.W. 3214 (Nov. 5, 1971) (Douglas, J. dissent to denial of application for injunction in aid of jurisdiction).

[103] 42 U.S.C. § 4342 (1970).

[104] As an indication of what lower-level management is apt to do, *see* Ehrenreich & Ehrenreich, *Conscience of a Steel Worker*, 213 THE NATION 268 (1971). One steel company's "major concession [toward obedience to the 1899 Refuse Act, note 78 *supra*] was to order the workers to confine oil dumping to the night shift. 'During the day the Coast Guard patrols. But at night, the water's black, the oil's black; no one can tell.'" An effective corporation law would assure that the internal information channels within a corporation were capable of forcing such matters to the attention of high-level officials. Even then, there is no guarantee that the law will be obeyed—but we may have improved the odds.

[105] In the case of Lake Erie, in addition to the considerations that follow in the text, there were possibly additional factors such as that no one polluter's acts could be characterized as inflicting irreparable injury.

[106] *See* for example Justice Reed's opinion for the Court in Kovacs v. Cooper, 336 U.S. 77 (1949) (*but see* Mr. Justice Frankfurter's concurring opinion, 336 U.S. at 89–96), and United States v. Carolene Products, 304 U.S. 144, 152 n.4 (1938).

[107] Note that in the discussion that follows I am referring to legislative apportionment, not voting proper.

[108] In point of fact, there is no reason to suppose that an increase of Congressmen for Alaska would be a benefit to the environment; the reality of the political situation might just as likely result in the election of additional Congressmen with closer ties to oil companies and other developers.

[109] *See* Simpson, *The Analysis of Legal Concepts*, 80 LAW Q. REV. (1964).

[110] Krier, *Environmental Litigation and the Burden of Proof*, in LAW AND THE ENVIRONMENT 105 (M. Baldwin & J. Page eds. 1970).

See Texas East Trans Corp. v. Wildlife Preserves, 48 N.J. 261, 225 A.2d 130 (1966). There, where a corporation set up to maintain a wildlife preserve resisted condemnation for the construction of plaintiff's pipe line, the court ruled that ". . . the *quantum* of proof required of this defendant to show arbitrariness against it would not be as substantial as that to be assumed by the ordinary property owner who devotes his land to conventional uses." 225 A.2d at 137.

[111] See Stone, *Existential Humanism and the Law*, in EXISTENTIAL HUMANISTIC PSYCHOLOGY 151 (T. Greening ed. 1971).

[112] National Environmental Policy Act, 42 U.S.C. §§ 4321–47 (1970).

[113] *See* note 65 *supra*.

[114] W. HOLDSWORTH, HISTORY OF ENGLISH LAW 45 (5th ed. 1931).

[115] Note that it is in no small way the law that imposes this manner of speech on businessmen. *See* Dodge v. Ford Motor Co., 204 Mich. 459, 499–505, 170 N.W. 668, 682–83 (1919) (holding that Henry Ford, as dominant stockholder in Ford Motor Co., could not withhold dividends in the interests of operating the company "as a semi-eleemosynary institution and not as a business institution").

[116] I. KANT, PHILOSOPHY OF LAW 195 (Hastie Transl. 1887).

[117] I. KANT, *The Metaphysics of Morality*, in THE PHILOSOPHY OF KANT § 1 at 230–31 (J. Watson transl. 1908).

[118] Engel, *Reasons, Morals and Philosophic Irony*, in LANGUAGE AND ILLUMINATION 60 (1969).

[119] L. WHITTGENSTEIN, TRACTATUS LOGICO-PHILOSOPHICUS §§ 6.421, 6.522 (D. Pears & B. McGuinness transl. 1961).

[120] Cousteau, *The Oceans: No Time to Lose*, L.A. Times, Oct. 24, 1971, § (opinion), at 1, col. 4.

[121] *See* J. HARTE & R. SOCOLOW, PATIENT EARTH (1971).

[122] McHarg, *Values, Process and Form*, in THE FITNESS OF MAN'S ENVIRONMENT 213–14 (1968).

[123] Murphy, *supra* note 27, at 477.

[124] On the other hand, the statement in text, and the previous one of Professor Murphy, may be a bit severe. One could as easily claim that Christianity has had no influence on overt human behavior in light of the killings that have been carried out by professed Christians, often in its name. *Feng Shui* has, on all accounts I am familiar with, influenced the development of land in China. *See* Freedman, *Geomancy*, 1968 PROCEEDINGS OF THE ROYAL ANTHROPOLOGICAL INSTITUTE OF GREAT BRITAIN AND IRELAND 5; March, *An Appreciation of Chinese Geomancy*, 27 J. ASIAN STUDIES 253 (1968).

[125] The legal system does the best it can to maintain the illusion of the reality of the individual human being. Consider, for example, how many constitutional cases, brought in the name of some handy individual, represent a power struggle between institutions—the NAACP and a school board, the Catholic Church and a school board, the ACLU and the Army, and so forth. Are the individual human plaintiffs the real moving causes of these cases—or an afterthought?

When we recognize that our problems are increasingly institutional, we would see that the solution, if there is one, must involve coming to grips with how the "corporate" (in the broadest sense) entity is directed, and we must alter our views of "property" in the fashion that is needed to regulate organizations successfully. For example, instead of ineffectual, after-the-fact criminal fines we should have more preventive in-plant inspections, notwithstanding the protests of "invasion of [corporate] privacy."

In-plant inspection of production facilities and records is presently allowed only in a narrow range of areas, *e.g.*, in federal law, under the Federal Food, Drug, and Cosmetic Art, 21 U.S.C. § 374 *et seq.* (1970), and provisions for meat inspection, 21 U.S.C. § 608 (1970). Similarly, under local building codes we do not wait for a building to collapse before authoritative sources inquire into the materials and procedures that are being used in the construction; inspectors typically come on site to check the progress at every critical stage. A sensible preventive legal system calls for extending the ambit of industries covered by comparable "privacy invading" systems of inspection.

[126] G. HEGEL, HEGEL'S PHILOSOPHY OF RIGHT 41 (T. Knox transl. 1945).

[127] C. MCCULLERS, THE BALLAD OF THE SAD CAFE AND OTHER STORIES 150–51 (1958).

[128] Consider what Schopenhauer was writing "Of Women," about the time the Wisconsin Supreme Court was explaining why women were unfit to practice law, note 23 *supra:*

"You need only look at the way in which she is formed, to see that woman is not meant to undergo great labour, whether of the mind or of the body. She pays the debt of life not by what she does, but by what she suffers: by the pains of childbearing and care for the child, and by submission to her husband, to whom she should be a patient and cheering companion. The keenest sorrows and joys are not for her, nor is she called upon to display a great deal of strength. The current of her life should be more gentle, peaceful and trivial than man's, without being essentially happier or unhappier.

"Women are directly fitted for acting as the nurses and teachers of our early childhood by the fact that they are themselves childish, frivolous and shortsighted; in a word, they are big children all their life long—a kind of intermediate stage between the child and the full-grown man, who is man in the strict sense of the word. . . .

"However many disadvantages all this may involve, there is at least this to be said in its favour: that the woman lives more in the present than the man, and that, if the present is at all tolerable, she enjoys it more eagerly. This is the source of that cheerfulness which is peculiar to woman, fitting her to amuse man in his hours of recreation, and, in case of need, to console him when he is borne down by the weight of his cares.

" . . . [I]t will be found that the fundamental fault of the female character is that is has *no sense of justice*. This is mainly due to the fact, already mentioned, that women are defective in the powers of reasoning and deliberation; but it is also traceable to the position which Nature has assigned to them as the weaker sex. They are dependent, not upon strength, but upon craft; and hence their instinctive capacity for cunning, and their ineradicable tendency to say what is not true. * * * For as lions are provided with claws and teeth, and elephants and boards with tusks, bulls with horns, and the cuttle fish with its cloud of inky fluid, so Nature has equipped woman, for her defense and protection, with the arts of dissimulation; and all the power which Nature has conferred upon man in the shape of physical strength and reason, has been bestowed upon women in this form. Hence, dissimulation is innate in woman, and almost as much a quality of the stupid as of the clever. . . ." A. SCHOPENHAUER, *On Women*, in STUDIES IN PESSIMISM 105–10 (T. B. Saunders transl. 1893).

If a man should write such insensitive drivel today, we would suspect him of being morally and emotionally blind. Will the future judge us otherwise, for venting rather than examining the needs that impel us to treat the environment as a senseless object—to blast to pieces some small atoll to find out whether an atomic weapon works?

[129] Of course, the phase one looks toward is a time in which such sentiments need not be prescribed by *law*.

[130] The "Purpose of the Legislation" in H.R. Rep. No. 91–1651, 91st Cong., 2d Sess., to the "[Animal] Welfare Act of 1970," 3 U.S. CODE CONG. & ADMIN. NEWS 5103, 5104 (1970). Some of the West Publishing Co. typesetters may not be quite ready for this yet; they printed out the title as "Annual Welfare Act of 1970."

[131] *See* MCCALL'S, May, 1971, at 44.

[132] Environmental Defense Fund, Inc. v. Hardin, 428 F.2d 1093, 1096 (D.C. Cir. 1970). Plaintiffs would thus seem to have urged a broader than literal reading of the statute, 7 U.S.C. § 135(z) (2) (d) (1970), which refers to " . . . living man and other vertebrate animals, vegetation, and useful invertebrate animals."

E.D.F. was joined as petitioners by the National Audubon Society, the Sierra Club, and the West Michigan Environmental Action Council, 428 F.2d at 1094–95 n.5.

[133] In the case of bestowal of rights on other humans, the action also helps the recipient to discover new personal depths and possibilities—new dignity—within himself. I do not want to make much of the possibility that this effect would be relevant in the case of bestowing rights on the environment. But I would not dismiss it out of hand, either. How, after all, do we judge that a man is, say, "flourishing with a new sense of pride and dignity?" What we mean by such statements, and the nature of the evidence upon which we rely in support of them, is quite complex. *See* Austin, note 93 *supra*. A tree treated in a "rightful" manner would respond in a manner that, when described, would sound much like the response of a person accorded "new dignity." *See also* note 93 *supra*.

[134] D. RUDHYAR, DIRECTIVES FOR NEW LIFE 21–23 (1971).

[135] *See* Stone, note 111 *supra*.

[136] San Antonio Conservation Soc'y v. Texas Highway Dep't, *cert. denied*, 400 U.S. 968 (1970) (Black, J. dissenting to denial of certiorari).

[137] *Id.* at 969.

[138] *Id.* at 971.

JOHN CONNALLY'S RESIGNATION

Mr. GURNEY. Mr. President, on Tuesday, May 16, President Nixon announced the resignation of Secretary of the Treasury John Connally. It is with regret that I heard this news, for Secretary Connally has done an outstanding job in a tough situation. On his shoulders has fallen the task of implementing much of the President's wage-price control program, the success of which is now exceeding expectations. To him was assigned this delicate job of negotiating the new international trade and monetary agreements which have had such a steadying effect upon the value of the dollar. His record in the Department of the Treasury has been a record of accomplishment and he will be missed.

However, those who know, or know of, John Connally should not be surprised at this record of success. Throughout his career—as a twice-decorated naval officer, as a lawyer, as Secretary of the Navy, as a three-term Governor of Texas, and now as Secretary of the Treasury—he has shown himself to be a leader, a persuasive man who gets things done. We were fortunate to have his services at a time when forceful leadership was needed.

Those of us who have watched John Connally negotiate with foreign Finance Ministers, explain the wage-price freeze to the American people, or talk the supermarket chiefs into reducing meat

prices are only too aware of his contribution to the success of the Nixon administration's program to control inflation and restore confidence in the dollar. In addition, his perseverance on the job, as shown by his willingness to serve 6 months more than he had originally agreed to, is a refreshing example of dedication at a time when such examples are badly needed. Although George Shultz is superbly qualified for the post, John Connally will certainly be missed at the Treasury Department. This Senator wishes him well and hopes that, as the President has indicated, he will soon be undertaking a new task in his accustomed manner.

POWER STRUGGLE IN THE KREMLIN

Mr. FULBRIGHT. Mr. President, "Power Struggle in the Kremlin: A Challenge to Brezhnev," is the title to a significant article in the Washington Post by Victor Zorza, one of the leading authorities on the Soviet Union.

The essence of his article is that in the Soviet Union among the members of the Politburo, consisting of 22 members and candidate members, there is vigorous adversary discussion of national policy among men of roughly equal power and status.

Although the Government of the U.S.S.R. is generally considered to be authoritarian in character, and under Stalin, of course, it was a tyrannical personal dictatorship; today according to Mr. Zorza, important policies are hammered out by prolonged and vigorous discussion among men who have achieved their position in the Politburo primarily as a result of long experience in the Government.

Mr. Brezhnev is the first among equals, but nevertheless he must persuade his colleagues of the wisdom of his policies. The experience of Nikita Khrushchev demonstrates that to take decisions without consultation with, and approval of, his colleagues may result in his permanent removal from power.

The real significance of this procedure of adversary discussion of policy among equals is that on balance the collective wisdom of the body of experienced men thus brought to bear is likely to avoid serious mistakes in judgment exposing the nation to dangerous risks of disaster. There is no practical substitute for thorough examination and discussion of complex problems by reasonably well-informed men of approximately equal status and power. Political geniuses have rarely appeared in history, and even they are often lead astray by their intellectual arrogance and isolation from reality.

The second virtue of genuine discussion and thorough consideration is that when the decision is finally taken, it has the genuine support of the overwhelming majority of the participants and therefore a minimum of criticism and dissent disturbs the people.

Decisions taken under such procedures are tied to the more cautious and conservative than those made by a single man. They may not be as innovative, original or daring as those of the individual leader, but they are less likely to be dangerous to the welfare of the Nation.

As a matter of fact, our Founding Fathers believed they were creating a procedure for thorough debate, by men of equal political power and status, when they gave the Congress the responsibility to initiate war with foreign nations and to give or withhold advice and consent to treaties with foreign countries. They did not anticipate that any President could change these procedures or powers with the acquiescence of the Congress. It is a remarkable and unanticipated development in our history that any President can go to a major meeting with a foreign government without the Congress being aware of what his plans or activities are. Whatever results from the Moscow meeting will come as a surprise to the Congress or to the people of our country. We all hope the surprise will be a pleasant one, but we shall have to wait and see.

In any case the procedures of our decision makers at the highest level of our Government, are scarcely in accord with the provisions of the Constitution.

I ask unanimous consent that Mr. Zorka's article be printed in the RECORD.

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

POWER STRUGGLE IN THE KREMLIN: A CHALLENGE TO BREZHNEV?

(By Victor Zorza)

The transfer to Moscow of the Ukranian party boss Pyotr E. Shelest is only the tiny visible tip of the huge iceberg which hides from the rest of the world the Kremlin power struggles of recent months. There has been no lack of evidence of the disputes between the hardliners and the moderates in the Soviet leadership during the preparation for the Moscow summit, though the prevailing view has been, and still is, that Brezhnev was so obviously in a position of ascendancy as to make it possible for him to defeat easily any challenge from his opponents. This is how the apparent demotion of Shelest, who has been deprived of his power base in the Ukraine while being kicked upstairs to the subordinate post of Deputy Premier in Moscow, is being generally interpreted now—but the interpretation could be wrong.

What is undoubtedly true is that during the week or two preceding the Summit Brezhnev has had to justify his foreign policy to a critical group within the leadership, and that he prevailed in the end, though not without difficulty. The evidence for this is contained in Soviet press articles which took a markedly defensive, argumentative tone towards the end of that period, as if to explain to party critics why it was in the best interests of the Soviet Union to go ahead with the summit after all.

Immediately after Mr. Nixon's announcement of the new Vietnam escalation early this month, the Soviet press took a waiting attitude, which meant that there was no agreed Kremlin decision on how to react to the new American policy. Even the White House was uncertain at that stage whether the summit was still on or not, because the issue was still being debated in the Kremlin. But when Brezhnev won the debate, and told the White House that the summit was on, the defensive tone of the Soviet press, and its references to unidentified opponents of the summit meeting, showed that the opposition had not been completely defeated.

Shelest's new appointment identifies one member of this opposition, but not necessarily its chief member. To judge from the nuances in the speeches of other Soviet leaders, his views were shared by Marshal Andrei Grechko, the Defense Minister, and Yuri Andropov, the secret police boss, as well as by Alexander Shelepin, the former police chief who remained in the politburo after his demotion in an earlier power struggle. While Brezhnev was stressing the prospects of cooperation with the United States, Andropov was saying that "we certainly have no illusions, and are not exaggerating the possibilities of such cooperation."

He was supported in the name of the military by Grechko, who argued that the relaxation of tension "does not mean that the bellicose circles of the United States . . . have lost their spirit of militarism, or have renounced their aggressive intentions." Substitute "the Soviet Union" for "the United States," and it might have been the Pentagon speaking.

Grechko was contradicted almost directly by Andrei Kirilenko, one of Brezhnev's closest allies in the politburo. Grechko had argued that "reactionaries" in the West were "trying to find a way out of unresolvable contradictions by causing an aggravation of the international situation." This was the old Marxist argument that the "capitalists" would seek a way out of their internal economic contradictions and crisis by creating a war situation, and that the Soviet Union must therefore always be prepared for the worst.

Kirilenko retorted that the capitalist economic and political crisis had indeed occurred but "it has not been accompanied by any aggravation of the general international situation." In his view "the imperialists dared not to resort to their usual method of sharpening the war danger as a way out of their predicament." Therefore, he argued "the international climate has improved," and his implied conclusion was that it was safe to go ahead with the Summit and with the East-West agreements which would be resented by the military, including a SALT agreement to limit strategic arms.

Grechko maintained that "we military people perceive even more fully (than before) our role, our mission in international affairs—a role and a mission conditioned by the great influence of our military might on the entire course of world events." His pretensions were answered in the party's main journal, "Kommunist," which argued that it was Brezhnev's foreign policy—rather than, by implication, Soviet military power—that now constituted the best way of achieving Soviet aims.

The evidence suggests that the argument in Moscow, as in Washington, is not so much between those who want to vanquish the adversary by arms alone, or only by clever foreign policy moves, as between those who advocate a "policy mix" in which the harder or the softer components should prevail. Shelest was not only a hard-liner on the arms issue with Grechko, and on the need to guard against Western "ideological" penetration, with Andropov, but also appears to have had reservations about the policy of reconcilation with Germany, and about internal economic reforms which might lead to some degree of political liberalization in the Soviet Union.

It is on this cluster of issues that the political opposition to the Brezhnev-Kosygin duumvirate is centered. There is reason to believe that some members of the politburo and many members of the central committee are opposed to the duumvirate on individual issues. This is especially so, to judge from their speeches, on domestic isses, but there is every reason to believe that these conservative leanings are also reflected in their foreign policy attitudes.

Because Brezhnev, as party secretary, has "organizational" control of the central committee, he has been able to prevent the com-

ing together of the opposition to challenge his power. But the demotion of Shelest alone, when he was by no means the only or even the chief challenger, shows that Brezhnev's victory is far from decisive.

Grechko with the army, Andropov with the secret police, and Shelepin with his widely developed network of supporters in various parts of the power apparatus are obviously in a good position to continue raising objections to Brezhnev's policies. Perhaps this explains why Shelest has not been dismissed outright, but appointed Deputy Premier in Moscow—so that Brezhnev could argue that, far from having been demoted, he has been brought closer to the center of power where he could exercise an even weightier voice in the making of policy on behalf of the conservatives.

This is a classic political ploy which has often been used in power struggles. But it has misfired on more than one occasion. Shelest may have been brought to Moscow so that Brezhnev could keep an eye on him—but, so long as the Ukrainian party boss remains in the politburo, he will continue to speak out on behalf of the conservative wing of the party. Enough is known both of his personal character and his political attitudes to make this virtually certain. The arguments in the politburo which preceded the summit will not be settled by the Nixon-Brezhnev communique on the Moscow talks. The two factions will continue to argue about the concessions made by each side, as they always have continued to argue, after each of the previous Kremlin crisis. There are bound to be times when a crisis here or there—a new turn of the screw in Vietnam, for instance—might weaken Brezhnev's position. With Shelest in Moscow, rather than in the Ukraine, the conservative power alignment could at a time like this prove to be Brezhnev's undoing. Brezhnev may have intended to demote Shelest, but the conservatives have enough strength in Moscow to save him.

MAN'S ROLE IN WILDLIFE

Mr. STEVENS. Mr. President, on April 23, 1972, on page 6 of the Sunday Denver Post, an article entitled "Man's Role in Wildlife Control" written by Herb Stoenner appeared. This article extensively discussed the Pribilof seal harvest and the methods used therein.

The article was based on an interview with American Humane Association wildlife consultant, Richard Denney, a noted expert in the field of wildlife management who has done extensive research with the Pribilof seal herd. Mr. Denney accompanied a group of six veterinarians, members of the Veterinarian Medical Association who traveled at the request of the Department of Commerce to the Pribliofs last year and made an extensive and objective study of the Pribilof seal harvest.

Mr. Denney's conclusions are both practical and objective. They represent the views of one knowledgeable in the field and concerned.

I ask unanimous consent that article be printed in the RECORD.

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

MAN'S ROLE IN WILDLIFE CONTROL

(By Herb Stoenner)

Mankind has interfered historically with the ecological balance and the critical factors of wildlife and sea mammals, and, therefore, mankind is committed to manifesting a presence in the management of these creatures' lives.

This concept which embraces harvesting, cropping or taking of animals' lives "to create optimum conditions for the species" is another major facet behind the controversy in the U.S. Congress, where eight bills are pending on the protection of wildife, particularly sea mammals. The House has defeated the Harris-Pryor version and has approved the Anderson bill.

This idea of rational management or harvesting is being strongly promulgated by the American Humane Association (AHA) through its national headquarters in Denver which, along with a number of other national organizations, finds Senate bill S3161 proposed by Sen. Ted Stevens, R–Alaska, to be the best approach to mankind's presence in the lives of animals.

At the opposite end of the spectrum is the view that there should be no taking of life and that nature should be allowed to harvest or let live without interference. This stance is being touted by the Friends of Animals national organization under the direction of Ms. Alice Herrington and a number of other organizations. It was the subject of an art'cle in the March 12 Contemporary on protecting sea mammals.

The Harris-Pryor bill would have established a hands-off policy; the Stevens bill provides for harvesting moratorium possibilities at the discretion of the Secretary of Interior or Commerce to protect endangered species. The AHA also favors placing all the regulatory powers in the Interior Department instead of having them shared by two departments.

The AHA is a national federation of agencies dealing in services and information to member agencies. It is not in the animal control business, such as the Humane Society or the Dumb Friends League. Its function is primarily research, and it operates under corporate laws in the United States and has some branches abroad. Its funding mainly is through bequests, but also through donations and membership dues.

The national office at 5351 S. Roslyn, near the Colorado Education Association Building, contains a complete printing office for its many publications to member agencies. The headquarters moved to Denver from New York about 17 years ago. In addition to its animal-welfare work, the agency has been involved traditionally in fighting child abuse. Rutherford T. Phillips is the executive director of the organization.

AHA Wildlife Consultant Richard Denney testified at length recently in support of the Stevens bill in the Senate. He is a member of the Wildlife Management Panel, embracing the National Wildlife Federation, the Wildlife Society, the Wildlife Management Institute, and, to a large extent, the Audubon Society. The Audubon Society didn't agree with all particulars of the Stevens bill, but it was the bill the group that came closest to supporting, Denney said.

Denney has been deeply involved in on-the-spot research for alternate methods to kill seals than clubbing. The research project is being financed by the AHA. He is also somewhat like a human guinea pig in that he has eaten the meat of animals he has drugged to prove that there are no residual ill effects on human beings. "In fact, it makes the meat more tender," he said in an interview.

"Much of the concern of the public is not the killing or harvesting of the seals, but the manner in which it is done," he said. "There is a violent movement, and the public reacts sensitively to the idea of clubbing. Until some of the mass media like the movies, documentaries and television covered various aspects of the harvest involving killing, the public didn't have much feelings about it. But then they see the swinging of the club, associate it with being a primitive method and therefore feel it is cruel. In reality, I guess one could do a documentary about an abattoir or slaughterhouse, and many people would feel the same way about the slaughter of domestic stock . . . maybe more so because the animals were raised only for that purpose. But they don't make these documentaries, and very few people have ever visited a slaughterhouse."

Trying to determine if clubbing is a humane method for killing seals is one of the many involvements of AHA. This research had been going on prior to the task force of 1968, but this was the first attempt to try a number of alternative methods. The spectrum of techniques used by the task force ranged from frangible bullets, electrocution, nitrogen narcosis and humane slaughterhouse instruments to euthanasia.

"None of the alternative methods used by the task force turned out to be as efficient or humane as the clubbing," Denney said. "So last summer a group of six veterinarians, part of the Veterinarian Medical Association, went up to St. Paul Island. I was fortunate enough to accompany them on this trip. We went into it from a physiological and anatomical aspect in trying to determine when clinical death was reached. We observed several thousand animals being harvested by Aleut crews. We came up with the same result that other independent and varied individuals had observed. Clubbing is the most efficient and humane method of harvesting the animals available to date."

Last summer, Denney explained, he tried a combination of methods that hadn't been tried before by immobilizing the animals with a muscle relaxant and then using a humane slaughtering instrument before they were bled. He described his method as not more humane but perhaps being more esthetically acceptable to the public. He used a capture gun to shoot a syringe of drug into the neck of the seal. Denney said that he was unable to kill a large number of animals under this system, but that he was able to try it on a large enough sampling to feel that the idea has merit.

"I wouldn't recommend the capture gun," said Denney. "What I'm trying to do now is to develop a probe or a cane with an automatic injecting device to meter out, say, one cubic centimeter of the drug into the animal as you reach it with the cane. All this can be done in the same organizational manner being used by the clubbers. It wouldn't cut down on employment and wouldn't have any real effect on the efficiency of the operation in terms of felling and bleeding the animals, but I believe that it would be more acceptable because there would be no violent actions involved."

Clubs would still be necessary to protect the Aleuts but not for beating the animals. They would be used in front of attacking animals so that the animals would bite the club instead of the man.

Aside from acceptable methods of harvesting, Denney commented at length on the critical factors affecting the well-being of wildlife. "All of the species have one or more critical factors that limit their welfare and propagation," he said. "And since man has changed the ecological conditions, man must continue to manipulate the habitats or populations in relation to the critical factors of wildlife." (Such manipulation is a goal of the Stevens bill in the Senate.)

Denney believes that species that have become extinct have not been exterminated by other species, unless man was a contributory predatory species. "Either they've been scheduled to be phased out historically through a lack of adapting or evolving to changes in environment or time, or they are species that haven't been subjected to management.

Denney gave as an example something close to home—the deer and elk in Colorado. "You bring through the winter the number you can carry in good condition on the winter range . . . and that is limited. They talk about stopping the hunting of deer and

elk before they become extinct, but we have in Colorado more deer and elk right now than we had 50 years ago. They are on a sustained-yield basis. And there is competition for winter range like the herds of sheep, for example, and the Game Department manages the deer and elk in such a manner as to get a cropping. It's the same idea as the rancher who wouldn't keep more cows than he can feed."

Denney emphasized that sports hunting is one of the tools of management and that the hunters are very sensitive to the antisports concepts being sought in legislation. "The interesting thing about it is that none of the species that are the goal of the hunter is extinct or endangered other than the possibility of the polar bears, and they have never been in great numbers anyway. The reason we still have seeable and huntable species is that the people who have been buying the licenses are footing the management bill and they are the ones being criticized."

Denney cited a classic case of the no-hunting, overprotection policy; the plight of the mule deer on the Kaibab Plateau in Arizona in the 1920s. They literally ate themselves out of house and home because of limits to the carrying capacity of the habitat.

In the case of seals, he explained, density of the population on the rookeries is a critical factor. Overpopulation creates a rise in hookworm disease, malnutrition and starvation of the pups. There is also a rise in accidental death as the pups are run over by the bulls and cows.

And there is an international factor. Commercial fishing in the Bering Sea by the Russians, Japanese and Koreans has intensified, Denney said.

"They (fishermen) are coming in all around the Pribilofs and the Aleutians outside the 12-mile limit." Denney warned, "The concern is over the starvation of the pup when the cow goes out to sea to feed. Usually that is four or five days, and the pup pods up or sleeps on the rookery. With diminishing food supplies (as a result of fishing), the cows must go farther out to sea and stay away longer.

"There is talk about extending our international boundary line now, and I have recommended a 100-mile radius around the Pribilof Islands," Denney said. "This would certainly give a long enough cruising range for the cows to come back to their pups. So you see, you just can't leave it to nature, because man has already interfered."

Denney said that the Northern Fur Seal is the only one species of all the sea mammals included in the bills that seems most vulnerable to a lack of management in the eyes of AHA. "We wouldn't argue over most of the species, except this seal, which has flourished very well under the management system that basically started in 1911," Denney said.

It is possible that the Department of the Interior has erred in judgment at times, for example, in the taking of too many female seals in the late '50s and '60s. But this was an effort to reduce the total population. That is the beauty of management. If you have erred, you can rectify it in time. Under a hands-off policy, you just have to let nature take its course.

Denney was bitter about protectionists who frequently create an emotional mother-offspring syndrome out of the white coat seal or the pup of the Harp Seal. They are fluffy balls of fur and have appealing brown eyes. This type is hunted in Canada and has nothing to do, in reality, with the U.S. legislation regarding harvesting of these mammals, except indirectly in possible banning of products taken from these fields.

Denney described the Stevens bill in the Senate as providing a rational direction to the issue of management. "Basically," he said "it provides for the management of the specific marine mammal species involved to declare a moratorium on the killing of that species, or just to continue it under a management program, such as in the case of fur seals."

As defined in the Stevens bill, management means "the collection and application of biological information for the purpose of increasing and maintaining the number of animals within species and populations of marine mammals at the optimum carrying capacity of their habitat. Management includes the entire scope of activities that constitute a modern scientific resource program, including, but not limited to research, census, law enforcement, and habitat acquisition and improvement. Also included within this term, when and where applicable, is the periodic or total protection of species or populations as well as regulated taking."

Denney outlined the position of AHA on management. "We feel that if moratoria are required for different mammals, we are for them (moratoria). But we believe that these should be imposed administratively, based on facts by a secretary and not a legislatively imposed moratorium, because you have an unwieldly situation then that may preclude management. Moratoria should be based on the needs of that species. Once you get a law on the books, it is very difficult to do anything about it."

The bill provides also for a marine mammal commission which will be advisory to the secretary. This committee would consist of nine scientists knowledgeable in marine ecology and marine mammal affairs and would be appointed by the chairman with the advice of the director of the National Science Foundation, the chairman of the National Academy of Sciences, and the secretary of the Smithsonian Institution."

The bill further requires reporting procedures to inform the president, the public and the states of the status of these animals. It would also provide additional incentives to curb porpoise mortality in relation to tuna, in particular.

The bill provides also that federal legislation wouldn't preempt states' rights, for example, in states already administering marine mammals (manatees) in Washington, Oregon and Florida.

Denney urged that citizens who prefer a management program on a scientific basis write to the chairman of the Senate subcommittees Sen. Warren G. Magnuson, D-Wash., or Sen. Ernest F. Hollings, D-S.C.

The AHA was founded almost 100 years ago and has as its primary objectives the prevention of cruelty and suffering of children and animals. The association and its affiliated agencies represent about 350,000 individuals. It has been instrumental or assisted in the passage of such federal legislation as the Humane Slaughter Act of 1958, the Laboratory Animal Welfare Act of 1966, the Animal Welfare Act of 1970, and the Horse Protection Act of 1970.

ACCOMPLISHMENTS OF SENATOR SCOTT IN FIELD OF LAW ENFORCEMENT

Mr. HRUSKA. Mr. President, the level of crime and violence in America continues to receive major attention by President Nixon and the Congress. As a member of the Committee on the Judiciary, the Senator from Pennsylvania (Mr. SCOTT) has been in the forefront of efforts to improve and strengthen our criminal laws. As a Member of this body, he has been vigorously active on the floor of the Senate in his support and with his votes.

Since 1968, the Federal Government has spent millions of dollars assisting States and local governments in their fight against crime. These funds have been used for riot control, for the training of law enforcement personnel and for prison rehabilitation programs. Senator SCOTT's efforts to strengthen these and other essential programs have been noteworthy. I ask unanimous consent to place in the RECORD Senator SCOTT's accomplishments in the field of law enforcement.

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

LAW ENFORCEMENT

THE 92D CONGRESS

Legislation

S. 120—To prohibit assaults on State and local law enforcement officers, firemen, and judicial officers.

S. 1428—To establish an Institute for Continuing Studies of Juvenile Justice.

S. 1509—To encourage and help implement improvements in the judicial machinery of State and local courts by creating an Institute for Judicial Studies and Assistance.

S. 2228—To amend the U.S. Code to provide for appellate review of sentences imposed in criminal cases arising in the district courts of the United States.

S. 2994—To provide for the compensation of innocent victims of violent crime in need; to make grants to States for the payment of such compensation; to authorize an insurance program and death and disability benefits for public safety officers; to provide civil remedies for victims of racketeering activity.

S.J. Res. 120—To designate the week of August 1, 1971, as "American Trial Lawyers Week."

S. Con. Res. 8—Relating to the Control of international drug traffic.

VOTES

Voted for amendment calling for President to take all possible means through international cooperation to reduce illegal importation of heroin and other narcotic drugs into the U.S.

Recorded in favor of the Convention for suppression of unlawful seizure (hijacking of aircraft).

THE 91ST CONGRESS

Legislation

S. 1509—To provide for appointment of court executives for each judicial circuit to administer activities of court in order to facilitate smooth functioning of court and to ensure the defendants and the public prompt justice in all cases.

S. 1510—To require each judge and justice of the United States to file an annual financial report in order to maintain judicial integrity and public confidence in the courts.

S. 1516—To establish a Commission on Judicial Disabilities and Tenure with powers to investigate any judge whose good behavior or judicial fitness is in question in order to promote the honorable and efficient administration of justice.

S. 2827—To allow college president to seek Federal court order to prevent campus disorders at any institution assisted by Federal funds.

S. 3175—To establish an Institute for Continuing Studies of Juvenile Justice to act as coordinating center for information in field of juvenile delinquency and control and to serve as training center for local, State and Federal officials who are connected with the treatment and control of juvenile offenders.

S. 3289—National Court Assistance Act—To establish an Institute for Judicial Studies and Assistance to promote the development and adoption of improvements in the judicial system at all levels, with power to make grants to local and state courts for the purpose of studying and implementing changes to ensure speedy and efficient justice in all cases.

S. 3541—To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968.

S. 4454—To make available Federal assistance to law enforcement agencies to halt attacks on policemen, firemen, and judicial officers.

Votes

Voted to ratify treaty concerning offenses committed to board aircraft.

Voted for the Organized Crime Control Act of 1970.

Voted for the Narcotics and Dangerous Drugs Control Act of 1970.

Voted to authorize a "no-knock" forcible entry by an officer under a search warrant issued where there was probable cause to believe the property sought will be destroyed or disposed of.

Voted for the Controlled Dangerous Substances Act of 1969 stating the Congressional findings and declaration relating to the uses and abuses of drugs. Asserts the need to establish control over illegal drug traffic, and for other purposes.

Voted for the Comprehensive Drug Abuse Prevention and Control Act of 1970 including under the Community Mental Health Centers Act persons suffering with drug abuse and drug dependence problems, and increasing the appropriations for Community Health Centers.

Voted to strengthen laws concerning the illegal use, transportation, or possession of explosives.

Voted for the Omnibus Crime Control Act of 1970.

Voted to reject the findings and recommendations of the Commission on Obscenity and Pornography which would have liberalized obscenity laws.

THE 90TH CONGRESS

Legislation

S. 676—To prohibit obstruction of Federal criminal investigations by any person.

S. 917—Safe Streets and Crime Control Act—Provides for a 5-year program of planning and program grants to States and local government to plan and execute programs to improve their police, courts, and correctional systems.

S. 1033—To establish within the Department of Justice the Office for Judicial Assistance in order to make studies and disseminate information pertaining to improvement in the administration and procedure of local and State courts; authorizes the Office to make grants to courts and organizations to make studies and implement improvements in court systems.

S. 2050—To prohibit electronic surveillance by persons other than duly authorized law enforcement officers.

S. 3304—To authorize the Bureau of Prisons to assist State and local governments.

Votes

Voted to expand Title I of the Omnibus Crime Control and Safe Streets Act, relating to the recruiting and training of community service officers.

Voted to provide that a voluntary confession be admissible in evidence in any criminal proceeding brought by the United States.

Voted to provide that a confession made while under detention shall not be inadmissible solely because of delay between arrest and arraignment of a person charged with an offense against the United States or the District of Columbia.

Voted to allow Federal courts to reverse State cases involving admissions and confessions admitted as voluntarily given in cases where the highest court of the State had affirmed.

Voted to provide that law enforcement assistance grants be made directly to the States (block grants).

Voted for the Omnibus Crime Control and Safe Streets Act of 1968.

Voted to provide that an institution of higher education, after notice and hearing to a student or an employee convicted of certain stated crimes or who had refused to obey a lawful regulation or order of such institution, could deny payment to such individual under Federal programs assisted higher education.

THE 89TH CONGRESS

Legislation

S. 647—To provide that convicted persons will receive credit toward service of their sentences for time spent in custody for lack of bail.

S. 1409—To authorize the Secretary of Health, Education and Welfare to make grants to public or nonprofit agencies to improve the effectiveness of State and local police forces.

S. 1808—To facilitate rehabilitation of persons convicted of Federal offenses; to permit certain prisoners to work at paid employment or undertake community training courses while continuing as inmates.

S. 2113—To authorize civil commitment in lieu of criminal punishment for certain narcotic addicts.

THE 88TH CONGRESS

Legislation

S. 864—To provide for right of persons to be represented by attorneys in matters before Federal agencies.

S. 1057—To provide for representation of financially indigent criminals in U.S. Court cases.

THE 87TH CONGRESS

Legislation

S. 403—To provide for appointment of additional circuit and district judges.

S. 2984—To establish matching grant program, under the Department of Health, Education and Welfare, to improve education, training, and recruitment of State and local police forces.

THE 86TH CONGRESS

Legislation

S. 818—To provide for appointment of three additional district judges for eastern, and two for western Pennsylvania.

THE DISCIPLINING OF JUSTICE FORTAS

Mr. ROBERT C. BYRD. Mr. President, the Chicago Sun Times for April 23, 1972, contained a review of Robert Shogan's recent book entitled "A Question of Judgment." The review was written by Philip B. Kurland, of the University of Chicago Law School. Mr. Kurland is one of the Nation's outstanding constitutional authorities. The review pays a high compliment to the distinguished Senator from North Carolina (Mr. ERVIN).

I ask unanimous consent that the review be printed in the RECORD.

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

THE DISCIPLINING OF JUSTICE FORTAS

(By Philip B. Kurland)

This book is a first-rate reportorial job on an event of no mean constitutional significance. It is first-rate not only because it is so lucidly written and so well-informed but because it is objective. In this day, when the press is given so much to polemical writing, Robert Shogan's commitment to facts is enlightening and heartening.

"A Question of Judgment" is neither an attack on nor a defense of former Supreme Court Justice Abe Fortas. It does show how Fortas contributed to his own downfall by the exercise of demonstrably bad judgment. It also shows that his acts of commission and omission do not support charges of dereliction of duty or malfeasance in office. If Fortas was guilty of anything, so far as the public record shows, he was guilty of an unbecoming arrogance. And there is much irony in the fact that his arrogance failed him at the crucial moment when he could have stood up to his accusers and challenged them to prove their damning inferences.

If Fortas looks bad in this book, the other participants in the events so ably and fully described look no better. The coalition of forces engaged in an attempt to remove Fortas from the Supreme Court by extra-constitutional means is vividly detailed. The conclusion is easily reached that their objective was to remove a "liberal" member of the Court rather then to remove a dishonest one. In a way, Fortas was a victim of the Vietnam war, for those in power who liked him as a judge detested him for his super-hawk role in the Johnson administration. In his time of crisis, they abandoned him.

Of all the public participants in these events, only Senator Sam Ervin of North Carolina—certainly no supporter of Fortas' Supreme Court opinions—stood upright in the political winds that levelled everyone else.

He recognized the constitutional crisis. He admonished his Senate brethren that, as putative judges in the event of an impeachment, they should better remain silent than speak on the basis of rumors that were officially sponsored but not officially proved or even acknowledged. He reminded them "that judges could be impeached only for violation of the law, and not for their political views or for the decisions they handed down while on the bench."

And he sought to inform the White House that the Constitution "confers no role on the President in matters of removal. A federal judge is immune from action by the President, and care should be taken in all cases not to establish any precedent suggesting that the President has any power or influence to discharge a member of the judiciary from office."

Neither the Members of Congress nor those of the executive branch heeded the sound advice tendered by the Senate's leading constitutional lawyer. The White House and the Attorney General, ably abetted by the news media, removed a Supreme Court Justice without resort to the sole constitutional means for doing so.

It is not clear what the role of the Chief Justice was in this enterprise. All that is known is that John Mitchell held a secret meeting with Earl Warren about Fortas' conduct.

But, as Ervin also said: "Courts are ill-equipped to discipline their own members, and it would be an unfortunate development if any court or judge—even the Chief Justice—had any role in resolving questions as the one we now face."

Shogan's tragic but well told tale is an intriguing story of political maneuvering and those who engage in it.

He reveals objectively all the events that an experienced and able reporter could uncover. His presentation records not merely the deeds that were done but the men who did them. It is a book that deserves a wide readership. And it has the virtue of being eminently readable. Only partisans of the one side or the other will find it unpalatable because of its single-minded commitment to the facts.

Shogan provides the facts, the reader must draw his own conclusions. For, with all the facts, the essential mystery remains: Why did a man of Fortas' obvious capacities and foresightedness behave so stupidly?

CONSOLIDATION OF FEDERAL SOCIAL SERVICES PROGRAMS

Mr. MATHIAS. Mr. President, President Nixon recently asked for support for the Allied Services Act of 1972, aimed at consolidating and streamlining the vast array of Federal social services programs established piece by piece over the last decade. I wish to announce my enthusiastic cosponsorship of this long-needed reform measure.

Today, more than 200 different assistance programs are administered by the Department of Health, Education, and Welfare, and delivered to needy citizens through a variety of local service institutions. Those seeking the aid of such programs must spend most of their time filling out forms and traveling from office to office. What is worse, human problems can rarely be so easily categorized: mental health, vocational rehabilitation, food and nutrition, education, juvenile counseling, public health, alcoholism and drug abuse—each of these services speaks to just one aspect of humanity. Rather than force those in need to tailor their problem to fit the program, we must shape our social programs to recognize the interrelatedness of human needs. The Allied Services Act, by promoting a unified delivery system utilizing integrated service institutions, would do much toward increasing the effectiveness of the social services we have worked so hard to develop.

I also applaud this proposal's emphasis on greater responsibility for State and local officials in planning and delivery of social services. As is evidenced by growing national support for Federal revenue sharing, the time to return responsibility to our local officials is long overdue.

Mr. President, Congress is presently considering several measures seeking to reduce the confusion and inefficiency of our Federal bureaucracy. Revenue sharing, executive reorganization, the Intergovernmental Cooperation Act of 1972, and now the Allied Services Act, represent modern, streamlined approaches to governing this complex Nation. I am sure that I speak for countless citizens who are fed up with the time-consuming, mind-boggling process of dealing with our bureaucracy, in calling for rapid action on these very fundamental reforms.

POWER OF THE COURTS

Mr. THURMOND. Mr. President, I invite the attention of Senators to recent article by William F. Buckley, Jr., entitled "Curb the Courts?" Mr. Buckley discusses the objections raised to the President's proposed antibusing legislation on grounds that Congress may not limit jurisdiction of Federal court decisions concerning busing of schoolchildren.

The author cites the specific example of the uncontested Norris-LaGuardia Act of 1932, in which Congress saw fit to limit jurisdiction of Federal courts in labor disputes. He also points out further examples of congressional rights in this area, including a decision of the Supreme Court during the Second World War which limited jurisdiction of the Federal courts in a decision of the Office of Price Administration.

Mr. President, I feel that the article is a particularly timely discussion of the relationship of Congress and the courts. Although many are inclined to believe that the courts are all-powerful, they do not realize that much of this power exists only because Congress has seen fit to allow it, and is not due solely to constitutional guarantees.

Mr. President, I ask unanimous consent that the article published in the May 4, 1972, issue of the Charleston, S.C., News & Courier be printed in the RECORD.

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

CURB THE COURTS?

(By William F. Buckley, Jr.)

The boys are becoming hysterical over the proposal that Congress should in any way intervene to protect the community from courts that have decided to make a vocation out of integrating the schools, sparing the pupils no expense whatever, and themselves only the expense of rigorous thought. The complaint is (a) against amending the Constitution to forbid wild court decisions on the subject of busing; and (b) against Richard Nixon's suggestion that the whole business be referred to Congress. In the first instance, the critics say, you would be reversing the 14th Amendment to the Constitution—and simply denying people their rights. In the second instance, you would be denying the superior power of the Constitution by seeking to override it via mere legislative action.

I have it from Mr. C. Dickerman Williams of New York, who is the best thing to hit the Constitution since the Founding Fathers, that the second objection is utter nonsense.

He cites with particular force what Congress did in 1932 in the Norris-LaGuardia Act. That act, however infamous in social effect and intention, has not been challenged as to constitutionality, and in it Congress very simply denied to federal courts jurisdiction over certain classes of labor disputes. To be sure, at no point has a federal court, citing that act, denied access to its services someone seeking to make a Constitutional claim. It happens that no one has tried. The crucial fact remains: that Congress saw fit to, and did, limit the jurisdiction of the federal courts in certain types of cases, intending by procedural maneuver to make a substantive point.

Moreover, during the war the Supreme Court itself upheld Congress' right to limit the jurisdiction of the federal courts in a decision involving the Office of Price Administration. It was Lockherty vs. Phillips, citing a decision 100 years old, and the court said in part. "The Congressional power to ordain and establish inferior courts includes the power 'of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.'"

Moreover, it was Congress which in the first instance invited the federal courts to accept cases based on the meaning of the Constitution—in April of 1871. The court could be deprived of authority to entertain claims made under the Constitution by the simple (and terrible) expedient of repealing Section 1331 of the Judicial Code. Nobody is saying Congress ought to do that, but everybody should be reminding himself that Congress has the power to do that, and it is not inappropriate occasionally to whisper in the court's ear, "The people who gave you 1331 can take away 1331."

No, there are less drastic things to be done. For instance the deprivation of jurisdiction. Or, for instance again, requiring that issues of fact be determined by a jury—or a combination of the two. Everyone is nowadays agreed that no school district should assign pupils to schools with reference to their race.

But the policies of many of the courts have as we all know gone far beyond this in their hot pursuit of de facto segregation, and remedial legislation based on the form of the Norris-LaGuardia Act would need merely to hold that "No court of the United States shall have jurisdiction to issue any temporary or permanent order, injunction, or decree in a case relating to the assignment of students to, or their enrollment in, an educational institution, other than to forbid assignment or enrollment on the basis of the race, creed or color of the students . . ." And it might be specified that juries would decide the factual point.

The purposes of the exercise is to get the federal courts out of the business of administration. Mr. Williams contributes as lagniappe a quotation from a speech by Chief Justice Hughes:

"And I tell you, ladies and gentlemen, no more insidious assault could be made upon the independence and esteem of the judiciary than to burden it with these questions of administration—questions which lie close to the public impatience, and in regard to which the people are going to insist on having administration by officers directly accountable to them."

THE CONSEQUENCES OF WAR

Mr. HUGHES. Mr. President, the war in Indochina, has affected the United States in many ways besides the terrible losses of life, the disruption of our economy, and the now common mistrust of our Government. This war has turned us against one another and has led us into a frightening era of political violence. It has diverted us from our true national purposes of helping to alleviate hunger and suffering at home and abroad.

We have lost sight of our noble goals and have become obsessed with the means of destruction and death.

Our people have undergone profound changes of mood and opinion on this war. The support for the President's policies was stripped away by the growing concern over continuing escalation, the credibility of official statements, and the mounting costs and casualties. There can be no doubt that now the American people overwhelmingly want a rapid end to this war in all its forms, along with the safe return of our troops and prisoners.

An article in today's Wall Street Journal documents these changes of mood over the years by focusing on a single town—Dodge City, Kans. As reporter Everett Groseclose writes:

From a groundswell of support for American involvement in Vietnam in 1966, sentiment here by mid-1967 had shifted to war weariness and deepseated doubts. And by late 1969 many residents of this prairie town of 17,000 had turned downright dovish.

Now, another shift has come. It is characterized by pessimism, cynicism, fear and outright hostility for continuing U.S. efforts in Vietnam. . . .

But far more than just the war and the fact that it is continuing now is involved. Many residents hereabouts contend that they are engulfed in a new feeling of helplessness and frustration that is affecting all

aspects of their lives. The major reason, they contend, is the war.

It is worth while to note, Mr. President, how far the real damage of this war has extended, how much our current angers and frustrations are a direct result of this war.

When we read so much about demonstrations in major cities against the war and about activism of college students, it is instructive to see how deeply rooted opposition to this war really is. I have found it in the farms and towns of Iowa; now it is being discovered in the Kansas prairie.

Because of this conviction that the overwhelming majority of our people, in all walks of life and in all sections of the country, want this war brought to an end by congressional action, I have joined with Senator CRANSTON in asking my colleagues to cosponsor a national peace poll, so that millions of Americans can tell us whether or not they want the Congress to bring the war to an end by cutting off the funds. By encouraging the distribution of postcard ballots throughout the country, we hope to find out what the people think Congress should do.

The evidence from Dodge City, Kans., is another indication that they will vote "Yes" to peace.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

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

RETURN TO DODGE: IN A SMALL COMMUNITY IN KANSAS, ANTIWAR SENTIMENT TURNS INTO GENERAL FRUSTRATION

(By Everett Groseclose)

DODGE CITY, KANS.—Once again, the mood has changed.

From a groundswell of support for American involvement in Vietnam in 1966, sentiment here by mid-1967 had shifted to war weariness and deep-seated doubts. And by late 1969 many residents of this prairie town of 17,000 had turned downright dovish.

Now, another shift has come. It is characterized by pessimism, cynicism, fear and outright hostility for continuing U.S. efforts in Vietnam. It developed over the past several months, and it hasn't changed noticeably since the U.S. started mining the harbors of North Vietnam and stepped up the bombing of military targets in the North.

But far more than just the war and the fact that it is continuing now is involved. Many residents hereabouts contend that they are engulfed in a new feeling of helplessness and frustration that is affecting all aspects of their lives. The major reason, they contend, is the war.

A SYMBOLIC FAILURE

"Vietnam is symbolic of our failure—the failure of our government and institutions of all kinds—to come to grips with our problems," says Charles M. Barnes, president of Dodge City's Community Junior College. "The war dramatizes our national predicament, our negative attitude toward all kinds of things." Aside from focusing attention on the scarcity of alternatives in Vietnam, he adds, the blockade has done nothing to change the basic outlook and sentiment of Dodge residents.

Mr. Barnes' view that the war has made deep inroads into the way people think and live in grass-roots America is relatively common around the "Cowboy Capital," as Dodge proudly calls itself. Although, of course, not everyone agrees, many residents here repeatedly talk about what the war has done and continues to do to American character, morals, integrity and willingness to place trust in elected leadership.

Indeed, to a visitor who comes to Dodge City for the fourth time in the past six years to gauge the impact of Vietnam, it's clear that things have changed enormously—not only since the first visit in the spring of 1966, but also since the most recent visit in the fall of 1969.

On the campuses of Dodge's two colleges, where attitudes of both faculty and students changed from hawkish in 1966 to active involvement in peace demonstrations in 1969, the mood now is one of despair and dejection. "You sit in the student union and try to talk to people about it, and you get disgusted reaction," says Kathy Ridgway, the president of the student body at St. Mary of the Plains College, a four-year institution. "They feel the subject has been talked to death, and they've given up on having any influence" with peace demonstrations, rallies and the like, she adds.

TOWN AGREES WITH GOWN

Around town, strikingly similar sentiment crops up. "People are just fed up with this war. They're frustrated. They've had it up to here," says W. D. Janousek, touching his throat while he sips midmorning coffee at Schafer's Cafe on Gunsmoke Street (named after the television show whose locale is Dodge). Mr. Janousek, who owns a retail TV and appliance store across the street, adds: "There's a feeling of helplessness. We all feel it, and we don't know what to do about it."

Almost all of Dodge's civic and business leaders blame the mood for voter rejection on April 4 of two issues that many believe would have been beneficial to the community. One was a $160,000 revenue-bond proposal, which wouldn't have involved a tax increase, to help finance a new park, swimming pool and recreation area for the town. The other was a one-year, one-mill assessment to help finance a search for new industry.

Moreover, many say that this mood helped elect a new group of city councilmen, headed by a man whose only campaign promise was negative—to fire Dodge's city manager, regarded by some as an able and conscientious man who had done much for the community. (Once elected, the new council majority promptly made good on its leader's promise.)

NEGATIVE FEELINGS EVERYWHERE

"There seems to be a negative feeling on just about everything—and especially anything that looks like an added tax burden," laments John E. Winter, Dodge's part-time mayor, who works full time as a teacher of driver education at Dodge City Junior High School. He adds: "All this disenchantment and unhappiness isn't just local. It's everywhere, all across the country."

It is impossible to determine precisely how much of such general discontent can be traced to the war and how much can be attributed to other factors—such as uneasiness about the economy, high taxation and racial strife. Nonetheless, the consensus of residents here is that the war's impact is a major element.

Why the dejection?

A few days in Dodge talking with townspeople turns up a number of considerations. The U.S. role in Vietnam combat—and thus U.S. casualties—has been scaled down dramatically in the past couple of years through troop withdrawals, but many residents say the strength of Hanoi's invasion that began on Easter Sunday only proves the failure of the so-called Vietnamization program.

Many also believe that the potential for reescalation is very real—especially after the U.S. mining of Haiphong harbor. A few pessimists even envision the possibility, unlikely though they admit it may be, that the U.S. could commit more troops, especially if the blockade fails to blunt the North Vietnamese invasion.

"I get the feeling that people around here just aren't willing to see more American lives lost over there, because the way things have been going, you have to wonder if they're lost in vain," says Mrs. William Merrill, executive secretary of the Red Cross chapter in Dodge.

Indeed, casualties play a large part in the sentiment of Dodge's residents. Thus far, 11 men from Dodge and its immediate vicinity have been killed in the war. About that many more have returned gravely wounded, some of them badly disfigured. And almost everyone recalls the shock that was felt in late July and early August 1970. In a three-week period two young men died in the war; both had lived in the tiny community of Wright, about five miles northeast of Dodge.

One of the men was Greg F. Steimel, the son of Mr. and Mrs. Alfred Steimel. Mr. Steimel is chairman of the board of trustees at Dodge's junior college and manager of a large farmer's co-op in Wright; Mrs. Steimel is a well-known feature writer for the Dodge City Daily Globe, the local newspaper. Until her son's death, says a tearful Mrs. Steimel, who has written a number of articles about the war, "like so many other people we had always just accepted the war, the necessity for men to fight in it." Now, however, she says, "we're completely opposite. All that has changed."

A PEACE PLEA—TOO LATE

Mrs. Steimel and others view what happened at Greg Steimel's funeral as suggestive of the quiet intensity of antiwar sentiment in central Kansas. As is customary in cases of combat deaths, the Steimel family planned to have a military funeral service. Then a delegation of 12 students, all of whom had been Greg's friends at St. Mary of the Plains, called on the Steimel family to ask that military services be rejected.

By that time, however, it was too late to change plans. A daughter of Mr. and Mrs. Steimel made leather peace symbols, which the family and others wore during the services. Among those who wore the symbols—and no one refused one—was the Army man assigned to escort the body. "He told me he absolutely believed in the peace movement," Mrs. Steimel says.

The other casualty from Wright was Richard J. Conrardy. In 1966, when I first assessed the impact of the war on Dodge, Richard's father, Eugene A. Conrardy, expressed fear for the life of an older son, Donnie, who had just been drafted. Mr. Conrardy, then a hawk but now a dove, also complained about having to cut back on the family's farming interests (he has 900 acres) because Donnie wouldn't be around to lend a helping hand. As it turned out, Donnie served in Vietnam without injury; his younger brother wasn't so lucky.

At the post-office building in Dodge, Mrs. Elwood Augerot, who has been the clerk of local draft board 23 since the war began heating up, says that these days, "things are actually pretty quiet," especially compared with two year ago. At that time draft calls were still high, and many parents were openly expressing hostility toward the war and personal resentment at her role in drafting their sons.

"The kids are still coming in from time to time wanting to know where they stand, but that's about all," Mrs. Augerot says. For the young men, she adds, "It's just a feeling of helplessness. There seems to be nothing they can do about the war, and that frustrates them." In the past year, Mrs. Augerot's draft call has been almost nonexistent. She has been told to induct only one man, and a volunteer turned up to fill that space.

PROBLEMS FOR RECRUITERS

Across the hallway from Mrs. Augerot's office, however, a Marine recruiter says the

absence of the draft threat is making recruiting considerably more difficult. And down the hall, a youthful Army recruiter allows that "you really have to get out there and hustle" to find enlistees. Even then, few are willing to sign up for infantry training "because they figure they'll go straight to Vietnam." Instead, he adds, "they all want to go to Europe or Hawaii."

In fact, there is substantial evidence around Dodge that a growing number of young men are determined to resist any connection with the military forces. Just a few weeks ago, for example, 20-year-old Stanley McMillen, the son of a local powerplant employe, returned home after making national headlines.

By young Mr. McMillen's account, he and nine other young men who had sought release from the Army on conscientious-objector grounds were "hastily discharged" at Fort Sam Houston, Texas, after being imprisoned for almost a week in a maximum-security stockade at Fort Hood, Texas. He contends that he faced "trumped-up" court-martial charges involving disrespect, disobedience and unwillingness or inability to adapt to military life. "The Army just wanted to get rid of us," he says.

VETERANS SEEKING TO FORGET

Over at the First Presbysterian Church, 31-year-old Tom Owen, whose mother is Mrs. Merrill at the Red Cross, works as a custodian full time and attends classes at the junior college in his spare time. He relates his opposition to the Vietnam war on moral grounds and says the deaths of several friends in Vietnam caused him to give up a military career after 10 years as a Navy medic. "I have a wife and two children," he says, "and I didn't like the thought of those children growing up without me."

Mr. Owen is also treasurer of the Vietnam Veterans Club, organized last October at the junior college. Club members, he says, hardly ever speak of their common memories of the war. Instead, they devote their time and interest to social projects, including the operation of a bus shuttle from homes for the aged to shopping areas. "Most of us just want to forget all about the war," Mr. Owen says.

Leaders of peace demonstrations two years ago agree that the situation is drastically changed. The Rev. Paul Palmer, pastor of the First Presbyterian Church, was one of the first Dodge residents to publicly oppose the war. "I have continued to make my opposition known, but I've found it less necessary to do it from a radical stance because I find that so many people are siding with me now," he says. Still, he is disappointed with the lack of peace-related activities on campus. "There haven't been any rallies in the last year or so, and that's part of the cynicism," he says.

Such attitudes also go a long way toward explaining Dodge's disenchantment with other things, according to James S. Maag, a second-term state representative, who teaches history at Dodge's junior college. He says such attitudes also contribute to "a general discontent with government at all levels—local, state and national—and their apparent inability to solve our problems." Voter rejection of Dodge's revenue-bond issue and of the assessment to finance a search for new industry, he adds, "is a classic example of the expression of that discontent."

But others in Dodge are expressing their dismay in other ways. Don C. Smith, a 46-year-old attorney, says his opposition to the Vietnam war caused him to change his political affiliation from Republican to Democratic slightly less than a year ago. "The war has affected my life, the way I think and the way I feel like no other single thing," he says. "I'm terribly concerned about the possibility of reescalation."

Mr. Smith, who now is a local Democratic leader, expressed his opposition to the war May 13 at the First District Democratic Convention in Pratt, Kan., when he introduced an emotional resolution against continuation of the conflict. The resolution, in toned-down form, was adopted. Mr. Smith also helped deliver seven of Ford County's eight delegates at the district convention to Sen. George McGovern, largely because of the Senator's promise to promptly withdraw from Vietnam. (The session elected six delegates to the national Democratic convention in Miami Beach; none of the delegates is formally committed, but Mr. Smith and others believe most of the delegates lean toward Sen. McGovern.)

A RARE SPECIES

Not everyone in Dodge, of course, sides with Mr. Smith and like-minded doves, but out-and-out hawks who favor a step-up in military action are indeed rare these days. Nonetheless, many residents contend that President Nixon had little realistic alternative to his blockade of North Vietnam.

One such man is Kenneth S. Johnson, an attorney in downtown Dodge. "Everybody wants to get out, but they want an honorable withdrawal," he says. "They don't want to just walk away." Like many other residents of Dodge, Mr. Johnson also complains that "these days you just don't know who you can believe—not the government, not what you hear on TV and read in the newspapers—you just don't know what the real situation is."

Six years ago the leaders of Dodge's small manufacturing community were complaining about late deliveries of goods, drafted workers and soaring prices. Now they say their problems that were brought on by the war have eased, largely because of lower draft calls, suppliers eager to please after the recession and the effects of economic controls. Business, they say, is generally improving, and they are optimistic about sales and earnings for the year.

But when the subject turns to Vietnam, their optimism vanishes. Stuart Curtis, president of Curtis Manufacturing Co., a maker of gearboxes, says that while he supports the Nixon policy, he is nonetheless dismayed that their seems to be no solution. Down the street at Speed King Manufacturing Co., a maker of conveyor systems, Hector Campbell, president, says: "Nixon has staked his whole future on Vietnamization, but what has happened so far is very discouraging. It appears to date that all the bombing we've done has accomplished exactly nothing, and I guess we'll just have to wait and see what cutting off their supplies will do."

Whatever the sentiment concerning the war, a number of people in Dodge are glad they accomplished certain things before attitudes changed. Mr. Barnes, the president of the junior college, proudly shows a visitor through the institution's gleaming new buildings on the campus northwest of downtown Dodge. "Seven years ago," he says, "we passed a 2.5 million revenue bond issue" to help finance the school's 4.8 million construction program. "Seven out of every 10 voters supported it," he adds. "Thank goodness we did it when we did. Today, with attitudes being what they are, there's just no way we'd ever get it approved."

COMMENCEMENT AT REGIS COLLEGE, DENVER, COLO.

Mrs. SMITH. Mr. President, it was my honor and privilege to give the commencement address at Regis College in Denver, Colorado on May 14, 1972. Because I was most impressed with the various statements made at these exercises, other than my own, I ask unanimous consent to place them in the RECORD.

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

INVOCATION

(By Virginia A. Roberts, Class of 1972)

In the name of the Father, and of the Son and of the Holy Spirit.

"For everything there is a season, and a time for every matter under heaven:
a time to be born, and a time to die;
a time to plant, and a time to pluck up what is planted;
a time to kill, and a time to heal;
a time to break down, and a time to build up;
a time to weep, and a time to laugh;
a time to mourn, and a time to dance;
a time to cast away stones, and a time to gather stones together;
a time to embrace, and a time to refrain from embracing;
a time to seek, and a time to lose;
a time to keep, and a time to cast away;
a time to rend, and a time to sew;
a time to keep silence, and a time to speak;
a time to love, and a time to hate;
a time for war, and a time for peace."

—Ecclesiastes 3: 1–9

"Wha[illegible]e call an end, the poet tells us, is often a beginning.

What we are is the answer that we are giving to the call of a future still in the making. Today we graduate and receive the human signs of accomplishment and learning, the reward of labor and the prize of perseverance.

This end, too, is a beginning, the point from which a person takes a new step, and begins to take the measure of the house that is still to be built, of the house that he and all men must call home, a home as small as the heart, and as wide as a world."

—"Home Celebration"
Lawrence Moser, S.J.

And so Lord, we thank you for the blessings of the past four years: for Your guidance, for the knowledge Regis has given us, for the love of our families and friends, most especially our mothers and fathers. They have helped to make us who we are. We ask for Your continued love and guidance. We ask also for these tools that we many take proper measure of the house to be built. First, we ask wisdom of choice and strength of purpose in fulfilling our responsibilities to the future. Next we ask sense of humor so that we may never lose sight that, while we might take our work seriously, we never take ourselves too seriously. We ask finally, serenity of soul and the integrity to be whole men and women, worthy to be Your children. We ask these, Father, that like Jesus, Your Son, the carpenter of Nazareth, we may build a better world for man. We ask these through that Son.

In the name of the Father, and of the Son and of the Holy Spirit. Amen.

ADDRESS OF MICHAEL T. SULLIVAN

"Today is May 22, 1968. It is really no different than yesterday was. Nor is it any different than tomorrow will be. The sun has been rising in the east and setting in the west and will most probably continue to do the same. Yet, in recent months we seniors graduating here tonite have been taking a closer look at our lives and futures, not anymore as kids rising from bed in the morning, wandering through the schoolday, and falling into bed at night, but as young men and women setting out with a determination to make this world a better place in which to live."

Four years ago as a senior in high school, that seemed like a rather gallant paragraph with which to begin. It was only four years

ago that I had the opportunity to speak at my high school graduation. And in preparing for this morning I took time to go back over some of the things that were said that night.

"Kids rising from bed in the morning, wandering through the schoolday, and falling into bed at night—no not anymore. It might be more accurate NOW to say rising in the afternoon, stumbling through the evening, and literally collapsing into bed at night, if we are lucky enough to make it that far.

"Young men and women setting out with a determination to make this world a better place in which to live—I think here again we have left something to be desired."

In recalling some of these things previously said, I found it very disturbing to see that so many of these ideas, spoken by an immature, idealistic high school senior were still very applicable and could very easily again be said by a yet immature but possibly not quite so idealistic college senior.

And I ask myself why are these things still so applicable. Possibly we have built for ourselves here at Regis a stagnant environment where we not only could not grow but did not even want to grow. Or possibly the entire college and university system is somewhat of an escape from education which might attribute to this failure to grow. Or possibly just because these ideas are so general they will always be applicable to any age group in any environment. Regardless, the evaluation of our years here at Regis can only be made on an individual level.

What is it, though, that can again be said?

Too often many of us, possibly all of us, can easily fall into the category of—which we will call for lack of a better word—"Joe Good-guy." We pay our taxes, go to church on Sundays (at least once in a while), never do anything too seriously wrong, and enclose ourselves in our own little protective bubble of personal interests. In doing this, it is not difficult for us to lose sight of the vast world around us—a world that is in a state of chaos. And unless we pop our bubbles before it is time to leave this confusion for good, we might never find out what life is all about, life that is lived to the fullest.

Today's world truly is a terrifying place, full of injustice, war and poverty. But no matter how harsh, how irrational, how terrifying a place this world is, it is the only world we've got. So as young adults, one of the first decisions we face is how to cope with it.

One quick solution might be to drop out altogether. The route for this escape need not only be in alcohol or reality—blunting drugs—but more often this escape may be a luxury hideaway or even a city's suburb where life centers around the daily bridge or golf game and a jug of martinis. These dropouts thrive off the society in which they live, but assume no responsibility for it.

A second solution might be not to drop out of the world, but to flee from it in order to find some new Eutopia of peace free from the world's problems. The fallacy in this solution is that the frontiers are gone; there are no longer places to run because the world's problems have infested nearly every corner of its immensity.

Then there are some active and idealistic young people who believe that the world can be changed only through force. Since this society is hopelessly bad, they advocate smashing it and building something better on its ruins. But it is only a matter of time before the evils which these violent revolutionists fought so valiantly to overthrow sprout up again from the seeds of their ruins.

Another solution does remain, and that is to try to change the world gradually, one clod at a time. This method is neither grand nor glorious; its results are not found in bold headlines; it demands patience, hard work forming the world in this way usually presents ten new problems for every one conquered. Yet, by facing these realities, men can not only improve the lot of all mankind but also find true meaning in their own lives, and what can be more important than this? We are left to make the choice—to drop out, to flee, to revolt, or to change gradually. And for our own sake as well as the world's, may all of us make this last strategy a vital part of our adult lives.

For the heroes of our generation will not be the dropouts, the escapees or the professional revolutionists; but the heroes will be the peacemakers who strive to erase the hatred between men, the racial prejudice in the community and the international distrust among nations; the heroes will be the young parents who from the day their firstborn comes home, foster in those homes the healthy attitudes which are so very necessary if all races, colors and creeds are ever to live together in harmony; the heroes will be the young people who while they are still free voluntarily give themselves to the underprivileged at home and abroad in order that the extreme poverty which exists may be just slightly lessened; the heroes will be the writers and artists who fire up our generation to meet the tasks ahead of us; maybe the heroes should be the men throughout the world who have left their homes to risk their lives that freedom may survive, but there are those who believe that Vietnam has proved this to be wrong; and finally, the heroes will be all the deeply concerned men and women who contribute only their prayers to our world reformation.

In surveying our futures it might do us well to toss the word "contentment" out of our thinking. For there can and should be no such thing. Nor can we ever do our share and then quit. For when we put any limit on our service to others we are doing nothing other than prohibiting ourselves from partaking in the greatest happiness, the greatest self-satisfaction that this life can bring. If we want to accomplish our mission we can never let ourselves becomes so comfortable that we lose sight of the human misery which flanks us on all sides. And unless we are to assume our roles now while we are young, our minds can easily settle into a state of lifelong dullness.

Both as Americans and as Christians, and just as human beings, we have taken on the conviction that in all men there is some value. As in a seed, this value may remain dormant unless it meets the right conditions. Our greatest challenge is to secure these conditions. The struggling peasants who can't defend themselves against bitter and unjust aggression, the sick in every corner of the earth whom medication has never reached, the hungry who are begging for food, the ghetto children who face this world with their hands and feet tied together from the very start, the Vietnam veterans who return to an unsympathetic homeland with no jobs awaiting them, the unwed mothers who often are completely ostracized from society—these are just a few cases that are crying for our involvement and that can provide each of us with an immediate challenge.

We cannot afford to be discouraged by the difficulty of these problems. We must not be discouraged by their immensity because if they were easy, they would have been solved a long time ago. And furthermore, we are not committed to just the easy ones, and it is the tough problems that will really put us to the test. In order to solve them it will take moral courage, intelligence and stamina. At no time in our history has there ever been a greater need for these qualities, especially in the young people, the generation of which we are a part. If in fifty years we look back over our lives and cannot see that we have made this world a better place in which to live cannot point out people who have profited by our existence, and cannot have attained any great self-satisfaction in life itself, then won't it have almost have been a waste of time? A waste of work? A waste of life?

In closing, without being overly dramatic but yet trying effectively to tie together all the loose ends, I would like to read an excerpt from Kahlil Gibran's masterpiece, *The Prophet*, which sums up more than just my words and ideas but an emotion that I am trying to communicate today:

"Then said a rich man, Speak to us of Giving.
And he answered:
You give but little when you give of your possessions.
It is when you give of yourself that you truly give.
For what are your possessions but things you keep and guard for fear you may need them tomorrow?
And tomorrow, what shall tomorrow bring to the overprudent dog burying bones in the trackless sand as he follows the pilgrims to the holy city?
And what is fear of need but need itself?
Is not dread of thirst when your well is full the thirst that is unquenchable?
There are those who give little of the much they have—and they give it for recognition and their hidden desire makes their gifts unwholesome.
And there are those who have little and give it all.
These are the believers in life and the bounty of life, and their coffer is never empty.
There are those who give with joy, and that joy is their reward.
And there are those who give with pain, and that pain is their baptism.
And there are those who give and know not pain in giving, nor do they seek joy, nor give with mindfulness of virtue;
They give as in yonder valley the myrtle breathes its fragrance into space.
Through the hands of such as these God speaks, and from behind their eyes He smiles upon the earth.
It is well to give when asked, but it is better to give unasked, through understanding;
And to the open-handed, the search for one who shall receive is joy greater than giving.
And is there aught you would withhold?
All you have shall some day be given;
Therefore give now, that the season of giving may be yours and not your inheritors.
You often say, "I would give, but only to the deserving."
The trees in your orchard say not so, nor the flocks in your pasture.
They give that they may live, for to withhold is to perish.
Surely he who is worthy to receive his days and his nights is worthy of all else from you.
And he who has deserved to drink from the ocean of life deserves to fill his cup from your little stream."

Today is May 14, 1972. It too is really no different than yesterday was. Nor is it any different than tomorrow will be. The sun again rose in the east and will set in the west, and will most probably continue to do the same. Today most of us had no more purpose for living than we had yesterday. But tomorrow we can, if we want. We have all been brought up with the teaching that the acknowledgment of our faults and shortcomings is always good for our souls, but at this time it again seems as it seemed four years ago, that an honest rethinking of our

purpose in this world might be even better.

Happy Mother's Day to all the moms. And thank you.

RESPONSE OF THOMAS J. CASEY, S.J. ACTING PRESIDENT OF REGIS COLLEGE

The response called for by Michael's remarks is not a few flowery phrases by me but rather a renewed resolve by each of us to strive to achieve a purposeful living of the days and years ahead.

Michael was kind enough to provide me with a copy of his remarks in advance and I would like to share with you some brief reflections on his thoughtful words.

Towards the close of his remarks, just before the excerpt from *The Prophet,* he stated:

"If in fifty years we look back over our lives and cannot see that we have made this world a better place in which to live, cannot point out people who have profited by our existence, and cannot have attained any great satisfaction in life itself, then won't it almost have been a waste of time? A waste of work? A waste of life?"

Just this past week I read in a recent issue of the *New York Review of Books* a sentence which caused me to ponder anew the meaning of my own existence. W. H. Auden, the English-American poet, in the course of a book review wrote: "I have always felt that to be walking this earth is a miracle I must do my best to deserve."

Looking back over a half century to his youth, he counted some of his blessings—the love his parents lavished on him, possessing excellent health, being paid by society for doing what he enjoyed doing, achieving a certain measure of success and a number of wonderful friends whom he loves dearly.

May these blessings, and many more, be yours—members of the 1972 graduating class of Regis College.

Central to Mr. Auden's outlook is his belief that life is a miracle. If we are to give purpose to our lives we must commit ourselves to a fundamental belief about the meaning of our existence as members of the human family. I submit that our Catholicism—or more properly our Christian commitment—provides such a foundation for our lives. I do not mean primarily a commitment to a cult or a creed or a code, though these have their place too, but rather a sense of religious values and spiritual concerns which impel us to find, discover and communicate meaning to one another about the realities of our lives—of love and belief, of hope and fulfillment, of death and sin, of reconciliation and the redemption of the basic meanings of our everyday existence.

Finally, it is my hope that as the years lengthen you will recall your days here at Regis first with amusement, then with affection, and later perhaps even with appreciation.

My time with you has been brief, but long enough to express my appreciation to you—a special word of appreciation to you young women who courageously integrated Regis four years ago—to have affection for you, and to share my amusement with you that providence should have made me your president during your senior year.

As I stated in my remarks recently at the Regis College Civis Princeps Awards Banquet, "I like young people."

I believe that your questions and concerns about the issues of our day—war, poverty and prejudice—are genuine and valid. You have asked us to reexamine our opinions, attitudes—yes, and even our convictions. You don't profess to have all the answers, sometimes you even doubt whether you have the right questions. You have asked us to be open and honest with you. You have invited us to be our true selves so that we might assist you to become your best selves. For this and more we are in your debt. Thank you.

BENEDICTION

(By William T. Hart, Class of 1972)

At the risk of sounding like Jane Fonda the night she received the Academy Award for best actress, there is much to say, but little time to say it. However, I have been advised by many of my fellow seniors, that if I knew what was good for me, I'd keep this short.

There is one thing I would like to say, but it was said before some time ago in a song entitled, "Go Where You Want to Go." Basically, what the song said was that people should do what they want, when they want, and where they want.

A Catholic priest once told me that one thing he noticed at a person's deathbed, as their life passed quickly before them, was a certain remorse, a remorse stemming from the realization that they had lived a life someone else wanted them to live. That they had done things not because they wanted to do them, not because they felt they should do them, but because someone else expected them to do those things.

Let us hope and pray on this day, that we will not experience that remorse; that our ambitions will be our own ambitions; that we will indeed go where we want to go, and realize that one of the greatest things man can acquire is not wealth, not social position, or political power, but the genuine respect of his fellow man. An honor which is so cherished because it cannot be bought or demanded, but only given freely from one to another, and given because that person was a man.

REMARKS OF DR. BOYCE M. GRIER, PRESIDENT EMERITUS OF LANDER COLLEGE, GREENWOOD, S.C., AT DEDICATION OF CECIL BRUCE BARKSDALE PHYSICAL EDUCATIONAL BUILDING

Mr. THURMOND. Mr. President, on May 6, 1972, Dr. Boyce M. Grier, the distinguished president emeritus of Lander College in Greenwood, S.C., delivered the memorial remarks at the dedication of the Cecil Bruce Barksdale Physical Education Building at the college. His remarks were an eloquent summation of the eminent career of Cecil Bruce Barksdale in the business and civic affairs of his community and State.

Mr. President, I ask unanimous consent that his statement, including a poem relating to the qualities of Mr. Barksdale, be printed in the RECORD.

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

GIVEN BY BOYCE M. GRIER, CECIL BRUCE BARKSDALE PHYSICAL EDUCATION BUILDING DEDICATION

My thoughts today are of Cecil Bruce Barksdale and of our mutual friends—those who are with us still, and those who have answered the call of immortality. Bruce Barksdale was a distinguished leader in the fields of religion, education, and civil affairs of life, not only on the community level but on state and national levels. In a variety of ways, all these areas of life were much enriched because of his life.

His primary devotion rested in his home and his church. His Christian home was a joy and inspiration to all who knew him. He was a life-long member of the First Presbyterian Church of Greenwood and served his church officially as a Deacon, an Elder, and a Trustee. He was a frequent delegate to the South Carolina Presbytery and Synod. A delegate on many standing committees of the church courts. As a Moderator of the South Carolina Presbytery he was particularly interested in the development of Camp Fellowship, and his interest through the years helped to make Camp Fellowship what it is today.

He was a native of Greenwood, the son of George A. and Mary Tarrant Barksdale. He graduated from Greenwood High School, attended Erskine College, the University of South Carolina, and the University of Kansas. He received from Lander College the honorary degree of Doctor of Engineering.

His business interests were many and varied, but in all of these he revealed to the public in general a wholesome life, a friendly and helpful hand. Those who knew him best knew that he believed that people come first in life.

Bruce Barksdale was president of the Greenwood Telephone Company, and was several times president of the South Carolina Association of Independent Telephone Companies. He was a director of the County Bank, Colonial Life Insurance Company, and the Greenwood Savings and Loan Association. He was a member and past president of the Rotary Club of Greenwood, and active in the local and state Chambers of Commerce, having served as president of both organizations.

He was a patriot of the first rank. Participating in three major engagements during World War I he was cited for bravery on the battlefield. In the second World War he served in the United States Air Corps, attaining the rank of Lieutenant Colonel. He was a Mason, serving as Eminent Commander of the Commandery; he was an active member of the American Legion and the Sons of the American Revolution.

Today we are particularly interested in his efforts to promote the cause of education. His interest in education was expressed in his support of the public schools of his community. He also served education through being a very active member of the Board of Trustees of Presbyterian College at Clinton. In many ways he gave freely of his time, his talent, his business ability and his financial support to help the cause of education.

It was in the school year of 1947-48 that Lander College was secured from the Methodists to become a Greenwood County Institution, and Bruce Barksdale became the first chairman of the Lander Foundation Board of Trustees, serving as chairman for ten years, and continuing on the Board as an active member until his death of July 16, 1966. Always he was vitally interested in Lander's welfare, and in her development.

Certainly it is fitting that this building be named for Bruce Barksdale.

Bruce Barksdale answered his call to immortality in line with this poem's expression:

As a marsh hen secretly builds on the watery sod,
I will build me a nest upon the greatness of God.
I will fly in the greatness of God as a marsh hen flies
In the freedom that fills all the space betwixt marsh and the skies.
By so many roots as a marsh grass sends into the sod,
I will heartily lay me a hold upon the greatness of God.

U.N. CONFERENCE ON THE ENVIRONMENT

Mr. TUNNEY. Mr. President, I have been following events leading up to the U.N. Conference on the Environment with much interest. It is important that now—before any more time passes—we highlight the need for all nations to be concerned with and involved in eliminating various forms of pollution.

Sadly, however, I have become aware that the world meeting which begins in

Stockholm on June 5, may not accomplish what it could—what it must.

Perhaps it was ill-conceived in the first place to set up an "action" conference to involve most of the nations of the world when it was clear that an agreement, if any, among all of them, with respect to curbing pollution worldwide, would have to be the lowest common denominator of what any of them thought was essential to save the environment.

On the other hand, it is most important that all countries who are interested be as vitally involved as possible. We must not forget that the environment and its problems are world problems.

For this reason, and because organizational efforts are near completion, it seems to me that we must make the best of what we have. In order to do this, I would urge the U.S. delegation to be far more forward and open on all issues than it has been to date. Specifically:

First, the use of cold war strategy by the United States already threatens to keep the countries of Eastern Europe out of the conference. The issue arises because of our refusal to give voting status to the German Democratic Republic—East Germany—and the retaliatory threat from the Russians that they will keep the entire Eastern bloc away. There is still a chance that an accommodation can be reached on the matter—perhaps by President Nixon in Moscow. But many say that the leadtime required for the Eastern Europeans to get their delegations in order will still prevent them from participating effectively. It is a shame that we have let the big power balance impede and confuse efforts to have the world environment.

Second, a recent briefing by the U.S. delegation to members of the Committee on Public Works would indicate an affirmative avoidance by our delegation of policy established by Congress in various areas of pollution control.

The notion of pollution controls at source by the use of best technology is not part of the U.S. position and will not even be put on the table by the U.S. delegation in Stockholm. This is despite the fact that the Clean Air Act Amendments of 1970 and the Senate-passed version of the Water Quality Control Act provide such a standards system.

Instead, the official U.S. position at Stockholm will be that control of water pollution should be adjusted according to "beneficial uses" which could range from recreational to waste-disposal uses. Pollution is then allowed up to the "assimilative capacity" of the beneficial use.

One must ask why we had to retreat, in advance, to a system which sanctions the creation of sewers in some waterways. Would not an agreement to provide controls at source at the earliest possible date do an enormous amount to dispel fears of economic disadvantage which critics argue that pollution controls will impose on domestic-produced goods? It seems to me that we would save the world environment and strengthen the U.S. economy if we would, at least, put this issue on the table at Stockholm.

Third, a most disturbing article appeared in the New York Times yesterday. The article, written by E. W. Kenworthy, and entitled "Some Delegates Critical of U.S. Approach to U.N. Conference on Ecology" portrays the frustrations of some of the 10 congressional members of the 35 member U.S. delegation who have been instructed that they must "support without question" the official U.S. position on all the recommendations—over 200—drawn up by the U.N. preparatory committee "even when they do not agree."

In addition, the article goes on to state that some environmental scientists and "most" environmental organizations are angered because the U.S. delegation contains no environmental scientists, only one representative of a nongovernmental environmental organization, and because of its cautious approach to the agenda.

The article then describes a meeting last week at which the members of the delegation were presented with a "scope paper" and other position papers by delegation chairman Russell E. Train, head of the Council on Environmental Quality, and vice chairman Christian A. Herter, Jr., special assistant to the Secretary of State for Environmental Affairs. It is reported that delegates were told to "hew precisely" to the positions presented.

While I can see the necessity of a delegation taking a unified position while negotiations are in process, I do not understand why the congressional members of the delegation—and, indeed, why Senator BAKER's task force which was set up some months ago—could not have been included, and could not still be included, in prenegotiation discussions on the U.S. position.

I ask unanimous consent that the article which I have been describing be printed in the RECORD. I remain hopeful that forward steps can be taken before the U.S. delegation arrives at Stockholm.

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

[From New York Times, May 22, 1972]

SOME DELEGATES CRITICAL OF U.S. APPROACH TO U.N. CONFERENCE ON ECOLOGY

(By E. W. Kenworthy)

WASHINGTON, May 21.—Two weeks before the opening of the United Nations Conference on the Human Environment in Stockholm, the State Department, which is responsible for preparing the United States position, finds itself the target of assorted angers, frustrations, resentments and suspicions.

Some of the 10 Congressional members of the 35-member United States delegation are resentful because they have been instructed that they must support without question the official United States position on all the recommendations—totaling about 200—drawn up by the United Nations preparatory committee for conference discussion and action, even when they do not agree.

Some environmental scientists and most environmental organizations are angered because the United States delegation contains no environmental scientists and only one representative of a nongovernmental environmental organization. They are frustrated because, in their view, the State Department has taken a limited and cautious approach to the agenda, seeking to eliminate or evade contentious issues.

PROPOSALS CALLED IGNORED

Some of the members and most of the staff of the Secretary of State's Advisory Committee on the Stockholm Conference—a group of 28 businessmen, industrialists, environmentalists, labor leaders and public officials headed by Senator Howard H. Baker Jr., Republican of Tennessee—are resentful because, they say, their recommendations were not only ignored but also not even discussed with them by Russell E. Train and Christian A. Herter Jr.

Mr. Train, who is chairman of the White House Council on Environmental Quality, is chairman of the United States delegation. Mr. Herter, who is special assistant to the Secretary of State for environmental affairs, and has been in charge of preparing the United States position, will be vice chairman of the delegation. They have been advised by an intergovernmental committee.

The Administration hopes that some of the frustrations and disappointments of the scientists and environmental groups will be worked off at an Environmental Forum that will be held concurrently with the two-week United Nations conference beginning June 5.

At this forum, which the Swedish Government has helped to organize and which also has United Nations support, scientists and environmentalists will read papers and hold discussions. They are expected to cover more ground and more controversial matters than the conference will.

What does have the Administration and State Department deeply worried, however, is a people's forum at Stockholm, which is being organized by activist groups in Europe. Several thousand are expected to attend, and the Administration is fearful that there will be demonstrations against United States bombing and defoliation in Vietnam.

There have been the following developments in the last few days in connection with the United States' participation in the conference:

DELEGATE INSTRUCTION

Last Wednesday, Mr. Train and Mr. Herter met all day with the delegation. The delegates were given a Scope Paper setting forth "five critical issues on which the delegation must firmly oppose recommendations contrary to the specific United States position."

First, the delegates were told they must oppose any effort to convert the United Nations voluntary Environmental Fund, expected to be authorized by the conference, into a development fund. The United States wants the fund to be used strictly for environmental studies and monitoring of environmental conditions, and not used as supplementary aid to less developed countries.

Second, the delegates were also told they must oppose any move to set up a new specialized United Nations agency for the environment, and support the United States position that the fund and its staff should be put under the Economic and Social Council.

OPPOSE RISE IN AID

Third, the delegates were instructed to vote against any recommendation for an increase in the goal set by the United Nations for aid to developing nations by the developed world. The goal was 1 per cent of gross national product by 1972. United States aid now amounts to about five-tenths of 1 per cent.

Fourth, the delegates were told they must oppose any attempt to provide money for an environmental cleanup by increasing the budgets of other specialized United Nations agencies.

Finally, they were told to "hew precisely" to the position paper if any attempt was made to amend the language of the preparatory committee's recommendation on nuclear testing. This reads: "Man and his environment must be spared the serious effects of further testing or use in hostilities of

weapons, particularly those of mass destruction."

The position paper on nuclear testing, classified "secret," will be given to the delegates, along with some other classified position papers, on arrival in Stockholm.

On Wednesday, the delegates, in addition to the Scope Paper, were given all other position papers. It was some of these positions that gave pause to Congressional members, particularly Senators.

For example, the United States position on control of water pollution is that the pollution should be adjusted according to the "beneficial uses," ranging from swimming to a receptacle for industrial wastes. Therefore, pollution would be allowed up to the "assimilative capacity" of the water for any use. However, all the Senators have voted for a bill that would abandon this concept and control pollution at the source by the use of "best practicable" technology at first, and later of "best available" technology.

It is expected that some Senators on the delegation—possibly Clifford P. Case, a Republican, and Harrison A. Williams Jr., a Democrat, of New Jersey, and Gaylord Nelson, Democrat of Wisconsin, who are environmentalists, and Frank E. Moss, Democrat of Utah, sponsor of freedom of information legislation—may balk at not being able to speak their minds even if they have to vote as instructed.

According to one participant in Wednesday's meeting, Mr. Train told the delegates "to read the position papers, study them and not argue with them."

At a news briefing yesterday, Mr. Train said: "We take a very positive view as a nation of the conference and the opportunity it presents." And, he added, the composition of the delegation was evidence of President Nixon's "commitment and concern."

That is not the view of environmentalists. In an interview, Barry Commoner, head of the Center for the Biology of Natural Systems at Washington University in St. Louis and author of the "Closing Circle," said: "The nongovernmental representation is notable for its innocence on those matters."

The head of one of the most prestigious conservation groups, who asked not to be named, said that he was frankly appalled at some of the delegates chosen. He was particularly critical of the appointment of Frank N. Ikard, president of the American Petroleum Institute.

Amazement was also expressed at the selection of Shirley Temple Black and John W. Rollins, president of the Rollins Leasing Company of Delaware.

In an article in the current Harpers magazine, Dr. Commoner is particularly critical of the State Department, which he holds responsible for a shift in direction of the conference from "basic issues" to an emphasis on measurement of pollution, technical controls and their economic "feasibility."

Dr. Commoner wrote that "while the original proposals emphasized the economic and social causes of environmental problems, the final program of The United Nations preparatory committee dealt only with the economic and financial implications of [environmental] policies and programs." He linked this shift to a speech by Mr. Herter at the second meeting of the committee in February, 1971, in which he recommended that the agenda be limited to the topics that were eventually decided on.

The advisory committee has had an uncertain existence. It was named by Secretary of State William P. Rogers in May, 1971, about two months after the preparatory committee had decided on an agenda.

However, when the advisory committee received this agenda in May and was given three or four days to comment on it, Sydney Howe, a member who is head of the Conservation Foundation, said in an interview, "the committee was told that it was a 'highly tentative first draft.' "

"It was impossible to react in that time," Mr. Howe said.

By December, 1971, the committee had not been given authority to hire a staff and had done "nothing substantive," Mr. Howe said.

At a meeting in December, according to Dennis Hayes, a member who represented Environmental Action, "half the advisory committee was ready to walk out unless a staff was hired."

Senator Baker went to the Secretary of State and a staff was hired in January, 1972.

However, Mr. Hayes said in an interview, "There was no real interchange between the advisory committee and its staff and Mr. Herter and his. There was 'utter disregard' by the State Department and the intergovernmental committee of the advisory committee's recommendations on key issues."

Mr. Howe said that he thought some of the recommendations went beyond what the Stockholm conference could be expected to deal with.

NEW YORK TIMES WRITER OPPOSES COMPREHENSIVE CHILD DEVELOPMENT PROGRAM

Mr. TOWER. Mr. President, the Senate will soon be considering S. 3617, the 1972 version of last year's child development legislation which the President vetoed. In the technical sense, S. 3617 represents some improvement over the legislation that the President vetoed. However, it basically accepts the underlying theory of comprehensive child development, therefore I cannot support it.

When the President vetoed last year's bill he called for a national debate on the subject of comprehensive child development legislation. While this national debate has not occurred, some responsible members of the liberal community have joined with Senators like myself in opposing the basic concept behind this legislation. For instance, Mr. William V. Shannon wrote an article, published in the Sunday New York Times Magazine of April 30, 1972, that strongly criticized a national child development program. While I must disassociate myself from his suggestion that the Government should directly pay mothers to stay home with their preschool children, as an alternative to comprehensive child development, I find his critique to be well developed and worthy of careful study.

I ask unanimous consent that Mr. Shannon's article be printed into the RECORD.

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

A RADICAL, DIRECT, SIMPLE, UTOPIAN ALTERNATIVE TO DAY-CARE CENTERS

(By William V. Shannon)

WASHINGTON.—I must share the view of those of its supporters who proclaim this to be the most radical piece of legislation to emerge from the 92d Congress.

I also hold the conviction that such far-reaching national legislation should not, must not, be enacted in the absence of a great national debate upon its merit and broad public acceptance of its principles.

Few contend that such a national debate has taken place—in a veto message.

—PRESIDENT NIXON.

One of the most irresponsible statements I have seen in my many years in public life . . . cruel, hysterical and false—commenting on the veto message.

—SENATOR WALTER MONDALE.

Last Dec. 9, President Nixon vetoed an antipoverty bill which had as its major component the Comprehensive Child Development Act of 1971, sponsored by Senators Walter Mondale, Minnesota Democrat, and Jacob Javits, New York Republican. The child-development bill, one of the most far-reaching measures ever passed by Congress, ranking in financial cost and social implications with Medicare or Federal aid to education, deserves much more thorough discussion than it has received. The bill has never been the subject of a question at one of Mr. Nixon's (admittedly infrequent) news conferences. It is rarely, if ever, brought up during Sunday TV interviews, in which his Democratic rivals are regular participants. It rarely made the front page of any newspaper until Mr. Nixon vetoed it.

The "great national debate" which President Nixon called for has not taken place but the legislative scene has already been set for passing the bill again. Ignoring G.O.P. predictions of a second Nixon veto, the House of Representatives on Feb. 17 approved a poverty bill which includes a much expanded Head Start program and which Senator Mondale intends to use as a vehicle for adding a revised version of his child-development plan.

If another bill passes Congress this year, President Nixon is sure to veto it again, and conservatives have the votes to sustain that veto. Over the longer term, however, a bill bearing some resemblance to Mondale's is likely, sooner or later, to become law. The political arithmetic of the growing number of working mothers guarantees that.

If the centers set up under such a law are adequately financed, ideally staffed and well run, they would, in my judgment, help some of those youngsters who are the worst victims of poverty and neglect. The centers are, however, neither necessary nor desirable for the great majority of children. Moreover, because they are likely to be underfinanced, understaffed and overcrowded, I sincerely doubt they will achieve many of their objectives. Unless Congress undergoes a radical change of heart, it will try to do a $30-billion job on a $3-billion budget.

Although I am a liberal, I do not share the liberal enthusiasm for day-care centers. Such centers are not a satisfactory or desirable substitute for the full-time care and devotion of a child's own mother. President Nixon may have politically expedient motives of his own, but I nevertheless agree with the premise of his veto message, which stated: "All other factors being equal, good public policy requires that we enhance rather than diminish both parental authority and parental involvement with children—particularly in those decisive early years when social attitudes and a conscience are formed, and religious and moral principles are first inculcated."

Liberals may deprecate these Nixon words as all wet and reactionary, but much hard-earned human wisdom lies behind them. Excessive emphasis on day-care centers can weaken the family at a time when it needs strengthening. Having said that, however, I do not think the status quo is good enough. I have a radical proposal of my own to advance. It would be an alternative to day care that would enable the poor and the working poor—except those families which are most severely deprived and damaged psychologically—to take care of their own children.

But before advancing my own views, I shall set forth the argument of the advocates of comprehensive child-development centers. And it is a powerful argument.

For any child, the years from birth to 6 are critical for his physical, intellectual and psychological development. Yet traditionally in the United States, the Government

takes no official interest in a child between his arrival, when a birth certificate is required, until he is 6 years old, when the compulsory school attendance law takes effect. The assumption has been that families took care of these early childhood years. Yet the evidence is all around us that for some children, the family system has completely broken down and is not doing the necessary job of nurturing their characters, and preparing them for life. For other children, the family is still a viable emotional unit providing some strengths, but the fathers and mothers are so overwhelmed by adverse circumstances—sickness, ignorance, mental illness, inability to hold a steady job, or inability to cope with competitive, sophisticated city life—that those families need help in preparing their young children for school and later life. Still other children have parents who can cope with life in adult terms but who—out of ignorance, or irresponsibility, or selfishness—are not giving priority to their duties as parents; these children also need help.

Society can ignore the needs of the children in these various unfortunate circumstances but it cannot ignore them indefinitely or without cost. Sooner or later, a sizable number of them are going to show up as juvenile delinquents, as mentally retarded children, as emotionally disturbed patients in institutions, as adolescent drug addicts. Some may survive the school years but show up in prisons as young adult criminals, or in hospitals as mentally ill, or on the welfare rolls as unemployable. One or two may even show up on television screens as a Presidential assassin.

(Why *all* deprived, damaged children do not come to a dismal end, why some actually develop from this adversity a thriving will to succeed, is a blessing and a mystery. But one can speculate that behind each hard-hit child who later makes it in life there is someone—an older brother or sister, a devoted grandmother, a minister, a teacher, an athletic coach—who cared a lot and provided the youngster with a model and with guidance.)

The Mondale bill which President Nixon vetoed is based on the theory that a big investment of money and effort in children, especially in the years from birth to 6, would save some of them from disasters later on and might actually reduce the amount of money that society now has to spend on juvenile-delinquent centers, prisons, mental hospitals, and other kinds of human repair and rehabilitation. In asserting the Government's comprehensive interest in these formative early years, the bill has many precedents, such as the long campaign against child labor, the public health effort to cut down infant mortality, the White House conferences on children and youth held once a decade since 1909, and the widely popular Head Start program enacted as a part of the poverty program.

Building on the Head Start model, the bill would go far beyond merely providing a convenient place near home or work where an employed mother could leave a child. It would establish child-development centers in every community. A child could get one, two or more meals, depending upon how many hours he stayed each day. A center would contract with outside doctors or clinics to provide medical, dental or psychiatric diagnosis and care. It would begin the education of preschool children and make available to them, as well as to older children, "summer, weekend, vacation and overnight programs." Parents would serve on the board of the center, and, if unemployed, they might be enlisted as volunteer workers or paid employes. In some circumstances, a mother might be paid to care for four or five children—her own as well as others—in her own home. This is called "family day care." Where needed, a professional or a trained volunteer would be sent out from the center to instruct and assist uneducated, inexperienced or underconfident mothers in baby and child care.

In short, this comprehensive approach is intended to be an active, responsible partner to every mother and, if a mother is absent, ill or indifferent, to serve as the best possible substitute. An ambitious concept realized in only a comparatively few existing centers, it signifies much more than the less expensive and more common day-care centers where children are, in effect, only in protective custody. "Custodial" child care is a dirty word among the experts in this field.

The Mondale bill covers all children from birth through 14. There is comparatively little controversy, however, about the older children in the 6-to-14 age group who attend school. For them, the problem is primarily to find a place where they can play or otherwise usefully occupy themselves for two or three hours after school until their parents pick them up.

The conflict over comprehensive child-development programs concerns the 22 million children under the age of 6. In theory, the bill would permit a rich woman—Mrs. Nelson Rockefeller or Mrs. Robert Kennedy—to send her child to a development center if she wanted to pay the fee. But, as a practical matter, the bill is primarily intended to help the children of working mothers and those in poverty families. About seven million children in the under-6 age group have mothers who work. (The number of mothers in the work force has doubled since 1950, and the trend seems to be steadily upward.) About four million children live in families which are in dire poverty and about an equal number in families which are above the poverty line but still in straitened circumstances.

Poverty children are not identical with the children of working mothers, although the two groups overlap. In fact, proportionately more mothers work in families with annual incomes above $10,000 than in families with incomes below $3,000. This paradox is understandable because more middle-class women have marketable skills and have the money to pay for maids, babysitters, private nursery schools and other forms of child care. But some of the confusion that surrounds the child-development issue is caused by the fact that mothers in quite different circumstances—the highly paid advertising woman who lives in Scarsdale, the factory worker's wife trying to eke out her budget in Queens the 17-year-old unwed mother just arrived in Bedford-Stuyvesant from a farm in South Carolina—are lumped together for purposes of discussion, and arguments which would be applicable to the family circumstances of one woman are used to justify or attack programs to help women in entirely different circumstances.

Although children from every kind of family could conceivably participate, the real emotional force behind the drive for comprehensive child development is the desire of liberal, compassionate people to improve the chances in life of children from the nation's worst-off families—migrant laborers and sharecroppers, unemployed miners in Appalachia, impoverished Mexicans, Puerto Ricans, Indians and blacks. Two-thirds of the places in the child-development centers would be reserved for the children of these low-income families.

In testimony before a Senate subcommittee, John Niemeyer, president of the Bank Street College of Education in New York City, graphically described the plight of families trapped in a city slum. "These families needed all kinds of help," Niemeyer reported. "Typically there was a mother with four or five children, a father not in the picture regularly—although that is not true in all of the cases—and the needs run in this order, as far as we could ascertain them:

"First of all, these adults are physically ill. Secondly, they live in constant physical fear—and very real fear. Fear of the pusher, fear of the person breaking in and stealing everything out of your meager little apartment, fear of the children getting run over in the heavy traffic in the streets. . . .

"And then the third great need, particularly on the part of mothers, is help with loneliness, with a tremendous feeling of vacancy in their lives. In fact, I am inclined to believe one of the problems that surrounds the whole question of . . . birth control, and so on, with people of this kind, is the problem of loneliness. Because I feel that many of these mothers, (when they have a baby) for two or three years have something to love and to fondle, and so on. I really think this fills a void in their lives, and I don't think that a knowledge of birth control will make a significant difference as long as we have these particular human emotional needs. . . .

"Now this seems almost unbelievable, but I think that it is easy for us to put ourselves into the position of a person like this, women who spend all day in bed because there is nothing in the home except a television. And the television, of course, has been the greater pacifier and mesmerizer of children because almost the minute they can see, they are propped up to watch this image that is flickering there—it's almost, I think, like hypnotism."

In what is rather an understatement, Niemeyer concluded: "These are the parents and families for which intervention is necessary."

Not all welfare mothers and their children are in the desperate circumstances described by Niemeyer. Some have personal strengths. But the apathy, physical squalor and fear are brutal realities. So are the low-grade infections and correctible physical defects which sap their energies. The question is what the state can effectively do to help. In an interview, Senator Mondale told me:

"In the last several years of traveling around the country and holding hearings on different aspects of the poverty problem, I examined all the different approaches—manpower training, enriched education, rehousing, and so on—and I kept coming back to the view that we have to reach these children in their first five years and do everything we can to improve their chances in life. For most of us, this is a great, rich, wonderful society full of hope and opportunity. But some people are outside the mainstream of American life. Are we content to say that hundreds of thousands of children because they were cheated at birth and in their early years are to be condemned to lives of failure and frustration?

"Consider a child, white or black or brown, who grows up in a community where he doesn't have enough to eat, lives in squalid, unsanitary housing, grows up without books or any kind of help, grows up in a broken home, grows up amid a depressed environment, without any health care, and then goes to what is often the worst school in town. The reactionaries of this country are trying to describe efforts to help that child as welfare, which is the code word by which we deliver money from 'decent, hard-working Americans' to this child and others like him, when in fact the issue is justice, permitting children to have the same chance in American society."

If a desire to improve the lot of impoverished children is one force behind proposals for comprehensive child development, the program's political appeal is enhanced by the benefits it offers three other groups of families: There are the families in modest economic circumstances with husbands who work but barely earn a subsistence income and wives who work part-time or full-time to pay for a few comforts beyond the family's necessities; these are the "working poor." A

second group consists of middle-class women who ordinarily would not have to work when their children are small but who are driven back into the job market prematurely because of divorce, or the death or illness of their husbands. Third, there are the families in which husbands earn a satisfactory income but the women work by choice. These middle-class wives often argue for day care in terms of women's "liberation."

A fourth category might be families in which the husbands earn adequate incomes and wives do not pursue careers, but might do so if high-quality day care were available. In other words, comprehensive day care is not only a response to the increasing number of working mothers but its existence would probably serve to accelerate that trend.

Since the working poor, the widowed or divorced heads of middle-class families, and the "liberated" career women comprise a huge number of people, it is not astonishing that politicians in both parties climbed aboard the comprehensive child-development bandwagon. The bill passed the Senate, 63 to 17. Yet it is the inclusion of these other categories of people that also triggers the opposition. Their coverage makes it unmistakably clear that the Government is not setting out to cope with a limited and—if all goes well—diminishing number of impoverished children. Rather, it is embarking upon a program which could cover virtually all children and would not only recognize but confirm a profound change in the way in which Americans rear their children.

The opposition in and out of Congress has formed on both economic and cultural grounds. In the original version of his bill, Mondale proposed spending $2-billion in the first year of operation, $4-billion in the second year and $7-billion in the third. These subsequent authorizations were dropped from the modified version that passed the Senate, and news stories usually referred to the bill as having "a $2-billion price tag." Once the program was fully under way, however, even if all eligible children did not participate and many of those who did were charged modest fees, the annual cost would be in the range of $20-billion to $30-billion a year. The cost of quality care for children in which food, toys, equipment and medical care are provided is at least $2,000 a year for each child. Dr. Jerome Kagan, chairman of the White House Conference's panel on day care, offered these rough estimates in Senate testimony:

"As you might expect, private centers run more efficiently than public centers. My impression is that, if you are working with preschool children 2½ to 5 years of age, $45 a week [per child] will run a pretty good private center. A public center which has more bureaucracy will probably be given $55 or $60 a week. You have to add 10 to 20 per cent for infants. It is more expensive to have a center for the first two years of life. . . . If this becomes a popular and approved way of raising American children, one could have half the population of children aged 0 to 6 requesting day care. You could spend all the money you want: 13 million children at $60 a week, which is $3,000 a child a year. If you pause to multiply those figures you have an enormous amount of money—$39-billion."

As it developed, President Nixon vetoed the bill for broad reasons having little to do with fee schedules or financial cost. The cost is probably not a decisive consideration for those on either side of the argument.

It gives hostile critics a handle with which to attack the bill, but most conservatives, when candid, admit that they would not like the program even if it cost only half as much. Liberals meanwhile dismiss the financial argument with the assertion that if this country can afford to subsidize aerospace companies and build a space shuttle, it can afford to invest huge sums in its own children.

More fundamental to the debate is the philosophy underlying the bill, which President Nixon attacked head-on, thereby evoking the angriest response from the bill's advocates. Liberals were quick to point out that his veto was a sop to the right wing of the President's party and that the Presidential candidacy of Representative John Ashbrook, a convinced conservative ideologue, may have had more than a little to do with Mr. Nixon's decision.

Most conservatives on Congress bitterly oppose President Nixon's Family Assistance Plan, better known as "welfare reform," a creditable if modest attempt to introduce the principle of a minimum income for every family. In opposing the Comprehensive Child-Development Bill, they argue in much the same way as they do against President Nixon's Family Assistance Plan. Unstated but clearly visible is their conviction that a guaranteed minimum income for poor families would merely encourage them to have more babies. Their second conviction is that the poor are financial failures solely because of moral turpitude or personal weakness. If they are poor, they deserve to suffer the consequences. (This is the converse of the sentimental liberal view that the poor cannot be held mortally accountable to any degree for their behavior and that society is to blame for everything.) Rejecting the evidence of new psychology and old common sense, conservatives insist upon applying a rationalistic carrot-and-stick economic theory as if welfare mothers were so many calculating Benthamites. If only the right economic pressures can be found, these conservatives believe, welfare mothers can be squeezed off welfare and onto private payrolls—as if a woman's employability in the market place were the highest test of her moral worth or her usefulness to society.

In trying to sell the Family Assistance Plan, Mr. Nixon has pandered to these conservative prejudices—and involved himself in a glaring contradiction. Thus, his welfare bill would provide $750-million annually to pay for day-care centers for the children of welfare mothers, so that these women can be trained and can work. It would apply initially to women with children over 6 and, after a short time, to those with children over 3. But in vetoing the Mondale child-development bill last December, Mr. Nixon piously warned against committing "the vast moral authority of the national Government to the side of communal approaches to child rearing over against the family-centered approach." Why is it right to coerce welfare mothers to put their children in Government-financed day-care centers in order to go to work and wrong to assist other women who voluntarily want to do the same thing?

Libarals and radicals, on the other hand, argue vigorously in behalf of comprehensive child-development centers for reasons which have only indirectly, if at all, to do with children and the family. They want child-care centers to energize the parents and get them involved in the community. Mrs. Maurien McKinley, associate director of the Black Child Development Institute in Washington, expressed a view put forward by numerous witnesses: "We believe that child-development centers can be the catalyst for total community development. It is to the advantage of the entire nation to view the provision of day-care/child-development services within the context of the need for a readjustment of societal power relationships. . . . As day-care centers are utilized to catalyze development in black and other communities, the enhanced political and economic power that results can provide effective leverage for the improvement of the over-all social and economic condition of the nation."

Translated from sociological jargon, this is the community-action theory which underlies the poverty program and the Model Cities program. It is the theory that only if the poor are organized and power taken away from "the Establishment" is progress possible. All the establishments—the politicians, the schoolteachers, the social workers, the doctors and medical administrators—are regarded as more harmful than helpful to the poor because of their heavy-handed paternalism. Without getting into the pros and cons of this complicated argument, one can see that the community action has more to do with helping adults to fight City Hall than with helping fathers and mothers to rear their children.

Politics aside, however, President Nixon's argument against actively encouraging the shift from the family to day-care center as the prime agent in child-rearing goes to the heart of the issue. Are child-development centers desirable for any children other than the most damaged and deprived? The unpopular truth is that any community facility—call it a day-care center or a child-development center—is at best an inadequate unsatisfactory substitute, and at worst a dangerous, destructive substitute for a child's own mother.

In the months of infancy, a child's whole universe consists of himself and the person who feeds him, dresses him and responds to his cries and other signals for attention. Although the development of a human being is imperfectly understood since babies cannot talk, intensive research by Dr. Margaret Mahler and other experts on what psychiatrists call the "separation-individuation process" shows that in the period from approximately 6 months of age to 2 years, critically important events are taking place in the formation of a child's personality. During those months, he learns that his mother is not just an extension of himself, that he is a person in his own right, that his mother can leave him and that there are other persons in the world besides himself and her.

Superficially, it is true that anybody can feed a baby or change his diapers. But in the most profound emotional sense, a baby's whole sense of himself depends upon the warmth and consistency of the relationship that he has with the person who takes care of him. If he is indifferently or inconsistently treated by a succession of various adults—as he would tend to be if left in a day-care center for 8 or 10 hours a day—he is truly a deprived child. Psychological research indicates that anxieties, depression, passivity and other serious handicaps may develop. From 2 to 3 years of age, a toddler learning to talk and to run about can begin to stutter or suffer other impairments, from slight to serious, if he is subjected to severe emotional upheaval—such as a shift from family care to day care. In the years from 3 to 6, other important though less dramatic stages of development unfold in the child's life. For these reasons, most well-run nursery schools which serve middle-class and upper-class families rarely take children before they are 2½ or 3 years old, and do not keep them more than three or four hours a day until they are at least 5 years old.

Day-care centers have become important institutions in this country in recent years as the number of working mothers has increased, but other nations have had much longer and more extensive experience with them. Dr. Dale Meers, a Washington psychiatrist, has reported on a study of programs in the Soviet Union, Hungary, East Germany, Czechoslovakia, Greece, Israel and France. The report, published by the U.S. Office of Economic Opportunity and entitled, "International Day Care: A Selective Review and Psychoanalytic Critique," is hardly an encouraging document. In the Soviet Union, Dr. Meers reports, senior officials who run the day-care centers do not make use of them for their own children. "Their preference [is] to

use their incomes to employ someone to care for their children at home." Dr. Meers found that Hungarian officials hoped eventually to eliminate day care for children under 3 because of the "manifest unhappiness" of the child. In Czechoslovakia, the best day care "appeared hygienic, sterile and depressing." In every country, Communist and non-Communist alike, officials encountered serious problems of staffing and rapid turnover.

"Nursing staff covertly resist continuity of care of one or more babies. Indeed, it was a common experience, internationally, that care-givers often could not readily identify their children by name and, with babies, did not know with certitude whether each one had been fed. . . . The younger and less active the child in the day nursery, the smaller the amount of attention he received.

"Multiple mothering all too frequently provides an uncoordinated octopus. The multiplicity of care-givers, their overlapping of shifts, their replaceability for illness or holidays, their departures for other employment, all leave the very young child accommodating first to one and then to another."

The enthusiasts of day care more often point to Israel where many children are communally reared in the kibbutz. But more sophisticated advocates agree that Americans have a tendency to idealize the Israeli situation. "One must draw on one's own cultural tradition, one's own identities," for the institutions that will solve the problems, Dr. Urie Bronfenbrenner of Cornell University observed to the Mondale subcommittee. Israel is a small, beleaguered nation with the uniquely high morale of people who feel themselves under siege and fighting for their very existence. No comparable sense of common danger and communal life in the United States, a vast rich, diverse and relatively sheltered country. A kibbutz, moreover, is a small, agricultural community where the parents work in the fields close by the "children's house" and are available to their children for three or four hours a day in the late afternoon and early evening.

Israeli practices in communal child rearing are the subject of intense controversy both within Israel and among outside experts. The evidence is not all in because really thorough scientific studies are only now being conducted, but there is some indication, as Dr. Bruno Bettelheim reported in his book, "The Children of the Dream," that kibbutz-raised children show significant personality differences from children raised in the conventional family. For example, the kibbutz children get along well with their peers and are very loyal to their group, but often seem incapable of deep emotional attachments and creative intensity.

In short, the experience of other countries with state-provided communal child care on a large scale does not suggest that this is a course on which the United States should enthusiastically embark. The risks for many, though not all, children range from mild neuroses and developmental lags to serious maladjustments.

Nor does the evidence cited in the Mondale Subcommittee's own hearings support the exaggerated claims made for parental involvement and control. The A.F.L.-C.I.O., a principal supporter of the bill, submitted a lengthy, glowing report on a day-care center operated in Chicago by the Amalgamated Clothing Workers Union for its own members. The report states: "Because the parents work, they are not free to come into the center during the day to investigate its benefits; after work, they are tired, with little interest in coming to evening parents' meetings. Therefore, education of the parents with regard to center capabilities is a slow process. There has been only one parents' meeting held, on a Sunday. Attendance was 50 per cent. The parents do bring the children in the morning and pick them up at night, so there is a brief opportunity to see what the children are doing and to visit with the staff."

That is the actual degree of parent participation in a center which the AFL-CIO describes as "a Rolls-Royce of day care."

There is a radical alternative to child-care centers which I believe would avoid the staffing difficulties, the psychic risks and the other drawbacks of communal care: Pay mothers to take care of their own children in their own homes.

Many years ago, Dr. Benjamin Spock put forward the ideal solution in his characteristically simple, straightforward language. In "Baby and Child Care," he wrote: "Some mothers have to work to make a living. Usually their children turn out all right because some reasonably good arrangement is made for their care. But others grow up neglected and maladjusted. It would save money in the end if the Government paid a comfortable allowance to all mothers of young children who would otherwise be compelled to work. . . . It doesn't make sense to let mothers go to work making dresses in a factory or tapping typewriters in an office, and have them pay other people to do a poorer job of bringing up their children."

A comparison of costs suggests that the Federal Government, if it chooses to do so, can as easily pay a mother to take care of her own children as to finance them in a day-care facility. Most working mothers, unless they have high professional qualifications, would consider themselves fortunate if they found work paying $150 a week ($7,800 a year). After deductions for Federal and state incomes taxes, Social Security, union dues, lunches and carfare, their take-home pay would be about $100 a week, or $5,200 a year. To provide the kind of comprehensive child care which the Mondale bill envisages could easily cost $2,600 a year a child. If that sum were paid directly to the mother of two children, she would have as much income as if she went out to work.

Such an approach would not solve all the problems of all the broken and overwhelmed families at the bottom of the heap. They and their children would still need the kind of direct help that social workers have long tried to provide. But the direct approach would meet the needs of the millions of children of the working poor and of those middle-class single parents—widows, widowers and divorcees—who are perfectly capable of coping with life and taking care of their own children if only they had more money. The financially well-off mothers who work only for their own satisfaction would not benefit, because any family allowance they received could be largely offset by higher taxes.

True equality between the sexes is wholly desirable, but the liberation of women must not become a potential defeat for young preschool children. Women should try to combine a full-time job with raising small children. It is a rare and exceptionally gifted woman who does something more important in the outside world than she does during those critical first six years when she is helping to form the personality and character of a child.

Essentially, it is a matter of making a rational choice. If a young woman decided to join the Peace Corps, she would know that she was signing up for two years of her life. If she decided to go to medical school, she would know that she was committing herself to four years of hard work. I suggest that if a woman decides to have a baby, she should know that she is signing up for six years before she can return to work full time.

The direct, simple method of paying parents to stay at home with their children is perhaps utopian, basically because Americans do not believe in the family as much as they think they do. No one can say when or if Americans will reinvigorate those values which make parenthood the most serious human vocation, which are essential to sustain happy, effective families and which, if practiced, would truly make this country what it now mistakenly thinks it is—a child-centered society.

RESOLUTIONS AND MESSAGES ON THE DEATH OF JAMES F. BYRNES

Mr. THURMOND. Mr. President, James F. Byrnes was a close associate and friend of the late Senator Ben Tillman from South Carolina. Mr. Byrnes served in the House of Representatives while Senator Tillman served in the Senate. In addition to their close personal friendship, they had many things in common, but perhaps none was closer to them than Clemson College, now Clemson University. Mr. Byrnes served as a life member of the board of trustees of Clemson for over 30 years. I ask unanimous consent to have printed in the RECORD the resolution adopted by the trustees following Mr. Byrnes' death and also a resolution adopted by the Clemson Student Senate.

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

RESOLUTION

Whereas, the members of the Board of Trustees of Clemson University desire to record their profound sorrow upon the death on April 9, 1972 of their good friend and esteemed associate, James Francis Byrnes, whose service as a member of the Board of Trustees of Clemson University spanned a period of thirty-one years; and

Whereas, as a member of the Board he gave unstintingly and effectively of his time, talents, resources, counsel and advice to further the growth of Clemson University and to develop its academic excellence; and

Whereas throughout his illustrious career of dedicated public service he benefited, not only the peoples of his native state, but those of the nation and the world, through the offices which he held of national and international significance, formulating through his wisdom, tempered by humaneness, actions and policies inuring to the benefit of his fellow man; and

Whereas, in his death, Clemson University, the State of South Carolina, the United States of America, and the world at large have lost an unselfish and untiring servant and a truly outstanding and public-spirited world citizen.

Now, therefore, be it resolved, That the Board of Trustees of Clemson University makes formal acknowledgement of its grievous loss in the passing from this life of James Francis Byrnes, a great and good leader who labored well in the love of service to his fellow man, whose leadership and guidance were an inspiration to the peoples of this state and nation, and who dedicated himself in word and deed to the struggle of man for a more perfect existence.

ONE OF SOUTH CAROLINA'S FINEST

Whereas, the great South Carolina statesman, James F. Byrnes, has recently passed away, and

Whereas, the Student Government of Clemson University wishes its condolences be known to the family of James F. Byrnes,

Be it resolved by the Clemson University Student Senate in regular session assembled the following:

I. That we, the Student Government of Clemson University, offer our condolences to the family of the great South Carolina statesman, James F. Byrnes.

II. That we further recognize the accomplishments of James F. Byrnes to Clemson University, to the State of South Carolina, to the United States of America, and to the world.

III. Copy to: the family of James F. Byrnes

Mr. President, in addition to serving on the board of trustees of Clemson, Mr. Byrnes also served on the board of trustees of Converse College, a liberal arts college of national recognition for women in Spartanburg, S.C., of which Mrs. Byrnes was a graduate. I ask unanimous consent that the resolution adopted by the Converse board of trustees be placed in the RECORD at the conclusion of these remarks.

Whereas, James Francis Byrnes exemplified in his lifetime a devotion to principles and duty characteristic of the greatest of statesmen, and

Whereas, collectively, he served with singular distinction in more elective and appointive offices in his native state and nation than any other public servant in this country's history, and

Whereas, his service redounded to his honor and to the honor and glory of South Carolina and the United States, therefore

Be it resolved, that we, the Board of Trustees of Converse College do stand in prayerful tribute and with grateful hearts for the privilege of having known and served with James Francis Byrnes, lawyer, Congressman, Senator, Supreme Court Justice, statesman, Governor, and Honorary Life Member of the Board of Trustees of this institution, and

Be it further resolved, that a copy of this resolution remain forever inscribed in the annals of Converse College, and that a copy be sent to his beloved wife and helpmate, Maude Busch Byrnes, Class of 1902.

Mr. President, people from all walks of life have expressed sorrow at the passing of James Francis Byrnes and paid tribute to this distinguished South Carolinian. Many messages were received in Columbia. I ask unanimous consent that these now be placed in the RECORD following these remarks.

I have held highly in esteem Mr. Byrnes, as a great American statesman who has helped shape the history and future of your country and whose death was a great loss to the United States as well as to the world.

NOBUHIKO USHIBA,
Ambassador of Japan.

It is with gratitude that we remember his (Mr. Byrnes) efforts for the reconciliation between the American and the German peoples during the years from 1945 to 1947 which were fateful to us Germans. We think of him in respect and gratefulness.

WALTER SCHEEL,
Federal Minister of Foreign Affairs, West Germany.

Few men in our history have had such a profound impact upon the lives of Americans and have been in a position to use their talents in as many ways to benefit our citizens His deeds will long stand as a monument to him.

J. EDGAR HOOVER,
Director, Federal Bureau of Investigation, U.S. Department of Justice.

The name of James F. Byrnes will be remembered for the long and distinguished service which is unparalleled in our time. He has left an indelible mark on the country he loved.

My colleagues in the Department of State join, too, in paying tribute to the memory of the man whose efforts helped shape our world.

WILLIAM P. ROGERS,
Secretary of State.

As a member of the House of Representatives, Senator, Supreme Court Justice, the number one assistant to President Roosevelt, Governor of South Carolina and Secretary of State, Mr. Byrnes was the greatest American statesman for more than two generations. Just last week I reread his book. My life was enriched by his friendship and I mourn his passing.

CARL VINSON,
Former Chairman of the House Armed Services.

Even though I have not had the privilege of seeing him (Mr. Byrnes) in recent years, I feel a definite loss in the passing of a cherished friend.

During his public life I began in the late Thirties to consult and work with him on many matters of domestic and international nature and greatly respected his judgment and valued his friendship. His broad experience and diverse responsibilities elevated him to a position of great distinction.

JOHN W. SNYDER,
Former Secretary of the Treasury.

Governor Byrnes was one of the greatest and wonderful men I ever had the privilege of meeting. He was one of the greatest statesmen in American history. I shall never forget his many kindnesses to me. I shall always cherish his memory.

REV. BILLY GRAHAM.

"The memory of his (Byrnes) fruitful life and his wonderful friendship will be with us always."

JACK BELL,
Formerly of the Associated Press, and now a newspaper columnist for Gannett Newspapers.

"The country has lost a great statesman, a great American."

EDWARD BALL,
President, Jacksonville Properties, Inc.

"I never worked for a man I admired more than Jimmy Byrnes. No man of this century enjoyed a more distinguished public career."

WILLIAM BENTON,
Former Senator from Connecticut and Assistant Secretary of State under Mr. Byrnes.

"The nation has lost a great statesman, and I have lost a great friend."

DAVID LAWRENCE, *Columnist.*

"He was indeed a great man and a warm friend."

ALLEN SHIVERS,
Former Governor of Texas.

". . . . Jim was my inspiration, in many ways, from the time of my arrival in Washington. Some time later when I joined with Frank (Hogan) in law practice, Jim, as Frank's cousin and devoted adviser, became my fast friend. I shall miss him knowing that his strength, wisdom and cheerful manner are no longer at hand."

NELSON T. HARTSON,
Senior Member of the Legal Firm of Hogan and Hartson, of which Mr. Byrnes was "of counsel" between his service as Secretary of State and Governor.

He (Governor Byrnes) was a great executive, legislator and judge to whom the nation owes much. I know that General Marshall prized his advice and counsel.

MARSHALL S. CARTER,
President, George C. Marshall Research Foundation.

I join the millions of Americans who admired Mr. Byrnes as one of the great men of our time and who mourn his death. His accomplishments as a public servant will live and be an inspiration to Americans for generations to come.

DONALD E. JOHNSON,
Administrator, Veterans' Administration.

I consider the opportunities that I had to be associated with him (Mr. Byrnes) one of the highest privileges that I have experienced.

LEWIS B. HERSHEY,
General, USA, Adviser to the President.

From all quarters and nations at this hour will come great tributes to this great man. And at such a time I feel I must speak on behalf of the mentally ill of this state, of yesterday and of today and of the future, who will look to Mr. Byrnes' tremendous contributions, both as Governor and personally, toward the better treatment and comfort and understanding of the sick. The impetus he gave this state's mental health program during his term as Governor, still exists today and we are all so grateful for his lifelong compassionate interest in the welfare of the mentally ill.

WILLIAM S. HALL, M.D.
State Commissioner, S.C. Department of Mental Health.

OMNIBUS HOUSING AND COMMUNITY DEVELOPMENT

Mr. MONDALE. Mr. President, as Congress proceeds this session with its deliberations on major omnibus housing and community development legislation, I feel it is appropriate for the Members to consider the full context into which these new programs will operate. Much has been written with respect to the role and scope of the present administration's urban policies. However, a great deal of this material remains shrouded in partisan rhetoric during an election year.

An excellent article has recently been published which avoids this subjective political pitfall. This article, from the February–March issue of the Journal of Housing, is entitled "1972: A Year of Truth For the Future Course of Urban Affairs." It is an excellent objective analysis of the directions any administration can lend to Federal assistance programs without legislative mandate from Congress. The article, by Mary K. Nenno, Director, Division of Program Policy and Research of the National Association and Redevelopment Officials, is an interesting and enlightening documentation of the Nixon adminstration's goals and direction in urban affairs.

It traces the general trends in administrative and legislative initiatives which have occurred over the past three and a half years and identifies two major trends: a shift away from Federal "lead responsibility" for problem solving with more reliance on local responsibility; and the creation of a "new bureaucracy" in line with the Nixon administration's focus on "new federalism." These two changes have been accomplished mainly through administrative action, although the thrust of the administration's legislative program is geared to the same ends and the article discusses the legislative program from this viewpoint.

Mr. President, I suggest that this article, which also analyzes the proposed HUD budget for fiscal year 1973 in light of the new directions of the Nixon ad-

ministration, should be closely read by all who are concerned about our national policy toward cities and urban areas. I ask unanimous consent that this article be printed in the RECORD.

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

1972: A YEAR OF TRUTH FOR THE FUTURE COURSE OF URBAN AFFAIRS

(By Miss Mary K. Nenno, Director, NAHRO Division of Program Policy/Research)

(Administrative changes, made over the past two years, mostly without legislation, have already shifted the direction of housing and community development programs. Basic new authorities in proposals now before the Congress for action in 1972 can accelerate or trim these directions. The 1972 Presidential election will seal or adjust, but probably not completely reverse, the present course.)

The basic goals of the Nixon Administration in urban affairs, particularly in housing and community development, are becoming more and more visible in the structure and direction of federal assistance programs. What began, in 1969, as an *objective*, is becoming, in 1972, a *fact*.

In December 1968, on the eve of the entrance into office of the Nixon Administration, the JOURNAL OF HOUSING identified these early indications of the goals for urban programs . . . "Bringing the nation together toward the center . . . modernizing the machinery of government . . . channeling more of the action through private enterprise, state and local government, and voluntary institutions."

In August 1970, the JOURNAL saw evidences of progress toward these goals by the Nixon Administration in mid-stream: ". . . the major policy directions remain intact, although they are being shaped by shifts in personalities and the political process and, most of all, by the continuing pressures of the Vietnam War, inflation, and the tight federal budget. The first major attempts to implement the goals came in the budget for fiscal 1971 and in the August 1970 message on the 'new federalism,' accompanied by 1970 legislative proposals on welfare reform, general revenue sharing, and consolidation of housing programs."

In February 1971, the JOURNAL saw the theme of the "new federalism" gradually dominating the direction of urban affairs in the Nixon Administration, moving away from the stress in the 1960's on "urban problems" as the focus of domestic action to the six goals of the "new American Revolution: renewing state and local government . . . welfare reform . . . general revenue sharing and special revenue sharing . . . reform of the federal government . . . restoring the natural environment."

In February 1972, the JOURNAL sees many of the Administration's goals already operative, largely through administrative initiatives in 1970 and 1971. The Presidential messages of 1972 on the state of the union, the economy, and the budget contain no new policy or legislative initiatives—nor, in fact, any extensive comment on urban affairs; there is only a short plea for passage of legislation already submitted. But the basic direction of the Administration in urban programs is already being implemented, without legislation.

The question remains as to how any legislative action in 1972 will accelerate or trim the direction already in process. A further question is how fast the full development of this direction can occur under the continuing stresses on the national economy and budget. A final question is whether the American electorate will approve or reject these changes. There is little evidence that the direction of urban programs will be a major issue in the 1972 Presidential election, except as a residual one related to the debate over the defense budget, or as a spin-off from the proposals to relieve the local tax burden. While a rejection of the Administration could result in a reconsideration of the direction of the past four years in urban programs, it is unlikely that it would completely reverse it. An election victory by the Administration would seal and expand it.

Changing Concepts of Federal Assistance Programs: The initiatives of the Nixon Administration in federal assistance, now in substantial effect, are a basic, reversal of the concepts that have dominated the federal approaches to domestic affairs since the 1930's. These earlier concepts were based on identifiable "programs" supported by the federal government and designed to move the nation as a whole toward broad national objectives. Part of the reason for the shift is found in disillusionment over ambitious federal program initiatives of the 1960's that failed to live up to expectations, particularly the "war against poverty." The shift is also related to the increasing complexity of achieving results in a rapidly changing urban society.

The underlying philosophy behind the shift is a faith in decision-making by individuals, particularly as they make choices as to how they spend their money at the local level, rather than in decision-making by the federal government. Some observers see the new direction as the beginning of a new era of freedom and opportunity for solving problems at their source; others see it as a rejection of federal leadership, which, they believe, alone can pull all local areas together toward common objectives and minimum standards. Like most reforms, there is also a middle-ground. The developments of 1972 could well determine whether the prevailing direction, for the next decade, will represent a middle-ground or a shift to the complete "individual and local direction" of the Nixon Administration. There is little enthusiasm anywhere for the massive federal policy initiatives that disappointed many liberal leaders in the 1960's.

The "staying power" of the new concepts is also related to two more subtle changes that have taken place over the past four years: the absorption of traditional programs and program loyalties into a "functional" organization and, more importantly, the installing of a "new bureaucracy" in the federal departments. As the reforms of the New Deal lived on long after the 1930's in the structure of government and in government personnel policies folded into the federal establishment, so too the approaches of President Nixon's "new federalism" appear slated to survive in the new functional organization and in the civil service system, under which the federal establishment will be run for several future years, regardless of a change in the Presidency.

Administrative Initiatives in Housing and Community Development: 1969–71: Beginning in late 1969, a number of administrative actions were undertaken by the Department of Housing and Urban Development, in basic accord with the general policy directions of the Nixon administration. These actions, reflected also in HUD budgets, move away from "programs" to "functions," and from a federal "lead role" to "local initiative" in what housing and community development actions should be undertaken. These initiatives can be summarized under the following general headings: Washington office reorganization; decentralizaiton into area offices; consolidation of categorical programs; allocation of federal assistance by formula; and a new focus on general purpose local government. These initiatives have long-term implications: the traditional "programs" have all but lost their identity at the federal level; a new "bureaucracy" has been installed to run housing and community development programs, particularly in the area offices.

Organization of the Washington Office of HUD: In November 1969, HUD Secretary George Romney annouced the first of two major reorganizations of the Washington office of HUD. This first organization provided for a realignment of program responsibilities of the assistant secretaries of the department, which has been in effect since the organization of the new cabinet department in February 1966. In the 1966 organization, for example, the public housing and urban renewal programs were combined under one Assistant Secretary for Renewal and Housing Assistance; they were clearly identified as integral programs, each headed by a deputy assistant secretary. In the November 1969 reorganization, the public housing program was split between production and management, with functions assigned to two assistant secretaries; there was no high public official designated to run the public housing "program."

In the second reorganization of February 1971, the urban renewal program was absorbed under an Assistant Secretary for Community Development, becoming just one program among many. As the table on budget outlays on page 67, shows, the proportion of community development funds allotted to urban renewal programs has declined from 71 percent to 40 percent over the period since 1969. The categorical programs for community development have already been consolidated in the administrative structure of HUD, without waiting for proposed legislation to pass the Congress. If proposed legislation is passed in 1972, it likely will provide new flexibility for local governments to use "block grants" of federal assistance for a broad range of purposes, without restriction to previous categorical programs.

The President's "executive reorganization" legislation presently pending before the Congress would be a still further move toward functional—rather than program—organization in a new Department of Community Development. The assistant secretaries for the new department would be staff officers dealing with such functional responsibilities as research and technology, equal opportunity, audit and inspection, and financial policy. Four administrators would head the following functions: urban and rural development, community transportation, housing, and federal insurance.

"Urban" community development would become one of a dozen community development areas under the Administrator for Urban and Rural Development; public housing activity would remain separated under the functional designations of associate administrators for housing production and for housing management. The depth of the shifts in departmental organization can be seen by recalling that, prior to the creation of HUD in 1965, the urban renewal and public housing programs were both headed by commissioners, loosely coordinated by the administrator of the Housing and Home Finance Agency. The public housing commissioner was appointed directly by the President. It is clear that traditional program identities are being rapidly absorbed in a new functional structure.

Decentralization of HUD into Area Office: Beginning in March 1970, HUD began the decentralization of its operating programs to 39 newly-created area offices. In February 1972, this task has been substantially completed. The impact of this decentralization can be seen clearly in the following table:

PERMANENT FULL-TIME PERSONNEL: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, 1969-73

	Comparable June 30, 1969	Estimated June 30, 1972	Estimated June 30, 1973
Central office	4,456	3,308	3,308
Field offices:			
Regional offices	3,836	1,220	1,220
Area and insuring offices	6,203	10,255	11,005
Audit and investigation staff	277	417	417
Subtotal	10,316	11,892	12,642
Total	14,772	15,200	15,950

	Comparable June 30, 1969	Estimated June 30, 1972	Estimated June 30, 1973
Distribution of field office staff by activity:			
Housing production and mortgage credit	[1] 6,292	7,250	7,850
Housing management	[1] 930	1,550	1,675
Community planning and management	333	350	375
Community development	992	1,000	925
Fair housing and equal opportunity	356	275	350
Federal Insurance Administration			20
Research and technology		50	30
Regional management and services	1,136	1,000	1,000
Audit and investigation	277	417	417
Total	10,316	11,892	12,642

[1] 6,292—FHA insuring offices; 930—Housing assistance (public housing) offices.

In 1969, 30 percent of the HUD personnel was in the Washington office, 26 percent in regional offices, and 42 percent in FHA area insuring offices. By 1973, it is anticipated that only 21 percent of the HUD personnel will be in Washington, 8 percent in regional offices, and 68 percent in area and FHA insuring offices. In the functional distribution of employees, "community development" largely the urban renewal program, has shown a net decline in personnel over the five-year period. Behind the numbers are the shifts to new faces. Transfers from Washington and regional offices have resulted in a large number of retirements by existing personnel. Presidential orders for staff cut-backs in 1971 have further accelerated personnel changes. While the gross number of employees of HUD shows only a modest change since 1969, it obscures the fact that the persons behind the numbers are not the same. A "new bureaucracy" now runs the housing and community development programs.

Consolidation of Programs and Allocations by Formula: A still further initiative by HUD over the last two years has been to consolidate the categorical housing assistance and community development programs. Legislative proposals involving consolidation—the proposed *Housing Consolidation and Simplification Act* and the *Special Revenue Sharing for Urban Community Development Act*—are currently awiting action by the Congress. (A full description of this legislation is shown in the foldout chart in the 1971 No. 9 JOURNAL.) Actions to consolidate, however, have not waited on the passage of legislation. As indicated above, changes in the organization of the Washington office of HUD, also reflected in the new area office organization, have consolidated categorical programs under new functional headings.

Both the "proclaimer" policy (see 1970 No. 6 JOURNAL) and the "annual arrangements" techniques (see 1971 No. 4 JOURNAL) are methods by which separate categorical programs for federal assistance can be combined in a local community program and funded as a "block." The inauguration by Assistant Secretary Eugene Gulledge in 1971 of a "fair share" method of disbursing housing assistance funds by a "formula" related to population and housing need factors, rather than at the individual requests of localities, is further evidence of consolidation, as well as a preparation for the pending legislation that involves "revenue sharing" formulas. New legislation will only confirm and give further impetus to changes already underway.

A New Focus on General Purpose Local Government: Implicit also in the recent initiatives of HUD, both legislative and administrative, is a new dependence on general units of local government—and in consequence—a move away from special authorities, such as local housing and renewal authorities. The pending legislation submitted by the Administration on *Special Revenue Sharing for Urban Community Development* calls for assistance to go directly to general units of local government, with local authorities receiving their funds through this source. Pending legislation on "planning and management" (see 1971 No. 8 JOURNAL, page 395) would provide new assistance funds to strengthen the capacity of local government to direct and coordinate local programs, including community development programs. The "planned variations" experiments of the model cities program (see 1971 No. 10 JOURNAL, page 547) are the first steps to transform this program from an "operating" program to a "coordinating" mechanism in the mayor's office.

HUD Policy Initiatives: At the same time as basic changes were being pursued in the administrative structure and processes of HUD, the department was undertaking a series of complimentary initiatives in important policy areas. These initiatives began in 1969 with the decision to accelerate housing production and to demonstrate the use of industrialized housing techniques and proceeded in 1970 to include departmental initiatives in the area of "equal housing opportunity." At the same time, with the support of special research authorizations by the Congress, the department began to explore both "housing abandonment" and "housing allowances." The HUD research budget for fiscal 1973 also reflects an increasing emphasis on the area of "housing management," related to the creation of a separate Assistant Secretary for Housing Management in February 1971, as well as increasing concern with Section 236 rental housing program.

A number of policy areas have dominated the public addresses of top HUD officials but have not yet become major policy initiatives: "housing allowances" has remained a research effort, despite the frequent references by Secretary Romney to "the need for a basically new approach to federal housing assistance." Also an expanded HUD effort in the area of "urban growth and new communities," while anticipated in a 1970 draft of a proposed bill prepared by the department, never was launched. In 1971, Secretary Romney spoke increasingly of the need to develop policies related to the "real city," the combination of central cities and their surrounding areas.

In early 1972, the Secretary announced a series of conferences in major cities focused on the question of "neighborhood abandonment," but concerned with area-wide solutions to this growing phenomenon. Rumors that a new policy initiative in this area, "Operation Tacle" (Total American Community Living Environment) would be part of the President's 1972 state of the union message failed to materialize. Undoubtedly, the decision not to undertake major policy actions in these areas was directly related to fiscal constraints resulting from national economic conditions and a tight federal budget.

Expanded Housing Production and "Operation Breakthrough": The earliest major policy initiative of the department was the decision to accelerate housing production and, in particular, to apply new technology to the methods of housing production. The Housing and Urban Development Act of 1968, adopted in the summer immediately preceding the advent of the Nixon Administration, called for the development of 26 million new housing units over a 10-year period, 6 million of which would be for low- and moderate-income families. The new Administration, spurred by the committees of the Congress, accepted the achievement of the housing goals as a major task.

In addition, on May 8, 1969, Secretary Romney announced Operation Breakthrough, designed to achieve low-cost, high-volume housing production through the use of industrialized housing technique (see 1969 No. 5 JOURNAL, page 227). Increased housing subsidies for low- and moderate-income housing, particularly the Section 235 homeownership and the Section 236 rental programs—the interest rate subsidy programs adopted in the 1968 HUD act—were included in the HUD budgets in an accelerated fashion.

Likewise, Operation Breakthrough became the major component of HUD's research and technology program, comprising some 30 million dollars each year, out of a total research appropriation of about 45 million dollars. Indigenous to Breakthrough was the concept of "aggregating housing markets," which involved new arrangements with private builders and public agencies concerned with developing new housing.

This production emphasis has been a mainstay of departmental policy to date. However, beginning in 1971, two developments appeared to put this position in question: one, increasing concern over the rising amount of housing asistance payments in the federal budget; second, the rising rate of mortgage defaults and foreclosures, as well as evidence of poor quality construction in some of the assisted housing developments under the Section 235 and Section 236 programs. These concerns led to departmental decisions in the HUD budget submissions for fiscal 1973 to cut back on the total new units to be started under the HUD housing assistance programs and, in particular, the Section 236 program, including rent supplement backup.

These cutbacks were proposed despite the fact that progress toward the original assisted programs housing goals projected in the 1968 HUD act was about 400,000 units behind, as the table on this page indicates. This gap was largely as a result of decisions not to develop public housing and rent supplements at the levels projected in the original 1968 act goals. The decisions to be made by Congress in 1972 on the HUD budget for fiscal 1973 could determine whether achievement of expanded housing production called for in the 1968 act goals will continue to be a dominant policy. In addition, the year 1972 may also be a "year of truth" for Operation Breakthrough, when it must show through its completed demonstration projects the extent to which industrialized methods and market aggregation techniques result in reduced housing costs and more efficient production methods.

Equal Housing Opportunity and the Project Selection Criteria: Another major area of HUD initiative since 1969 is an area of equal housing opportunity. As in the case of housing and urban development legislation, the Nixon Administration came into office on the heels of a major piece of legis-

lation in the area of civil rights. The Civil Rights Act of 1968 established (1) a national policy on fair housing, (2) a mechanism for handling complaints of discrimination in housing, and (3) an obligation on the part of federal agencies to take affirmative action to further the goals of fair housing. As detailed in the article in the July 1971 issue of the JOURNAL by HUD Assistant Secretary for Equal Opportunity Samuel J. Simmons, the department moved early to undertake actions designed to process complaints on housing discrimination on a case-by-case basis. The department also took early action to stimulate the passage of fair housing laws in the various states; in 1971 HUD tentatively recognized 24 states as having fair housing laws substantially equivalent to Title VIII of the 1968 federal act.

In the second area of activity relative to equal housing opportunity, however—that of administering HUD programs in such a way as to correct discrimination as well as stimulate new housing opportunities—action was slower. As Assistant Secretary Simmons points out in his article, from the very day that Title VI of the Civil Rights Act of 1964 went into effect there was "confusion, controversy and endless discussion as to what the act really comes down to in specific terms." One of the early problems faced by the new Administration in 1969 was the vesting of program responsibility for this activity in each program assistant secretary, rather than in the Assistant Secretary for Equal Opportunity. Approval for transfer of responsibility to this single assistant secretary was not implemented until June 1971, when President Nixon signed an order to this effect. The Assistant Secretary for Equal Housing Opportunity now has full responsibility for Title VI civil rights enforcement, except approval of tenant selection and assignment plans for local housing authorities.

Up until June 1971, HUD activities in the "program administration" area were largely "ad hoc," involving testing on an individual locality basis of the conditioning of HUD assistance on actions by the locality to provide housing opportunities for low- and moderate-income families. The statement by the President in June 1971 on "Federal Policies Relative to Equal Housing Opportunity" triggered a new series of HUD initiatives in the entire area of equal housing opportunity, but particularly in the area of "program administration." In a press conference on June 14, Secretary Romney laid down a broad general foundation for a series of HUD implementing procedures designed to put into action the concepts set forth in the President's Message. On June 15, he told the Civil Rights Commission that he was concerned about "devising and implementing strategies." In late 1971, the Secretary came out strongly in support of the "fair share" formula for distributing assisted housing in a metropolitan area, pioneered by the "Dayton plan."

The major initiative by HUD in 1971 to use "program administration" to stimulate equal housing opportunity was the "project selection criteria" to be applied both to the urban renewal program and the housing assistance programs (see 1971 No. 10 JOURNAL, pages 537–544). Basically, the new criteria establish rating systems to be used by area offices in determining priorities for funding. The "housing site" criteria are aimed at promoting the development of housing in areas outside concentrations of low-income population and include such factors as need for low-income housing, improved location for low-income housing, relationships to orderly growth and development, relationship to physical environment, potential for creating minority employment and business opportunities, and provision for sound housing management.

The proposed "community development" criteria, relating to the urban renewal program, include such factors as: local effort and coordination; local equal employment effort; impact on the area, capacity to administer; local need based on median family income; commitment of local, state, and federal government; and expansion of the housing supply of low- and moderate-income families. The criteria were officially promulgated to be effective on February 1, 1972. However, the objective of promoting housing opportunities in metropolitan areas, to which the new criteria are weighted, has raised debate as to the fate of housing assistance and renewal programs in central cities. It is probable that the proposed criteria will continue to be a subject of debate for some time in terms of the needs of the central cities.

The Presidential Messages of 1972: The Presidential Messages of 1972 on the state of the union, the economy, and the budget, as they relate to urban programs, are notable for the lack of new initiatives and for abbreviated attention. The major theme of the three messages in the domestic area is a plea for passage and implementation of reform legislation already submitted to the Congress.

The State of the Union Message—January 20: In a state of the union message, delivered in person to the Congress on January 20 and comprising four pages of condensed type, the references to urban programs include some six lines, the longest reference being a plea for passage of federal revenue sharing legislation. In the expanded text sent to the Congress to accompany the oral message, covering 14 pages of condensed type, a special reference to urban programs came under a four-paragraph section titled "The Commitment to Our Cities" and included the following statement: "Our commitment to balanced growth also requires a commitment to our cities—to old cities threatened by decay, to suburbs now sprawling senselessly because of inadequate planning, and to new cities not yet born but clearly needed by our growing population . . . My recommendations for transportation, education, health, welfare, revenue sharing, planning and management assistance, executive reorganization, the environment—especially the proposed Land Use Policy Act—and my proposals in many other areas, touch directly on community development . . .

One of the keys to better cities is better coordination of these many components. Two of my pending proposals go straight to the heart of this challenge. The first, a new Department of Community Development, would provide a single point of focus for our strategy for growth. The second, Special Revenue Sharing for Urban Community Development, would remove the rigidities of categorical project grants which now do so much to fragment planning, delay action, and discourage local responsibility. My new budget proposed a $300 million increase over the full year level which we proposed for this program a year ago . . . The Department of Housing and Urban Development has been working to foster orderly growth in our cities in a number of additional ways.

A Planned Variation concept has been introduced into the Model Cities program, which gives localities more control over their own future. HUD's own programs have been considerably decentralized. The New Communities Program has moved forward and seven projects have received final approval. The Department's efforts to expand mortgage capital, to more than double the level of subsidized housing, and to encourage new and more efficient building techniques through programs like Operation Breakthrough have all contributed to our record level of housing starts. Still more can be done if the Congress enacts the administration's Housing Consolidation and Simplification Act, proposed in 1970. The Federal Government is only one of many influences on development patterns across the land. Nevertheless, its influence is considerable. We must do all we can to see that its influence is good."

The major innovative proposals carried in the state of the union message, are proposals to expand the research and technology effort of the federal government, to reduce the burden of the local property tax, and to develop a new "delivery system for social services." This latter proposal will be followed by special legislation to be presented to the Congress under the title of *The Allied Services Act;* the concept involves a restructuring of programs of the Department of Health, Education, and Welfare to provide a delivery system "based around people and not around programs."

The Economic Message—January 27: The economic message of the President, submitted to the Congress on January 27, projects an expansionary picture for the American economy in 1972 based on the conclusion that inflation, unemployment, and the balance of payments will be brought under control. The two dramatic shifts in economic policy undertaken in August 1971 involving price and wage controls and the suspension of dollar convertibility on the world market are the major economic determinants. The sequels and consequences of these economic decisions will, in the words of the economic report, be "the real economic news of 1972." The prospects for 1972 are "rising output, diminishing unemployment, and a stronger United States position in the world economy."

As in 1971, the major link between the economic report and the federal budget is the projection of the Gross National Product (GNP), which becomes the basis for determining estimates of national income. Another important link is the rate of unemployment, because, for the second straight year, the federal budget ceiling is related to a "full employment" budget—the taxes that would be produced if there were full employment. The estimates in the economic message for 1972 are particularly sensitive, since the 1971 message forecast a grossly overrated growth in the GNP and resulted in a budget deficit estimated to exceed even a "full employment" ceiling figure.

The 1971 economic message forecast a GNP in 1971 of 1.065 trillion dollars, the actual level estimated to be achieved is 1.047 trillion dollars. The resulting gap in national income and federal revenue is in large measure responsible for the estimated deficit for the fiscal 1972 budget of 38.8 billion dollars; the original 1972 budget forecast a deficit of only 11.6 billion dollars. Even if the 1972 deficit is measured in terms of the full employment concept—the revenues that would be available in a full employment situation—the 1972 budget for the year ending June 30 is expected to show a deficit of 8.1 billion dollars. The President's 1972 budget message views this deficit beyond the "full employment" concept, as "able to be absorbed for a time" but not for an extended period. Using this same concept, the projected federal budget for fiscal 1973 is anticipated to run an actual deficit of 25.5 billion dollars, and a "full employment" surplus of 0.7 billion dollars.

The 1973 Budget Message—January 24: The federal budget for the 1973 fiscal year beginning on July 1, 1972 is estimated to total 220.8 billion dollars, an increase of 10 billion dollars, or 4 percent, over fiscal 1972. Budget receipts are estimated at 220.8 billion dollars, leaving an actual deficit of 25.5 billion dollars. This is the third year of budget deficit but the projected 1973 figure is 13 billion dollars less than the deficit of 1972. As indicated in the report on the economic message above, this deficit under the "full employment concept" bcomes a thin surplus of 0.7 billion dollars.

The receipts projected in the budget reflect a reduction of 6.9 billion dollars result-

ing from the tax cuts made under the revenue act of 1971; 5 billion dollars of this reduction involves cuts in individual income taxes. This additional personal income is anticipated to spur consumer purchasing and serve as a boost to the economy. The close margin of receipts over expenditures, even using the full employment concept, has led to speculation about new federal taxes, such as a "value-added" national sales tax. However, the likelihood of such action in the 1972 election year is remote.

In terms of budget priorities, the budget message points out, as it did in 1970 and 1971, that the spending for human resources exceeds the expenditures for national defense—45 percent, as against 32 percent. However, the 1973 budget also shows the largest annual increase in defense spending since 1969. The 1973 budget for national defense calls for an increase of 6 billion in budget authority, largely to develop new weapons systems.

A major fact about defense expenditures made particularly clear in the 1973 budget document is that the "peace dividend" originally forecast to be made available as the war in Vietnam ended has evaporated. A forecast five years ago had estimated a surplus of about 30 billion dollars by 1976. The 1973 conclusion is that increased expenditures for existing programs and reduced taxes have virtually eliminated any budget margin that might be used for domestic needs. It is also clear that additional revenue, or offsetting reductions in existing programs, will be necessary to undertake any new initiatives.

Most federal departments are budgeted at the same level of expenditures, or with only slight increases. The budget for the Department of Housing and Urban Development, covered in more detail below, makes up 1.7 percent of total federal outlays in fiscal 1973, a gain over the 1.4 percent proportion of 1972. The comparable proportion for 1969 was 0.8 percent. Thus, HUD outlays are comprising slightly higher percentages of the total federal budget.

HUD Budget—Increased housing payments; community development consolidation: Appropriations requests to the Congress by HUD in fiscal 1973 total 4.7 billion dollars, an increase of 827 million dollars, or 21 percent, over fiscal 1972. Actual outlays for the year are estimated at 4.2 billion dollars. By far the largest share in the increase in appropriations requests comes from increased payments for assisted housing—over 500 million dollars—reflecting the expanded production over the past three years of units now reaching the management stage. This increased budget impact by housing payments has caused some concern, as the discussion above on the policy initiatives of the department indicates. This concern over budget impact, as well as over the quality of housing being produced under the Section 236 rental housing program, has led to the decision in the fiscal 1973 budget to cut back on the number of new housing units placed under contract.

A special appropriation of 195 million dollars is requested for the special risk insurance fund, to cover losses from foreclosures and to put foreclosed properties in saleable condition. In fiscal 1973, HUD proposes to make commitments for only 174,200 new units of Section 236 housing and only 20,000 units of add-on rent supplements, in contrast to 239,000 and 27,900 such units in fiscal 1972. In public housing, the new budget proposes a level of 110,000 units for the new budget year—7,000 more than in 1972. However, only 75,000 of these units will be for new construction or rehabilitation, while the balance of 35,000 units will be for existing housing using the Section 23 leasing program; a substantial part of these 35,000 units are anticipated to be used for demonstrating the use of "housing allowances." There will be 8600 fewer units involving new construction placed under contract than in 1972. For more detail, see the table on page 65.

The largest single dollar outlay in the 1973 HUD budget—2.1 billion dollars—is for community development, including the categorical assistance programs consolidated under one assistant secretary during the past fiscal year. The 1973 budget proposes to add the open space land program to the categorical programs previously combined. Unlike the budget proposal for fiscal 1972, however, the department proposes separate line-item budget requests for each of the categorical programs in fiscal 1973, pending the enactment by the Congress of legislation for a combined block-grant community development program. However, the appropriation total includes an undesignated request of 490 million dollars for "urban community development," to be used when the new legislation is enacted. Remaining balances in categorical accounts will be transferred to the new community development program at this point. The urban renewal appropriation is projected at a level of 1 billion dollars, a level that has been fairly constant as an outlay level since 1970, although the actual appropriation for fiscal 1972 was 250 million dollars more. Some 500 million dollars of urban renewal contract authority is being held by administrative action to cover estimated increased costs of relocation benefits under the 1970 uniform relocation act.

No additional appropriation is requested for the Section 312 rehabilitation loan program. The unused balance of 50 million dollars from the fiscal 1972 appropriation will be utilized.

A significant new initiative in the area of research and technology is represented in the proposed increase in appropriations from 45 to 60 million dollars. This is the largest research budget proposed in the history of the department and is particularly significant in that the Operation Breakthrough portion of this total is anticipated to decline to 4.5 million dollars in fiscal 1973, leaving a larger allocation for other types of research. This expansion in research effort is also in line with the new research emphasis in the entire Administration, as noted in the President's state of the union message.

In terms of federal contributions for public housing operating services, the budget document indicates that HUD plans to spend 185 million dollars in annual contributions for operating services in the fiscal year ending June 30; this figure includes 150 million dollars of annual contributions contract authority specifically earmarked for operating services and an additional 35 million dollars from general contract authority to cover special family subsidies for the elderly, large, and very low-income families. In fiscal 1973, the budget anticipates spending the full 150 million dollars earmarked operating subsidy and 20 million dollars for special family subsidies—a total of 170 million dollars. The drop in the allocation for special family subsidies anticipates the passage in 1972 of the pending legislation on housing consolidation, which would combine all operating subsidies under one fund. The Administration's housing bill (S2049; HR 9331) would set a ceiling of 200 million dollars on contributions for operating services; the Brooke-Mondale amendments to this bill would set the ceiling at 300 million dollars. It is anticipated that there would be a balance of unused public housing contract authority of 97 million dollars at the end of fiscal year 1973; however, 15 million dollars of this amount would have to be committed to special family subsidies in the event that the housing consolidation bill does not pass the Congress. Thus, only 82 million dollars of additional contributions authority could be committed to new public housing development.

New authorizations from the Congress are required to cover a number of the proposed appropriations in the HUD budget for fiscal 1973. A listing of these requirements is shown in the chart on page 67. These amounts must be approved by the substantative housing committees and passed by the Congress before the appropriations committees can consider appropriations action.

A complete breakdown of the proposed HUD appropriations is shown in the following chart:

JOURNAL OF HOUSING "INDEX" ON NIXON ADMINISTRATION URBAN POLICIES

(December 1968/January 1972)

Basic Goals

1968 JOURNAL No. 11, pages 558-561—"The Nixon Administration: bringing the nation together toward the center . . . modernizing the machinery of government . . . channeling more of the action through private enterprise, state and local governments, and voluntary institutions: these are the early indications of what may be the directions in which urban programs will be going over the next four years."

1969 JOURNAL No. 4, pages 173–175—"President Nixon Announces Domestic Policies; Budget for Coming Year."

1970 JOURNAL No. 2, pages 67–69—"Key Messages May Reflect New Administration Goals."

1970 JOURNAL No. 7, pages 352–54—"The Nixon Administration . . . Mid-Stream."

1971 JOURNAL No. 2, pages 60–64—"The Presidential Messages of 1971 on the State of the Union, the Economy, and the Budget . . . They stimulate a new national debate on how the nation shall order its domestic affairs . . . directions for the next 40 years may be in the balance."

People

1969 JOURNAL No. 3, pages 118–119—"How Will Decisions be made by the Nixon Administration in the Domestic Area?"

Money: Budgets/Inflation

1969 JOURNAL No. 4, page 175—"Budget for Coming Year."

1969 JOURNAL No. 9, pages 455–456—"1969; The Year of Inflation."

1971 JOURNAL No. 3, page 117—"NAHRO, Mayors, Builders Ask for Release of Funds."

Processes

1969 Journal No. 8, pages 394–395—"President Nixon Calls for a New Federalism, 'a new approach in which the power, funds, and responsibility would flow from Washington to the states and the people.' "

Legislation

1970 Journal No. 1, pages 14–21—"Housing and Urban Development Act of 1969: unexpected scope in an atmosphere of inflation, tight budgets, and tax reform."

1970 Journal No. 3, pages 121–126—"Nixon 1970 Housing Bill Combines Current Programs."

1970 Journal No. 6, pages 293–297—"NAHRO Testifies on 1970 Housing and Urban Development Legislation . . . 'we are losing the fight to develop new housing adequate for the needs of the 1970's. And we are losing the fight to maintain the existing housing supply in urban areas.' "

1971 Journal No. 1, pages 17–26—"Housing and Urban Development Legislation of 1970" . . . a Presidential veto of original appropriations bills for the Department of HUD and a stormy ride for the 1970 HUD Act on the House floor cannot detract from the major bipartisan accomplishments of the Congress.

1971 Journal No. 4, pages 165–66—"President Submits Major Executive Reorganization." Includes proposed creation of a new Department of Community Development.

1971 Journal No. 5, pages 216–17—"Special Revenue Sharing Introduced in Senate." Includes proposed Special Revenue Sharing for Urban Community Development.

1971 Journal No. 6, pages 268–269—"Housing Consolidation is on Congressional Agenda." Includes proposed consolidation of HUD housing programs.

HUD

1969 Journal, No. 4, page 202—"HUD Regional Boundaries Changed." HUD boundaries made the same as five other federal departments and agencies.

1969 Journal No. 5, pages 227–230—" 'Breakthrough,' that's what HUD Secretary Romney calls his new program for achieving low-cost, high volume production of low-income housing."

1970 Journal, No. 3, pages 127–139—" 'Breakthrough' Begins; Housing Enters the Industrial Age."

1970 Journal No. 4, pages 180–187—"What's Happening at HUD: what is the reorganization of the Department of Housing and Urban Development all about?"

1970 Journal No. 6, page 298—"Proclaimer' Procedure Begins—new administrative device for cutting red tape for urban renewal projects on the way."

1970 Journal No. 11, pages 580–83—"Reform . . . and Urban Renewal," Norman V. Watson calls for renewal reform.

1971 Journal No. 4, pages 185–186—"Gary Indiana gets one-year bundle of HUD commitments in return for committing itself to series of 'federal interests'. New process called "Annual arrangement."

1971 Journal No. 7, pages 329–334—"Minority Americans: here's what the Department of Housing and Urban Development is doing in their behalf."

1971 Journal No. 10, pages 537–40—"HUD's New Project Selection System, a Review and Analysis."

1971 Journal No. 11, pages 582–87—"HUD Secretary George Romney speaks extemporaneously to NAHRO's 33rd National Conference." Reinforces views on decentralization, funding of urban programs, governmental coordination, metropolitan focus, equal housing opportunities.

PROGRESS TOWARD 1968 HOUSING GOALS FOR LOW- AND MODERATE-INCOME FAMILIES

[In dwelling units, starts, and rehabilitations, evened to nearest hundred]

	Original goals 1969–73	Actual housing units 1969–72	Estimated housing units: fiscal 1973	Gap in goals progress
Public housing	795,000	395,000	90,000	−310,000
Sec. 235 (homeownership)	570,000	398,300	177,400	+5,700
Sec. 236 (plus other rentals)	615,000	464,000	256,000	+105,000
Rent supplements	260,000	76,000	32,100	−151,900
Rehabilitation loans and grants	110,000	38,700	10,800	−60,500
Total	2,350,000	1,372,000	566,300	−411,700

Source: for original housing goals: Department of Housing and Urban Development hearings before the subcommittee on housing and urban affairs of the Senate Committee on Banking, Housing and Urban Affairs March 1968, pt. 2, table 1-c, p. 1325: for actual and estimated starts: President's Third Annual Report on National Housing Goals, 1971, p. 8, and HUD budget, fiscal year 1973.

NEW UNIT RESERVATIONS AND COMMITMENTS HUD ASSISTED HOUSING UNITS: 1971–73

Program	Fiscal year— 1971	1972 (estimate)	1973 (estimate)
Public housing:			
New or rehabilitation	85,375	93,588	75,000
Existing without rehabilitation	3,332	9,412	35,000
Total	88,707	103,000	110,000
Rent supplements:			
Market rate	11,103	32,300	18,000
Piggy back	19,305	27,900	20,000
Total	30,408	60,200	38,000
Rental housing (sec. 236)	158,892	239,200	174,200
Homeownership (sec. 235):			
New or rehabilitated	133,692	177,500	177,500
Existing, without rehabilitation	8,462	21,100	21,100
Total	142,154	198,600	198,600
Rehabilitation loans and grants:			
Substantial rehabilitation	10,400	9,400	11,800
Other	10,382	9,435	11,775
Total	20,782	18,835	23,575
Grand total	440,743	619,835	544,375

APPROPRIATIONS REQUESTED FOR THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—FISCAL YEAR 1973

[In thousands of dollars]

	Appropriations 1971–72 actual	1972–73 request
Housing production and mortgage credit:		
Special risk insurance fund		$195,000
Nonprofit sponsor fund	$4,000	1,000
Housing production and mortgage credit—Continued		
Interstate land sales	830	1,230
Total	4,830	197,230
Housing Production and Mortgage Credit—GNMA:		
Restoration of capital—special assistance funds		119,369
Participation sales insufficiencies	36,259	26,020
Total	36,259	145,389
Housing Management:		
Housing payments:		
Public housing	824,500	1,105,000
College housing	10,000	8,000
Rent supplements	91,300	147,000
Sec. 235 (homeownership)	299,000	428,000
Sec. 236 (rental)	149,000	190,000
Counseling services (homeownership)[1]	3,250	
Total	1,377,050	1,878,000
Community planning and Management:		
Comprehensive planning grants (701)[2]	100,000	100,000
Community development training	3,500	3,500
New community assistance grants	10,000	5,000
Total	113,500	108,500
Community Development:		
Urban community development (proposed legislation)[3]		490,000
Urban renewal programs	1,250,000	1,000,000
Rehabilitation loans (312)[4]	90,000	
Model cities[5]	150,000	515,000
Water and sewer grants[6]	500,000	
Neighborhood facilities grants	40,000	40,000
Open space land programs	100,000	100,000
Total	2,130,000	2,145,000
Federal Insurance Administration:		
National flood insurance	6,000	10,000
Research and Technology	45,000	60,000
Fair Housing and Equal Opportunity	8,250	9,100
Departmental Management:		
General management, administration, staff services	25,408	24,175
Regional management and services	23,000	22,300
Salaries and expenses, functional programs	63,718	60,580
Total	112,126	107,055
Total HUD appropriations	3,833,015	4,660,274

[1] Counseling services for fiscal year 1973 will be funded out of HUD research and technology.

[2] Appropriation total for fiscal year 1972 includes a proposed supplemental appropriation of $40,645,000,000.

[3] Proposal for special revenue sharing for community development requires authorizing legislation.

[4] Carry-over of $50,000,000 is anticipated from $90,000,000 appropriated in fiscal 1972 to cover program activity for fiscal 1973.

[5] Program activity level for model cities in fiscal 1973 is anticipated at $620,000,000, including carryover appropriation from fiscal 1972.

[6] Program activity level for water and sewer grants is anticipated at $200,000,000 in fiscal 1973, financed from uncommitted appropriations remaining from fiscal 1972.

NEW AUTHORIZATIONS REQUIRED TO COVER HUD FISCAL APPROPRIATIONS REQUESTS

[In thousands of dollars]

Sec. 235 (homeownership)	$115,000
Sec. 236 (rental)	125,000
Public housing	68,000
College housing	4,300
Neighborhood facilities grants	4,000
Comprehensive planning grants	81,000
Federal Insurance Administration	1,500,000
Total	1,897,300

DISTRIBUTION OF ANNUAL OUTLAYS FOR DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT COMMUNITY DEVELOPMENT ACTIVITY, 1968–73

[In thousands of dollars]

Activity	Fiscal years 1969	1970	1971	1972 (est.)	1973 (est.)
Urban renewal	$572.2	$1,053.7	$1,031.4	$1,000.0	$1,000
Neighborhood facilities grants	10.6	23.4	22.5	35.0	35
Rehab loans (312)	24.7	35.0	41.5	40.7	40
Open space grants	43.3	43.4	39.2	70.0	80
Water and sewer grants	80.2	109.0	120.6	130.0	150
Land acquisition	0.1				
Urban transportation	$2.0				
Public facilities loans	47.3	$40.5	$41.3	$36.4	$36
Model cities	15.4	85.8	328.2	450.0	625
General community development					490
Total	795.8	1,390.8	1,584.7	1,762.1	2,456

Source: Budgets of the Department of Housing and Urban Development 1971–73.

PROPOSED UTILIZATION OF CONTRACT AUTHORITY IN PUBLIC HOUSING: HUD BUDGET—FISCAL 1973

[In thousands of dollars]

Total contract authority available:	
General contract authority (for debt service, modernization, and special family subsidies)	$1,424.2
Contract authority for operating services only	150.0
Total	1,574.2
Contract authority to be utilized:	
General contract authority:	
Debt service obligations	1,219.7
Modernization	87.5
Special family subsidies [1]	20.0
Contract authortiy for operating services only	150.0
Total	1,477.2
Unused contract authority:	
General contract authority	97.0
Contract authority for operating services only [2]	
Total	97.0

[1] This is a reduction of $15,000,000 from the fiscal 1972 level of $35,000,000.

[2] The proposed Housing Consolidation and Simplification Act presented by the Administration in 1971 proposes increasing the contract authority ceiling for operating services to $200,000,000; the Brooke-Mondale Housing Reform Amendments bill raises the ceiling to $300,000,000.

WORLD TRADE WEEK

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished Senator from Indiana (Mr. HARTKE), I ask unanimous consent that Senator HARTKE's statement on World Trade Week and accompanying material be printed in the RECORD.

There being no objection, the statement and accompanying material of Senator HARTKE was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR HARTKE

Mr. President, the entire nation, in the midst of World Trade Week, has become aware that the United States remains in a trade crisis of unprecedented proportions. Even official administration figures indicate that last year our policies resulted in a trade debacle.

What has been kept from the American public is the true extent of our international trade and investment muddle. While the administration claims that 1971 showed the first trade deficit ever, a more realistic look at the trade figures shows that we had a trade deficit as early as 1966. The same realistic approach would show a deficit in 1971 of $6.7 billion, not the $2 billion figure that is given general currency.

Our illusions about our foreign trade position have been fed by a uniquely American way of calculating foreign trade figures. On the export side, we include such items as military grants in aid, AID loans and grants and shipments of agricultural commodities under the PL-480 program. In other words, when we give wheat, arms or American machinery to a foreign country, this aid is counted as an export. These programs have no bearing on our ability to compete internationally, they bring no dollars back into our economy, and they say nothing about our trade situation.

This overstatement on the export account is compounded by persistent understatement on the import account. We do not include the cost of insurance and freight in computing our imports—even though most countries, the United Nations and the International Monetary Fund all use the C.I.F. (Cost, Insurance, Freight) method.

Calculating our imports on the C.I.F. basis and deducting aid grants from our exports, we have had a trade deficit position since 1966. And our position has grown steadily worse. We passed the billion dollar mark in 1968 and plummeted to $6.7 billion in 1971.

These sobering statistics translate into a million lost jobs for American workers, many endangered American industries, and the loss of a once pre-eminent position in foreign trade.

As we celebrate World Trade Week and the promise of growing international cooperation, we must not lose sight of our own desperate trade situation. Burying our heads in false statistics is no answer. To keep clear the record, I call your attention to our true trade picture as shown in the following figures.

ESTIMATED U.S. TRADE BALANCE, 1966-71

[In millions of dollars]

Year	U.S. exports: Total, including reexports	U.S. exports: Military grant-aid	U.S. exports: AID loans and grants	U.S. exports: Public Law 480 shipments	U.S. exports excluding military grant-aid and Public Law 480	U.S. imports: F.o.b. value	U.S. imports: Estimated c.i.f. value	U.S. trade balance, based on estimated c.i.f.-valued imports and exports excluding military grant-aid—AID Law 480 shipments
1966	31,430	940	1,186	1,306	26,998	25,618	27,745	−747
1967	31,622	592	1,300	1,237	28,493	26,889	28,745	−252
1968	34,636	573	1,056	1,178	31,929	33,226	[1] 35,519	−3,690
1969 [1]	37,988	674	994	1,018	35,302	36,052	38,539	−3,237
1970	43,224	565	957	957	40,745	39,952	42,389	−1,644
1971	44,137	581	914	971	41,671	45,602	48,384	−6,713

[1] Preliminary data.

Source: Former Secretary of Commerce Stans, testimony before Ways and Means, May 12, 1970, 1966-69; Department of Commerce, 1970-71.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time designated for the transaction of routine morning business having expired, morning business is concluded.

EDUCATION AMENDMENT OF 1972—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore (Mr. CHILES). Under the previous order, the Chair lays before the Senate a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the text of the bill (S. 659) to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, the General Education Provisions Act—creating a National Foundation for Postsecondary Education and a National Institute of Education—the Elementary and Secondary Education Act of 1965, Public Law 874, 81st Congress, and related acts, and for other purposes.

The Senate proceeded to consider the report.

(For text of the conference report, see proceedings of the House today.)

The ACTING PRESIDENT pro tempore. The question is on agreeing to the conference report.

Mr. JAVITS. Mr. President, I believe that the conference report which has been brought in is going to require some considerable discussion, because of the fact that it is probably the most important achievement in the field of higher education for a century and also because it has tremendous connotations in other aspects, including an extremely vexing and trying problem in the field of desegregation and equal opportunity for education.

The Senator from Michigan (Mr. GRIFFIN) has announced this morning that he is going to make a certain motion. The manager of the bill and I, as the ranking minority member of the committee, feel that it might be well for the Senate to know what that motion is, and have it before us, as it will have to be voted on anyway, if in order, before the conference report.

So, as far as I am concerned, if it is agreeable to the Senator from Rhode Island (Mr. PELL), I am prepared to yield so that the Senator from Michigan may obtain the floor and raise the question he has in mind.

Mr. PELL. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. PELL. Should not the pending business be the question on agreeing to the conference report, or does a recommittal motion lie?

The ACTING PRESIDENT pro tempore. As the Chair has already stated, the pending question is on agreeing to the conference report.

Mr. PELL. That is the pending question?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. JAVITS. Mr. President, in order to propound a parliamentary inquiry which I wish to make concerning it, I now yield to the Senator from Michigan for the purpose of making his motion.

Mr. GRIFFIN. Mr. President, I thank the distinguished ranking minority member of the committee for yielding.

On behalf of myself and the Senator from Florida (Mr. GURNEY), I send to the desk a motion and ask that it be stated.

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

The assistant legislative clerk read as follows:

Mr. Griffin moves that the conference report (92–798) be recommitted with instructions that the conferees on the part of the Senate be instructed to recede from the position of the Senate with respect to title VIII of S. 659, and concur in the position taken by the House relative thereto.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. JAVITS. Is such a motion in order, and in order to be voted on, before the conference report is voted up or down?

The ACTING PRESIDENT pro tempore (Mr. CHILES). The motion of the Senator from Michigan takes precedence over the adoption of the conference report.

Mr. JAVITS. Will the Chair be kind enough to inform the Senator from New York as to either the authority or the rule upon which the Chair's ruling is based?

The ACTING PRESIDENT pro tempore. Had either body agreed to the conference report, the conferees would have been discharged. Prior to the agreement of either body to the conference report, a motion for recommittal takes preference over a motion to adopt the conference report, as provided in rule XXII.

Mr. JAVITS. That is, recommittal to the existing conference committee?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. GRIFFIN. Mr. President, if the distinguished Senator from New York will yield to me, I shall make only a very brief statement at this time, because obviously the manager of the legislation and the ranking minority member are entitled to make their opening statements first.

I am informed that there is a technical error in the motion, and I modify the motion as follows: The reference should be to title XIII of the Senate bill, rather than title VIII.

The ACTING PRESIDENT pro tempore. The motion will be modified.

Mr. JAVITS. Mr. President, I ask unanimous consent that the motion, as modified, be restated to the Senate.

The ACTING PRESIDENT pro tempore. The motion, as modified, will be stated.

The assistant legislative clerk read as follows:

Mr. Griffin . . . moves that the conference report (92–798) be recommitted with instructions that the conferees on the part of the Senate be instructed to recede from the position of the Senate with respect to title XIII of S. 659, and concur in the position taken by the House relative thereto.

Mr. JAVITS. Mr. President, will the Senator from Michigan yield?

Mr. GRIFFIN. I yield.

Mr. JAVITS. Mr. President, a further parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. JAVITS. Is the conference report now before the Senate in such a way that the committee of conference could itself, without any further instructions, go out and modify it and bring back a modification to the Senate?

The ACTING PRESIDENT pro tempore. No; the conference report has been submitted to the Senate and is now pending before the Senate. Without going back to conference the report could not be modified.

Mr. JAVITS. So the conference report as it stands before the Senate is final, subject to the action of the Senate?

The ACTING PRESIDENT pro tempore. Subject to the action of the Senate in recommitting the report to the conferees.

Mr. JAVITS. I thank the Chair. I now yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, just this brief statement:

If the only option available to the Senate at this point were an up or down vote on the conference report, this Senator would vote for the conference report. To be sure, the language of the conference report would provide some temporary relief from busing orders in some circumstances. I would be concerned if I thought my motion, in the event it prevailed, would lead to rejection of the bill by the Senate. I am very much in favor of this higher education legislation, and I would not want to see it defeated altogether, because of the busing provisions. But I am convinced that would not be the case.

I make this point for the Senate's consideration:

The House of Representatives, on March 11, 1972, by a vote of 275 to 124, instructed its conferees to insist on the House amendments with respect to the busing provisions. If the Senate should see fit to adopt the pending motion, and we in the Senate should instruct our conferees to agree to the same provisions, then obviously there would be nothing for the conferees to do except to go through the formalities of a meeting and to report back in accordance with identical instructions by a majority in both Houses. For the Senate, adoption of this motion would be similar to the Senate recommitting a bill to a Senate committee, and instructing the committee to report back forthwith with certain amendments.

If my motion is adopted, we would then be able to have a conference report before us with the strongest antibusing provisions available within the limits of the parliamentary situation that confronts us with respect to this legislation.

I thank the distinguished Senator from New York again for yielding.

Mr. JAVITS. Mr. President, the normal procedure which should be followed, as this is a highly important and very complex bill in terms of its length, though not in the individual provisions, would be for the distinguished Senator from Rhode Island to proceed first. I sat through practically all the conference, and Senator PELL, whatever may be the final outcome, has thoroughly performed a miracle in producing any result at all. He should assuredly be entitled to the full benefit of a complete explanation of every aspect of this bill. There is no question about the fact that it is a monumental achievement of a most constructive character in respect of education.

The real battle comes upon the question of what to do about the really unrelated question of busing. Is it big enough to jettison the bill, or, considering everything that is at stake in terms of proportion, shall those of us who feel as strongly as I do about equal educational opportunity and desegregation swallow hard and take the conference report?

But Senator PELL is entitled to the first opportunity to develop the strength of the conference report as he sees it.

So, Mr. President, I just wish to state that although I have very grave reservations about what we did on busing, they are completely opposite from the reservations of the Senator from Michigan and those who side with him. Therefore, I wish to announce that I shall, with every strength I have, oppose the motion to recommit with those instructions.

At this point I yield the floor, so that Senator PELL may speak.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield for a question?

Mr. PELL. I yield.

Mr. HARRY F. BYRD, JR. Is there a time limitation on this matter?

Mr. PELL. No.

Mr. HARRY F. BYRD, JR. The reason why I inquire is that the conference report became available only at 10:30 this morning. I would hope that if any request is made for a time limitation, the Senator from Rhode Island would object in my behalf until I can return to the Chamber. It is a tremendously important piece of legislation, and I believe adequate time should be taken to consider it.

Mr. PELL. I would hope that the Senator from Virginia would ask that of the majority leader, also.

Mr. HARRY F. BYRD, JR. I will ask it of the majority leader, the minority leader, and the manager of the bill.

Mr. PELL. I would hope that if we do not have a vote on it today, tomorrow would be agreeable.

Mr. HARRY F. BYRD, JR. I am concerned mainly that I cannot understand the provisions of the bill. The debate is just starting. I do not know how long it will take me to understand it, but I would like to have a reasonable length of time.

Mr. PELL. It is extremely unlikely that there will be a vote today.

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

Mr. PELL. I yield.

Mr. JAVITS. Mr. President, out of respect for just such feelings, I refused to agree to a time limitation. But I really believe with the Senator that it will not take an inordinate length of time for Senators to be able to encompass the details. Nonetheless, I refused a unanimous-consent request for a certain number of hours, for that reason.

Mr. HARRY F. BYRD, JR. I join with the Senator from New York.

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

Mr. PELL. I yield.

Mr. BAKER. Mr. President, I apologize to the manager of the bill for coming into the Chamber as the distinguished assistant minority leader was making his remarks with reference to a motion to recommit.

Might I at this time inquire of the Chair what is the pending business?

The ACTING PRESIDENT pro tempore. The pending question is on the adoption of the motion of the Senator from Michigan to recommit the conference report with instructions.

Mr. BAKER. Mr. President, I have shared with the distinguished assistant minority leader the responsibilities and the victories and the defeats in battle over the busing issue on the floor of the Senate over several months. We have exactly the same point of view with respect to this matter. I must express some reservations about the motion at this time, and I must express them in frank and personal terms.

I share the desires of the conferees of the House to have a stiffer bill and to have the provisions of the House bill included in the conference report; but I believe that this bill carries such significant relief for my State and for the situation that I would be fearful of losing this provision or jeopardizing it.

I inquire of the distinguished manager of the bill—to be very exact, indeed—whether the provisions of this bill relating to busing would in fact apply to, say, my situation in Nashville, Tenn., where a district court order has been handed down on busing but the case is on appeal to the Sixth Circuit Court of Appeals and no doubt will be appealed to the U.S. Supreme Court. My query is this: Under that state of affairs, is it clear that the language before the Senate in this conference report would stay that case?

Mr. PELL. My understanding is that it would. I am not a lawyer. I think the Senator should ask the Attorney General for his interpretation. My interpretation of the language is that it would stay the case.

Mr. BAKER. So it is the opinion of the distinguished manager of the bill that it would stay the case.

Mr. PELL. That is correct.

Mr. BAKER. In view of that, I must respectfully urge that we give careful consideration to the motion by the distinguished assistant minority leader. I do not want to jeopardize the good that has come of this bill. I do not criticize the Senator from Michigan for wanting to do better, but I urge that we consider this matter carefully. At this time I cannot support the motion.

Mr. GRIFFIN. Does the Senator from Tennessee have the floor?

Mr. BAKER. No, I do not.

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

Mr. PELL. I yield.

Mr. JAVITS. Mr. President, I say to the Senator from Tennessee that one of the things that is troubling me very deeply is that if one is a conferee, as I was, one really has some obligation in good faith to accept a version of what this means, and that is what is giving me the most trouble about this matter.

I agree with the Senator that if we took it the way its author construed it, though I think it defies its language and assumes a constitutionality which it does not have, then his answer is correct. But by my silence, I would not wish to mislead the Senator respecting the imprecision of the language, which I think is not affected by the conference agreement, and the question of constitutionality. If we take the construction of the House of what it meant by its language, which is the language incorporated in this bill, and if the court rules that way, then Senator PELL is correct in his interpretation.

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

Mr. PELL. I yield.

Mr. BAKER. I would agree with the Senator from New York, obviously, on the question of constitutionality. No amount of legislative history is going to affect the constitutionality of this issue. That, I judge, will be decided ultimately by the highest court. But my question does not touch that. It presupposes that it is constitutional, as the Senator from New York has pointed out. We just have to take our chances on that.

The point I wanted to make here before I made my statement in opposition to the motion of the distinguished Senator from Michigan was that it was the view of the distinguished manager of the bill that that language does cover this situation, wholly aside from the question of constitutionality.

Mr. PELL. As I said earlier, that is my understanding. I think that the Attorney General would be able to render a legal interpretation.

Mr. BAKER. I owe a debt of gratitude to the distinguished manager of the bill for yielding and to the Senator from New York.

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

Mr. PELL. I yield.

Mr. GRIFFIN. Mr. President, I can understand the concern of the distinguished Senator from Tennessee. I must admit that I thought a long time about the dilemma which confronts us. I have no doubt, however, on reflection, that if the conferees follow the instructions of the Senate, which they would be directed to do, we would have a conference report back before us in short order, with the stronger House provisions in it. I am convinced that such a conference report would be adopted by the Senate.

Mr. President, after some consideration the Parliamentarian advises that the motion which I have submitted should read "to title VIII" rather than "to title XIII." I therefore modify my motion accordingly.

The PRESIDING OFFICER (Mr. STEVENSON). The motion is so modified.

Mr. PELL. Mr. President, I would remind my colleagues that if the bill is to be attacked, from the right and from the left, those efforts can result in the defeat of the bill. If that should happen and the conference report is not approved, I can see that with the mood of the country and the intensity of feeling on these subjects, that there would be no higher education bill through this and perhaps next year. Even a continuing resolution would become subject to this same problem. If this were the case, with the expiration of the higher education programs on June 30, the Federal support of higher education would end. Is this the result we want?

I would therefore hope that those who criticize the bill, from both the right and the left, as being too probusing or too antibusing would bear with the conference managers who worked laboriously and very hard—as some of my colleagues may not be aware, until 5:30 one morning—to try to get some ground of agreement.

In order to get agreement, there had to be some "give" on both sides. This is the best job we could do.

In connection with the bill, the higher education portion is really the main portion, but like an iceberg, only a small bit shows through. The educational part of the bill is the least visible—with the extraneous issue of busing which has been added as the iceberg's tip, gaining all the attention of our Nation.

The bill covers a whole spectrum of educational measures. It is most lengthy and detailed. Although spoken of as a higher education bill, it is in truth much more.

Title I covers higher education; title II, vocational education; title III, a reorganization of the Office of Education; title IV, Indian education; title V, miscellaneous subjects; title VI, youth camp safety; titles VII and VIII, emergency school aid and transportation of schoolchildren; title IX, sex discrimination; title X, direct aid to institutions of higher education.

The conference met 20 times over a period of 9 weeks. There were many major issues to resolve, issues which were, in truth, an outgrowth of the difference in philosophical approach to Federal support of higher education. Since the discussions turned on abstract concepts, we did not have the luxury of simply splitting the differences. Nevertheless, most of the conferees were dedicated and wanted to finish work on a bill. The document you have before you, Mr. President, reflects their diligence and success.

I shall not in this statement touch upon every matter contained in the bill. Each element is fully explained in the joint statement of the managers. Suffice it to say, the conferees have brought to you a 3-year bill which extends certain of the present programs and authorizes new programs through fiscal year 1975.

To my mind, the major portion of the legislation contains the amendments to the Higher Education Act of 1965. Before discussing some specific actions taken by the conference, I would like to point out the different approaches to the role of the Federal Government in support of higher education in each bill. The Senate bill sought to change the thrust of Federal student assistance to an approach which directs the emphasis of Federal support to the student, funnels Federal funds to institutions which are

providing an education to those students, and supports innovation and experimentation in higher education. The House amendments, while going quite far, were in effect simply a reauthorization of existing programs, with an institutional aid provision which provided for a single per capital payment to the schools.

A major new program of assistance to students is now established. The basic educational opportunity grant program provides for an entitlement—not as a privilege but as a matter of right—of $1,400, from which is deducted an expected family contribution, to every student in good standing who desires to attend a postsecondary institution. This program would be limited, of course, by considerations revolving around appropriations—and the formula we worked out gives a break, in that case, to those students who have the greatest need. It also helps not only children from poor families, but also children from the lower middle-income and middle-income families, who have responsibilities that presently make it very difficult to send their youngsters to college.

Present programs of student assistance are continued as supplements to the new basic educational opportunity grant program. None of them is eliminated. By utilizing the basic grant program and the other available programs such as the supplemental grant program, the national defense student loan program, and the work-study program, a student will be able to attend either a lower or higher cost institution, according to his abilities and his special interests. What has been achieved is a basic floor for each student, upon which that student can build a package of student assistance to meet his or her specific educational needs, and which gives that student a degree of certainty in planning his educational future.

Following the Senate philosophy, the institutional aid provisions revolve around those students who are receiving Federal student assistance funds. All but 10 percent of the institutional aid provisions are tied to the student assistance provisions. Forty-five percent of the funds appropriated for institutional aid will be allocated on the basis of the number of students receiving a basic grant. Forty-five percent of the funds will be allocated on the basis of the amount of Federal student assistance received by students in that institution. The institutional assistance is for graduate students and is greater for the smaller school than for the larger one. However, we do recognize the work being done by graduate schools, and a per-capita allowance is provided for them.

The conference report contains in title IX an amendment which would bar discrimination by sex in higher education. It is a most admirable provision, and was easily accepted by the conference. Some question has been raised as to the interpretation of this language. I have received a letter from Julian H. Levi at the University of Chicago which raises some interesting questions, which have been discussed in a letter to me from Senator BAYH. I ask unanimous consent to have these letters printed in the RECORD.

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

THE UNIVERSITY OF CHICAGO, THE DIVISION OF THE SOCIAL SCIENCES,
Chicago, Ill., March 22, 1972.

Senator CLAIBORNE PELL,
Chairman, Subcommittee on Education, Senate Committee on Labor and Public Welfare, Senate Office Building, Washington, D.C.

DEAR SENATOR PELL: A number of faculty at the University of Chicago have considered a number of points regarding the Bayh Amendment.

While the major thrust of the Amendment speaks of admissions to educational institutions, the legislative history makes clear that faculty selection and appointment are intended to be covered. It is here that we see particular problems.

This is always a temptation in these matters for the examining agents to turn to a statistical report and then, purely on the basis of percentages, to thrust the burden upon the institution. This has resulted in some places responding somewhat akin to the reasoning in the busing cases, that past discrepancies now justify reverse discrimination. Thus, some of us are now in receipt of letters from other institutions asking not that we suggest candidates for faculty appointment without discrimination, but rather confining the inquiry to either women or Blacks.

As you know, the selection of faculty has more to do with the excellence and future direction of a university than anything else. These decisions have to be made upon merit, as well as the future direction of the department—probable retirements, vacancies and strengths. This leads to four points:

1. In recruitment of faculty a reasonable, good faith search should suffice—otherwise, the costs and the burden can get completely out of hand.

2. There ought to be specific recognition of the right of the institution to make a merit judgment.

3. The Amendment ought not justify the development of quotas, percentages, etc.

4. On looking at Section 1003, in contrast to Section 1002, we do not understand whether taking judicial review will postpone action or not. The consequence of a cut-off of Federal support is so grievous and divisive between departments of the university that we would hope that full rights of judicial review and stay would be fully recognized.

Finally, would Section 2000e of the Civil Rights Act apply to these problems?

May we add the obvious—these suggestions are not made in opposition to the spirit of the Bayh Amendment. We appreciate that the problems are difficult and that past history leaves a heavy burden to be corrected. We are further convinced, however, that no one wishes for one moment to impede the efforts of universities and colleges throughout the country in their search for excellence.

We are most grateful for your consideration.

Sincerely yours,

JULIAN H. LEVI.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., May 18, 1972.

Hon. CLAIBORNE PELL,
U.S. Senate,
Washington, D.C.

DEAR CLAIBORNE: I am pleased to respond to the questions raised by Julian H. Levi and his colleagues at the University of Chicago concerning my sex-discrimination amendment to the higher education bill.

As you know, the House attached a floor amendment specifying that the legislation would not require specific quotas. I did not include such a provision as part of the Senate amendment because I believe my amendment already states clearly that no person, male *or* female, shall be subjected to discrimination. The language of my amendment does not require reverse discrimination. It only requires that each individual be judged on merit, without regard to sex.

Of course my amendment does not preclude a decision by enforcing agencies to use comparisons between female and male admissions or hiring rates as one indication of the presence or absence of sex discrimination. Indeed, Mrs. Green specifically addressed this question during the 1970 hearings held by her Special Subcommittee on Education; I enclose a copy of her statement for your reference. It is helpful to remember that the provisions of my amendment in question are parallel to those found in the 1964 Civil Rights Act. Since 1964, there has been ample opportunity to establish enforcement procedure with respect to discrimination on the basis of race; enforcement of my amendment will draw heavily on these precedents.

As to judicial review, the amendment specifically provides that review would be subject to the provisions of Chapter 7 of Title 5, United States Code. Section 705 of that Chapter provides that when an agency finds that justice so requires, either may postpone the effective date of agency action.

In response to Mr. Levi's final question, Title VII of the 1964 Civil Rights Act, as amended by P.L. 92-261, would certainly apply to employment of individuals by a university.

Thank you for giving me the opportunity to respond to Mr. Levi's questions. I certainly appreciate the significant impact which these considerations can have on our universities.

Sincerely,

BIRCH BAYH.

STATEMENT OF MRS. GREEN

Thank you very much, Dr. Norris.

I think the heart of the matter is contained in the two paragraphs on page 5 of your statement, which point out that in many places women are required to have a higher grade point average and greater ability, but in terms of minority groups we lower the admission standards in order to have more numerically. It seems to me that one of the criteria, in fact the major criterion, that has been used by the Enforcement Division of Civil Rights is that the absence of a black, for example, is proof in and of itself of discrimination, or the absence of a certain ratio of blacks to whites, or whites to black, is in and of itself proof of discrimination.

I have letters in my files, and there are innumerable documents where the Federal Government has shown the absence of Negroes in a classroom to be in and of itself proof of discrimination. The absence of a certain ratio of ethnic minorities among employees of an industrial plant or of a bank or construction firm has confirmed discrimination and the Enforcement Division on Civil Rights has so ruled.

It seems to me the same criteria should be used insofar as women are concerned. If the criterion is logical in one place, it ought to be in another. If the percentage of women in a medical school is much lower, then it seems to me the same criteria should be applied as in judging minority groups.

Of course, this is the reason for the amendment which I have offered to title VI of the Civil Rights Act, because now colleges and universities, or any schools that the Federal Government supports, are perfectly free to discriminate on the basis of sex whenever they want to, and nothing can be done about it.

I would invite my colleague from California and the group here today to work on a rewording of that amendment so we do not run into the problem of this provision being applied to all-male schools or all-female schools. If this were the case there would be tremendous opposition by those who still hold the view there is a justification for an all-boys' or all-girls' school.

I must say I have not completely resolved this in my own mind. But in those schools where they do admit both men and women or both boys and girls, then I think there ought to be an end to discrimination, and the same criteria should be applied against such discrimination as we do against discrimination on the basis of creed or race or nationality.

I speak for women who are interested and becoming more vocal and more militant. I welcome that, because I guess it is the only way we can persuade a world which is run by men of the injustices that are occurring and the brain power and energies lost to the Nation through the consistent and systematic discrimination against girls.

I cited a few minutes ago the apprenticeship program. I just do not understand how the Congress, which has been concerned about minority groups not being in the apprenticeship program, can let year after year go by with only token participation by girls.

We have a Conservation Corps proposed. It was originally designed for boys only. We finally got the law changed so girls would be included. But we do not see the establishment of a quota, and I would be willing to predict if there are any girls in it, it will be token representation only.

So, we systematically discriminate against girls or women in every field, whether it be in apprenticeship and Job Corps training or in graduate study at our greatest colleges and universities.

Mr. PELL. Mr. President, to put it succinctly, we must be sure that this type of amendment is not used to establish quotas for sex, ethnic, and religious groups. In the past, quotas have been used to bar admissions at some of the better schools of our country. I would not like to see them reinstituted in the name of fairness.

Still seeking to support innovation, S. 659 contains, in title III and other titles, what is in effect a complete restructuring of the Federal education bureaucracy. The bill establishes within the Department of Health, Education, and Welfare an Education Division headed by an Assistant Secretary of HEW for Education. Within the Education Division there are two agencies: the Office of Education headed by the Commissioner of Education, and the National Institute of Education headed by the Director of the Institute. The National Institute of Education is also under the governance of the National Council on Education Research, which is charged with the responsibility for setting general policy for the Institute. That National Council also has an advisory function for the Department of Health, Education, and Welfare with respect to education.

It is not intended that the newly established Assistant Secretary have any administrative responsibilities except for those related to the emergency schoool assistance program. The primary responsibility for education programs continues to be vested in the Commissioner of Education. Nor is there any intention on the part of the conferees to elevate any responsibilities now carried on in the Office of Education to the Assistant Secretary.

In addition to this structure, the conference report takes a major step toward legislating the internal structure of the Office of Education. There is established a Bureau of Occupational and Adult Education and a bureau-level Office of Indian Education. The bill also establishes a unit for coordinating community college programs. As manager on the part of the Senate conferees, I wish to make clear that the community college unit is not intended to be part of either the Bureau of Higher Education or the Bureau of Occupational and Adult Education. Indeed, it could not have been placed in either, since one of the purposes of the unit is to coordinate the activities of both bureaus as they relate to community colleges.

It should be noted that the Congress has departed from its past policy against legislating the internal organization of the Office of Education. We have done this with a great deal of reluctance, but are convinced that it had to be done if there is to be stability within the Office. The Department of Health, Education, and Welfare was given due warning of the possibility of changing policy on this matter in the report of the Committee on Labor and Public Welfare on our last major bill, the 1970 elementary and secondary education amendments. It is hoped that this action will bring about such stability within the Office of Education that future action of this type will not be needed.

The third major portion of the bill is found in titles VII and VIII, the controversial emergency school aid and busing amendments. These titles grow out of S. 1557, a bill enacted by the Senate on April 26, 1971, and certain actions taken by the House of Representatives when it passed its version of the higher education bill. The two bills pertaining to emergency school aid, while seemingly different on their face, were quite easy to bring together in conference, for a close study of them indicated that while the House bill mainly sought to assist those school systems presently desegregating, the Senate provision dovetailed those efforts with assistance to school districts voluntarily attempting to meet the problems of desegregation. Therefore, as you study the conference report, you will see in many cases that provisions from both bills are included.

The conference report contains a 2-year, $2 billion measure. It will assist desegregating school districts and provide assistance to local educational agencies which wish to meet desegregation problems. It continues the authorization for educational television contained in the Senate bill. In addition, while I regret that it deletes the mandatory requirement for education parks, it does make provision for the optional building of an education park as part of the program for metropolitan areas.

The amendment offered by the junior Senator from Mississippi (Mr. STENNIS) has been brought back unchanged in spite of great opposition on the part of the House. Indeed, to assuage the House, we also included their version of the Stennis amendment. Some would ask why we did this. In answer, the House amendment covered only the emergency school aid provision itself, while the Senate amendment also covered title VI of the Civil Rights Act and section 182 of the Elementary and Secondary Education Amendments of 1966. Here we have the agreeable option of taking one provision from each bill to accomplish the same end. The action of the conferees in no way weakens or expands the language of subsection (b) of section 2 of Public Law 91-230.

The conferees struggled long and hard over the so-called busing amendments. The conference report adopts verbatim the Broomfield amendment, except that the duration of the amendment is limited to January 1, 1974. During conference discussion, there was disagreement as to the meaning of the Broomfield language. Here I would say that a literal reading of the language by a nonlawyer would indicate that if a local educational agency is under an appealable order to transport students to achieve racial balance, that local educational agency can receive a stay of that order whether it has been implemented or not. I expect that today's debate will bring disagreement from those who have more of a legal background on this subject than I. However, I would say that the Senate is not in the habit of enacting frivolous language, and those who interpret our work as a sham and a fraud do injustice to both the Senate and the House.

My remarks, Mr. President, cover the main thrusts of the conference report. Other Senators, I am sure, will wish to take note of specific portions. The Senate should accept this conference report with alacrity. We have in effect brought back the Senate bill. The basic philosophy underlying the higher education provisions has been adopted. Many of the provisions contained in the Senate bill are included in this conference report, such as community colleges, emergency institutional aid, Indian education, State scholarships, and a new section on State postsecondary education commissions.

Unfortunately however, when the vote in the Senate takes place, it will not revolve around the education portion of the bill, but all too likely will be focused on the busing question. Here, I believe, the Senate can also accept what the conference report returned. The language we have brought back is much stronger than the original provision. The Mansfield-Scott amendment remains. We have in effect added a moratorium on intradistrict transportation for 18 months, as opposed to the previous Senate moratorium on interdistrict transportation for a year.

The measure will perhaps not satisfy all in the Senate, but it should be satisfactory, and I would hope that it will be accepted by the Senate.

In closing, Mr. President, I would plead with the Senate to accept this conference report. It is the fruit of many years' work by many people. One newspaper recently called it the most important piece of legislation which may come out of this

Congress. Others have called it the most important higher education measure since the Land-Grant College Act. It is truly a landmark bill, for from the time it becomes law, it will assure all youngsters in our Nation the right of some form of postsecondary education. It has often been said that the wealth of our Nation lies in the education of its citizens. This bill would invest much in that citizenry. It could perhaps even signal a change in our national priorities, which up until now has meant value on hardware rather than people. I move that the Senate adopt the conference report on S. 659.

Mr. President, in conclusion I plead with my colleagues, both those on the left and on the right, the liberals and the conservatives, to agree to the conference report. If they were to make an unholy alliance together, there would be no question whether the bill would be sunk. And, if it were sunk, in the end the higher education innovations in a major bill of this sort would be lost for a substantial period of years.

I hope that while my colleagues recognize that parts of this measure may be hard for them to swallow, will be able to swallow those parts that they do not like in order to enact into law the very good piece of legislation that is pending before the Senate at this time.

PRIVILEGE OF THE FLOOR

Mr. President, I ask unanimous consent that the privilege of the floor be granted to the following members of the staff of the Senate Committee on Labor and Public Welfare, in addition to the allocated slots, during the debate on the conference report: Stephen J. Wexler, Richard D. Smith, Roy Millenson, Nik Edes, and Dan Moyle.

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

Mr. MONDALE. Mr. President, I ask unanimous consent that the members of the staff of the Subcommittee on Education be granted the privilege of the floor during the consideration of this measure.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. 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. PELL. I ask unanimous consent to have printed in the RECORD an article entitled "Backing Seen for Higher Education Bill," written by Carol J. Young and published in today's Providence Journal, and an article entitled "Conferees Extend Bus Curbs; Back Pell on School Aid," written by Douglas C. Wilson and published in the Providence Journal of May 18, 1972.

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

[From the Providence Journal, May 23, 1972]

BACKING SEEN FOR HIGHER EDUCATION BILL

(By Carol J. Young)

The higher education aid bill reported out of a House-Senate conference committee last week after two months of deliberations will have the reluctant support of several national higher education organizations, it was disclosed here yesterday.

A key element in the conference bill is a new kind of "basic opportunity grant" for students—an aid scheme developed by Sen. Claiborne Pell, chairman of the Senate education subcommittee.

Almost all of the major national higher education groups originally refused to support Senator Pell's direct student aid approach and favored instead the alternative proposal of direct institutional aid as contained in the House version of the omnibus higher education bill. . . . Survival of the student aid plan in conference is considered a major victory for Mr. Pell.

John F. Morse, director of federal relations for the American Council on Education (ACE), told a group meeting at the Biltmore Hotel yesterday afternoon that the ACE leadership has decided within the last couple of days that it has "no choice" but to support the results of the House-Senate conference.

This action is being taken, he added, in spite of a recent meeting with Senator Pell's counterpart in the House, Rep. Edith Green, D-Ore., in which she suggested that ACE and other national organizations oppose the conference bill. It was Mrs. Green who fought hard to get approval for the institutional aid concept favored by most higher education leaders.

"Aren't we selling her (Mrs. Green) down the river?" one member of the audience asked.

"The gentle lady from Oregon would say, yes, we are," Mr. Morse responded.

But, it seemed wiser to start off with "something" and hope to improve it later than to argue for its defeat and start over, he explained.

He said he knew of several other organizations, including the National Association of State Universities and Land-Grant Colleges, which also are falling in line behind the conference measure.

Senator Pell has been openly critical of the national higher education lobby for its resistance to his student aid plan.

Mr. Morse was the luncheon speaker at the sixth annual meeting of the Eastern Association of Student Financial Aid Administrators, the men and women who will be responsible for much of the red tape tied to the new legislation if it meets with Congressional approval.

About 225 representatives from colleges and universities in several eastern states are attending the meeting which began Sunday and ends after a business session today.

Senator Pell made a last-minute appearance at the meeting Sunday night. He outlined the key elements of the massive bill and responded to questions. He reportedly won support for his concept from some financial aid officers during an informal social gathering later that evening.

Under the Pell aid plan, students admitted to college and occupational schools are eligible to receive up to $1,400 a year in basic grants "minus the amount his or her family can reasonably be expected to contribute."

The grant would be figured out on a complicated formula adjusted to the total amount of funds available, family income, and a variety of other factors.

A certain amount of institutional aid will follow those students who already receive federal aid under existing programs or who qualify for the basic grants. But the amounts would be considerably lower than the per-student institutional aid proposed by Mrs. Green and her House education committee.

Senator Pell repeatedly has characterized the basic opportunity grant approach as "landmark legislation" which establishes for the first time "the right to a post-secondary education for all our nation's citizens."

Although Mr. Morse did not refer directly to Senator Pell's comments about the concept, he did say that there has been an "enormous amount of rhetoric" surrounding the basic grant plan.

The problem is that there is no indication that the grants will be backed up with an adequate appropriation, he said. appropriation, he said. Without adequate funding, "we're in a worse credibility gap than we've ever been in before," he said.

Mr. Morse urged the financial aid officers at the meeting to analyze the bill carefully in an attempt to come up with a lump sum necessary to make the grant approach work. Nobody knows at this point how much money is needed as a minimum, he said. But, he cautioned, if the funding turns out to be too low, the grants will be distributed in "dribs and drabs all over the country" and it will have been better to have none at all.

Earlier in the day, the Pell plan for direct aid to students drew strong support from Dr. Harry F. Evarts, president of Bryant College.

Dr. Evarts said the aid-to student approach "allows a student to make the choice of colleges himself . . . to buy what he wants to buy." In addition, he said, institutional aid might have had the effect of subsidizing for a while longer those colleges which shouldn't survive.

Dr. Evarts was a member of a panel in which college presidents were asked to discuss what they thought the role of financial aid should be at their institutions.

Dr. Joseph F. Kauffman, president of Rhode Island College, emphasized that the office which doles out the loans, grants, scholarships and work-study money, should be made an integral part of the entire student personnel function of an institution. The student who needs money or must work might also need some good counseling, he said.

Jack P. Hudnall, president of Bristol Community College, Fall River, said the financial aid administrator should play a key role in seeing that college priorities are carried out. If a college has a commitment to serve adults, part-time students, high risk students, disadvantaged student and other categories, then the aid should be distributed to make sure the enrollment reflects these goals, he said.

[From the Providence Journal, May 18, 1972]

CONFEREES EXTEND BUS CURBS; BACK PELL ON SCHOOL AID

(By Douglas C. Wilson)

WASHINGTON.—Senate and House conferees agreed yesterday on an aid-to-higher-education bill that includes a compromise antibusing proposal and an unprecedented program of federal grants for students.

Agreement on the student assistance plan was a victory for Sen. Claiborne Pell, chairman of the Senate education subcommittee, who devised the program.

Mr. Pell also ended a conference deadlock on the busing controversy by agreeing to impose a moratorium on busing for an extra six months.

Thus, in its final form, the conference bill would halt implementation of court-ordered busing for a period of 18 months, until Jan. 1, 1974.

President Nixon called earlier this year for a 12-month busing moratorium.

Agreement on the 19-billion-dollar education package came at 5:15 a.m. yesterday after an all-night work session that ended two months of meetings to work out differences between the House and Senate versions of the measure.

The most controversial differences involved the busing issue, with the House bill carrying

antibusing provisions that were much stronger than those passed by the Senate.

The compromise bill now faces obstacles to final passage in the House, where antibusing forces may complain that it is too weak, and in the Senate, where civil rights advocates may say its prohibitions on busing are too strong.

It is expected that majorities in both Houses will accept the measure, however.

The conferees weakened the House provisions against busing by dropping a House amendment that would have imposed an outright ban against the use of any federal funds to support busing for school desegregation.

They accepted, instead, a milder Senate version that would allow the federal government to continue to support busing financially if school officials ask for the money. Under this provision, which was part of the Senate's so-called Scott-Mansfield amendment, federal spending for busing would be prohibited only when the time or distance of the busing "is so great as to risk the health of the children or significantly impinge on the educational process," or when the busing would mean sending a child away from a good school to an inferior school.

But the Senate side yielded to the House position on another antibusing provision, accepting, in essence, a House amendment that would not allow any court-ordered busing to take effect until all court appeals of the order had been exhausted.

The conferees accepted this in the form of a moratorium by imposing the 18-month limit on its effect.

The Senate conferees yielded to the stronger House position, slowly and reluctantly. First the senators, including Mr. Pell, were willing to accept only a three-month moratorium.

PELL BREAKS DEADLOCK

By 3 a.m. yesterday the House conferees were holding the line for an 18-month suspension and the Senate conferees had agreed to a moratorium as long as 12 months. Neither side would yield further, and the conference was deadlocked.

Mr. Pell finally broke the deadlock by agreeing to go for the 18-month proposal and by helping Sen. Peter H. Dominick, R-Colo., the ranking minority member of his subcommittee, to round up supporting votes from two senators who were sleeping at home.

The tie-breaking senators they roused at 3 a.m. were Harrison A. Williams Jr., D-N.J., and Richard S. Schweiker, R-Pa.

Mr. Pell said yesterday that he "had to take the bull by the horns. The House had already given a great deal. As chairman I had to get through a bill that's acceptable to the House."

Noting strong opposition to the 18-month plan by such senators as Edward M. Kennedy, D-Mass., and Walter F. Mondale, D-Minn., Mr. Pell said, "I guess on this issue their enthusiasm for busing is greater than mine."

Throughout the debate on the higher education bill, Mr. Pell has regarded the landmark new assistance programs as its most important provisions.

GRANTS FOR NEEDY STUDENTS

Under the Pell student-grant program, needy students who qualify for college or occupational schools after high school could receive up to $1,400 a year in federal assistance grants, "minus the amount his or her family can reasonably be expected to contribute."

The grant would be figured out on a complicated formula adjusted to the total of funds available, family income, the number of college-age children in the family, etc. No stipend could amount to more than half the student's college costs.

Mr. Pell said the overall cost of the student aid program would be about 850 million dollars a year.

He has described the plan as one which would establish "the right to a post-secondary education for all of our nation's citizens. This is the first bill which clearly states that the United States has a responsibility to provide some form of post-secondary education to all students."

Acceptance of the plan was a clear victory for Mr. Pell's Senate proposals over alternatives voted by the House.

The original House measure did not give direct grants to students. It simply would have continued the Educational Opportunity Grant program, a smaller program distributed through the states and then through the colleges and the universities.

CONTROVERSIAL HOUSE PLAN

And instead of creating a new program of student aid, the House bill would have launched a controversial new program of institutional aid to support private and religious as well as public institutions of higher learning. This aid would have had few strings attached, and some observers felt it might violate the constitutional separation of church and state.

The conference bill does provide federal aid to colleges and universities on a large scale for the first time. This and other innovations in the bill prompted one conferee, Rep. John Brademas, D-Ind., to call it "the most important higher education bill since Abraham Lincoln signed the college land grant bill."

Rather than using the House approach to aiding institutions, however, the conference bill is hinged more on the approach used in Mr. Pell's Senate bill: It would allocate aid to the colleges on the basis of their federally-financed student enrollment.

One asset of this approach is that it is less vulnerable to a constitutional challenge, since the support is given simply to help colleges meet the cost of educating students supported by the government.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. COTTON when he submitted Senate Resolution 303 are printed in the RECORD under Submission of a Resolution.)

SENATOR SCOTT'S LEGISLATIVE RECORD ON BEHALF OF AMERICAN BUSINESS

Mr. COTTON. Mr. President, after several years of an extremely frustrating economic slump, the economy shows encouraging signs of growth. The number of jobs has increased, business investment has been stimulated, and there has been some improvement in our balance of payments.

One of the keys to this economic growth is a strong, viable business sector. More business means more jobs, higher salaries and wages, and a more stable future. Congress has helped sustain this growth through the enactment of certain tax incentives, for example, which enable businesses to invest in new machinery and equipment.

The distinguished senior Senator from Pennsylvania (Mr. SCOTT) is a friend of the businessman and his record proves it. I am sure that others in this Chamber share my admiration of the legislative and voting record of our distinguished minority leader seeking to promote the interests of American business. I, therefore, ask unanimous consent to have his legislative activities printed in the RECORD.

There being no objection, the legislative and voting record was ordered to be printed in the RECORD, as follows:

COMMERCE AND INDUSTRY

THE 92D CONGRESS

Legislation

S. 646—To provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recordings.

S. 647—To provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions.

S. 1457—To amend the Clayton Act by adding a new section to prohibit sales below cost for the purpose of destroying competition or eliminating a competitor.

S. 1729. To supply general service freight cars to meet the needs of commerce, users, shippers, national defense, and the consuming public.

S. 2365—To provide for orderly trade in iron and steel products.

S. 3232—To provide more effective means for protecting the public interest in emergency disputes involving the transportation industry.

Votes

Voted to allow a greater expansion of export trade for the United States.

Voted for amendment requiring approval of Congress prior to the instituting of wage and price controls by the President.

Recorded in favor of an amendment to provide a 10 per cent investment tax credit to industries creating new jobs in rural areas and in certain cities with 6 per cent or more unemployment.

THE 91ST CONGRESS

Legislation

S. 766—Unfair Competition Act of 1969—to provide for registration and protection of trademarks, etc.

S. 864—Orderly Trade Expansion Act—to authorize the President to enter into trade agreements with foreign countries, etc.

S. 1164—Iron Ore, and Iron and Steel Orderly Trade Act to limit the amount of iron ore, pig iron and steel mill products which may be imported into the United States by giving the President authority to negotiate agreements establishing import quotas.

S. 2143—To authorize the Secretary of Commerce to develop a national travel policy, to encourage and improve domestic travel facilities, and to coordinate and act as the Federal Government's liaison with State and private tourist organizations. Provides funds for new activities of the U.S. Travel Service.

S. 3615—To provide for orderly trade in textile articles, designed to provide relief for the American textile industry from ruinous threat of foreign imports.

S. 3723—To provide for orderly trade in textile articles and articles of Leather Footwear.

Votes

Voted against the nomination of Carl J. Gilbert to be Special Representative for Trade Negotiations because of his total commitment to free trade at the expense of some of our hard-pressed domestic industries.

Voted to authorize the President to impose tariffs, and other import restrictions as he deems necessary, and requiring the President to reciprocate when other countries remove import quotas on U.S. goods.

Voted for Newspaper Preservation Act, to exempt joint newspaper operating arrangements from any antitrust law if only one of the newspapers involved is a financially sound publication.

Voted for the Bank Holding Company Act Amendments of 1970 to permit banks to engage in certain non-banking, but related activities.

Voted for Securities Investor Protection Act of 1970 to provide for greater protection for customers of registered brokers and dealers and members of national securities exchanges.

Voted for temporary prohibition of railway strikes or lockouts.

Voted for railway labor-management dispute—imposed settlements.

Voted to create an independent presidentially appointed 3-member review commission to adjudicate contested enforcement cases under the Occupational Health and Safety Act of 1970.

THE 90TH CONGRESS

Legislation

S. 612—To regulate imports of milk and dairy products, etc.

S. 1796—To impose quotas on importation of various manmade or natural articles of textile fibers.

S. 3335—To apply an acceptable credit risk standard for loans to small business concerns in certain high-risk areas.

Votes

Voted to suspend foreign aid to any country which seize or penalized a U.S. fishing vessel until that country reimbursed the United States for its payments to owners of such vessels.

Voted *not* to reduce by 122 million the authorizations for U.S. Maritime programs.

THE 89TH CONGRESS

Legislation

S. 949—To promote State and regional centers to place finding of science usefully in hands of American enterprise.

S. 1858—To promote the expansion and replacement of U.S. nonsubsidized merchant and fishing fleets.

S. 2022—Orderly Marketing Act: to afford foreign supplying nations a fair share of the growth or change in U.S. market.

S. 3530—To create Federal Maritime Board-Administration.

Votes

Voted to exempt Rural Electrification Administration-financed cooperatives from Federal Power Commission jurisdiction.

Voted to authorize a qualified State to administer the safety standards contained in Federal Metal and Nonmetallic Mine Safety Act.

88TH CONGRESS

Legislation

S. Res. 30—To grant legislative authority to the Select Committee on Small Business.

S. 627—To promote State commercial fishery research and development.

S. 1773—To provide construction subsidies for merchant fleets.

Votes

Voted for the Commercial Fisheries Research and Development Act of 1963.

Voted *not* to reduce by 21⅔ percent the proposed subsidy for fishing vessel construction.

Voted for the United States Fishing Fleet Improvement Act.

87TH CONGRESS

Legislation

S. 610—To establish an Office of International Travel and a Travel Advisory Board within the Commerce Department.

S. 852—To encourage and promote the expansion through private enterprise of domestic exports in world markets.

S. 1722—To protect and equalize rights in distribution of merchandise identified by a trade-mark, brand or trade name.

Votes

Voted to strengthen and pass the Communications Satellite Act of 1962.

Voted to restore the "peril-point" provisions of existing law into the Trade Expansion Act of 1962.

Voted to provide for financial assistance to firms and workers adversely affected by the above Act.

Voted *not* to limit payments to displaced workers in affected industries to amounts they would receive under regular State unemployment compensation programs.

Voted to require the President to transmit to Congress a copy of each trade agreement entered into, with a statement of his reasons therefore.

Voted for the Trade Expansion Act of 1962.

Voted *not* to cut by $14.2 million funds for ship construction, Maritime Administration.

86TH CONGRESS

Legislation

S. 2663—To provide for equalizing conditions of competition between domestic industries and foreign industries with respect to level of wages and working conditions in the production of articles imported into the U.S.

S. 2692—To provide for a ten year program of research, construction, etc., to advance the marine sciences.

S. 1362—To encourage and stimulate production of conservation for coal; authorize the Secretary of the Interior to contract for coal research.

Votes

Voted to provide a program of assistance to correct inequities in the construction of fishing vessels.

QUORUM CALL

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

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

EDUCATION AMENDMENTS OF 1972—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the text of the bill (S. 659) to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, the General Education Provisions Act—creating a National foundation for Postsecondary Education and a National Institute of Education—the Elementary and Secondary Education Act of 1965, Public Law 874, 81st Congress, and related acts, and for other purposes.

Mr. WEICKER. Mr. President, to paraphrase Charles Dickens:

This is the best of days and the worst of days. This is the highest of ideals and the lowest of emotions.

A dilemma faces each of us today as we come to the final decision on a bill which but for one section is a landmark of creative excellence in America's higher education. Unfortunately that one small section erodes the Constitution of the United States for 18 months. And that is like one bite out of the apple. There just is not such a reality as "once." What to do? We are offered an indivisible package of excellence and muck. This is not the normal compromise which moves legislation through these halls every day. This compromise our whole reason for being—as Senators—as a United States of America.

Mr. President, how ironic it is that in the same vote we are asked to both further the educational and condemn the constitutional future of our children.

Busing is not the issue. I do not know anybody that claims it as the answer to equality of educational opportunity. Some courts have allowed its use as a tool in those parts of the country where the law stated that all men are not equal.

The issue is what portion of the legal rights of every American are to be traded for the painless attempt at achieving equality of educational opportunity in this country.

Now, my fellow Americans, maybe giving up a portion of our constitutional rights does not hurt as much as increased taxes or seeing customs shattered or suffering the noises of despair heretofore quarantined, but, believe me, we are leaving our children, not just their's, with a United States that is morally and legally cheaper than that which our parents gave to us. We have amassed wealth of every kind to a fantastic degree in this country. Within this struggling Nation of 100 minorities, whether in an ethnic, occupational, physical, religious, income or color sense, most of us have made it. How, rather than thank God and Constitution by building a bigger boat, we have opted to beat back into the water those struggling to get aboard.

This is the point for a Bill Klem.

S. 659 is over the line.

Mr. President, I intend to vote no on the conference report, and I urge all of my colleagues who are sworn to "support and defend the Constitution of the United States" to do the same. Maybe that is the greatest boost we can give to higher education in this country.

The PRESIDING OFFICER. What is the pleasure of the Senate?

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

The PRESIDING OFFICER (Mr. WEICKER). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I rise in opposition to the motion made by the Senator from Michigan (Mr. GRIFFIN). I do this without regard to my own position on this conference report, because right now I am planning to vote against it, but simply in the interests of the work of the Senate and the work of the conference.

It is my judgment that this information should be made available, Mr. President, to all those who have an interest

in this bill, which represents probably the most important single higher education bill since the last century. The tragedy which will appear to all, is that it represents such a monumental achievment in the educational field and is not, I assure every Member of the Senate, to be lightly forgone. On the contrary, I consider this one of the most important decisions I have to make myself, in terms of my legislative life and as the ranking Republican member of the committee which has produced the Senate bill and the conference report.

But, Mr. President, this would all be shattered without hope of recovery, in my judgment, were we to go back to conference with these instructions, for then this particular conference report would, if Senator GRIFFIN's motion were agreed to, be made to carry a load truly backbreaking, not only to me, but it should be backbreaking to the overwhelming majority of the Members of the Senate, and anathema to the interests of the country in terms of equal opportunity in education which is contained in the conference report with what is required by the Griffin amendment, which is of a completely different order of magnitude.

I have myself—and I shall discuss them in a minute—very grave doubts, Mr. President, as to the constitutionality or the effectiveness of the so-called Broomfield amendment adopted by the conferees. But what Senator GRIFFIN would have us do is adopt the House provisions as they were passed, which would not only break the back of transportation in terms of busing for desegregation, but break the back of desegregation in every way in this country, and would represent such a regression in terms of the law as to really be alarming for the country's future.

Indeed, Mr. President, notwithstanding the two instructions voted by the House of Representatives to its own conferees, even the House conferees were compelled to recede in very material ways from the congeries of amendments which they presented to us, and which Senator GRIFFIN's instructions would now require us as conferees to accept.

I invite Senators' attention to the whole of title VIII. It is always very important to read the fine print. The motion which is before us would require the Senate conferees to acept the whole of title VIII, including every provision in it; and every provision in it goes far beyond what the conferees adopted. In addition to problems of unconstitutionality, there are problems of just plain deep injustice which would be the result of the adoption of these instructions to the conferees.

The real problem for us all—and it certainly is not solved by the Griffin motion—is that this is, and I shall detail that also, in every other way an admirable bill, doing things which cry out to be done, in terms of facilitation of higher education, in terms of helping with the desegregation of education at the public school and secondary school levels, in terms of occupational education, in terms of Indian education, and in terms of individual students, including, in all fairness, students of minority groups who suffer adversely from the antibusing provisions, in giving them an enhanced opportunity for higher education, where busing is not in question at all one way or the other.

But with these provisions, Mr. President, both for those who support the conference report as being what they consider a necessary compromise of the views of the House and those of the Senate, and for those who oppose the conference report on the ground that it goes too far in inhibiting constitutional rights or trying to inhibit them, even if it cannot, with respect to equal opportunity for education, the motion which is before us is disastrous and regressive. Therefore, Mr. President, whatever may be the outcome upon which the Senate works its will, this is certainly not the way to go. It would just be compounding all the difficulties which we already face.

The rationale of those who would vote for the conference report is clear. They would feel that the high desirability of the educational provisions outweighs the difficulty, where there is validity, of the so-called antibusing provisions. The problem for those would vote against the conference report is that the balance is tipped by denial of equal opportunity in the educational field by forbidding courts to order desegregation in situations where segregation still persists, and that the bill, notwithstanding its admirable provisions on education, is being used as a vehicle for that purpose and, therefore, we cannot accept it in terms of the conference report and let the balance then go the other way. As I have indicated before, that is my position.

But, Mr. President, to send this report back to the conferees with instructions to accept the worst of what the House originally passed in terms of antibusing and antidesegregation simply compounds what was already a problem for both those who would vote for and those who would vote against and, therefore, in my judgment, unless they feel so dug in that the antibusing provisions and the antidesegregation provisions preponderate over everything else in the bill, I can hardly see how they can support this motion.

So in my judgment, Mr. President, both sides on the basic controversy should vote against the motion.

Now moving, Mr. President, to the basic controversy which is involved: The real difficulty which arose in the conference may not be so much in the words of the amendment which is inserted, the so-called Broomfield amendment—because it is a fact that it was limited in its operation to 18 months—as in the legislative purpose and intent which is described as being carried by those words. Whether or not the courts will go along with that interpretation no one knows; and whether or not the courts will hold the provision constitutional, even if they went along with the construction of the language according to the legislative intent described by the sponsors of Broomfield on the House floor, nobody knows. But it seems to me that we are presented with a dilemma that if you vote for it, you must in good faith accept what the House says it means. The only way you can undo or protest or challenge what the House says it means is by voting against it. That is a very different course from the course which is offered to us by the Senator from Michigan.

The Senate also adopted a version of the Broomfield amendment, but a version which, in my judgment, is much more likely to be constitutional and much more acceptable. Indeed, I supported it and was one of its architects.

If we go back to conference as a result of the action of this body without such instruction as Senator GRIFFIN has given us, I think there is a real likelihood that the Senate will then have stood its ground, as the House in two successive instructions stood its ground.

The House conferees were able to take a very strong position in the conference. They were almost inflexible on the Broomfield amendment in conference. Indeed, the only part on which they gave was a time limitation—although a lengthy one, considering what is at stake. They felt themselves deeply fortified by the instructions of the House.

Mr. President, the Senate conferees would feel themselves just as deeply fortified by the unwillingness of the Senate to accept Broomfield even in its present form. Therefore, I feel that there would be great likelihood of working out a compromise on this subject far more acceptable to many of us. So that it is not totally illogical to say, if you do not like this conference report, send it back to conference, but to send it back to the conferees with such instructions that Senator GRIFFIN would give us, to move from what is already a hot frying pan into the fire—I hope the Senate will not choose to do that. It is no answer to attempt to forgo the whole controversy by complete surrender to the unconstitutional and highly regressive and unjust provisions which were passed by the other body and which we would then be instructed by the Griffin motion to accept without any choice whatever.

In short, Mr. President, we should be going in the other direction, away from Broomfield, even in the form reported by the conferees, rather than in the direction of the other body. We should not sacrifice the distance which the House conferees have already traveled in yielding even the small amount they did yield in terms of fixing a date respecting the operation of the Broomfield amendment.

Mr. President, why do I say that about the House amendments? We have a right to argue those. Though they are not in the conference report, as originally adopted in the House, they are what the Griffin motion wishes us to adopt. The Ashbrook, Green, and Broomfield amendments are included in this motion, the Broomfield amendment, without a date. It is simply something we could not do.

What the House does in the so-called Ashbrook amendment, is to absolutely prohibit any kind of expenditure out of Federal education funds for the transportation sometimes necessary to achieve school desegregation, even if asked for voluntarily by the local education agency, and without any qualification or limitation of any kind; so that even if a local school district felt on its own that it wanted to work out a desegregation plan with furnishing some busing, it could not

get help from the very funds of the Federal Government which are set up to help them desegregate voluntarily or to comply with the desegregation order.

Then we move to the Green amendment, which seeks to inhibit even State or local funds being used for transportation in order to work out school desegregation, which in a sense tightens the noose around the neck of the effort to desegregate the schools—again, without any limitation of any kind or character regardless of the requirements of the Constitution.

In addition, the Green amendment, as the House has written it, goes even further than that, but it strikes at orders of the Department of Health, Education, and Welfare. I feel that it completely invalidates the most present application of title VI of the Civil Rights Act of 1964, by which the Department is instructed to enforce nondiscrimination requirements, facilitating where appropriate, school desegregation through the utilization of funds and authorities in respect of aid to education in the Federal establishment.

Should the Green amendment be enacted, we would then have the anomalous situation of taxpayers' money—which includes the money of people flagrantly discriminated against—being used for the purpose of denying them the equal opportunity for education which the Constitution affords them.

Then, Mr. President, we come to the Broomfield amendment, which was finally compromised as between the two bodies, and here again we have an absolutely flat, automatic stay of any order until appeals have been exhausted. At least, if you take the language for what the House sponsors say it means—and I will discuss that in a moment—you have an automatic stay for 18 months of any lower court order which would seek either to transfer or to transport students in respect of what again I say the amendment's House sponsors claim is an effort to desegregate in order to comply with the Constitution.

I might point out that that is exactly the point made this morning in the colloquy between Senator PELL and the Senator from Tennessee. I can understand perfectly why the Senator from Tennessee would expect that the interpretation put upon this provision by the Members of the other body would be the interpretation which he would expect to be carried out.

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

Mr. JAVITS. First, I should like to read what the conference report managers said about this amendment. I think it will help the Senator from Tennessee in his questioning.

Mr. BAKER. All right.

Mr. JAVITS. The managers in the conference, in commenting on the question of the Broomfield amendment, say the following in their report:

> The House amendment provided that notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. An identical provision was contained in the Senate bill but is applicable only to court orders requiring transportation of students between local educational agencies or consolidation of two or more such agencies. The Senate amendment provides that the section shall expire at midnight on June 30, 1973.
>
> The conference agreement contains the precise language of the House amendment and provides that this section shall expire midnight January 1, 1974. This section does not authorize the reopening of final orders, however, appealable orders are considered to be within the scope of this amendment. The conferees are hopeful that the judiciary will take such action as may be necessary to expedite the resolution of the issues subject to this section.

Now I am happy to yield to the Senator from Tennessee.

Mr. BAKER. I thank the Senator for yielding. I understand the point he is making but do not entirely agree with the representation advanced. The interpretation of the Senator from Tennessee is not dependent on the interpretation given in the House report. Rather, instead, it is my position that the language reported to the Senate in this conference form, as elaborated by the Senator from Rhode Island (Mr. PELL), is the fair import of the proposed statutory language, without reference to what the House says or believes.

Briefly put, it is this, that, putting aside the question of constitutionality, which the Senator from New York and I have discussed previously, and assuming the situation he described, that is, a busing order issued by the U.S. District Court which has been put into effect but which is on appeal now in the U.S. Sixth Circuit Court of Appeals and no doubt will be appealed to the Supreme Court by one side or the other, in that situation, not in view of the House language but in view of the managers' understanding of that situation, I ask, does this language stay the effectiveness of this order? My understanding is that the Senator from Rhode Island (Mr. PELL) indicated it was his understanding of the language. So I rise only to make the point that this has nothing to do with the House's interpretation but it has to do with the colloquy on the floor of the Senate with respect to an understanding of the language now before us.

Mr. PELL. The recollection of the Senator from Tennessee is correct. That is my understanding.

Mr. BAKER. I thank the Senator.

Mr. JAVITS. This exactly bears out what I said a minute ago, that the reason for rejecting the Griffin motion is as much within the purview of the Senator from Tennessee, taking his position, as within my purview. In short, it is my judgment—and I will analyze it in great detail—not only that the provisions which the conferees have brought back are unconstitutional but that it does not, in its own terms, say what the Senator from Rhode Island, who speaks for the managers—claims it says, with regard to applicability to the particular case raised by the Senator from Tennessee. But, again, that is neither here nor there in terms of the Griffin motion which does us both "in," as it were, if passed. That was the basic point I was trying to make. The Senator may disagree with me thoroughly on constitutionality. He may disagree with me thoroughly on construction of the language. I have pointed out the grave difficulty, notwithstanding what I consider to be the tremendous appeal of the educational provisions of voting yea on the conference report, lest one is willing to subscribe to the very interpretation the Senator from Rhode Island (Mr. PELL) has described.

I know that he will understand I am perfectly free to argue that this language means something different from what the Senator from Rhode Island (Mr. PELL) interpreted it to mean. But he is right about the fact that the application of the provision to school desegregation is the managers' interpretation, expressed not only on the floor of the House but also on the floor of the Senate, now that a majority of the conferees have brought in the conference report.

Mr. BAKER. I fully agree with the Senator from New York that this does not bear directly on the motion before the Senate, that is, the motion to recommit. However, this colloquy is important because this is an issue, a point, and a salient point, vital to the final determination of the attitudes and positions of Senators on this conference report. I thought it especially important to have an elaboration of the point of view of the managers of the bill so that we could use that as legislative language further to serve our purposes, whether we disagree or agree on how we will vote.

Mr. JAVITS. I thoroughly agree with the Senator and would like to point out, in all fairness to the conferees, that they themselves have invited early attention of the courts to the unresolved issues. Of course, what we seek to do here will be very much dependent on how the courts deal with the question. They will not be bound by it but they will want to know what we thought we were doing—at least a majority.

Now, Mr. President, to proceed to the essential elements of the bill; but before I go into the question of constitutionality and the construction of the language of the so-called Broomfield amendment, I would also like to make the point respecting a comparison of the Broomfield—as they term it in the conference report—with the version of the Broomfield amendment which was passed by the Senate. It is as different as day and night.

First, as to the bill itself, I take unusual pride in the contributions of the minority to the educational aspects of the bill. I pay special tribute to the Senator from Colorado (Mr. DOMINICK) who was the ranking member of the subcommittee, and to Senators SCHWEIKER, BEALL, and STAFFORD, as well as to the majority, led by the Senator from Rhode Island (Mr. PELL)—which I have already done.

I say that because it is my belief that the educational provisions will survive and that we will work out some resolu-

tion of the busing business in respect of the votes which are impending. I hope and pray that we do not go the Griffin way. Even if we reject the conference report for reasons which I have stated in respect of the Broomfield concept which was adopted, the educational provisions will survive, so that that part of the job has been done. It is truly historic. It includes a grant program.

Mr. President, I interrupt momentarily to yield to the Senator from Rhode Island.

Mr. PELL. Mr. President, I would ask unanimous consent that at 4 p.m. today agreement be given to a vote on tabling the Griffin motion to refer the conference report back to the conference.

Mr. JAVITS. Mr. President, I would wish that the Senator from Rhode Island would withdraw that. I do not wish to object to it, but I will object if I have to; for this reason: I do not wish to be taken off my feet. I expect to be through well before 4 p.m. today, but I do not wish to be taken off my feet at 4 o'clock. I, therefore, suggest to the distinguished Senator that he give notice of what he is going to do and that at 4 o'clock or as close to that as he can, he will seek the floor in order to move to table. I believe that it will work out. I can assure the Senator that my cooperation will be fully on hand.

Mr. GRIFFIN. Mr. President, will the Senator from New York yield for an observation?

Mr. JAVITS. I yield.

Mr. GRIFFIN. I would agree with the Senator because it would be awkward for the Senator from Michigan to agree to such unanimous consent.

But, a motion to table is the privilege of the Senator from Rhode Island. If he wants to notify the Senate and he then gets the floor to do that, there is, obviously nothing any Senator can do about it.

Mr. JAVITS. I take it that that is agreeable to the Senator from Rhode Island and he will give me notice at 4 p.m. that he will move to table.

Mr. PELL. That is correct.

The PRESIDING OFFICER (Mr. WEICKER). Does the Senator from Rhode Island withdraw his request?

Mr. PELL. Yes, Mr. President, I withdraw the request.

Mr. GURNEY. Mr. President, will the Senator from New York yield for a quick question?

Mr. JAVITS. I yield.

Mr. GURNEY. I was called away as the Senator was discussing the House provisions, insofar as the busing question is concerned. Is it my understanding, in the Senator's general description of what the House provisions were, that those provisions would be much tougher as regards antibusing than those presently in the conference report?

Mr. JAVITS. If constitutional, if the language were construed as its sponsors in the House have construed it. So it would be much tougher—than even the provision, that I am unhappy with which is in there already.

Mr. GURNEY. I thank the Senator.

Mr. JAVITS. Mr. President, to proceed with the question of educational achievement, which we hope very much after consideration will be a closed book no matter how we go on the conference report, such achievements include a grant program to stimulate innovation in higher education. This is extremely desirable and one very strongly favored by the administration.

It includes matching grants to the States, a State student incentive program, to provide educational assistance to encourage State programs for students in financial need so they might obtain a higher education. This provision would be one of the most important and stimulating and broadening opportunities to obtain a college education which was in the bill.

We have the inclusion of half-time or part-time students in the educational opportunity grant programs.

We have the establishment in poverty areas and in ghetto areas of Educational Opportunity Centers to counsel the poor and others on entering college. Again, this is critically important, because too often these people suffer from lack of information or from misinformation.

We have an important advance in vocational and adult education by establishing a bureau in the Office of Education, as well as a new grant program for occupational education.

There is an amendment which deals with discrimination against particular categories of students in the guaranteed loan program not only with respect to race and sex discrimination, but also with respect to the requirement that a certain amount be deposited in a given bank, which inhibits in many cases poorer students from getting this kind of guaranteed loan.

We have in the bill the authorization, for funds to remove architectural barriers that hamper handicapped persons in attending college.

We have provisions in the emergency school aid part of this law, which authorizes $2 billion, that is of tremendous assistance to schools that are seeking to desegregate. That is also part of the bill.

Mr. President, there are many other provisions which are very much to be favored in the educational section. For the first time we have the concept of the entitlement of a student to a Federal grant so as to enable him to go to college. We have the Student Loan Marketing Association—Sally Mae—the secondary market loan facility to make more additional funds available for banks for guaranteed student loans.

We have a landmark memorial to one of our former colleagues, the late Senator Winston Prouty, who fought for so long to bring about the establishment of a National Institute of Education to foster educational research.

This has been provided for in this law, with the opportunity to extend that work not only in the field of research, but also to support demonstration and innovation programs.

We have $40 million of rescue funds for financially hard-pressed colleges and universities that are in imminent danger of closing.

This program was sponsored by the Senator from Maryland (Mr. BEALL) about whom I have spoken before, and the Senator from Colorado (Mr. DOMINICK). It is a most important program.

We have a new program in the legislation for vocational education for Indians.

We also have a new ethnic educational program to deal with ethnic groups in the United States. That amendment was sponsored by the Secretary from Pennsylvania (Mr. SCHWEIKER).

All in all the bill is a really remarkable achievement in respect of education. So many of us are so deeply depressed by the fact that, notwithstanding this magnificent achievement in the field of education, we have to contend with the use of this really great bill as a vehicle for endeavoring to perpetuate for an additional 19 months the conditions of oppression for individual Americans who are segregated or discriminated against in respect of educational opportunities.

Mr. President, I turn now to the unconstitutionality of the so-called Broomfield amendment provision, which has been brought back to the Senate in much worse form than it was adopted by the House and also with respect to the construction of the language itself which, I feel, may not affect even the automatic stay on desegregation which the managers claim for it.

Mr. President, obviously my point is not to accord with the construction put on this section by the managers, but to voice a contrary view.

The amendment says—and I now read from it:

> Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on January 1, 1974.

That is exactly the same as adopted by the House, except as to the date.

It will be noted that this section, unlike the Green and Ashbrook section adopted by the House, does not speak of desegregation. It speaks of balance. It is a fact that it does not speak of racial balance. However, it has a totally new formulation. It speaks of achieving a balance among the students with respect to race, sex, religion, or socioeconomic status.

Mr. President, as far as I know, the courts are not issuing orders respecting socioeconomic status, which is here included. There is nothing in the Constitution which says that a person is entitled as a right under the Constitution to an education with or without a particular socioeconomic group. Nevertheless, that is in this particular amendment.

We have been through a number of provisions of law which talk about using funds for the purpose of achieving racial balance, a different formula from that which is contained here. The word "racial" is omitted here.

The courts have held in respect of this particular provision that they are not the same as desegregation orders—either HEW orders or court orders—and that it depends upon the educational law of each State as to whether it is permissible to shift students around for the purpose of achieving racial balance.

There is nothing in the Federal Constitution which makes any special requirement as to race or racial balance. Therefore, the courts have tended to say that these provisions are without effect.

It is my view that that could very well be said about this provision. It omits the word "racial" before the word "balance." If it included it, it would come within these cases. But, in effect, it said the same thing, namely to achieve a balance among students with respect to race, sex, religion, and it then goes on to the socioeconomic status. The construction which its original House sponsors contend for is that this would include all desegregation orders.

Whether one is for or against this amendment, his position is compounded by the use of the word "transfer" which occurs in this amendment which was agreed to by the conferees—not only transportation, but also "transfer." "Transfer" would include a walking transfer, a transfer from one school to another school, even a transfer where busing was not involved.

So the combination and use of the word "transfer" and the failure to use the same words which the court has said is ineffective respecting a desegregation definition, "racial balance," lays this open to a very adverse construction so that any desegregation order could be construed as coming within its terms. I believe that the cases state that racial balance is not desegregation and that racial balance is not required by desegregation of a kind which the courts redress. The courts might dismiss that provision as they did the racial balance provision when it came to the desegregation issue.

I hope if this provision becomes law, the courts do that, but no one can assure that, especially if there is adopted the construction of this provision adopted by the sponsors of the provision in the House and presumably, those who signed the conference report on the part of the Senate and the House.

The other challenge to this particular provision, and this was even recognized by the conferees themselves in their invitation to the courts to expedite consideration of the matter, is the question of constitutionality. I believe this provision of the conference report is unconstitutional and I rely mainly on the case of Alexander against Holmes County, Miss., which decision was handed down in 1969. In that case petitioners were seeking delays in court ordered desegregation throughout Mississippi. The principle which this case established I will argue in a moment. The Supreme Court said it was establishing a constitutional principle that dual school systems, to wit, those guilty of de jure segregation, must be terminated at once and that the Court could brook no delay under the Constitution.

We are talking about the Supreme Court, which is not inhibited by the Broomfield amendment.

This is what the court said:

> The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court. Against this background the court of appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.

It seems to me clear, as that was a circuit court of appeals decision the Supreme Court was dealing with, that the court held unconstitutional any modification such as Broomfield would make, regarding the time when segregated districts must be desegregated, and this provision seeking to freeze into law a 19-month stay would be struck down as unconstitutional.

Another legal principle derived from the 14th amendment renders this provision unconstitutional, the principle that racial classifications may not be made. In Lee against Nyquist, a 1970 case in which the judgment of a three-judge district court was later affirmed by the Supreme Court, at issue was a New York statute prohibiting the implementation of plans designed to alleviate racial imbalance. In holding the New York law unconstitutional, the three-judge court said, citing the 1969 Suprme Court case of Hunter against Erickson:

> The State creates an 'explicitly racial classification' whenever it differentiates between the treatment of problems involving racial matters and that afforded other problems in the same area.
>
> The Statute—creates a single exception to the broad supervisory powers the State Commissioner of Education exercises over local public education.

The Broomfield amendment treats school cases involving a balance of race, religion, sex, or socioeconomic status differently from other school cases the district courts may be asked to decide. In singling out these criteria, of which race is obviously the major factor, it creates a constitutionally proscribed classification.

I have expressed my views, one, that the provision brought in may not be construed to do what the managers and the proponents seem to say it does and what the House says it will do, to wit, give a statutory or automatic stay to all desegregation orders in the 19-month limitation, and, two, if the House sponsors' construction is correct, it is unconstitutional on that ground. I support and voted for, the compromise adopted here with respect to a version of Broomfield, to wit, inhibiting for 1 year the question of final decision on two issues: One, the consolidation of school districts in court-ordered desegregation; that is, consolidating them for the purpose of moving students from one to the other where they were contiguous; and two, crossing district lines in the assignment of students to achieve desegregation.

It was much closer then because in that case, in the measure the Senate adopted, we were dealing with two novel questions not decided by the Supreme Court. It seems to me there was a chance, and I said so at the time—I was not positive about it, but there was a chance—that with the one-year hiatus, we were giving opportunity for all relevant new law to be the same throughout the United States and that one year was a reasonable time to give the Supreme Court the opportunity to consider the question as it came from the different circuits and have the question decided so the law would be uniform throughout the United States.

That is different than congressional intercession, the justification for the part of the conference report with which we are dealing here.

Mr. President, I would like to conclude as follows: there are, many will say, highly complex and highly esoteric questions of law, of constitutionality, or the meaning of given words which I have been discussing, but they come at a time which is tremendously meaningful in terms of national policy, and this must dictate votes like mine. Let us remember there is a tremendous feeling many seem to read, which is moving and sweeping the country. The example which is most often given to us is the example of the primaries, especially the primary in Michigan where the question is a very hot one; it has been interpreted to mean that the country is against busing—so-called involuntary busing—that is busing that is an element of court-ordered desegregation; this, notwithstanding the limitations the Supreme Court put on busing, which are very real, in the Swann case, which relate to the health of the child, and whether the child's learning is interfered with by the nature of the busing. In the Scott-Mansfield amendment, the Senate sought to add another guideline, to which I expect the courts will be receptive, to wit that the busing does not interfere with the education of any of the children participating in a desegregation program of which busing is an element.

That is our reasonable and honorable limitation, to the extent anyone would wish to give long delayed justice to those who have endured second-class citizenship, because they were sentenced at 5 or 6 years of age, because they were black, or because they were Polish, or because they were Mexican Americans, or because they were Jewish, or for some other reason of minority status.

With this kind of tide running in this country and with so many people in this country hungering for some sense of reassurance that we in public office understand their real and legitimate problems, I believe the Senate acted responsibly in adopting reasonable and fair limits on busing as a remedy. Yet we should not and cannot sweep aside the elemental promise of justice in this country; does it not seem elementary that, since we are people of conscience, we will stand up for the victims of discrimination, that this will not mean our joining a parade and moving with the tide against prog-

ress and movement, because of fear of one kind or another or an unwillingness to accept the principle that all Americans are equal, no matter what may be their color, race, or national origin?

That is what the issue is. It is climatic, but it is true. That, as I see it, is the basic issue which we face.

I think it is most regrettable that this great education bill has been used as a vehicle for endeavoring to turn the clock back in our country for millions of people in the minority. Mr. President, that is it. There is no choice about it. So we simply have to decide, each of us. It is not a matter of exhortation. This is a deep question of conscience for each of us. What weighs the heaviest in our consciences? Let this not be a notice to millions upon millions of Americans that some sentiment is sweeping the country which is inimical to their future and their progress. If, as I believe, this is an excellent education bill, we will find a way to make it into law if the Senate stands its ground, without the necessity to yield and go along with the bill notwithstanding the injustice for which it has been made the vehicle.

It seems to me this is the most conclusive argument against the Griffin motion—that it will turn the clock back even further and give an even worse signal to millions of American people who look to us for a sense of responsibility and a sense of justice and a sense of restraint, whatever may be a prevailing public sentiment.

For those reasons—and that is the immediate issue before us—I hope the Senate will reject the motion of the Senator from Michigan.

I yield the floor.

Mr. DOMINICK. Mr. President, I thank the Senator from New York for giving me some time before I understand a motion, probably by myself and the Senator from Rhode Island, will be made to table the motion of the distinguished Senator from Michigan to recommit the bill. I will vote to table and am supporting that move.

I think the reasons ought to be outlined first informally and then perhaps we can get the motion to table agreed to and get to the effect of the bill on the educational process of this country.

I listened to the Senator from New York (Mr. JAVITS) with great interest and with considerable sympathy. I know the problems with which he has been faced insofar as the busing issue is concerned.

The Senator from Colorado, perhaps as well as any Senator in this hall, realizes the controversies, the fears, the violence, and unrest which can flow, and which have flowed from mandatory busing proposals of the courts. The capital city of my State is presently awaiting the Supreme Court's decision on its case which well may provide the definitive national busing statement we have all been waiting for. My concerns for a sane resolution to the busing controversy have led me first to cosponsor Senator GRIFFIN's joint resolution to amend the Constitution, and later to seek national guarantees of equal educational opportunity through introduction of President Nixon's Equal Educational Opportunities Act of 1972. My involvement in and concern for the problems of mandatory busing are thus substantial. Yet, I do not intend that such an issue should torpedo a bill as necessary, as promising, and as comprehensive as this.

Assuming that one can still remain practical in the barrage of emotional rhetoric swirling around the busing issue, no Senator should allow busing alone to dictate his vote on this report. The proponents of mandatory busing must reorganize the political exigencies of the present situation.

A defeat of the conference report will not end the busing debate. It will continue until the Supreme Court finally decides the issue or Congress works out other methods to support quality education for all people.

On the positive side, the conference report contains language substantially similar to the Senate adopted Scott-Mansfield amendment concerning the expenditure of Federal funds and Federal requirements concerning the expenditure of State and local funds for busing. In fact, it was somewhat strengthened by virtue of using the language in subsection (a) of the Scott-Mansfield amendment.

The conference report also contains the House-approved Broomfield amendment staying the effectiveness of busing orders until all appeals are exhausted or the time for appeals has run, effective about January 1, 1974. In essence, the modified Broomfield amendment guarantees schoolchildren—this is another way to look at it, I might say—the right to continue attending their present school through final decision of the case, rather than shuttling them from school to school each time a district court order is implemented and then reversed. To guarantee less educational tranquility would, in my opinion, produce counterproductive educational results—and educational results are what we are all interested in.

A consequence for civil libertarians advocating defeat at all costs of the Broomfield amendment is the concurrent death of numerous programs contained in the report expressly or substantially for the disadvantaged or minority student. The shallowness of such logic is blatantly obvious for those who read the bill instead of their own headlines and rhetoric.

Killed in the heat of such anti-Broomfield rhetoric would be programs such as the entire student assistance program in S. 659 which is structured, more than ever before, for the needy students by the inclusion of the basic educational opportunity grant "entitlement" for such students. Even without the BEOG or the expanded authorizations of S. 659, during fiscal year 1971, approximately 1,280,000 national defense loans, college work/study jobs, and educational opportunity grants were distributed to America's poor students.

Additionally, 1,080,739 guaranteed student loans were made in fiscal year 1971 with 70 percent of them to students from families with adjusted family incomes below $9,000. Also, 90 percent of the institutional assistance program is specifically written to encourage the enrollment of poor students. Part I of title I contains a special graduate fellowship program for students from disadvantaged backgrounds. A vote against the conference report is a vote against authorizations of $96 million, $100 million, $100 million, and $100 million respectively for the next 4 years for the special programs for students from disadvantaged backgrounds. These three programs—upward bound, talent search, and special services for disadvantaged students—assisted 143,000 disadvantaged students toward postsecondary education in 1971 alone. Also killed would be special educational programs, such as the Indian Education Act with authorizations of $116 million, the strengthened Teacher Corps, and special bilingual and migrant education programs contained in part E of title I and title V, all over the busing fight.

Mr. President, if the conference report fails to pass, then the poor child's opportunity to escape poverty through the new $850 million Occupational Education Act or the extended Vocational Education Act fails also. Dying with the bill would be the $25 million ethnic heritage program and the $80 million consumers education program. And, finally, as a last note in a pool of chaos, the civil libertarians would vote against a $2 billion emergency school assistance program designed to assist school districts in meeting the special needs incident to desegregation, to encourage voluntary integration, and to aid schoolchildren in overcoming the educational disadvantages of minority group isolation. The record should be clear that those who vote against the conference report, because of special allegiances to mandatory busing do so with the full knowledge that they are consigning the abovementioned meritorious education programs for the disadvantaged to the junk heap.

To those who oppose the conference report, because the effect of the Broomfield language is ambiguous or not strong enough, may I point out that this was the best we could get. The automatic stay which is put in will give the Supreme Court time to decide the cases that are presently pending before it, or, in the alternative, will give Congress the chance to fashion either new legislation or a constitutional amendment to present to the American people, to see how they feel about it. But I would point out that we gain very little by defeating the bill on the ground that the antibusing language is not strong enough, when in the process of so doing, we are destroying the very educational processes which may make busing unnecessary for the future.

All I would say to my colleagues is that I hope we will not recommit this bill, that we will be able to table the Griffin motion, and that we can get on with the job of providing the necessary authorization for programs which, as I say, may finally at some point lay at rest the very emotional and highly volatile issue of mandatory busing.

Mr. TALMADGE. Mr. President, I wish to make one thing emphatically clear. If the Griffin motion is agreed to, it will not delay this bill, it will not kill this bill, and it will not harm this bill. The House of Representatives has voted twice, by overwhelming votes on both occasions, instructing its conference to agree to the House amendments. If the Griffin motion is agreed to, it will be the same action that the House has already taken twice, so that both bodies will be in complete harmony. All the conferees would have to do at that point would be to meet, to take the action that the House and the Senate had agreed upon, and they could resolve the matter in about 5 minutes. All they would have to do would be sign their names to the conference report and perfect the language.

A lot has been said about how the American people feel on this issue. I do not think there is anything clearer today on the horizon of this country than how the American people feel about forced school busing. We have had referendums in Texas, in Florida, and in Tennessee, all with overwhelming results. We have also had Presidential primaries, and George Wallace, the Governor of Alabama, a deep Southern State, has polled more votes in those primaries to date than any other candidate. Why? Because he did not equivocate on this issue of forced school busing. As a matter of fact, he was so emphatic on the issue that he swept Michigan, which is supposed to be the most liberal industrial State in the United States. That ought to be emphatic enough as to how the people feel on this issue. It is time for us to stop ignoring the clear mandate of the people we serve.

Nationwide, according to the Gallup poll, 69 percent of the people opposed forced busing to achieve racial balance. Moreover, according to the same poll, 46 percent oppose busing and are in favor of a constitutional amendment.

The Gallup poll pointed out that the principle of desegregation is accepted in all walks of life, North, South, East, and West. It is not a regional issue any more. Busing as a technique to achieve desegregation is another matter. Most people everywhere, North and South, oppose busing and favor neighborhood schools.

As a matter of fact, the Black Caucus that was held in Gary, Ind., overwhelmingly voted against forced school busing.

Mr. President, 75 percent of the people interviewed by the Gallup poll were outside the South. Sixty-eight percent of those outside the South opposed forced busing. Seventy-four percent in the South opposed forced busing.

Mr. President, the issue involved here is more than just whether or not the American people favor a certain principle. The issue involved is whether or not the American people, the fathers and mothers and guardians, possess the most sacred right that can be given our citizens—to determine the school that their children are going to attend, and whether all parents in all parts of the country possess this right to an equal degree.

I wish all Senators could see some of the hundreds and thousands of pitiful letters that I have received, not only from my constituents but from people who live elsewhere. For instance, a lady in Savannah, Ga., has her children bused 15 miles every day.

Also in Savannah, a 10-year-old girl who lives 2 blocks from one school is bused 15 miles to another one. She will travel over 5,000 miles in that bus in 1 year.

In Chatham County, Ga., a girl is bused 20 miles to school each day.

One family in Pooler, Ga., has six children. The two older boys go to a school 10 miles away. Two smaller boys go to school 4 miles in the opposite direction. In each case, they have to walk a mile to get to the buses.

This is a quotation from a letter:

> There are four primary public schools within three miles of my home, however, my fifth and sixth grade children were assigned to a school 16 miles away . . . children that got home at 3:15 last year aren't coming home now until 6:15.

Here is another one:

> We live within 100 yards of a neighborhood school and our child is being bused 10 miles each way.

A writer in Savannah says:

> Savannah children in the first through sixth grades are having to get up at 6:00 a.m. in order to be 30 minutes late daily for their classes due to this busing. Many of them are not getting home until 5:30 and 6:00 p.m.

Another letter:

> I have a son 8 years of age, we have three elementary schools within walking distance of our home. The Fifth Circuit Court of Appeals has seen fit to order this boy bused 24 miles each day to a foreign neighborhood.

Finally, in Wilkinson County, Ga., every day, the school buses travel as far from Washington, D.C., to Miami, Fla., and half way back. Forced school busing will cost this little county $133,000 next year. In Chatham County, the bill will run $850,390.

Mr. President, that is going on largely in southern States and is going on in some degree outside the South. That is not improving education. On the contrary, it is destroying public education in many sections of our country. That is not promoting racial harmony. On the contrary, it is creating more ill will between the races than our country has known since the War Between the States.

The time has come for this body and this Congress to step in and take corrective action. We thought that the Supreme Court in 1954, in the Brown decision, when it held that the children could not be classified by race for assignment to public schools, had put that issue to rest. We find that it did not. We thought, also, in 1964 that the provision in the Civil Rights Act, part 4, that said that children could not be assigned to public schools to achieve a racial balance had laid the issue to rest. But we find that the Department of Health, Education, and Welfare, and particularly our Federal courts, have completely disregarded and misconstrued the law. They are now classifying children by color, particularly in the South and in a few isolated areas outside the South, forcing them to go to schools, because of their color and to travel long distances in many areas of our country against their will.

I say that is not education. It does nothing to further education. It destroys education. It is tyranny. I hope Congress will lay it to rest once and for all by sending the conferees back to conference with instructions to accept the House amendment.

I yield the floor.

Mr. SCOTT. Mr. President, Abraham Lincoln once said that no question is settled until it is settled right. This is a very important bill. It involves more than $21 billion over 4 years. It is probably the best major educational bill of its nature to be offered to Congress.

The conferees have worked 6 or 7 weeks. One session was perhaps the longest ever held by conferees between the two bodies. They have made compromises.

The impress of the Mansfield-Scott amendment is still upon the bill to a degree. We had sought some stay of one of the most exacerbating aspects of the busing issue in order to give a breathing spell, but this was not enough for the other body; and while they have not put in the Ashbrook or Green amendments, they have put in the Broomfield amendment. I believe, as others have said, that this amendment is unconstitutional. I hope it will be declared unconstitutional. I hope that a court test will be presented for that purpose, so that we may have an early end to the confusion that surrounds the entire question of busing and all the emotion involved in it.

So that I have to say that I see a bill most of which is good and one aspect of which goes beyond what I would have wished, beyond what the distinguished majority leader and I sought to achieve in arriving at some middle ground between the point of view of those who were opposed to all busing and those who were in favor of busing under almost all circumstances. Our position was a moderate position, in between. We thought it was reasonable and logical and I say that the impress is still there.

But while this bill, in my opinion, goes too far in one regard, I can fully understand the sentiments of those who are not satisfied with the conference report and those who would wish to send it back. In my view, if it goes back, we will never get a bill, and that is what motivates me most of all. I cannot imagine the same conferees enduring the presence of each other with such infinite patience for an additional period of time. There are times when even nature rebels against the forced juxtaposition of widely opposing views. I am afraid that that would be the future of another conference.

Therefore, I regret very much that I have to disagree with some of my esteemed colleagues on this matter and perhaps disagree with others in various places of authority. It is my view that I can only vote to table the motion to recommit, because I would rather have this excellent bill, marred, as I see it, in only one or two respects, than to have no bill at all. As so happens in my particular case, my position probably will please nobody, and that is all right with me, too.

Mr. PELL. Mr. President, I yield 2 minutes to the Senator from Florida.

Mr. GURNEY. I thank the Senator.

Mr. President, I strongly support the motion of the Senator from Michigan to recommit the conference report with instructions to the conferees to adopt the House provisions on busing.

Without belaboring the point, those of us who have had experience in the business of busing—and all of us in the Southern States have; Florida has been one of the States most widely affected by busing—know that it is not helping the matter of education, that is hurting the matter of education. It is not helping the matter of race relations; it is hurting the matter of race relations.

All over the United States where the problem of busing has occurred, the people have shown, in overwhelming numbers, that they oppose busing. The polls range between 70 and 80 percent, and it does not make much difference whether they are taken in my State or Michigan or California or any other State where busing has taken place. The people are overwhelmingly opposed to it.

I do not suppose that in the history of representative government in this country Congress has more arrogantly ignored what the people want than with respect to busing.

As other speakers have pointed out, the House provisions, in the House bill, were much stronger than the Senate provisions and much stronger than those in the conference report.

I hope the Senate will adopt the motion of the Senator from Michigan and instruct the conferees to adopt the House provisions.

Mr. PELL. Mr. President, I yield to the junior Senator from Florida, and then I intend to offer the motion which I have already announced to the Senate.

Mr. CHILES. Mr. President, the key question is whether or not recommittal will help in a situation of busing. The question I especially am asking myself is what it will do to my State of Florida if we send it back.

It has been said that the motion to recommit with instructions to the conferees will bring the tougher versions of the House. What are the tougher versions of the House? We are talking about two things. We are talking about the Ashbrook amendment. The Ashbrook amendment says "no Federal funds for busing," period. What about all the areas in the South, particularly in Florida, that are under busing orders, in which the local school board wants to use some Federal funds for busing? We are under a busing order. It is final. The Ashbrook amendment would do nothing to give us any relief. It just says that we cannot use any Federal funds.

The conference committee report says that if a school board wants to say in writing that they need to use these Federal funds, they can use them.

So my State will be better off with the conference report than with the Ashbrook amendment. Then we have the Green amendment which says there will be no Federal inducement to encourage State funds for busing. That will do nothing for Florida. That is less applicable to some States that do not have busing. We are already busing in Florida. It is already required. The tougher House version we talk about is not tougher at all for Florida. In fact, we will be much better off in Florida with the conference report, such as it is, to instruct the conferees to go back and accept the House version, because all we are doing is cutting ourselves off from the use of Federal funds where the local school boards are required to bus, and then will have to use local tax dollar funds—ad valorem tax dollar funds—to comply with the busing because the Ashbrook amendment will cut off those funds. So I am going to support the motion to table and be against the motion to recommit.

Mr. PELL. Mr. President, I thank the Senator from Florida.

Mr. RIBICOFF. We are on the verge of taking a long step backward in our struggle for racial equality. Ironically, this step will be taken in the name of higher education reform.

The antibusing provisions of the conference report on S. 659, the Higher Education Act, represent the first official sanction of America's drift toward a racially separate society. Some have attacked these provisions for being too lenient, while others have praised them as an acceptable compromise. There is a point, however, where we cannot compromise on the issue of human rights, and this bill is surely it. I opposed the compromise the Senate adopted 3 months ago, and I will vote against the conference report and its even stronger restrictions on the rights of minority-group children.

I do this recognizing that the bill contains many important reforms in Federal higher education programs. But the real issue is not higher education. It is whether the Nation will continue its commitment to a unified society where race is an irrelevant factor. Unfortunately, in this election year, with politicians stumbling over each other in their rush to support the fake issue of busing, race is the dominant factor.

How can Congress say it is concerned with improving higher education opportunities, when at the same time it is restricting the opportunities of elementary and secondary school students who happened to have been born with black or brown skin? By consciously limiting millions of minority group children to an inferior education, we necessarily prevent them from ever taking advantage of the positive reforms contained in this bill. Unless these noxious provisions are eliminated, higher education will be an option available only to white Americans—what a future tragedy to encourage.

The reforms contained in S. 659 are needed—but not at the price the conferees ask us to pay.

Mr. TALMADGE. Mr. President, I support the motion to recommit the conference report on the higher education bill.

It is hard to say, with any certainty exactly what the language in the conference report which deals with the subject of forced schoolbusing really means. The actual effect of it will be determined by the bureaucrats who will administer it, and the judges who will interpret it. Based on past performance, this does not give those of us from the South much reason for optimism.

But regardless of how it is interpreted, Mr. President, one thing is clear—it offers no relief to the schoolchildren in this Nation who are currently being bused, and whose time for appeal has expired.

Let us take a real look, Mr. President, at what we are doing here today. We have enacted limitations on the future busing of schoolchildren for the purpose of achieving a racial balance. Why would we do such a thing? There can be only one logical answer—because we are beginning to have doubts about this remedy which is, in reality, a Frankenstein monster created by judges and bureaucrats who are not directly responsible to the people.

I can remember several years ago, Mr. President, when this country was swept by a "cranberry scare." The Federal Government, recognizing that the product in question might well be dangerously defective, not only stopped its flow into the stores, but took the cranberries which were already in the stores, off the shelves.

Well, the remedy of busing our children for the purpose of achieving a racial balance is now suspected of being dangerously defective. I, myself, have thought for a long time that this particular shipment of cranberries was rotten. What we have done, today, is stop the flow of these cranberries to the stores, but allowed those which have already been sent to the stores to remain on the shelves. In other words, Mr. President, these cranberries may be too dangerous for the children in the rest of the Nation, but they are all right for the southern children.

Those who support this shameful solution will, once again, rely on distinctions such as, "de facto" and, "de jure" to support their position. They will tell us that there are really two different kinds of school systems in this country—one in the South, and one in the rest of the Nation.

Mr. President, there is simply no basis in fact for such an argument. My very able and distinguished colleague, the junior Senator from Mississippi, has presented to the Senate statistics which conclusively prove that the southern schools are the most desegregated schools in our Nation.

Mr. President, my record on forced schoolbusing is clear—I oppose it. It is costing us a horrendous amount of money, but it is costing us something a great deal more precious.

It has deprived many American parents of their right to choose where their child will go to school. This is a right, incidentally, which enables many of the supporters of this practice to send their children to private schools to escape its effects.

Let us think for a moment, Mr. President, about how fundamental and important this right really is. I would think that few people, if any, are completely satisfied with what they have accomplished in this life. But one of the things which keeps us all going, is the

abiding dream that things for our children and grandchildren will be better than they were for us. A common bond which unites all parents is the desire that their children will have the best life has to offer, insofar as it is within the ability of the parent to secure it for them.

This is a right which belongs equally to black and white Americans. The supporters of forced schoolbusing may argue that in the past, the right of parents to select schools for their children has been abused, to the detriment of black Americans. If this is so, the way to solve it is to provide, to every American, the right to attend any school he may select. What could be simpler than that?

In 1954, Mr. President, the Brown decision struck out against so-called State action which resulted in segregation. Now what does this really mean? It means that State governments will no longer be allowed to tell parents where their children must attend school. And in 18 years, see how far we have come. Now, the Federal Government tells all children where they must attend school. We have rescued this precious right from alleged abuse by State governments only to sacrifice it to the Federal Government. And the parents and children of this Nation are poorer for it.

In closing, Mr. President, what we have done here today is very simple. We have acknowledged that there may well be something wrong with forced school busing. So we are going to hold it in check for awhile and take another look at it. That is, we are going to hold it in check for all children except those who have suffered under it the longest. Now, Mr. President, there is either something wrong with forced schoolbusing, or there is not. If there is nothing wrong with busing as a medicine, then let us administer it wherever it is needed. But if there is something wrong with it, then let us extend equal protection to all the children of America. One way or the other. Mr. President, it is time to put a stop to this shameful hypocrisy.

Mr. PELL. Mr. President, on behalf of the junior Senator from Colorado (Mr. DOMINICK), the ranking minority member of the subcommittee, and myself, I move that the Senate table the Griffin motion.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. WEICKER). The question is on agreeing to the motion of the Senator from Rhode Island to table the motion of the Senator from Michigan (Mr. GRIFFIN) to recommit the conference report.

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

The assistant legislative clerk called the roll.

Mr. METCALF (when his name was called). On this vote, I have a pair with the distinguished Senator from Massachusetts (Mr. KENNEDY). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. MANSFIELD (after having voted in the affirmative). On this vote, I have a pair with the distinguished Senator from Mississippi (Mr. EASTLAND). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from North Carolina (Mr. JORDAN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from Utah (Mr. MOSS) are absent on official business.

I further announce that, if present and voting, the Senator from Indiana (Mr. HARTKE) would vote "yea."

On this vote, the Senator from South Dakota (Mr. MCGOVERN) is paired with the Senator from Louisiana (Mr. LONG). If present and voting, the Senator from South Dakota would vote "yea" and the Senator from Louisiana would vote "nay."

On this vote, the Senator from Minnesota (Mr. HUMPHREY) is paired with the Senator from Alabama (Mr. SPARKMAN). If present and voting, the Senator from Minnesota would vote "yea" and the Senator from Alabama would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Wyoming (Mr. HANSEN), and the Senator from Idaho (Mr. JORDAN) are absent on official business.

The Senator from Colorado (Mr. ALLOTT), the Senator from Utah (Mr. BENNETT), the Senator from Massachusetts (Mr. BROOKE), the Senators from Kentucky (Mr. COOK and Mr. COOPER), the Senator from Kansas (Mr. DOLE), the Senator from Hawaii (Mr. FONG), the Senator from Oregon (Mr. HATFIELD), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Illinois (Mr. PERCY) would each vote "yea."

On this vote, the Senator from Massachusetts (Mr. BROOKE) is paired with the Senator from Wyoming (Mr. HANSEN). If present and voting, the Senator from Massachusetts would vote "yea" and the Senator from Wyoming would vote "nay."

The result was announced—yeas 44, nays 26, as follows:

[No. 184 Leg.]

YEAS—44

Aiken	Burdick	Eagleton
Anderson	Case	Fulbright
Beall	Chiles	Harris
Bentsen	Cranston	Hart
Boggs	Dominick	Hughes
Jackson	Packwood	Stafford
Javits	Pastore	Stevens
Magnuson	Pearson	Stevenson
Mathias	Pell	Symington
McIntyre	Randolph	Taft
Miller	Ribicoff	Tunney
Mondale	Saxbe	Weicker
Montoya	Schweiker	Williams
Muskie	Scott	Young
Nelson	Smith	

NAYS—26

Allen	Cotton	Hollings
Baker	Curtis	Hruska
Bible	Ellender	Proxmire
Brock	Ervin	Roth
Buckley	Fannin	Spong
Byrd, Harry F., Jr.	Gambrell	Stennis
Byrd, Robert C.	Goldwater	Talmadge
Cannon	Griffin	Thurmond
	Gurney	Tower

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mansfield, for.
Metcalf, against.

NOT VOTING—28

Allott	Fong	Long
Bayh	Gravel	McClellan
Bellmon	Hansen	McGee
Bennett	Hartke	McGovern
Brooke	Hatfield	Moss
Church	Humphrey	Mundt
Cook	Inouye	Percy
Cooper	Jordan, N.C.	Sparkman
Dole	Jordan, Idaho	
Eastland	Kennedy	

So Mr. PELL's motion to table the Griffin motion to recommit the conference report was agreed to.

Mr. DOMINICK. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. PELL. Mr. President, I move to lay that motion on the table.

Mr. JAVITS. Mr. President, I move to lay that motion on the table.

The motion was agreed to.

ORDER FOR ADJOURNMENT TO 11 A.M.

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate, after consultation with the joint leadership on both sides and the interested parties—and we hope that we have touched all bases—I would like to ask unanimous consent that when the Senate adjourns tonight, it stand in adjournment until the hour of 11 a.m. tomorrow.

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

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, it is my understanding that two 15-minute speech orders have already been entered. I ask unanimous consent that after those Senators who have already been granted that privilege have finished with their speeches, there be a period of not to exceed 15 minutes for the conduct of routine morning business with a time limitation of 3 minutes attached thereto.

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

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its

reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (H.R. 14852) making supplemental appropriations for the fiscal year ending June 30, 1972, and for other purposes.

EDUCATION AMENDMENTS OF 1972—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the text of the bill (S. 659) to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, the General Education Provisions Act—creating a National Foundation for Postsecondary Education and a National Institute of Education—the Elementary and Secondary Education Act of 1965, Public Law 874, 81st Congress, and related acts, and for other purposes.

ORDER SETTING TIME FOR VOTE ON CONFERENCE REPORT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the vote occur on the final passage of the conference report at the hour of 3:30 tomorrow afternoon.

Mr. JAVITS. Mr. President, reserving the right to object, and I hope I shall not object——

Mr. MANSFIELD. Mr. President, I want to get a time limitation agreement if this request is granted.

Mr. JAVITS. Mr. President, I would like to make it clear that we have stipulated with the majority leader that there will be 3 hours of debate. There may be intervening motions or other business. Those 3 hours are to be equally divided between the proponents and opponents of the conference report.

Mr. MANSFIELD. The Senator is correct. I was going to make that request if we got the time situation agreed to.

Mr. JAVITS. It should be built into the time.

Mr. MANSFIELD. It will be.

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object, I have not decided if I will speak tomorrow or not. If I do, I would like to speak for 20 minutes. Could I be accommodated for 20 minutes?

Mr. MANSFIELD. The Senator can be assured of that time.

The PRESIDING OFFICER. Is there objection?

Mr. CHILES. Mr. President, reserving the right to object, I did not understand how the time is going to be divided. I may want to speak for 10 or 15 minutes. I wonder if there will be sufficient time.

Mr. MANSFIELD. Yes. The Senator can be assured he will get that time.

Mr. STENNIS. Mr. President, reserving the right to object, what was the time that was requested?

Mr. MANSFIELD. The vote will occur at 3:30.

Mr. STENNIS. How much time?

Mr. MANSFIELD. I want to get this out before I ask for that.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, if my calculations prove to be correct, at about 10 minutes of 12 tomorrow we will be through with speeches and morning business.

I ask unanimous consent that time from then on to 3:30 p.m. be equally divided between the proponents, the distinguished manager of the bill (Mr. PELL), and the opponents, not necessarily the minority leader, but just to keep the record straight, whomever he may designate.

Mr. JAVITS. Mr. President, it is adequate that it go to the minority leader or if for any reason there is a change in position I will yield to others.

Mr. MANSFIELD. I will substitute the name of the distinguished senior Senator from New York.

Mr. SCOTT. With the understanding the distinguished senior Senator from New York will work it out with the Senator from Colorado (Mr. DOMINICK).

Mr. JAVITS. If he is on the side of the Senator from Rhode Island (Mr. PELL). But I would like to stipulate.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, will the Chair please request staff members to take their seats and remain seated, and Senators to take our seats?

The PRESIDING OFFICER. The Senate will be in order.

Mr. JAVITS. Mr. President, the thing I wish to be sure of is that we will have 3 hours of debate, with an hour and a half on each side. In view of intervening motions, quorum calls, and so forth, that is not guaranteed necessarily. So I would ask the majority leader if he would be good enough to build into his unanimous-consent request the fact that the opponents and the proponents will be assured an hour and a half in that period.

Mr. MANSFIELD. Yes. Mr. President, I amend my unanimous-consent request to that extent.

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

Mr. STENNIS. Mr. President, reserving the right to object, can I be assured of 7 or 8 minutes?

Mr. MANSFIELD. Yes.

Mr. President, I ask unanimous consent that in opposition the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) be recognized for not to exceed 20 minutes and that the distinguished Senator from Mississippi (Mr. STENNIS) be recognized for not to exceed 10 minutes; and in favor, I assume, the distinguished Senator from Florida (Mr. CHILES) for not to exceed 15 minutes.

Mr. ERVIN. I would like to have 10 minutes in opposition.

Mr. MANSFIELD. And 10 minutes for the Senator from North Carolina. I am going outside of my sphere in doing this.

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

Mr. JAVITS. With the assurance of 3 hours, all Senators can be accommodated.

Mr. MANSFIELD. Almost 4 hours.

Mr. PELL. 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. ROBERT C. BYRD. 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 TO LAY BEFORE THE SENATE THE CONFERENCE REPORT ON THE HIGHER EDUCATION BILL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, at the close of routine morning business, the Chair lay before the Senate the conference report on the higher education bill.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 11 a.m. After the two leaders have been recognized under the standing order, the Senator from Alaska (Mr. GRAVEL) will be recognized for not to exceed 15 minutes and he will be followed by the Senator from Wisconsin (Mr. PROXMIRE) for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business for not to exceed 15 minutes with statements therein limited to 3 minutes.

At the conclusion of routine morning business, the Senate will resume consideration of the conference report on the higher education bill, S. 659. There is a time agreement thereon, with a vote to occur on adoption of the conference report at 3:30 p.m. tomorrow. That vote will be a yea-and-nay vote.

Following disposition of the conference report tomorrow, it is unclear at the moment as to whether the Senate will then be able to proceed to the consideration of S. 1478, the hazardous substances bill.

If not, the Senate will resume consideration of the unfinished business, S. 3526, the State-USIA authorization bill.

ADJOURNMENT TO 11 A.M.

Mr. ROBERT C. BYRD. 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 tomorrow at 11 a.m.

The motion was agreed to; and, at 5:02 p.m., the Senate adjourned until tomorrow, Wednesday, May 24, 1972, at 11 a.m.