Any program has potential administrative problems, and this bill is no different. Yet, the $1 copayment, the reimbursement directly to pharmacies, and the formulary committee proposal strikes me as offering a balance between safeguards against waste, on the one hand, and protection and convenience for pharmacists, the Government and, of course, the elderly, on the other.

And most programs, Mr. Speaker, are expensive. Again, this one is no different. Yet, the human costs of not enacting this bill, and thus perpetuating this hardship for our elderly, are far greater than the financial costs involved. In an age when we talk of spending over $10 billion on space shuttles and one-tenth that amount on elaborate university campuses and Government office complexes, surely we must find the necessary funds to provide drugs for our elderly citizens.

There is no reason why the wealthiest, most technically and scientifically advanced Nation on earth cannot also be the healthiest. We can no longer permit the dire shortage of medical personnel, the lack of adequate facilities, the unequal geographical distribution of those facilities, and the soaring costs of the available services and facilities to prevent every American citizen from receiving complete and preventative health care. An integral part of this effort is making the necessary drugs available to all who need it, regardless of their ability to pay.

# SENATE—*Friday, January 28, 1972*

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

## PRAYER

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

Eternal Father, who has watched over this Nation in the past and whose grace is sufficient for all our need, continue to guard and guide all who bear the responsibilities of public office. Should we forget Thee, do not forget us, lest we stray from Thy precepts. Forgive our sins. Be patient with our mistakes. Turn us around if our direction is wrong. Assure us when we are right. Be near those who suffer poverty, who are hurt by war or forgotten and unloved by others. Bind us together in our common humanity to be one nation just, and pure, and righteous.

"To serve the present age
Our calling to fulfill
Oh, may it all our powers engage
To do the Master's will."

Amen.

## THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, January 27, 1972, be dispensed with.

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

## COMMITTEE MEETINGS DURING SENATE SESSION

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

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

## THE CALENDAR

Mr. MANSFIELD. Mr. President, separate and apart from the application of the Pastore rule of germaneness, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 569, 570, 571, and 572.

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

## AUTHORIZATION FOR ADDITIONAL FUNDS FOR THE COMMITTEE ON AGRICULTURE AND FORESTRY FOR ROUTINE COMMITTEE PURPOSES

The resolution (S. Res. 226) to provide additional funds for the Committee on Agriculture and Forestry for routine committee expenditures was considered and agreed to, as follows:

S. RES. 226

*Resolved*, That the Committee on Agriculture and Forestry is authorized to expend from the contingent fund of the Senate, during the Ninety-second Congress, $30,000 in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act of 1946.

## AUTHORIZATION FOR ADDITIONAL EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION FOR INQUIRIES AND INVESTIGATIONS

The resolution (S. Res. 240) authorizing additional expenditures by the Committee on Rules and Administration for inquiries and investigations was considered and agreed to, as follows:

S. RES. 240

*Resolved*, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Rules and Administration, or any subcommittee thereof, is authorized from March 1, 1972, through February 28, 1973, for the purposes stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) 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. 2. The Committee on Rules and Administration, or any subcommittee thereof, is authorized from March 1, 1972, through February 28, 1973, to expend not to exceed $327,000 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries and to 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) in accordance with such succeeding sections of this resolution.

SEC. 3. Not to exceed $150,000 shall be available for a study or investigation of privileges and elections.

SEC. 4. Not to exceed $177,000 shall be available for a study or investigation of computer services for the Senate, of which amount not to exceed $25,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 5. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1973.

SEC. 6. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–597), explaining the purposes of the measure.

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

Senate Resolution 240 would authorize the Committee on Rules and Administration, or any subcommittee thereof, from March 1, 1972, through February 28, 1973, to expend not to exceed $327,000 for inquiries and investigations.

The funds requested by the committee would be allocated to specific inquiries and to the procurement of the services of individual consultants or organizations thereof as follows:

"Section 3 of the resolution would provide that not to exceed $150,000 would be available for a study or investigation of privileges and elections.

"Section 4 of the resolution would provide that not to exceed $177,000 would be available for a study or investigation of computer services for the Senate, of which amount not to exceed $25,000 could be expended for the procurement of consultants."

During the first session of the 92d Congress (February 1, 1971–February 29, 1972) the committee was authorized to expend not to exceed $113,000 for a study relating to privileges and elections. The Subcommittee on Privileges and Elections estimates that the unobligated balance under this authorization as of February 29, 1972 (funds returnable to the Treasury), will be approximately $30,100.

In respect to the inquiry into computer services for the Senate, for which purpose $78,000 was authorized by Senate Resolution 175, agreed to October 21, 1971, the Subcommittee on Computer Services estimates that the unobligated balance as of February 29, 1972, will be approximately $15,000.

The supporting letters and budgets submitted to the Committee on Rules and Administration by its Subcommittees on Priv-

ileges and Elections and Computer Services, respectively, are as follows:

*Budget—S. Res. 240—Committee: Rules and Administration*

| | |
|---|---|
| Total amount requested | $327,000 |
| Consultants for full committee | -------- |
| Training of professional staff | -------- |
| Inquiries and investigations | 327,000 |

## AUTHORIZATION FOR THE PRINTING OF THE 73D ANNUAL REPORT OF THE NATIONAL SOCIETY OF THE DAUGHTERS OF THE AMERICAN REVOLUTION AS A SENATE DOCUMENT

The resolution (S. Res. 239) authorizing the printing of the 73d annual report of the National Society of the Daughters of the American Revolution as a Senate document was considered and agreed to, as follows:

S. RES. 239

*Resolved,* That the Seventy-third Annual Report of the National Society of the Daughters of the American Revolution for the year ended March 1, 1970, be printed, with an illustration, as a Senate document.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–598), explaining the purposes of the measure.

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

The National Society of the Daughters of the American Revolution was incorporated by act of Congress on February 20, 1896 (29 Stat. 8–9), which act included the provision—

"that said society shall report annually to the Secretary of the Smithsonian Institution concerning its proceedings, and said Secretary shall communicate to Congress such portions thereof as he may deem of national interest and importance,"

but did not provide that such report be printed. When in 1889, during the 55th Congress, the first report of the society was transmitted as required by law, it was printed as a Senate document pursuant to a simple resolution agreed to by the Senate. All subsequent DAR reports to date have been printed as Senate documents under the same procedure.

The printing-cost estimate, supplied by the Public Printer, is as follows:

To print as a Senate document (1,500 copies) ---------- $4,029.41

## GRATUITY TO ELAINE H. DRUMMOND

The resolution (S. Res. 238) to pay a gratuity to Elaine H. Drummond was considered and agreed to, as follows:

S. RES. 238

*Resolved,* That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Elaine H. Drummond, widow of William H. Drummond, recently deceased employee of the Architect of the Capitol, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

## PRESIDENT NIXON'S PEACE PLAN—FORMER SENATOR McCARTHY'S REACTION

Mr. SCOTT. Mr. President, strange and wonderful are the ways of ambition and of ambitious candidates. Our former colleague, Senator McCarthy, reacting to the President's peace plan—and, I may note, Senator McCarthy reacts to everything, but never predictably—is quoted as saying, "I do not care whether you call it a coalition government or a new government, but it has to be an acceptable government."

The only conclusion from that is that former Senator McCarthy feels that the government must be acceptable.

Acceptable to whom?

The proposal is acceptable to South Vietnam and its allies. Therefore, he can only mean that the proposal must be acceptable to the enemy. That is pleading the cause of the enemy. I deplore it.

I wish that all of our public speakers, no matter what their advocacy and no matter what their ambition, would at least stay within the bounds of advocacy of the best interests of the United States.

In my judgment, to advocate that a government be acceptable, which in this case can mean only to the enemy, is a lot of foolishness and is rather typical of some of the garrulous and gullible campaignery with which we are being inflicted.

Another argument which I find fatuous and disingenuous is the contention that we are now too weak to ask for anything from the enemy because we have so far reduced our forces in Vietnam that we no longer have the strength of a bargaining position.

For heaven's sake, Mr. President, these are the very same people who joined us in urging the administration to reduce our forces in Vietnam. By May 1 we will be down to not much more than 10 percent of what was in there when this administration took office. These people did not urge that on any other administration. It is because we have done this thing, because we have reduced our forces, that they now turn around and use that argument against the administration, and say, "Well, of course, now you are too weak to make your points. You are too weak to defend the American position."

Well, that is about the only argument they have. In fact, I think the critics here are criticizing mainly because they cannot find anything to criticize.

Mr. President, in support of previous statements I have made regarding the necessity for fairness and objectiveness, I ask unanimous consent that editorials from various newspapers across the Nation commenting on the President's peace proposal be printed in the RECORD. The headlines for the editorials and the newspapers in which they appear are:

"President's Peace Plan a Focal Point for Unity," from the Nashville Banner.

"Mr. Nixon's Initiative Ignored," from the Los Angeles Times.

"The New Peace Offer," from the Philadelphia Evening Bulletin.

"Running True to Form," from the New York Daily News.

"The President's Offer," from the Wall Street Journal.

"Hanoi's Price for Settling War Is Total Victory," from the New York Daily News.

"Mr. Nixon's Attempt To Find a Solution," from the Baltimore Sun.

"The Peace Plan, on the Ground," from the Christian Science Monitor.

"Not Yet the Last Mile," from the New York Times.

"Openings Toward Peace," from the New York Times.

"Clearing the Air on Viet Nam," from the Chicago Tribune.

"Mr. Nixon's Peace Initiatives Rate Serious Reply from Hanoi," from the Philadelphia Inquirer.

"Nixon Clears the Decks," from the Washington News.

"Nixon's Peace Plan," from the Washington Star.

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

[From the Nashville Banner, Jan. 26, 1972]

IN NATIONAL INTEREST—PRESIDENT'S PEACE PLAN A FOCAL POINT FOR UNITY

Nothing could be fairer to all concerned than the peace plan outlined last night by President Nixon—not only to end the fighting in Vietnam, but to modify the clouds of war and its East-West involvement in Indochina. Nothing could in reason supply greater cause, than does the advancement of this formula, to end the partisan policy sniping in this country. For it is sufficiently clear that the President and his administration have been working to advance acceptable solutions to the problems his political foes have been merely talking about.

The enemy, of course, has willfully obscured the very fact that these reasoned peace proposals have been under discussion privately. For obfuscation is the Communist way; frustration and deceit, and double-talk tools in its policy kit.

What the President believes is that the people of the United States and those at least of the rest of the Free World are entitled to know that this formula has been given—and that it is the enemy that has demurred. He also believes, obviously, that awareness of the points proposed and urgently addressed to settlement purposes should still the babble of tongues clamoring in attempted contravention of policy, to the detriment of reasonable peace hope.

Note the plan developed in long months of study, and disclosed last night—but advanced in negotiations that have been held since last August:

Within six months of the signing of agreement, all U.S. and Allied forces would be withdrawn from South Vietnam; a full exchange of prisoners of war would be effected, a cease-fire would prevail throughout Indochina, and a new presidential election would be held, open to all factions in South Vietnam.

Further, and answering the arch-critics here and abroad, South Vietnam's President Thieu and his Vice President would resign a month before those elections and a provisional caretaker government would preside.

Proof of the policy pudding surely is, so to speak, in the eating. And President Nixon has done far more than TALK about terminating the war in Vietnam and reducing the vast American commitment and sacrifice there. He has moved his nation far along the road to peace—in fulfillment precisely of the promises he gave as a nominee for President. Significantly, his loudest critics on the false premise they thus seek to press are the arch-liberals who were either party to or the kinsmen—political or otherwise—of the policy-architects who involved this country in that war. As one of them, Sen. Edward M. Kennedy has to be speaking the language of sham, insulting both the intelligence and the memory of any audience that professes to listen seriously to his pretentious and slandering triades.

When President Nixon took office, there

were 550,000 American sons in combat in Vietnam. That number has been reduced year by year, exactly as promised—and the total of withdrawals is ahead of schedule. By May 1 the total over there will be down to 69,000.

The President has kept his word. As he reminded the nation last night, on that Inauguration Day three years ago, American men were dying there at the rate of 300 a week, and that mortality rate has been vastly reduced—to the point of a fraction of such toll. Until Mr. Nixon's election there were no plans for withdrawal.

Progress has been made in winding down this war, working in behalf of an honorable settlement—accomplishing, in fact, the very things political critics have *talked* about.

The President evidently knows—and herewith almost is saying—that at this juncture, if indeed ever, it is no time to be saying and doing things that give aid and comfort to the enemy. It is no time to present the impression a *divided* America, and the fact of an upcoming presidential campaign and election certainly is no satisfactory pretext for that.

Mr. Nixon said it best in his concluding paragraph last night—by way of warning to the Communists, and of appeal to reason and bipartisanship at home.

"If the enemy's answer to our peace offer is to step up their attacks, I shall fully meet my responsibility as Commander-in-Chief of our armed forces to protect our remaining troops. The proposal I have made tonight is one on which we can all agree. Let us unite now in our search for peace."

Notwithstanding any lingering rumblings of dissent, an intelligent and devoted people *will* unite.

[From the Los Angeles Times, Jan. 27, 1972]

MR. NIXON'S INITIATIVE IGNORED

President Nixon cannot be suspected of dragging his feet on the way to a negotiated settlement of the war in Indochina. His speech Tuesday revealed initiatives which deserved but have not received a response from North Vietnam. And he has renewed a commitment to explore in the most flexible terms possible the various ways to a negotiated settlement.

His address indicated that there is really only one obstacle to a negotiated settlement: The insistence by North Vietnam that the United States not only get out but terminate all help, military as well as economic, to South Vietnam.

In outlining a new eight-point peace plan, the President said: "The only thing this plan does not do is to join our enemy to overthrow our ally." This is something the United States will not do. And should not do. But it makes more tragic the situation of the more than 300 American prisoners of war who now are being made hostages by Hanoi's unreasonable and impossible demands.

In the 30 months since the President authorized the secret peace talks to parallel the public peace talks in Paris, he has continued to cut American forces in Vietnam. In the last four months, while waiting in vain for some response to his latest peace initiative, Mr. Nixon has accelerated the withdrawal. This has been a reasonable recognition of the limited, very limited, prospects for negotiating an end to this undeclared war. As we have said before, the best thing the United States can do for peace is to get out, and get out as soon as possible.

But Mr. Nixon has been right in seeing that no stone was left unturned in the search for a negotiated settlement. From the American point of view, a negotiated settlement would be best if for no other reason that the freedom it would assure the prisoners. For Indochina itself, it would seem best because it could be the basis of a regional reconstruction in peace. For Hanoi, however, a negotiated settlement may seem a real obstacle to its continued hopes for the "liberation" of the land.

Only Mr. Nixon fully understands his motives for making public the course of the 13 secret sessions between Henry A. Kissinger and North Vietnamese leaders. One immediate result has been the shifting of a heavy burden of responsibility to Hanoi in the eyes of world opinion. The President seemed to justify his disclosure on the grounds that North Vietnam has divided Americans by deceiving them about the talks. There is no assurance that disclosure of the deception will produce the national unity called for by the President. Beyond American frontiers, the revelations must have had an impact in China and the Soviet Union, where leaders may be reappraising their ambitions for Southeast Asia in anticipation of the presidential visits.

The speech may have marked the end of the road toward a negotiated settlement. As the President said. "The choice is up to the enemy." But these new disappointments and frustrations should not divert Washington from its two priorities in Indochina, the speedy withdrawal of American forces, and the patient extension of assistance to the nations that have been its allies.

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[From the Philadephia Evening Bulletin, Jan. 26, 1972]

THE NEW PEACE OFFER

As President Nixon said last night in dramatically making public the new peace offer he made secretly to the Vietnam Communists three months ago:

"The only thing this plan does not do is to join our enemy to overthrow our ally, which the United States of American shall never do. If the enemy wants peace, it will have to recognize the important difference between settlement and surrender."

But even with this reservation, the Nixon plan, endorsed by President Thieu of South Vietnam, makes a remarkable political concession. Agreeing to complete withdrawal of all U.S. forces within six months in return for an Indochina cease-fire and freedom for all prisoners, the United States and South Vietnam also offer the resignation of President Thieu one month before an internationally supervised election.

The sticking point in negotiations with the Communists, which many of Mr. Nixon's critics have presistently glossed over, has always been enemy insistence that the United States go alone with them in undercutting the Thieu regime. Mr. Nixon has not done that, but the Thieu offer to stand down from office does make it clear that, if the Communists are now interested in a ballot-box decision, they can have it without the leader they detest at the helm of South Vietnam's government.

To most Americans, at least, this would seem to be walking the twain mile toward a negotiated settlement. Indeed, the full range of the Nixon eight points appears a fair offer to stop the shooting and permit the Vietnamese to work out their own destiny in a peaceful process and, indeed, to bring internationally guaranteed peace for all the peoples of Indochina.

Yet, while the world will hope that reflection will bring the Communists to accept such terms, it would also require a remarkable change of stance for them to accept after all these years. The North Vietnamese do not regard themselves as foreigners fighting in another's land. They recall the elections that didn't come off after the Geneva agreement in the 1950's. They have fought for decades to reunify Vietnam on their terms, taking all the punishment that a huge American army could inflict. And now that American forces have been largely withdrawn, they may see no advantage in accepting Mr. Nixon's terms so far as acheiving the political victory they seek.

But if such reasonable terms are rejected out-of-hand, this could be an ominous development and one threatening to the relatively small number of Americans who remain in Vietnam. The memory of the Tet offensive in 1968, which was followed by the withdrawal of President Johnson as a candidate for reelection, can never be entirely absent from Administration thinking. President Nixon's warning against new attacks would seem very much addressed to that hazard.

There is one other aspect of the long history of Mr. Nixon's secret negotiations with the Communists through the ubiqu'tous Dr. Henry Kissinger that have now been made public record. It indicates that much of the criticism of the President for his supposed refusal to negotiate seriously and in a flexible manner with the Communists has been unfounded. Whatever the future may hold in Indochina, his revelations should clear the air as the American presidential campaign moves ahead. If Mr. Nixon's 'accounting' renders the debate less acrimonious and divisive, it will at least be a decided gain for peace at home.

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[From the New York Daily News, Jan. 27, 1972]

RUNNING TRUE TO FORM

The die-hard doves and defeatists greeted President Richard M. Nixon's generous offer of a Vietnam peace settlement with knee-jerk sneers that it did not go far enough.

The reaction from the enemy camp was so similar that North Vietnam and the domestic critics might have been working from the same song book.

Diplomats hold out some hope that Hanoi will change its tune once it has time to give Mr. Nixon's proposal more study. Chances are slimmer that peace-at-any-pricers like Sen. William Fulbright (D-Ark.) and Sen. George McGovern (D-S.D.) will make any positive or constructive contributions toward peace in Vietnam.

Both these arch-appeasers were quick to suggest new concessions the U.S. and South Vietnam should make. And, of course, neither uttered even a whisper of displeasure at the fact that the other side has yet to put forward anything but demands, conditions and threats.

The peacenik claque has pushed its line of sellout and surrender so hard and so long that it now has a vested interested in torpedoing any honest plan that might end the Vietnam conflict on terms short of American humiliation.

We believe the vast majority of Americans are wise to the game these harpies are playing, and stand as firmly as does the President against any action that would result in national dishonor and disgrace.

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[From the Wall Street Journal, Jan. 27, 1972]

THE PRESIDENT'S OFFER

It's hard to understand why serious people should be surprised that President Nixon has offered and Hanoi has rejected generous terms for ending the Vietnam war. In fact, the effect of the revelation is simply to clarify what has been, at least to us, abundantly clear already; that American options are harshly limited by the bald fact that Hanoi is interested not in compromise but in conquest.

The plan revealed by the President reads like a prospectus drawn up by the Senate doves: the withdrawal of all American forces, the relase of prisoners, the resignation of President Thieu, South Vietnamese elections under independent auspices, a general ceasefire. The American-South Vietnamese offer could scarcely have been more generous, particularly viewed as an opening position. But Hanoi has failed to respond.

Hanoi's reaction is perfectly consistent with the attitude it has displayed throughout the negotiations. Because of that attitude, we long ago sadly concluded that while negotiations of course must be seri-

ously pressed the actual chance of ending the war by an honorable compromise is remote at best. We have marked it up to the mysteries of human psychology that many thoughtful and articulate Americans could go on believing that if only the administration offered this or accepted that, peace would ensue.

How these same people will react to the latest revelation remains to be seen. Some in Congress and the press reacted favorably, while others made excuses for Hanoi. We expect the President's speech will earn him a period of grace, but that over a few months the mysteries of psychology will gradually prevail, and he will again find himself exhorted to go one more mile and offer one more concession.

Still, you have to stretch to find that next concession and this makes the harshness of the American options all the more clear. Senator Fulbright's immediate reaction to the President's speech is especially useful in this regard. "What looks generous to us may not look generous to North Vietnam," he said, and the sticking point is whether the U.S. is "willing to get out and leave the Thieu government to its own devices."

Since the remark came in criticism of a presidential offer specifying the removal of all American fighting forces, we are entitled to assume the Senator's phrase "get out" means something more than that. We can see no logical step to fit this prescription except the termination of all logistical aid to the South Vietnamese.

To keep this step in perspective, one must remember that the entire nation of North Vietnam is a conduit for lavish logistical aid from mainland China and the Soviet Union. Indeed, North Vietnam probably would not even be able to feed itself if outside aid stopped tomorrow. So what Senator Fulbright seems to be proposing is that we cut off all American aid to South Vietnam, allowing the Chinese and Russian bankroll to buy North Vietnam its conquest.

Unquestionably this is one of the options, and as such it deserves some debate. It would be interesting and illuminating, in fact, to probe seriously into the assumptions Senator Fulbright and his followers make about the nature of the Russians and Chinese. One need not believe in a monolithic and crusading world communism, after all, to believe that these nations have a high potential for world mischief that might well be encouraged by the outcome of what the Senator seems to propose in Vietnam.

A second clear option is the President's policy: Pursue negotiations in the hope that something may yet change Hanoi's intransigence. Otherwise, work at "ending American involvement in the war by withdrawing our remaining forces as the South Vietnamese develop the capability to defend themselves."

The stark options of sellout or Vietnamization are clear enough. The question the administration's critics need to face, the question above all brought home by the disclosure of the President's offer and Hanoi's rejection, is simplicity itself: What third option is there?

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[From the New York Daily News, Jan. 27, 1972]

HANOI'S PRICE FOR SETTING WAR IS TOTAL VICTORY

(By Stan Carter)

WASHINGTON, January 26.—Predictably, President Nixon's disclosure that he has been secretly pursuing a Vietnam peace formula almost identical to the demands of many of his Democratic critics did not satisfy the critics.

But it has returned the focus of the war to its harsh reality. The reality is this:

There isn't any easy way out. Sen. George S. McGovern (D-S.D.) and other doves who have insisted that the North Vietnamese would release American prisoners if only the United States set a date for total withdrawal may be right. But the Communists adamantly refuse to make an advance agreement to do this.

Hanoi's price for settling the war is much higher. The North Vietnamese goal is the same as it has been since 1959, when Ho Chi Minh decided to unify Vietnam by force. It is to take over the Saigon government. They have shown that they do not want any settlement of the war short of total victory.

The Communists have clung tenaciously to this goal through more than a decade of their country's misery, not giving an inch despite military setbacks.

The Communists in Paris and Hanoi sputtered angrily that Nixon's Indochina speech last night was a "brazen challenge" and a "perfidious maneuver to deceive the American electorate in this election year."

But nothing that they said belied the statement by presidential adviser Henry Kissinger, who held 12 secret meetings with Communist diplomats in Paris, that the main sticking point in negotiations was Hanoi's demand that the United States pull the rug out from under the South Vietnamese regime headed by President Nguyen Van Thieu.

In fact, this demand was part of the seven-point peace formula put forward publicly by the Viet Cong last summer, as well as the secret nine-point plan that the North Vietnamese gave to Kissinger. Both plans were presented by the Communists as packages that must be accepted in toto, implying that there could be no release of American prisoners without Thieu's overthrow, in addition to withdrawal of all U.S. troops.

Hanoi's nine points also included a demand that the U.S. pay reparations for war damage.

"They are in effect asking us to ally ourselves with their overthrow of the people who have been counting on us," Kissinger said today. "They want us to achieve for them what they have not been able to accomplish themselves."

Among the Communists' specific demands is that the United States not only stop all military and economic aid to South Vietnam, but strip the country of all aid that had been previously given, including the South Vietnamese army's weapons. Nixon has refused to do this, but did offer to put a limitation on future aid to the Saigon regime, provided there was a similar limitation on the aid given by China, the Soviet Union, and other Communist countries to North Vietnam.

IT'S BELIEVED THEY WOULD WIN, ANYHOW

Why the North Vietnamese would insist on this linking of political and military issues is baffling to many Americans, who believe—perhaps mistakenly—that the Communists could easily defeat the Thieu regime once U.S. troops have left the country.

Why don't they accept the first deal that Nixon offered, for a complete U.S. withdrawal within six months in exchange for a cease-fire and release of American prisoners, and leave the political issues to be settled later among the Vietnamese themselves?

One reason may be that they are not at all that confident of their ability to defeat the Saigon regime on their own, either through political struggle or a renewal of the fighting after the Americans have gone.

This would explain their refusal to give up the prisoners merely in exchange for American withdrawal—they regard the prisoners as a bargaining card which will help them put pressure on the United States to help achieve their ultimate goal.

There is another, psychological reason for the hard-bitten Hanoi leadership's refusal to end what they call the "armed struggle" phase of the Vietnam war without firm assurances that they can gain hegemony over the South through "political struggle."

THE WAR HAS BEEN COSTLY TO THEM

The psychological reason is that accepting less than political control over the South would be an admission that nearly two decades of war—much more costly to North Vietnam than to the United States in terms of blood—had been in vain.

How, then, can the difficult problem of Vietnam ever be solved? The only possible way that has been stated publicly is the Vietnamization program. This will reduce U.S. troop strength in Vietnam to 69,000 by next May 1, but envisions a residual force remaining in the country for an indefinite period.

But conceivably, Nixon may find another answer on his journeys to Peking and Moscow next month and in May. Nixon has denied that he expected to end the war through negotiations with either the Chinese Communists or the Russians. But it is nevertheless true that Hanoi could not carry on the war without Peking's and Moscow's support.

It is also noteworthy that Peking's interest in the war is different from Hanoi's. What the Chinese want most is to get American forces off the Asian mainland—which Nixon has offered. It may be no coincidence that Nixon disclosed his secret offer only three weeks before he is scheduled to leave for Peking.

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[From the Baltimore Sun, Jan. 27, 1972]

MR. NIXON'S ATTEMPT TO FIND A SOLUTION

Hanoi's immediate public reaction to President Nixon's revelation of his peace proposals is the same as the private reaction reported by the President: negative. This was entirely to be expected, since in his television address Mr. Nixon was in fact not offering a new peace plan, except as it was new to his listeners, but acknowledging the failure of a long effort to find an Indochina solution through secret diplomacy.

It was an earnest effort. Even though most of its points had been discussed in one form or another at the Paris negotiations, in this they had been brought together in a coherent package, and had been given an emphasis of flexibility well beyond what most of the President's domestic critics had been calling for. The text of the packaged proposal, put forward as a joint United States-South Vietnamese program for ending the war, is on its face fair and reasonable—or would be reasonable in a reasonable situation.

Hanoi certainly does not see the proposal in that light, because, first of all, Hanoi continues to insist on the one condition Mr. Nixon declares that the United States cannot accept, American connivance in the "overthrow" of the Saigon regime. Hanoi continues further to insist that military and political settlements must be bound tightly together, which is a rejection of the sensible American offer either to begin "implementing certain military aspects" while other negotiations proceeded, or to settle only the military issues and leave the political "to the Vietnamese alone," under a new election internationally supervised. In Hanoi's eyes, of course, the fact that President Thieu says he would step aside before such an election is merely more evidence of Thieu's status as an American puppet. To cap their immediate negativism the North Vietnamese charge Mr. Nixon with having broken a promise in revealing the secret talks between its representatives and Dr. Kissinger, an attitude which seems to preclude further private discussions. But the secret discussions had broken down anyway.

Thus, barring possible developments at the Paris table, we are where we were before, with Hanoi demanding that the Saigon regime be abandoned, Washington asserting the right to maintain its support of that regime, American ground-force withdrawal proceeding, American air power remaining in substantial

though reduced force, massive American logistical assistance for the South Vietnamese continuing and "Vietnamization" still an American policy—a policy which Mr. Nixon declares to be on the path of success.

How the American public will view all this is uncertain. The President, one of whose obvious purposes in his revelations was to minimize the war as a campaign issue, will be given credit for a genuine attempt to find a solution, within permissible limits, but for the time being the war goes on, and the prisoners are still prisoners.

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[From the Christian Science Monitor, Jan. 27, 1972]

THE PEACE PLAN, ON THE GROUND . . .

The best way to get at the meaning of President Nixon's peace proposals is to examine exactly what would be happening now in Southeast Asia if Hanoi had accepted his terms when proposed in October and had signed an agreement in November or December to carry out the terms.

A cease-fire would have gone into effect from the day the agreement was signed and all movements of troops down the Ho Chi Minh trails would have stopped.

At the present moment American ground forces would continue to embark for home in complete security. There would be no threat either to their well being or their convenience. More important to those around them would be the fact that the armed forces of South Vietnam would be in undisputed and secure control of the whole of the territory of South Vietnam. The present threat of an impending military attack on them—a "second Tet"—would no longer exist.

President Thieu of South Vietnam would be in the process of preparing for a special presidential election. He could prepare at leisure because he would set the date. True, he would have to resign and take his chances with competitors from a month before voting day. But since he would have been in control until the last month he would enjoy reasonable prospects of success.

During this interim period of time the Americans in Hanoi's prison camps would begin to come out and come home.

At the end of the six months of this interim period all American ground troops would have left South Vietnam. But American "advisers" would still be attached to units of the South Vietnam Army. The flow of American weapons and other supplies would be continuing for that Army. Offshore in the South China Sea the big attack carriers of the U.S. Sixth Fleet would be patroling, watchfully. And the B-52's on Guam and in Thailand would be ready for "protective reaction" should anything begin moving down the Ho Chi Minh trails.

Thus the American political conventions would take place at a time when the prisoners would all have been released, the ground troops would all be home. The shooting would have stopped. And Nguyen Van Thieu would still be presiding over a South Vietnam still associated with the United States.

Meanwhile the "second Tet" offensive, for which Hanoi has been preparing for two years, would have been canceled. Hanoi would have abandoned its last best chance for that decisive military victory which has been its goal and its dream for some 30 years.

There is every reason for Mr. Nixon to propose this desirable (from the U.S. point of view) scenario. He has everything to gain, nothing to lose. But what is there in it for the North Vietnamese?

They would spare themselves the losses they will take in the offensive which is expected to burst on the South Vietnam Army at any moment. But combat losses have not bothered them before. Their losses have been relatively slight since the first Tet. They have invested heavily in this offensive. And their chances of dealing a shattering defeat on South Vietnam are too good for the comfort of Saigon or Washington.

There isn't enough for Hanoi in the Nixon offer to make it worth giving up their offensive. If it works, they end up with what they want most, a victory. If it fails, they still have the prisoners for their opener in another round of negotiation.

. . . IN AMERICAN POLITICS

As a political strategy, Mr. Nixon's peace proposal must go down in the history books as a modern classic. Though it does not seem destined to move Hanoi, the President's initiative reaffirms a commendable and continuing effort to find the road to a political settlement. The Vietnam war is, as perhaps no other war has ever been, a multidimensional exercise. The battlefields of Indo-China are only its take-off point. From there, it pulsates out over the United States domestic political scene, and goes on to rattle the doors of major world capitals, including most significantly Moscow and Peking.

The brilliance of Mr. Nixon's move is that it operates to his benefit at all of these levels. To be fully appreciated, we need to understand that two entirely different and mutually incomprehensible value systems are at work here, Hanoi's and Washington's. Thus when Mr. Nixon proposes free elections, United States ground troop withdrawal, and a cease-fire, he can do so with ringing conviction, to Western ears, that he is making a perfectly fair offer, and even going the second mile.

From the North Vietnamese viewpoint, however, this seemingly fair offer can and, judging from its early response, does look to be another piece of Western propaganda, as explained above.

Mr. Nixon is, of course, perfectly aware of this value gap between his and Hanoi's position. He is perfectly aware of both the possibility and probability of rejection. But from the viewpoint of a majority of the American people, and indeed from most of the Western world, he has shown himself to have been hard at work trying to negotiate a peace with Hanoi, and that within the context of supersecret diplomacy.

For his Democratic opponents who have charged him with prolonging the war, his revelation of a 30-month, 12-session peacemaking effort utterly demolishes that particular political issue. Senator Muskie immediately perceived this, as reflected in his approving comments afterward. Senator McGovern, on the other hand, by choosing to cavil with the President's proposal, probably lost political ground.

As for Peking and Moscow, they of course are playing a different game for different reasons than Hanoi. While each would dearly love to see the United States humiliated in Indo-China, neither has a major strategic interest in how that war is settled. Each does have a major interest in arriving at détente with the United States. If Hanoi rejects the President's plan out of hand, it gives them an excuse for pursuing closer relations with Washington, while giving them insurance against criticism from their own anti-American hawks at home.

As Mr. Nixon travels to Peking and Moscow in the coming months, he goes from a position of strength, having proven himself a political strategist of virtuoso caliber. It is a quality that the men in the Kremlin and in the Forbidden City will be inclined to treat with respect.

. . . IN DIPLOMACY

It was comforting to learn from President Nixon's peace proposals that secret diplomacy is still possible even in this day of instant communication and in a society as open as that of the United States.

For presidential adviser Henry Kissinger to travel undetected between Washington and Paris for a dozen meetings with the North Vietnamese was in itself a remarkable achievement. Here was something even a Jack Anderson didn't get wind of. Nor did any of the astute news hawks who have been watching the peace talks in Paris for months for any hint of private meetings that might portend a breakthrough in the negotiating stalemate. President Nixon rightly paid tribute to President Pompidou of France for his part in arranging the Kissinger talks and for keeping the secret.

In this case the attempt to end the war through secret negotiations did not pay off. But of course the President was right to try. The attempt had to be made. There may still come a time when Hanoi will be ready to parley, and if so there is a greater chance of negotiations succeeding through private diplomacy than at the formal sessions of the Paris talks which have devolved into nothing more than a propaganda roundabout.

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[From the New York Times, Jan. 27, 1972]

NOT YET THE LAST MILE

(By Tom Wicker)

President Nixon, with understandable satisfaction, remarked during his Tuesday night broadcast that it was "difficult to see how anyone, regardless of his past position on the war, could now say that we have not gone the extra mile in offering a settlement that is fair to everybody concerned."

That well may be a prophetic political statement. The proposals Mr. Nixon disclosed himself to have made—and, even more important, the fact that he had made them—are likely to appeal to the war-weary American people as the most any President could be expected to do. There will also be those to whom it will seem that he now has done as much as any of his potential Democratic opponents have said they would do.

Nevertheless, the last mile remains somewhere ahead of us. For one thing despite all the advance leaks to set up the assumption, Mr. Nixon's proposals did not set a date for American withdrawal in return for the release of American P.O.W.'s by the same date; rather the President offered to withdraw six months after the other side agreed in principle to release the P.O.W.'s, to stop shooting, and to accept elections as a means of determining the future of South Vietnam.

Later clarifications by Dr. Henry Kissinger may suggest that the withdrawal-prisoner deal could be arranged separately; but that is not the wording of the text, nor was it the apparent meaning of the President in his speech. This is a point that needs to be cleared up, but as it now stands there is no such thing as a direct pledge to withdraw, provided only that the prisoners are released.

There was no mention, moreover, of the withdrawal of the powerful air units in Thailand that have done so much of the bombing of Laos and North Vietnam; or of the equally powerful naval air units that have so often pummeled North Vietnam; or of the C.I.A.-financed army in Laos; and the withdrawal offer was coupled with the assertion—which Mr. Nixon's text also seemed to say would have to be agreed upon "in principle" before the American withdrawal—that all North Vietnamese forces would have to be withdrawal within that country's borders.

This is a demand that Hanoi agree to give up its military positions in Laos. Cambodia and South Vietnam and accept aerial encirclement from Thailand and the Gulf of Tonkin, in return for elections to determine the future of South Vietnam. The resignation of President Thieu one month before those elections would scarcely sweeten this bitter pill; he could still run for re-election, his whole administrative apparatus would still be in office, including that powerful province chiefs, and the whole thing would take place within the framework of his Constitution. In his own speech in Saigon, Mr. Thieu made it

clear also that the Vietnamese Communists could participate in the elections only if they laid down their arms and renounced violence. What about his own army and internal police?

But the real reason why these latest proposals are not yet "the last mile" lies in the assumptions and attitudes of those who put them forward—in Mr. Nixon's insistence, for example, that his plan is "fair to everybody concerned." Whether or not that is correct, such proposals would be appropriate and necessary when two equivalent positions were in deadlock and an even-handed compromise could both rescue the situation and provide justice. The hard truth is that this is not the case in Indochina.

The Nixon proposals, like every American peace plan ever put forward, assume that the United States is as much in the right in the war as Hanoi or the Vietcong; they assume that American forces have as proper a place in Indochina as do those of North Vietnamese; they assume that North and South Vietnam are separate and equal nations, a dubious proposition historically, politically and legally; and while this latest plan asserts the right of the Vietnamese people to determine the future of South Vietnam, it also assumes that the United States has a right to say how that determination ought to be arrived at—by elections.

Above all, therefore, those who made this peace proposal assume either that this war has been rightly waged, or that the American people are not willing to be told that it has been wrongly waged. They are insisting upon a settlement that cannot be interpreted as a defeat or as the abandonment of a war that cannot be won. They are trying to find some way to make it appear, in the end, that the lives sacrificed to this war have not been wasted, and that worthy objectives have been attained.

This is understandable, politically, and it may even be that no President could take any other attitude and survive. But until some President does—until the truth is admitted that this is a war that should not have been fought, and should be fought not a day longer—the last mile will not have been walked.

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[From the New York Times, Jan. 27, 1972]

OPENINGS TOWARD PEACE

The emphasis Presidential assistant Henry Kissinger has placed on the flexibility of the Administration's new Vietnam peace proposals strengthens hope that they may yet provide a key to ending this tragic conflict, despite their initial unacceptability to North Vietnam and the Vietcong.

There are obvious shortcomings in the plan revealed by President Nixon, and the American leverage for any kind of negotiated political settlement has been measurably reduced by Vietnamization and its abysmal failure to bring closer a cessation of hostilities. But neither factor should overshadow the very significant advances the revised proposals represent over any previous American position—especially since they are offered as a jumping-off point for what could become the first real bargaining since the frustrating negotiations at Paris began three years ago.

The North Vietnamese have criticized the President for disclosing that secret talks took place between Dr. Kissinger and top Communist diplomats in Paris over an extended period—talks which were conducted at a higher level and with greater intensity than most Americans even suspected. But this disclosure could have a positive impact on the prospects for a negotiated settlement. It reveals the President's sensitivity to public criticism of his peace posture and gives Americans for the first time an opportunity to judge their Government's real position and perhaps to effect changes.

One opening that invites further discussion is the President's suggestion that the military issues in his proposal could be separated from the more difficult political questions. This approach has its pitfalls. Mr. Nixon did not offer a simple withdrawal of American forces in return for prisoners of war as Senator Mansfield and others have urged.

The President tied withdrawal also to acceptance of a cease-fire throughout Indochina, something the Communists oppose because under existing conditions a total cease-fire would tend to solidify Saigon's political control over most of the South Vietnamese population. But the Communists themselves have proposed a partial cease-fire between their troops and withdrawing allied forces. The cease-fire issue could be a subject for fruitful negotiations.

Even the wide gap between the two sides on political questions has been narrowed. The President made a major concession to long-standing Communist demands when he offered the resignations of President Thieu and Vice President Huong one month before proposed new supervised elections. The other side is understandably unhappy about this arrangement as presented, especially Mr. Nixon's suggestion that the chairman of the Senate, a Thieu man, should head a caretaker government.

But the timing of Mr. Thieu's departure from government is surely negotiable. And it is not inconceivable that the functions of the broadly based electoral commission proposed by Mr. Nixon could be enlarged to approach the wider role assigned to a "government of national concord" in the Vietcong plan.

In light of the frightful losses that all sides have already suffered and of the imminent threat of a new escalation of the fighting, it would be the height of irresponsibility to write off the new Nixon proposals before these and other possible openings toward peace have been thoroughly explored.

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[From the Chicago Tribune, Jan. 27, 1972]

CLEARING THE AIR ON VIETNAM

President Nixon has made public the standing American offer for an agreement with North Viet Nam, and it is an eminently fair one. Hanoi has rejected it. Whatever happens now, the exchange has cleared the air of a good deal of rhetorical pollution and has unmasked Hanoi as the real obstructionist all along.

Briefly, the offer is to withdraw all American forces within six months of an agreement [Mr. Kissinger says that we had offered to set a specific deadline of Aug. 1], this to be carried out simultaneously with the release of all prisoners of war. There would be a cease-fire thruout Indochina, effective with the signing of the agreement and supervised by international authority. A free and democratic election would be held in South Viet Nam within the six-month period, open to all parties and again supervised by an international commission. The Thieu government would resign one month before the election, but presumably could run for reelection. The United States would keep its hands off of the election. The two Viet Nams would be free to work out their own destiny subject to the provisions of the Geneva convention of 1954. The United States would assist in the economic development of all Southeast Asia, including North Viet Nam.

No fair-minded government that sincerely desired peace could object to this formula. Hanoi's hasty rejection therefore confirms what was already clear. Hanoi does not want peace. It wants to persist in its effort to take over its neighbors, with or without their consent.

The secrecy of the negotiations thus far has enabled Hanoi to play Dr. Jekyll and Mr. Hyde. Hanoi has continued to denounce us for supporting the "puppet" Thieu government even after we offered privately to dissociate ourselves from it. It has continued to accuse us publicly of refusing to set a specific date [and so did a good many Americans] even tho we had secretly offered to set one and indeed had set one, according to Mr. Kissinger.

No wonder Hanoi is angry at Mr. Nixon for spilling the beans. And its anger confirms something else. Mr. Nixon said: "Just as secret negotiations can sometimes break a public deadlock, public disclosure may help to break a secret deadlock . . . Nothing is served by silence when it enables the other side to imply possible solutions publicly that it has already flatly rejected privately" and to induce "many Americans in the press and in Congress into echoing their propaganda." The set of proposals was given to the Communists as far back as Oct. 11, Mr. Nixon said.

And so Hanoi, thrashing about for a new excuse to reject the offer, settles on the Vietnamization program, which is not covered in the proposal. Yet if there were peace, Vietnamization would largely cease to be a legitimate issue; the United States would not need to pursue it, and Hanoi would not need to fear it. If Hanoi were seriously to offer any credible commitments in return, we might make concessions with respect to Vietnamization.

But this is as far as the President can fairly be expected to go. Idealistic [and other] liberals keep talking about ending the war in Indochina; but clearly it is an unrealistic to talk about restoring peace by withdrawing our forces as it is to talk about subduing North Viet Nam by force. The President's proposals on Viet Nam, like the agreement between Britain and Ian Smith in Rhodesia, do not offer moral or theoretical perfection. There have been concessions in principle to accommodate reality; yet on Rhodesia, ironically, the doctrinaire liberals are beating the drums for principle and morality without regard to what is possible and in Viet Nam they are clamoring for the fastest possible withdrawal without regard to whether it brings justice or peace.

There is no guarantee that even the President's plan will work, but it has as good a chance of serving both principle and reality as any we've seen. If the country could only get behind it, and make our unanimity clear to Hanoi, there might be real reason for hope.

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[From the Philadelphia Inquirer, Jan. 27, 1972]

MR. NIXON'S PEACE INITIATIVES RATE SERIOUS REPLY FROM HANOI

The Vietnam peace proposal President Nixon has now made public should lay to rest the charge that he is interested only in a military solution to the war.

Mr. Nixon, it is now clear, has been intensively pursuing—through private channels—a negotiated settlement on terms which even some of his severist critics now describe as "just and fair" and "generous."

His disclosure of the secret diplomacy that has been underway for more than two years is both encouraging and disappointing. It is encouraging to learn that such a reasonable approach to ending this tragic conflict has been pursued. But it is disappointing to learn that it has been ignored, for this suggests that it is the Communists who are in fact insistent on a military solution.

We shall now see if "public disclosure may help to break a secret deadlock," as the President suggested in announcing that the plan will be laid on the table in the Paris peace talks Thursday. Certainly the obligation is now on the Communists to come up with the response they have been avoiding in the backstage discussions.

There could hardly be a clearer test of their intentions.

"Hanoi and the Vietcong," Sen. George McGovern commented back in 1970, "have repeatedly said they would be ready to nego-

tiate as soon as we announce our willingness to withdraw on a definite timetable."

Such a timetable is now an indisputable part of the Nixon proposal. "Within six months of an agreement," the President said Tuesday night, "we shall withdraw all U.S. and allied forces from South Vietnam."

This does not call for acceptance of the plan in toto. But it does pave the way for serious consideration of any points still at issue if Hanoi and the Vietcong are indeed as "ready to negotiate" as they had indicated to Mr. McGovern they were.

It is no answer to say, as Radio Hanoi did in its initial reaction Wednesday, that there is "nothing new" in the President's proposal. It may not be new to the diplomats who have been dealing secretly with Mr. Nixon and Dr. Kissinger, but the plan embodies some significant changes in previous public proposals.

Not the least of these is the understanding that the Thieu government would step down a month before new elections were conducted in South Vietnam under international supervision by an intedependent body . . . "representing all political forces in South Vietnam . . . including the National Liberation Front." The importance of that is best understood by recalling that it was United States intervention in canceling the 1956 elections called for in the Geneva Accords which got us into the Vietnam mess in the first place.

But if this proves to be a sticking point, the President has also promised to withdraw all American troops in six months in exchange for an Indochina cease-fire and the release of prisoners and then "leave the political issues to the Vietnamese."

If in the face of these options the Communists remain unwilling to negotiate, we may conclude only that they are not interested in ending the war but in intensifying it as American forces withdraw.

And what then? That is a question of many parts which would call for some hard answers—and some specific ones from Mr. Nixon's critics, especially those who want his job.

Meanwhile, as long as even a slender hope remains that things will not reach that point, the plan the President has outlined for ending not just our own participation in the war but the war itself is one which all Americans should be able to support.

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[From the Washington News, Jan. 26, 1972]

NIXON CLEARS THE DECKS

President Nixon's Vietnam speech last night ought to change a lot of thinking about that frustrating internal war and the extraordinary efforts to end it.

The settlement plan he said had been privately offered the North Vietnamese communists and ignored is eminently fair, even generous.

If the North Vietnamese are half as interested in ending the war as they have been claiming, Mr. Nixon gave them the opportunity, plus.

If they believe what they have been saying, that they want "self-determination" by the people of South Vietnam, Mr. Nixon gave them the chance to get it.

The offer of South Vietnam's President Nguyen Van Thieu and his vice president to resign a month before new elections is more than the communists of the north had any right to expect.

If, as the communists say, it is the right of the South Vietnamese to choose, once again, their own leaders, they cannot object to an election supervised by an international agency.

President Nixon said he offered last May to pull out all U.S. and allied forces by a definite date in exchange for the release of all prisoners of war (on both sides) and a cease-fire.

What can be fairer or more practical than that?

The President revealed he had been privately negotiating with the North Vietnamese for 30 months. His latest offers of a settlement have not been rejected, only ignored.

The last contact with the North Vietnamese was Nov. 17, Mr. Nixon said. No word since. In that light, he decided to make public details of the secret talks in the hope that this might "break the deadlock."

We have no notion of whether this will succeed—but if you can't get a breakthru up one street, the only thing to do is try another.

Just a few days ago, the North Vietnamese, while withholding an answer to Mr. Nixon's push for negotiations, officially were broadcasting from Hanoi a demand that the United States set a "definitive" date for withdrawing all forces "unconditionally."

The United States cannot withdraw, "unconditionally." It cannot wholly withdraw without an agreement on the release of the prisoners of war. It cannot, on the way out, wantonly scuttle the Thieu government.

Mr. Nixon's course, as he outlined it last night, is the only honorable, decent course he could follow. And, in view of the obviously deliberate statement set up by Hanoi, his decision to make public the long series of secret talks was a necessary decision—it just might be productive.

In Washington, and perhaps elsewhere, the first question, of course, was: Why did the President choose this time to reveal the secret and futile talks?

Was it to still the political clamor for a definite date for final withdrawal? No doubt he had that in mind. But read your newspaper; obviously it hasn't altogether had that effect. But his disclosure does make the carping sound pretty puny and destroys its validity.

Was the timing of this speech politically motivated? All we can say is that it is an election year and the President is a politician.

So what! The job is to get the war ended, American forces home safely and, most important, release of the prisoners of war. Anything which accomplishes that the people can support, political overtones or not. Besides, anything a President does, in any year, invariably has political overtones, intended or suspected.

The essence of it is that the President has been trying. He already has brought home the overwhelming majority of U.S. forces in Vietnam. This has been accomplished, up to now, on a practical altho rapid basis, and without loss of honor or betrayal of commitment.

This is one place, despite anything else, where the President has been faithfully keeping a promise. On that basis, we can commend what has been tried and, with confidence, go on hoping for an ultimately wholesome and conclusive solution to this tragic adventure.

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[From the Washington Star, Jan. 26, 1972]

NIXON'S PEACE PLAN

We don't know if it will succeed in pulling the rug out from under Senator Mike Mansfield or other opponents of the administration's Vietnam policies. We don't know if it will end the war. But it will take a very determined critic to find much fault with the Vietnam peace plan unfolded by President Nixon to the nation last night.

Part of the revelation was past history. Mr. Nixon's effort to try the road of secret diplomacy, dating back to August 1969, and the 12 subsequent trips to Paris of Presidential Security Adviser Henry Kissinger, unannounced and incredibly unreported, adds a new dimension to the Byzantine diplomacy which seems to be the hallmark of this administration. There will be some, no doubt, who will deplore the secrecy of these initiatives. But in view of the offers made—and rejected by the Communist side in the course of these negotiations—there should also be a considerable amount of crow-eating among those who have accused the administration of obduracy in trying to find an honorable solution to the war.

Very certainly, the terms which Mr. Nixon is now offering in public must be supported by the overwhelming majority of the American people. For those who have urged him to set a "date certain" for a complete American withdrawal from Vietnam, he has complied. The date will be six months from the time that an agreement in principle is reached on the release of American prisoners of war held in Hanoi and on a military cease-fire throughout Indochina. If agreement can be reached on these military provisions, all American participation in the war can come to an end, including air support for the defending South Vietnamese army and the forces of Laos and Cambodia.

The political elements of the President's offer are no less persuasive. An agreement to hold new elections throughout South Vietnam under international supervision with President Thieu and Vice President Huong resigning a month beforehand, offer a solid basis for a political settlement of the conflict. With National Liberation Front forces guaranteed participation, only those, as Nixon put it, who cannot differentiate between a settlement and a surrender can reasonably object. And similarly, the American offer to undertake a major program of reconstruction in both North and South Vietnam on the termination of the hostilities is a positive and promising move.

However, the President's objective in making his announcement last night was not limited to silencing his opponents in the United States. It was quite simply to put an end to the war under conditions that would fulfill our obligations to the people of South Vietnam, our own war dead and most reasonable people everywhere. It was aimed also at obtaining release of our war prisoners, without which a complete withdrawal of American forces from South Vietnam would be an unpardonable act of abandonment.

The results, unfortunately, do not depend on reasonable people. They depend rather on leaders who have known for months the general terms on which they could get an end to the killings and a return of peace in Indochina. It is still very uncertain whether these terms are acceptable to them or whether the force of world opinion can induce them to modify their ambitions for military victory. The response may be bitterly disappointing, but at least from now on it should be clear to everyone who is responsible for continuing the war.

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## TRANSACTION OF ROUTINE MORNING BUSINESS

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

The Senator from Virginia (Mr. BYRD) is now recognized.

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## PRESIDENT NIXON'S PEACE PROPOSAL

Mr. BYRD of Virginia. Mr. President, I feel that President Nixon made a splendid presentation the night before last in giving the background of his discussions with representatives of North Vietnam.

I thought that his proposal was a fair one. I support basically the President's position. In my judgment, he is doing everything conceivable to negotiate an end to the Vietnam war and, at the same

time, he is continuing to withdraw American forces.

Mr. President, I want to see this war brought to an end. The President has reduced the number of American troops in Vietnam from 543,000 when he first took office to around 69,000 which he predicts will be there this coming May. Thus, he is making great progress. I support the President, our Commander in Chief, in his endeavors to bring the Vietnam war to a conclusion. It must be done at the very earliest possible time.

Now, Mr. President, having said that, I note that yesterday, Secretary of State Rogers, in a press conference, stated that the administration envisions a $7½-billion program to rehabilitate Indochina.

Because I have supported the President's position and because I have stated my support of his television address the other evening, I want the RECORD to show that my support does not encompass a $7½ billion gift to Indochina, including the North Vietnamese.

Mr. President, all of our problems are not going to be solved by spending more money.

I am deeply alarmed and disturbed by the smashing deficits that this Government has been running. Forty-five billion dollars was the Federal funds deficit for this current fiscal year, that being the prediction of the administration itself. This past year the deficit was $30 billion. The estimate by the administration itself is for $36 billion deficit for the new fiscal year beginning July 1.

So, while I support the Commander in Chief in his program to negotiate with the North Vietnamese and to negotiate an end to this war, and while I support his sharp reduction in troops in Vietnam—and they must be brought home—I want to make it clear that my support does not go to taking $7.5 billion out of the pockets of the American taxpayers and turning that money over to Vietnam, Laos, Cambodia, and North Vietnam, at whose hands the United States has suffered the loss of 50,000 men who have been killed and 300,000 men who have been wounded.

I am convinced, too, that a huge American aid program—billions of dollars—would be of little value to the citizens of those nations. My belief is that the cream of these American dollars would be siphoned off by the politicans and the ruling groups.

## TIME FOR RUNNING OF GERMANENESS RULE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time under the Pastore germaneness rule not begin running today until the unfinished business has been laid before the Senate.

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

## ORDER FOR ADJOURNMENT TO 10 A.M., MONDAY, JANUARY 31, 1972

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. Monday next.

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

(Subsequently, this order was changed to provide for the Senate to convene at 11 a.m. on Monday.)

## QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

## CONGRATULATIONS TO REPRESENTATIVE BOB JONES ON HIS 25TH ANNIVERSARY IN CONGRESS

Mr. ALLEN. Mr. President, in a special election on January 28, 1947—25 years ago today—the people of Alabama's Eighth Congressional District, chose a young judge from Jackson County, Ala., as their new Representative to Congress. Today, that man, ROBERT EMMETT JONES, is the dean of Alabama's delegation in the House of Representatives where he ranks 30th in seniority among the 435 Members of that body.

It is my great privilege to congratulate Congressman BOB JONES on this milestone. The fact that the people of his district have chosen him for 13 consecutive terms in Congress speaks volumes for their appreciation of his constant dedication to fulfilling the great responsibilities of that high office.

It should be of interest to Members of the U.S. Senate to know that the special election which first chose BOB JONES was necessary because the Eighth Congressional District seat had been vacated when JOHN SPARKMAN resigned from the House of Representatives to take a seat in the Senate—a fact that I marked in a speech on November 5, 1971, which was the 25th anniversary of Senator SPARKMAN'S membership in the Senate of the United States.

Representative BOB JONES is ranking member of the House Public Works Committee where he is chairman of the Subcommittee on Flood Control and Internal Development, which handles important waterways and water resource development legislation for the entire Nation.

To assume chairmanship of the Flood Control Subcommittee in 1965, Representative JONES resigned as chairman of the Public Buildings and Grounds Subcommittee, but he remains on this group as ranking member. He also serves as ranking member of the Roads Subcommittee and the Investigations and Oversight Subcommittee. Needless to say, Representative JONES is a powerful voice when any legislation is prepared affecting questions over which these subcommittees have jurisdiction.

Early in 1965, BOB JONES was chairman of a special House Subcommittee on Appalachian Regional Development. Much of the credit for drawing up this beneficial legislation and guiding it successfully through its congressional course must go to Congressman JONES, who continues to handle renewal and revision of this pioneer act.

BOB JONES was also a prime mover of legislation to establish the Economic Development Administration which is assisting depressed areas in providing much needed public facilities, and of the highway safety bill which provides for new local, State, and Federal initiatives to reduce traffic fatalities.

Representative JONES was also author of the Rural Housing Act, which gave citizens in farm and rural areas the same opportunities to obtain Federal loans as city residents, and of the Public Buildings Act of 1957.

As the third ranking member of the House Government Operations Committee, which is primarily concerned with economy and efficiency in Government, BOB JONES is a member of the Subcommittee on Government Activities and on Intergovernmental Relations. He was chairman of the Natural Resources and Power Subcommittee which conducted America's most comprehensive examination of national water resources, including antipollution measures, during the first half of the 1960's, and he is a nationally recognized authority on water resources.

In addition to his committee work, BOB JONES has sponsored legislation to provide financial aid to education, to authorize multipurpose development of small watersheds, improve farm programs, establish a consumer protection agency, seek new sources of electric power, provide park and recreational facilities and expand aid to veterans.

By profession, Congressman JONES is an attorney-at-law, having graduated from the University of Alabama Law School. In 1941, he was elected as his home county's first county judge, a position he held until 1943 when he joined the U.S. Navy in which he served as a gunnery officer in both the Atlantic and Pacific theaters. For several months he served on the legal staff of Gen. Douglas MacArthur.

Because of his initial election to Congress at a relatively young age, and because of the voters' continued confidence in his work, Congressman BOB JONES has served longer than any other Representative from north Alabama, a list that includes Gen. "Fighting Joe" Wheeler of Wheeler, Ala., who served for 16 years and Williamson R. W. Cobb of Bellefonte, Ala., who served 14 years.

Mr. President, if the secret of success is constancy to purpose, then we have identified the success of Congressman BOB JONES, whose guiding principle through 25 years of congressional service has been a constant battle to bring a better life to the people of his district, to his fellow Alabamians, and to all Americans everywhere.

Mr. President, it is with great respect that I recognize and honor my fellow Alabamian, Congressman BOB JONES, on

this anniversary marking his 25th year as a Member of the House of Representatives.

On Sunday, January 23, 1972, the Huntsville Times, the largest daily newspaper in north Alabama and in the Eighth Congressional District, published an article written by their Washington correspondent, Phil Smith, and entitled "Twenty-five Years on the Hill," and another written by James K. Hutsell, associate editor, entitled "Home Is Where the House Retreats." Both of these articles concern the 25th anniversary of Congressman JONES' election to the House of Representatives. I ask unanimous consent that these fine newspaper articles be printed in the RECORD.

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

TWENTY-FIVE YEARS ON THE HILL

WASHINGTON.—Sept. 24, 1946, dawned bright and clear in North Alabama. Schools had been closed the week before for the cotton-picking break, and the harvest was well under way.

Voters were going to the polls that day for the fifth time since the regular Democratic primary in May. On the ballot were seven Democrats seeking the Eighth District seat in Congress, which had been vacated when John Sparkman resigned following his election to the U.S. Senate.

One of the candidates was Judge Robert Emmett Jones, county judge of Jackson County. He preferred just plain "Bob" Jones.

According to a story by Mrs. Martha Witt Smith, then a reporter for The Huntsville Times, the campaign had been "largely personalized, waged on a person-to-person basis."

When election officials finished counting the votes in the early hours of Sept. 25—there were no voting machines then—Jones led the slate, primarily because of the vote in his home county. Jackson County had 10,300 registered voters at that time. More than half of them—5,361—voted for their county judge while his opponents received a combined vote of only 139 in the county.

The almost unanimous support from Jackson County was enough to give Judge Jones only a plurality in the large field, however, and not a majority. He faced a runoff election Oct. 22 with state Sen. Jim Smith of Tuscumbia.

That election was described by one newspaper as a "listless and almost issueless affair" but when the election-weary citizens of North Alabama had cast their ballots, the young county judge again emerged as the victor—16,787 to 11,260.

The home counties of the candidates had been the key. Jones' supporters piled up 6,884 votes in Jackson while the best Smith could do was 4,437 in Colbert. Voting was light and fairly evenly split in the other five counties of the district—Madison, Limestone, Morgan, Lawrence and Lauderdale.

This time the Jackson Countian had apparently convinced a few more of his neighbors of his qualifications. He lost only 104 votes in Jackson while he picked up 493 in Smith's Colbert County. Both candidates had conceded the other's home county when the runoff began and Jones never made a speech in Colbert.

He and Smith campaigned together, part of the time in the middle portion of the district to cut down on expenses. At times they even shared the same hotel room. One story has it that the two candidates checked into their hotel one night after a day of stumping together and a Smith supporter mistook Jones for the man he was backing. The voter drew Jones aside and whispered his encouragement, adding that "we're going to beat this Jones fellow." Not wanting to embarras the man, Jones thanked him and replied, "We'll do our best."

A more unusual aspect of the campaign was that Judge Jones did not campaign in Jackson County. He left the job at home to his volunteer supporters there, headed by Sanford Lee of Scottsboro, a young World War II veteran like the candidate.

The judge had no paid staff during the election. For clerical workers he depended on young women from Jackson County who would "just show up" at his headquarters in Scottsboro each morning.

By the runoff, the cotton harvest was in full swing and Jones' volunteers feared many farm hands would find it more important to stay in the fields than to go vote for the sixth time that year.

There is no way to tell whether that would have happened, however, since the Jones volunteers took no chances. According to news accounts of the election, a number of cars—estimates ranged from 250 to 400—loaded with volunteers left Scottsboro on the morning of the runoff. They went into cotton fields and took the farmers' picksacks and continued to fill them while the voters were driven to the polls to vote for Judge Jones.

At headquarters in Scottsboro, about a dozen young women spent the day calling almost everyone in the county who had a telephone and urging them to go vote.

The result was summed up by an eight-column headline across the front page of The Times Oct. 23, 1946—"Bob Jones Sweeps District."

For all practical purposes, Jones was the new Eighth District congressman but he had to go through the motions of running, unopposed, in a general election Jan. 28, 1947. On that date, at the age of 34, he became the Tennessee Valley section of Alabama's congressional delegation—the job he has now held for 25 years. Today he ranks 30th in seniority among the 435 members of the House.

Nationally, the congressional elections of 1946 took on an aspect not seen in American politics for many years. The millions of World War II veterans were back at home and taking an active part in politics. It was largely their support, particularly in Jackson County, that put Jones in office.

When he took his seat shortly after the 80th Congress convened, Jones became the first congressman from Jackson County since Williamson R. W. Cobb of Bellefonte resigned in 1861, shortly before Alabama left the Union.

Three men who have since gained great national prominence were also elected to Congress in 1946.

While Jones, a Navy veteran who had served on Gen. Douglas MacArthur's legal staff, was campaigning in North Alabama, another young Navy veteran was winning on the campaign trail in his home state of Massachusetts. And when Jones came to Washington he was assigned an office next to this fellow freshman congressman, John F. Kennedy. The New Englander and Southerner became good friends.

After President Kennedy's death in 1963, it was Jones who sponsored legislation creating a national cultural center in Washington as the official national memorial to him. The bill established the Kennedy Center for the Performing Arts, which opened last year.

Other new representatives in the 80th Congress included Richard M. Nixon of California and Carl Albert of Oklahoma, now speaker of the House.

During his first campaign, Jones emphasized three promises to the voters through his leaflets and posters and in his speeches.

He said he was for "enlightened legislation to increase the purchasing power of the farmer and to protect his markets; low-cost long-term financing for farm homes; and expansion of the Tennessee Valley Authority to its fullest capacity and the extension of the Rural Electrification program to assure every farm home in the Eighth District the benefit of cheap electricity."

He has kept those promises over the last quarter of a century, his record shows.

During his first 10 years in office, much of the congresman's time was spent defending TVA against its opponents in the House and fighting for increased cotton allotments and better support prices for the farmers of his district.

He was the author of the Rural Housing Act which provides loans from the Farmers Home Administration for new farm homes. The first of these loans was given to a Jackson County farmer in 1949.

Today, there is probably not a farm home in the Eighth District that does not have electricity available.

Jones earned the honorary title of "Mr. TVA" in his battle to preserve that agency during the Truman and Eisenhower administrations.

His voting record on TVA legislation is unvarying. In 1959 he sponsored legislation authorizing TVA to borrow up to $1 billion to finance its power expansion programs, finally making the agency free of congressional financial control in its power program. Four years ago he introduced and secured passage of legislation increasing the bonding authority to $5 billion.

In his early years in the House, Representative Jones could not spend all his time worrying about the problems of his district, however. His first committee assignment was to the House District of Columbia Committee.

At that time, Washington had no mayor or city government and was run by the congressional committee. So, soon after arriving in Washington, the former county judge from rural Alabama found himself grappling with the problems of one of the most complex and cosmopolitan cities in the world.

Over the years, his committee assignments have changed and he has long since been off the District Committee but later, as chairman of Public Buildings and Grounds Subcommittee, he oversaw a vast construction program of new federal buildings in Washington.

While the congressman has devoted much time to many issues, there is one area, above all others, that has consistently drawn his attention and one in which he is a recognized national expert. That is flood control and water pollution.

He served as chairman of the Natural Resources and Power Subcommittee which conducted America's most comprehensive examination of national water resources, including anti-pollution measures during the first half of the 1960s—long before "ecology" became a household word.

In 1965 he assumed the chairmanship of the Subcommittee on Flood Control and Internal Development of the Public Works Committee. He remains in that position today and is the ranking Democrat on the full Public Works Committee.

In the Flood Control Subcommittee, he handles waterway development legislation for the entire nation, including the proposed Tennessee-Tombigbee Canal—a project he has been advocating ever since he entered Congress.

His work on such matters as flood control and rural housing have earned Congressman Jones the label of "Southern liberal." After his first year in office, national newspaper columnist Drew Pearson picked him as on of the 10 best new members.

The Americans for Democratic Action rated Jones' voting record in 1960 at 90 out of a possible 100. Among Southern congressmen and senators, that was second only to Sen. Estes Kefauver of Tennessee.

His liberal voting record has been fairly consistent except for one issue—civil rights. In that area he has generally voted with other Southerners in opposition to proposed legislation, beginning with President Truman's civil rights amendments in 1948.

At that time he was quoted in various newspapers in the district as saying, "I shall vigorously oppose all measures which would affect the way of life in the South. I mean the FEPC (Fair Employment Practices Commission), anti-poll tax proposals, and especially any measure which would impose on the people of Alabama any dictation from the federal government on how to carry on their normal way of life."

Even on the civil rights question, he is not inflexible, however. Last year he voted for an extension of the Civil Rights Act because it was attached to the 18-year-old vote amendment. He was in favor of lowering the voting age, and the Civil Rights Act was assured of being extended anyway, so he says he saw no reason to oppose a measure he favored just to cast a ceremonial vote against civil rights.

Throughout his 25 years in Congress, Jones has retained some basic political philosophy. First and foremost is his belief in building. He sums it up in talking about his years on the Public Works Committee.

"I had rather build monuments of public accommodation such as schools and highways and sewer systems than to sit here docile and fret away with the fathoms of hate."

In his position as chairman of various "building" subcommittees, Jones could have had public buildings and locks or dams all over the country named for him if he had wished. But he has steadfastly refused to allow a single public structure to be dedicated to him, according to his staff.

Last week, however, he spent his first day back in Washington after the recess working to name the Columbia dam in South Alabama for his longtime friend, the late Rep. George W. Andrews of Union Springs who died last month.

Although nothing in the Eighth District or anywhere else bears his name, his staff claims that you can drive the entire length of the Eighth District from the Georgia state line to Mississippi and never be out of sight of something that their boss was responsible for building.

Congressman Jones will not single out any particular public works legislation which he has sponsored which he feels has contributed more to the nation than any other. He does feel, however, that the $27-million water pollution control bill, which he guided through the Public Works Committee when he was acting chairman just before Christmas, will be the legislation that will finally eliminate water pollution in the United States—a goal he has been working toward since the early 1960s.

For his own district and the surrounding area, he feels his TVA self-financing bills were extremely important.

"There is no doubt in my mind that TVA would have been liquidated in another 18 months if we had not gotten the first finance act through in 1959, because the Eisenhower Administration simply would not budget any money for power expansion," he said.

He does not claim credit for single-handedly saving TVA. Other Tennessee Valley congressmen and senators also worked hard for the agency but the North Alabamian's efforts were sufficient to earn him the honorary title of "Mr. TVA"—one which he is very proud of.

Another monument to Jones and other members of the public works committee is the Interstate Highway System—the largest public works project in the history of the world.

Jones led the fight against an Eisenhower administration proposal in 1955 to finance the Interstate system through the sale of bonds. He was successful and the next year the Public Works Committee put through a pay-as-you-go Interstate plan. This, according to the congressman, has saved billions of dollars in interest payments.

As he begins his 26th year in Congress, Jones has no plans to retire anytime soon. He will announce that he is a candidate for re-election for a 14th term within the next two weeks.

Asked about retirement plans, the 59-year-old legislator's only comment was, "I haven't applied for my old-age pension yet."

The congressman does not claim to have succeeded alone, however, in his career as lawmaker, he gives much of the credit to his staff which he calls "the best on Capitol Hill."

But most of the credit belongs to the people of the Eighth District, he says. "I appreciate more than I can ever express the fact that they have permitted me to represent them all these years. They have been generous and sometimes maybe excessive in overlooking my legislative faults," he says of the voters in North Alabama.

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HOME IS WHERE THE HOUSE RETREATS

(By James K. Hutsell)

SCOTTSBORO.—The day is brisk to the point of being headlineable. The thermometers have regrouped for a counter-push against the freezing-mark, and the sky might be literally enough called ice-blue. And Bob Jones has stepped from inside the quiet house on the western edge of town to cast a long appraising look at home. By tomorrow, or next day at the latest, he and Christine must be heading back to Washington again.

Thirteen consecutive terms, this has been going on. He will this time be heading back for the second half of that term. It will be a busy year, tied to the tail of a year heavy with legislative business and committee-work details. And this—1972—will again be a presidential election year and, as corollary, time again for a congressional campaign.

"That," he says, "is a fine tree—that cedar there; it's a tree that's taken its natural shape, and look how consistently it arises." The congressman glances to the rear beyond the backyard and the fringes of the town toward the Jackson County hills. "I don't suppose I will get too much time to work around the house this spring and summer. I do want to get more azaleas in time; and more with color in them." The wind shifted a little, back nearer to north; he hunched his shoulders and headed in through a rear door.

In the kitchen he suddenly halted and pulled a light chair beside the small table. And his mind was back again on Congress and the weeks ahead. "If Congress could just get on with its work; we are slowed by infinite detail. Quorum-calls, teller-votes. Not long ago it was 2 o'clock one morning and there we were going through the motions of another teller-vote—something the press is always wanting. And I glanced up and there was not a soul in the press gallery . . ."

His finger traced a design on the kitchen table cover. "You know, I've always recognized that I have to make any record I achieve as the record of getting things done. I've never been able to spellbind an audience with words. I haven't the charisma that gets me on the evening television news. If I get anything done, it has to be by the hard, direct, programmed route.

"I try to serve my own district and its needs; I try to serve my state; but, in my view, I have also the obligation to serve the nation and to improve the lives and opportunities of all of us here in America. I think that I am serving my own district well when I am serving all of us well." He pushed back his chair and moved back toward a sitting room.

Christine Francis, of Tuscaloosa, and Bob Jones were married 33 years ago. That was only a year or two before the young lawyer became the first county judge of Jackson County, and only a year or two before Bob Jones enlisted in the Navy to become a gunnery officer in the Atlantic and Pacific war theaters. He was re-elected to the bench in absentia, and for several months he was on the legal staff of Gen. Douglas MacArthur. But the point here is that 25 of those 33 years, Christine Jones has, so to phrase it, been in Congress, too—a Washington-Scottsboro housewife, and apparently as comfortable in one spot as the other.

"I like them both," she always insists. "When I am here, I seem to let Washington bide its time; when I am there, necessity requires that I give the capital routine precedence."

After a quarter-century, in which time Representative Jones has become the 30th ranking member of the 435-member House, the Joneses have come to know scores of Washington figures well. Mrs. Jones loves to cite the idiosyncrasies and mannerisms of friends and political figures they know, but her judgments are not cutting despite the clear eye with which she observes the changing capital scene.

Christine Jones has a knack of making almost anyone feel at ease; she is full of an instinctive kindness; and she knows how to cook for men.

She is ready for the legislative and political year ahead, one gathers, if but for the reason that a quarter-century has led her to understand the need for accepting routine gracefully and sensing that routine is the thing that moves the day even in high places.

But the other day—with the time for the return to Washington almost upon her—Christine Jones, too, stood looking out upon the Scottsboro homegrounds, and at the big dog lying in the January sun outside. "Don't you want, can't you use another dog?" she said. "That's what I dislike about starting back up there. He just came here last August—he just strayed in. But he insists on staying, whether Bob and I are here or not." She was silent for a moment. Then she said, "The soup is ready now. And I didn't get around to making any cornbread . . . Up in Washington, I seldom make cornbread—just once in awhile. But the last time I made some, Bob took it to his office for his lunch. And Nelson Rockefeller and his wife happened to drop by and they stuck it in a pocket and took it along with them. I really don't know whether they ate it or not. Well, they said they did, though. A day or two later, I had a note from them. They said they ate the cornbread for breakfast. What do you think about that!"

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## ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND FOR UNFINISHED BUSINESS TO BE LAID BEFORE THE SENATE ON MONDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, following the remarks of the two leaders under the standing order there be a period for the transaction of routine morning business for not to exceed 30 minutes with statements therein limited to 3 minutes, at the conclusion of which the Chair lay before the Senate the unfinished business.

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

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## QUORUM CALL

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. NELSON when he introduced S. 3084 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

## COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

QUADRENNIAL REVIEW OF MILITARY COMPENSATION

A letter from the Assistant Secretary of Defense, transmitting, pursuant to law, the 1971 Quadrennial Review of Military Compensation (with an accompanying document); to the Committee on Armed Services.

REPORT ON MODIFICATION OF LOAN

A letter from the Administrator, Rural Electrification Administration, Department of Agriculture, reporting, pursuant to law on the modification of a loan to the Tri-State Generation and Transmission Association, Inc., of Denver, Colo.; to the Committee on Agriculure and Forestry.

REPORT ON OVEROBLIGATION OF AN APPROPRIATION

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

REPORT ON RESEARCH AND DEVELOPMENT PROCUREMENT ACTIONS

A letter from the Deputy Chief of Naval Material (Procurement and Production), transmitting, pursuant to law, a report on research and development procurement actions of $50,000 and over, for the 6-month period ended December 31, 1971 (with an accompanying report); to the Committee on Armed Services.

NOMINATION OF MEMBERS OF THE BOARD OF DIRECTORS OF THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

A letter from the Commissioner of the District of Columbia, nominating, pursuant to law, John J. Gunther, Esquire, for appointment as a Member of the Board of Directors of the District of Columbia Redevelopment Land Agency; to the Committee on the District of Columbia.

A letter from the Commissioner of the District of Columbia, nominating, pursuant to law, Willie L. Leftwich, Esquire, for appointment as a Member of the Board of Directors of the District of Columbia Redevelopment Land Agency; to the Committee on the District of Columbia.

REPORT OF FEDERAL MEDIATION AND CONCILIATION SERVICE

A letter from the Director, Federal Mediation and Conciliation Service, transmitting, pursuant to law a report of that Service, for the fiscal year 1971 (with an accompanying report); to the Committee on Labor and Public Welfare.

REPORT ON SCIENTIFC POSITIONS

A letter from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to Law, a report on certain scientific positions within that Administration, for the calendar year 1971 (with accompanying papers); to the Committee on Post Office and Civil Service.

## PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A joint resolution of the Legislature of the State of Vermont; ordered to lie on the table:

"J.R.H. 58

"Joint resolution expressing sympathy on the death of United States Senator Winston L. Prouty

"Whereas, United States Senator Winston L. Prouty died September 10, 1971, at the age of 65; and

"Whereas, Win Prouty was active in municipal, state and federal government for many years, having served most ably as mayor of his home town of Newport, as representative to the General Assembly from that city in 1941 and 1945, being elected Speaker in 1947, member of the U.S. House of Representatives from 1951 to 1959, and of the U.S. Senate from 1959 until his death; and

"Whereas, during that long and dedicated service to his beloved city, state and country he dedicated his life and his legislative concerns with humility and integrity on the plight of our elderly, the sick, the afflicted and the destitute. His thoughts and energies were directed on the need for educating our youngsters and providing meaningful employment for the unskilled and otherwise disadvantaged; and

"Whereas, during that entire period Win Prouty demonstrated his leadership and dedication to the principles of good government. As he himself so aptly expressed it "A man cannot delegate his conscience to the crowd. It is as solitary as his soul"; and

"Whereas, with the passing of the Honorable Winston L. Prouty, Vermont and the Nation lost a well loved citizen and a humble and dedicated public servant, now therefore be it

*"Resolved by the Senate and House of Representatives:* That we express our deep sympathy and deep sense of loss on the death of United States Senator Winston L. Prouty; and be it further

*"Resolved:* That the Secretary of State be hereby instructed to send copies of this resolution to the bereaved family, to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives and to our Congressional delegation."

## 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. NELSON:

S. 3084. A bill to provide for a study and investigation to assess the extent of the damage done to the environment of South Vietnam, Laos, and Cambodia as the result of the operations of the Armed Forces of the United States in such countries, and to consider plans for effectively rectifying such damage. Referred to the Committee on Foreign Relations.

By Mr. CANNON (by request):

S. 3085. A bill to authorize the disposal of molybdenum from the national stockpile; and

S. 3086. A bill to authorize the disposal of nickel from the national stockpile. Referred to the Committe on Armed Services.

By Mr. GRAVEL:

S. 3087. A bill for the relief of Ana Beatriz Alvarado. Referred to the Committee on the Judiciary.

By Mr. MOSS:

S. 3088. A bill to encourage State and local governments to provide relief from real property taxes for elderly individuals. Referred to the Committee on Finance.

By Mr. LONG:

S. 3089. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to strengthen the enforcement of provisions relating to unlawful possession or receipt of firearms. Referred to the Committee on the Judiciary.

(The remarks of Mr. LONG when he introduced this bill appear in the RECORD toward the end of today's proceedings.)

By Mr. INOUYE:

S. 3090. A bill for the relief of Domingo Asumio. Referred to the Committee on the Judiciary.

By Mr. INOUYE:

S. 3091. A bill to authorize the Public Service Commission of the District of Columbia to conduct a study with respect to the desirability and feasibility of requiring the installation of meters in taxicabs in the District of Columbia. Referred to the Committee on the District of Columbia.

By Mr. BURDICK (for himself and Mr. COOK):

S.J. Res. 190. A joint resolution to provide for an extension of the term of the Commission on the Bankruptcy Laws of the United States, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. CRANSTON:

S.J. Res. 191. A joint resolution designating the week of May 1–7, 1972, as "National Bikecology Week." Referred to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NELSON:

S. 3084. A bill to provide for a study and investigation to assess the extent of the damage done to the environment of South Vietnam, Laos, and Cambodia as the result of the operations of the Armed Forces of the United States in such countries, and to consider plans for effectively rectifying such damage. Referred to the Committee on Foreign Relations.

VIETNAM WAR ECOLOGICAL DAMAGE ASSESSMENT ACT OF 1972

Mr. NELSON. Mr. President, suppose we took gigantic bulldozers and scraped the land bare of trees and bushes at the rate of 1,000 acres a day or 44-million square feet a day until we had flattened an area the size of the State of Rhode Island, 750,000 acres.

Suppose we flew huge planes over the land and sprayed 100-million pounds of poisonous herbicides on the forests until we had destroyed an area of prime forests the size of the State of Massachusetts or 5½ million acres.

Suppose we flew B–52 bombers over the land droping 500-pound bombs until we had dropped almost 3 pounds per person for every man, woman, and child on earth—8 billion pounds—and created 23 million craters on the land measuring 26 feet deep and 40 feet in diameter.

Suppose the major objective of the bombing is not enemy troops but rather a vague and unsuccessful policy of harassment and territorial denial called pattern or carpet bombing.

Suppose the land destruction involves 80 percent of the timber forests and 10

percent of all the cultivated land in the Nation.

We would consider such a result a monumental catastrophe. That is what we have done to our ally, South Vietnam.

While under heavy pressure the military finally stopped the chemical defoliation war and has substituted another massive war against the land itself by a program of pattern or carpet bombing and massive land clearing with a huge machine called a Rome Plow.

The huge areas destroyed pockmarked, scorched, and bulldozed resemble the moon and are no longer productive.

This is the documented story from on-the-spot studies and pictures done by two distinguished scientists, Prof. E. W. Pfeiffer and Prof. Arthur H. Westing. These are the same two distinguished scientists who made the defoliation studies that alerted Congress and the country to the grave implications of our chemical warfare program in Vietnam, which has now been terminated.

The story of devastation revealed by their movies, slides, and statistics is beyond the human mind to fully comprehend. We have senselessly blownup, bulldozed over, poisoned, and permanently damaged an area so vast that it literally boggles the mind.

Quite frankly, Mr. President, I am unable adequately to describe the horror of what we have done there.

There is nothing in the history of warfare to compare with it. A "scorched earth" policy has been a tactic of warfare throughout history, but never before has a land been so massively altered and mutilated that vast areas can never be used again or even inhabited by man or animal.

This is impersonal, automated, and mechanistic warfare brought to its logical conclusion—utter, permanent, total destruction.

The tragedy of it all is that no one knows or understands what is happening there, or why, or to what end. We have simply unleashed a gigantic machine which goes about its impersonal business destroying whatever is there without plan or purpose. The finger of responsibility points everywhere but nowhere in particular. Who designed this policy of war against the land, and why? Nobody seems to know and nobody rationally can defend it.

Those grand strategists who draw the lines on the maps and order the B–52 strikes never see the face of that innocent peasant whose land has been turned into a pock-marked moon surface in 30 seconds of violence without killing a single enemy soldier because none were there. If they could see and understand the result, they would not draw the lines or send the bombers.

If Congress knew and understood, we would not appropriate the money.

If the President of the United States knew and understood, he would stop it in 30 minutes.

If the people of America knew and understood, they would remove from office those responsible for it, if they could ever find out who is responsible. But they will never know because nobody knows.

By any conceivable standard of measurement, the cost benefit ratio of our program of defoliation, carpet bombing with B–52's, and bulldozing is so negative that it simply spells bankruptcy. It did not protect our soldiers or defeat the enemy, and it has done far greater damage to our ally than to the enemy.

These programs should be halted immediately before further permanent damage is done to the landscape.

The cold, hard, and cruel irony of it all is that South Vietnam would have been better off losing to Hanoi than winning with us. Now she faces the worst of all possible worlds with much of her land destroyed and her chances of independent survival after we leave in grave doubt at best.

This has been a hard speech to give and harder to write because I did not know what to say or how to say it—and I still do not know. But I do know that when the Members of Congress finally understand what we are doing there, neither they nor the people of this Nation will sleep well that night.

For many reasons I did not want to make this speech but someone has to say it, somewhere, sometime.

Mr. President, I ask unanimous consent that the following statistics, which were provided by Dr. Arthur H. Westing and which will appear in a forthcoming publication, be printed in the RECORD at this point.

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

ALL INDOCHINA

[In millions of pounds]

| Year | Air munitions | Surface munitions | Total munitions |
|---|---|---|---|
| 1965 | 630 | ---------- | 630 |
| 1966 | 1,024 | 1,164 | 2,188 |
| 1967 | 1,866 | 2,413 | 4,278 |
| 1968 | 2,863 | 3,003 | 5,866 |
| 1969 | 2,774 | 2,808 | 5,583 |
| 1970 | 1,955 | 2,389 | 4,344 |
| Total | 11,112 | 11,777 | 22,889 |

MUNITIONS EXPENDITURES

[In millions of dollars]

| Year | South Vietnam | North Vietnam | South Laos | North Laos | Cambodia | Total Indochina |
|---|---|---|---|---|---|---|
| 1965 | 594 | 65 | 60 | 10 | 0 | 630 |
| 1966 | 1,778 | 255 | 135 | 20 | 0 | 2,188 |
| 1967 | 3,634 | 415 | 200 | 30 | 0 | 4,278 |
| 1968 | 5,185 | 330 | 310 | 40 | 0 | 5,866 |
| 1969 | 4,674 | 0 | 490 | 420 | 0 | 5,583 |
| 1970 | 3,333 | 0 | 655 | 240 | 115 | 4,344 |
| Total | 19,099 | 1,065 | 1,850 | 760 | 115 | 22,889 |

ECOLOGICAL IMPACT

| Country | Number of craters (in millions) | Area with "shrapnel" (in million acres) | Area cratered (in thousand acres) | Earth displaced (in million cu. yds.) |
|---|---|---|---|---|
| South Vietnam | 19.1 | 23.9 | 309.9 | 2,500 |
| Military region I | (6.1) | (7.6) | (98.4) | (794) |
| Military region II | (3.8) | (4.8) | (62.0) | (500) |
| Military region III | (8.3) | (10.3) | (134.2) | (1,083) |
| Military region IV | (.9) | (1.2) | (15.3) | (124) |
| North Vietnam | 1.1 | 1.3 | 17.3 | 139 |
| Laos | 2.6 | 3.3 | 42.4 | 342 |
| Southern Laos | (1.8) | (2.3) | (30.0) | (242) |
| Northern Laos | (.8) | (1.0) | (12.3) | (99) |
| Cambodia | .1 | .1 | 1.9 | 15 |
| Total Indochina | 22.9 | 28.6 | 371.4 | 2,996 |

IMPACT OF U.S. MUNITIONS

[In pounds]

| Expenditure | South Vietnam | North Vietnam | Laos | Cambodia | Total Indochina |
|---|---|---|---|---|---|
| Per acre | 446 | 26 | 45 | 3 | 125 |
| Per person | 1,091 | 58 | 992 | 18 | 513 |

B-52—ASSUMING AN AVERAGE OF 7 SORTIES PER MISSION

[In numbers of missions]

| Year | Military region I | Military region II | Military region III | Military region IV | Total South Vietnam |
|---|---|---|---|---|---|
| 1967 | 527 | 284 | 269 | 10 | 1,090 |
| 1968 | 1,137 | 644 | 1,143 | 148 | 3,072 |
| 1969 | 319 | 440 | 1,777 | 98 | 2,634 |
| 1970 | 624 | 274 | 366 | 150 | 1,414 |
| Total | 2,607 | 1,642 | 3,555 | 406 | 8,210 |

Note: Although breakdowns for 1965 and 1966 are not available, the totals approximate 138 and 550, respectively.

Mr. NELSON. Mr. President, I further ask unanimous consent that the full text of the bill, "Vietnam War Ecological Assessment Act of 1972," 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. 3084

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

SHORT TITLE

SECTION 1. That this Act may be cited as the "Vietnam War Ecological Damage Assessment Act of 1972".

STATEMENT OF FINDINGS

SEC. 2. The Congress finds that unprecedented techniques of warfare have been used by the Armed Forces of the United States in th countries of South Vietnam, Laos, and Cambodia; that these techniques, employed for the purpose of denying certain territory to the enemy, have been extensively employed by such armed forces in such countries; that the use of such techniques has resulted and continues to result in the ecological destruction of vast areas of those countries; and that the United States has a responsibility to assess the extent of the ecological damage inflicted in such countries and to consider plans for the ecological reconstruction of the affected areas of such countries.

AUTHORIZATION FOR STUDY AND INVESTIGATION

SEC. 3. (a) The President shall undertake, as soon as practicable after the date of enactment of this Act, to enter into an appropriate arrangement with the National Academy of Sciences under which arrangement such academy would be engaged to conduct a comprehensive study and investigation to determine (1) the ecological effects and consequences suffered by the countries of South Vietnam, Laos, and Cambodia as a result of the operations of the Armed Forces of the United States in such countries, and (2) effective ways and means of rectifying the damage caused to the ecology of such countries by such operations. Any arrangement for the conduct of any such study and investigation shall specifically provide for, but shall not be limited to, an assessment of the ecological effects and consequences of (1) aerial bombing, including so-called carpet bombing and concussion bombing, (2) wide area use of CS2 powder, and (3) bulldozing large areas of land with equipment known as "Rome Plows".

(b) Any arrangement entered into by the President with the National Academy of Sciences for conducting the study and investigation authorized by subsection (a) of this section shall provide for the submission directly to the President and the Congress of a final report containing the results of such study and investigation, together with recommendations for plans for the effective reconstruction of those areas of South Vietnam, Laos, and Cambodia ecologically damaged or destroyed by operations of the Armed Forces of the United States, not later than six months after the date of the enactment of this Act. Such report shall be made public.

(c) On and after the date that the National Academy of Sciences enters into an arrangement with the President for the conduct of the study and investigation authorized by subsection (a) of this section, each department, agency, and instrumentality of the Government shall furnish to the National Academy of Sciences such information as the chairman of the study group designated by the National Academy of Sciences to conduct such study and investigation considers necessary to carry out such study and investigation.

AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 4. There are authorized to be appropriated to the President, for the purpose of carrying out the provisions of this Act, not to exceed $10,000,000.

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By Mr. MOSS:

S. 3088. A bill to encourage State and local governments to provide relief from real property taxes for elderly individuals. Referred to the Committee on Finance.

PROPERTY TAX RELIEF FOR THE ELDERLY

Mr. MOSS. Mr. President, rapidly rising property taxes are a serious problem in the United States. Many taxpayers are angry at the continual increase, and with some justification. Property taxes have doubled—some say tripled—over the last decade. Logic suggests that this problem is all the more significant to the elderly and those who live on fixed incomes.

In a recent speech on the floor, my esteemed colleague, Senator HARRISON WILLIAMS, pointed out that in a typical urban household 4 percent of income is spent on property taxes. He then documented the extent to which those taxes have a magnified effect on the elderly. In one Midwestern State, he said, more than 8,000 aged homeowners who have incomes of less than $1,000 a year paid 30 percent of their total family income on property taxes. Others with lower income were found paying as much as 58 percent of their income for local property taxes.

This problem, Mr. President, cries out for redress and I am sure that those of us who have in the past called this issue to the attention of the Congress and the media were pleased to have President Nixon highlight the problem in his state of the Union message.

While the details of the President's proposal are not available it is clear that he will propose some solution. I hope it is a viable and fully adequate answer to a most difficult dilemma. I look forward to the specifics from the White House.

But in the meantime I wish to introduce a bill which may offer the germ of a solution. I do not consider this measure to be the final word. It is a suggestion only on which hearings can be based, and I hope some relief for our elderly worked out.

First of all my bill would only affect the 8 million Americans over 65 who are homeowners. Since most of them have low, fixed retirement incomes they suffer most when real estate taxes are raised. Some States have recognized this problem and granted exemptions to their elderly citizens. But because of the tortured condition of State budgets at this time, most States can ill afford the losses in income that would result from the exemption of all or part of the property taxes paid by the elderly.

In introducing this bill, I accept the assumption that the property tax is particularly damaging because it is regressive in nature. My bill would therefore require the Federal Government to replace, within limits, the amount of collected money a State would lose in granting a property exemption to the elderly. These losses would be made up with general tax revenues. Philosophically, this would replace to a degree the regressive property tax in favor of the progressive Federal income tax.

To describe the bill more specifically, it requires that if a State enacts legislation to exempt from taxation the first $5,000 in actual value of the property held by one of its over-65 citizens, the Federal Government would be obligated to replace these funds. However, the Federal Government's replacement of these funds would not be on a one-to-one basis. The bill contains a ratio of reimbursement formula which favors the lowering of effective property tax rates in general.

Since most real estate taxes are imposed on a local basis, States would be responsible to certify to the Treasury such amounts as it has lost by extending a $5,000 exemption on the property taxes of its senior citizens. The Secretary would pay the State the amount of the qualified reduction attributable to the exemption plus:

First, 13 percent of the qualified reduction, if the applicable tax rate does not exceed $1 per $100 of actual value of the property.

Second, 12 percent of the qualified reduction, if the applicable tax rate exceeds $1 but does not exceed $2 per $100 of actual value of the property.

Third, 11 percent of the qualified reduction, if the applicable tax rate exceeds $2 but does not exceed $3 per $100 of actual value of the property.

Fourth, 10 percent of the qualified reduction, if the applicable tax rate exceeds $3 but does not exceed $4 per $100 of actual value of the property.

Fifth, 7 percent of the qualified reduction if the applicable tax rate exceeds $4 but does not exceed $5 per $100 of actual value of the property, and

Sixth, 5 percent of the qualified reduction if the applicable tax rate is $5 or more per $100 of actual value of the property.

The bill provides, however, that in no case shall the qualified reduction attributable to the exemption plus the bonus exceed $200 per over-65 property taxpayer in the State.

In short, the bill provides positive incentives to the States to enact senior citizen exemptions for the first $5,000 actual value of real property on the assurance that the Federal Government would replace these funds from general revenues, and would also pay a bonus of up to 13 percent depending on the effective tax rates within the States. States would certify these amounts to the Secretary of the Treasury. The Secretary would pay over to the State such funds as are indicated by the States, provided, of course, the State gives assurance that the Federal money will be paid over to the appropriate political subdivisions of the State. As cost control, the Secretary would not be allowed to pay to the State more than $200 per certified over-65 property taxpayer.

As I have stated, I have no illusions that this bill is the entire answer to the problem of increasing property taxes. Perhaps also the amounts in the bill will have to be changed. But I do hold that the philosophy of this bill, which seeks to substitute the progressive income tax for the regressive property tax, is sound—that this is the right way to go—if we are to help our senior citizens whose fixed retirement incomes in recent years have been ripped to shreds by the twin buzz saws of inflation and escalating real estate taxes.

Finally I would ask unanimous consent to have entered in the RECORD at

this point an article by Columnist Sylvia Porter entitled "Property Taxes Become Crushing," and an article from the July 12, 1971, edition of U.S. News and World Report which serves to show the dimensions of the problem of increasing property taxes.

I send my bill to the desk and request its proper referral.

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

PROPERTY TAXES BECOME CRUSHING

(By Sylvia Porter)

The strong controls of Phase 2 must moderate the pace of upsurge in over-all housing costs, but they cannot even touch one of the most painful and ever more expensive items in our lives—property taxes. These taxes will not be frozen, not ever. And property taxes will continue rising—for several reasons—for the foreseeable future.

Simply to suggest the intensity of the squeeze on many of us, in all income groups and all age brackets:

Our total property tax bill hit $37.5 billion in 1970, up 35 percent since 1967 alone, a rate nearly twice the average increase in the cost of living during the period. And the pace is quickening: 1970's bill was nearly 12 percent higher than 1960's.

In many cities, the property taxes on a medium-priced house and lot have crossed $1,000 a year. In virtually every major city, a homeowner's property taxes now exceed $500 a year.

Some cities and towns have raised tax assessments as much as 20 to 25 percent in a single year, and in some cases reassessments designed to spread the tax burden have meant doubling, tripling or even quadrupling the taxes of certain homeowners.

Next to your mortgage payment your tax bill today is likely to be your biggest homeownership cost, and property taxes have for years been among the fastest rising items in total living costs. The Washington-based Advisory Commission on Intergovernmental Relations reported not long ago that the city family pays an average of $1 in $25 earned by the household on local property taxes, including the taxes hidden in the rent of non-homeowners.

Why. Obviously, behind soaring property taxes are the rising costs of health, education, welfare and public services. Contributing are rising crime rates and mounting needs for more and better paid police. Part of the pattern is the rising need for more and better paid firemen, road construction and sanitation workers, similar workers.

On top of this, many towns and cities are struggling under staggering interest loads on bond debts run up to build schools, help finance new hospitals and transit systems, comply with tough new Federal, state and local antipollution laws, satisfy the demands of the public for a cleaner environment.

Making the massive burden feel even heavier is the fact that many homeowners are carrying too much of the load, and many too little. The injustices and the inequities as follows:

Our elderly, for instance—for many of whom school ended after the 8th, 10th or 12th year, who tend to use expensive highways much less than younger Americans and who are least able to bear any extra financial burdens—are probably the hardest hit of all.

Numbers of elderly, in fact, are being compelled to give up owning and living in their own homes primarily because they can't take the climbing property taxes.

Farmers also are often victims, especially in recreation-oriented areas where land is increasingly being assessed and taxed on the basis of its real estate potential, instead of its meager return as pure farm land.

In a cross-section of cities and towns, the poorest are shouldering a disproportionately large share of property taxes while mobile homeowners—whose homes are taxed as personal property rather than in the form of real estate taxes—are not bearing their full share of local tax costs.

And while those citizens who have fled to suburban bedroom communities may squawk about their own property taxes, they also are escaping the heavy burdens in the cities to which they commute daily to earn their incomes.

All sorts of suggestions are being tossed around. One would junk the property tax system entirely by "piggy-backing" on state incomes taxes and giving the states responsibility for paying certain costs now being borne by cities and towns. Another would have the federal government take over responsibility for paying public school costs in the nation's 25 biggest cities. A third, cited recently by Norman Karsh, executive director of President Nixon's Commission on School Finance, would equalize tax rates for education throughout the United States and would have the states in areas of low property values kick in extra funds. And, of course, pressure continues for more federal revenue sharing.

But while the system remains as is—which it will for quite a while—can you, a house-hunter, curb the cost of your property taxes? Indeed, you can.

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RISING TAXES ON HOMES, AND THE SEARCH FOR A WAY OUT

Anger over real estate taxes is boiling up, setting off a scramble for alternatives. A new study reveals a wide range in burdens on homeowners.

A homeowners' revolt against rising property taxes is forcing cities to seek other sources of revenue.

How poorly they are succeeding is suggested by the fact that the real estate tax still accounts for $8.50 of each $10 in local taxes collected.

In most cities beset by soaring expenses, property owners have been hit by a long string of property-tax boosts.

A look at what is happening has just been made public by the International City Management Association and other local-government organizations. They conducted a survey of cities all over the country. Some of the findings:

The typical property tax on a house and lot with a sale value of $25,000 was $595 in the year ended in mid-1969. A Census Bureau study for the year ended in mid-1966 indicated a typical tax of $495 on that home.

The tax tends to be higher in suburbs than in central cities—typically $632 for a $25,000 home in the outskirts, against $563 in the city.

Mark Keane, executive director of the city-management group, ascribed the difference to school levies. "On the average," he said, "the suburbs raise almost $100 more in school taxes per $25,000 home than the central cities."

Property taxes vary, too, from area to area. For Northeastern cities surveyed, the typical tax on a $25,000 home was $851, more than 40 per cent above the nationwide average. For Southern cities, the typical real estate tax on such a home was $450—nearly a fourth below average.

Size of communities also shows up as a factor. The smallest cities studied—with populations of 25,000 to 50,000—had a typical tax of $702 on a $25,000 home. Lowest level was in cities with more than 500,000 population, a typical tax of $534.

The list of cities on page 71 shows the wide spread in homeowners' tax burdens.

SPREADING REVOLT

Cities that depend most heavily on the real estate levy for revenue find boosts now are coming with increasing difficulty as voters' ire grows.

In States that require voter approval in tax referendums, rejections have been frequent recently. In some communities—in Ohio, for example—schools have been shut down for varying periods because voters have withheld operating funds.

Recently, the plight of homeowners has been cited more and more in support of proposals for the Federal Government to share its revenues with State and local units. On June 25, President Nixon told an audience:

"Approximately 70 per cent of Americans over 65 own their own homes. This means that the growing burden of property taxes falls on their shoulders with special weight.

"When a person retires, his income goes down—and so do most of his tax bills. But his property taxes keep right on climbing—and he may even be forced out of the home he has paid for. This is one reason I want revenue sharing."

RELIEF SOUGHT

Nearly everywhere, property-owner complaints and local-government frustrations have become commonplace. In the past week or so—

Homeowners in Florida's Dade County, which includes Miami, have complained bitterly about increases in property assessments—up to 27 per cent or more in 1971 over 1970.

Georgia's municipal association and county commissioners' association have urged that the State's sales tax be boosted from 3 per cent to 4 in order to make way for property-tax relief.

In Virginia, civic and political groups have called on a State tax commission to relieve property owners by pushing for a law giving localities power to impose a piggyback surtax on top of the State's income tax.

On June 28, Philadelphia's school board adopted a new budget calling for elimination of all extracurricular activities—including sports, music, art, dramatics and debating—and the use of school facilities after school hours.

For local officials, County Judge William O. Beach, of Montgomery County, Tennessee, summed it all up recently when he said:

"The painful fact is that we have reached the limits of political tolerance with respect to property taxation."

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HOW PROPERTY TAXES VARY

NOTE.—All figures, which are for 1968–69—latest available—have been compiled in a survey by the International City Management Association, the Municipal Finance Officers Association, the National Association of Counties—the National League of Cities and the United States Conference of Mayors. Included are all cities of 50,000 or more population responding to the survey questionnaire.

TYPICAL TAX ON HOUSE AND LOT WITH A SALE VALUE OF $25,000

| | |
|---|---|
| Abilene, Tex | $526 |
| Albany, Ga | 440 |
| Albuquerque, N.M | 424 |
| Alexandria, Va | 447 |
| Amarillo, Tex | 476 |
| Anaheim, Calif | 569 |
| Atlanta, Ga | 484 |
| Aurora, Colo | 760 |
| Aurora, Ill | 754 |
| Austin, Tex | 266 |
| Baton Rouge, La | 417 |
| Beaumont, Tex | 587 |
| Berkeley, Calif | 778 |
| Birmingham, Ala | 257 |
| Boston, Mass | 1,130 |
| Boulder, Colo | 625 |

| | |
|---|---|
| Burbank, Calif | $521 |
| Cedar Rapids, Iowa | 837 |
| Champaign, Ill | 697 |
| Chattanooga, Tenn | 631 |
| Chicago, Ill | 550 |
| Chula Vista, Calif | 598 |
| Cleveland, Ohio | 551 |
| Colorado Springs, Colo | 721 |
| Columbus, Ohio | 452 |
| Concord, Calif | 760 |
| Corpus Christi, Tex | 654 |
| Cuyahoga Falls, Ohio | 661 |
| Dallas, Tex | 521 |
| Davenport, Ia | 729 |
| Dayton, Ohio | 638 |
| Decatur, Ill | 594 |
| Des Plaines, Ill | 681 |
| Detroit, Mich | 590 |
| Dubuque, Ia | 666 |
| Duluth, Minn | 590 |
| Durham, N.C | 479 |
| Eugene, Oreg | 777 |
| Fargo, N.D | 626 |
| Fort Worth, Tex | 617 |
| Fremont, Calif | 615 |
| Fullerton, Calif | 651 |
| Galveston, Tex | 510 |
| Garden Grove, Calif | 558 |
| Garland, Tex | 484 |
| Glendale, Calif | 543 |
| Grand Rapids, Mich | 509 |
| Greensboro, N.C | 484 |
| Hamilton, Ohio | 510 |
| Harrisburg, Pa | 758 |
| Hartford, Conn | 839 |
| Honolulu, Hawaii | 231 |
| Inglewood, Calif | 595 |
| Jackson, Miss | 609 |
| Joliet, Ill | 815 |
| Kansas City, Mo | 539 |
| Kettering, Ohio | 400 |
| Knoxville, Tenn | 607 |
| Lafayette, La | 54 |
| Lakewood, Calif | 541 |
| Lansing, Mich | 596 |
| Las Vegas, Nev | 438 |
| Lima, Ohio | 411 |
| Lincoln, Nebr | 865 |
| Lincoln Park, Mich | 649 |
| Little Rock, Ark | 349 |
| Livonia, Mich | 723 |
| Long Beach, Calif | 656 |
| Los Angeles, Calif | 645 |
| Lubbock, Tex | 482 |
| Madison, Wis | 666 |
| Medford, Mass | 848 |
| Memphis, Tenn | 543 |
| Miami, Fla | 528 |
| Midland, Tex | 576 |
| Milwaukee, Wis | 921 |
| Minneapolis, Minn | 469 |
| Nashville, Tenn | 530 |
| New Orleans, La | 204 |
| Newport, R.I | 750 |
| Newport News, Va | 375 |
| New York, N.Y | 522 |
| Niagara Falls, N.Y | 974 |
| Norfolk, Va | 340 |
| Norwalk, Calif | 581 |
| Oakland, Calif | 764 |
| Odessa, Tex | 485 |
| Ogden, Utah | 457 |
| Ontario, Calif | 668 |
| Orange, Calif | 608 |
| Overland Park, Kans | 615 |
| Oxnard, Calif | 579 |
| Peoria, Ill | 696 |
| Phoenix, Ariz | 562 |
| Port Arthur, Tex | 606 |
| Racine, Wis | 1,004 |
| Raleigh, N.C | 386 |
| Redwood City, Calif | 608 |
| Richmond, Calif | 670 |
| Roanoke, Va | 345 |
| Rock Island, Ill | 550 |
| Roseville, Mich | 650 |
| Sacramento, Calif | 553 |
| Saginaw, Mich | 515 |
| St. Joseph, Mo | 539 |
| St. Louis, Mo | 547 |
| St. Petersburg, Fla | 457 |
| Salem, Oreg | $676 |
| Salinas, Calif | 717 |
| Salt Lake City, Utah | 496 |
| San Angelo, Tex | 623 |
| San Antonio, Tex | 551 |
| San Diego, Calif | 550 |
| San Francisco, Calif | 639 |
| San Jose, Calif | 617 |
| San Leandro, Calif | 534 |
| Santa Ana, Calif | 493 |
| Santa Barbara, Calif | 647 |
| Santa Clara, Calif | 643 |
| Savannah, Ga | 626 |
| Seattle, Wash | 476 |
| Skokie, Ill | 753 |
| South Bend, Ind | 916 |
| South Gate, Calif | 560 |
| Springfield, Mo | 484 |
| Stockton, Calif | 684 |
| Sunnyvale, Calif | 607 |
| Toledo, Ohio | 407 |
| Torrance, Calif | 595 |
| Tucson, Ariz | 700 |
| Tulsa, Okla | 537 |
| Tyler, Tex | 526 |
| Utica, N.Y | 1,195 |
| Virginia Beach, Va | 290 |
| Waco, Tex | 425 |
| Waltham, Mass | 1,085 |
| Waterbury, Conn | 787 |
| Westminster, Calif | 691 |
| Wichita, Kans | 821 |
| Wichita Falls, Tex | 546 |
| Wyoming City, Mich | 495 |

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By Mr. INOUYE:

S. 3091. A bill to authorize the Public Service Commission of the District of Columbia to conduct a study with respect to the desirability and feasibility of requiring the installation of meters in taxicabs in the District of Columbia. Referred to the Committee on the District of Columbia.

Mr. INOUYE. Mr. President, I introduce today a bill to authorize a study to properly determine whether the present zone-fare system should be replaced by a meter-fare system for the taxicabs that are registered to operate in the District of Columbia.

The bill, essentially a housekeeping measure, will circumvent a rider that has inexplicably but perennially been attached to the House Appropriations bill for the District of Columbia. The rider was a topic of discussion in the recent Senate-House conference which met to resolve differences in the appropriations bills for the District of Columbia for fiscal year 1972. It was determined that the most expeditious manner in which to resolve a situation that I feel is detrimental to cabdrivers and riders alike was to introduce this legislation. The law, as it presently reads, intimately and adversely affects the 11,000-plus hackers in this city. If enacted, this legislation would simply permit the Public Service Commission of the District of Columbia government to apply its expertise and undertake a study to determine if the installation of meters is in the best public interest. For 40 years, the Commission has been denied the funds to conduct the very type study that the Commission was designed to undertake. It is my firm belief that the administrative agencies of the District government are more appropriate bodies in matters such as this than any congressional committee.

While all of us have been made keenly aware of the shortcomings of the taxicab industry in this city at one time or another, I became more intimately acquainted with the plight of the taxicab drivers during the most recent hearings on the District budget. The rationale of the driver's position is sound and it becomes all the more tenable in light of the rumors that circulate relating to the origin of the rider on the appropriations bill. One of the more ludicrous reasons given is that the Congress continues to enact the provision so that the Nation's legislators can commute from the Mayflower or Madison Hotels to Capitol Hill for the minimum fare. Contrasted to such reasoning, is the drivers' position that they want only that which every cabdriver in every other major metropolitan area of the country already has—reasonable compensation based on the time expended as well as for the services rendered. With the enactment of this legislation, the Commission will be permitted to make the proper determination.

At present, there are 11,563 cabdrivers licensed to operate taxis in the District of Columbia. There are 9,276 automobiles that are registered to operate as cabs in the city. While the numbers would appear to be adequate to meet the needs of the city, all too often and always during rush hours and in the outlying parts of the city, it is nearly impossible to hail a cab. The most obvious reason is that the present zone system makes it possible to ride several miles in heavy traffic within the same subzone for the minimum fare of 60 cents. Ironically, it is also possible to ride for less than 1 mile but through three zones and be obligated to pay $1.45. The fare that one has to pay may have little to do with the distance that is traveled. More importantly, the fare that the driver now receives has no direct relationship to the time he has expended. Whether a trip takes 5, 15, or 50 minutes, the driver is now often entitled to the same fare. The net result is that the public has the fewest number of cabs available when the public's need is greatest.

It is estimated that 85 to 95 percent of all the drivers in the District operate their cabs on a part-time basis. The most recent study by the Public Service Commission in 1971 indicated that the drivers averaged 4.33 hours of work per day. From another point of view, it means that only a very small portion of the drivers are full-time professionals. While this may be convenient for the student who seeks part-time work or for the government employee who seeks to supplement his income, driving a cab in the District of Columbia will not support a family in the Metropolitan Washington area unless the driver works far in excess of 40 hours per week. In the same Commission study it was found that the net revenue per hour is $3.02. It is far less during rush hour. The average revenue per trip in Washington is $1.20, while in New York City, the average revenue per trip is in excess of $2. It is interesting to note that the starting salary for a driver for the D.C. Transit is $4.64 per hour in addition to group benefits that the common hacker is unable to obtain.

This measure affects not only the cab-

drivers: the riders and potential riders are equally affected.

While I cannot forecast the study's conclusions, I would render a guess that if the Commission does find that the meter system is preferable, the citizens of this city will see more cabs when they are needed most and will see fewer "On Call" signs in the windshields of cabs. More persons would be attracted to full-time employment if such employment would insure equal compensation at all times of the day for the time at the task. If drivers were to be paid for their time, fewer pedestrians would stand stranded at distant points or in bad weather.

If the Public Service Commission were to eliminate the present system, which has 26 zones and subzones, and varying charges for different zones with single and group rates, then visitors would leave our Nation's Capital less confused and more secure in the feeling that they had not been "had" by a cabdriver. It is not a problem for visitors alone. Few native Washingtonians know where one zone begins and another leaves off.

While I do not question the integrity of most of our cabdrivers there exists under our present system not only the opportunity to cheat an unknowing public but also the governments involved. There is strong incentive to under-report fare receipts. This incentive is increased by a system which underpays the honest man and places a premium on less than honest accounting practices. Are we asking the taxpayers of America to subsidize our taxi services? I should hope not.

Increased regularization of personnel would also permit them to protect themselves against potential profiteering by franchisers, financiers, and insurers.

I urge my colleagues to review the proposed legislation and to act upon it in an expeditious manner.

I request at this time, Mr. President, that a recent news article in the Washington Post be printed in the RECORD, not only because it is material and relevant to this legislation, but laso because it is a fine example of responsible, innovative, investigative reporting.

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

IT'S A RARE DISTRICT HACKER WHO VENTURES INTO SOUTHEAST

(By Robert F. Levey)

Complaint One: Christmas Day, corner of Mt. Pleasant and Lamont Streets NW. A woman hails a cab and asks to go to 2400 30th St SE, in Anacostia. The driver says he doesn't know the way.

Complaint Two: Jan. 3, 25th Street and Good Hope Road SE. A woman hails a cab at morning rush hour, and asks to go to the Commerce Department. The driver hunts on side streets for 10 minutes for other downtown-bound fares to share the cab. When the woman complains that she'll be late for work, the driver rasps: "Lady; I'm the driver."

Complaint Three: Jan. 2, 7:30 p.m., 8th Street and Virginia Avenue SE. A mother and daughter and six relatives are standing on the corner. The mother hails a cab, but just she and her daughter get in. The driver refuses to take them. "I thought I was going to get six of you," he says.

These three complaints are all on file with the city government. They were filed by citizens against cab drivers. The city's records—and a Washington Post experiment—indicate that they are not atypical.

Almost twice a day, the city's public vehicle services department logs a written complaint from a citizen against a local cab driver.

About 80 per cent of the complaints that reach his office involve drivers who refuse to transport passengers, said Charles Morgan, head of the department. And 95 per cent of those complaints, Morgan said, are filed by black women who have been refused rides to or from Southeast Washington.

The law governing trips to Southeast, or anywhere else in the city, is clear; once a passenger is in a cab, he or she must be taken to the stated destination.

It is illegal to use "on call" or "off duty" signs to avoid certain passengers or areas of town.

It is illegal to "shop" for passengers or destinations, as many complaints charge that drivers do at Union Station, major hotels and the bus terminals.

And it is illegal to, as drivers call it, "play the zones"—avoid passengers who are hailing just to the "cheap" side of a zone boundary, or drop passengers just to the expensive side.

Violators face a possible fine of $300 and/or 90 days in jail. "But it goes on, it sure does," said Maurice J. Harmon, a complaint investigator for the city.

To test just how much it does go on, The Washington Post performed an experiment for 2½ hours last Thursday afternoon.

Three Post employees volunteered—Roberta Bright and Sonja Chavis, who are black, and Peter McLennan, who is white.

The three volunteers spaced themselves along the 2100 block of Virginia Avenue NW, near the State Department. Simultaneously, they hailed passing cabs.

Each volunteer would ask to be taken to an address in the farthest reaches of Southeast Washington. After the cab was about four blocks down the street, each volunteer would say he or she had forgotten something, and would ask to return to the State Department. Then the process would be repeated.

The volunteers started 36 trips between them.

Three times, drivers flatly refused to go to Southeast—once for each volunteer.

Three other times, after they had heard the destination, drivers said they could not take the volunteer, listing various reason for not doing so.

In the first case, the driver said "Aw, gee, I can't take you down there . . . I've got to get my windshield wiper fixed." It wasn't raining at the time.

In the second case, the driver said he remembered he had an appointment five minutes later.

In the third case, the driver said he didn't know where 2018 Savannah Pl. SE was. But after the volunteer had asked to return to the State Department, he said he had once lived on Savannah Street SE—two blocks away from the requested destination.

Five other drivers complained spontaneously and out loud about the Southeast run ("It's like going out of the country," one said). At least 10 others looked pained or shook their heads slowly from side to side, the volunteers said. One man was so relieved when he was asked to return to State that he exhaled and said: "Saved by the bell."

On the other hand, almost all of the other drivers were extremely courteous. Two insisted on waiting in the State Department driveway while the volunteer went to fetch the "forgotten" item. Another was so concerned at the volunteer's failing memory that he gave her the name and address of a mental discipline school.

Drivers—both black and white—would invariably pick up Peter McLennon, the white volunteer, first. And after they had returned to the State Department from what turned out to be a 10-block ride, drivers consistently charged the two black women more than they charged McLennan.

The charge for the 10-block ride varied from 50 cents to $1.45. The proper charge, for a ride within one zone was 60 cents.

All the volunteers were instructed to ask when they got back to the State Department, "What do I owe you?" Neither woman ended up paying less than 60 cents; McLennan twice paid 50 cents and one paid nothing.

Nor did all the cabbies agree on what it would have cost to get to Southeast.

Most quoted a fare of $1.80, which is correct. However, the driver of a Diamond cab licensed to William Gibbons quoted $2.30, and drivers of cabs licensed to Philip J. Gordon and William F. Manuel quoted $2.20. (The names were copied from licenses displayed in the cabs.) And one driver, whose license was not displayed—itself a violation—quoted $2.55.

Counting refusals to transport, licenses that were not displayed and overcharges on the short trip to and from State, 20 of the 36 drivers in the experiment broke the law.

Two dozen cabbies interviewed this week have a standard—and understandable—explanation for their reluctance to go to Southeast.

They say they have only a small chance of getting a tip. They say they're afraid of robbery. They say they face an almost certain empty run back downtown. And they say that many Southeast-bound passengers can't pay the fare.

"What am I out here for, the love of it?" asked Jim Madison, as he waited for a fare one afternoon near the Mayflower Hotel. "This is a business."

The city's taxicab industry group, which represents 43 companies and associations, recently has adopted a program for avoiding abuses of the rules, according to its president, William J. Wright.

The group advocates more hack inspectors on the streets. There are now three, according to Morgan. Two years ago, when enforcement of hack rules still was the duty of the police, there were 15.

The group also favors a change in the fare structure to allow drivers to charge full fares to each passenger on a group ride from 4 p.m. until the end of morning rush hour the next day.

The change in fares, Wright said, "would encourage more cabs to be on the street," would make night work profitable, and might help eliminate the Southeast problem.

Morgan said that 95 per cent of the city's 12,000 licensed drivers do business honestly. It is the other 5 per cent, he said, "who run up files."

"It's the newcomers, those new to the area, who cause most of the trouble," Morgan said. In general, he said, the industry here is "a lot better than it used to be."

"But I get phone calls from the public that you wouldn't believe," Morgan said.

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IN OUR TOWN IT TAKES A TRICK TO CATCH CAB

Here, according to several black women interviewed in offices and on streets in downtown Washington, are some ways to beat the resistance of cab drivers:

Don't just stand on a downtown street, particularly at night, and hope for the best. Go into the revolving door of a hotel, go all the way around and come back out, and then ask the doorman for a cab.

When going to Southeast from Northwest, phone, rather than hail, a cab. And tell the dispatcher your destination is Capitol Hill, not Congress Heights. It costs an extra quarter for the radio cab, but it can save an hour.

When going from Southeast elsewhere, try if possible to carry a large purse or satchel. Drivers may think it's a suitcase, and "read" you for an airport fare.

If possible, hail cabs in groups. Some drivers will take a group ride to Southeast for $5 when they won't take an individual for $1.45.

Never tell a driver after you get in that you're going "down to Southeast, just take the 11th Street Bridge and I'll show you." He will think you can't pay the fare. Give him a street address, and sound sure of yourself.

Get in the front seat when the cab pulls over. The driver is less likely to refuse you if he has to look directly at you.

If you're downtown, hail from the "wrong" side of the street. The driver may think you're a maid heading for Georgetown, or a nurse going to Georgetown University Hospital.

Use your femininity. If you have two children waiting at home, tell the driver you have six.

Tip, always, if you can. The driver may get a newfound good impression of Southeasterners, and you're bound to need another cab sometime.

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By Mr. CRANSTON:

S.J. Res. 191. A joint resolution designating the week of May 1–7, 1972, as "National Bikecology Week." Referred to the Committee on the Judiciary.

NATIONAL BIKECOLOGY WEEK

Mr. CRANSTON. Mr. President, I am introducing today for appropriate reference a resolution calling upon the President to proclaim the week of May 1–7, 1972, as National Bikecology Week. An identical resolution is being introduced today in the House of Representatives by Congressman SEYMOUR HALPERN and 24 House cosponsors.

National Bikecology Week is the brainchild of a California-based organization, Friends for Bikecology. The aim of Friends for Bikecology is to promote a more balanced transportation system that places less stress on the environment. The bicycle, which produces no harmful emissions and causes no noise, is an ideal component for a more ecologically-oriented national transportation system. National Bikecology Week is designed to focus public attention on the environmental and personal benefits to be gained from bicycling.

Last May 8, organizations and individuals in nearly 50 cities across the Nation participated in National Bikecology Day through "bike-ins" and other community activities. This year it is anticipated that more than 200 cities will feature bikecology events during National Bikecology Week. Friends for Bikecology has informed me that five Governors have already issued proclamations establishing National Bikecology Week in their States, and many more State proclamations are expected.

National Bikecology Week can help to establish that the bicycle is a viable alternative to the automobile as a means of transportation, particularly for short distances. Friends for Bikecology has informed me that 60 percent of all automobile trips in the United States are for distances of 5 miles or less. Conceivably the bicycle could be substituted for a good many of these short automobile trips.

Secretary of Transportation John Volpe has been quoted as saying:

As far as I'm concerned, . . . bicycles have equal rights wtih automobiles on our city streets.

Under his leadership, the Department of Transportation has been working with the District of Columbia to make Washington, D.C. a "model bicycle city." With safe, physically separate bicycle routes available to bicyclists, the bicycle will become an essential and lasting means of commuter transportation in our cities.

I am fully convinced that the sudden increase in the popularity and use of the bicycle is not a fad. Bicycle manufacturers sold nearly 8.5 million bicycles in 1971, compared to 3.7 million in 1960. More than a third of the bicycles sold last year were for adults, whereas prior to 1971 only 15 percent of the bicycle market was adult oriented. This abrupt and significant shift in the age of bicycle purchasers points to an increased use of the bicycle as a means of transportation.

This year the bicycle industry expects to sell 10 million new bicycles. With the repeal of the excise tax and with the import surcharge, I have estimated that the domestic automobile industry will sell approximately 8.6 million new cars in 1972. If these estimates are realized, 1972 will be distinguished as the year when Americans bought more bicycles than automobiles.

With the need to reduce the amount of harmful automobile emissions that pollute our air and impair our health becoming more acute each day, we must develop a more balanced national transportation system. Our dependence on the automobile must be lessened. National Bikecology Week, by focusing public attention on the environmental benefits of the bicycle, can be an important step in the direction of a more balanced national transportation system—one which provides many viable alternatives to the automobile. I wholeheartedly support the concept of "bikecology," and I urge the Senate to join me in this effort.

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

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

S. J. RES. 191

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That,

Whereas, nearly 80 million Americans are bicycling today, almost twice as many as a decade ago; and

Whereas, the health and the quality of life of urban Americans are increasingly threatened by congestion and air pollution; and

Whereas, the automobile is the major source of air pollution and congestion in our urban areas; and

Whereas, the bicycle is an efficient, nonpolluting and healthful alternative to the automobile as a means of commuter transportation; and

Whereas, it is in the national interest to promote a more balanced transportation system that places less stress on our environment; and

Whereas, this national interest can be enhanced by encouraging the use of the bicycle and focusing public attention on the individual and community benefits that can be gained from bicycling; now Therefore be it

*Resolved,* That the week of May 1–7, 1972, is designated as National Bikecology Week and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

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## SENATE RESOLUTION 245—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON COMMERCE

(Referred to the Committee on Rules and Administration.)

Mr. PASTORE, from the Committee on Commerce, reported the following resolution:

S. RES. 245

*Resolved,* That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Commerce, or any subcommittee thereof, is authorized from March 1, 1972, through February 28, 1973, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) 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. 2. The expenses of the committee under this resolution shall not exceed $1,233,800.00, of which amount (1) not to exceed $35,000.00 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), and (2) not to exceed $10,000.00 shall be available for the training of the professional staff of such committee, or any subcommittee thereof (under procedures specified by section 202 (j) of such Act).

SEC. 3. For the purposes of this resolution the Committee, or its Chairman, from March 1, 1972, through February 28, 1973, is authorized in its, or his discretion, (1) to require by subpena or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents; (2) to hold hearings; (3) to sit and act in any time or place during the sessions, recesses and adjournment periods of the Senate; (4) to administer oaths; and (5) take testimony, either orally or by sworn statement.

SEC. 4. The 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. 5. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

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## ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 232

At the request of Mr. CHILES, the Senator from California (Mr. TUNNEY), the Senator from Minnesota (Mr. MONDALE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Iowa (Mr. HUGHES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Idaho (Mr. CHURCH), and the Senator from Michigan (Mr. HART) were added as cosponsors of Senate Resolution 232, expressing the sense of the Senate that the remainder of the amount appropri-

ated for the rural electrification program for fiscal 1972 be immediately released by the Office of Management and Budget.

## EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 839 THROUGH 846

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

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

## CANCELLATION OF HEARING ON SUBSTITUTE AMENDMENT RELATING TO 1972 FEED GRAIN PROGRAM

Mr. TALMADGE. Mr. President, I wish to announce the cancellation of a hearing by the Committee on Agriculture and Forestry which had been scheduled for Monday, January 31 on a substitute amendment to Senate Joint Resolution 172 to be offered by the Senator from Minnesota (Mr. HUMPHREY). The substitute amendment affects the 1972 feed grain program and authorizes planting of cotton on cotton set-aside acreage.

## NOTICE OF HEARING

Mr. HART. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Tuesday, February 1, 1972, at 2 p.m., in room 2228 New Senate Office Building, on the following nominations:

Ralph E. Erickson, of California, to be Assistant Attorney General, vice William H. Rehnquist, resigned, to which office he was appointed during the last recess of the Senate.

Dale Kent Frizzell, of Kansas, to be Assistant Attorney General, vice Shiro Kashiwa, resigned, to which office he was appointed during the last recess of the Senate.

Henry E. Petersen, of Maryland, to be Assistant Attorney General, vice Will Wilson, resigned, to which office he was appointed during the last recess of the Senate.

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

This hearing will be before the full committee, Senator EASTLAND, chairman.

## ADDITIONAL STATEMENTS

## DELAWARE REDUCES HIGHWAY DEATHS BY 25 PERCENT; INITIATES NEW PROGRAM AGAINST DRUNK DRIVERS

Mr. BOGGS. Mr. President, last year the American people suffered new tragedy on our Nation's highways. The number of persons killed in 1971 in traffic fatalities is estimated at 55,000, a slight increase from the 54,800 persons killed in 1970.

There is no need to discuss at length the tragic consequences of these deaths. The highway safety problem inflicts tragedy on the families that suffer the loss of a loved one. The highway safety problem inflicts on the American public a cost that runs into the billions of dollars yearly for hospital bills, lost income, insurance costs, and property damage.

But I must tell my colleagues about some of the great strides the State of Delaware has made in reducing highway deaths. Our effort in Delaware seeks to make the First State the safest State. Delaware, in 1971, achieved a percentage reduction in highway fatalities that I think should serve as a goal for every State.

Through stepped-up enforcement, improved emergency services, and a campaign of public awareness, Delaware last year reduced the number of its traffic deaths by approximately 25 percent, compared with 1970. That reduction was the best record for any of the contiguous States, I understand.

Specifically, Delaware recorded 115 traffic deaths last year, compared with 152 the preceding year. Of course, the 115 deaths remain 115 deaths too many. We shall never achieve a truly acceptable highway safety program until we eradicate highway deaths entirely.

But I do believe that the level of reduction achieved in Delaware clearly demonstrates what law enforcement agencies and the public can achieve together in the effort to lessen the number of highway deaths.

Highway travel must not continue to be a terminal disease.

I am very proud of the accomplishments achieved under the direction of Governor Peterson, his Secretary of Public Safety, Fred W. Vetter, Jr., and the Federal-State Highway Safety Coordinator, William Scotten. Our State went out and worked hard to bring the highway safety message to the public. Secretary Vetter recently spoke of the sense of urgency that exists in Delaware on the problem of highway safety. I think his fine statement deserves our attention:

> Every time the number goes up on our fatality boards, let's get upset—even angry about it. Because it tells us we failed—and in a very real and personal way. We must be sure, however, to focus our irritation and concern in the right direction. Don't just leave it to the police and courts to do something as if they were the only ones who get paid to worry about it. Everyone of us must develop an intolerance—a deep, personal, and lasting rejection of the driver conduct that causes highway deaths. I'm talking about the show-off behind the wheel, the chance-taker at intersections, the back road speeder, the heavy drinker, and the chronic rule breaker. You see, we're really not talking about accident fatalities, we're more often talking about death resulting from lawless and undisciplined behavior, inattentiveness, chance-taking, and a lack of concern for our fellow man—these are conscious acts, not accidents.

Much of Delaware's success in reducing fatalities has come from an awareness that the drinking driver is a highway menace. Without any unusual Federal support, Delaware put together an effective, first-class program to get the drunk off the highway.

In addition, the State now has developed an alcohol safety action project that is designed, over a 3½-year period, to reduce by 30 percent the number of accidents associated with alcoholic beverages.

I am happy to announce that Governor Peterson has today received official notification that the National Highway Traffic Safety Administration has approved a $2,292,000 grant to support this project.

This grant is not intended to foster a health or a morality campaign. Rather, it will be a well-rounded approach to educate individuals on the effects of alcohol on their driving.

With this grant, Delaware should be able to perfect still further its various programs to get the drinking driver off the highway, creating new approaches that should work in many other States and communities.

Specifically, Secretary Vetter's department describes the Delaware project as involving several areas of alcohol countermeasures:

> Eight special two man police "Alcohol Patrol Unit" vehicles will be operated throughout the state; five by State Police, one by Wilmington Police, one by New Castle County Police, and one by the Dover Police Department. The cars will operate mostly during nighttime hours and will concentrate attention to those locations and hours with high incidences of alcohol related accidents.
>
> Additional men are to be added to the Division of Motor Vehicles to devote much needed attention to those persons applying for relicensing following revocation for intoxicated driving convictions. They will determine whether a license should be reissued or delayed pending satisfactory proof of a violator's rehabilitation in the use of alcohol.
>
> Three new prosecutors are to be added to the staff of the Attorney General's Office to assure adequate coverage for contested intoxicated driving (DWI) cases in courts.
>
> A strong and continuing public education and information program will be mounted to alert the public to the nature and size of the alcohol-highway problem and, hopefully, generate support for those activities which must be undertaken in order to achieve real success in reducing the problem. Our statewide school system will be an active part of the education thrust.
>
> Discussions are now being held to determine the most effective methods for treating and rehabilitating the problem drinking driver. Fines and/or jail sentences do little to correct the basic problem. We are working closely with personnel of the Division of Alcoholism Services of the Department of Health and Social Services in their attempts to secure grant funds available from the U.S. National Institute of Mental Health. In addition, other groups such as the Delaware Safety Council are participating in these discussions on the rehabilitation problem.
>
> Continuing evaluation of our program will be conducted by the staff of the University of Delaware's Technical Services Division. Through this operation we hope to be able to not only judge the effectiveness of our program elements, but also contribute, through NHTSA, to the national body of knowledge on the subject of the problem drinking driver.

I wish to commend Governor Peterson and his fine staff for preparing such a fine program that will save lives in our great State and in the Nation. Much of the credit must go to George Grotz who is director of Delaware's Alcohol Countermeasures Office.

With this fine record Delaware achieved in 1971, I hope we can look forward to years of further progress to-

ward a reduction in the number of traffic fatalities.

Every Delawarean should be proud of the tremendous effort to lessen the danger of highway fatalities. Yet each of us is also aware of what remains to be achieved. This new grant to Delaware represents a significant step toward further reductions in the rate of traffic fatalities in 1972.

## MALNUTRITION

Mr. HOLLINGS. Mr. President, in South Carolina, we are facing up to some severe problems of malnutrition and inadequate health care. While we are not proud of the terrible poverty which blights some areas of the State, we are proud of the way that both officials and also the poor themselves are beginning to unify to combat our common enemies. The Beaufort-Jasper Comprehensive Health Services, Inc., exemplifies this commitment to improving the living standard of the poor. I am very proud that the Office of Economic Opportunity has spotlighted the Beaufort-Jasper program in the OEO magazine Opportunity. I ask unanimous consent that the text of the article be printed in the RECORD.

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

SOUTH CAROLINA: HEALTH SERVICES COMES TO THE BYWAYS & BACKWOODS

(By Betty Murphy)

You can see the sky through the roof and the earth through what is left of the floor. The view is clearer through the walls than out of the dingy windows. Two scrawny pigs grovel for garbage in the mud under the house and in the yard. An ancient washing machine struggles through its fifth laundry of the day on the shaky little front porch. The water for it and the whole house comes from an outdoor pump.

Inside, a toothless woman, aged beyond her 33 years with the burden of bearing nine children in poverty, sorts tattered clothing on threadbare, cushionless living room chairs. Six of her children are playing, napping or eating spaghetti and rice on a small dilapidated bed in the same room. The youngest, a 10-month-old baby, lies panting with the heat in their midst. He is recovering from pneumonia.

A middle-aged lady in a crisp orange uniform is partially responsible for the baby's recovery. She took him to a doctor, treated him herself and brought him free medicine from the health center where she works. She has also treated the mother for pleurisy and given all the children medicine for worms. All members of the family are counted among her 275 patients, although she is not a doctor nor even a licensed nurse.

Mrs. Azarine Thompson, a 47-year-old mother of six, dons her bright uniform five, six and sometimes seven days a week to visit disadvantaged patients in Beaufort County, South Carolina. Almost everybody in her area knows her by her dress, spotless white shoes and rectangular black bag as a family health worker attached to the Beaufort-Jasper Comprehensive Health Services, Inc.

Mrs. Thompson is one of 19 black, mostly middle-aged women who serve as Comprehensive Health Services outreach workers among the poor in 19 target areas in rural Beaufort and Jasper, southern coastal counties of South Carolina. They form the troops of four coordinated teams of doctors and registered and licensed practical nurses who work in and out of four neighborhood health centers. These and other specialists with the OEO-funded health services program hope to eradicate health problems among the 25,000 poor, mostly black people in the two counties by curative and preventive means.

The need for health care in these counties, where more than 40 percent of the 61,000 population fall below OEO poverty guidelines, has long been desperate but largely unnoticed. Before the Comprehensive Health Service started operating last March, there were only about 21 practicing physicians in the 1,300 square-mile area. Arthritis, diabetes, strokes, high blood pressure, pneumonia and worm infestation are extremely common in the area. An undetermined number of these cases have gone undetected and untreated because some residents, even whole families, have never seen a doctor in their lives.

The wealth of beauty, particularly in Beaufort County, is largely to blame for concealing the poverty and disease. One is awed by the magnificence of stately old Southern mansions framed by sprightly palmetto trees and towering oaks dripping with Spanish moss. The sagging tarpaper shanty nearby often goes unnoticed. Another contrast to the poverty is the plush resort developed in recent years on one end of Hilton Head Island in Beaufort County. People who go there, however, seldom see the poor on the other side of the island.

For generations, rich and poor, well and sick have lived side by side, more or less unaware of one another in the two counties. Then in 1967, an obscure general practitioner, who had served both the wealthy and the destitute in the area for more than ten years, helped bring the plight of his poor patients to the attention of the entire country. Dr. Donald Gatch testified before the Citizens Board of Inquiry into Hunger and Malnutrition in the United States at hearings held in Columbia, S.C., in November of that year. Then in 1968, he appeared on national television and was interviewed by reporters from South Carolina newspapers, the New York Times, The New Republic and Esquire Magazine. He told how children were infested by parasites and literally starving to death in Beaufort County.

Following the national publicity, Sen. Ernest F. Hollings, accompanied by local government officials, visited the two counties. "We showed them everything. We took them off the tree-lined highways down the dirt roads where the clotheless, homeless and the hungry live," said Thomas C. Barnwell, Jr., project director of the Comprehensive Health Services and a native of Beaufort County. "They saw things they had never seen before and never imagined existed in this country."

In February 1969, Senator Hollings testified before the Select Committee on Nutrition and Human Needs of the U.S. Senate. He reported that he saw, "bleak hunger and hovel-housing amidst disease and ignorance." The Senator later discussed these conditions with officials of OEO's Office of Health Affairs and in June, 1970, the Beaufort-Jasper Comprehensive Health Services, Inc., was created with an OEO grant of $754,373 After nine months of planning, staffing, organizing and setting up facilities, the project opened with a main office in the city of Beaufort and three satellite health centers in Sheldon in Beaufort County, and Hardeeville and Grays in Jasper County. A fourth center on St. Helena Island in Beaufort County was opened last fall.

The health services project, funded this year by OEO for $1,776,991, started out with a comprehensive medical team working in and out of each center: a doctor, one or two registered nurses, a licensed practical nurse, three to eight family health workers, a medical records clerk and a receptionist. Two MEDEX, who have each served 20 years as military corpsmen, serve on two of the teams. Recently, the project hired a dentist who works out of a mobile dental unit in Jasper County, which has only one other dentist. The area's Head Start program donated $10,000 toward this unit in return for dental care for children enrolled in the program.

Laboratory facilities for the whole project are set up in one center with a well-stocked pharmacy in another. The centers, loaned or leased from the county Public Health Department, are also well equipped clinics with examining and treatment rooms, small labs, interviewing and waiting rooms. Mobile units or trailers alongside each center house medical records and offices.

"Each Comprehensive Health Service center is equipped as well as any good, modern doctor's office in the big cities and suburbs," said Dr. Jerry J. Galloway, an internist who was appointed medical director of the project last January. He works out of one of the centers and two black doctors, Dr. Elijah Washington, a native of Beaufort County, and Dr. Albert D. Jenkins of Charleston, S.C. man two of the other centers. They and their teams work from 8 a.m. till they see their last patient every weekday except for four days a month in two of the centers. The Public Health Department holds crippled children, TB, pre-natal and family planning clinics on those days.

All comprehensive health project services are free to those who earn incomes below the OEO poverty guidelines ($3,200 for a rural family of four). Physical examinations, treatments, medications and prescriptions are provided for many poor people who never before had access to such comprehensive health care.

If patients need X-rays, operations, or other hospital care, they are sent to Beaufort Memorial Hospital, where project doctors are on the staff. The project pays fees not covered by Medicaid or Medicare. Should a patient need more specialized care than is available at Beaufort Memorial, staff doctors send them to public hospitals in Charleston or Savannah. The project also holds clinics for Head Start and day care children and, during this school year, is examining and treating all the children in four Beaufort schools. All the students are from poor families and have received little medical attention.

Comprehensive Health Services also tries to coordinate with other existing health services as much as possible. The project's medical personnel frequently refer patients to the Public Health Department clinics, a state-funded, four-county Coastal Empire Mental Health Program and Clemson Nutritional Services, which offers nutritional education to people who can't afford much food.

Three local physicians and a registered nurse were invited to serve on the project's board of directors. Professionals, businessmen and community people make up this 18-member governing body, advised by a 30-member advisory council consisting mostly of community people from the 19 target poverty areas.

The compehensive care concept of this project covers the entire immediate family of every patient as well as individual health care. When an eligible patient is found by a family health worker or walks into a center, he and his whole family are registered in the center nearest their home. Every family member is given a complete physical examination and medical histories are taken from them by a trained medical records clerk.

An overall view of the total health of an entire family is kept before the health care staff constantly through several means. These include medical records and complete reports on every patient encountered by the family health workers. Also, team conference meetings are held by the entire medical staff at least twice a week at each satellite center. The team discusses current cases, including

diagnosis, treatment, prescriptions and the health status of the whole family. This provides not only communication, but on-going education for the staff.

The success of such team coordination is reflected in the work of the 19 family health workers. "the backbone of the whole project," according to Mrs. Estelle Rodriguez, a 59-year-old registered nurse who has dedicated much of her 40 years' nursing experience to rural health care, including directing and teaching nurses and family health workers all over the deep South. She now supervises all the Comprehensive Health Services nurses and family health workers in and out of the centers and is on call night and day to assist any one of them with a problem the family worker feels she can't handle.

"They can treat most common ailments, even diabetes. And they only graduated last March from six months' training in family health care," said Mrs. Rodriguez, who gives the family workers as much extra training in nursing techniques as her time allows. "They are really growing. I don't think I have ever seen a group of such strong, energetic, dedicated women as these 19 workers. Their people really knew what they were doing when they selected them for their jobs."

The family health workers were selected to serve their own home communities by their friends and neighbors at open community meetings held last fall in the 19 target areas. They work in their own and adjacent neighborhoods in areas which contain roughly 2,000 poor individuals who are eligible for their services. They have known many of these people all their lives and know intimately the problems of being poor for they all came from families with incomes below the poverty guidelines.

"Making contact with people I didn't know in my area was easy. I understand them and they understand me," said Mrs. Sarah Douglas, a 47-year-old mother of six who has lived in Beaufort County for more than 25 years. Although she never had formal nurse's training, Mrs. Douglas has practiced home nursing with needy neighbors most of her adult life. She used a medical encyclopedia and a first aid book before becoming a family health worker. She received twice as many votes as any other applicant at her election and had the highest achievement record in the health care course.

"I feel this is the work of the Lord. We are His hands, eyes and helpers. We have to have a feeling beyond sympathy for our patients whether they be black or white. We have to have empathy, to feel like they feel," said Mrs. Douglas. She recently turned down a project offer to provide her and two other health workers a year's free training to become a licensed practical nurse. "My heart is in this community. I'm needed here now. You're either totally dedicated or not at all.

Mrs. Douglas and the other family health workers drive out the dusty backroads in their communities every weekday, seeking and tending the sick. They sometimes drive more than 70 miles and may make 20 visits a day. They take temperatures and blood pressures, read pulses, give bed baths, do blood sugar tests on diabetics and treat people for worms. They also deliver prescriptions and other medications, show their patients how to use them and check later to see if they are being used properly. Coordinating with the center receptionists, they schedule appointments and drive people to the center who have no other way to get there.

One of the most important functions of the outreach health workers is finding the sick and registering eligible families with the center. Within five months, they helped register more than 2,500 families, according to Mrs. Rebecca Price, who is in charge of the medical records. Very often these patients find the health workers because of their bright orange uniforms. The women selected them because they liked the color, not for identification purposes.

The workers are often stopped on their rounds by strangers who say: "You're the lady in the orange dress who helps sick folks. My little boy doesn't feel too good. Can you help him?" Or, "The old man who lives in that house over there has bad arthritis. He'd like to see you." If their schedule permits, the workers visit the person in need immediately and get the names and ages of every member of the family after making a preliminary determination on whether they meet the poverty guidelines test. This is later checked out thoroughly by the medical records clerks at the centers when the patients arrive for their first appointment.

"You can almost tell if a family is poor enough just by observing," said Mrs. Thompson, who has already contacted 275 eligible families in her area and brought most of them to the Sheldon center. "I don't have time to loaf. In some neighborhoods, there are eligible patients in about every house. Some are isolated old people who haven't seen a doctor in years, if ever," said this worker, who estimates that one out of every 10 or 15 of her cases never had professional care.

A few months ago, Mrs. Thompson located two elderly, widowed sisters who live down the lane from the nine-child family described in the first part of this article. In contrast with the living conditions of that family, which Mrs. Thompson says is one of her worst cases, these two ladies have a bright, spotless little house in excellent condition. The older sister, 78, had severe diabetes, but hadn't seen a doctor for 10 years because of religious reasons when the health worker found her.

"She believed that God would heal her, but I was able to convince her that God expects us to try to help ourselves," said Mrs. Thompson, who took the lady to Dr. Washington for treatment and has tended to her regularly ever since. The woman's blood sugar count is now normal and she says that she is sleeping well for the first time in ten years.

It isn't unusual for the family health workers to discover large isolated villages of poor families living in shacks and trailers, sharing one water pump and one or no outside privy at all. A few months ago, by chance, Mrs. Douglas found a group of 26 people, most of them related, living in such conditions. The father and grandfather of many of them is a stroke victim and his wife a diabetic who couldn't afford medication. Two teenage girls were pregnant and not receiving pre-natal care. One two-month old baby was so malnourished that even with iron and vitamin supplements in her diet, she now only weighs nine pounds. Mrs. Douglas has treated all 26 people for one ailment or another, including all the children for worms.

Worm infestation is common in southern coastal regions because of the excessive moisture of the subtropical climate, and particularly serious in poor rural areas where many people don't have indoor plumbing or even outhouses, according to Director Barnwell. The minute eggs or larvae are transmitted from hand to mouth and breed in the intestinal tract. When excreted, they easily reinfest people in areas with poor sanitation facilities. The worms cling to the intestinal tract and cause anemia, and sometimes swelling of the stomach due to malnutrition.

Oral medications, such as Piperazine, work like a highball on the parasites, according to Mrs. Rodriguez. It anesthetizes the worms so that they pass through the system over a two-day period. But the drug's effect lasts for only a while if the person is reinfected.

"The real remedy is preventive medicine, said Dr. Terrence Frederick, a registered civil engineer from Trinidad who directs an Environmental Health Program for the Comprehensive Health Services. "People must have sanitary outhouses or septic tanks with water to flush them to control this disease. Wells at least 60 feet deep are also needed as the worms can live in shallow wells with only surface water."

Dr. Frederick plans to help communities obtain funding to install rural water systems in areas where 10 or 12 families are clustered together. He, a field operations man and three environmental aides have built nearly 100 outhouses and fixed roofs, windows, steps and screens on some rundown houses. This has been done mostly on the recommendations of family health workers who report poor sanitation and housing conditions which contribute to health problems of their patients.

One of the poorest areas in Beaufort County is Daufuskie Island, the last big sea island occupied by a sizeable population which is totally inaccessible except by boat. About 120 very poor people, mostly elderly and some children, live on this primitive island which is one of Comprehensive Health Services target areas served by a family health worker who lives there. The same health problems exist there as on the mainland, according to Mrs. Rodriguez, who has journeyed there many times by shrimp boat to treat the sick. Dr. Galloway also holds a clinic on the island every other Saturday in an old two-room school house where the island's 40 children attend grammar school. The patients travel the lonely dirt roads mostly by ox and cart to get to the clinic, as there are very few automobiles on the island.

On one occasion, Dr. Galloway got a nearby Naval air station to pick up a lady suffering with heart failure from the island by helicopter. It took a good while for relatives of the woman to get to the radio and notify the sheriff, who had to locate a Comprehensive Health Services doctor. He in turn had to arrange transportation, including an ambulance to meet the helicopter. The same time-consuming ordeal occurred again before the Coast Guard rescues a woman about to have a baby.

One long-range goal of the project is to improve the transportation to and on Daufuskie Island. Meanwhile it is ironing out a route schedule for its own transportation system throughout the counties, which are laced and divided by marshes and streams. Beaufort alone is made up of 65 coastal islands divided by causeways and bridges, often requiring traffic to take roundabout routes. Roads in general are good, but the good roads rarely lead to the homes of the poor, making transportation of the sick poor a critical problem.

Part of this problem has been solved by pooling 11 vehicles: an ambulance, station wagons, buses and automobiles. Local men from target areas have been hired to drive the sick to and from the centers, the county hospital and Charleston or Savannah hospitals when necessary. A couple of them who start out at 5 a.m. taking people to the county hospital for X-rays sometimes are still transporting patients late in the evening. All drive on flexible schedules because of emergency cases, sometimes causing overlapping and neglect of some outlying areas. The project needs more drivers and vehicles to operate a smoother, more efficient route schedule. They hope to have them soon.

At present, the health service is also developing a comprehensive Health, Education and Action program, using trained social service personnel to educate community groups on project services, health care, proper sanitary practices and environmental precautions. Planned too is an environmental survey of all families in the area who have inadequate sanitation facilities, substandard housing or other deterrents to good health. The program already is referring eligible people to social services such as public health, welfare and legal aid.

Currently ten new family health workers are undergoing their six-month training. The project also plans to hire a psychiatric nurse and a physical therapist and to seek additional doctors and nurses to work in a new central facility opening in the spring on six acres of land donated by Mrs. Marshall Field in the community of Chelsea. To be financed out of the OEO grant, the facility will house the lab, pharmacy, dental unit, X-ray department, centralized medical records and complete treatment and examining units for two new comprehensive health teams.

Project officials feel that training present personnel to higher levels of skills is as important as hiring new people. Nearly everyone from secretaries to administrators and medical personnel on the 90-member staff receives some sort of on-going training by outside consultants or the project's own training staff. The latter includes a teaching counselor and a registered nurse. All staff nurses, for example, are taking a one-year nurse practitioner course, or advanced nursing training conducted each morning by the staff doctors.

"When these nurses finish this course, they'll practically be doctors," said Mrs. Rodriguez, who attends the classes when her time permits, although she's taken three similar courses and once worked 16 years for a doctor who taught her practically all he knew. "They'll be able to give complete physicals themselves and be much more valuable in the field to the doctors. Nurses have to be general practitioners in a rural outreach program like this."

The Beaufort-Jasper Comprehensive Health Services has only been active since March, but it is well on its way toward achieving its first year goal of 22,000 physician encounters with low income rural residents who have never had good health care before.

"The whole program is a beautiful dream come true," said Mrs. Rodriguez. "Give us one more year and you'll see a picture of hope and health in the whole area."

## THE DOCK STRIKE AND CONGRESSIONAL RESPONSIBILITY

Mr. TOWER. Mr. President, on January 21, President Nixon asked the Congress for legislation allowing him to empanel a three-man arbitration board which would have the power to dictate and enforce a final settlement in the dispute between the striking longshoremen and the Pacific Maritime Association.

I do not generally support compulsory arbitration as a means of solving a labor-management dispute. However, it should be quite clear that this is the only method available to settle this strike situation which threatens the economic health of this Nation.

I have spoken on this general problem on a number of occasions. Five days before the President invoked the Taft-Hartley Act providing for an 80-day cooling-off period, I made the following statement concerning the effect this dispute and similar disputes have had on the Nation's agricultural producers.

The immediate effect on agribusiness has been the loss of current exports because foreign buyers fear their purchase might be tied up on U.S. docks for a prolonged time. Perishable products rot in the packing crates if held for long periods of time, and nonperishable commodities tie up storage facilities. The West Coast dock strike has already cost our nation's farmers in excess of $215 million, of which about $40 million is in fresh fruit and vegetables. This is only a small loss compared to the potential long-range effect. If America cannot be depended upon to furnish our foreign markets with the necessary commodities when they are needed, then foreign buyers will look elsewhere for new sources of agricultural imports. This would cause U.S. producers to lose valuable markets. It is imperative that U.S. docks be allowed to operate.

Mr. President, my statement has the same meaning today, with the exception that the strike, now resumed, has cost this Nation's farmers much more than $215 million.

In addition to my previous statement on the dock strike, I have made numerous statements in support of the Emergency Public Interest Protection Act. President Nixon first introduced this progressive piece of legislation more than 2 years ago. It has been laying fallow in the respective House and Senate committees since that time. The Senate and the House Committees on Labor have failed to take any meaningful action on these bills, except to hold a few public hearings to relieve some of the pressure for action. This has given the public the erroneous impression that they were actually doing something about the problem of national emergency strikes in the transportation industries.

The President and the proponents of S. 560 have made it quite clear that they remain flexible on the issue of permanent legislation to bring about more effective negotiations and governmental responses to these types of strikes. Yet, the Congress has been denied the opportunity to vote on any new concept to improve the laws governing these situations. I can personally think of no greater failure of the 92d Congress than the failure to act on the Emergency Public Interest Protection Act or a similar proposal to effectively deal with this matter.

The President of the United States echoed the feeling of the Nation when he said in his state of the Union address that the American people will no longer tolerate extended strikes, such as the current longshoremen's strike, that endanger the economic well-being of this Nation. If the majority of the members of the Senate Labor and Public Welfare Committee disapprove of the Emergency Public Interest Protection Act then they have a public duty to report an alternative bill to the Senate that will provide the relief so desperately needed.

The same situation exists with respect to the stopgap measure the President was forced to submit to the Congress last week. I have read some statements to the effect that the Senate Labor and Public Welfare Committee does not intend to report out a bill for another month. While I find this hard to believe, it is certainly consistent with the committee's record on the need for strike legislation. For 14 months negotiations on the dock dispute have been going on, and, unfortunately, there seems to be no possibility of a settlement unless the Congress acts. Instead of meeting this problem head-on, the Congress is unable to provide for the needs of the American people because committees of both the House and the Senate have failed to act in a responsible manner.

I urge the Senate to take action on this matter immediately. I, for one, do not think it is wise policy to postpone action any longer. The situation is at a dangerous stage at this point in time.

Mr. President, at the same time, the Congress should pass S. 560 or a bill similar to it. On February 14, the 80-day cooling-off period for the east and gulf coast ports strikes expires. If Congress does not act immediately on the west coast strike, it is quite possible that a nationwide longshoremen's shutdown will then be in effect. However, if permanent legislation had been passed previous to these strikes, it is more than likely that a collective bargaining agreement would have been reached for all ports long ago.

I urge the Senate to respond in a positive fashion to the leadership provided by the President and consistent with the wishes of the American people. The disastrous economic situation that now confronts the Nation due to prolonged labor disputes should make it perfectly clear that action is needed at once.

## TRIBUTE TO CARL T. HAYDEN

Mr. HUMPHREY. Mr. President, we mourn the passing of a truly great American, Carl Trumbull Hayden, of Arizona. Through his long and industrious career in public service, Carl Hayden distinguished himself as a good and honorable man, a conscientious public servant of the people of Arizona and of America.

Carl Hayden served in the U.S. Senate longer than any man in our Nation's history—42 years. Before that he served in the House for 14 years. For more than half a century, a period of great and profound changes and events in our Nation and the world, Carl Hayden played a vital role in quietly but effectively guiding the hand of governmental leadership.

Chairman of the Senate Committees on Rules and Administration, and on Appropriations, Carl Hayden was a man of decisive influence, dedication to principle, and devotion to hard work. As President pro tempore of the Senate, he was a vital link in the presidential succession following the assassination of President John F. Kennedy. As assistant majority leader of the Senate at that time, I knew him as a close working associate and a fair and equitable gentleman—a knowledge that served to strengthen further the ties of personal friendship.

The avoidance of public praise was a hallmark in the character of Carl Hayden. Therefore, let us now fix this great American in our memory firmly and without fanfare as a man whom it was an honor to know and to love, and for whose service his country must forever remain indebted.

## THE PRESIDENT'S ADDRESS ON VIETNAM

Mr. CASE. Mr. President, I am happy that the President has taken all of us into his confidence. It is good to know too that our Government has been actively trying to pursue serious negotiations to end the war in Indochina.

Obviously the North Vietnamese have

not been interested in negotiation. This does not surprise me since I have long felt that the North Vietnamese would not enter into serious negotiations unless they felt that they could make a better compromise now than after the United States had withdrawn from Vietnam.

The North Vietnamese clearly have not believed that the United States would continue indefinitely to support a regime that seemed unlikely to be able to support itself at any time in the foreseeable future. They have been reinforced in this position by their conviction that the people of the United States would not support a policy which required us to destroy Vietnam, or much of it, in order to save it.

I have believed also that the only way in which there might be a chance that South Vietnam would shape up for its own defense would be for us to let them know there was a definite time limit to our support.

I shall continue, therefore, to support our fixing of a definite date for complete withdrawal.

## ANNIVERSARY OF UKRAINIAN INDEPENDENCE

Mr. PROXMIRE. Mr. President, this week marks the 54th anniversary of the independence of the Ukraine. On January 22, 1918, the Ukraine, long a part of imperial Russia, declared its independence. Unfortunately her freedom was short lived. Communist armies soon overran the area and forced its incorporation into the Union of Soviet Socialist Republics. Ukrainian leaders either fled to the West or were killed.

The Ukrainian people are different from the Russian people. They have a different culture, a different language, a different national heritage. With a population of 47 million the Ukraine is the largest captive non-Russian nation in Eastern Europe. Despite continuous attempts to Russianize the area the Ukraine has succeeded in maintaining her identity if not her independence.

On this 54th anniversary of Ukrainian independence we should pause to remember the heroic struggle of the Ukrainian people and rededicate ourselves to the great principles of freedom, liberty, and justice upon which this country was founded.

## THE SPACE SHUTTLE IS SOUND

Mr. GURNEY. Mr. President, just the other day, the Washington Star published an editorial entitled "New Thrust in Space." The subject of the editorial is a matter which I have often discussed in the Senate, the space shuttle program proposed by the National Aeronautics and Space Administration.

The Star editorial is an excellent distillation of the present status and present necessity for a U.S. commitment to the most important next step in man's exploration of space. The editorial commends, as I have earlier, President Nixon's firm commitment to this program. I am confident that the majority of Americans agree.

I ask unanimous consent that the editorial be printed in the RECORD.

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

[From the Washington Star, Jan. 26, 1972]

NEW THRUST IN SPACE

Just in the nick of time, President Nixon has re-ignited the fizzling U.S. space program, and the benefits from the new venture he approved the other day promise to be substantial and stimulating. The space shuttle program represents a new era that will appeal to many Americans as bringing more practical applications of space science and technology.

In any event most should agree that the country's masive investment in that field cannot now be written off and the program dismantled. There already has been too strong a drift in that direction; the aerospace industry is hanging by a thread and 200,000 space-related jobs have been eliminated. With the last two Apollo moon shots scheduled for this year, the whole space enterprise has been rapidly losing speed.

That's good, some people will say. After all, Americans have kicked around on the moon enough and Mars is out of the question, so why not proclaim the conquest of space and save the money? The answers are several. Certainly much money *will* be saved, in comparison to the peak Apollo development years. The space shuttle will cost $5 or $6 billion over a six-year period, and that is not an exorbitant outlay, it seems to us, for the continued gleaning of knowledge from space.

Moreover, the shuttle's function also will be, in very large measure, to broaden man's knowledge of the earth. It will be an orbiting runabout, in which the crew may peer at their leisure at the natural and human phenomena below and conduct studies of potentially great value. There is, needless to say, some national security advantage in the maneuverability it will afford and the improved surveillance capability.

And in addition, the shuttle will be sort of a repair truck of the heavens, making possible the fixing of broken-down satellites and the servicing of space laboratories. It could even be an ambulance, rescuing astronauts in trouble. Like an airplane, it would soar back down for earth landings after the completion of lengthy orbital missions.

Some of the costs would, of course, be recovered through economic expansion generated by the program—mainly through restoration of 50,000 aerospace jobs and prevention of the loss of others. Perhaps, too, the administratin will succeed in its laudable efforts to bring some European countries in on the endeavor, to the tune of 10 or 15 percent of the cost.

Congress should go along with this proposed investment, knowing that if the country's highly efficient space organization is killed, it will not easily be revived. There's still much work to be done on those peaceful cosmic frontiers that can spread many benefits and much inspiration on this troubled earth.

## TROOP CUTS IN EUROPE COULD BEGIN

Mr. HUMPHREY. Mr. President, just this week the Warsaw Pact countries met and issued a conciliatory communique on the question of troop withdrawals from Europe. The door for substantive negotiations has been opened just a little bit more. Now it would seem that the NATO countries could give it that extra push.

The most hopeful sign in the communique was the apparent willingness of all the Warsaw countries to discuss mutual balanced force reductions—MBFR. Their preference is to discuss this issue in the forum of a more general European Security Conference, rather than between the two pacts. But even here, there is room for an understanding.

Until now, NATO countries have preferred to handle the question of MBFR within the confines of the two pacts. This difference should not, however, be an insurmountable stumbling block. The important thing is that there is now an agreement in principle that preparatory talks for troop reductions should get underway. The Warsaw Pact will be naming delegates for such a meeting in Finland. I urge our own Government to ask the NATO countries to do the same.

Each time the question of troop reductions has been debated in the Senate, we have been told to wait because there is something very important in the offing. In good faith, the majority of Senators have been willing to wait. But now I ask what are we waiting for? What is our Government's response to the Warsaw Pact communique?

In the simplest terms, let us get going. The time is ripe. There is a lot of diplomatic activity and the Soviet Union is feeling its own pressures to negotiate troop reductions in Europe. President Nixon has called the period we are living through an era of negotiations. I am willing to accept his metaphor, but I urge action.

We are anxious to resolve some of the outstanding issues which are the legacy of Yalta and Potsdam. We want and need them to be resolved. We now have a chance to negotiate these issues and to make troop reductions on a mutual basis. Let us then begin.

## THE WORK OF THE RESEARCH AND DESIGN INSTITUTE

Mr. PELL. Mr. President, I should like to ask unanimous consent to insert into the CONGRESSIONAL RECORD at the conclusion of my brief remarks an article which appeared in the Rhode Islander section of the Providence Sunday Journal of January 2, 1972, entitled "Ron Beckman, Man of the Year: Putting People Back in the Saddle," by Douglas R. Riggs. This article is about the imaginative and outspoken executive director of the Research and Design Institute of Rhode Island, known as REDE. It is with a real sense of pride that I read this article, especially since REDE developed out of a concept of mine that I first advanced in 1960, a concept I afterward helped develop into an actual institution. And now at last, under the dynamic direction of Mr. Ron Beckman, an industrial designer who studied architecture, REDE is not only firmly on its feet, but appears to be off and running with the promise to make Rhode Island a more creative and exciting community. REDE is a creation of Federal, State, and local industrial support. It was designed not just to fulfill a need, but also as a firm step forward in building a new way of life in our community. In effect, it has been a quantum jump whose greatest expectations are now coming to fulfillment. In many ways, Ron Beckman symbolizes what REDE is,

and what REDE is doing, controversial; the breaking of new ground; the rejection of old dogmas for new ideas; and a fervent desire to do that which must be done—better.

Finally, I might add that the article clearly delineates Mr. Beckman's contribution which is more than well deserved, but I should also like to point out that the local business community has given not only its moral support, but also substantial financial support through the board of directors and officers of REDE. I commend my colleagues to read this article and join with me in my unstinting praise of Rhode Island's "Man of the Year," Ron Beckman.

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

RON BECKMAN, MAN OF THE YEAR: PUTTING PEOPLE BACK IN THE SADDLE

(By Douglas R. Riggs)

More than a century ago, Ralph Waldo Emerson wrote: "Things are in the saddle/ And ride mankind." More recently, Alvin Toffler brought us up to date in Future Shock: Not only are things still in the saddle, but the horse is galloping out of control. Ron Beckman and his associates at the Research and Design Institute in Providence think they have an approach to getting people back into the saddle. Is anybody listening?

If you want to find our Man of the Year in his natural habitat, you'll have to take a creaking, wiremesh elevator to the sixth floor of one of those former mill buildings in the CIC complex, walk down a dreary corridor, and open a door into the 21st century.

The door is lettered REDE, which is shorthand for the Research and Design Institute. Our Man of the Year works there, directly behind those huge CIC letters you see from Route 95 in Providence. There he and a tiny band of like-minded men and women labor Phoenix-like to fashion a new kind of Industrial Revolution from within the empty shell of the old one. His name is Ron Beckman. He's the director.

But you aren't ready to meet him yet. One should approach a first meeting with Ron Beckman gradually, as a blind man removing bandages after a sight-restoring operation. Bring tranquilizers with you, or a willingness to renounce your citizenship in the State of Rhode Island, or maybe both. Be prepared for a high-voltage jolt of Future Shock.

Look around at the office first; it's good preparation.

In the single large room, massive oak tables and cabinets, leftovers from the original inhabitants of this industrial fortress, mingle incongruously with free-standing steel and cork space dividers. A kind of fiberglass igloo near one wall serves as an office, conference room, or what-have-you. A pipe-work staging, free-standing in the middle of the floor, supports an office area without walls seven feet in the air, and shelters another beneath it. In an open space nearby, for no particular reason, a trapeze hangs from the ceiling.

The whole place looks as if it had been assembled in 24 hours from materials left over from a World's Fair, thrown together by an ad hoc committee of highly creative people with very little money and more important things on their minds than appearances. It also looks very functional, cheerful, individualistic, democratic. You get the impression that *people* are in charge here.

You also have the impression that extraordinary things are done here.

The Institute itself is an extraordinary idea: A non-profit, independent organization founded to bring "human ecology" to the forefront of designers' concerns; to bring the insights of the social sciences to bear on technical problems; to improve the quality of life by finding better ways to do things in terms of human needs. To put people back into the saddle.

You still aren't ready to meet Ron Beckman, but here he is anyway:

His appearance is unimposing. Youngish-looking (he's 40), a bit on the short side, he is clean-shaven and keeps his coppery hair at a length that is unremarkable in either culture. He pads around the office in soft-soled shoes, in his shirt-sleeves, looking more like a shop foreman than a director. He speaks softly, but with the intonations of a born actor and the intensity of a dreamer of dreams.

Within the first five minutes of your first conversation, it becomes clear that Ron Beckman believes most of the world is out of step with reality, and that vast portions of it (with several outposts in Rhode Island) are stark, raving mad.

After 15 minutes, he has you believing it too. You aren't quite sure whether it is the logic of what he says, or the persuasiveness with which he says it. But you suspect that even without the eloquence—even if he stuttered and stammered and spoke with a Row-Dyland accent, as he does, devastatingly, when imitating certain public figures—even then one would have to nod assent to the outrageous things he says. Because they make so much *sense*.

At one point, for example, he talked about what he calls the "edifice complex."

"We're trying to get people to realize that the only constant in life is change. The true belief in God and such has been dead for a long, long while, although we don't admit it because we have no substitute. People are still building these monuments because they want something to hold onto.

"Human nature is out of phase with reality, and this is what the anthropologists call culture shock. Human nature is also out of phase with technology, and this is what people are referring to as future shock. And so the only answer will be to change human nature.

"You must do it humanely and you must do it patiently. We should allow people their tombstones and their cathedrals, their banks and their government domes. But when some son-of-a-gun puts a government dome on an elementary school or builds a geriatric center like a tombstone, or builds a public health clinic like a bank, charging the welfare rolls that amount of money, then I get angry.

"Corporations don't put up with this anymore, but the public sector still does. It somehow feels, in its peasant-like mind, that a public building must be a monument.

"Take the new public welfare building, that rusting tin can out there. Take this ridiculous marble addition to the State House (the new state health building). The cost of that marble is a travesty. The wealth of that building is an insult. But he (the architect) built a monument. For what? It's not the state capitol. If anything it embarrasses the state capitol—it's more brightly lit!

"It's a state *health* office. And it scares people away. Welfare people who'd like to go and get some help look at that and say, 'Oh my God, the King lives there. He'd never talk to anyone as poor as me. I'd better get my lawyer before I go in there.' The whole thing has been structured to put people down, to impress them. With what? The fact they can't get a vaccination for their daughter?

"Where do we put our state welfare offices? Out there on 'Looney Row,' next to the crazy people and the prisoners . . . 'We're collecting all our wards over there in this bureaucratic slum. It's insane. And here I have to lay the blame at the insensitive government, from the Governor on down. Their insensitivity to the realities of life is causing unimaginable damage to the human psyches of the people of Rhode Island. That's what the edifice complex really means. It means destroying people."

Well . . . You begin to understand why Ron Beckman gets talked about at cocktail parties. And one other thing: You begin to understand one reason why REDE is perpetually on the brink of financial disaster. Its success, after all, is dependent to a large extent on voluntary contributions from public and private sources. And when you've gone around proclaiming from the rooftops that the emperor has no clothes, it's tough to get a royal commission.

After you've listened to Mr. Beckman for a while on various subjects—like Rhode Island as a state ("provincial"), the Providence Police ("Keystone Cops"), the Civic Center ("a ridiculous hockey rink") and so on—you begin to wonder less about why Rhode Island government, business and industry haven't given REDE more support, and more about how the whole outfit has managed to avoid being ridden out of town on a rail.

He is beholden to no stockholders, no corporation, no government official; only his clients, his charter, his board of directors and his vision. And when your life revolves around two major concerns, and one of them is meeting the next payroll and the other is the survival of the human race, it's really no contest. He'll keep shouting.

And if he has trouble meeting the payroll, he will fire five people, as he did several months ago, and sell one of his two floors in the CIC building, as he did late last summer, for $7,000 and a few more weeks of solvency. Next summer, if all goes according to plan, he will move some of his operations onto the roof, under a couple of air support structures. ("And once more we shall rise from the ashes . . . Would you like to buy my shirt? I can have it cleaned . . .")

And he will keep shouting.

Why? Because he is an optimist. An optimist, he explains, borrowing the concept from Paul Erlich, head of Zero Population Growth, is a person who thinks the human race is doomed—unless we rethink some of our basic assumptions about how society ought to work and take radical action to turn things around. A pessimist, he says, is someone who thinks it's already too late.

"One basic premise in a democracy," he says, "is that each member is a responsible person. With freedom comes responsibility. But how do you teach responsibility to people in a time when technology is taking away from them two things, initiative and responsibility . . .? By constantly being concerned about the human being instead of the function of the machinery, and the function of the social program instead of the function of the aesthetic or architectural program, we are a voice for the survival of human values. Our job is to make sure that the life that is being designed for us, on every level, is worth living."

Noble sentiments, but what, you might ask, is REDE *doing?* Plenty. This is no ivory-tower think tank, nor is our Man of the Year just another social scientist viewing with alarm. REDE illustrates its approach through "demonstration projects." There have been more than 50 such demonstrations so far in the five years since the Institute began operations in its present form, many of them already in full operation. Among them are several projects which promise to change the ways we build things and look at things from now on.

Projects like the hospital-clinic in the "new town" of Columbia, Maryland, which is nearing completion and which may revolutionize medical architecture. Like a new campus for Antioch College, also in Columbia, which uses a one-acre air support structure—a plastic bubble—enclosing permanent, temporary or disposable components, instead of buildings with walls (and which, incidentally, will cost about $5 a square foot, rather than the typical $20).

Like a radical new approach to highway design and traffic control which could reduce accidents and make driving fun again. Or like an open-plan, open-door elementary school/community center in the heart of a Baltimore ghetto which discourages vandalism through its accessibility, rather than the opposite.

REDE confines itself to three general areas of concern: education, medical care and urban problems. Within that obviously broad field, its projects are so diverse they defy further categorization. They range in size from redesigning the offices of the state commissioner of education in Rhode Island to planning entire college campuses in Maryland, Illinois and California. Some of them involve huge structures, others incorporate new ideas in existing buildings, and some, physically speaking, are totally invisible.

It is impossible, within the scope of a magazine article, to do more than hint at the range of the Institute's work. Perhaps a closer look at a single project, one that happens to be close to home, will be illustrative:

The Borda Wing at South County Hospital in Wakefield, occupied in June of 1970, represents a synthesis of several ideas about what an extended care unit ought to do, ideas that are as sensible as they are unconventional. Most of them came from the REDE staff, which was called in on the planning in 1968. Howard Yarme, REDE program director, directed the design.

The central idea was that "post-acute" patients—people who are on the mend after serious illness or an operation, but are still too sick to leave the hospital—don't belong in a traditional hospital room. Furthermore, their surroundings should encourage them to get up and walk around.

REDE's solution? Smaller rooms and a "therapeutic corridor," a rather luxurious, 18-foot-wide corridor, with alcoves containing book shelves, card tables, etc., even a couple of "meal centers," with refrigerators, table-top burners, sinks and cabinets. Patients are encouraged to walk out into the corridor, visit, raid the icebox, make coffee—anything they want to do, any time they want to do it.

This gets them up and around, which is good therapy (the average length of stay has been reduced as a result) and the self-care aspects of the place save money because the wing requires less staff time, fewer expensive gadgets. The cost per patient in the Borda Wing is $37 a day as opposed to about $50 in the main hospital.

The area is completely carpeted—almost unheard of in hospital corridors—and there are other homey touches, such as bright colors and residential lighting. And on one wall, a simple little thing that perhaps no one but a behavioral scientist would have thought of: A geodetic survey map of the Wakefield area, with everyone's house on it. Patients go up to it and point out their homes to other patients. A rallying point, conversation-starter and reminder of home. And a typically unconventional, sensible REDE touch.

Altogether, it's a very inviting place. The hospital calls it a post-acute extended care wing, but the patients call it the "Wakefield Hilton."

Meanwhile, other hospitals continue mingling post-acute patients with the seriously ill or dying, in cheerless, expensive, intensive care wards. And hospitals which have extended-care units at all tend to build them along the same lines as other wards. But now a lot of hospital people are coming around to look at the Borda Wing.

**The Borda Wing is one of Ron Beckman's favorite projects for a number of reasons, one of them being that it is here in Rhode Island. Because one of the puzzling things about the Institute is that it is, by and large, a philosopher without honor in its** own state. Fully 65% of its work has been for out-of-state clients.

**It wasn't supposed to be that way. The idea for such an institute here was first broached as a plank in Senator Clairborne Pell's 1960 campaign platform. When it was founded in 1963, with Senator Pell as the prime mover, it was supposed to be a boost for the Rhode Island economy. And in turn, local industry and the state and federal government were supposed to nurture REDE's growth through the first five years by filling the gap between the Institute's revenue from contract fees and its operating expenses with outright grants and donations.**

**It didn't happen. There have been, and continue to be, grants and donations, but not nearly enough. REDE actually began operations in September of 1966. The first-five-year-plan came to an end last fall, therefore, and it was a dismal flop. The plan called for revenues of nearly a million dollars a year at the end of five years, and a staff of 51. In fact, revenues this year amounted to about $208,000 and at last count there were just 13 staff members.**

What went wrong?

**"We were billed as the people who were going to come in and redesign products for Rhode Island industry, make them more attractive for buyers," Mr. Beckman explained. "I let people think that for a time. But we refused to behave the way they felt we should. Instead of tailoring better suits, we were questioning the whole concept of clothing—much to everyone's consternation.**

**"People got nervous when we started studying the woman's role in the production of children. At Lying-In, women are treated as infantile human beings—but what the hell right does an industrial designer have to look into birth by the Lamaze Method?**

**"We started looking into the concept of non-graded classes, and what did that have to do with the price of tea in China? We were talking about ecology five years ago, too, but no editor would print it then."**

And then, too, there's that tendency of his to bite the hand that might otherwise feed him:

"I think one of the problems is that old money is here in Rhode Island, and old money has not seen it necessary to reinvest in the state. There's not much venture capital here, so progressive management ideas haven't worked.

"The local American Institute of Architects sees us as competition, trying to put them out of business. The contractors are concerned that if we continue to restore old mills like this one, we are going to hold back progress—progress being, in a very myopic sense, more new buildings, such as those beauties dotting Route 95.

"We have empty apartment houses here, we have empty office buildings, we are building a ridiculous and empty Civic Center (hockey rink, in parentheses) a hotel . . . we have followed the Great American profitable scheme of taking land away from the city, giving it to the federal government, putting a highway through, putting the land back into the public domain, and selling it to the highest bidder. It's an unplanned urban program, based on cost-accounting about this city and this state.

"And so when we come along with social accounting ideas this is a direct threat to those people who see their very existence as tied to cost-accounting factors. So of course they . . . I won't say they resent us . . . they ignore us! Who are we? How could we be anything to invest in?

"The state of Rhode Island suffers from cultural lag."

And yet he perseveres. REDE survives, somehow. Sometimes it does so only because 13 men and women do the work of 50, led by Mr. Beckman, whose energy seems to have no stopping point. He speaks of his working day as ending at 10 p.m., but twice we encountered him after all-night sessions, meeting another deadline at the 11th hour.

Why does he do it?

"I was trained as a Boy Scout, in Buffalo, New York, so I got a good taste of conservation and ecology as a youngster," he said. "Then I was trained as an industrial designer, and felt betrayed when I learned I was only supposed to pretty up products so they would sell. So I went back to Yale and studied architecture, and felt betrayed for the second time when I realized that architects were prettying up bigger products called buildings. . . ."

He quit architecture school and went to work for designer George Nelson in New York City, doing research. ("He was kind of my teacher—one of the liberal-radical thinkers in design.") He became a vice president of George Nelson, Inc., was making a lot of money, moved with his wife and children from an apartment in Greenwich Village out to New Canaan, one of those manicured garden spots along the New York City commuter lines—and then asked himself certain questions which have become classics in Suburbia, USA:

"We did it all, just the way society told us to. I made money, the kids went to Tinkerbelle Nursery School; we were established—and it made us feel a little sick, and a little guilty. Was this it? What do you do next?"

Next, as it turned out, was the Research and Design Institute in Providence, in 1965, and eventually a house on Halsey Street, one of those handsome restored structures near Benefit. He shares its three stories plus widow's walk with Elizabeth, born in Paris, whom he secretly married when he was teaching at Pratt Institute and she was one of his students, and their children, Claire, 10½, who plans to be a poet or ventriloquist or "something to do with the stage." Ken, 8, who might be a designer or scientist or explorer or maybe a lawyer, and Adam, 6, who leans toward archeology at the moment.

The New Canaan experience had lasted not quite a year. But long before New Canaan there had been another intellectual turning point, one which was to cast its shadow all the way to that office in the CIC building and from there into a dozen states and innumerable lives:

"We had our first child by the Lamaze Method. I was in the delivery room, and there I got my first taste of the counterculture, because that's what the Lamaze Method is. The wife and husband are there and cooperating, and the whole Victorian thing went away. We had our child with dignity and great joy and ceremony and happiness, and that was the experience. I realized suddenly, after leading a life for 31 years of phony tinsel, that life doesn't have to be that way. I was in one culture and suddenly I got a look at the other culture, and I couldn't go back."

There are those who wish he would. There were, some years back, a number of Junior League ladies who walked out on him when he spoke to their meeting about the Lamaze Method, showed them photographs of mangled bodies in Vietnam, and presented what he calls his "pornographic slide show," consisting of advertisements from *Life* Magazine with a commentary from him on the Freudian symbolism of Coke bottles, cigars and the like. (In fairness, the Junior Leaguers have invited him back three times since then.)

And there are those who hope he will stay, even though he makes them damned uncomfortable. Architect Philemon Sturges is one of these.

Mr. Sturges' Providence Partnership has its offices just across the street from Mr. Beckman's, in another CIC building—the one with the great fish-eye window in the middle of its solid brick wall. Their proximity is philosophical as well, but their last joint professional venture left strains.

Mr. Sturges hired REDE as consultants for "The Great Room" at North Kingstown High School, that huge open-plan space which has

created quite a stir in educational circles, for which he was the architect. To make a long story short, there were disagreements during the collaboration, and now that the job is done, each man thinks the other is claiming too much of the glory.

Mr. Beckman raised hackles right from the start on that job, according to Mr. Sturges, by rushing down to North Kingstown as soon as he was hired and arguing forcefully for the open-plan idea, which in fact had already been agreed upon. "In hindsight, I really don't think he was aware that so much planning had been done and that everyone was on his side. He went down there and started throwing flaming arrows in all directions, and people sat back open-mouthed," Mr. Sturges said.

Gary Daughn, another architect in the Providence Partnership, happens to be a next door neighbor of Mr. Beckman's. "There's not a damn thing he says that we wouldn't agree with," Mr. Daughn said. "Not a damn thing. And yet there's a barrier between us; I don't know whether it's personal or professional or what."

"I think part of it may be that he is out to get the monument-builders," Mr. Sturges added. (It may or may not be relevant that the architect of the new welfare building out at Howard—that "rusting tin can" Mr. Beckman referred to earlier—is none other than Philemon Sturges.)

"I know of several projects he could be involved in in Rhode Island, if he didn't turn people off," Mr. Sturges said. "But then, if he wasn't the kind of guy he is, maybe he wouldn't get things done. REDE's being here has certainly had an effect on this office, and I think on other offices, and regardless of any personal feelings, it has been an invaluable asset to the community.

"Wherever Ron goes, he's going to be embroiled in controversy. He loves it. I think in the long run, it's a positive, healthy thing. Even though it drives me mad."

Reflecting back upon his Junior League speech, the one the ladies walked out on, Mr. Beckman had said: "It was a very controversial talk. And it was a hell of a lot of fun."

It was in somewhat the same spirit, perhaps, that we decided to name him our Man of the Year—despite, we should add, a certain reluctance on his part: He was worried, when he learned what we were up to, that concentrating on him would obscure the important things the Institute is doing, that we would ignore the contributions of other talented people on his staff (which we have done, with apologies), and that he would come out sounding like "just another sourpuss."

But we had our reasons, they went far beyond the obvious fact that his quotes make "good copy," and in due course we faced the problem of how to portray him on the cover.

There was the image we finally chose, of course; Beckman as a latter-day Moses standing atop the CIC building, pointing the way to a new Promised Land. . . .

But another had occurred to us earlier, a possible view of the not-too-distant future:

Ron Beckman is standing on the roof beside the inflatable plastic bubble that is his last refuge after selling the sixth floor. Someone has turned off the pump and the bubble is slowly collapsing. He is simultaneously offering to sell his shirt to the highest bidder and throwing flaming arrows at the State House, at Route 95, at the new health offices, and perhaps at the Journal Building as well.

But, no. That image wouldn't do. He is not merely a quixotic figure—we can't afford to let him become that. Because the windmills he is fighting are grinding *people* beneath their millstones. And the wind is rising.

## THE GENOCIDE CONVENTION AND EXTRADITION TREATIES

Mr. PROXMIRE. Mr. President, some people who oppose the Genocide Convention do so, because they fear that American ratification of this treaty will mean the extradition of American citizens to such Communist countries as China and Russia where they will be forced to stand trial without any of the protections of our Constitution. To determine if there is any validity to this fear it will be helpful for us to objectively examine the Genocide Convention and the extradition treaties in force between the United States and other nations.

Article VII of the Genocide Convention says that the contracting powers will grant extradition in accordance with the laws and treaties in force. The United States presently has extradition treaties with 87 foreign nations. These treaties provide for extradition for many crimes, but not for genocide. Also, we have no extradition treaties whatsoever with such countries as Russia, Communist China, East Germany, North Korea, or North Vietnam. No person can be extradited from the United States to these Communist nations for any crime. No person can be extradited for genocide to any of the 87 countries with which we have extradition treaties until these treaties are modified to include genocide. Such action must be ratified by the Senate.

Mr. George Aldrich, Deputy Legal Adviser to the Department of State, testified before a Foreign Relations Subcommittee in 1970 that article VII of the Genocide Convention will not compel the United States to immediately renegotiate its extradition treaties or to enter into any new extradition treaties. Rather, whenever the United States in the normal course of events decided it was in its best interest to renegotiate or make new extradition treaties, the United States would seek to include genocide as one of the crimes covered.

So we can reasonably assume, Mr. President, that American ratification of the Genocide Convention will not expose Americans to extradition to Russia or Red China. I call upon the Senate to ratify the Genocide Convention.

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## THE PEACE CORPS REALLY WORKS

Mr. HUMPHREY. Mr. President, last week I spoke at some length about why I thought the Peace Corps was an institution in need of our firm endorsement. I urged the Members of this Chamber to vote for a full funding of the Peace Corps in recognition of the great work it has already done and will continue to do.

Only yesterday, I received a letter which describes in a most eloquent way just why we need the Peace Corps. The letter is an eyewitness report and the message is clear. Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

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

JANUARY 21, 1972.

Hon. HUBERT H. HUMPHREY,
*U.S. Senate, Old Senate Office Building, Washington, D.C.*

DEAR SENATOR HUMPHREY: The attached photo of my young Indian friend, Suba Rao, is a success story. Suba Rao, along with his father and two brothers, rely on five acres of land to sustain their family of seven. This lush sorghum crop yielded over 100 bushels/acre, a yield which any American sorghum farmer would envy. During the other months of the year this family raises improved varieties of rice and peanuts, with equally impressive yields. How did they do it?—with the reliable flow of water from the Tungabhadra Irrigation Project and the technical assistance of a joint team of young Indian and American agricultural extension workers. The Americans were Peace Corps Volunteers—specially trained in Kannada (the language of Mysore State) and in the applied skills of land leveling, irrigation water management, and in the use of new seed varieties, chemical fertilizers and insecticides. This "package of practices" has enabled thousands of Indian farmers such as Suba Rao to quickly learn to make the most productive use of extremely limited land and water resources.

I was among the first group of Peace Corps Volunteers to work with farmers in the Tungabhadra Irrigation Project from 1966–68. Subsequently two more volunteer groups have been requested by the Mysore Agriculture Department to continue assisting in this vital agricultural development effort. Over half of the Tungabhadra's 1.2 million acres of irrigable land is yet to be developed.

The reason I tell you this personal experience, which I believe is representative of the much needed work that thousands of other volunteers have done and continue to do in 55 countries throughout the world, is because the continued viability of the Peace Corps is in grave jeopardy.

As you know, this year the President requested you and your Congressional colleagues to appropriate a tight $82.2 million to fund the Peace Corps in fiscal 1972. That amount is $2.5 million *less* than the Peace Corps budget appropriated by Congress in 1971. However, instead of approving this austere 1972 budget proposal of $82.2 million, Congress first passed an authorization bill with a $77.2 million ceiling and then in December, 1971, lowered that ceiling to a meager $72 million. As you know, to date—over six months into this fiscal year—Congress has still not passed an appropriation bill to fund the Peace Corps program for the remainder of 1972.

*A $72 million appropriation will undercut the very essence of the Peace Corps program.* Such an action will result in:

(1) Recall of 4,000 of the 8,000 volunteers now serving in the field.

(2) Total withdrawal in 15 of the 55 countries now served by the Peace Corps.

(3) Total cancellation of training programs for 2,400 volunteers committed to enter Peace Corps training between now and June 30, 1972.

(4) Drastic professional staff reductions at home and abroad.

Therefore, I urge you to carefully weigh the unfortunate consequences of such a meager appropriation. If you support the kind of success stories that I have related from my own experience as a volunteer, then it is essential that you vote to appropriate *at least* the original $77.2 million authorized by Congress. A more responsible action would be to persuade your Congressional colleagues to appropriate the $82.2 million requested by the President.

One final word. As a utility executive, both the public and management I serve con-

stantly demand that I apply a "cost/benefit analysis" to every proposed fiscal action. As I have already stated, my own experience (and the collective judgment of other former volunteers that I know) is that the Peace Corps cost/benefit ratio is very favorable measured in terms of productive development reaped per dollar invested.

But we must not overlook the tremendous benefits that America can gain from this rather minor foreign relations investment (in comparison with our defense and weapons aid appropriations). The benefit is this: *Peace Corps Volunteers work at the grass roots level—where 95% of the world's population is at.* For over ten years volunteers have built an empathy, rapport and understanding of third world cultures that no other American institution attempting to foster American relations with the rest of the world has ever achieved.

Through committed volunteerism coupled with linguistic, cultural and skills training, thousands of Americans like myself have begun to intimately learn some of the divergent values, attitudes and aspirations held by the vast majority of the world's population. This I believe is a critical lesson for Americans to learn. In spite of our current technological and natural resource advantages, America must face the hard reality that we are but a small segment of the world's global village. We simply cannot afford to alienate ourselves from 95% of the world's people—the overwhelming grass roots constituency.

The Peace Corps is by no stretch of the imagination a "super" institution in its ability to meaningfully respond to the needs and aspirations of this grass roots constituency. But it is a successful start—a vital training ground—if America is truly committed to being a contributing member of the global village.

Your active support and vote for an $82.2 million Peace Corps appropriation for fiscal 1972 will demonstrate your commitment to this goal.

Sincerely,

WILLIAM S. SEELEY,
*Administrator,*
*Environmental Regulation.*

## NATIONAL HUNTING AND FISHING DAY—1972

Mr. McINTYRE. Mr. President, yesterday, I had the privilege of hosting a meeting that will have profound impact on the future of the sportsmen and nonsportsmen alike in our Nation.

Leaders of more than half a hundred organizations representing a broad range of interest in the Nation came together yesterday in the Senate Caucus Room to make preparations for National Hunting and Fishing Day on September 23 of this year.

I ask unanimous consent that my remarks to this distinguished group be printed in the RECORD.

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

NATIONAL HUNTING AND FISHING DAY

Not long ago, I came across four paragraphs in a book which are particularly appropriate to today's remarks by reading those paragraphs:

"Today, both our physical and social environments have become deadly enemies.

"How did it happen? Obviously some of the things we've been doing to our environments that seemed right all along must have been wrong.

"We didn't realize that each time we do something to the environment, it in turn does something to us.

"Until each one of us understands that we are not separate from our environments, *but part of them,* we will fail to see the direct relationship between our environments, and our health, our behavior, and even our ability to understand ourselves."

Well, all along there were *some* Americans who *did* understand. *Some* Americans who long ago realized that Nature was not inexhaustible, that there existed in it a delicate ecological balance that should not—*must* not—be upset . . . and that man's survival and well-being—*and the survival and tranquility of the society of man*—depended upon a wholesome respect, yes, and affection, for that balanced ecosystem.

I speak of the outdoor sportsmen, of course, those Americans who not only stand in awe of Nature, but love it and are dedicated to its preservation.

It was they who—decades ago—sounded early alarms about the raping of the land, the pillaging of forests, the pollution of lakes and streams and oceans, the indiscriminate slaughter of fish and wildlife. And it was they—even then—who were trying to do something to stop it.

For a long time—a very long time—we didn't listen.

And for an even longer time we didn't credit them with what they were doing . . . doing for all of us.

And so, today, I am most pleased to host this first meeting of the leadership of those who want to recognize the many contributions of the outdoor sportsmen.

When the parades and the celebrations and the open houses and displays mark the first National Hunting and Fishing Day this year, we can all look back and say: "This was the beginning."

I am particularly grateful to those of you who came long distances to make your input toward insuring success.

I began my own effort last summer, and I know that many of you have worked on this concept as long and as hard as I have.

In this regard, I'd like to pay tribute to my friend and Congressional colleague, the Honorable Robert Sikes. Bob's sponsorship of the bill in the House has generated great interest in that body for a national recognition of the outdoor sportsman.

For myself, I've been truly gratified by the hundreds and hundreds of responses that have poured into my offices. From all across the country, letters and telegrams have encouraged me to keep working for Congressional approval of National Hunting and Fishing Day.

Thirty three Senators have co-sponsored the resolution, and the governors of nearly two dozen states have declared hunting and fishing days in the spirit of my resolution.

Our bill in the Senate is now before the Senate Federal Charters, Holidays and Celebrations Subcommittee, chaired by one of the co-sponsors of the bill, Senator Roman Hruska. We are all hoping that the full Judiciary Committee will soon consider the bill.

I want you to know that I have also asked the Postmaster General to issue a stamp commemorating National Hunting and Fishing Day and honoring the efforts of outdoor sportsmen in environmental protection, in game management and in species preservation.

And so, gentlemen, I thank you again for coming here to begin the planning for the first National Hunting and Fishing Day.

I know that the time spent will be more than repaid by the public interest and acclaim that the day will inspire next September.

Mr. McINTYRE. Mr. President, one thing that is evident from yesterday's meeting and from the interest that has been shown for National Hunting and Fishing Day is that all segments of the society give it support.

The meeting established a Hunting and Fishing Day 1972 Steering Committee to conduct the activities this year. This committee is made up of representatives from wildlife and environmental groups, sportsmen, service, labor, forestry, and recreational organizations.

I ask unanimous consent to include the members of the Hunting and Fishing Day 1972 Steering Committee in the RECORD at this point.

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

LIST OF MEMBERS

COCHAIRMEN

Thomas L. Kimball, Executive Director, National Wildlife Federation.

Raymond C. Hubley, Executive Director, Izaak Walton League of America.

SECRETARY

Charles Dickey, Promotion Director, National Shooting Sports Foundation.

MEMBERS

Mrs. Donald E. Clusen, Director of Committee on Environmental Programs and Projects, League of Women Voters of the United States.

Ted S. Pettit, National Conservation Director, Boy Scouts of America.

Maxwell E. Rich, Executive Vice President, National Rifle Assn. of America.

Sheldon W. Samuels, Director, Occupational Health, Safety and Environmental Affairs, IUD, AFL–CIO.

William E. Towell, Executive Vice President, American Forestry Association.

Carl A. Troester, Jr., Executive Secretary, American Assn. for Health, Physical Education, and Recreation.

Douglas Trussell, Assistant Vice President, National Assn. of Manufacturers.

Gordon K. Zimmerman, Executive Secretary, National Assn. Conservation Districts.

Bodie McDowell, President, Outdoor Writers Assn. of America.

Forrest Durand, Executive Director, International Association, Game, Fish and Conservation Commissioners.

Mr. McINTYRE. Mr. President, much of the credit for the success of yesterday's gathering goes to the Interim Steering Committee which set up this meeting.

I ask unanimous consent to include in the RECORD at this point the names of the Interim Steering Committee.

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

INTERIM STEERING COMMITTEE

Chairman, Daniel A. Poole, President, Wildlife Management Institute.

Secretary, Cliff Morrow, Hunting and Conservation, National Rifle Association of America.

Ted S. Pettit, Conservation Director, National Conservation Committee, Boy Scouts of America.

Dr. Richard A. Wade, Executive Secretary, Sport Fishing Institute.

William E. Towell, Executive Vice President, American Forestry Association.

Gordon K. Zimmerman, Executive Secretary, National Association of Conservation Districts.

Mr. McINTYRE. Mr. President, I would like also to include in the RECORD

at this point a list of those in attendance at the meeting, because it indicates once again the scope of interest in this effort.

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

LIST OF ATTENDANCE

Department of the Interior: Mr. William L. Colpitts, Fish & Wildlife Service.

Mr. Charles G. Carothers III, Special Assistant in the Office, of Fish & Wildlife Service.

Bureau of Reclamation: Mr. Ottis Peterson, Special Assistant to the Commissioner.

Department of Agriculture: Dr. Richard T. Marks.

Environmental Protective Agency: Mr. Dick Haffman, Office of Public Affairs.

Water Pollution Control Fed.: Mr. Leo Weaver, Assistant Executive Secretary.

Mr. Philip A. Ridgely, Manager, Public Relations.

Remington Arms Co., Inc., Mr. Clark G. Webster, Manager, Wildlife Mgt.

National Marine Fisheries Service: Mr. John S. Gottschalk Assistant to the Director.

Mr. Ben Schley, Special Assistant for Sport Fisheries.

Archery Manufacturers Organization: Mr. Doug Morgan, President.

American Pulpwood Association: Mr. Robert E. Jones.

National Associaton of State Departments of Agriculture: Mr. William. Stanwood Garth, Executive Secretary.

FFA: Mr. Robert A. Seefeldt, Manager, FFA Contests & Award Programs.

American Forest Institute: Miss Phyllis A. Rock.

Wildlife Management Institute: Mr. Daniel A. Poole, Mr. Lonnie L. Williamson, Editor, "Outdoor News Bulletin."

The Wildlife Society: Mr. Lynn A. Greenwalt.

National Wildlife Federation: Mr. Philip A. Douglas, Assistant to the Director.

Outdoor Writers Association of America: Mr. Bodie McDowell, President.

National Muzzle Loading Rifle Association: Mr. Vaughn K. Goodwin, President.

AFL–CIO: Mr. Sheldon W. Samuels.

National Forest Products Association: Mr. John Koenig, Office of Public Relations.

The American Forestry Association: Mr. William E. Towell, Executive Vice President.

U.S. Army Corps of Engineers: Col. William Barnes, Mr. Leverty, Mr. Crane.

Headquarters USAF: Mr. Walter W. Barrett, Mr. John G. Tutko, Chief Hq. Recreation Services.

U.S. Forest Service: Mr. Everett R. Doman, Director of Wildlife Mgt.; Mr. Alex Smith, Director, Div. of Information and Education.

American Forestry Association: Mr. Dick Pardo.

Gulf & Caribbean Fisheries Institute: Mr. Charles E. Jackson.

Navy Department: Mr. Ross Leonard, Head, Fish and Wildlife Branch.

American Fisheries Society: Mr. Henry Clepper, Executive Secretary.

American Casting Association: Mr. Clifford L. Netherton, Mr. Jay C. Reed, Mr. C. Clyde Newman, Delegates.

National Skeet Shooting Association: Mr. William E. Rollow, Director, Chairman Legislative and Governmental Relations Committee.

North American Wildlife Foundation: Mr. C. R. Gutermuth, Secretary.

National Recreation and Park Association: Mrs. Carol Bickley, Director, Division of Special Programs.

National Association of Conservation Districts: Mr. Gordon K. Zimmerman, Executive Secretary.

Appalachian Trail Conference: Mr. Lester L. Holmes, Executive Director.

National Shooting Sports Foundation: Mr. Charles Dickey, Director of Promotion; Mr. Warren Page, Executive Vice President.

African Wildlife Leadership Foundation: Mr. John Rhea, Executive Director.

Sport Fishing Institute: Mr. Richard A. Wade, Executive Secretary.

American Fishing Tackle Manufacturers Association: Mr. John G. Zervas, Director, Public Information.

Boy Scouts of America: Mr. Ted S. Pettit, Director of Conservation.

National Rifle Association of America: Maxwell E. Rich, Executive Vice President; Frank C. Daniel, Secretary; Cliff Morrow, Director, Hunting and Conservation; Jack Hess, Director, Office of Public Relations; John Alles, Bill Davidson, Steve Hines, Robert Joerg.

North American Falconers Association: Mr. Charles W. Harry, Vice President.

Extension Service, USDA: Mr. H. G. Geyer, Director, Natural Resources and Env. Improvement; Dr. Richard Marks, Extension, Forester and Acting Wildlife Specialist.

American Automobile Association: Mr. Warren G. Stambaugh, Travel Editor.

Soil Conservation Service: Mr. Lawrence W. Compton, Biologist.

Mr. McINTYRE. Mr. President, I am proud to say that at the present time 33 of my colleagues have joined in cosponsoring Senate Joint Resolution 117 which I introduced and which calls upon the President to declare a National Hunting and Fishing Day. I ask unanimous consent to include the names of these Senators in the RECORD at this point.

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

LIST OF COSPONSORS

MIKE MANSFIELD.
HUGH SCOTT.
ALAN BIBLE.
GALE W. MCGEE.
FRANK E. MOSS.
MIKE GRAVEL.
BOB PACKWOOD.
TED STEVENS.
CLAIBORNE PELL.
PAUL J. FANNIN.
FRANK CHURCH.
HOWARD W. CANNON.
CLIFFORD P. CASE.
WALLACE F. BENNETT.
HUBERT H. HUMPHREY.
JAMES L. BUCKLEY.
ROMAN L. HRUSKA.
WALTER F. MONDALE.
EDMUND S. MUSKIE.
BARRY GOLDWATER.
JOHN L. MCCLELLAN.
JAMES B. PEARSON.
HARRISON A. WILLIAMS, JR.
PETER H. DOMINICK.
QUENTIN N. BURDICK.
GLENN J. BEALL, JR.
CHARLES MCC. MATHIAS, JR.
RICHARD S. SCHWEIKER.
WILLIAM E. BROCK III
DAVID H. GAMBRELL.
STROM THURMOND.
JENNINGS RANDOLPH.
NORRIS COTTON.

Mr. McINTYRE. Mr. President, I wish to acknowledge the efforts of Congressman BOB SIKES of Florida for his sponsorship of the Hunting and Fishing Day resolution in the House of Representatives. To date, 14 other Members of the House have indicated their support of his action by introducing identical resolutions.

I ask that the RECORD show at this point these Members and the resolutions that they have introduced.

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

NAMES AND RESOLUTIONS

Representative BOB SIKES, House Joint Resolution 798.

Representative HAMILTON FISH, Jr., House Joint Resolution 815.

Representative BOB CASEY, House Joint Resolution 834.

Representative TOM FOLEY, House Joint Resolution 846.

Representative GLENN M. ANDERSON, House Joint Resolution 851.

Representative ALBERT H. QUIE, House Joint Resolution 871.

Representative PATRICK T. CAFFERY, House Joint Resolution 890.

Representative FLETCHER THOMPSON, House Joint Resolution 894.

Representative JOSHUA EILBERG, House Joint Resolution 918.

Representative JOHN R. RARICK, House Joint Resolution 921.

Representative HARLEY O. STAGGERS, House Joint Resolution 926.

Representative EARLE CABELL, House Joint Resolution 929.

Representative JAMES M. HANLEY, House Joint Resolution 930.

Representative FERNAND J. ST GERMAIN, House Joint Resolution 952.

Representative PHILIP E. RUPPE, House Joint Resolution 976.

Mr. McINTYRE. Mr. President, I am also pleased to report that the Governors of 23 States have proclaimed State Hunting and Fishing Days during 1971. In some instances these proclamations came through gubernatorial action and in some instances through legislative action.

I ask unanimous consent to include this list of States who have proclaimed National Hunting and Fishing Day in the RECORD at this point.

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

LIST OF STATES

Arkansas by Governor Dale Bumpers.

California by unanimous passage of the California Legislature.

Connecticut by Governor Thomas J. Meskill.

Delaware by Governor Russell W. Peterson.

Georgia by Governor Jimmy Carter.

Idaho by Governor Cecil E. Andrus.

Illinois by Governor Richard B. Ogilvie.

Iowa by Governor Robert D. Ray.

Kansas by Governor Robert Docking.

Kentucky by Governor Louie B. Nunn.

Louisiana by Governor John J. McKeithen.

Maine by Governor Kenneth M. Curtis.

Maryland by Governor Marvin Mandel.

Michigan by Governor William G. Milliken.

Minnesota by Governor Wendell R. Anderson.

Mississippi by Governor John Bell Williams.

Nebraska by Governor J. James Exon.

New Jersey by Governor William T. Cahill (Oct. 9).

North Carolina by Governor Robert W. Scott.

Ohio by Governor John J. Gilligan.

Pennsylvania by Governor Milton Shapp (Outdoor Sportsmen's Day Sept. 26).

Tennessee by Governor Winfield Dunn.

Vermont by Governor Deane C. Davis.

Mr. McINTYRE. Mr. President, so that further information may be available about National Hunting and Fishing Day, I ask unanimous consent to insert in the

RECORD at this point material from a just published fact sheet on National Hunting and Fishing Day.

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

NATIONAL HUNTING AND FISHING DAY

Historically the joint activities of hunting and fishing have been held in the highest regard as a prime recreational activity. In Feudal Europe hunting and fishing were held to be royal sport reserved for the nobility. As the Feudal Age passed from the scene, one of the early concessions was the designation of some game as being suitable for pursuit by the Yeomanry and later ordinary citizenry. In early America, game and fish were a major and frequently the sole source of food for the early settlers. The concern of American pioneers for fish and game led to the first American conservation laws. Early leaders in the conservation movement such as John Audubon, Theodore Roosevelt and Gifford Pinchot, the originator of the word conservation, came from the ranks of outdoorsmen whose first interest was hunting and fishing. Today, that trend continues. With scarcely an exception, the most effective leaders in the fight to save the environment developed their dedication to the cause from their early outdoor experiences in hunting and fishing.

Economically, some 50 million hunters and fishermen spend 4 billion dollars annually in pursuit of their avocation. Dollars that enter the economy through such diverse channels as transportation expenses, food, lodging, and clothing, as well as the more direct cost of equipment and license fees.

For many years, the only funds available to Federal and State Governments for conservation of natural resources came from special taxes and fees levied solely on hunters and fishermen. To date, some two and a half billion dollars in tax and license fees, over and above all other including public tax contributions, has been the sportsman's special financial contributions for the conservation of our natural resources.

In view of these facts and others, Senator Thomas J. McIntyre of New Hampshire and Congressman Robert L. E. Sikes of Florida, have introduced respectively to the U.S. Senate and House of Representatives, joint resolutions to declare the fourth Saturday of September as National Hunting and Fishing Day. Twenty-three states and one city have issued such proclamations. Major conservationists and conservation organizations enthusiastically endorse the concept of celebrating a National Hunting and Fishing Day each year.

The purpose of such a celebration is to call attention to the considerable contribution hunters and fishermen make to our national welfare and introduce the nonhunting public to the hunters and fishermen in their community with the view of promoting harmony and a greater total public concern for the conservation of natural resources and the maintenance of a viable environment.

The main thrust of this celebration is suggested to be an open house hosted by local sportsman's organizations during which graphic demonstrations of all club activities is presented to the visiting public, including such things as nature walks, habitat restoration projects, hunting & fishing clinics, skill demonstrations and participation. Themes, programs and projects are suggested as those falling best within the capabilities of the separate clubs and organization.

Mr. McINTYRE. Mr. President, I believe the enormous support and effort indicated by these facts is clear evidence that National Hunting and Fishing Day has come of age.

I hope that more of my colleagues will want to join in sponsoring Senate Joint Resolution 117 to give further national recognition to this activity.

I hope that soon the Judiciary Committee may be ready to report this resolution and that we can move to action on the floor of the Senate to adopt it.

Too many months, too many years, too many decades have gone by without suitable expression of appreciation for the lasting contributions the outdoor sportsman has made to a better world, a cleaner world, a healthier world.

It is time we act to make our appreciation known.

## MAHALIA JACKSON

Mr. HUMPHREY. Mr. President, I am profoundly saddened by the death of Mahalia Jackson, whose gospel songs stirred the heart and conscience of every American over the years. I have lost a dear and kind friend.

The stilling of this warm, rich voice in praise of God is a great loss to America and the world. Her music of joy and agony, hope and need, broke a silence of communication that would otherwise have surrounded so many of us—overcoming that perennial barrier between man and his Maker, as well as his fellow man.

Truly a great lady, a human being with soul, she gave of herself totally in service to God and her people. She was a woman of true beauty, because it came from her heart. She served her Nation nobly in healing the wounds of a divided society, and in building bridges of understanding and good will throughout the world. She knew poverty and wealth, the ignominy of discrimination and the praise of fame, but she remained a genuine person, deeply concerned to advance the equal opportunities that life should offer to every American. I was honored to share in her friendship.

Mahalia Jackson's greatness is firmly established in the world of musical artistry. But I shall remember her best for a single song at the funeral of Dr. Martin Luther King, Jr. May that song now be her promise: "Precious Lord, Take My Hand."

## NURSING HOMES: A NEW PERSPECTIVE

Mr. MOSS. Mr. President, Dr. Herbert Shore, executive vice president of the Jewish Homes for the Aged is well known to experts in the field of long-term care. His involvement with care of the aged can be measured in decades and his facility in Dallas, Tex., enjoys an excellent reputation.

Dr. Shore frequently communicates with my Subcommittee on Long-Term Care and often provides perspectives which can only come from having an active role in care for the infirm elderly. His dedication to improving the quality of life for nursing home patients makes his comments especially helpful. For these reasons, Mr. President, I ask unanimous consent to have entered in the RECORD a copy of a letter which Dr. Shore recently wrote to the Honorable Elliot Richardson, Secretary of Health, Education, and Welfare.

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

NATIONAL ASSOCIATION OF JEWISH HOMES FOR THE AGED,
*November 18, 1971.*

HON. ELLIOT RICHARDSON,
*Secretary, U.S. Department of Health, Education, and Welfare, Washington, D.C.*

DEAR SECRETARY RICHARDSON: I was present at the Duke-AARP Conference and had the privilege of hearing your remarks as well as witnessing your introduction of Mrs. Marie Callender. I have also since heard Secretary Veneman and Dr. Arthur Fleming at the Annual Conference of the American Association of Homes for Aging in Seattle. Since Mr. Veneman's remarks so closely paralleled yours, I can only assume that the positions being taken are the Department's policy re institutional care.

As one who has served as President of the American Association of Homes for Aging and of the National Association of Jewish Homes for the Aged, I am writing to state my concern with the posture the institution is being placed in and with the thrust the Administration has taken relative to alternatives for institutional care. I feel compelled to share my views with you and ask your indulgence in reading them.

The institution (nursing home—home for aged) is not responsible for the present position it finds itself in.

Until three or four decades ago, the institution, more specifically, the almshouse, represented our major public policy for care of the poor and infirm aged, and policy development of the aged is a history of the abandonment of that policy.

The emergence of the philanthropic or voluntary home was essentially the first step in the effort to abandon the public institution made on behalf of the "deserving poor" and sometimes the not-so-poor, aged.

The first step in the effort to abandon the public institution was the movement for "old age pensions" and "social security" which was "a revolt against institutions as a welfare resource." What we succeeded in doing was to transfer responsibility for care of a very high proportion of the institutionalized aged from public institutions, and to a lesser degree, from philanthropic institutions to proprietary institutions, which either had not existed or were of no significance before.

The large public institution did not disappear, although it has changed its name and its function, but a new institutional resource was added to help serve "social security (and later old age assistance) paupers". We brought into existence institutions where the cost of care equals the old age assistance check—abolishing the "lease-out" system of care of the poor. Lacking a decent social policy for the aged society drives out the remnants of the soul of the institutionalized old person while it barely keeps his body alive.

Fifty years ago discussions of institutions included a section on the "sick bay", "infirmary" or "nursery", but these were peripheral. With the advent of antibiotics and tranquilizers, we have made them central. Over the long run, the basic function of institutions for the aged has increasingly changed from care of the poor to care of the sick. We, increasingly, define and classify institutions along the single dimension of the health services they offer. Institutionalized aged are no longer poor therefore defective, we treat them as sick and therefore invalid.

It is the absence of a national policy for long term care that has cast the institution into its present mold. It is the wholesale dumping of patients from state mental hospitals into nursing homes so that states can use the federal funds rather than their own; that has contributed to the problem.

It is the lack of understanding that hous-

ing without services (as FHA insisted they be built) is a disservice to the aged and contributes to the misuse of nursing homes.

It is lack of adequate welfare payments that actually depress standards of care. The elderly are the victims, caught in a vicious trap between state financing and lack of adequate resources. Sources of payment now dictates the kind, quality, quantity and geography of care.

Alternatives to institutional care are needed. A great host of services to aged in their own homes and in congregate care homes must be developed but this will not in any way change the fact that at some point the aged need a complex of services available only in an institution. Yes, we need better utilization. I am also opposed to unnecessary institutionalization, but I am not opposed to the institution as a valid resource.

My experience has shown me that there is a great amount of pathology (physical and psychological) in the aged who seek institutional care.

I am indeed pleased with President Nixon's program. It is a good beginning, but only a beginning. Hopefully the White House Conference can build on this and will define a real national policy on long term care.

The problems of the aged in America's Nursing Homes will not be solved with additional programs of inspection and enforcement. Necessary as it is to enforce fire and safety codes, the aged will be best served when government, the providers and the public can agree on a program that will include: 1. The aged must be elevated from second class citizens and "castoffs" to a proper place in our society—one of dignity and worth; 2. Those who have most direct contact with the residents, the aides, maids and waitresses; those who traditionally perform the closest and most intimate service need the greatest amount of training and preparation for their job; need continuing support; need understanding of the patient and their special role in meeting his need and they need a great deal of recognition for their performance. The bulk of all money spent and the thrust of all attention must be aimed at this level of employee. A whole host of innovative approaches to pre-service, in-service and on the job training must be developed if we are to achieve any success in improving patient care.

This is the key to improving care if it is to occur at all.

Recognize that provision of care is total—that meeting the medical, nursing and health needs, though important and essential for the chronically ill, aged and vulnerable population in Nursing Homes, must be matched with massive programs to meet the social and personal needs of the aged.

Inspections that shuffle papers, escalate and increase paper work, test the degrees of water and nitpick conditions of safety, *though important*, cannot and will not make the difference as to what does the older persons have to look forward to each day; is there reason, meaning and purpose in his existence; a reason to get up? Will he have someone to interact with? Something to do? People who care? Unfortunately the social components are not considered. We are told we do not know how to measure them or pay for them yet they are just as necessary if the individual is to live and not merely exist. No amount of inspectors can improve standards and services as long as payments are inadequate. Welfare rates actually depress standards. In essence, the communities are subsidizing the States because they refuse to pay the true cost of care but rather pay on a system of rates that the Welfare Department sets. They demonstrate the level of care and the rate of payment. Their orientation is strictly a limited nursing care program. Inadequate reimbursement begets inadequate service.

No amount of inspection, no pious mouthing will change this.

I am concerned with the posture that indicates that the *"nursing homes be a last recourse"*.

As long as nursing homes are viewed in this perspective and the image is one that relegates the nursing home *out* of the mainstream of appropriate resources, nursing homes will continue to be the Siberias, the warehouses for the dying, etc.

If, however, the nursing home is in fact viewed as an important and necessary specialized recourse, we will begin to achieve the aspirations of the President's program. Rather than the place to go because there is no other place, the aged should go to nursing homes because no other place in the community can match it in its specialized program and ability to care for the aged.

In your remarks you mentioned that 2000 facilities voluntarily withdrew from the Medicare program. While many may have withdrawn because they could not meet the Federal standards, hundreds upon hundreds withdrew because they could not live with the systematic dismantling of the program by rules and regulations, hospital auditing, denial of claims and administrative abuses that made it impossible to stay in the program.

When the Medicare legislation pased, there were no "Extended Care Facilities" in existence; it was the nations skilled nursing homes that met the challenge, that enabled the program to be launched because they firmly believed that the aged had a right to use these benefits.

It has always been the nursing homes that have adapted to the existing and changing Federal programs through Kerr Mills, Vendor Medical programs and now Medicaid. It is these same nursing homes that are constantly being cut back in payments for service. HR 1 in its present form will again reduce benefits for the medicaid recipients in Nursing Homes compounding confusion and creating further havoc for the older person and provider alike.

There are no simple answers to this highly complex problem. It will take more than inspectors, more than alternatives to institutional care, more than a single study of a Florida Nursing Home.

We are delighted with the appointment of Mrs. Callender and look forward to an opportunity to work with her and with you toward a solution and a positive program and national policy. I pledge the support of the National Association of Jewish Homes for Aged in working with you.

We have a long and proud tradition, as accountable, responsible community supported facilities. We have attempted to provide leadership and will continue to do so, not as the last recourse, but as specialized facilities rendering a vital and necessary service to the aged today and tomorrow.

Sincerely,

HERBERT SHORE, Ed. D.,
*Executive Vice-President.*

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## THE WAR GOES ON

Mr. MOSS. Mr. President, I listened intently, as did other Americans, courtesy of nationwide TV, to the President's political statement outlining the American peace offer to Hanoi. I was disturbed by the recitation of the many secret trips Henry Kissinger had made, in an effort to reach an agreement with North Vietnam to end the war. Why were these attempts not made public earlier? While the administration has been closely guarding its secret, the world has continued to blame the war on the United States. If these offers had been made public, world opinion could have focused earlier on Hanoi and the United States would have been given credit for trying to end the fighting.

I was more disturbed, however, by the President's recitation of failure. The war still goes on today. The President's speech was truly a triumph of form over substance. We were simply told Mr. Nixon's negotiations have not been working, his proposals have made no difference, they have not achieved peace.

The key to ending the war is not the administration's shell game peace plan. We must set a definite date for the complete withdrawal of American forces from Vietnam. I believe that only the actual setting of a date for withdrawal and the end of bombing will bring our men and prisoners home.

A Washington Post editorial of January 27 entitled "Vietnam: The Same Old Shell Game" gives an excellent summary of the administration's shopworn peace plan.

I recommend this penetrating editorial to my colleagues, and ask unanimous consent that it be printed in the RECORD.

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

VIETNAM: THE SAME OLD SHELL GAME

Those who value form over substance may find a political triumph in Mr. Nixon's new "Plan for Peace" in Indochina—a veritable political master-stroke, courtesy of nationwide TV. Senator Mansfield, for example, hailed it as a long step forward; Senators Muskie and Humphrey welcomed it as a new initiative. The President himself called it "generous," as if generosity had any place in our dealings with a ruthless and relentless adversary. Republican sympathizers are delighting in the way the rug is supposed to have been pulled from under those who have been advocating a "date certain" for our withdrawal in exchange for our prisoners of war—on the theory that this is what the President has been secretly offering. This is what was meant to dazzle us—along with the drama of Dr. Kissinger's thirteen transatlantic trips, the secret dealings, the surprise. We are meant to believe, in short that the President has "gone the extra mile for peace" and that whatever happens next—continued impasse, a new Communist offensive, an increase in Ameriac casualties, a prolonged, open-ended war—*is not his fault.*

Well, you can make the argument that it is Hanoi's fault, or even that the whole war is Hanoi's (or Peking's or Moscow's) fault, and not gain much by doing so. You can prove, as Mr. Nixon did, that the enemy has been duplicitous, but that is hardly a revelation. You can assert that Mr. Nixon has tried what some of his critics have long been urging him to try, but even if that were so (which it isn't) it doesn't help much when it doesn't work—except perhaps at home, politically for a time. The fact of the matter is, of course, that there is drama in the unveiling of a secret peace initiative and a little vindication, perhaps, and not much else—not even, in this case, much surprise.

Last November 12, just about the time when Dr. Kissinger was busiest on his Parisiene rounds, the President was asked if he had any reason for encouragement concerning prospects for release of our POWs, and he replied: "No reason for encouragement that I can talk about publicly. I can say, however, that we are pursuing this subject, as I have

indicated on several occasions in a number of channels . . ." So the likelihood of private dealings was always there and the real surprise is in the terms the President was offering "the other side"; there is, in fact, no better way to measure the significance of the President's hitherto secret "plan for peace" than by comparing it with one he was proposing *publicly* in October, 1970—when there were 384,000 American troops in South Vietnam. At that time, Mr. Nixon announced that the United States would offer in Paris a plan for:

"An agreed timetable for complete withdrawal as part of an over-all settlement";

An immediate and unconditional release of all prisoners of war held by both sides;

A fair political solution, which would "reflect the existing relationship of political forces" in South Vietnam. The U.S., he said, would abide by the outcome (whether one reached by negotiation or election, he did not specify) and he added that "we know that when the conflict ends, the other side will be there, and the only kind of settlement that will endure is one both sides have an interest in preserving (in other words, an eventual piece of the action in Saigon was held out to the Communists);

An Indochina peace conference, to negotiate a wider settlement which would be guided by the terms of the Geneva Accords of 1954 (Vietnam) and 1962 (Laos).

A cease fire, to be internationally supervised.

That, then, was the Nixon peace plan fifteen months ago, publicly put forth in Paris. What is essentially new or different about the one Dr. Kissinger has been pushing secretly? Essentially nothing, except that elaborate election machinery has been added—an electoral process made in America, rooted in democratic institutions which are alien to the Vietnamese, and one to which Hanoi has been consistently hostile. That, and an eye-catching deadline of six months for U.S. troop withdrawal, which is about as uncertain a "date certain" as could be devised, depending as it does on an agreement not just on prisoner exchange, as the President's leading critics have proposed, but on working out the incredibly difficult details of a cease fire and an election procedure.

This, we are asked to believe, is a new peace plan whose unilateral, public disclosure is likely to break the impasse with Hanoi. This, we are told, is progress, when in fact it is more of the same old shell game. It may work, for a time, for as this game has been played with the Vietnam war over the years, the hand of a government in possession of a secret and in command of prime time has proved more often than not to be quicker than the eye. But the real news here is not of a new peace plan, or even of an earnest secret initiative. What the President told us Tuesday night was nothing more or less than that he and Dr. Kissinger have been privately pressing upon Hanoi a rather shopworn peace plan, only slightly refurbished, and that over a period of 30 months they have been had; he is telling us that he still wants it done the American way and that the North Vietnamese are still not buying it; he is telling us that negotiation isn't working, and that this, by his own admission leaves the alternative of "Vietnamization" which he is frank enough to describe as the "long voyage home."

So unless there is a lot the President *isn't* telling us, we are just where we were before we learned of Dr. Kissinger's secret travel: still insistent on having it our way; still counting on the North Vietnamese to abandon the goals of some forty years of fighting; still unwilling to act upon the President's own, public estimates (also offered in Oct., 1970) that the "South Vietnamese have gained the capability to handle the situation"—and with less and less to offer, as our ground forces shrink, in exchange for our prisoners of war.

## SET-ASIDE PROGRAM A FAILURE—SECRETARY BUTZ MUST ACT TO AVOID ANOTHER GRAIN SURPLUS IN 1972

Mr. HUMPHREY. Mr. President, I originally introduced Senate Joint Resolution 172 last November as a companion measure to S. 2729, the Strategic Storable Agricultural Food Commodities Act of 1971.

At that time I said:

> If enacted, S. 2729 would give the Secretary of Agriculture authority and require him to buy sufficient wheat and feed grains at prices approximating $1.20 a bushel for corn and $1.40 a bushel for wheat to lift market prices close to those levels. * * *
>
> If passed in the next 6 weeks (S. 2729) would increase the market value of the 1971 crops of wheat and feed grains about $1.5 billion. A similar increase would apply to the 1972 crops.

At that time my staff estimated the net additional fiscal year 1972 cost of creating a strategic reserve under S. 2729, at about $300 million.

We had an opportunity to create a strategic reserve which would have contributed to stabilizing consumer supplies and increasing farm income by $1.5 billion at a first fiscal year cost to the Government of $300 million. I regret that the administration opposed this and we were unable to take the needed legislative action.

We recognized, however, that passage of S. 2729 by itself would not provide a long-term solution to the economic problems facing grain producers. We concluded that unless more effective adjustment programs were developed to restrict 1972 production of wheat and feed grains, production would again be excessive. After consulting with farm leaders, I introduced Senate Joint Resolution 172 as a companion measure to S. 2729, requiring the Secretary of Agriculture to return to the 1965 base acreage adjustment program for feed grains and establish a voluntary additional set-aside program for wheat.

Several developments have occurred since November 10, 1971. The House passed a grain reserve bill containing a mandatory requirement to increase 1971 and 1972 wheat and feed grain loan rates by 25 percent.

On December 15, 1971, the Subcommittee on Agricultural Production, Marketing and Stabilization of Prices, of which I am a member, held an executive session and unanimously reported the bill to the full Senate Committee on Agriculture and Forestry. Although considerable pressure was exerted, the full committee was unable to act upon the bill before adjournment last December. But the chairman of the committee, Senator HERMAN TALMADGE, said he would move on the bill as soon as possible in the next session, and he kept that promise. One day of hearings were held on H.R. 1162 and Senate Joint Resolution 172 and all of the major farm and commodity organizations, with the exception of the Farm Bureau, indicated their support of these bills. Secretary Butz appeared and indicated his strong opposition to the bill, especially those provisions which would have provided for an increase in loan rates for wheat and feed grains. Two days following these hearings the full Committee on Agriculture met and voted down H.R. 1163 and tabled my Senate Joint Resolution 172 as amended. Hearings were scheduled on the latter for next Monday, January 31, 1972.

Yesterday, USDA released the planting intentions report which indicated that producers plan to plant over 70 million acres to feed grains this year. Instead of the 15 to 20 percent reduction in acreage that the administration was hoping to get under their announced set-aside program for feed grains, they got less than 4 percent. Unless prompt action is now taken by Secretary Butz to drastically reduce these plantings we will produce close to 200 million tons of feed grains this year, or about 30 million tons more than we need, which would be added to carryover stocks. Another carryover this year on top of the one we had last year will drive feed grain prices so far down they will have to look up to see bottom. And, of course, such a market condition will economically destroy our Nation's grain producers.

Mr. President, following the defeat of H.R. 1163 earlier this week, the further delay I encountered regarding action on Senate Joint Resolution 172 as amended, and the planting intentions report of yesterday, I have concluded that only prompt action by Secretary Butz can now avoid a disastrous situation occurring in our Nation's grain producing areas.

Signup begins next Thursday for the 1972 feed grains program and there obviously is not time enough for Congress to take any action to force Secretary Butz to move. He has all the authority he requires to move administratively and should do so immediately. He has opposed all of the suggestions made by me and others here in the Congress concerning this situation, so now let him act.

I have written to Secretary Butz urging him to move promptly and also have written to Chairman TALMADGE indicating that I do not intend to pursue enactment of my Senate Joint Resolution 172, as amended, any further, since it is obvious that time has run out for Congress to act. The ball is in Secretary Butz' court where he insisted it be. Now let us see what he does with it.

Mr. President, I would like to ask unanimous consent to have my letters to Secretary Butz and Chairman TALMADGE placed in the RECORD at this point.

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

U.S. SENATE,
*Washington, D.C., January 28, 1972.*

Hon. HERMAN E. TALMADGE,
*Chairman, Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: In view of yesterday's planting intentions report which indicates that producers are planning to plant in excess of 70 million acres of freed grains this year, I have written to Secretary Butz urging him to take immediate action administratively to reduce plantings to insure a production level that will not exceed 175 million tons of feed grains. Also in view of the fact that the Secretary has all the authority he requires to accomplish this goal administratively, and the fact that program sign-up

begins next Thursday, February 3, 1972, it is essential that he act immediately.

I do not feel there is sufficient time for the Senate Agriculture Committee and the Congress to act upon my amended resolution S.J. Res. 172. Therefore I question how productive next Monday's hearings will be, when action on this matter is needed immediately and cannot wait for the Committee and both chambers of Congress to act.

I think it would be better for the Committee, either by letter or by a "Sense of the Senate" resolution to urge Secretary Butz to take the action required administratively—and immediately to achieve the 170 million ton production goal desired.

I personally do not intend to pursue enactment of S.J. Res. 172 as amended any further. Therefore I will not be appearing at next Monday's hearing nor will I be submitting a statement.

Both S.J. Res. 172 and S.J. Res. 172 amended were proposed by me as a complimentary measure to H.R. 1163. I said from the very beginning of the discussion regarding the current grain crisis, that we needed both H.R. 1163 *and* S.J. Res. 172. Enactment of H.R. 1163 would have given the Secretary the "reserve inventory" authority he needs to minimize the hazards of estimating production levels and would have required him to increase loan levels in an effort to substantially increase crop values and market prices for producers.

The "greater incentive to plant" conditions that such loan rate increases admittedly might have created would have been prevented by enactment of S.J. Res. 172, which, as you know, would have required adoption of more effective production control programs for 1972. Had both of these measures been enacted, 1971 and 1972 wheat and feed grain crop values would have been increased by a total of almost $3 billion and with no additional costs being incurred by the government in the long run. Unfortunately, I don't believe the Committee, during its consideration of these measures last Wednesday, understood the inter-relationship of these two measures.

With the killing of H.R. 1163, enactment of my amended S.J. Res. 172 would still be important, especially if time were available to implement it. However, taking action on that alone—either administratively or legislatively—would still leave the need, in my judgment, for legislation to authorize the establishment of grain reserves and for improving the income of grain producers by increasing loan rates. Wednesday's action by the Committee was a major economic blow to our nation's grain producers. I don't know whether the Committee at this point is open to any compromise or not. But I do know action must be taken promptly by Secretary Butz to reduce feed grain plantings substantially. I hope you will join me in urging him to take immediate administrative action to achieve that goal.

Sincerely,

HUBERT H. HUMPHREY.

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U.S. SENATE,
*Washington, D.C., January 27, 1972.*

Hon. EARL L. BUTZ,
*Secretary of Agriculture,*
*Washington, D.C.*

DEAR MR. SECRETARY: In view of today's planting intentions report which indicates that producers are intending to plant in excess of 70 million acres of feed grains in 1972, I urge you to take steps administratively to reduce plantings under this year's set-aside program for feed grains.

Unless immediate action is taken to substantially reduce these plantings, we will end up with almost 200 million tons of feed grains instead of the 170 million tons desired.

As you know, I have been urging that we return to a base-acreage program for feed grain since last summer. The set-aside program approach is too loose and provides for too much production slippage to rely upon it.

Since my urgings and recommendations have thus far been ignored by the Department regarding these program changes, I hope you will now take immediate action to reduce plantings under the program to a production level not to exceed 170 million tons.

In view of the fact that sign-up for this year's program is due to get underway next Thursday, February 3, 1972, I believe it is essential that you move administratively—and immediately—to make the changes required. Although I have legislation still pending before the Senate Agriculture Committee which, if enacted, would require you to make these type of changes, it is now obvious that there is not enough time for Congress to act. Therefore, I again urge you to exercise your authority to make the necessary changes and not wait for Congress to require you to do so.

With every good wish, I am

Sincerely,

HUBERT H. HUMPHREY.

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## EXPECTED NORTH VIETNAM OFFENSIVE

Mr. CRANSTON. Mr. President, on Wednesday, the day after the President unveiled his secret Vietnam peace plan, I expressed on the floor of the Senate my fears that the President may have decided to "go public" at this time partly in an effort to prepare the American public for a renewed escalation of the fighting in Indochina.

I also pointed out that the President's so-called peace plan was not a peace plan at all because it was not realistically formulated to be accepted by the other side. Only a plan conceivably acceptable to both sides in a war as a basis for negotiations, bargaining, and compromise legitimately deserves to be called a peace plan.

A major sticking point in the President's proposals, "Catch 22," is his demand for a general cease-fire encompassing all fighting forces throughout all of Indochina. I said at the time that it was quite clear that the North Vietnamese would not accept such a demand.

On Thursday morning, the Los Angeles Times carried an account of the same views as those expressed by others.

In a page 1 article, the Washington Bureau Chief David Kraslow, an extremely well-informed and perceptive reporter, disclosed that:

The major offensive apparently being planned by North Vietnam was an important element in President's Nixon's decision to surface the secret efforts to negotiate an end to the war.

He goes on to point out that:

Some knowledgeable observers feel that the timing and tone of the President's speech Tuesday night and Kissinger's press conference Wednesday were in part an effort to prepare the American public for the possibility of bad news on the military front in Indochina.

Mr. Kraslow also notes that the impending Tet offensive "probably explains why the North Vietnamese ignored the eight-point peace plan the U.S. offered secretly last October."

Mr. President, I ask unanimous consent to have printed in the RECORD at this point an article from the January 27 issue of the Los Angeles Times headlined, "Expected North Viet Offensive Key to Timing of Speech."

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

EXPECTED NORTH VIET OFFENSIVE KEY TO TIMING OF SPEECH

(By David Kraslow)

WASHINGTON.—The major offensive apparently being planned by North Vietnam was an important element in President Nixon's decision to surface the secret efforts to negotiate an end to the war.

The offensive, which American officials expect around the beginning of the Tet new year period on Feb. 15, also probably explains why the North Vietnamese ignored the eight-point peace plan the United States offered secretly last October.

For one thing, that plan contains a provision for a cease-fire in place and that obviously would bar a Tet offensive.

But the current interplay of diplomatic and military factors—even without considering the growing domestic pressures on Mr. Nixon to resolve the Vietnam issue as the presidential election approaches—is far more complex.

There is strong reason to believe that the Administration is assessing the current situation and enemy motivations in the context of what happened almost exactly four years ago.

The Communists uncorked a massive Tet offensive to demonstrate their disruptive capabilities in South Vietnam, and then agreed to participate in peace talks in Paris in a stronger bargaining position than they were in before the offensive

An authoritative view is that the North Vietnamese are now preparing a military blow for the same two reasons they did in 1968:

1.—Make the maximum effort for a military victory that would topple the government of President Nguyen Van Thieu and therefore obviate negotiations with the United States.

2.—If a knockout blow cannot be delivered, cause so much damage—including blemishing Mr. Nixon's prestige—that the Communist side can return to the negotiating table with the ability to bargain from greater strength.

The clear suggestion of such a scenario came at a press conference Wednesday from Henry A. Kissinger, the President's national security adviser and the man who met secretely in Paris 12 times with Hanoi's top negotiators.

". . . We believe that we can contain the offensive," Kissinger said, "and it is even possible, maybe even probable, that the reason they make the offensive is as a prelude to a subsequent negotiation. This . . . was their pattern in 1968."

Kissinger then said that uncovering the secret negotiations was in part "an attempt to say to them once again, 'It (the offensive) is not necessary. Let's get the war over with now.'"

At another point Kissinger remarked that the enemy's response to "the most sweeping offer" the United States had made (a reference to the eight-point plan) "was a massive step up in their infiltration and a move toward a military solution."

If a repetition of the 1968 scenario is what the North Vietnamese have in mind, there is little reason to believe they will be deterred from that course by the President's decision to broadcast the fact and some of the substance of the secret talks or by Kissinger's almost plaintive plea that an offensive isn't necessary.

Considering the history of the Vietnam negotiations, it was uncharacteristic for North Vietnam to have left the President's latest peace proposal on the table so long without a formal response.

In some informed quarters, that behavior

would be consistent with a plan to come back to the negotiating table to bargain on that proposal if the offensive falls short of total victory.

There also is reason to believe that the Administration expects some setbacks to South Vietnamese forces in a major Communist offensive.

Some knowledgeable observers feel that the timing and tone of the President's speech Tuesday night and Kissinger's press conference Wednesday were in part an effort to prepare the American public for the possibility of bad news on the military front in Indochina.

Observers took special note of Mr. Nixon's warning that he will "fully meet my responsibility as commander in chief" if the North Vietnamese "answer to our peace offer is to step up their military attacks."

The President has a record of implementing warnings he has issued on the Indochina war, and there is no reason to expect him to deviate from that record if the enemy launches a big offensive.

Officials declined Wednesday to discuss how the President might respond militarily. His options are obviously limited by the continued withdrawal of American troops, but officials were not ruling out heavy bombing of North Vietnam as part of the President's response.

Although the Communists would object to a cease-fire if they have a TET offensive in mind, the question of a cease-fire has longer-range import in connection with a negotiated settlement and the political debate in this nation.

Kissinger said Wednesday that while the two sides "may well differ about how we define the cease-fire," he insisted that the cease-fire has not been "a contentious issue" in the secret negotiations.

One informed source who had long urged Mr. Nixon to offer a cease-fire before the President finally did so publicly in October 1970, said the Communists would stand to lose it they accepted a cease fire today. He said he believed the all-Indochina cease-fire is still much an issue.

In any event, the question is largely academic in the short term if the North Vietnamese are committed to an offensive soon.

Although Kissinger stressed that the President's disclosures Tuesday would have no impact on his plans to visit China Feb. 21 to 28, there will be no surprise in the presidential party if major fighting occurs in Vietnam while Mr. Nixon is in China.

## MAHALIA JACKSON

Mr. WILLIAMS. Mr. President, death has claimed Mahalia Jackson, a woman revered in America and throughout the world.

Her singing entertained millions. It is not much of an exaggeration to say that she did have "the whole world in her hands" when she performed.

Most certainly, this was because her performances went far beyond entertainment in its usual sense. Mahalia Jackson had the ability to inspire people; to make those who heard her feel a little better.

But the respect—in fact awe—that so many people felt for her did not stem solely from her role as a consummate performer. She was a great human being who seemed surrounded by an aura of dignity that the strength of her personality created.

Mahalia Jackson was a leader, both on the stage and in life. She devoted tremendous and lifelong efforts to help this Nation achieve the goal of true equality. Her talent opened many doors for her but she never forgot that those doors were closed to persons who did not possess her talent or prestige.

Her loss is deeply felt. We realize that we have lost not only an outstanding talent but also a warm, marvelous human being.

None of us can emulate her as an artist.

However, we can honor her memory by carrying on with her efforts to make this a better country; a country where all are treated equally.

## IN DEFENSE OF FAMILY FARMS

Mr. MONDALE. Mr. President, the January 23, 1972, issue of the St. Paul Sunday Pioneer Press focuses attention on the steady drift of people from rural America.

The article points out that a growing number of economists worry that even highly capitalized family farms are having an uphill struggle. It calls for congressional action to open up new benefits for bona fide farm families who want to stay on their land.

I ask unanimous consent that this article from the St. Paul Sunday Pioneer Press be printed in the RECORD.

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

FARM CRISIS EMPHASIZED IN WORTHINGTON

A "cornbelt crisis" conference was held at Worthington this past week with 500 Minnesota and Iowa farmers and businessmen in attendance. The central problem discussed, the steady drift of young people from rural America to the urban centers, is national in scope, but is especially visible in the Midwest.

It stems from the economic changes which are driving small farmers from the land. As the farm population dwindles, the small towns which serve that population are left with a smaller base of support. Jobs and opportunities on and off the land decline, and young people move toward the bigger cities.

The Worthington meeting showed a keen appreciation of the problem in that region. The fact that the conference was regional in character, not limited to a single community, is an encouraging indication. For as some of the speakers emphasized, regional economic patterns will be more significant in the future than in the past.

"It is no longer important at what particular geographical spot a high school, hospital or church is located," said The Rev. Lawrence Gavia of Wilmont, Minn. "The important thing is that educational, health and church services are accessible to the people of a general area so that their needs can be met."

The regional approach is important politically also. With six southwestern Minnesota counties and four Iowa counties sending delegations to the Worthington conference, public officials took notice. Gov. Wendell Anderson, Sen. Walter Mondale and Rep. John Zwach were among those on hand.

It is easier to describe rural problems than to find their solutions. Local and regional efforts to develop cooperative programs for an improved quality of life are essential.

However, broader efforts at the state and federal levels also must be developed. Federal policies in particular have direct impact on farm prosperity, land use and ownership and manifold aspects of country and small town living.

Farm families, squeezed by high taxes, high operating costs and low crop prices, continue to sell out their holdings and look for urban jobs and futures. In 1971 the number of Minnesota farms declined by 3,000 from 122,000, to 119,000. Iowa and Wisconsin lost about 2,000 farms each. Just since 1963, Minnesota farm units have dropped by 35,000.

The remaining farms of course are larger in size. Normal economic factors, including development of more efficient farm machinery, naturally favor larger operating units. Within reasonable limits, a trend to larger acreages would be healthy, provided the bigger family units produced genuine prosperity and stability for the owners.

What worries a growing number of economists is that even the big, highly capitalized family farms have an uphill struggle to survive, especially in competition with corporation agribusiness land operation which often enjoy special tax advantages or can be partly supported by profits from nonfarm activities.

There is a possibily that if present trends in agriculture continue the eventual outcome could be industrial domination of the nation's food production, with giant conglomerate corporations in control.

Agriculture Secretary Earl Butz and many others pooh-pooh this possibility as an imaginary threat. But each year the migration continues from the farms and the small towns which family farming supports. No end is in sight.

It might help if Congress could find ways of opening up tax shelters or benefits for bona fide farm families who want to stay on their land, comparable to benefits now enjoyed by some of the conglomerate corporations now invading agriculture.

## PRESIDENT SHOULD ABOLISH 47-CENT CHEESE QUOTA

Mr. MONDALE. Mr. President, the Tariff Commission has recommended abolition of the 47-cent price break on quota-type cheeses. But President Nixon has delayed the setting of quotas and the evasion of present quotas by importers continues.

Since the mid-1960's there has been an increase in dairy imports primarily because importers find ways of legally evading quotas on dairy import items. Since then, several hearings have been held, each usually followed by a Presidential action to close a loophole.

Early last year, President Nixon requested the Tariff Commission to make recommendations to him concerning three import categories of cheeses costing 47 cents a pound or more and having no import quotas. These are Swiss, Gruyere-process and a comprehensive grouping labeled as "other cheese." Subsequently the Tariff Commission held hearings which resulted in their recommendation on July 28, 1971, that the President abolish the 47-cent price break and establish a quota for various types of cheese regardless of price.

During the Tariff Commission's hearings on the matter last year, I submitted a statement to them urging abolition of the obsolete 47-cent quota. I urged closing of the loopholes then and I fully support the Tariff Commission's recommendation to the President. The President consistently delays the setting of quotas as the Tariff Commission recommended. He should delay no longer in placing all quota-type cheeses under the same quota.

Further delay will only result in continued dairy product imports hurting our domestic dairy industry. I ask unanimous consent that my testimony to the Tariff

Commission be printed in the RECORD at this point.

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

STATEMENT TO THE TARIFF COMMISSION

(By Senator WALTER F. MONDALE, Apr. 28, 1971)

In January 1969 the Department of Agriculture exempted from quota certain cheeses priced at over $.47. A Department press release stated: "these are the high price miscellaneous specialty cheeses such as are normally found in gourmet food counters and stores."

If this exemption had removed from quota only those exotic cheeses sold in small quantity for their special appeal, there would be little argument for halting the price break.

Unfortunately, this has not been the case.

In 1969, according to the latest USDA figures, over $.47 quota-type cheese was 27% of all cheese shipped in to this country and (on a milk equivalent basis) over 20% of all imports. In 1970 the corresponding figures were 38% (of the cheese import total) and 25% of all diary imports. (These figures do not refer to all of the cheese coming in outside of quota, but only to certain specific types—such as Swiss—Emmenthaler and Gruvere—which are subject to quota if priced under $.47).

In both 1969 and 1970 imports of the higher cost nonquota items exceeded imports of the same cheese under quota. In million pounds, imports were:

Quota (under $.47) in 1969, 33.3; in 1970, 29.5.

Nonquota (over $.47) in 1969, 44.6; in 1970, 58.1.

A quick look at these figures will show that the ratio is widening—a trend which I fear will continue unless action is taken.

There are a number of factors encouraging greater imports of the higher-priced items. Because of inflation, a cheese which may have cost $.45 in 1969 may now have risen to $.50, thus crossing the $.47 line. In some cases, imports of the higher priced cheeses have been encouraged by kickbacks and other questionable trade practices which, I hope, other witnesses will call to this Commission's attention.

Another factor is the rise in the price support level. When the $.47 figure was established, it was the same as the domestic support purchase price for cheese. Today the cheese support level is 54.75 cents. The Commission, during this hearing, should determine whether this spread is sufficient to induce domestic producers to import the foreign cheese and sell it here commercially while their own production goes into government warehouses under the price support program.

In summary, I urge the Tariff Commission to recommend the abolition of the $.47 price break on quota-type cheeses, placing all such quota-type cheeses under the same quota. To exempt certain cheese from quota because of its greater cost was a noble experiment which, to put it bluntly, just hasn't worked.

## CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

## EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The PRESIDENT pro tempore. Under the previous order, the Chair now lays before the Senate the unfinished business, S. 2515, the pending amendment being No. 818 by the Senator from North Carolina (Mr. ERVIN).

The clerk will read the bill by title.

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

A bill (S. 2515) to further promote equal employment opportunities for American workers.

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

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

The legislative clerk proceeded to call the roll.

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

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

## CLOTURE MOTION

Mr. WILLIAMS. Mr. President, I submit, and ask the clerk to state, a motion for cloture under the rule.

The PRESIDENT pro tempore. Under rule XXII, the Chair directs the clerk to state the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 2515), a bill to further promote equal employment opportunities for American workers.

1. Harrison Williams.
2. Walter Mondale.
3. Richard S. Schweiker.
4. George McGovern.
5. Thomas J. McIntyre.
6. Claiborne Pell.
7. J. Glenn Beall, Jr.
8. Mark O. Hatfield.
9. J. Javits.
10. Clifford P. Case.
11. Charles McC. Mathias, Jr.
12. Edward W. Brooke.
13. Charles Percy.
14. P. A. Hart.
15. Harold E. Hughes.
16. Gaylord Nelson.
17. Edward M. Kennedy.
18. Jennings Randolph.

## ORDER FOR ADJOURNMENT FROM MONDAY NEXT TO TUESDAY NEXT AT 10 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business on Monday next, it stand in adjournment until 10 a.m. on Tuesday next.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

## ORDER THAT THE 1 HOUR UNDER RULE XXII BEGIN RUNNING AT 11:30 A.M. ON TUESDAY, FEBRUARY 1, 1972

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the 1 hour for debate under rule XXII not begin running on Tuesday next until 11:30 a.m.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

## CONTROL OF TIME UNDER RULE XXII

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time with respect to the 1 hour under rule XXII on Tuesday next be divided between and controlled by the able manager of the bill (Mr. WILLIAMS) and the able Senator from North Carolina (Mr. ERVIN).

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. JAVITS. Does that mean that the vote on the cloture motion will come at 12:30 p.m. on Tuesday?

The PRESIDENT pro tempore. The Senator is correct, after a quorum call.

Mr. JAVITS. I thank the Chair.

Mr. BYRD of West Virginia. Mr. President, at 12:30 p.m. on Tuesday next, the Chair will ask the clerk to call the roll to establish a quorum. The rollcall vote also is automatic under the rule.

The PRESIDENT pro tempore. Yes.

Mr. BYRD of West Virginia. The rollcall vote would begin at about 12:40 or 12:45. Is that sufficient?

Mr. JAVITS. Yes.

## AMENDMENTS IN ORDER UNDER RULE XXII

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that all amendments which are at the desk on Tuesday next at the time the Chair asks the clerk to establish the presence of a quorum—to wit, at the conclusion of the 1 hour of debate, at 12:30—be considered qualified under rule XXII, as having been read.

The PRESIDENT pro tempore. Is there objection?

Mr. ERVIN. Mr. President, as I understand it, they shall be considered as having been read under rule XXII and otherwise qualify.

Mr. BYRD of West Virginia. That is correct.

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

## EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) to further promote equal employment opportunities for American workers.

Mr. BYRD of West Virginia. Mr. President, it is my understanding that the able Senator from North Carolina is willing to have a vote at 11:30 a.m. today on an amendment which he is about to offer. May I ask if all parties are willing to announce that a vote will occur at that time, and if so, we can ask unanimous consent?

Mr. JAVITS. Mr. President, may I ask special consideration for the business of a commission of the United States of which I am a member, the Commission on Marihuana and Drug Abuse, with respect to the imminent plans of the Sen-

ator from Alabama and the Senator from North Carolina?

I am perfectly willing to vote, but I need a half hour to an hour some time this morning to attend that Commission meeting. Would I have a right to expect, assuming that we do vote at 11:30, that the following amendment may be one which is not so heavily involved in legal questions, et cetera?

Mr. ERVIN. Mr. President, we propose to offer an amendment to provide that the courts are not bound by the findings of fact of the Commission unless they are supported by the preponderance of the evidence. We expect to offer after that an amendment which would exempt from the coverage of the bill employees of educational and religious institutions.

Mr. JAVITS. May I say to the Senator that on the latter—I shall stay and debate the first amendment; I feel that I must, but on the latter amendment, may I ask whether there is going to be any time limitation soon on that?

Mr. ERVIN. I doubt it seriously, because I think it will take a certain amount of time to show how ridiculous is the proposal of the bill to give to either Federal judges in respect to State educational institutions or to the Commissioners in respect to other educational institutions the power to determine whether or not the institution has hired men who are more competent than others who have been hired to teach the very same subjects, men who are more competent than applicants to seek employment against the will of those institutions. That will require some time, and I would not be willing at this time to agree to a time limitation on it.

Mr. BYRD of West Virginia. Mr. President, I take it that all parties are willing to vote on the amendment the Senator from North Carolina is about to offer at 11:30 a.m. today.

Mr. WILLIAMS. Yes.

Mr. BYRD of West Virginia. I ask unanimous consent that the vote on the amendment which the able Senator from North Carolina is about to offer occur today at 11:30 a.m.

The PRESIDENT pro tempore. The amendment which is the pending business?

Mr. ERVIN. Mr. President, I was going to withdraw the pending amendment, because I consider that it is not of the importance of the amendment I am about to offer.

The PRESIDENT pro tempore. Without objection, the amendment is withdrawn.

AMENDMENT NO. 811

Mr. ERVIN. Mr. President, I call up amendment No. 811, which has been proposed by the Senator from Alabama (Mr. ALLEN) and myself, and ask that it be stated in full, because that will explain what it does.

The PRESIDENT pro tempore. Is there objection to the proposal to vote on this amendment at 11:30? The Chair hears none, and it is so ordered.

The amendment will be stated.

The legislative clerk read as follows:

1. On page 42, lines 17, 18, and 19, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court, which shall reject them and make its own findings of fact on the evidence in the record in the event it concludes that the findings of fact of the Commission are not supported by the preponderance of the evidence in the record."

2. On page 43, lines 5 and 6, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court under the rule hereinbefore specified governing its review of other findings of fact of the Commission."

3. On page 44, lines 17 and 18, strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court, which shall reject them and make its own findings of facts on the evidence in the record in the event it concludes that the findings of fact of the Commission are not supported by the preponderance of the evidence in the record."

4. On page 45, lines 5, 6, and 7 strike out the words "if supported by substantial evidence on the record considered as a whole shall be conclusive," and insert in lieu thereof the words "shall be reviewed by the court under the rule hereinbefore specified governing its review of other findings of fact of the Commission."

Mr. ERVIN. Mr. President, for the information of the distinguished Senator from New York, I will state that the Senator from Alabama and I, instead of calling up the amendment that I mentioned to exempt employment practices of educational and religious institutions, will call up another amendment, if this amendment should be rejected, which would give the right to the party aggrieved by a decision of the commission to apply to the court for trial de novo, and the right to a jury trial in the event either party requested it. If the Senator from New York will advise me at what time he wants to go to the meeting of the Commission that he mentioned, we can adjust the debate to suit the convenience of the Senator from New York.

Mr. JAVITS. I thank the Senator.

Mr. ERVIN. Mr. President, someone stated in a happier day that if he could write the songs of the Nation, he would not care who wrote its laws. I say that if I were allowed to write the verdict on which a judgment is to be based, I do not care who writes the judgment.

During the course of the day yesterday, I pointed out that the pending bill emulates hyprocrisy. We are told that hyprocrisy pays homage to righteousness and justice by attempting to disguise itself in the garb of righteousness and justice.

I also called attention yesterday to the fact that the men who drafted and ratified the Constitution stated in its preamble that one of their purposes in establishing and ordaining that document was to establish justice. I charge without fear of successful contradiction that every procedural aspect of the Senate committee bill is designed to stay so far away from justice that despite the far-reaching grasp for power of this bill, the bill does not get close enough to justice to touch the hem of its garment.

The truth of it is that this is a bill which seeks to prostitute justice for the purpose of making certain the policies of those who believe that basic rights should be denied to all American citizens for the supposed—and I use the word "supposed" advisedly—benefit of one class of our citizens or one segment of our society.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. BYRD of West Virginia. I ask unanimous consent that the time on the pending amendment be equally divided between the Senator from North Carolina (Mr. ERVIN) and the Senator from New Jersey (Mr. WILLIAMS).

Mr. ERVIN. Mr. President, I shall not object to that if the Senator from West Virginia will not make his unanimous-consent request as to the few remarks I have heretofore made.

Mr. BYRD of West Virginia. No, beginning only at this point.

The PRESIDENT pro tempore. Without objection, beginning at this moment, the time on the amendment will be equally divided between the Senator from North Carolina and the Senator from New Jersey.

Who yields time?

Mr. ERVIN. Mr. President, I yield myself such time as I may require out of what I construe to be the 20 minutes allotted to those who favor the amendment.

The PRESIDENT pro tempore. The Senator from North Carolina is recognized for 20 minutes.

Mr. ERVIN. Mr. President, I assert that every provision of this bill is designed to enforce the policy of the bill—that is, to rob all American citizens of basic liberties—for the supposed benefit of the individuals constituting one segment of our society, for whom certain pressure groups have appointed themselves guardians.

First, you establish a Commission, a politically appointed Commission. The history of this Commission down to this date shows that virtually all the men who have been appointed to serve on this Commission were men who were psychologically incapable of holding the scales of justice evenly, because they were so biased in favor of the policy of the bill that they could not appraise impartially the truth involved in the proceedings.

So, you start out with the creation of a board composed of men of undoubted bias, men who would be disqualified to serve on any jury passing on questions of fact which arise in cases of this nature, and who would be incapable of doing what the great English statesman Edmund Burke said is the duty of exercising the cold neutrality of the impartial judge. If the men who were selected to serve on this Commission were impartial and unbiased, the system for administering the act is such that it makes it impossible for those men to long remain unbiased; because it unites the function of the prosecutor and the function of the judge, and these men are prosecuting, in the sense that they investigate charges and then prefer charges to the General Counsel on some occasions, and on other occasions these men sit as judges rather than investigators.

The Supreme Court of the United States has declared in plain words, in the McGrath case, that when you unite these functions and permit a public offi-

cial 1 day to exercise investigatory powers in some cases and on the next day to exercise the adjudicatory powers in other cases, you cause him to develop a psychological handicap which disables him from exercising either of these functions in an impartial manner.

I know nothing that is more inconsistent with the purpose proclaimed by the men who drafted and ratified the Constitution, and the preamble to that instrument, when they ordained and established that instrument to establish justice, than to create a Commission of this nature, with power to coerce into acceptance of their views with respect to each person employed by them, in all cases throughout the United States involving a business enterprise employing from eight to 25 persons, and of every religious institution except in respect to those who engage simply in religious activities rather than the secular activities which are necessary to permit any religious institution to function.

To show the absurdity of the last provision, many churches employ people to conduct kindergartens for small children in order that the parents of these children may attend divine services. Yet, under this bill, as I construe it, the EEOC would have jurisdiction to supervise the employment practices of the churches in respect to the employment of these persons.

Furthermore, Mr. President, this bill gives the EEOC power to supervise the employment practices of every private educational institution in the United States. This shows another phase of this bill, which manifests that the bill is the greatest threat of tyrannical power ever proposed in any legislative proposal presented to the American Congress throughout the history of this Nation.

For example, I hold in my hand a catalog of an educational institution which manifests this absurdity. This educational institution has a department of classics in which they teach ancient art, Greek archeology, the archeology of the Bible, and Roman art. This bill, insofar as a non-State-supported educational institution is concerned, would give the EEOC the power to judge whether the person selected by the educational institution to teach these rather abstruse subjects is less competent than a person that the EEOC chooses to teach them in the institution and to find that in employing a person to teach these subjects, the institution selected a man less competent than the man selected by the EEOC, and did so because of some mental preference, such as those condemned by this act.

Another thing which illustrates the fact that the bill is not designed to do justice arises out of the fact that, under the bill, the Commission is acting on behalf of individuals selected by it and the taxpayers of the United States will pay the cost incurred in behalf of these individuals, whereas the bill compels the individual employers and the individual employees hired by the individual employees to bear the cost of any efforts to vindicate their rights.

The crowning prostitution of justice sanctioned by this bill is the provision which is designed to prohibit courts of law which review the findings of the Commission to search for the truth with respect to the facts of the case.

On yesterday, I read to the Senate the definitions which are given to the terms "substantial evidence" and "preponderance of evidence."

What is the definition of "preponderance"?

It is this: Superiority in weight, quantity, power, importance, or the like.

Under the law of every State in the United States, a party suing in a civil court to establish a complaint of any kind is required to establish the truth of his cause by the preponderance of the evidence, that is, by the evidence which outweighs the evidence in opposition and the evidence which shows that his allegations are probably true.

Not so with this bill. It disables the courts to search for the truth with respect to the facts by decreeing that the court, no matter how inconsistent the findings of the Commission may be with respect to questions of fact, is bound by its findings if they are supported by substantial evidence.

Now what is "substantial evidence"?

According to the definition of the courts, it is merely evidence which is more than a scintilla. It is merely evidence which is a percentage point beyond being purely imaginary. Five percent of the evidence is substantial evidence.

Thus, we have a situation here that, in their zeal to deny all Americans rights for the supposed benefit of one segment of our society—for which the pressure groups supporting this bill have appointed themselves guardians—we have a system under which the courts are denied the right to search for truth with respect to issues of fact, even if those issues of fact are supported by as little as 5 percent of the evidence and are shown to be false by at least 95 percent of the evidence.

Mr. President, I do not know what will happen to this country. I would say, with all due respect to those who support this bill, that one of the chief activities of Congress in enacting bills of this character is to frustrate another purpose of the Founding Fathers declared in the preamble to the Constitution, and that is, to destroy rather than to secure the blessings of liberty to the American people.

This bill represents the greatest grab for governmental power in the history of this Nation. It represents the implementation of the grab for power by procedures which constitute an insult to justice which, as I have stated, do not approach close enough to Justice even to touch the hem of her garment.

Mr. President, I urge the Senate to adopt this amendment and thus enable the courts which review the findings of the Commission to search for truth in accordance with the evidence in the case and thus to set aside the findings of fact which are not supported by a preponderance of the evidence. In any case, under this amendment, where the findings of the Commission are supported by a preponderance of the evidence, the court would be bound by those findings.

But this amendment would merely provide, where the court finds the findings of the Commission are not supported by the greater weight of the evidence, or the more convincing evidence, or the preponderance of the evidence, that the court itself can make findings of fact.

It is important to have these findings of fact reviewed by an impartial tribunal composed of men who are capable of acting with the cool neutrality of the impartial judge.

Mr. WILLIAMS. Mr. President, will the Senator from North Carolina yield for a question?

Mr. ERVIN. I am happy to yield to the Senator from New Jersey.

Mr. WILLIAMS. Within the last few seconds, the Senator described in three ways his interpretation of the meaning of the weight of evidence that would be the test here. Could the Senator please repeat what those three ways of describing the weight of the evidence are.

Mr. ERVIN. They all mean the same thing.

Mr. WILLIAMS. Would the Senator repeat them?

Mr. ERVIN. I tell the Senator that I used to have to charge juries on this. The preponderance of the evidence is the evidence which has more convincing force than the evidence in opposition to it. All I am trying to do is see that the court should be allowed to act in cases where the findings of the Commission are only supported by evidence which is less convincing than the evidence accepted by the Commission.

Mr. WILLIAMS. Mr. President, I thank the Senator.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator is recognized for 4 minutes.

Mr. WILLIAMS. Mr. President, I am glad that I asked the Senator from North Carolina the last question. He did give further meaning to the word "preponderance." Since we talked about the weight of the evidence in charges to the jury—and as I say, the Senator from North Carolina was a most able and distinguished jurist in North Carolina before he came to the Senate—that is one of the points I would like to make.

This description of the weight of the evidence would be the test where it is used in law and used in the jury trial situation. Of course, that is not what we are dealing with here. We are dealing with agency administrative action and all of the precedent and all of the practice goes contrary to what the Senator from North Carolina is suggesting as the court of appeals test in connection with the weight of the evidence on an appeal from a Commission decision.

I will say that perhaps if any man can tread where others might fear to tread in this legal area, the Senator from North Carolina perhaps is that one.

Professor Wigmore, whom many of us used as the high authority in evidentiary matters as we went through law school and who used to guide us in the practice of law, found the term "preponderance of the evidence" to be quite impossible to define and subject to much confusion among the courts and those in the legal profession.

If I recall correctly, Professor Wigmore characterized it as a term which jurors could waste years trying to define. Therefore, we have not the time to define it here.

I will say that there is a precedent for this descriptive phrase to be applicable in the trial of a case. This is true in jury cases. However, we are not dealing with jury trials here. We are dealing with trials before an administrative agency or a commission.

We have a precedent in jury trials. Two years ago, as manager of the bill, I accepted an amendment offered by the Senator from North Carolina to have the preponderance of the evidence as a test for the Commission. That was written into the bill passed by the Senate.

I will confess my error in not including that in the bill that was reported to the Senate by the Committee on Labor and Public Welfare. It is an oversight.

I will say that if this amendment offered by the Senator from North Carolina fails on the vote that will be taken shortly, it will be my purpose to include the preponderance test where it properly belongs, at the trial level. Then we will go on to the test at the appellate level as it is in all other administrative agencies save one, the Subversive Activities Control Board. And we might look into how many cases they have had to use that test of preponderance in at the appellate level. I doubt if there are very many, if any. At any rate, it is at the appellate level and not at the trial level. I would like to stick, being a lawyer, with the longtime precedents on the evidence rule.

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

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I join with the manager of the bill in the statement that we will include the preponderance of the evidence rule before the Commission. Second, I must say that the vast majority of commissions which have cease-and-desist powers are subject to the substantial evidence rule rather than the preponderance of the evidence rule, aside from the Subversive Activities Control Board, which the manager of the bill has already mentioned.

Indeed, the substantial evidence rule is specifically mandated into law as the general standard of review under the Administrative Procedure Act. Thus 5 U.S.C. 706 provides:

§ 706. Scope of review.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

* * * * *

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

* * * * *

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

Also, there is a very serious question as to whether this amendment does not simply constitute again a reargument of the cases on cease-and-desist power in an effort to obtain civil suits. We might as well proceed with the nisi prius suit and not circuit court review. In short, this amendment is just another way of trying to reverse the Senate's position so far taken in respect to the so-called Dominick amendment.

Mr. President, I realize that they do not call witnesses in the trials of those cases. However, they must weigh every shred of evidence as carefuly as if it were a de novo trial. And if they have a preponderance of the evidence rule, they will have to use that technique time and time again because they will have to study and evaluate the evidence, not as to meeting the standard of substantiality, but as to which side preponderates on the scale of justice.

Mr. President, if the substantial evidence rule contained as much gossamer as the Senator from North Carolina would have us believe, he would have much more of a point not only against this Commission but also against every other commission than he actually has.

There is a big, gaping hole in his argument. He said that it is a percentage point beyond being purely an imaginary description of its substance. Then he said it could be as little as 5 percent of the evidence.

Let us see what the substantial evidence rule is. A classic statement on that rule is made in the case of *Universal Camera Corp.* v. *the Labor Board*, 340 U.S. 474. At page 488, Mr. Justice Frankfurter, in the classic decision on the subject had this to say about the substantial evidence rule:

To be sure, the requirement for canvassing "the whole record" in order to ascertain substantiality does not furnish a calculus of value by which a reviewing court can assess the evidence. Nor was it intended to negative the function of the Labor Board as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect. Nor does it mean that even as to matters not requiring expertise a court may displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*. * * *

Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view.

So the doctrine of substantiality, based upon the Administrative Procedure Act which will be applicable to this particular Commission under this bill, as defined by the U.S. Supreme Court means that we take the whole record, the facts for and the facts against, and then see if there is substantial evidence left that backs up the finding of the Commission.

That, Mr. President, is a very different standard, a much more weighted standard than "a percentage point beyond being purely imaginative." We do not contend for a "percentage point beyond being purely imaginative," but we do contend that the agency which is trying the facts presents a complete record to the court, when it weighs the pros and cons and still leaves a substantial amount in favor of the pros; that that will stand with the court; and that the court of appeals should not have to weigh the evidence as it would if it were trying the case de novo, remembering always that the court can send back the case for further evidence if it does not find that by laying the pros and the cons in the balance—both sides of the evidence, not just one side—there is still a substantial amount to support the findings of the Commission.

Mr. President, there are good reasons why the substantial evidence rule was included in the Administrative Procedure Act and in the bill before us.

To quote another case, *Conolo* v. *Federal Maritime Commission*, 388 U.S. 607, at 620:

Congress was very deliberate in adopting this standard of review. It frees the reviewing courts of the time-consuming and difficult task of weighing the evidence, it gives proper respect to the expertise of the administrative tribunal and it helps promote the uniform application of the statute. These policies are particularly important when a court is asked to review an agency's fashioning of discretionary relief. In this area agency determinations frequently rest upon a complex and hard-to-review mix of considerations. By giving the agency discretionary power to fashion remedies, Congress places a premium upon agency expertise, and, for the sake of uniformity, it is usually better to minimize the opportunity for reviewing courts to substitute their discretion for that of the agency. These policies would be damaged by the standard of review articulated by the court below.

Mr. President, those reasons are fully applicable to the EEOC and therefore I believe we should reject the pending amendment.

Mr. WILLIAMS. Mr. President, I have heard an overwhelming weight of persuasion by the Senator from New York that this amendment should be defeated by a preponderance of the statements and by reason of all the precedents.

Mr. President, in the first place, I do not feel that the use of the term "preponderance of the evidence" is at all useful or necessary in the context of this bill. It neither clarifies the degree or nature of the evidence that we would be dealing with in these situations nor introduces any added benefit for the resolving of complaints under this bill in these situations.

In general, Mr. President, the courts have avoided using the term or applying it in to any significant number of cases. While it is generally termed to be the standard of persuasion in civil cases, its precise meaning or an understanding of its application has never been fully undertaken by the court. The question still remains. A widely accepted definition is that evidence pre-

ponderates when it is more convincing to the trier than the opposing evidence. While this kind of commonsense explanation has grown out of repeated use, its applicability has been restricted to jury-trial situations where the jury is led to believe, through proof by preponderance, that the existence of a contested fact is more probable than its nonexistence. However, this ceases to be applicable in appellate cases.

This nonapplicability of the term "preponderance of the evidence" can be best illustrated by reference to the experiences of the NLRB. While the National Labor Relations Act contains the requirement that the Board make its findings by a "preponderance of the testimony," a search of the Labor Board cases as reviewed by the courts discloses no reference to "preponderance." The courts rather refer repeatedly to "substantial" evidence.

Second, Mr. President, I feel that the amendment, as proposed by the distinguished Senator from North Carolina, seeks to introduce a new and unnecessary element in the courts' reviewing process of administrative decisions. If I understand the amendment correctly Mr. President, it would require the appellate courts to hold, in effect, a trial de novo in those cases where "it concludes that the findings of fact of the Commission are not supported by the preponderance of the evidence in the record."

Mr. President, it is one of the fundamental traditions of our system of courts that there is a gulf fixed between the trial court and the reviewing court. The reviewing court examines only questions of law, and is barred, except in a few exceptional situations like mandamus actions or disbarment proceedings, from examining issues of fact. This amendment, Mr. President, would specifically alter this separation of functions.

The traditional and long-standing procedure of administrative review in this country is that the courts of appeals review an agency decision by examining the record of the administrative proceeding to determine whether there is "substantial evidence on the record" to sustain the agency's finding. This process is guaranteed by the Administrative Procedure Act and by the provisions of S. 2515.

The reviewing courts, in examining the record of the agency, have been very conscious of the need to fully insure that the administrative hearing fully and properly takes into document all the evidence presented at the hearing. The standard has probably been best enunciated by the former Mr. Chief Justice Frankfurter in the Supreme Court's decision in Universal Camera Corp. against NLRB where the court stated:

> The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before the Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence, or both.

The amendment which we are now considering would destroy this traditional function of the appeals courts and would seek to make them trial courts. It would seek to supplant the substantial evidence rule contained in the Administrative Procedure Act, and preferred by the courts even before its formalization in that act, and seek to substitute therefor a new procedure based upon a yet undefined standard which the courts must use in reviewing equal employment cases. I submit, Mr. President, that this amendment would confuse the administrative review process immeasurably, and would result in unnecessary work for the appeals courts.

It is the purpose of appellate procedure to provide a quick and precise review of any errors which may have been made at the trial level. In this function, the appellate courts are by design, and not by accident, freed from the frequently tedious and time-consuming process of taking factual evidence. To now introduce this function into the appellate courts, as this amendment seeks to do, can create nothing short of chaos in the judicial process. The appeals court traditionally reviews for errors and, if in its opinion errors are indeed found, it remands the case to the trier of the facts with specific instructions for remedying the error.

If this traditional separation of functions is now destroyed, Mr. President, what worth does the trial level proceeding have? If the reviewing court is going to retry the entire case, then we might as well do away with the trial process altogether and only have the appeals courts doing all cases. I feel, Mr. President, that the amendment which we are now discussing degrades the entire administrative process by imputing that the appeals court may have to entirely retry a case where errors are made on the record, and that remand to the administrative tribunal would not resolve any such errors which might have been made.

Mr. President, I believe that the time of the Senator from North Carolina has been used up. If he would like to borrow from my time, I shall be glad to yield to him.

Mr. ERVIN. I certainly appreciate the generosity of my good friend from New Jersey.

Mr. President, the distinguished Senator from New York says that the weight of this argument is that the court should not be permitted to require a greater weight of evidence when the facts of the case should have been determined by a substantial amount of evidence.

He says he is willing to amend the bill to require the Commission to make a finding based on a preponderance of evidence, but the retention in the bill of provisions which I seek to strike, and to offer substitute provisions which would nullify that purpose.

While the law as amended requires the findings of the Commission to be made by a preponderance of the evidence, that would be paying little more lipservice to justice than the bill now before us. It would be absolutely nugatory because if the Commission did not obey that law and based its findings on less than a preponderance of the evidence, when the court reviewed the action of the Commission it could not determine that the Commission had failed to obey the law if the findings of the Commission were supported by any substantial evidence—that is, anything above a scintilla, and anything constituting enough to resist a motion for a nonsuit in a civil court.

Mr. WILLIAMS. Mr. President, will the Senator from North Carolina yield for an observation?

Mr. ERVIN. I yield.

Mr. WILLIAMS. It was just 2 years ago, when the bill was before us, that the Senator from North Carolina persuaded me—indeed, persuaded the entire Senate—that at the trial level, at the Commission hearing level—the preponderance of evidence—a test which fits the precedents in other areas of the law—would be appropriate at that level, and that is why, in the bill as passed by the Senate, at pages 10 and 12, the Senator's amendment was added. The amendment provided that "if the commission finds by a preponderance of the evidence taken by the commission," et cetera; and in the other section, at page 12, "shall be determined by a preponderance of the evidence of the record." It was not lipservice then. We were persuaded by the language of the amendment.

Mr. ERVIN. The Senator from North Carolina is a little wiser now than he was then. He has recognized that all that amounted to was a sort of biased request to the Commission. Under the provision that binds the courts, if there is barely more than a scintilla of evidence—that is, substantial evidence—then the Commission can violate the rule that the Senator from Alabama and the Senator from North Carolina advocated with respect to the action of the Commission, and the courts would be unable to correct a violation of that rule under the bill in the absence of my amendment.

I thank the Senator from New Jersey for his generosity in yielding me the extra time. I should like to add this observation: It is true that there are many laws making the findings of administrative agencies binding if they are supported by substantial evidence. But, as I observed yesterday, the fact that Congress has passed iniquitous laws in the past does not justify Congress continuing to enact iniquitous laws.

I thank the Senator for yielding me his time.

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

The PRESIDING OFFICER. All time is yielded back.

Mr. JAVITS. 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. 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 ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The time on the amendment having expired, under the previous order the Senate will now proceed to vote on the amendment

offered by the distinguished Senator from North Carolina.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Missouri (Mr. EAGLETON), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Virginia (Mr. SPONG), the Senator from Mississippi (Mr. STENNIS), the Senator from Illinois (Mr. STEVENSON), the Senator from California (Mr. TUNNEY), the Senator from Idaho (Mr. CHURCH), the Senator from Indiana (Mr. HARTKE), and the Senator from Minnesota (Mr. HUMPHREY) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. EASTLAND) is absent because of of illness.

On this vote, the Senator from Mississippi (Mr. EASTLAND) is paired with the Senator from Washington (Mr. MAGNUSON).

If present and voting, the Senator from Mississippi would vote "yea" and the Senator from Washington would vote "nay."

On this vote, the Senator from Colorado (Mr. DOMINICK) is paired with the Senator from Washington (Mr. JACKSON).

If present and voting, the Senator from Colorado would vote "yea" and the Senator from Washington would vote "nay."

On this vote, the Senator from Georgia (Mr. GAMBRELL) is paired with the Senator from South Dakota (Mr. MCGOVERN).

If present and voting, the Senator from Georgia would vote "yea" and the Senator from South Dakota would vote "nay."

I further announce that, if present and voting, the Senator from Idaho (Mr. CHURCH), the Senator from Illinois (Mr. STEVENSON), the Senator from California (Mr. TUNNEY), and the Senator from Minnesota (Mr. HUMPHREY) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. DOMINICK), the Senator from Oklahoma (Mr. BELLMON), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senator from Iowa (Mr. MILLER), the Senator from Kansas (Mr. PEARSON), the Senator from Ohio (Mr. TAFT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Wyoming (Mr. HANSEN), and the Senator from Maryland (Mr. MATHIAS) are absent on official business.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Utah (Mr. BENNETT) is detained on official business.

On this vote, the Senator from Wyoming (Mr. HANSEN) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from Wyoming would vote "yea" and the Senator from Oregon would vote "nay."

On this vote, the Senator from South Carolina (Mr. THURMOND) is paired with the Senator from Ohio (Mr. TAFT). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Ohio would vote "nay."

On this vote, the Senator from Colorado (Mr. DOMINICK) is paired with the Senator from Washington (Mr. JACKSON). If present and voting, the Senator from Colorado would vote "yea" and the Senator from Washington would vote "nay."

On this vote, the Senator from Utah (Mr. BENNETT) is paired with the Senator from Iowa (Mr. MILLER). If present and voting, the Senator from Utah would vote "yea" and the Senator from Iowa would vote "nay."

The result was announced—yeas 22, nays 43, as follows:

[No 18 Leg.]

YEAS—22

| | | |
|---|---|---|
| Allen | Ellender | Jordan, Idaho |
| Baker | Ervin | Long |
| Byrd, Va. | Fannin | Roth |
| Cannon | Fulbright | Talmadge |
| Chiles | Gurney | Tower |
| Cooper | Hollings | Young |
| Cotton | Hruska | |
| Curtis | Jordan, N.C. | |

NAYS—43

| | | |
|---|---|---|
| Aiken | Gravel | Percy |
| Allott | Griffin | Proxmire |
| Anderson | Hart | Randolph |
| Bayh | Hughes | Ribicoff |
| Beall | Inouye | Saxbe |
| Bible | Javits | Schweiker |
| Boggs | Mansfield | Scott |
| Brooke | McGee | Smith |
| Burdick | McIntyre | Stafford |
| Byrd, W. Va. | Mondale | Stevens |
| Case | Montoya | Symington |
| Cook | Moss | Weicker |
| Cranston | Nelson | Williams |
| Dole | Pastore | |
| Fong | Pell | |

NOT VOTING—35

| | | |
|---|---|---|
| Bellmon | Harris | Mundt |
| Bennett | Hartke | Muskie |
| Bentsen | Hatfield | Packwood |
| Brock | Humphrey | Pearson |
| Buckley | Jackson | Sparkman |
| Church | Kennedy | Spong |
| Dominick | Magnuson | Stennis |
| Eagleton | Mathias | Stevenson |
| Eastland | McClellan | Taft |
| Gambrell | McGovern | Thurmond |
| Goldwater | Metcalf | Tunney |
| Hansen | Miller | |

So Mr. ERVIN's amendment was rejected.

Mr. WILLIAMS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 829

Mr. ERVIN. Mr. President, I have announced that the distinguished Senator from Alabama and I would next call up amendment No. 609, which would provide for trial by jury——

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ERVIN. I had announced that I would next call up amendment No. 609, which was an amendment to allow the party aggrieved by a judgment of the Commission to appeal to the courts and have a trial de novo, and a trial by jury if he so desired. But I think it will take more educational endeavors on my part to persuade the Senate, in view of its last vote——

Mr. BYRD of West Virginia. Mr. President, will the Senator please use his microphone?

The PRESIDING OFFICER. The Chair cannot hear the Senator from North Carolina.

Mr. ERVIN. I was announcing that instead of calling up that amendment, I have reached the conclusion, in view of the last vote, that the Senate is not now in a position to show much veneration for the ancient right of trial by jury, and I shall postpone offering that amendment until the Senate has had time to further consider some of the landmarks of the Constitution of worthier service.

So instead of doing that, on behalf of the Senator from Alabama (Mr. ALLEN) and myself, I call up amendment No. 829, and ask that it be stated in full, because a statement in full will do much to explain what its purport is.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

Add a new section at the end of the bill appropriately numbered and reading as follows: "No department, agency, or office of the United States shall require any employer to practice discrimination in reverse by employing persons of a particular race, or a particular religion, or a particular national origin, or a particular sex in either fixed or variable numbers, proportions, percentages, quotas, goals, or ranges. Any officer of the United States or any other person who violates this provision shall be guilty of a misdemeanor and upon conviction shall be imprisoned not exceeding one year or fined not exceeding $1,000.".

Mr. ERVIN. Mr. President, I modify this amendment by striking out lines 8, 9, 10, and 11, which provide that any officer of the United States or any other person who violates this provision shall be guilty of a misdemeanor and upon conviction shall be imprisoned not exceeding 1 year or fined not exceeding $1,000, and substitute in lieu thereof the following:

If any department, agency, officer, or employee of the United States shall violate or attempt or threaten to violate the provisions of the preceding sentence, any employer or employee aggrieved by such violation, or attempted or threatened violation, shall have the power to bring a civil action in the appropriate district court of the United States; and said district court shall have the power to enter such a decree or grant such temporary interlocutory or permanent injunctive relief as may be necessary to correct the consequences of such violation or to prevent such attempted or threatened violation.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

Mr. ERVIN. Unfortunately, it is in my head. I had written it out, but I left it in my office. I can get a written copy, if

we take a recess long enough for me to go to my office.

I ask unanimous consent, instead of that, that the Official Reporter of Debates furnish it.

The PRESIDING OFFICER. The Chair should have the modification at the desk, so that the clerk can read it before we proceed.

Mr. ERVIN. I suggest the absence of a quorum, until I can write it up.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ERVIN. 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. ERVIN. Mr. President, I find that I was mistaken with respect to the draft of the modification. I send to the desk the amendment as modified and ask that it be stated in full.

The PRESIDING OFFICER. The clerk will state the amendment as modified.

The assistant legislative clerk read as follows:

Add a new section at the end of the bill appropriately numbered and reading as follows: "No department, agency, or officer of the United States shall require an employer to practice discrimination in reverse by employing persons of a particular race, or a particular religion, or a particular national origin, or a particular sex in either fixed or variable numbers, proportions, percentages, quotas, goals, or ranges. If any department, agency, officer, or employee of the United States violates or attempts or threatens to violate the provisions of the preceding sentence, the employer or employee aggrieved by the violation, or attempted or threatened violation, may bring a civil action in the United States District Court in the District in which he resides or in which the violation occurred, or is attempted or threatened, or in which the enterprise affected is located, and the District Court shall grant him such relief by way of temporary interlocutory or permanent injunctions as may be necessary to redress the consequences of the violation, or to prevent the attempted or threatened violation.

Mr. BYRD of West Virginia. Mr. President, will the Senator from North Carolina yield for a question, without losing his right to the floor?

Mr. ERVIN. I am delighted to yield.

Mr. BYRD of West Virginia. Mr. President, for the convenience of Senators on both sides of the aisle, I ask the able Senator from North Carolina whether or not a vote could be had on the pending amendment at 2 o'clock this afternoon, and I ask the same question of the distinguished manager of the bill.

Mr. WILLIAMS. It is agreeable.

Mr. ERVIN. That would be entirely satisfactory to me.

Mr. BYRD of West Virginia. Is it anticipated by either party that an amendment in the second degree would be offered to the pending amendment?

Mr. WILLIAMS. Not for my part. I cannot speak for the comanager of the bill, the ranking minority Member.

UNANIMOUS-CONSENT REQUEST

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the vote on the pending amendment occur today at 2:15 p.m.; that time on any amendments to the pending amendment be limited to 20 minutes, to be equally divided between the mover of such and the distinguished manager of the bill; that the time on any motions or appeals be likewise limited and likewise divided; that time on any amendments to the amendment, motion, appeal, or point of order, with the exception of nondebatable motions, come out of the time allotted on the pending amendment; and that the time on the pending amendment be equally controlled and divided between the distinguished Senator from North Carolina (Mr. ERVIN) and the distinguished manger of the bill.

Mr. COTTON. Mr. President, for the moment I am compelled to object to the proposals. In a few moments, after I have had a chance to confer with the distinguished acting minority leader, I will not object.

Mr. BYRD of West Virginia. Mr. President, I withhold the request, accordingly.

The PRESIDING OFFICER. Objection is heard.

Mr. COTTON. Mr. President, will the Senator from North Carolina yield for a question?

Mr. ERVIN. I am delighted to yield.

Mr. COTTON. I know that the Senator from North Carolina is going into this, but I may have to leave town and might not be here all day.

This amendment, if adopted, would mean that any Senator or Representative who had eight or more people on his staff would be subject to this law, just as every other American citizen, would it not?

Mr. ERVIN. It may be; so I would like to modify it again, to provide that it shall not apply to any Member of the legislative branch.

Mr. COTTON. I would hope not. No man should be above the law. I think that if we are going to make everybody in this country who employs eight people be liable in some way and responsible in some way and subject to actions and harassment in some way, we should take it ourselves.

As I stated yesterday, I have always opposed this, because it gets down to the very small business, where the relationships of people are so personal. If we are going to do it to the small businessman with eight employees, in some little town, I think it would be very unwise and not very consistent for us to exempt ourselves, even if we are political officers.

I hope the Senator will leave it so that it will apply to us, because what is sauce for the goose is sauce for the gander.

Mr. ERVIN. Mr. President, the eloquence and cogent argument of the able and distinguished Senator from New Hampshire have convinced the Senator from North Carolina of the absolute rectitude of the position which the Senator from New Hampshire has just stated. On reflection, I think it would be a mistake to modify this amendment so as to exempt Members of Congress from its application. Since this amendment now covers all of the employees of all of the States of all of the subdivisions, and since it covers all the members of the faculties and the other employees of all educational institutions, and since it empowers Caesar to lay his political hands on the activities of God, I think it would be a mistake to exclude anyone from the unspeakable tyranny which this bill is designed to inflict upon the people of America.

Mr. COTTON. Will the Senator from North Carolina yield to me for 1 more minute?

Mr. ERVIN. I am delighted to do so.

Mr. COTTON. I thank the Senator for the opportunity to express these sentiments, and having it understood that if I am unable to be present when the final vote is taken on this amendment, that I would vote for it if it is to apply to us. However, I would vote against it if it does not apply to us, and I shall vote against the bill if it does not apply to us. May I say now that I am very glad to withdraw my objection to the unanimous-consent request of the distinguished Senator from West Virginia (Mr. BYRD).

Mr. ERVIN. I thank the distinguished Senator from New Hampshire, a State which has now been irrevocably and completely embraced by the Senator from North Carolina. [Laughter.]

Mr. BYRD of West Virginia. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I am delighted to yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I now renew my unanimous-consent request.

The PRESIDING OFFICER (Mr. MCINTYRE). Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I would ask the distinguished Senator from North Carolina, does he anticipate a rollcall vote on this amendment today?

Mr. ERVIN. Yes. I certainly do. I want to ask for the yeas and nays. I want to find out how many Members of the Senate——

Mr. BYRD of West Virginia. I do not believe there are a sufficient number of Senators present in the Chamber at this moment, but the Senator may be assured that the yeas and nays will be ordered.

Mr. ERVIN. Mr. President, I suggest the absence of a quorum on my time, because I want to get the yeas and nays before there are too many weekend departures. There might be too many weekend departures for me to get the yeas and nays at a later time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

THE PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, I yield to myself such time as I may use.

Mr. President, this amendment is very clear. It is in complete harmony with the other provisions of the Senate committee bill, strange to say.

All the other provisions of the Senate bill are avowedly included in the bill to prevent any employer, whether he is engaged in the work of Caesar or in the work of the Lord, who is touched by the bill, from practicing discrimination against applicants for employment or persons who desire to be promoted or persons who desire not to be discharged on account of their race, religion, national origin, or sex.

The amendment is in perfect harmony with that objective of the Senate committee bill because it forbids discrimination in reverse.

It gives access to the courts to prevent any department or agency or officer of the United States from requiring any employer to practice discrimination in reverse.

When Congress adopted the Civil Rights Act of 1964 it undertook to forbid discrimination in reverse.

It inserted in title VII of that act a provision which stated in about as plain words can be found in the English language that no employer should be required to hire employees on a quota system; that is, a system which required him to employ certain numbers or percentages of a particular race, or a particular religion, or a particular national origin, or a particular sex.

I thought that that provision of title VII of the Civil Rights Act of 1964 was so plain that he who runs might read it and not err in so doing.

But some officials who are charged by the Executive order relating to discrimination in employment—Executive Order 11246—and who are charged with enforcing the provisions of title VII of the Civil Rights Act of 1964 were apparently illiterate or educated way past their intelligences, and they could not understand the plain and the unambiguous words of Congress which were designed to prevent what is probably known as discrimination in reverse.

As a consequence of this lack of understanding of the plain and unambiguous words of the English language employed in title VII of the Civil Rights Act of 1964, the Office of Contract Compliance on virtually every occasion has required employers seeking Government contracts to practice discrimination in reverse. The EEOC, on less frequent occasions, has haled employers before its bar to practice discrimination in reverse.

It is to be noted that the Office of Federal Contract Compliance in the Department of Labor is charged with exactly the same duty in respect to employers seeking Government contracts that the EEOC is charged with in respect to employers generally. The sole function of the Office of Federal Contract Compliance under the Executive order is to review proposed contracts which various executive departments or agencies have made to obtain work or services for the Federal Government and to make sure that those contracts prohibit discrimination against employees or applicants for employment because of their race or religion or national origin or sex.

One of the strange things about Government is that it has an insatiable thirst for power and that if we give an executive department or an executive agency an inch of authority, it converts that inch of authority into a mile of authority. This has been true in respect to the Office of Federal Contract Compliance in the Department of Labor and it has been true in some instances in respect to the EEOC itself. The most notorious example of discrimination in reverse has been embodied in the concept set forth in what is popularly known as the Philadelphia plan.

The Office of Federal Contract Appliance adopted the Philadelphia plan and required building contractors who obtained contracts from the Federal Government of certain magnitude to deny the employment of members of the majority race until the employees belonging to the minority race reached certain percentages or certain proportions of their total employees.

Manifestly this requires discrimination in favor of the members of the minority race and discrimination against members of the majority race. In other words, it requires discrimination in reverse.

When the attention of the Office of Federal Contract Compliance and the then Secretary of Labor was called to the fact that the Office of Federal Contract Appliance was requiring discrimination in reverse and was requiring building contractors holding Government contracts of a certain magnitude to practice discrimination in favor of the members of one race and against the members of other races, the Office of Federal Contract Compliance and the then Secretary of Labor engaged in linguistic gymnastics and in a sematic operation the like of which is unknown in the annals of either the English language or of our country.

They said that, when they require the employers holding Federal contracts to employ persons of one race in certain variable proportions in preference to the members of other races, that does not constitute the hiring of people by quotas, but on the contrary is the hiring of people to obtain certain goals or the hiring of people to achieve certain ranges of employment.

The Senator from North Carolina is not a person of great erudition in the English language. For that reason he cannot ascend to the linguistic stratosphere. On the contrary, he has to rely on the definitions in the English dictionaries in his effort to ascertain the meaning of English words.

The Senator from North Carolina took the dictionaries he had, and they are rather multitudinous, and he looked up the word "goal." He found that the word "goal" was synonymous for all practical intents and purposes with the word "quotas." And he found that requiring an employer to employ persons of one race in preference to persons of other faces within a variable percentage or a variable proportion of his total employees was nothing in the world other than for all practical intents and purposes requiring a hiring of quotas.

So the Senator from North Carolina does not believe in discrimination and he joins those who propose that the Government prevent discrimination on the basis of race or religion or national origin or sex, and he offers an amendment which will prevent any department, agency, or office of the United States from requiring an employer to practice discrimination in reverse by employing persons of a particular race or a particular religion or a particular national origin or a particular sex in either fixed or variable numbers, proportions, percentages, quotas, goals, or ranges.

I urge the Senate to adopt this amendment for two reasons. In the first place, it is in perfect harmony with the objective of the bill to forbid discrimination in employment on the basis of race, religion, or national origin, or sex.

In the second place, the amendment is so phrased that any person handicapped in linguist ability and understanding of the meaning of words, and the Office of Federal Contract Compliance, the EEOC, and the Secretary of Labor will have a law couched in phraseology which all of them can understand—and surely we ought to try to bring about simplicity of statements in the laws of the United States, and have those laws couched in terms such as the Members of Congress and those charged with preventing discrimination in employment can all understand alike. That is the objective of this amendment.

In its original form, the amendment had a criminal sanction for enforcement; but on reflection, the Senator from Alabama (Mr. ALLEN) and the Senator from North Carolina came to the conclusion that it would be a rather harsh remedy to make men criminals because their understanding of English language differs from the understanding of Congress, which enacts laws in the English language. So the distinguished Senator from Alabama and the Senator from North Carolina modified their amendments so as to establish a different sanction for this amendment, and that sanction is the rather general sanction of giving any employer who is required to practice discrimination in reverse or any employee who is denied a job because of discrimination in reverse, access to the courts. The courts can then exercise their general powers of equity and compel the Office of Contract Compliance and the EEOC to obey the acts of Congress according to the plain intent of Congress. All these objectives will be achieved by the adoption of this amendment.

Frankly, I find, as I travel to and fro among the people of this land, that people cannot understand why the Federal Government orders employers to practice discrimination in employment while they are supposed to be preventing discrimination in employment. As I observe the activities of the departments, agencies, or offices which are charged with preventing discrimination in employment, I am reminded of one of Aesop's fables, the one about the man who got lost in the woods on a very cold evening.

The man could not find his way out of the woods. He met a satyr. The satyr told the man he would take him to the satyr's home and entertain him overnight, and thus offer the man an opportunity to find his way out of the dense woods to the man's home in the daylight of the following morning.

When the satyr was accompanying the man to the satyr's home, the man's hands were so cold that he blew on his hands, and the satyr asked the man, "Why are you blowing on your hands?" The man said, "I am blowing on my hands to keep them warm."

After the satyr and the man got to the satyr's habitation, the satyr prepared an evening meal, which consisted in the main of hot porridge. The porridge was particularly hot, and the man blew his breath on his porridge.

The satyr asked, "Why are you blowing your breath on the porridge?"

The man replied, "I am blowing my breath on the porridge to make the porridge cold."

The satyr said, "Out with you. I will have nothing to do with a man who blows hot and cold with the same breath."

That is precisely what the Office of Federal Contract Compliance of the Department of Labor and the EEOC have been doing in their alleged efforts to enforce Executive Order 11246 and title VII of the Civil Rights Act of 1964, respectively, which prohibit discrimination in employment on account of race, religion, national origin, or sex. These authorities, in case after case, have entered orders requiring employers to practice discrimination in reverse by employing persons of a particular race or a particular religion or a particular national origin or a particular sex, either in fixed or variable numbers, proportions, percentages, quotas, goals, or ranges. I do not believe you can enforce laws against discrimination in employment by commanding and requiring discrimination in employment. The two concepts are irreconcilable and repugnant to each other.

So I appeal to every Member of the Senate who does not think that the Office of Federal Contract Compliance and the EEOC should be permitted to blow hot and cold with the same breath to support this particular amendment.

Mr. President, I reserve the remainder, if any, of the time in support of this amendment.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. On whose time?

Mr. WILLIAMS. It will be on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, will the Senator consent to the withdrawing of his order for a moment? I just want to ask that the section of the Civil Rights Act of 1964 that I referred to be printed in the RECORD.

Mr. WILLIAMS. 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. ERVIN. I yield myself such time as I may use at this moment.

Mr. President, I ask unanimous consent that subsection (j) of section 703 of title VII of the Civil Rights Act of 1964 be printed in the RECORD at this point.

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

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

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

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

Mr. JAVITS. Mr. President, the amendment which is before us——

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. JAVITS. Will the Senator from New Jersey yield me 10 minutes?

Mr. WILLIAMS. Such time as the Senator requires, yes.

Mr. JAVITS. Mr. President, the amendment which is before us affects both the problem of dealing with Government contractors in the Office of Contract Compliance, to which we have voted in the Department of Labor, and with remedies available under title 7. This amendment seeks to set a standard by which remedies shall be determined on the part of the United States.

Now, all we see in the wording of the amendment which is largely contained in its first sentence, is the tip of the iceberg because what this first sentence purports to restrain is a department, agency, or officer of the United States. But a department, agency, or officer of the United States may move respecting a given situation for or upon the order of the court. We do not have to specify in this amendment that it applies to the seeking or enforcing orders of a court because a court usually does not itself require anything of an employer but acts on motion of an officer or employee of the United States. Therefore, the depth of this amendment is much greater than is apparent on the surface because it would purport not only to inhibit in given respects the officers of the United States but also the courts of the United States through whom, once they make a finding or a judgment, the officers of the United States are moved.

I make that analysis because it is clear that what is sought to be reached is, first the Philadelphia plan and similar plans in other cities, and beyond that, the whole concept of "affirmative action" as it has been developed under Executive Order 11246 and as a remedial concept under Title VII.

Philadelphia-type plans are based on the Federal Government's power to require its own contractors or contractors on projects to which it contributes—for example, State projects with a Federal contribution—to take affirmative action to enlarge the labor pool to the maximum extent by promoting full utilization of minority-group employees, and by making certain requirements for those who hire to seek out minority employees as well as majority employees and also to correct discrimination on its face which has persisted over a long period of time. The courts have sustained such requirements. The Philadelphia plan itself was sustained by the Court of Appeals for the Third Circuit in the case of *Contractors Association of Eastern Pennsylvania* v. *the Secretary of Labor*, 442 F. 2d 159. Certiorari was recently denied by the Supreme Court. The basis of sustaining it was really upon two critical points: First, the Government, as part of its procurement function, has the right to encourage full utilization of all minority-group employees as a method of insuring the availability of a broad manpower pool to support procurement efforts, and second, the plan was upheld as a proper way to remedy past discrimination in the six building trades covered by the plan.

Thus, with respect to procurement, the court—I am reading from page 171 of 442 Fed. 2d, if anyone is following the actual decision—stated:

In direct procurement the federal government has a vital interest in assuring that the largest possible pool of qualified manpower be available for the accomplishment of its projects.

Therefore, it was held that the Philadelphia plan requirement that construction contractors agree to use good-faith efforts to meet goals pertaining to the employment of minority-group employees in certain trades was entirely appropriate in terms of authority by the Federal Government.

The court also held that there was nothing inconsistent between the Philadelphia plan and section 703(j) of title VII of the Civil Rights Act because the Philadelphia plan was issued under an Executive order, rather than title VII of the Civil Rights Act, and that section 703(j) was a limitation only on title VII. The decision also implied that the words of the Civil Rights Act themselves apply to the matter of setting quotas for correction of imbalance in the percentage of people in any race, in comparison to the percentage in the available work

force in the area, whereas the Philadelphia plan was applicable to the available work force in certain specific trades.

Finally, the court also held that the Civil Rights Act of 1964 does not prohibit specific relief requiring an employer to be "color conscious" to remedy the effects of past discrimination.

The court, on page 173, held:

Clearly the Philadelphia Plan is color-conscious. Indeed the only meaning which can be attributed to the "affirmative action" language which since March of 1961 has been included in successive Executive Orders is that Government contractors must be color-conscious. Since 1941 the Executive Order program has recognized that discriminatory practices exclude available minority manpower from the labor pool. In other contexts color-consciousness has been deemed to be an appropriate remedial posture. Porcelli v. Titus, 302 F. Supp. 726 (D.N.J. 1969), aff'd, 431 F.2d 1254 (3d Cir. 1970); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 980, 931 (2d Cir. 1968); Offermann v. Nitkowski, 378 F.2d 22, 24 (2d Cir. 1967). It has been said respecting Title VII that "Congress did not intend to freeze an entire generation of Negro employees into discriminatory patterns that existed before the Act." Quarles v. Philip Morris, Inc., *supra*, 279 F. Supp. at 514. The *Quarles* case rejected the contention that existing, nondiscriminatory seniority arrangements were so sanctified by Title VII that the effects of past discrimination in job assignments could not be overcome. We object the contention that Title VII prevents the President acting through the Executive Order program from attempting to remedy the absence from the Philadelphia construction labor of minority tradesmen in key trades.

Therefore, that the Government had a right, under the Philadelphia plan, to order affirmative action which would overcome that past discrimination without transgressing the Civil Rights Act of 1964.

The court sealed that in on page 177 of the opinion, which states:

The Philadelphia Plan is valid Executive action designed to remedy the perceived evil that minority tradesmen have not been included in the labor pool available for the performance of construction projects in which the federal government has a cost and performance interest. The Fifth Amendment does not prohibit such action.

So, Mr. President, the courts have rejected much of the argument that we should—what in effect this amendment does—preclude preferential treatment under any and all circumstances, because it runs afoul of section 703(j).

I would also like to cite in that regard the opinion in the *United States* v. *Ironworkers Local No. 86,* 443 F.2d 544, decided in the Ninth Circuit Court of Appeals as recently as May of 1971, in which the court held, in a title VII "pattern or practice" case, that there was an affirmative duty for minority recruitment where it was shown that there was past discrimination which now required correction, and that the court could order that correction affirmatively without violating section 703(j) relating to preferential treatment of individuals of any group, and so forth, where there had been illegality. The court would not allow a respondent to profit from his own illegality under cover of section 703(j).

Now, Mr. President, I am told, and I believe the information to be reliable, that under the decision made last week by Judge Bonsal in New York, in the Steamfitters case, an affirmative order was actually entered requiring a union local to take in a given number of minority-group apprentices.

What this amendment seeks to do is to undo the Philadelphia plan and those court decisions. Incidentally, I take great pride in the fact that when the legality of the Philadelphia plan was argued here, and we had an opinion of the Attorney General which held it lawful pitted against an opinion of the Comptroller General's Office which held it unlawful, I think I was the principal Senator who sustained the doctrine of legality. And I am very grateful, naturally, that the courts took that view.

So, here I believe that the amendment does two things, both of which should be equally rejected.

First, it would undercut the whole concept of affirmative action as developed under Executive Order 11246 and thus preclude Philadelphia-type plans.

Second, the amendment, in addition to the dismantling the Executive order program, would deprive the courts of the opportunity to order affirmative action under title VII of the type which they have sustained in order to correct a history of unjust and illegal discrimination in employment and thereby further dismantle the effort to correct these injustices.

So, for both reasons, Mr. President, I believe that the amendment should be rejected, and I hope very much that the Senate will do that.

Mr. President, I ask unanimous consent that the two opinions which I have cited in this discussion be printed in the RECORD.

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

CONTRACTORS ASSOCIATION OF EASTERN PENNSYLVANIA VERSUS SECRETARY OF LABOR

(The Contractors Association of Eastern Pennsylvania v. The Secretary of Labor, George P. Shultz, the Assistant Secretary of Labor, Arthur A. Fletcher, the Director, Office of Federal Contract Compliance, John L. Wilks, the Secretary of Agriculture, Clifford M. Hardin, and the General State Authority of the Commonwealth of Pennsylvania.)

(James D. Morrissey, Inc., the Conduit & Foundation Corp., Glasgow, Inc., Buckley & Company, the Nyleve Company, Erb Engineering & Constr. Co., Perkins, Kanak, Foster, Inc., and Lansdowne Constructors, Inc. (Intervening Plaintiffs in D.C.).)

(The Contractors Association of Eastern Pennsylvania, James D. Morrissey, Inc., the Conduit & Foundation Corp., Glasgow Inc., Buckley & Company, the Nyleve Company, Erb Engineering & Constr. Co., Perkins, Kanak, Foster, Inc. and Lansdowne Constructors, Inc., Appellants.)

(No. 19027. United States Court of Appeals, Third Circuit. Argued March 1, 1971. Decided April 22, 1971.)

Action by contractors' association and individual contractors against various state and federal officials challenging validity of the Philadelphia Plan. The United States District Court for the Eastern District of Pennsylvania, Charles R. Weiner, J., 311 F.Supp. 1002, entered order denying plaintiffs' motion for summary judgment and granting motion of federal defendants for summary judgment and the plaintiffs appealed. The Court of Appeals, Gibbons, Circuit Judge, held that Executive Order promulgating Philadelphia Plan relating to minority hiring in federally assisted construction projects in five-county area and including as a precondition to federal assistance the bidder's submission of an affirmative program containing goals within the range set for minority hiring was valid as being within the implied authority of President and his designees and was not prohibited by any congressional enactment.

Affirmed.

1. Administrative Law and Procedure—668: Civil Rights—13: Contractor plaintiffs, who as bidders on federally assisted project were directly affected by requirement of Philadelphia Plan pertaining to the hiring of minority persons in federally assisted construction projects requiring, among other things, the inclusion in each bid of a commitment by bidder to an affirmative action program containing goals falling within specified ranges on minority hiring, had standing to bring action challenging validity of Plan. Executive Order Nos. 11246, § 202(1), 11478, 42 U.S.C.A. § 2000e note; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

2. States—4.12: If Philadelphia Plan relating to the hiring of minority persons in federally assisted construction projects was adopted pursuant to valid exercise of presidential powers, its provisions would prevail over local Pennsylvania statutes. Executive Order Nos. 11246, § 202(1), 11478, 42 U.S.C.A. § 2000e note; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 200e et seq.

3. United States—82: When Congress authorizes an appropriation for program of federal assistance and authorizes executive branch to implement program by arranging for assistance to specific project, in absence of specific statutory regulations it must be deemed that Congress granted to President a general authority to act for protection of federal interests.

4. United States—82: Executive order promulgating Philadelphia Plan relating to minority hiring in federally assisted construction projects in five-county area and including as a precondition to federal assistance the bidder's submission of an affirmative program containing goals within the range set for minority hiring was valid as being within the implied authority of President and his designees and was not prohibited by any congressional enactment. Executive Order Nos. 11246, § 202(1), 11478, 42 U.S.C.A. § 2000e note; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

5. Civil Rights—2: Express reference in Civil Rights Act of 1964 to executive orders relating to fair employment practices for government contractors indicates that Congress contemplated continuance of the executive order program and the remedies established by that Act are not exclusive. Civil Rights Act of 1964, §§ 701 et seq., 703(j), 709(d), 42 U.S.C.A. §§ 2000e et seq., 2000e–2(j), 2000e–8(d).

6. Civil Rights—3: While Congress has not prohibited presidential action in area of employment on federal or federally assisted contracts, President is bound by the express prohibitions of title of Civil Rights Act of 1964 dealing with discrimination in employment. Civil Rights Act of 1964, §§ 701 et seq., 703(j), 709(d), 42 U.S.C.A. §§ 2000e et seq., 2000e–2(j), 2000e–8(d).

7. Civil Rights—2: Civil Rights Act of 1964 provision stating that nothing should be interpreted to require any employer or labor organization to grant preferential treatment to any individual or group because of race is a limitation only upon that title of Act dealing comprehensively with discrimination in employment and not upon any other remedies, state or federal. Civil Rights Act of 1964, § 703(j), 42 U.S.C.A. § 2000e–2(j).

8. Civil Rights—2: Provision of Civil Rights Act of 1964 to effect that it shall not

be unlawful employment practice for employer to use different conditions and standards of compensation in any employment pursuant to bona fide seniority or merit system is a limitation only upon that title of Act comprehensively dealing with discrimination in employment and not upon any other remedies. Civil Rights Act of 1964, § 703(h), 42 U.S.C.A. § 2000e–2(h).

9. Civil Rights—2, 3: Civil Rights Act of 1964 provision making it unlawful employment practice for employer to fail or refuse to hire any individual because of race or classify employees in any way which would deprive any individual of opportunity because of race discloses no intention of Congress to freeze the status quo and to foreclose remedial action under other authority designed to overcome existing evil, and section does not preclude Philadelphia Plan relating to the hiring of minority in specified five-county area with respect to federally assisted construction programs. Executive Order Nos. 11246, § 202(1), 11478, 42 U.S.C.A. 2000e note; Civil Rights Act of 1964, § 703 (a), 42 U.S.C.A. § 2000e–2(a).

10. Civil Rights—2: General prohibition against discrimination in any program or actvity receiving federal financial assistance contained in Civil Rights Act of 1964 cannot be construed as limiting executive authority in defining appropriate affirmative action on part of a government contractor. Civil Rights Act of 1964, §§ 601 et seq., 604, 701 et seq., 42 U.S.C.A. §§ 2000d et seq., 2000d–3, 2000e et seq.

11. Labor Relations—251: While hiring hall arrangements are permitted by federal law, they are not required. National Labor Relations Act, § 8(f) as amended 29 U.S.C.A. § 158(f).

12. Civil Rights—3: Since Philadelphia Plan relating to hiring of minorities in certain construction trades within five-county area on federally assisted construction projects violate neither Constitution nor federal law, fact that is contractual provision with relation to hiring of minority members for enumerated construction trades might be at variance with other exclusive hiring hall agreements by contractors was legally irrelevant. National Labor Relations Act, § 8(f) as amended 29 U.S.C.A. § 158(f).

13. Civil Rights—3: Absence of a judicial finding of past discrimination was irrelevant to authority to promulgate Philadelphia Plan regarding the hiring of minority workers in specified construction trades for work on federally assisted construction contracts in five-county area. Civil Rights Act of 1964, §§ 701 et seq., 706(g), 42 U.S.C.A. §§ 2000e et seq., 2000e–5(g).

14. Administrative Law and Procedure—303, 413, 701: Administrative action pursuant to Executive Order is invalid and subject to judicial review if beyond scope of Executive Order, but court should give more than ordinary deference to an administrative agency's interpretation of Executive Order or regulation which it is charged to administer.

15. Administrative Law and Procedure—413: Civil Rights—3: Where Attorney General issued an opinion that the Philadelphia Plan with regard to hiring of minority workers in federally assisted construction projects was valid and the President had continued to acquiesce in interpretation of Executive Order by his designee, the Labor Department interpretation of order that the affirmative action required more than mere policing against actual present discrimination and action looking toward employment of specific member of minority trades must be deferred to by courts. Executive Order No. 11246, §§ 201, 202, 42 U.S.C.A. § 2000e note.

16. Civil Rights—3: Orders implementing Executive Order regarding hiring of minority tradesmen in federally assisted construction projects in the five-county area were not invalid because signed by the assistant secretary rather than by the Secretary of Labor, Executive Order No. 11246, § 401, 42 U.S.C.A. § 2000e note.

17. Constitutional Law—275(2): Philadelphia Plan regarding hiring of minority tradesmen in a five-county area for federally assisted construction programs does not violate due process clause of Fifth Amendment on ground that it imposes on contractor contradictory duties which are impossible of attainment, that plan is arbitrary and Capricious by administrative action singling out contractors in five-county Philadelphia area and that the goals specified by Plan were racial quotas prohibited by the equal protection aspect of Fifth Amendment. Executive Order Nos. 11246, § 202(1), 11478, 42 U.S.C.A. § 2000e note; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; U.S.C.A. Const. Amend. 5.

18. Administrative Law and Procedure—470; Civil Rights—3: Public hearings after notice were appropriate means for the Department of Labor to obtain information needed for informed judgment regarding orders to be issued to implement Philadelphia Plan relating to the hiring of minority tradesmen in federally assisted construction contracts. Executive Order No. 11246, § 204, 42 U.S.C.A. § 2000e note.

19. Civil Rights—3: Data in order of Department of Labor implementing Philadelphia Plan as to percentages of utilization of minority tradesmen in the six trades compared with the ability of such tradesmen in the five-county area justified issuance of order regarding minority hiring of tradesmen in federally assisted construction projects without regard to a finding as to cause of situation. Executive Order No. 11246, § 204, 42 U.S.C.A. § 2000e note.

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Before Hastie, Chief Judge, and McLaughlin and Gibbons, Circuit Judges.

OPINION OF THE COURT

Gibbons, Circuit Judge.

The original plaintiff, the Contractors Association of Eastern Pennsylvania (the Association) and the intervening plaintiffs,[1] construction contractors doing business in the Philadelphia area (the Contractors), appeal from an order of the district court which denied their motion for summary judgment, granted the motion of the federal defendants[2] to dismiss the Association complaint for lack of standing, and granted the cross-motion of the federal defendants for summary judgment.[3] When deciding these motions, the district court had before it the Association's verified complaint, a substantially identical complaint of the Contractors, the affidavits of Vincent G. Macaluso and Ward McCreedy on behalf of the federal defendants which identified certain relevant documents, a stipulation by the parties as to certain facts, and two affidavits of Howard G. Minckler on behalf of the plaintiffs.

The complaint challenges the validity of the Philadelphia Plan, promulgated by the federal defendants under the authority of Executive Order No. 11246.[4] That Plan is embodied in two orders issued by officials of the United States Department of Labor, dated June 27, 1969 and September 23, 1969, respectively. Copies of these orders were annexed to the verified complaint as exhibits 1 and 2, respectively, and to the Macaluso affidavit as appendices B and C respectively. In summary, they require that bidders on any federal or federally assisted construction contracts for projects in a five-county area around Philadelphia,[5] the estimated total cost of which exceeds $500,000, shall submit an acceptable affirmative action program which includes specific goals for the utilization of minority manpower in six skilled crafts: ironworkers, plumbers and pipefitters, steamfitters, sheetmetal workers, electrical workers, and elevator construction workers.

Executive Order No. 11246 requires all applicants for federal assistance to include in their construction contracts specific provisions respecting fair employment practices, including the provision:

"The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin."[6]

The Executive Order empowers the Secretary of Labor to issue rules and regulations necessary and appropriate to achieve its purpose. On June 27, 1969 Assistant Secretary of Labor Fletcher issued an order implementing the Executive Order in the five-county Philadelphia area. The order required bidders, prior to the award of contracts, to submit "acceptable affirmative action" programs "which shall include specific goals of minority manpower utilization." The order contained a finding that enforcement of the "affirmative action" requirement of Executive Order No. 11246 had posed special problems in the construction trades.[7] Contractors and subcontractors must hire a new employee complement for each job, and they rely on craft unions as their prime or sole source for labor. The craft unions operate hiring halls. "Because of the exclusionary practices of labor organizations," the order finds "there traditionally has been only a small number of Negroes employed in these seven trades."[8]

The June 27, 1969 order provided that the Area Coordinator of the Office of Federal Contract Compliance, in conjunction with the federal contracting and administering agencies in the Philadelphia area, would determine definite standards for specific goals in a contractor's affirmative action program. After such standards were determined, each bidder would be required to commit itself to specific goals for minority manpower utilization. The order set forth factors to be considered in determining definite standards, including:

"(1) The current extent of minority group participation in the trade.

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Footnotes at end of article.

"(2) The availability of minority group persons for employment in such trade.

"(3) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.

"(4) The impact of the program upon the existing labor force."

Acting pursuant to the June 29, 1969 order, representatives of the Department of Labor held public hearings in Philadelphia on August 26, 27 and 28, 1969. On September 23, 1969, Assistant Secretary Fletcher made findings with respect to each of the listed factors and ordered that the following ranges be established as the standards for minority manpower utilization for each of the designated trades in the Philadelphia area for the following four years:

[In percent]

| Identification of trade | Range of minority group employment | | | |
|---|---|---|---|---|
| | Until Dec. 31, 1970 | for 1971 | for 1972 | for 1973 |
| Ironworkers | 5-9 | 11-15 | 16-20 | 22-26 |
| Plumbers and pipefitters | 5-8 | 10-14 | 15-19 | 20-24 |
| Steamfitters | 5-8 | 11-15 | 15-19 | 20-24 |
| Sheetmetal workers | 4-8 | 9-13 | 14-18 | 19-23 |
| Electrical workers | 4-8 | 9-13- | 14-18 | 19-23 |
| Elevator construction workers | 4-8 | 9-13 | 14-18 | 19-23 |

The order of September 23, 1969 specified that on each invitation to bid each bidder would be required to submit an affirmative action program. The order further provided:

"4. No bidder will be awarded a contract unless his affirmative action program contains goals falling within the range set forth * * * above * * *

* * * * *

6. The purpose of the contractor's commitment to specific goals as to minority manpower utilization is to meet his affirmative action obligations under the equal opportunity clause of the contract. This commitment is not intended and shall not be used to discriminate against any qualified applicant or employee. Whenever it comes to the bidder's attention that the goals are being used in a discriminatory manner, he must report it to the Area Coordinator of the Office of Federal Contract Compliance of the U.S. Department of Labor in order that appropriate sanction proceedings may be instituted.

* * * * *

8. The bidder agrees to keep such records and file such reports relating to the provisions of this order as shall be required by the contracting or administering agency."

In November, 1969, the General State Authority of the Commonwealth of Pennsylvania issued invitations to bid for the construction of an earth dam on Marsh Creek in Chester County, Pennsylvania. Although this dam is a Commonwealth project, part of the construction cost, estimated at over $3,000,000 is to be funded by federal monies under a program administered by the Department of Agriculture.[9] The Secretary of Agriculture, one of the federal defendants, as a condition for payment of federal financial assistance for the project, required the inclusion in each bid of a Philadelphia Plan Commitment in compliance with the order of September 23, 1969. On November 14, 1969, the General State Authority issued an addendum to the original invitation for bids requiring all bidders to include such a commitment in their bids. It is alleged and not denied that except for the requirement by the Secretary of Agriculture that the Philadelphia Plan Commitment be included, the General State Authority would not have imposed such a requirement on bidders.

The Association consists of more than eighty contractors in the five-county Philadelphia area who regularly employ workers in the six specified crafts, and who collectively perform more than $150,000,000 of federal and federally assisted construction in that area annually. Each of the contractor plaintiffs is a regular bidder on federal and federally assisted construction projects. The complaint was filed prior to the opening of bids on the Marsh Creek dam. It sought injunctive relief against the inclusion of a Philadelphia Plan Commitment requirement in the invitation for bids. By virtue of a stipulation that the General State Authority would issue a new and superseding invitation for bids if the district court held the Plan to be unlawful, the parties agreed that bids could be received without affecting the justiciability of the controversy. Bids were received on January 7, 1970. One of the intervening contractor plaintiffs submitted a low bid and appeared at the time of the district court decision to be entitled to an award of the contract.

The complaints of the Association and the Contractors refer to the fact that the Comptroller General of the United States has opined that the Philadelphia Plan Commitment is illegal and that disbursement of federal funds for the performance of a contract containing such a promise will be treated as unlawful.[10] The plaintiffs point out that the withholding of funds after a contractor has commenced performance would have catastrophic consequences, since contractors depend upon progress payments, and are in no position to complete their contracts without such payments. They allege that the Philadelphia Plan is illegal and void for the following reasons:

1. It is action by the Executive branch not authorized by the constitution or any statute and beyond Executive power.

2. It is inconsistent with Title VII of the Civil Rights Act of 1964.[11]

3. It is inconsistent with Title VI of the Civil Rights Act of 1964.[12]

4. It is inconsistent with the National Labor Relations Act.[13]

5. It is substantively inconsistent with and was not adopted in procedural accordance with Executive Order No. 11246.

6. It violates due process because

(a) it requires contradictory conduct impossible of consistent attainment;

(b) it unreasonably requires contractors to undertake to remedy an evil for which the craft unions, not they, are responsible;

(c) it arbitrarily and without basis in fact singles out the five-county Philadelphia area for discriminatory treatment without adequate basis in fact or law; and

(d) it requires quota hiring in violation of the Fifth Amendment.

The federal defendants moved both to dismiss the complaint under Rule 12(b)(1), Fed.R.Civ.P. and for summary judgment under Rule 56(b), Fed.R.Civ.P. They asserted that the plaintiff's lacked standing and that they were entitled to judgment as a matter of law. The plaintiffs moved for summary judgment.The district court held that the Association lacked standing to maintain the suit, that the Contractors had such standing, and that the Plan was valid, 311 F.Supp. 1002. It granted summary judgment for the federal defendants, and the plaintiffs appeal.

*Standing*

[1] The district court's holding that the Association lacked standing to sue was handed down prior to that of the Supreme Court in Association of Data Processing. Service Organizations, Inc. v. Camp, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970), and in the light of that decision and the more recent decision in Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971), is at least doubtful. We need not reach this issue, however, since the Contractor plaintiffs who as bidders are directly impacted by the requirement that they agree in their bid to comply with the Plan, clearly have standing. Abbott Laboratories v. Gardner, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). All plaintiffs have been represented by the same attorney, and the presence or absence of the Association as a plaintiff has no practical significance.

*Executive power*

[2] The plaintiffs contend that the Philadelphia Plan is social legislation of local application enacted by the Executive without the benefit of statutory or constitutional authority. They point out, probably correctly, that the Plan imposes on the successful bidder on a project of the Commonwealth of Pennsylvania record keeping and hiring practices which violate Pennsylvania law.[14] If the Plan was adopted pursuant to a valid exercise of presidential power its provisions would, of course, control over local law. See United States v. City of Chester, 144 F.2d 415, 420 (3d Cir. 1944); cf. United States v. Allegheny County, 322 U.S. 174, 183, 64 S.Ct. 908, 88 L.Ed. 1209 (1944); Panhandle Oil Co. v. State of Mississippi ex rel. Knox, 277 U.S. 218, 221, 48 S.Ct. 451, 72 L.Ed. 857 (1928). But, say the plaintiffs, where there is neither statutory authorization nor constitutional authority for the Executive action, no substantive federal requirements may be imposed upon a contract between the Commonwealth and its contractor.

The district court's answer is that the federal government "has the unrestricted power to fix the terms, conditions and those with whom it will deal."[15] For this proposition it cites Perkins v. Lukens Steel Co., 310 U.S. 113, 60 S.Ct. 869, 84 L.Ed. 1108 (1940) and King v. Smith, 392 U.S. 309, 333, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968). Neither case is in point, however on the issue of Executive as distinguished from federal power. King v. Smith held that the Alabama substitute father regulation was inconsistent with the Social Security Act, 42 U.S.C. § 606(a), and points out that the federal government may impose the terms and conditions upon which its money allotments may be disbursed. The conditions referred to were imposed by Congress, not by the Executive branch. Perkins v. Lukens Steel Co. interprets the Public Contracts Act of June 30, 1936[16] which requires that sellers to the federal government pay prevailing minimum wages. It holds that an administrative determination of prevailing wages in a given industry made by the Secretary of Labor is not subject to judicial review on behalf of a potential seller.[17] The opinion contains the language:

"Like private individuals and businesses, the Government enjoys the unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases."[18]

The quoted language refers to federal power exercised pursuant to a statutory mandate. The case is not in point on the issue of Executive power absent such a mandate.

The federal defendants and several amici[19] contend that Executive power to impose fair employment conditions incident to the power to contract has been upheld in this circut and in the Fifth Circuit. They cite Farmer v. Philadelphia Electric Company, 329 F.2d 3 (3d Cir. 1964) and Farkas v. Texas Instrument, Inc., 375 F.2d 629 (5th Cir.), cert. denied, 389 U.S. 977, 88 S.Ct. 480, 19 L. Ed. 2d 471 (1967). Both cases discussed the Executive Order program for achieving fair employment in the context of Government contracts rather than federally assisted state contracts, and both assumed the validity of the Executive Order then applicable.[20] Both cases held that even assuming the validity of the Executive Order, it did

Footnotes at end of article.

not give rise to a private cause of action for damages by a party subjected to discrimination. Discussion of the validity of the Executive Order was in each case dictum. Moreover, both *Farmer* and *Farkas* refer to 40 U.S.C. § 486(a) as the source of the Executive power to issue the order. That subsection authorizes the President to prescribe such policies and directives as he deems necessary to effectuate the provisions of Chapter 10 of Title 40 [21] and Chapter 4 of Title 41.[22] These chapters deal with procurement of Government property and services, not with federal assistance programs. Thus even if *Farmer* and *Farkas* were holdings rather than dicta as to Executive power, the holdings would not reach the instant case. The validity of the Executive Order program as applied to the construction industry in state government contracts by virtue of federal assistance has not been litigated, so far as we have been able to determine, in any case reaching the courts of appeals.[23] Certainly no case has arisen which considers Executive power to impose, by virtue of federal assistance, contract terms in a state construction contract which are at variance with state law.

The limitations of Executive power have rarely been considered by the courts. One of those rare instances is Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952). From the six concurring opinions and one dissenting opinion in that case, the most significant guidance for present purposes may be found in that of Justice Jackson:

"We may well begin by a somewhat oversimplified grouping of practical situations in which a President may doubt, or others may challenge, his powers, and by distinguishing roughly the legal consequences of this factor of relativity.

"1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth) to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power. A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily on any who might attack it.

"2. When the President acts in absence in either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

"3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system." [24]

Footnotes at end of article.

Plaintiffs contend that the Philadelphia Plan is inconsistent with the will of Congress expressed in several statutes. We deal with these statutory contentions hereinafter. Thus for the moment we may set to one side consideration of Justice Jackson's third category, and turn to category (1), action expressly or impliedly authorized, and category (2), action in which the President has implied power to act in the absence of congressional preemption. To determine into which category the Philadelphia Plan falls a review of Executive Orders in the field of fair employment practices is helpful.

The first such order, Executive Order No. 8802,[25] was signed by President Roosevelt on June 25, 1941. It established in the Office of Production Management a Committee on Fair Employment Practice, and it required that all Government contracting agencies include in all defense contracts a covenant not to discriminate against any worker because of race, creed, color, or national origin. The order contained no specific statutory reference, and describes the action "as a prerequisite to the successful conduct of our national defense production effort." In December 1941 Congress enacted "An Act to expedite the prosecution of the war effort," [26] and on December 27, 1971, pursuant to that Act the President issued Executive Order No. 9001 [27] which granted to the War and Navy Departments and the Maritime Commission broad contract authority. This order among other provisions stated that a non-discrimination clause would be deemed incorporated by reference in all such contracts. On May 27, 1943, Executive Order No. 8802 was amended by Executive Order No. 9346 [28] which established in the Office for Emergency Management of the Executive Office of the President a Committee on Fair Employment Practice. This order required the antidiscrimination clause in all government contracts rather than in defense contracts only. Still, the order was quite clearly bottomed on the President's war mobilization powers and was by its terms directed toward enhancing the pool of workers available for defense production.

On December 18, 1945, President Truman signed Executive Order No. 9664,[29] which continued the Committee established by Executive Orders Nos. 8802 and 9346 "for the periods and subject to the conditions stated in the National War Agencies Appropriation Act, 1946 (Public Law 156, 79th Cong., 1st Sess., approved July 17, 1945)." On February 2, 1951, the President signed Executive Order No. 10210,[30] which transferred to the Department of Defense the contracting powers referred to in Executive Order No. 9001. The order continued the provision that a non-discrimination clause would be deemed incorporated by reference in all defense contracts. It referenced the First War Powers Act, 1941 as amended. By a subsequent series of Executive Orders, Executive Order No. 10210 was extended to other Government agencies engaged in defense related procurement.[31] On December 3, 1951 the President signed Executive Order No. 10308,[32] creating the Committee on Government Contract Compliance, which was charged with the duty of obtaining compliance with the nondiscrimination contract provisions. The statutory authorities referenced in Executive Order No. 10308 are the Defense Production Act of 1950 [33] and 31 U.S.C. § 691.[34] Reference to the Defense Production Act of 1950 shows that the President was still acting, pursuant to his national defense powers, to assure maximum utilization of available manpower.

President Eisenhower on August 13, 1953, by Executive Order No. 10479 [35] revoked Executive Order No. 10308 and transferred the compliance functions of the Committee on Government Contract Compliance to the Government Contract Committee.[36] In this order for the first time there is no mention of defense production. For the first time the Committee is authorized to receive complaints of violations,[37] and to conduct activities not directly related to federal procurement.[38] On September 3, 1954, by Executive Order No. 10557 [39] the required form of Government contract provision was revised. The new provision was much more specific, required the imposition of the contractor's obligation on his subcontractors, and required the posting of appropriate notices. The Eisenhower orders, while they did not refer to defense production and did authorize the Compliance Committee to encourage nondiscrimination outside the field of Government contracts, were still restricted in direct application to federal government procurement.

While the orders do not contain any specific statutory reference other than the appropriations statute, 31 U.S.C. § 690, they would seem to be authorized by the broad grant of procurement authority with respect to Titles 40 and 41.[40] No less than in the case of defense procurement it is in the interest of the United States in all procurement to see that its suppliers are not over the long run increasing its costs and delaying its programs by excluding from the labor pool available minority workmen. In the area of Government procurement Executive authority to impose non-discrimination contract provisions falls in Justice Jackson's first category: action pursuant to the express or implied authorization of Congress.

Executive Order No. 10925 [41] signed by President Kennedy on March 6, 1961, among other things enlarged the notice requirements and specified that the President's Committee on Equal Employment Opportunity could by rule, regulation or order impose sanctions for violation. Coverage still extended only to federal government contracts. Significantly for purposes of this case, however, the required contract language was amended to add the provision:

"The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." [42]

The Philadelphia Plan is simply a refined approach to this "affirmative action" mandate. Applied to federal procurement the affirmative action clause is supported by the same Presidential procurement authority that supports the non-discrimination clause generally.

The most significant change in the Executvie Order program for present purposes occurred on June 22, 1963 when the President signed Executive Order No. 11114,[43] which amended Executive Order No. 10925 by providing that the same non-discrimination contract provisions heretofore required in all federal procurement contracts must also be included in all federally assisted construction contracts. By way of Executive Order No. 11246 [44] issued in 1965, President Johnson transferred to the Secretary of Labor the functions formerly specified in Executive Order Nos. 10925 and 11114, and he continued both the affirmative action requirement and the coverage of federally assisted construction contracts.

[3, 4] While all federal procurement contracts must include an affirmative action covenant,[45] the coverage on federally assisted contracts has been extended to construction contracts only. This choice is significant, for it demonstrates that the Presidents were not attempting by the Executive Order program merely to impose their notions of desirable social legislation on the states wholesale. Rather, they acted in the one area in which discrimination in employment was most likely to affect the cost and the progress of projects in which the federal government had both financial and completion interests.

In direct procurement the federal government has a vital interest in assuring that

the largest possible pool of qualified manpower be available for the accomplishment of its projects. It has the identical interest with respect to federally assisted construction projects. When the Congress authorizes an appropriation for a program of federal assistance, and authorizes the Executive branch to implement the program by arranging for assistance to specific projects, in the absence of specific statutory regulations it must be deemed to have granted to the President a general authority to act for the protection of federal interests.

In the case of Executive Order Nos. 11246 and 11114 three Presidents have acted by analogizing federally assisted construction to direct federal procurement. If such action has not been authorized by Congress (Justice Jackson's first category), at the least it falls within the second category. If no congressional enactments prohibit what has been done, the Executive action is valid. Particularly is this so when Congress, aware of Presidential action with respect to federally assisted construction projects since June of 1963, has continued to make appropriations for such projects. We conclude, therefore, that unless the Philadelphia Plan is prohibited by some other congressional enactment, its inclusion as a pre-condition for federal assistance was within the implied authority of the President and his designees. We turn, then to a consideration of the statutes on which plaintiffs rely.

*The Civil Rights Act of 1964*

[5] Plaintiffs suggest that by enacting Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., which deals comprehensively with discrimination in employment, Congress occupied the field. The express reference in that statute to Executive Order No. 10925 or any other Executive Order prescribing fair employment practices for Government contractors, 42 U.S.C. § 2000e–8 (d), indicates, however, that Congress contemplated continuance of the Executive Order program. Moreover we have held that the remedies established by Title VII are not exclusive. Young v. International Telephone & Telegraph Co., 438 F. 2d 757 (3d Cir. 1971).

[6, 7] But while Congress has not prohibited Presidential action in the area of fair employment on federal or federally assisted contracts, the Executive is bound by the express prohibitions of Title VII. The argument most strenuously advanced against the Philadelphia Plan is that it requires action by employers which violates the Act. Plaintiffs point to § 703(j), 42 U.S.C. § 2000e–2(j):

"Nothing contained in this subchapter shall be interpreted to require any employer * * * [or] labor organization * * * to grant preferential treatment to any individual or to any group because of the race * * * of such individual or groups on account of an imbalance which may exist with respect to the total number or percentage of persons of any race * * * employed * * * in comparison with the total number or percentage of persons of such race * * * in the available work force in any community * * * or other area."

The Plan requires that the contractor establish specific goals for utilization of available minority manpower in six trades in the five-county area. Possibly an employer could not be compelled, under the authority of Title VII, to embrace such a program, although § 703(j) refers to percentages of minorities in an area work force rather than percentages of minority tradesmen in an available trade work force. We do not meet that issue here, however, for the source of the required contract provision is Executive Order No. 11246. Section 703(j) is a limitation only upon Title VII not upon any other remedies, state or federal.

[8] Plaintiffs, and more particularly the union amici, contend that the Plan violates Title VII because it interferes with a bona fide seniority system. Section 703(h), 42 U.S.C. § 2000e–2(h), provides:

"Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to employ different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system * * *."

The unions, it is said, refer men from the hiring halls on the basis of seniority, and the Philadelphia Plan interferes with this arrangement since few minority tradesmen have high seniority. Just as with § 703(j), however, § 703(h) is a limitation only upon Title VII, not upon any other remedies.[46]

[9] Plaintiffs contend that the Plan, by imposing remedial quotas, requires them to violate the basic prohibitions of Section 703(a), 42 U.S.C. § 2000e–2(a):

"It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire * * * any individual * * * because of such individual's race * * * or

(2) to * * * classify his employees in any way which would deprive * * * any individual of employment opportunities * * * because of such individual's race * * *."

Because the Plan requires that the contractor agree to specific goals for minority employment in each of the six trades and requires a good faith effort to achieve those goals, they argue, it requires (1) that they refuse to hire some white tradesmen, and (2) that they classify their employees by race, in violation of § 703(a). This argument rests on an overly simple reading both of the Plan and of the findings which led to its adoption.

The order of September 23, 1969 contained findings that although overall minority group representation in the construction industry in the five-county Philadelphia area was thirty per cent, in the six trades representation was approximately one per cent. It found, moreover, that this obvious underrepresentation was due to the exclusionary practices of the unions representing the six trades. It is the practice of building contractors to rely on union hiring halls as the prime source for employees. The order made further findings as to the availability of qualified minority tradesmen for employment in each trade, and as to the impact of an affirmative action program with specific goals upon the existing labor force. The Department of Labor found that contractors could commit to the specific employment goals "without adverse impact on the existing labor force." Some minority tradesmen could be recruited, in other words, without eliminating job opportunities for white tradesmen.

To read § 703(a) in the manner suggested by the plaintiffs we would have to attribute to Congress the intention to freeze the status quo and to foreclose remedial action under other authority designed to overcome existing evils. We discern no such intention either from the language of the statute or from its legislative history. Clearly the Philadelphia Plan is color-conscious. Indeed the only meaning which can be attributed to the "affirmative action" language which since March of 1961 has been included in successive Executive Orders is that Government contractors must be color-conscious. Since 1941 the Executive Order program has recognized that discriminatory practices exclude available minority manpower from the labor pool. In other contexts color-consciousness has been deemed to be an appropriate remedial posture. Porcelli v. Titus, 302 F. Supp. 726 (D.N.J. 1969), aff'd, 431 F.2d 1254 (3d Cir. 1970); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F. 2d 920, 931 (2d Cir. 1968); Offermann v. Nitkowski, 378 F.2d 22, 24 (2d Cir. 1967). It has been said respecting Title VII that "Congress did not intend to freeze an entire generation of Negro employes into discriminatory patterns that existed before the Act." Quarles v. Philip Morris, Inc., *supra*, 279 F.Supp. at 514.

The *Quarles* case rejected the contention that existing, nondiscriminatory seniority arrangements were so sanctified by Title VII that the effects of past discrimination in job assignments could not be overcome.[47] We reject the contention that Title VII prevents the President acting through the Executive Order program from attempting to remedy the absence from the Philadelphia construction labor of minority tradesmen in key trades.

[10] What we have said about Title VII applies with equal force to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. That Title prohibits racial and other discrimination in any program or activity receiving federal financial assistance.[48] This general prohibition against discrimination cannot be construed as limiting Executive authority in defining appropriate affirmative action on the part of a contractor.

We hold that the Philadelphia Plan does not violate the Civil Rights Act of 1964.

*The National Labor Relations Act*

The June 27, 1969 order, par. 8(b) provides:

"It is no excuse that the union with which the contractor has a collective bargaining agreement failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and the Civil Rights Act of 1964. It is the longstanding uniform policy of OFCC that contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, or the implementing rules, regulations and orders."

The union amici vigorously contend that the Plan violates the National Labor Relations Act by interfering with the exclusive union referral systems to which the contractors have in collective bargaining agreements bound themselves. Exclusive hiring hall contracts in the building and construction industry are validated by Section 8(f) of the National Labor Relations Act, 29 U.S.C. § 158(f). In Teamsters Local 357 v. NLRB, 365 U.S. 667, 81 S.Ct. 835, 6 L.Ed2d 11 (1961), the Supreme Court held that the National Labor Relations Board could not proscribe exclusive hiring hall agreements as illegal per se since Congress had not chosen to prohibit hiring halls. It is argued that the President is attempting to do what the Supreme Court said the National Labor Relations Board could not do—prohibit a valid hiring hall agreement. Of course collective bargaining agreements which perpetuate the effects of past discrimination are unlawful under Title VII. Local 189, United Papermakers & Paperworkers v. United States, *supra;* United States v. Sheet Metal Workers, Local 36, 416 F.2d 123, 132 (8th Cir. 1969). The findings of past discrimination which justified remedial action in these cases were made in judicial proceedings, however. See 42 U.S.C. § 2000e–5 (g). The amici contend that the Assistant Secretary's nonjudicial findings of prior exclusionary practices is insufficient to support the Plan's implied requirement that the contractor look to other sources for employees if the unions fail to refer sufficient minority group members.

[11, 12] It is clear that while hiring hall arrangements are permitted by federal law

Footnotes at end of article.

they are not required. Nothing in the National Labor Relations Act purports to place any limitation upon the contracting power of the federal government. We have said hereinabove that in imposing the affirmative action requirement on federally assisted construction contracts the President acted within his implied contracting authority. The assisted agency may either agree to do business with contractors who will comply with the affirmative action covenant, or forego assistance. The prospective contractors may either agree to undertake the affirmative action covenant, or forego bidding on federally assisted work. If the Plan violates neither the Constitution nor federal law, the fact that its contractual provisions may be at variance with other contractual undertakings of the contractor is legally irrelevant.

Factually, of course, that variance is quite relevant. Factually it is entirely likely that the economics of the marketplace will produce an accommodation between the contract provisions desired by the unions and those desired by the source of the funds. Such an accommodation will be no violation of the National Labor Relations Act.

[13] The absence of a judicial finding of past discrimination is also legally irrelevant. The Assistant Secretary acted not pursuant to Title VII but pursuant to the Executive Order. Regardless of the cause, exclusion from the available labor pool of minority tradesmen is likely to have an adverse effect upon the cost and completion of construction projects in which the federal government is interested. Even absent a finding that the situation found to exist in the five-county area was the result of deliberate past discrimination, the federal interest in improving the availability of key tradesmen in the labor pool would be the same. While a court must find intentional past discrimination before it can require affirmative action under 42 U.S.C. § 2000e–5(g), that section imposes no restraint upon the measures which the President may require of the beneficiaries of federal assistance. The decision of his designees as to the specific affirmative action which would satisfy the local situation did not violate the National Labor Relations Act and was not prohibited by 42 U.S.C. § 2000e–5(g).

*Consistency with Executive Order No. 11246*

[14, 15] The plaintiffs argue that the affirmative action mandate of § 202 of Executive Order No. 11246 is limited by the more general requirement in the same section, "The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin." They contend that properly construed the affirmative action referred to means only policing against actual present discrimination, not action looking toward the employment of specific numbers of minority tradesmen.

Section 201 of the Executive Order provides:

"The Secretary of Labor shall be responsible for the administration of Parts II [Government contracts] and II [federal assistance] of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof."

Acting under this broad delegation of authority the Labor Department in a series of orders of local application made it clear that it interpreted "affirmative action" to require more than mere policing against actual present discrimination.[49] Administrative action pursuant to an Executive Order is invalid and subject to judicial review if beyond the scope of the Executive Order. Peters v. Hobby, 349 U.S. 331, 75 S.Ct. 790, 99 L.Ed. 1129 (1955). But in the courts should give more than ordinary deference to the administrative agency's interpretation of an Executive Order or regulation which it is charged to administer. Udall v. Tallman, 380 U.S. 1, 85 S.Ct. 792, 13 L.Ed. 2d 616 (1965); Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 413, 65 S.Ct. 1215, 89 L.Ed. 1700 (1945). The Attorney General has issued an opinion that the Philadelphia Plan is valid,[50] and the President has continued to acquiesce in the interpretation of the Executive Order made by his designee. The Labor Department interpretation of the affirmative action clause must, therefore, be deferred to by the courts.

[16] Plaintiffs also contend that the signing of the June 27, 1969 and September 23, 1969 orders by an assistant secretary rather than by the Secretary of Labor makes those orders procedurally invalid. Here they rely on § 401 which provides:

"The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature."

The Plan, they say, is a rule or regulation of a general nature, and could have been issued only by the Secretary. In the first place the Plan is not general. It is based upon findings as to the available construction manpower in a specific labor market. Moreover, the interpretation of § 401 made by the administrator requires the same deference from the courts as is required toward his interpretations of the order. We will not second guess his delegation to the Assistant Secretary of the duty of enforcing the affirmative action covenant.

*The due process contentions*

[17] Plaintiffs urge that the Plan violates the Due Process Clause of the Fifth Amendment in several ways.

First, they allege that it imposes on the contractors contradictory duties impossible of attainment. The impossibility arises, they say, because the Plan requires both an undertaking to seek achievement of specific goals of minority employment and an undertaking not to discriminate against any qualified applicant or employee, and because a decision to hire any black employee necessarily involves a decision not to hire a qualified white employee. This is pure sophistry. The findings in the September 23, 1969 order disclose that the specific goals may be met, considering normal employee attrition and anticipated growth in the industry, without adverse effects on the existing labor force. According to the order the construction industry has an essentially transitory labor force and is often in short supply in key trades. The complaint does not allege that these findings misstate the underlying facts.

Next the plaintiffs urge that the Plan is arbitrary and capricious administrative action, in that it singles out the contractors and makes them take action to remedy the situation created by acts of past discrimination by the craft unions. They point to the absence of any proceedings under Title VII against the offending unions, and urge that they are being discriminated against. This argument misconceives the source of the authority for the affirmative action program. Plaintiffs are not being discriminated against. They are merely being invited to bid on a contract with terms imposed by the source of the funds. The affirmative action covenant is no different in kind than other covenants specified in the invitation to bid. The Plan does not impose a punishment for past misconduct. It exacts a covenant for present performance.

Some amici urge that selection of the five-county Philadelphia area was arbitrary and capricious and without basis in fact. The complaint contains a conclusive allegation to this effect. No supporting facts are alleged. It is not alleged, for example, that the specific goals for minority manpower utilization would be different if more or fewer counties were to be included in the September 23, 1969 order. The union amici do question the findings made by the Assistant Secretary of Labor, but the complaint, fairly read, does not put these findings in issue.

We read the allegation with respect to the five-county area as putting in issue the legal authority of the Secretary to impose a specific affirmative action requirement in any separate geographic area. The simple answer to this contention is that federally assisted construction contracts are performed at specific times and in specific places. What is appropriate affirmative action will vary according to the local manpower conditions prevailing at the time.

Finally, the plaintiffs urge that the specific goals specified by the Plan are racial quotas prohibited by the equal protection aspect of the Fifth Amendment. See Shapiro v. Thompson, 394 U.S. 618, 641–642, 89 S.Ct. 1322, 22 L.Ed. 600 (1969); Schneider v. Rusk, 377 U.S. 163, 84 S.Ct. 1187, 12 L.Ed.2d 218 (1964); Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). The Philadelphia Plan is valid Executive action designed to remedy the perceived evil that minority tradesmen have not been included in the labor pool available for the performance of construction projects in which the federal government has a cost and performance interest. The Fifth Amendment does not prohibit such action.

One final point. The plaintiffs contend that although there were cross-motions for summary judgment the district court, while it should have entered summary judgment in their favor, could not properly enter summary judgment against them. Several amici press this point on appeal even more strenuously than do plaintiffs. They contend that neither the finding of past discrimination by the craft unions made in the June 27, 1969 order nor the statistical findings as to availability of minority tradesmen, employee attrition, and industry growth made in the September 23, 1969 order should be accepted as true.

[18, 19] The federal defendants conceded in the district court that the affidavit of Mr. Macaluso, to which copies of both orders were attached, was offered not for the truth of the underlying facts but only to identify the orders. This concession was not significant for the decisions on the motions under Rule 12(b)(1) and Rule 56(b). The complaint to which the motions by the federal defendants was addressed nowhere challenges the factual underpinnings of the specific goals set forth in the September 23, 1969 order. Rather the complaint makes a legal attack upon the power of the Department of Labor to impose these goals as contractual commitments. Read generously the complaint can be construed to challenge the administrative procedures followed by the Assistant Secretary in determining these goals. We have dealt hereinabove with that challenge insofar as it questions compliance with the procedures specified in Executive Order No. 11246.

Insofar as the complaint challenges on broader administrative law grounds the methods by which the Assistant Secretary assembled the data for the September 23, 1969 order, we hold that public hearings after notice were an appropriate means for the administrative agency to obtain the information needed for informed judgment. Cf. Shannon v. Department of Housing & Urban Development, 436 F.2d 809 (3d Cir. 1971). No public hearing was held prior to the issuance of the June 27, 1969 order, which contains the Assistant Secretary's finding of past exclusionary union practices. He relied upon published data, however, which itself may have been sufficient to justify administrative action leading to the specification of contract provisions.

We need not decide that issue, however, for in our view the data in the September 23, 1969 order revealing the percentages of

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utilization of minority group tradesmen in the six trades compared with the availability of such tradesmen in the five-country area, justified issuance of the order without regard to a finding as to the cause of the situation. The federal interest is in maximum availability of construction tradesmen for the projects in which the federal government has a cost and completion interest. A finding as to the historical reason for the exclusion of available tradesmen from the labor pool is not essential for federal contractual remedial action.

The judgment of the district court will be affirmed.

FOOTNOTES

[1] James D. Morrissey, Inc.; The Conduit & Foundation Corp.; Glasgow, Inc.; Buckley & Company; The Nyleve Company; Erb Engineering & Constr. Co.; Perkins, Kanak, Foster, Inc.; and Lansdowne Constructors, Inc.

[2] The Secretary of Labor, George P. Shultz; The Assistant Secretary of Labor, Arthur A. Fletcher; The Director, Office of Federal Contract Compliance, John L. Wilks; The Secretary of Agriculture, Clifford M. Hardin.

[3] An additional defendant, the General State Authority of the Commonwealth of Pennsylvania, has not participated in this appeal.

[4] 30 Fed. Reg. 12319 (Sept. 24, 1965), as amended by Exec. Order No. 11375, 32 Fed. Reg. 14303 (Oct. 13, 1967), 3 C.F.R. 406 (1909), 42 U.S.C.A. § 2000e note (170), superseded in part by Exec. Order No. 11478, 34 Fed. Reg. 12985 (Aug. 8, 1969), 3 C.F.R., 1969 Comp. 133, 42 U.S.C. § 2009e note (1970).

[5] Encompassing Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania.

[6] § 202(1). This wording comes from Exec. Order No. 11375, see note 4 supra, and represents a minor change from the original designed to parallel the classes of discrimination prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

[7] Recognition of this problem antedated the present Plan. Under the Philadelphia Pre-Award Plan, which was put into effect on November 30, 1967 by the Philadelphia Federal Executive Board, each apparent low bidder was required to submit a written affirmative action program assuring minority group representation in eight specified trades as a precondition to qualifying for a construction contract or subcontract. This predecessor Plan was suspended due to an Opinion letter by the Comptroller General stating that it violated the principles of competitive bidding. 48 Comp. Gen. 326 (1968).

[8] The order of June 27, 1969 listed "roofers and water proofers" among the trades underrepresented by minority craftsmen. The order of September 23, 1969 dropped this category from the list, leaving the six trades previously named.

[9] Federal assistance was authorized under the Watershed Protection and Flood Prevention Act, 16 U.S.C. § 1001 et seq.

[10] Comp. Gen. Op., Letter to Sec. of Labor George P. Shultz, August 5, 1969, 115 Cong. Rec. 17201–04 (daily ed. Dec. 18, 1969). The Comptroller General had objected to earlier efforts at implementing the "affirmative action" aspect of Exec. Order No. 11246 on the ground that these plans failed to inform prospective bidders to definite minimum standards for acceptable programs. In his negative opinion letter in response to the original Philadelphia Pre-Award Plan, he had also adverted to the possibility of conflict with Title VII of the Civil Rights Act of 1964. See note 7 supra. The Title VII objections became the heart of the opinion of August 5, 1969 which challenged the validity of the Revised Philadelphia Plan.

[11] 42 U.S.C. § 2000e et seq.

[12] 42 U.S.C. § 2000d et seq.

[13] 29 U.S.C. § 151 et seq.

[14] The Pennsylvania Human Relations Act, 43 P.S. § 951 et seq. (Supp. 1970), specifically prohibits an employer from keeping any record of or using any form of application with respect to the race, color, religion, ancestry, sex or national origin of an applicant for employment, 43 P.S. § 955(b)(1). The Act also prohibits the use of a quota system for employment based on the same criteria. 43 P.S. § 955(b)(3). The record keeping prohibition may be of limited force due to certain requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–8(c). Moreover, we do not know how the Pennsylvania courts or the Pennsylvania Human Relations Commission would react to a scheme of "benign" quota hiring.

[15] 311 F. Supp. 1002, 1011 (E.D.Pa. 1970).

[16] 49 Stat. 2036–2039, 41 U.S.C. §§ 35–45.

[17] The actual holding of *Perkins* was subsequently nullified by Congress. 66 Stat. 308 (1952), 41 U.S.C. § 43a. See 4 K. Davis, Administrative Law § 28.06 (1958).

[18] 310 U.S. at 127, 60 S.Ct. at 876.

[19] Amici favoring the Plan include the City of Philadelphia, the Urban League of Philadelphia, Wives for Equal Employment Opportunity, the Lawyers' Committee for Civil Rights Under Law, and the N.A.A.C.P. Appearing as amici in opposition to the Plan are the Building and Construction Trades Dep't, AFL–CIO, the Building and Construction Trades Council of Philadelphia and Vicinity, AFL–CIO, the General Building Contractors Ass'n, Inc., the National Electrical Contractors Ass'n, and the Associated General Contractors of America.

[20] Exec. Order No. 10925, 26 Fed. Reg. 1977 (March 6, 1961), 3 C.F.R., 1961 Comp. 86.

[21] Management and Disposal of Government Property.

[22] Procurement Procedures.

[23] But cf. Weiner v. Cuyahoga Community College, 19 Ohio St. 2d 35, 249 N.E. 2d 907 (1969), cert. denied, 396 U.S. 1004, 90 S. Ct. 554, 24 L. Ed. 2d 495 (1970); Ethridge v. Rhodes, 268 F. Supp. 83 (S.D. Ohio 1967).

[24] 343 U.S. at 635–638, 72 S. Ct. at 870–871 (footnotes omitted).

[25] 6 Fed. Reg. 3109, 3 C.F.R., 1938–43 Comp. 957.

[26] Act of Dec. 18, 1941, ch. 593, 55 Stat. 838.

[27] 6 Fed. Reg. 6787, 3 C.F.R., 1938–43 Comp. 1054.

[28] 8 Fed. Reg. 7183, 3 C.F.R., 1938–43 Comp. 1280.

[29] 10 Fed. Reg 15301, 3 C.F.R., 1943–48 Comp. 480.

[30] 15 Fed. Reg. 1049, 3 C.F.R., 1949–53 Comp. 390.

[31] Exec. Order No. 10216, 16 Fed. Reg. 1815 (Feb. 23, 1951), 3 C.F.R., 1949–53 Comp. 732 (Department of Agriculture, Atomic Energy Commission, National Advisory Committee for Aeronautics, and Government Printing Office); Exec. Order No. 10227, 16 Fed. Reg. 2675 (Mar. 24, 1951), 3 C.F.R., 1949–53 Comp. 739 (General Services Administration); Exec. Order No. 10231, 16 Fed. Reg. 3025 (April 5, 1951), 3 C.F.R., 1949–53 Comp. 741 (Tennessee Valley Authority); Exec. Order No. 10243, 16 Fed. Reg. 4419 (May 17, 1951), 3 C.F.R., 1949–53 Comp. 752 (Federal Civil Defense Administration); Exec. Order No. 10281, 16 Fed. Reg. 8789 (Aug. 28, 1951), 3 C.F.R., 1949–53 Comp. 781 (Defense Materials Procurement Agency).

[32] 16 Fed. Reg. 12303, 3 C.F.R., 1949–53 Comp. 837.

[33] 50 U.S.C. App. § 2061 et seq.

[34] This latter reference is to the source of appropriations for salaries and expenses for committee members and staff. It appears in numerous subsequent Executive Orders, but has no significance other than fiscal.

[35] 18 Fed Reg. 4899, 3 C.F.R., 1949–53 Comp. 961.

[36] The new committee was composed of 15 members, 9 named by the President and one representative each from the Atomic Energy Commission, the Department of Commerce, the Department of Defense, the Department of Justice, the Department of Labor and the General Services Administration. Id. § 3, as amended by Exec. Order No. 10482, 18 Fed. Reg. 4944 (Aug. 15, 1953), 3 C.F.R., 1949–53 Comp. 968.

[37] Id. § 5.

[38] "Sec. 6. The Committee shall encourage the furtherance of an educational program by employer, labor, civic, educational, religious, and other voluntary nongovernmental groups in order to eliminate or reduce the basic causes and costs of discrimination in employment.

"Sec. 7. The Committee is authorized to establish and maintain cooperative relationships with agencies of state and local governments, as well as with nongovernmental bodies, to assist in achieving the purposes of this order."

Id. §§ 6, 7.

[39] 19 Fed. Reg. 5655, C.F.R., 1954–58 Comp. 203.

[40] See 40 U.S.C. § 486(a).

[41] 26 Fed. Reg. 1977, 3 C.F.R. 1959–63 Comp. 448.

[42] Id., pt. III, § 301(1).

[43] 28 Fed. Reg. 6485, 3 C.F.R., 1959–63 Comp. 774.

[44] See note 4 supra.

[45] Section 204 of Exec. Order No. 11246 provides that the Secretary of Labor may exempt certain contracts and purchase orders from the requirements of the order because of special circumstances in the national interest and that he may by rule or regulation exempt certain classes of contracts (1) to be performed outside the United States, (2) for standard commercial supplies or raw materials, (3) involving insubstantial amounts of money or workers, or (4) involving subcontracts below a specified tier.

[46] This same subsection refers to ability tests. The Supreme Court recently in Griggs v. Duke Power Co., 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971) considered the extent to which such tests are permissible. The Court said:

"But Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation." 91 S.Ct. at 854.

It held that the tests must be job related. Nor can seniority make permanent the effects of past discrimination. Local 189, United Papermakers & Paperworkers v. United States, 416 F.2d 980 (5th Cir. 1969), cert. denied, 397 U.S. 919, 90 S.Ct. 926, 25 L.Ed.2d 108 (1970); Quarles v. Philip Morris, Inc., 279 F.Supp. 505 (E.D.Va.1968).

[47] The federal courts in overcoming the effects of past discrimination are expressly authorized in Title VII to take affirmative action. 42 U.S.C. § 2000e–5(g). See Vogler v. McCarty, 294 F. Supp. 368 (E.D. La. 1968), aff'd *sub. nom.* International Ass'n Heat & Frost Insulation & Asbestos Workers v. Vogler, 407 F. 2d 1047 (5th Cir. 1969).

[48] Section 604 of Title VI, 42 U.S.C. § 2000d–3, states that nothing in the Title authorizes agency action under the Title with respect to employment practices of any employer, except where federal assistance is primarily aimed at providing employment. However, since the Philadelphia Plan does not purport to derive its authorization from Title VI, this section does not affect its validity.

[49] See United States Commission on Civil Rights, The Federal Civil Rights Enforcement Effort at 167–72 (1970).

[50] Att'y Gen. Op., Letter to Sec. of Labor Shultz, Sept. 22, 1969, 115 Cong. Rec. 17,204–06 (daily ed. Dec. 18, 1969).

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[United States Court of Appeals, Ninth Circuit, May 17, 1971, No. 26048]

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE, v. IRONWORKERS LOCAL 86 ET AL., DEFENDANTS-APPELLANTS

Action wherein government charged unions and joint apprenticeship and training com-

mittees with having denied equal employment opportunities to blacks in violation of Civil Rights Act. The United States District Court for the Western District of Washington, William J. Lindberg, J., 315 F.Supp. 1202, entered judgment in favor of government, and all but one defendant appealed. The Court of Appeals, Hamlin, Circuit Judge, held, inter alia, that finding that building construction unions and joint apprenticeship and training committees associated with them had engaged in a pattern or practice of discriminatory conduct with respect to equal employment opportunities for blacks was not clearly erroneous when well documented with statistical evidence showing a distinct absence of black membership in unions and committees, failure of union hiring halls to grant black referrals, many overt acts of discrimination on part of unions and committes, and many facially neutral employment practices which had a differential effect on blacks.

Affirmed.

1. Courts—406.1(23), 406.3(13): On appeal from judgments determining that certain building construction unions and joint apprenticeship and training committees associated with them had pursued a pattern or practice of conduct which denied equal employment opportunities to blacks on account of their race, Court of Appeals would not review evidence de novo and freely substitute its judgments for that of trial court, but would apply clearly erroneous rule, even if a "large reliance" was placed on written evidence in trial court. Fed.Rules Civ.Proc. rule 52(a), 28 U.S. C.A.

2. Courts—406.3(6): Court of Appeals may not substitute its judgment for trial court if conflicting inferences may be drawn from established facts by reasonable men, and inferences drawn by trial court are those which could have been drawn by reasonable men.

3. Federal Civil Procedure—1191: Application forms found in files of joint apprenticeship and training committees, which were accused along with building construction unions of having denied equal employment opportunities to blacks on account of their race, were not admissible under business records exception to hearsay rule to prove truth of matters contained therein, but were admissible as evidence of type of information sought by committees and relied upon by them in reaching their evaluative decisions. 28 U.S.C.A. § 1732.

4. Civil Rights—3: On basis that a showing of a small black union membership in a demographic area containing a substantial number of black workers raises an inference that racial imbalance is the result of discrimination, the burden of going forward and the burden of persuasion is shifted to the accused, for such a showing is enough to establish a prima facie case. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

5. Civil Rights—3: Statistics showing racial composition of membership of construction unions accused of having denied equal employment opportunities to blacks on account of their race could be used for purpose of establishig a prima facie violation of Civil Rights Act. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

6. Courts—406.3(6): Even if statistics concerning racial composition of membership of unions accused of having denied equal employment opportunities to blacks on account of their race could not alone show as a matter of law that there had been a civil rights violation, conclusion of law reached by trial court that a violation had occurred would not be overturned, where trial court cited specific instances of discrimination on part of unions and apprenticeship committees in its findings, and where statistical evidence was complementary rather than exclusive. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

7. Civil Rights—2: It is the intent of Congress that a "pattern or practice" of discriminatory conduct with respect to employment opportunities be found where acts of discrimination are not "isolated, peculiar or accidental" events. Civil Rights Act of 1964 § 701 et seq., 42 U.S.C.A. § 2000e et seq.

8. Courts—406.3(20): Finding that building construction unions and joint apprenticeship and training committees associated with them had engaged in a pattern or practice of discriminatory conduct with respect to equal employment opportunities for blacks was not clearly erroneous when well documented with statistical evidence showing a distinct absence of black membership in unions and committees, failure of union hiring halls to grant black referrals, many overt acts of discrimination on part of unions and committees, and many facially neutral employment practices which had a differential effect on blacks. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

9. Civil Rights—3: Trial court did not violate Civil Rights Act by ordering building construction unions to offer immediate job referrals to previous discriminatees, and ordering apprenticeship and training committees associated with unions to select and indenture sufficient black applicants to overcome past discrimination, and to also meet judicially imposed ceiling requirements in apprenticeship program participation. Civil Rights Act of 1964, §§ 703(j), 706(g), 707(a), 42 U.S.C.A. §§ 2000e-2(j), 2000e-5(g), 2000e-6(a).

10. Civil Rights—3: There can be little doubt that where a violation of equal employment provision of Civil Rights Act is found, the court is vested with broad remedial power to remove the vestiges of past discrimination and eliminate present and assure the nonexistence of future barriers to the full enjoyment of equal job opportunities by qualified black workers. Civil Rights Act of 1964, §§ 703(j), 706(g), 707(a), 42 U.S.C.A. §§ 2000e-2(j), 2000e-5(g), 2000e-6(a).

Hugh Hafer (argued), John E. Rinehart, Jr., of Bassett, Donaldson & Hafer, Seattle, Wash., Harold Stern, Gen. Counsel, Ironworkers International Union, New York City, Donald Fisher, Gen. Counsel, Sheet Metal Workers International Union, Toledo, Ohio, Martin F. O'Donoghue, Gen. Counsel, Plumbers & Pipefitters International Union, Washington, D.C., for defendants-appellants.

Frank Petramalo, Jr. (argued), David L. Rose, Robert T. Moore, Attys., Dept. of Justice, Washington, D.C., Jerris Leonard, Asst. Atty. Gen., Stan Pitkin, U.S. Atty., Seattle, Wash., Herman Siqueland, Duane Vance, Don Davidson, Alec Brindle, Seattle, Wash., for plaintiff-appellee.

Before Hamlin and Merrill, Circuit Judges, and Hill, District Judge.*

Hamlin, Circuit Judge:

On October 31, 1969, the Attorney General of the United States[1] brought an action in the United States District Court for the Western District of Washington against five building construction unions[2] located in Seattle, Washington, and three joint apprenticeship and training committees associated with them.[3] The complaint alleged that the named unions and joint apprenticeship and training committees had denied employment opportunities to blacks on account of their race and that certain policies, practices and conduct, described therein, constituted a "pattern or practice" of resistance to full employment of blacks in violation of Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 200e et seq. The district court, William J. Lindberg, Chief Judge, found that all the named unions and joint apprenticeship and training committees had pursued a pattern or practice of conduct which denied blacks, on account of their race, equal employment opportunities in the construction industry; two judgments and decrees followed.[4] All but one of the defendants[5] have joined in the instant appeal.[6] We affirm.

Many of the basic facts were largely undisputed and were stipulated by the parties. Appellant building trades unions are labor organizations which represent a large number of workmen employed in the construction industry in and about Seattle, Washington.[7] Through the union hiring halls, appellant unions effectively control a large percentage of the employment opportunities in the construction industry in that area. Under the bargaining agreements entered into between the contractor-employers and the unions, the unions must be given first opportunity to fill positions. Contractors may not employ non-union workers unless the positions are not filled by the unions within a period of time stipulated under the bargaining agreement.

The joint apprenticeship and training committees who join in this appeal are entities legally separate and distinct from the specific unions with which they are associated. The committees consist of members representing both the unions and the employers,[8] and are formed to oversee and run the apprenticeship programs whose purpose is to train apprentices to become journeymen in the respective trades. Once an applicant is accepted into the program,[9] he becomes indentured to the joint apprenticeship and training committee for a period of years[10] and participates in a program which consists of both on-the-job training and classroom instruction. It is through this program that participants gain admission to the union as a journeyman, thereby obviating the necessity of taking the avenue of direct admission which demands that an applicant meet certain requirements such as possessing a specified number of years of experience, being within a given age range, having letters of recommendation, and passing a journeyman's examination.

The court found appellant unions and joint apprenticeship and training committees to have engaged in a pattern or practice of discrimination which denied blacks employment opportunities in the construction industry. It based its conclusions on specific findings of discrimination which included (1) the employment of tests and admission criteria which had little or no relation to on-the-job skills and which had a differential impact upon blacks, and which operated to exclude them from entrance into the unions or referrals to available jobs; (2) the active recruitment of whites while at the same time giving little or no publicity to information concerning procedures for gaining union membership, work referral opportunities, and the operation of the apprenticeship training programs in the black community; (3) the granting of preferential treatment to friends and relatives of existing members of the unions; and (4) the differential application of admission requirements, often by-passing such requirements in cases of white applicants. In addition, several instances were shown where black workers who sought referrals were turned away without reason or after being given a spurious reason in support of its action; and in some cases, unions refused to place blacks on the referral lists, thus assuring their inability to secure work.

The relief granted by the court took the form of two judgments and decrees: the first related to the unions and the second related to the joint apprenticeship and training committees. In the first, the court enjoined the unions from engaging in future discrimination with respect to referrals for employment and the acquisition or retention of union membership. It ordered that the unions keep detailed records of their operations and actively disseminate information in the black community describing the operation of the referral systems, membership

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Footnotes at end of article.

requirements and available job opportunities. Specific relief was granted by the court to certain individuals or groups of persons ordering the unions to offer them immediate construction referrals in response to the next contractor requests for workers and to open their membership application lists to these persons. The court retained jurisdiction for such further relief as it deems necessary or appropriate to further effectuate equal employment opportunities.

Judgment and Decree No. 2 pertained to the joint apprenticeship and training committees. The committees were enjoined from all future discrimination against applicants for apprenticeship on account of their race. It further ordered the committees to disseminate information concerning the requirements and procedures for admission to the apprenticeship programs so as to apprise blacks within the geographical area of available opportunities. The respective committees were ordered to consider all applicants who met the standards set out by the court in the decree. In addition to the above, an affirmative action program was included in the decree in the hope of eradicating the vestiges of past discrimination. Among the provisions under this program were the creation of special apprenticeship programs designed to meet the special needs of average blacks with no previous experience or special skills in the trade, or black applicants who have some previous experience or special skills in the trade but do not meet journeymen standards. The court also retained jurisdiction over the committees in order to grant such further relief as it deems necessary.

I. FINDINGS OF FACT

We are confronted initially with the appellants' contention that the "clearly erroneous" rule[11] should not govern our review of the findings of fact made by the district court. They reason that the rationale underlying the rule is that an appellate court should defer to the judgment of the trial court because the trial judge had access to demeanor evidence and could readily assess the credibility of the witnesses. Hence, where, as they allege, "large reliance" is placed upon written instruments and depositions, they claim the rule does not apply as demeanor evidence played a small part in the trial judge's decision.

[1, 2] Appellants' characterization of the proceeding below as one in which the trial judge placed "large reliance" on documentary evidence and depositions ignores the fact that over fifty-five witnesses testified, many of whom were deponents prior to trial. Even if "large reliance" was placed on written evidence, the clearly erroneous rule would still apply. We examined this problem in Lundgren v. Freeman, 307 F.2d 104 (9th Cir. 1962), and found the better rule to be that the clearly erroneous rule does apply, even where the factual issues are decided on written evidence alone.[12] Appellants would have us review the evidence *de novo* and freely substitute our judgment for that of the trial judge. We decline to do so. The well-established rule is that we "may not substitute our judgment if conflicting inferences may be drawn from established facts by reasonable men, and the inferences drawn by the trial court are those which could have been drawn by reasonable men." *Lundgren, supra,* 307 F.2d at 113. *See also* Jacobson v. Colorado Fuel and Iron Corp., 409 F.2d 1263, 1267 (9th Cir. 1969); Friend v. H. A. Friend & Co., 416 F.2d 526, 531 (9th Cir 1969); United States v. Hanna Nickel Smelting Co., 400 F.2d 944, 947 (9th Cir. 1968).

[3] Appellants further contend that the district court's findings were based on evidence which it had previously excluded. Prior to trial, the Attorney General examined the application forms found in the files of the joint apprenticeship and training committees. At trial, appellants objected to the introduction of charts which were made from information found in the application forms on the ground that they did not qualify for admission under the business records exception to the hearsay rule.[13] The court, sustaining, in part, appellants' objection, held this evidence was inadmissible to prove the truth of the matters contained therein, but was admissible as evidence of the type of information sought by the committees and relied upon by them in reaching their evaluative decisions.

The contention of appellants is unsupportable, given the limited purpose for which the information contained in the applications was used. As we noted in Phillips v. United States, 356 F.2d 297, 307 (9th Cir. 1965), cert. denied, 384 U.S. 952, 86 S.Ct. 1573, 16 L.Ed.2d 548 (1966), where a similar argument was raised:

> The purpose of that section [Business Records Act, 28 U.S.C. § 1732, as amended, 28 U.S.C. § 1732 (Supp. IV 1961)] is to provide, in the case of business records, an exception to the hearsay rule, and to provide an acceptable substitute for specific authentication of each business record. We are not here concerned with the hearsay rule because the letters and requests contained in exhibits 968 and 984 were not offered in proof of the statements contained therein. They were introduced only to show defendants had knowledge that such statements had been made. Nor are we concerned with authentication since the authenticity of the documents need not be established where the only purpose of the documents is to show notice.

*Accord:* United States v. Middlebrooks, 431 F.2d 299, 301 (5th Cir. 1970). As in *Phillips, supra,* the information contained in the applications was not proffered to prove the statements therein, but to show what information was sought by the apprenticeship committees in the applications and relied upon by them in making their decisions. The application form information was properly admitted for this purpose.

The district judge's duty was to consider the evidence, reach all reasonable interferences therefrom, and make specific findings of fact and conclusions of law. This task was necessarily a difficult one and involved the review of extensive oral testimony, many depositions and a great amount of accompanying documentary evidence. Its proportions are reflected in the size of the reporter's transcript which alone numbers twenty volumes. In his carefully written and excellent opinion, covering some fifty pages, Judge Lindberg made separate findings of fact as to each party, carefully analyzing the supportive evidence found in the record. In these findings of fact Judge Lindberg has pointed out by page reference to the record, the testimony, stipulations, admitted facts, and exhibits upon which his findings were based. It would serve no purpose to repeat such references in this opinion. It is not our duty to relitigate the facts at this time. Having reviewed the findings below and the record before us, we are fully convinced that the findings are amply supported by the evidence.

II. CONCLUSIONS OF LAW

At the outset, appellants contest the use of racial statistics to prove a "pattern or practice" of discrimination as a matter of law. They categorize this mode of proof as a statistical "numbers game", incapable of proving a violation of Title VII. We believe this argument is without support as the use of statistics is well established in recent Title VII cases.[14]

In the district court's opinion, a separate statement was made as to each appellant concerning the racial composition of its membership. As to appellate unions, it was stated: Ironworkers Local 86 had approximately 920 members in January 1970, only one of whom was black.[15] Sheet Metal Workers Local 99 had approximately 900 members in its construction division, only one of whom was black;[16] and Plumbers and Pipefitters Local 32 had approximately 1900 members in its construction classification, only one of whom was black.[17] In addition, with respect to the appellant joint apprenticeship and training committees, the court noted: Sheet Metal Workers JATC had 100 apprentices indentured in its program and seven were black;[18] Plumbers and Pipefitters JATC had 104 building trades apprentices and none were black.

The district court also made a specific finding applicable to all parties concerning the racial composition of the City of Seattle where the main offices, hiring halls and training facilities of the appellants are found. Approximately 42,000 blacks reside in the City, constituting roughly seven percent of the population. This information came from an expert witness, a demographer, called to testify by the Attorney General.[19]

[4, 5] Since the passage of the Civil Rights Act of 1964,[20] the courts have frequently relied upon statistical evidence to prove a violation. This judicial practice has most often taken the form of the use of such data as a basis for allocating the burden of proof. On the basis that a showing of an absence or a small black union membership in a demographic area containing a substantial number of black workers raises an inference that the racial imbalance is the result of discrimination, the burden of going forward and the burden of persuasion is shifted to the accused, for such a showing is enough to establish a *prima facie* case.[21] In many cases the only available avenue of proof is the use of racial statistics to uncover clandestine and covert discrimination by the employer or union involved. One court, in Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421, 426 (8th Cir. 1970), held as a matter of law, without other supportive evidence, that the statistics introduced showing an extraordinarily small number of black employees, notwithstanding a small number who held menial jobs, established a violation of Title VII. Of course, as is the case with all statistics, their use is conditioned by the existence of proper supportive facts[22] and the absence of variables which would undermine the reasonableness of the inference of discrimination which is drawn. It is our belief that the often-cited aphorism, "statistics often tell much and Courts listen,"[23] has particular application in Title VII cases.

[6] Here, even if we were to accept appellant's assertion that statistics alone cannot show as a matter of law that there has been a violation, it would not command our overturning of the conclusions of law reached by the district court. We are not faced with a situation where a court has relied upon statistical data alone. On the contrary, in its findings, the district court cited specific instances of discrimination on the part of the unions and apprenticeship committees. Thus the statistical evidence is complementary rather than exclusive. We see no merit in appellants' complaint regarding the use of statistics.

Appellants next argue that the conclusions reached by the court that appellants engaged separately in a "pattern or practice of resistance" are wholly unsupportable. They equate the phrase "pattern or practice" with "uniformly engaged in a course of conduct aimed at denying rights secured by the Act." We feel that such an interpretation is overly restrictive and does violence to the meaning intended by Congress to be accorded the phrase. Moreover, it is our firm belief that the conclusions reached by the district court are not clearly erroneous and must be affirmed.

The phrase is not defined in Title VII, but some guidance is offered by an examination of the legislative history of this and other Civil Rights Acts employing the same words. Commenting on the meaning to be accorded the phrase in the debates on the Civil Rights Act of 1964, Senator Humphrey stated:

Footnotes at end of article.

* * * Such a pattern or practice would be present only where the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine or of a generalized nature.[24]

In testimony before the House Judiciary Committee on the Civil Rights Act of 1960,[25] Deputy Attorney General Walsh said:

Pattern or practice have their generic meanings. In other words, the court finds that the discrimination was not an isolated or accidental or peculiar event; that it was an event which happened in the regular procedures followed by the state officials concerned.[26]

In United States v. Mayton, 335 F.2d 153, 158 (5th Cir. 1964), an action under the Civil Rights Act of 1960, in which the court found that racial discrimination in the voter registration process was pursuant to a "pattern or practice", the court addressed itself to defining the words and concluded that they "were not intended to be words of art." *See also* United States v. Ramsey, 331, F.2d, 824, 837 (5th Cir. 1964) (Judge Rivas, concurring and dissenting in part). With respect to the phrase, Senator Keating commented that "[t]he 'pattern or practice' requirement means only that the proven discriminatory conduct of defendants was not merely an isolated instance of racial discrimination." 106 Cong. Rec. 7767.

[7, 8] We are firmly convinced that it was the intent of Congress that a "pattern or practice" be found where the acts of discrimination are not 'isolated, peculiar or accidental" events. The words were not intended to be words of art. Applying this definition in the instant case, we are compelled to concur with the district court's findings that appellants engaged in a "pattern or practice" of discrimination. The findings are well documented with statistical evidence showing a distinct absence of black membership in the unions and the apprenticeship programs; the failure of the union hiring halls to grant black referrals; many overt acts of discrimination on the part of appellants; and many racially neutral employment practices which had a differential effect upon blacks. We are not concerned with isolated or accidental acts by appellants but a "pattern or practice" of resistance by them which has had an effect of denying black workers equal job opportunities in the Seattle area.

Therefore, we hold that the conclusions reached by the district court finding appellant unions and joint apprenticeship and training committees to have engaged in a pattern or practice of discriminatory conduct with respect to employment opportunities in the construction industry are not clearly erroneous.

III. RELIEF GRANTED

[9] Appellants finally contend that the district court violated section 703(j) of the Act[27] in ordering appellant unions to offer immediate job referrals to previous discriminatees, and ordering appellant apprenticeship and training committees to select and indenture sufficient black applicants to overcome past discrimination, and to also meet judicially imposed ceiling requirements in apprenticeship program participation. This they condemn as "racial quotas" and "racial preferences." We cannot agree.

The Act vests in the Attorney General and the trial court power to eliminate both the vestiges of past discrimination and terminate present discriminatory practices. Under sections 706(g)[28] and 707(a),[29] unlawful employment practices may be enjoined by the court and such affirmative relief granted as the court may deem appropriate. The only statutory limitation on the availability of relief is the anti-preferential treatment provision of section 703(j).

[10] There can be little doubt that where a violation of Title VII is found, the court is vested with broad remedial power to remove the vestiges of past discrimination and eliminate present and assure the non-existence of future barriers to the full enjoyment of equal job opportunities by qualified black workers. Parham v. Southwestern Bell Telephone Co., 433 F.2d 421, 427 (8th Cir. 1970); United States v. International Brotherhood of Electrical Workers, No. 38, 428 F.2d 144, 151 (6th Cir. 1970); Local 53 of International Association of Heat and Frost Insulators and Asbestos Workers v. Vogler, 407 F.2d 1047, 1052–1053 (5th Cir. 1969); United States ex rel. Mitchell v. Hayes International Corp., 415 F.2d 1038, 1039 (5th Cir. 1969). *Cf.* Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (April 20, 1971). On the basis of this broad equitable power, the courts have allowed a wide range of remedial relief. *See, e.g. Electrical Workers Local 38, supra* (remand to district court with direction to fashion appropriate affirmative relief); *Parham, supra,* (remand to the district court with directions to retain jurisdiction to assure compliance); Griggs v. Duke Power Co., 420 F.2d 1225 (4th Cir. 1970), rev'd 401 U.S. 424, 91 SCt 849, 28 LEd2d 158 (March 8, 1971) (immediate work referral or union membership); *Hayes International Corporation, supra* (preliminary injunction); *Sheet Metal Workers Local 36, supra* (publication of the fact that membership and related benefits were open to all persons and an affirmative duty of minority recruitment); United States ex rel. Mitchell v. United Association etc. Plumbers Local 73, 314 F. Supp. 160 (S.D. Ind. 1969) (revamping of apprenticeship program). Without such powers, the district court would be unable to effectuate the desire of Congress to eliminate all forms of discrimination.

In *Vogler, supra,* 407 F.2d at 1053–1055, the district court ordered, in addition to an injunction against future discrimination and the immediate admission of four discriminatees, that the union develop objective criteria for membership and union size. As here, it was contended that the order established a "quota system to correct racial imbalance in violation of section 703(j)." Rejecting this argument, the court held the district court did "'no more than ensure that the injunction against further racial discrimination would be fairly administered." *Id.* at 1054. The *Vogler* court succinctly stated that "where necessary to insure compliance with the Act, the District Court was fully impowered to eliminate the present effects of past discrimination." Similarly, in International Brotherhood of Electrical Workers, Local No. 38, *supra,* 428 F.2d at 149, the court felt that such an interpretation of section 703(j) "would allow a complete nullification of the purposes of the Civil Rights Act of 1964."

We therefore reject appellants' contention. The district court neither abused its discretion in ordering the affirmative relief, nor did it in any way establish a system of "racial quotas" or "preferences" in violation of section 703(j).

The judgment of the district court is affirmed.

FOOTNOTES

* Honorable Irving Hill, United States District Judge, Central District of California, sitting by designation.

[1] 42 U.S.C. § 2000e–6(a) reads:

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action * * * requesting such relief, including an application for a permanent injunction or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice. * * *

[2] Local 86 International Association of Bridge, Structural, and Ornamental Ironworkers (hereinafter Ironworkers Local 86); Local 46, International Brotherhood of Electrical Workers (hereinafter Electrical Workers Local 46); Local 32, United Association of the Plumbing and Pipefitting Industry of the United States (hereinafter Plumbers and Pipefitters Local 32); Local 302, International Union of Operating Engineers (hereinafter Operating Engineers Local 32); Local 99, International Sheet Metal Workers Association (hereinafter Sheet Metal Workers Local 99).

[3] Ironworkers Joint Apprenticeship and Training Committee (hereinafter Ironworkers JATC); Plumbers and Pipefitters Joint Apprenticeship and Training Committee (hereinafter Plumbers and Pipefitters JATC); Sheet Metal Workers Joint Apprenticeship and Training Committee (hereinafter Sheet Metal Workers JATC).

[4] Judge Lindberg's opinon is reported at 315 F.Supp. 1202 (W.D.Wash. 1970).

[5] Operating Engineers Local 32 was party to a consent decree and thus did not join in the appeal. The Ironworkers JATC chose not to join in the appeal and were represented by other counsel.

[6] After the court found that the unions and the joint apprenticeship and training committees had engaged in a pattern of practice of discrimination, the court, desiring to structure proper and effective relief, ordered the parties (Electrical Workers Local 46, defendant contractor associations and the United States) to "take all steps available to persuade or require" the Electrical Workers Joint Apprenticeship and Training Committee (hereinafter Electrical Workers JATC) to intervene for purposes of relief in respect to conduct of the apprenticeship program. The court specifically noted that it did not intend to find or imply that the Electrical Workers JATC had discriminated against blacks, but entered the order so as to impart "uniformity in procedures relative to the J.A.T.C.'s connected with the respective defendant unions found to have discriminated." While appellants take exception to this order, we see no error in the court requesting the full cooperation of the defendants in structuring appropriate relief.

[7] More specifically, the court found that the unions had the following membership: Iron Workers Local 86, approximately 920 members; Plumbers and Pipefitters Local 32, approximately 1900 members; Electrical Workers Local 46, approximately 1750 members; Sheet Metal Workers Local 99, approximately 900 members.

[8] The Plumbers and Pipefitters JATC is comprised of five representatives of Local 32, and three representatives of the Seatle Plumbing and Pipefitting Employers, one representative of the Refrigeration Contractors' Association and one member from the Puget Sound Shipbuilders Association. As for the Sheet Metal Workers JATC, the other committee joining in this appeal, it is comprised of eight members, four representatives of Local 99 and four representatives of contractors party to a collective bargaining agreement.

[9] The Sheet Metal Workers JATC provides an example of the process leading to acceptance into an apprenticeship program. An applicant must be between the ages of 18 to 24 (excluding time spent in the military service), pass a GATB aptitude test, complete an application form and submit a high school transcript before he is considered. Preference is given to high school graduates. Assuming these threshold requirements are met, thereby allowing the applicant the right to be considered by the committee, he is then interviewed in order to evaluate his qualifications and the committee then votes whether to accept him or not. The chairman of the Sheet Metal Workers

JATC indicated that they "will more or less look favorably on an individual who has family members who are sheet metal workers."

[10] The period of indenture differs between the appellant committees: Plumbers and Pipefitters JACT (five years), Sheet Metal Workers JATC (four years).

[11] *See* Fed.R.Civ. P. 52(a).

[12] A number of courts have held that in cases where the findings are based on documentary evidence, on uncontradicted testimony, on stipulated facts, or on testimony taken by depositions, the trial court's findings are given only slight weight on appeal. *See, e.g.,* Galena Oaks Corp. v. Scofield, 218 F.2d 217 (5th Cir. 1954); Hart v. Gallis, 275 F.2d 297 (7th Cir. 1960). *See generally,* 5 J. Moore, Federal Practice ¶ 52.04 (2d ed. 1959).

[13] 28 U.S.C. § 1732, as amended, 28 U.S.C. § 1732 (Supp. IV 1961).

[14] The reliance upon statistical evidence to prove discriminatory practices is not new to the courts. *See, e.g.,* Swain v. Alabama, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965); Patton v. Mississippi, 332 U.S. 463, 68 S.Ct. 184, 92 L.Ed. 76 (1947); Hill v. Texas, 316 U.S. 400, 62 S.Ct. 1159, 86 L.Ed. 1559 (1942); Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074 (1935) (jury selection cases); F. W. Woolworth Co., 25 NLRB 1362 (1940) (anti-union discrimination case). *See generally,* Fiss, A Theory of Fair Employment Laws, 38 U.Chi.L.Rev. 235 (1971).

[15] The black was Howard Lewis, who was admitted on September 12, 1969, pursuant to an order of the Washington State Board Against Discrimination.

[16] His name was Leonard O'Neale, a member of Local 99 since the summer of 1968.

[17] He was David Williams, a welder, who was accepted in a period where there was an acute shortage of welders, forcing Local 32 to recruit from the Boilermakers' Union.

[18] Five were accepted after September, 1969, and the remaining two were accepted in May, 1968.

[19] Aside from their castigation of the use of such information as an engagement in a statistical "numbers game," appellants further contend that this data is irrelevant as the appellants' jurisdiction extends beyond the City of Seattle, rendering such statistics misleading. This is simply answered by the fact that the City has the single largest population within their jurisdiction and is that area from which they would most likely draw the vast majority of workers for apprenticeship, referral and membership purposes. We also recognize that appellants made no objection to this testimony at trial. We feel appellants' argument has no merit.

[20] Title VII of the Civil Rights Act of 1964 took effect on July 2, 1965.

[21] *See, e.g.,* United States v. Local 38, IBEW, 428 F.2d 144, 151 (6th Cir. 1970); EEOC v. United Association of Journeymen, etc., 311 F.Supp. 468 (S.D. Ohio 1970); United States ex. rel. Mitchell v. Hayes Int'l Corp., 415 F.2d 1038 (5th Cir. 1969); United States v. Sheet Metal Workers Local 36, 416 F.2d 123 (8th Cir. 1969).

[22] Fiss, *supra* note 14, at 272–73. *See also* Note, Enforcement of Fair Employment Under the Civil Rights Act of 1964, 32 U.Chi.L. Rev. 430, 461 (1965).

[23] State of Alabama v. United States, 304 F.2d 583, 586 (5th Cir.), aff'd per curian, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112 (1962).

[24] 110 Cong.Rec. 14270.

[25] 42 U.S.C. § 1971(e).

[26] Hearings Before the House Committee on the Judiciary on H.R. 1037, 86th Cong., 2nd Sess. 13.

[27] U.S.C. § 2000e–2(j). It provides:

Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist * * *.

[28] 42 U.S.C. § 2000e–5(g) reads:

If the court finds that the respondent has intentionally engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative relief as may be appropriate. * * *

[29] See note 1 *supra.*

Mr. JAVITS. Mr. President, if there are no other speakers at the moment, I again suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. JAVITS. Mr. President, I ask unanimous consent that the time consumed in the quorum be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BYRD of West Virginia. Mr. President, will the Senator from New Jersey yield me time?

Mr. WILLIAMS. Mr. President, I yield to the Senator from West Virginia.

ORDER FOR TIME TO VOTE ON PENDING AMENDMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time for debate on the pending amendment close at 2 p.m. today and that the vote on the pending amendment then occur.

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

RECESS TO 1:45 P.M.

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess until 1:45 p.m. today.

The motion was agreed to; and (at 1:15 p.m.) the Senate took a recess until 1:45 p.m.; whereupon the Senate reconvened when called to order by the Presiding Officer (Mr. BYRD of Virginia).

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, on my time, 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. WILLIAMS. 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, will the Senator yield?

Mr. WILLIAMS. I yield.

The PRESIDING OFFICER. Does the Senator ask unanimous consent that the remaining time be equally divided?

Mr. WILLIAMS. Yes.

Mr. ALLEN. I yield back the remainder of my time.

Mr. JAVITS. Mr. President, just to consummate and complete the argument I made against this amendment, pointing out that it would torpedo orders of courts seeking to correct a history of unjust discrimination in employment on racial or color grounds, because it would prevent the court from ordering specific measures which could assign specific percentages of minorities that had to be hired, and that could apply to government as well as private employers, I have just had my attention called to two recent cases, both involving consent decrees negotiated by the Justice Department.

One is a case in the U.S. district court in Boston and another in Kansas. In one case, part of the decree required that 166 Negroes and Puerto Ricans be given preference—in filling future vacancies for which they were qualified.

In the other case in Kansas, the company agreed to make a good-faith effort to hire from three minority groups for 20 percent of the clerical positions to be filled in the next 3 years.

This amendment would make it impossible for the Justice Departament to obtain such decrees in the future.

I ask unanimous consent that a news item in the Daily Labor Report of December 22, 1971, concerning these two cases be printed in the RECORD.

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

[From the Daily Labor Report, Dec. 22, 1971]

JUSTICE DEPARTMENT OBTAINS CONSENT DECREES PROHIBITING DISCRIMINATION UNDER TITLE VII

The entry of two consent decrees prohibiting two firms from discriminating against minority groups in employment is announced by the Department of Justice.

A decree prohibiting AMBAC Industries, Inc., from discriminating against Negroes and Puerto Ricans in employment at its Springfield, Mass., plant is entered in U.S. District Court in Boston, concluding a suit filed against AMBAC by the Justice Department on June 28, 1968. A second one prohibits a Kansas manufacturer from discriminating against Negroes, Spanish-surnamed Americans and American Indians. It was entered in U.S. District Court in Kansas City., Kan., terminating an employment discrimination suit filed on April 24, 1969.

The AMBAC decree is also signed by American Bosch Industrial Union Local 206, IUE, and the parent international union, which were named as defendants because the interests of their members would be affected by the relief sought. AMBAC, which has 1,200 employees, manufactures carburetors and fuel injection systems for trucks, trailers and tanks.

The suit charged discrimination against blacks and Puerto Ricans in its employment practices in violation of Title VII of the Civil Rights Act of 1964, and the decree permanently enjoins AMBAC from any racial or ethnic discrimination in its employment practices, including hiring, assigning, promoting and training.

In addition, AMBAC is required to provide back pay of $1,000 to each of 29 black and Puerto Rican persons who unsuccessfully applied for jobs between 1966 and 1969. They also must be offered jobs ahead of all new applicants and ahead of persons who have been laid off and have a later seniority date. The company is further required to give preference to another 166 black and Puerto Rican persons in filling future vacancies for which they are qualified.

Another requirement is the notification by AMBAC of employment offices and racial and ethnic groups of job vacancies, to keep

job applications for 90 days and check them against vacancies. AMBAC also must recruit for salaried employees at educational institutions which have a substantial black enrollment, and to post signs when vacancies exist stating that the company is an equal opportunity employer.

The Kansas decree applies to Certain-Teed St. Gobain Insulation Corp., successor to Gustin Bacon Division of Certain-Teed Products Corp., and Teamsters Local 41, whose members, interests would be affected by the relief sought. The original suit charged that Gustin-Bacon, which employed about 1,000 persons, discriminated against the minority groups in hiring, job assignment, testing, and promotion to supervisory positions. The defendants are prohibited from any discriminatory practice and the company is required to provide for Negroes, Spanish-surnamed persons and American Indians training similar to that made available to white employees.

In addition, the firm is required to make a good faith effort to hire from the three minority groups for 20 percent of the clerical positions filled during the next three years.

Mr. WILLIAMS. Mr. President, I do not believe that it is the intent of the Senator from North Carolina to deny to the judicial and executive branches of Government all power to remedy the evils of job discrimination; but I am afraid—I am desperately afraid—that this amendment would strip title VII of the Civil Rights Act of 1964 of all its basic fiber. It can be read to deprive even the courts of any power to remedy clearly proven cases of discrimination.

That statement follows right on examples of situations cited by the Senator from New York of the kind of situation that could be affected adversely.

I have listened intently to the debates on this bill. Not one Member of this body has spoken against providing some method for enforcing the law. This amendment raises the real threat of destroying any potential for effective law enforcement. If this amendment is accepted, I earnestly suggest that we will have a law, but there will be little chance for order under the law again if this amendment should prevail.

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

Mr. WILLIAMS. I yield.

Mr. JAVITS. I am authorized to state that the Secretary of Labor is directly opposed to this amendment.

Mr. WILLIAMS. That is to say that the administration opposes this amendment?

Mr. JAVITS. That is correct.

Mr. WILLIAMS. I do not always speak for the administration. I am happy to.

Mr. ERVIN. It is not very surprising that a public official would object to anything which robs him of the power to be a tyrant. That is not surprising at all.

Mr. WILLIAMS. Moderately, may I say that I disagree with the tempestuous language of the Senator from North Carolina.

Mr. President, if any further time remains, I yield it back.

Mr. ERVIN. If any further time remains on our side, I should like to add to the Senator's statement—"tempestuous and truthful."

The PRESIDING OFFICER (Mr. MONTOYA). All time has now expired.

Mr. WILLIAMS. There is no time for a surrebuttal. [Laughter.]

The PRESIDING OFFICER. All time on this amendment has now expired.

The question is on agreeing to the amendment of the Senator from North Carolina (Mr. ERVIN).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Missouri (Mr. EAGLETON), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Washington (Mr. JACKSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Mississippi (Mr. STENNIS), the Senator from Illinois (Mr. STEVENSON), the Senator from California (Mr. TUNNEY), the Senator from Alaska (Mr. GRAVEL), and the Senator from Indiana (Mr. HARTKE) are necessarily absent.

I further announce that the Senator from Mississippi (Mr. EASTLAND) is absent because of illness.

On this vote, the Senator from Mississippi (Mr. EASTLAND) is paired with the Senator from Washington (Mr. MAGNUSON).

If present and voting, the Senator from Mississippi would vote "yea" and the Senator from Washington would vote "nay."

On this vote, the Senator from Georgia (Mr. GAMBRELL) is paired with the Senator from Washington (Mr. JACKSON).

If present and voting, the Senator from Georgia would vote "yea" and the Senator from Washington would vote "nay."

I further announce that, if present and voting, the Senator from Illinois (Mr. STEVENSON) and the Senator from California (Mr. TUNNEY) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Delaware (Mr. BOGGS), the Senator from Colorado (Mr. DOMINICK), the Senator from Oklahoma (Mr. BELLMON), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senator from Iowa (Mr. MILLER), the Senator from Kansas (Mr. PEARSON), the Senator from Ohio (Mr. TAFT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Wyoming (Mr. HANSEN), and the Senator from Maryland (Mr. MATHIAS) are absent on official business.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Colorado (Mr. DOMINICK) would vote "yea."

On this vote, the Senator from Wyoming (Mr. HANSEN) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from Wyoming would vote "yea" and the Senator from Oregon would vote "nay."

On this vote, the Senator from South Carolina (Mr. THURMOND) is paired with the Senator from Ohio (Mr. TAFT). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Ohio would vote "nay."

The result was announced—yeas 22, nays 44, as follows:

[No. 19 Leg.]

YEAS—22

| | | |
|---|---|---|
| Allen | Ellender | Jordan, Idaho |
| Bible | Ervin | Long |
| Byrd, Va. | Fannin | Spong |
| Byrd, W. Va. | Fulbright | Talmadge |
| Cannon | Gurney | Tower |
| Chiles | Hollings | Young |
| Cotton | Hruska | |
| Curtis | Jordan, N.C. | |

NAYS—44

| | | |
|---|---|---|
| Aiken | Griffin | Percy |
| Allott | Hart | Proxmire |
| Anderson | Hughes | Randolph |
| Bayh | Humphrey | Ribicoff |
| Beall | Inouye | Roth |
| Bennett | Javits | Saxbe |
| Brooke | Mansfield | Schweiker |
| Burdick | McGee | Scott |
| Case | McIntyre | Smith |
| Church | Mondale | Stafford |
| Cook | Montoya | Stevens |
| Cooper | Moss | Symington |
| Cranston | Nelson | Weicker |
| Dole | Pastore | Williams |
| Fong | Pell | |

NOT VOTING—34

| | | |
|---|---|---|
| Baker | Hansen | Mundt |
| Bellmon | Harris | Muskie |
| Bentsen | Hartke | Packwood |
| Boggs | Hatfield | Pearson |
| Brock | Jackson | Sparkman |
| Buckley | Kennedy | Stennis |
| Dominick | Magnuson | Stevenson |
| Eagleton | Mathias | Taft |
| Eastland | McClellan | Thurmond |
| Gambrell | McGovern | Tunney |
| Goldwater | Metcalf | |
| Gravel | Miller | |

So Mr. ERVIN's amendment was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. WILLIAMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. The Senator from New Jersey is recognized.

Mr. WILLIAMS. Mr. President, I yield briefly to the Senator from Michigan.

Mr. HART. Mr. President, I appreciate the Senator's yielding to me. I rise to address a question to the manager of the bill with respect to one aspect that has given concern and to establish the understanding and purpose as it will be reflected by the expression of the manager of the bill.

Mr. President, on Wednesday, January 19, at the opening of our deliberations on proposals to amend title VII of the Civil Rights Act of 1964 so as to give the Equal Employment Opportunity Commission much needed additional enforcement authority, the distinguished chairman of the Committee on Labor and Public Welfare placed into the RECORD

an excellent comparative analysis of the present law, his own bill (S. 2515) that we are discussing today, and the bill passed last year by the House of Representatives (H.R. 1746).

Although this analysis will be most helpful to all of us as we continue debate on this vitally important legislation, I am concerned about a provision in the House-passed measure that is described as the exclusive remedy provision. It is one that is not identified or referred to in the comparative analysis printed in the RECORD of January 19, and I believe some clarification would be desirable.

This provision, which some feel might be interpreted as an exclusive or sole provision or sole remedy provision, was the subject of discussion during the floor debate on H.R. 1746 in the House. There, several Members drew attention to its possible effect on the remedies available, particularly beneficial to women employees under the Equal Pay Act of 1963.

Mr. President, the Equal Pay Act of 1963 was the first Federal law enacted by the Congress to prohibit wage discrimination on the basis of sex. It has enjoyed widespread support, and we should make explicit the fact that Congress does not intend the Equal Pay Act to be affected by proposals to expand and strengthen title VII of the Civil Rights Act of 1964.

I should like to ask the distinguished chairman of the Senate Labor Committee if he will confirm my understanding that it is not the will or desire of this body that the Equal Pay Act of 1963 be superseded in whole or in part by any action taken by the Congress to provide most sorely needed amendments to title VII of the Civil Rights Act.

Mr. WILLIAMS. Mr. President, I appreciate the questions put to me by the distinguished Senator from Michigan. I certainly want to make the situation very clear here today.

The distinguished Senator from Michigan is correct in his assumption that it is not our intention in any way to affect or diminish the remedies available under the Equal Pay Act of 1963. I am glad to have the opportunity to add my voice to those who wish to see continued, effective enforcement by the Department of Labor of a law that is of major importance, particularly to women employees who have long been the victims of wage discrimination based on sex. Many of us in the Congress strove for a period of years to see an equal pay for equal work law placed on the statute books. The Senator from Michigan may rest assured that his question, if it still remains, will be further clarified during the course of our conference on S. 2515 and H.R. 1746 with Members of the House of Representatives.

Mr. HART. Mr. President, I appreciate very much the response of the distinguished chairman of the committee. I know that I speak for many Members of the Senate.

Mr. ERVIN. Mr. President, I call up my amendment No. 599 and ask that it be stated.

The PRESIDING OFFICER (Mr. SAXBE). The amendment will be stated.

The assistant legislative clerk read as follows:

On page 39, line 20, following "finds" insert "by preponderance of the evidence taken by the Commission".

On page 41, line 8, strike "on the record." and insert "by a preponderance of the evidence of the record as a whole.".

Mr. ERVIN. Mr. President, if I may have the attention of the distinguished manager of the bill for a moment, I will state that the amendment would merely make clear that in making findings of fact, the Commission should make the findings of fact conform to the preponderance of the evidence. I understand that there is a probability that the distinguished manager of the bill may be willing to accept the amendment.

Mr. WILLIAMS. Yes. We discussed the purport of the amendment during the debate on an earlier amendment. I recall that this amendment, dealing with the preponderance of evidence at the Commission level, was included in a bill passed by the Senate 2 years ago. The Senator from North Carolina offered the amendment then, it was agreed to, and was in the bill passed by the Senate at that time. It was not included in the bill reported by the Senate committee this year. It should be in the bill, in my judgment.

Mr. ERVIN. I thank the Senator from New Jersey. I am ready to vote.

Mr. WILLIAMS. I am, too.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ERVIN. Mr. President, I call up my amendment No. 812. I ask that the reading of the amendment be omitted but that the text of the amendment be printed in the RECORD and that I be permitted to explain the amendment in lieu of its being read.

The PRESIDING OFFICER. Without objection, the amendment will be printed in the RECORD and considered as having been read.

The amendment is as follows:

1. On page 32, strike out lines 8, 9, and 10.

2. On page 32, line 18, insert the words "a State or political subdivision thereof" between the comma following "United States" and the words "an Indian tribe."

3. On page 33, strike out lines 4 and 5.

4. On page 33, strike out lines 11, 12, and 13.

5. On pages 32 and 33, renumber (2) and (4) as (1) and (2), respectively.

6. On pages 36 and 37, strike out everything from the beginning of line 22 on page 36 through the end of line 12 on page 37, and re-letter the remaining subsections appropriately.

7. On pages 38 and 39, strike out everything from the word "In" on line 18 on page 38 through the word "hearing" on line 2 on page 39.

8. On page 48, strike out everything from the word "upon" on line 14 through the word "importance" on line 24.

9. On page 49, strike out everything between "Subsection (c)" and the words "or the efforts" on line 2.

10. On page 49, strike out everything between "Subsection (f)" on lines 6 and 7 and the words "or the Commission" on line 8.

11. On page 54, strike out everything from the word "or" on line 16 through the word "Subdivision" on line 17.

Mr. ERVIN. Mr. President, this is a simple amendment. I should like to alert Senators to the fact that it is, in my judgment, one of the most crucial amendments which will be offered to the bill.

Stated simply, the amendment would completely remove from the bill all the provisions which undertake to give the EEOC jurisdiction over the employment practices of any of the States or any of the political subdivisions of the States. I should like to discuss the amendment for a comparatively brief time this afternoon and announce my willingness to have it voted on Monday. I think that because of the great importance of the amendment, all Senators should have an opportunity to ascertain what is contemplated by it and have an opportunity to think about it before they vote. I am ready to proceed with the argument.

Mr. President, in my honest judgment, the legislative proposal contained in the bill that the EEOC be given jurisdiction over the employment practices of all the States and of all the political subdivisions of all the States constitutes the most drastic assault upon our Federal system of government which has been proposed in any legislative proposal to come before Congress at any time in its history.

The bill gives the EEOC power to pass upon the employment practices whereby the States and their political subdivisions employ any person to render services to them. There is not even an exception in the bill to the effect that the EEOC will not have jurisdiction over the Governor of a State or the Lieutenant Governor of a State, or both; statewide election officials; State judges, whether they are elected or appointed to office; clerks of superior courts of counties and their assistants; sheriffs of counties or their assistants; and the chiefs of police of municipalities. The bill would give the EEOC jurisdiction, even, over members of school boards, certainly where they are appointed.

It was once said, in a far happier day than the present, that the Constitution of the United States looks in all its provisions to an indestructible Union composed of indestructible States. Yet today we have pending before the Senate of the United States a bill providing that the EEOC be given the ultimate power to determine who a State or a political subdivision of a State can appoint or employ to exercise the legislative, executive, and judicial powers of a State.

If the amendment is not adopted, we ought to change the name of our country from that of the "United States of America" to the "United State"—singular—"of America," because any Federal agency which has jurisdiction over the employment of persons by a State, which exercises legislative, executive, and judicial power over a State, is the supreme dictator of State and local governments in America.

Mind you, Mr. President, the bill not only gives the EEOC power to supervise and ultimately to control the employees of a State; it also gives the Commission that power in respect to all employees. Hence, under this power, in the bill in its present form, the EEOC would be authorized to act as the school board for every school district in the United States. In that capacity, the EEOC would have

the ultimate power to determine the persons who would act as school superintendents, school principals, and schoolteachers in every area of the United States.

The bill does not, however, stop with that. It would, in effect, give the EEOC the ultimate power to overrule the decisions of the boards of trustees of State institutions of higher learning, and ultimately control the appointment of every teacher who teaches any subject in any institution of higher learning.

I would say that this bill not only constitutes the most drastic grab for governmental power on the part of the Federal Government in the history of this Nation, but I would say that if it is enacted into law in its present form, without removing the provisions which would be removed by this amendment, this bill would represent the most stupid piece of legislation in the Nation's history.

I can illustrate that by discussing the power which this bill gives to the EEOC to supervise and ultimately control the employment practices of State institutions of higher learning. As the Senator from North Carolina understands this bill, it does not give the EEOC the power to compel a State institution of higher learning to employ a man whose competency for teaching is inferior. It does not intend to take away from a State institution of higher learning the rightful power to select as teachers of the various subjects taught in institutions of higher learning men who are competent to teach those subjects. And yet it is conceivable that it may, in practical effect, accomplish that unintended and that unwarranted result.

There are two questions involved in every case which is concerned with the application of this bill to any employment situation involved in State employment. There are two things that the EEOC must do before it can control the employment practices of a State institution of higher learning and order that institution to employ an applicant for a teaching job in lieu of the person selected by the trustees of the State institution. To do this the EEOC must do two things, and it must find these things by the preponderance of the evidence, according to the amendment just now adopted. The EEOC must find by the great weight of the evidence, first, that the person is competent to perform the function of the employment in question, and second, that he has been denied employment because of his race, or because of his religion, or because of his national origin, or because of his sex.

The bill before the Senate puts the same obligation upon the Federal courts in respect to State employees and in respect to employees of State institutions of higher learning. The EEOC, under this bill, exercises that power with respect to the employees of private institutions of higher learning where jurisdiction is given to Federal district courts in cases of State institutions of higher learning. And so, when a Federal judge undertakes to exercise control under this bill over teachers of State institutions of higher learning and undertakes to order them to employ as a teacher an individual selected by the Federal judge, in place of the person selected by the authorities of the State institution of higher learning, the Federal judge must find by the preponderance of the evidence these two things: First, that the person he orders the State institution of higher learning to employ is competent to teach the subject which he is to be assigned to teach; and, second, that he has been denied that employment by that State institution of higher learning because of his race or religion or national origin or sex.

This first requirement manifests the stupidity—and I know of no other way to describe it—of this proposed legislation insofar as it relates to the employment of teachers of a State institution of higher learning.

The University of North Carolina at Chapel Hill is a State institution of higher learning established and maintained and operated by the State of North Carolina. Under this bill, a Federal judge would have the ultimate power to order the University of the State of North Carolina to employ a specified person selected by the Federal judge, rather than by the authorities of the University of North Carolina at Chapel Hill, if the Federal judge found, as a fact, that the person selected for it was competent to teach the subject in question and that he had been denied employment to teach such subject because of his race or religion or national origin or sex.

I submit, with all due deference to all concerned, that it is the height and the depth of legislative stupidity to confer on Federal judges the power to determine the competency of any person to teach any of the abstruse subjects in which people receive instructions in a State institution of higher learning. And, while such observation is not strictly germane to this particular amendment, I also submit that it is both the height and the depth of stupidity to confer upon the EEOC like powers with respect to persons who are to teach subjects at private institutions of higher learning. I submit that if there is anything which is beyond the competency of a Federal judge and beyond the competency of the EEOC, it is the task of passing upon the qualifications of people who are to teach the various subjects of instruction which are presented to the students at institutions of higher learning.

I can illustrate that by certain references to the subjects, or some of the subjects, in which the University of North Carolina instructs its students.

The University of North Carolina has a department of anthropology, and virtually every State institution of its caliber in this Nation has a similar department. I might add that the leading private institutions of higher learning also have such departments.

Let me call the attention of Senators to what instruction is offered in this one field.

They have a freshman seminar:

> The seminar will provide an initial small group learning experience in significant current topics in anthropology.

I respectfully submit that it would be a legislative absurdity for Congress to enact this bill and give to the EEOC in the case of private institutions and to Federal judges in the case of State institutions of higher learning the power to pass on the competency of any person to provide initial small group learning in the significant current topics in anthropology. Despite all of their legal learning, Federal judges are too ignorant to have any competency to perform that task; and notwithstanding all of its political acumen, the EEOC is too ignorant to be vested by law with the task of performing that function in respect to private institutions of learning.

Let us refer to just a few other subjects which are taught in State and private institutions of higher learning.

General anthropology, which is an introduction to anthropology:

> The science of man, the culture-bearing animal. Topics considered: Physical evolution of mankind and biological variations within and between human populations. Prehistoric and historic developments of culture. Cultural dynamics viewed analytically and comparatively.

Now, what Federal judge is competent to determine whether any person possesses the qualification to teach general anthropology? And obviously, the EEOC manifests about as much capacity in that field as I possess the capacity of directing the kind of activities which archangels should pursue.

Then these institutions of higher learning, both State and private, teach courses in human origins, which constitute surveys of physical anthropology, including the place of man among the primates, human evolution, and racial differences. Consideration is also given in these courses to osteology and the interrelationship of cultural and biological factors.

With all due respect to Federal judges and the EEOC, I would say that they are totally without the capacity to determine the competence of any person to teach such a subject in any State or private institution of higher learning. Yet this bill gives Federal judges that power in respect to the teaching of such subjects at State institutions of higher learning, and the EEOC that power in respect to private institutions of higher learning.

I note that one branch of anthropology deals, among other things, with the place of man among his primates in human evolution. This bill, in this respect, reminds me of the time I served in the legislature of North Carolina, many years ago, when someone offered a bill to prohibit the teaching of the organic theory of evolution in any of the State-supported colleges or schools. If the legislature of North Carolina had been so foolish as to adpt such a piece of legislative stupidity, North Carolina would have enjoyed the very dubious fame of being the place where the Scopes trial occurred, rather than the State of Tennessee.

I participated in the debate on that bill in the legislature of North Carolina, and I made this observation: That the only good purpose that I saw that such a bill could serve would be to bring the satisfaction to the monkeys in the jungle of knowing that the Legislature of North Carolina had absolved them from

any responsibility for the conduct of the human race in general, and of the North Carolina Legislature in particular.

We defeated the bill. But the issue did not necessarily die there.

During the campaign for the election of the members of the next legislature, one of my good friends, Gus Seff, of Hickory, N.C., was the Democratic candidate for the legislature from Catawba County. He was opposed by my good friend of a by-gone day, Loomis Kluttz, of Newton, N.C., who was a Republican candidate for the State legislature.

During the campaign, these two gentlemen engaged in a joint debate, and Loomis Kluttz charged Gus Seff with believing in evolution, which Loomis Kluttz explained as a belief that men are descended from monkeys.

Gus Seff said he did not know much about evolution, that he believed that evolution taught that as the ages go by, mankind progresses, and that he would like to think that mankind does progress with the passing of the ages. He said:

I don't know anything about this proposition, to the effect that evolution teaches that men are descended from monkeys. I don't accept that. But I knew the father of my opponent. He was a great, old-time family physician in Catawba County. He was a man of good sense and intelligence. I take no position with respect to the theory that men may be descended from monkeys; but my knowledge of the father of my opponent, and my observation of my opponent, have led me to the conclusion that sometimes monkeys are descended from men.

[Laughter.]

Well, I do not mean any harm, and I do not mean to violate any rule of the Senate; but I would say that the passage of this bill in its present form, without my present amendment, might shed no light whatever upon this subject in anthropology, concerning evolution, insofar as it may proclaim—if it does proclaim—that men are descended from monkeys. I would say, were it not for the fact that it might constitute some kind of implicit violation of the Senate rule, that the passage of this bill would afford considerable evidence that sometimes legislators act with the limited intelligence which is ordinarily exhibited by monkeys rather than by men.

Now, let us talk a little more about a bill which gives a Federal judge and the EEOC the ultimate power to pass on the competency of men or women to teach anthropology and the various subjects in institutions of higher learning.

One of the subjects that is taught in this field is genetics and human evolution. A prerequisite to the study of this subject is introductory biology, by permission of the instructor. This subject deals with the fundamental principles of genetics, population genetics, genetic equilibrium, race and species formation, the factors of evolution, and the relation of these principles to man and the primates. Blood groups and other traits are used to illustrate this subject.

Mr. President, I ask this question, not facetiously but solemnly: Does any Member of the Senate know of any Federal judge anywhere within our vast borders who has enough understanding of the subject of anthropology to determine the competency of a person to teach genetics and human evolution as a course in anthropology in an institution of higher learning?

There is another subject in this field that would certainly tax the ingenuity of a Federal judge or the ingenuity of the EEOC. In these departments of anthropology in private and State institutions of learning, they teach a subject called primate social behavior. This deals with the social behavior and ecology—ecology is a good word—of presimians, monkeys, and apes, and the evolution of human behavior.

I think it is inconceivable that there is any judge on any Federal district court bench anywhere within the vast borders of our land who is qualified to pass on the competency of any individual to teach primate social behavior. Yet, this bill imposes that duty upon a Federal judge in any case where it is alleged, in any action before him, that the institution of higher learning has refused to employ a particular person to teach primate social behavior because of that person's race or religion or national origin or sex.

I submit that this bill imposes the same duty in the same situation upon the members of EEOC and that their competency to make a decision on this point places them in the same state which is inhabited by ignoramuses and the Senator from North Carolina. Yet, we have this bill to impose that duty on Federal judges and the members of the EEOC. Thank God it does not impose that duty on the Senator from North Carolina, and the Senator from North Carolina is opposed to having it imposed upon him. That is one of the purposes of this amendment.

There is another subject that is taught by the department of anthropology in the institutions of higher learning, the "Anthropology of Religion." This course examines over 100 years of speculation. This is not speculation on Wall Street which they are talking about but speculation about the origin of religion and its place in our culture, including the thoughts of Marx, Durheim, and Freud. It gives attention to ritual, magic, myth, and revitalization movements as they operate in modern society and others.

Mr. President, I should like to have some proponent of this bill tell me the name of a Federal judge or some member of the EEOC who is possessed of sufficient knowledge to pass upon the question of the competency of any man or any woman to teach the anthropology of religion.

Senators will note, if they heard what I said, that the course included, among other things, myths. I say it is a legal myth that any Federal judge or any member of the EEOC has the competency to pass on the qualifications of any person to teach the anthropolgy of religion.

There is another subject in this field which is entitled "The Development of Anthropological Thought." This course of study is a constitutional review of selected cultural anthropologists and their predecessors to define recurrent as well as innovative perspectives with which they have viewed man, culture, and society.

Mr. President, I think it would be a myth for Congress to assume that any Federal judge or any member of the EEOC has the competency to pass upon the qualifications of a person to teach that course, the development of anthropological thought. This course also deals not only with the subject of myths but also with the subject of magic.

I just do not believe there is a single Federal judge within the borders of the United States of America, or any member of the EEOC, who could possibly be appointed to that board who would have possession of enough magic to empower him to determine the competency of any person to teach this subject in any State or private institution of higher learning. Yet that is one of the duties which this bill, if enacted into law, would impose upon Federal judges and members of the EEOC in exercising the vast powers it would give them to supervise and control the employment practices of institutions of higher learning.

Mr. President, I have barely scratched the surface of the subject I am now expounding. I have cited only a relatively few instances which show how stupid it would be for Congress to give Federal judges and members of the EEOC the power to pass upon the qualifications of persons employed or to be employed to teach the very subjects of learning taught in institutions of higher learning.

I might state to my friends that there are many other subjects taught in these institutions of higher learning, such as intermediate painting, arts, and crafts, sculpture, elementary bacteriology, general botany, cells biology, plant physiology, environmental biology, chemistry, physics, and religion.

It would be, as I say, the height and depth of stupidity for Congress to enact a law which would empower and require Federal judges and members of the EEOC to pass upon the qualifications of persons who apply or are hired by institutions of higher learning to teach those subjects.

Mr. President, as I have just said, I have merely scratched the surface in presenting the view that it is the height and depth of stupidity for Congress to undertake to empower and require Federal judges and members of the EEOC to pass upon the qualifications of men and women to teach subjects of learning in which students receive instruction in a State or private institution of higher learning.

Mr. President, I do not desire to trespass upon eternity, as I could do in further expounding on this subject. I sincerely trust that the old expression, "A word to the wise is sufficient," and these few words which I have spoken on this subject, will induce the wise Members of the Senate—and, indeed, the foolish ones, if any such there be—to vote in favor of this amendment when it comes up for a vote.

Mr. President, I yield the floor.

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## QUORUM CALL

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

The PRESIDING OFFICER (Mr. FANNIN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, for the RECORD, what is the pending question?

The PRESIDING OFFICER. The pending question is amendment No. 812 of the Senator from North Carolina.

Mr. BYRD of West Virginia. Mr. President, I thank the distinguished presiding officer.

Mr. President, I have cleared the following requests with the distinguished majority leader, the distinguished assistant Republican leader, the distinguished manager of the bill, and with the distinguished Senator from North Carolina (Mr. ERVIN), the author of the pending amendment.

## ORDER FOR ADJOURNMENT TO 11 A.M. MONDAY, JANUARY 31, 1972—TIME FOR DEBATE ON PENDING AMENDMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its busines today it stand in adjournment until 11 a.m. on Monday next; provided that at the conclusion of the morning business and when the unfinished business is laid before the Senate on Monday next, the time on the pending amendment begin running and that the time be under the control of and divided between the distinguished manager of the bill, the Senator from New Jersey (Mr. WILLIAMS), and the distinguished mover of the amendment, the Senator from North Carolina (Mr. ERVIN).

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

## ORDER FOR THE SENATE TO VOTE ON ERVIN AMENDMENT NO. 812 AT 2 P.M. ON MONDAY

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that a vote occur on the pending amendment at 2 p.m. on Monday; provided further, that time on any amendment thereto, motion, appeal, point of order—with the exception of nondebatable motions—be limited to 20 minutes, the time to be equally divided between the mover of such and the manager of the bill, except in any case in which the manager of the bill is in favor of such, in which case the time in opposition thereto be under the control of the distinguished minority leader or his designee; provided further, that time on any amendment to the amendment, debatable motion, appeal, or point of order shall come out of the time on the amendment in the first degree with one exception, that being if there is an amendment in the second degree pending at the time of 2 p.m., then the provision with respect to the 20 minutes on any such amendment would apply.

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

Mr. BYRD of West Virginia. I yield.

Mr. HRUSKA. Mr. President, is it correct that this limitation of time and the conditions pertaining thereto apply only to the pending amendment?

Mr. BYRD of West Virginia. The Senator is correct.

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

Mr. BYRD of West Virginia. Mr. President, for the information of Senators, the vote on the pending amendment will be a rollcall vote.

## ORDER FOR ADJOURNMENT FROM MONDAY TO TUESDAY, FEBRUARY 1, 1972, AT 9:45 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business on Monday next, it stand in adjournment until 9:45 a.m. Tuesday next.

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

## ORDER FOR RECOGNITION OF SENATORS PEARSON, FANNIN, ELLENDER, GOLDWATER, AND YOUNG ON TUESDAY MORNING NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the recognition of the two leaders on Tuesday next, the distinguished Senator from Kansas (Mr. PEARSON) be recognized for not to exceed 15 minutes, and that at the conclusion of the remarks of the Senator from Kansas on Tuesday next the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Senators FANNIN, ELLENDER, GOLDWATER, and YOUNG.

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

## ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON TUESDAY NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Tuesday, following the remarks of the aforementioned Senators, there be a period for the transaction of routine morning business for not to exceed 30 minutes with the statements therein limited to 3 minutes, the period to end at 11:30 a.m.

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

## CREATION OF OFFICE FOR DRUG ABUSE LAW ENFORCEMENT

Mr. HRUSKA. Mr. President, the past 3 years have witnessed a balanced, comprehensive, as well as a determined and effective strategy to fight drug abuse and its related problems on a Federal level.

Today the President has, by Executive order, created an Office for Drug Abuse Law Enforcement within the Department of Justice, headed by a Director with the title of Special Assistant Attorney General. Its thrust in chief will be against drug traffickers and pushers on the streets.

This is a program in keeping with that part of the state of the Union message in which the President declared:

> I will soon initiate a major new program to drive drug traffickers and pushers off the streets of America. This program will be built around a nation-wide network of investigative and prosecutive units, utilizing special grand juries established under the Organized Crime Control Act of 1970, to assist State and local agencies in detecting, arresting, and convicting those who would profit from the misery of others.

Mr. President, this new office is also in keeping with the past 3 years' persistent and determined efforts to fight the drug menace and all of its aspect through a balanced, comprehensive strategy.

It is an overall approach. Its component parts are designed to work together and to complement each other. They are functioning admirably and vigorously. Much progress has been made. More is on its way.

In his release today, the President referred to a number of these programs:

First. The Special Action Office for Drug Abuse Prevention headed by Dr. Jaffe.

Second. The Cabinet Committee on International Narcotics Control.

Third. Expanded programs for drug treatment and rehabilitation in the Department of Defense and Veterans' Administration.

Fourth. National drug education training program.

Fifth. National clearinghouse for drug abuse information.

Sixth. Federal Drug Abuse Prevention Coordination Committee.

Of course, there are many other programs, a total of nine Federal agencies being involved in one or another of the aspects of this problem.

Congressional action and cooperation have been exemplary, both in legislation and in appropriations. Such action is headed by passage in October 1970 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

The providing of funding by Congress has been selective and generous toward implementing of these programs:

First. For treatment and rehabilitation this fiscal year, $190 million—a sevenfold increase from 3 years ago. An increase of $40 million is asked for fiscal year 1973, to make a total of $230 million.

Second. Research, education, training, and prevention, also about a sevenfold increase over the amount of 3 years ago, at the figure of $120 million, with a further increase of $17 million requested for 1973.

Third. Law enforcement obligations had an eightfold increase in the past 3 years, from $20 million to $165 million. An increase of $65 million for fiscal year 1973 is requested, to make a total of $230 million.

Fourth. An increase in the past year alone of over 2,000 positions in personnel in the Bureau of Customs and in the Bureau of Narcotics and Dangerous Drugs.

It has been borne in mind throughout that the Federal Government cannot meet this menace alone, but it can take

a strong leadership position. The tone is set at the top. But State and local efforts must likewise be commensurate, and of much more total massive proportions.

The new Office of Drug Abuse Law Enforcement, created today, recognizes and demonstrates this.

It is designed for cooperation with State and local government units engaged in like enforcement work.

It is directed at the street-level pushers and traffickers, with a dedicated group of lawyers and investigators intent upon exposing and eliminating retail sales. It will utilize new authorities under the Organized Crime Control Act of 1970, including special grand juries.

Mr. President, this action should be widely hailed and commended as another giant step in the continuing progress in drug abuse control.

Mr. President, I ask unanimous consent that the President's release and Executive order on this subject earlier today be printed in the RECORD.

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

STATEMENT BY THE PRESIDENT

Drug abuse—as I said seven months ago—is America's "public enemy number 1." It is an all-pervasive and yet an elusive enemy. I am convinced that the only effective way to fight this menace is by attacking it on many fronts—through a balanced, comprehensive strategy.

For the past three years, this administration has been working to carry out such a strategy. We have moved to eliminate dangerous drugs at their source, to cut their international flow, to stop them from entering our country, and to intercept them after they do. We have been educating our people to understand the drug problem more completely. We have expanded significantly our efforts to prevent drug addiction and to treat and rehabilitate those who have become drug dependent.

A NEW INITIATIVE

Today our balanced, comprehensive attack on drug abuse moves forward in yet another critical area as we institute a major new program to drive drug traffickers and drug pushers off the streets of America.

I have signed today an executive order establishing a new Office of Drug Abuse Law Enforcement in the Department of Justice. This Office will marshal a wide range of government resources—including new authorities granted in the Organized Crime Control Act of 1970—in a concentrated assault on the street level heroin pusher. Working through nine regional offices, our new program will use special grand juries to gather extensive new information concerning drug traffickers and will pool this intelligence for use by Federal, State and local law enforcement agencies. It will draw on the Department of Justice and the Department of the Treasury to assist State and local agencies in detecting, arresting and prosecuting heroin traffickers.

I am pleased to announce that the new Office of Drug Abuse Law Enforcement will be headed by Myles J. Ambrose, who has been serving as our Commissioner of Customs. Mr. Ambrose will also serve as my own Special Consultant for Drug Abuse Law Enforcement, advising me on all matters relating to this important subject.

PROGRAMS ALREADY IN OPERATION

This effort to meet the drug menace directly on the streets of America—an effort which I promised in my message on the State of the Union—complements our other drug-related initiatives.

*The Special Action Office for Drug Abuse Prevention*, established on an interim basis last June and headed by Dr. Jerome Jaffe, is already beginning to have an impact in the fields of drug abuse education, treatment, rehabilitation, and prevention. The Office is working to coordinate programs which are spread through nine Federal agencies and to develop a national strategy to guide these efforts. Drawing on private and public expertise, the Special Action Office has spurred new research, gathered valuable information, planned for a new drug training and education center, and helped in setting up a major program to identify and treat drug abuse in the Armed Services.

The Special Action Office—which has already done so much—can do much more if the Congress will promptly give it the authority and the funds I have requested for it.

The Cabinet Committee on International Narcotics Control, established last September and chaired by Secretary Rogers, is taking the lead in our efforts to fight the international drug traffic and to eliminate drugs at their source. We have appointed Narcotics Control Coordinators in all affected American embassies around the world and have been working closely with other governments to strengthen drug control efforts. We were especially gratified when Turkey announced last summer a total ban on the growing of the opium poppy.

Drug dependence in the Armed Forces and among veterans is being reduced considerably by expanded drug treatment and rehabilitation programs in the Department of Defense and in the Veterans Administration. Drug identification and detoxification programs, which began in Vietnam, have been expanded to include all military personnel in the United States who are being discharged, sent abroad, or are returning from overseas duty. In the year ahead the Veterans Administration will offer treatment and rehabilitative service to an estimated 20,000 addicts. It will expand its drug dependence units by as many as 12, creating a total of up to 44 such units.

We have also been moving ahead with a range of other activities. The Comprehensive Drug Abuse Prevention and Control Act of 1970—which I proposed in July of 1969—was passed by the Congress and signed into law in October of 1970. The model State narcotics legislation which I also recommended has been adopted by 26 States and is being considered in 15 others.

Tens of thousands of teachers, students, and community leaders have been trained under our National Drug Education Training Program. A new National Clearinghouse for Drug Abuse Information has been established. Some 25 million pieces of drug education information have been distributed by the Federal Government. We have established a Federal Drug Abuse Prevention Coordinating Committee at the interagency level and a number of White House Conferences on Drug Abuse have been conducted.

In addition, the Federal Government is carrying out a number of major research programs to help us better to identify and analyze drugs and more fully to understand how they are moved about the country and around the world. I have also recommended the creation of a United Nations Fund for Drug Control—to which we have already contributed $1 million and pledged $1 million more—and have recommended several steps to strengthen international narcotics agreements.

In the enforcement field, the number of authorized new positions in the Bureau of Narcotics and Dangerous Drugs and in the Bureau of Customs has jumped by more than 2,000 in the past year alone. We are expanding our program to train State prosecutors to handle cases under the newly enacted Uniform Controlled Dangerous Substances Act. We are stepping up the work of the Joint State-Federal Narcotics Task Force in New York City.

It is estimated that the amount of heroin which will be seized in the current fiscal year will be more than four times what was seized in fiscal year 1969. Since that time, the number of drug-related arrests has nearly doubled.

OVERALL EXPENDITURES

Perhaps the most dramatic evidence of our stepped up campaign against drug abuse lies in the budget figures for various aspects of our effort. In the last three years, for example, Federal obligations for drug treatment and rehabilitation have increased nearly seven-fold, from $28 million to $189.6 million, and we have proposed a further increase of $40.6 million for next year. Obligations for research, education, training, and prevention activities have also grown *nearly seven-fold*, from $17.5 million in fiscal year 1969 to $120.5 million this year, and our new budget calls for a further increase of $14.5 million.

This means that we will be obligating more than 8 times as much for treatment, rehabilitation, research, education, training and prevention in the coming fiscal year as we were when this administration took office.

As far as law enforcement obligations relating to drug abuse are concerned, the level has increased more than eight-fold in our first three years in office—from $20.2 million to $164.4 million. We plan to increase this figure by another $64.6 million next year to the $229 million level.

A BALANCED AND COMPREHENSIVE PROGRAM

The central concept behind all of these programs is that our overall approach to the drug menace must be balanced and comprehensive—fighting those who traffic in drugs, helping those who have been victimized by drugs, and protecting those who have not yet been threatened. The new initiative I have launched today in the area of law enforcement is aimed against those who would profit from the misery of others. It will confront the street level heroin pusher with a dedicated group of lawyers and investigators intent upon exposing and eliminating retail sales of heroin. At the same time, however, we must be sure that we have sufficient treatment facilities to handle any increase in the number of addicts seeking treatment because of the disruption of heroin trafficking. The Special Action Office for Drug Abuse Prevention, which helped in the development of this new law enforcement program, has assured me that we will be able to meet an increased demand in the treatment field if the Congress passes its new legislation.

Drug abuse, as I said in my message on the State of the Union, saps our Nation's strength and destroys our Nation's character. The Federal Government cannot meet this menace alone—but it can take a strong leadership position. I believe we have developed a Federal program for combating drug abuse which is both firm and compassionate. With the cooperation of the Congress, the State and local governments, and the American people, that program will continue to grow in effectiveness.

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EXECUTIVE ORDER

CONCENTRATION OF LAW ENFORCEMENT ACTIVITIES RELATING TO DRUG ABUSE

The menace of drug abuse threatens to sap our Nation's strength and destroy our Nation's character. It must be combatted in a variety of ways—through international measures, through domestic law enforcement, through programs dealing with prevention, education, treatment and rehabilitation. As one critical part of this balanced and comprehensive program, we must now give special emphasis to improving law enforcement activities at all levels of government.

Now, therefore, by virtue of the authority vested in me by the Constitution and laws

of the United States, including section 5317 of Title 5 of the United States Code, as amended, it is hereby ordered as follows:

Section 1. (a) The Attorney General of the United States shall provide for the establishment within the Department of Justice of an "Office for Drug Abuse Law Enforcement."

(b) This Office shall be headed by a Director who shall have the title of Special Assistant Attorney General.

(c) The Director shall also serve as a Special Consultant to the President for Drug Abuse Law Enforcement. He shall advise the President with respect to all matters relating to the more effective enforcement by all Federal agencies of laws relating to illegal drug traffic and on methods by which the Federal Government can assist State and local governments in strengthening the enforcement of their laws relating to illegal drug traffic. He shall, as appropriate, recommend to the President plans, programs, legislation, techniques, and other measures designed to maximize at every level of government the Nation's campaign to stamp out illegal drug traffic through effective law enforcement.

(d) The Director shall be responsible for the development and implementation of a concentrated program throughout the Federal Government for the enforcement of Federal laws relating to the prevention of drug abuse and for cooperation with State and local governments in the enforcement of their drug abuse laws. The Attorney General is called upon to delegate to the Director those duties and authorities vested in him as are necessary to carry out those functions.

Sec. 2. The Director shall consult with the Director of the Special Action Office for Drug Abuse Prevention and those officials shall ensure that all steps permitted by law are being taken by Federal, State, and local governments and, to the extent feasible, by private persons and organizations, to prevent drug abuse in this Nation and elsewhere.

Sec. 3. Section 1 of Executive Order No. 11248 of October 10, 1965, as amended, is further amended by deleting "(12) Chairman, Pay Board," and by inserting in lieu thereof "(12) Director, Office for Drug Abuse Law Enforcement."

Sec. 4. Each department and agency of the Federal Government shall, upon request and to the extent permitted by law, assist the Director of the Office for Drug Abuse Law Enforcement in the performance of functions assigned to him by or pursuant to this order, and the Director may, in carrying out those functions, utilize the services of any other agencies, Federal and State, as may be available and appropriate.

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

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

## RECOGNITION OF SENATOR CHILES AND SENATOR GURNEY ON WEDNESDAY, FEBRUARY 2, 1971

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the recognition of the two leaders on Wednesday next, the distinguished junior Senator from Florida (Mr. CHILES) be recognized for not to exceed 15 minutes, to be followed by the distinguished senior Senator from Florida (Mr. GURNEY) for not to exceed 15 minutes.

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

## THE MUSLIM MURDERS IN BATON ROUGE, LA.

Mr. LONG. Mr. President, the rioting, burning, and senseless killing which convulsed this great Nation several years ago has subsided, for which all of us are grateful. But on January 10 of this year we were shocked by an incident in Baton Rouge, La., where the lives of five persons, including two deputy sheriffs, were extinguished. This was not a scuffle with law enforcement authorities, but a planned shootout by an extreme group of Black Muslims who invaded the capital city of my home State.

These extremists told responsible black leaders in Baton Rouge that they wanted a confrontation to occur and spread across the country. They said they were prepared to die in a conflict but warned local residents not to bring firearms to the 1300 block of North Boulevard. Instead these Black Muslims said they wanted "the women and children to see them"—the Muslims—"die" in the streets.

Three of these Black Muslim extremists got their wish. Thomas David, 28, and Lonnie X. Mobley, 33, both from Chicago, and Samuel Upton, 29, of Vallejo, Calif., perished in the shootout with Baton Rouge police and deputy sheriffs. Tragically, two young deputy sheriffs, Ralph G. Hancock, 30, and DeWayne Wilder, 27, who had promising careers ahead of them, were fatally hit in the rain of bullets that took place.

In addition, 31 persons, including eight policemen, were injured in the fracas. A television newsman, Bob Johnston, of station WBRZ–TV, was so savagely beaten in the head that he lies in a coma and is not expected to live.

Official and unofficial investigations are underway, and eight Black Muslims have been charged by the State of Louisiana with murder and inciting to riot. The FBI is taking statements, and the National Association for the Advancement of Colored People—NAACP—plans to conduct its own inquiry.

Mr. President, I am taking this occasion to try to impress on Senators the urgent need for this body to look into the shootout in Baton Rouge and determine whether Federal authorities coordinated any information about this extreme Black Muslim group and their travels throughout the Nation with local authorities.

Then I would hope that the FBI, which has done such a very fine job of investigating and alerting local enforcement agencies of the dangers that existed, would take heed of this situation and see to it that in the future the rights of human beings are protected every bit as much from the ravages of the Black Muslims as they are from those of the Ku Klux Klan.

A so-called itinerary of cities and dates, beginning in Rochester, N.Y., on November 7 and ending in Phoenix, Ariz., on January 17, was found among the belongings of the Black Muslims. Police in Tampa, Fla., have reported that the extremist group was in their city on the date shown on the list, in late December. Tampa authorities were quoted as saying the Muslims were going to have a confrontation with police but were told to leave the city and did so.

These Muslims also were reported to have been on the campus of West Texas State University on December 6, were scheduled in Atlanta and Mobile and the two groups of these extremists were to join ranks in Baton Rouge.

Mr. President, the FBI has fought the Klu Klux Klan to the extent that the KKK cannot do anything without Federal authorities knowing about it. I am not here to criticize any of that, even though, in some respects, it might be overdone. At least, it is better to overdo it than not do it at all.

I deplore killing of any kind, such as occurred in Mississippi several years ago when three civil rights workers were murdered. Those killers should have been prosecuted. They were and I applaud the fine work of the FBI in that instance and others.

One of the good things that has been happening in this country is that Negroes have been emerging into full possession of the rights of Americans. But with those rights go responsibilities. People should have the courage and the good judgment to realize that rights and responsibilities go hand in hand.

Mr. President, such violence as occurred so tragically in Baton Rouge cannot be tolerated. It cannot be tolerated when conducted by the Black Muslims, any more than it can be tolerated when conducted by the KKK.

It is obvious that the FBI has not shown the Black Muslims the close scrutiny, the attention in depth, that it has shown the KKK or the Black Panthers, another extremist black group.

The shoot out in Baton Rouge was not just a scuffle with the police. This was a planned confrontation, a planned attack on a community, with the deliberate intent of killing the police officers.

If anyone could have any doubt about this matter, the fact that the newsman, Bob Johnston, was beaten so savagely prior to the police even arriving on the scene should remove their doubts. He literally had his head kicked in.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a verbatim account of how Mr. Johnson and other television newsmen were beaten and chased, before police arrived and the ensuing and tragic shootout. Al Crouch, news director of WBRZ–TV, provided this account to me.

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

THE BATON ROUGE TRAGEDY, JANUARY 10, 1972—REPORT BY AL CROUCH

Henry Baptiste is a black newsman who works for Al Crouch. Baptiste is off on Mondays and just happened to be on North Boulevard in Baton Rouge at 13th Street. Baptiste saw a crowd of blacks gathering in the streets and called the TV station. Baptiste talked with Bob Johnson, a newscaster, at 11:55 a.m., just prior to Johnson's noon news broadcast. Since Johnson was going on the air, he said Maurice Cocherham would come down and assess the situation.

Maurice drove down and observed the crowds gathering but did not see Baptiste. He returned to the TV station without stopping. This was about 12:15 p.m., just as Johnson was finishing his broadcast. Johnson and Maurice went to the newsroom and called the police (Maurice had seen no policemen during his drive).

Johnson called the office of the Chief of Police and spoke with a sergeant, informing him of the situation. The sergeant said he didn't know anything about it but would send a car down to check on it. Maurice said he would go back to check, also.

Johnson and Maurice went back down and parked their car next to Baptiste's car, about seventy yards from where the events were to occur. They left all cameras and tape recorders in the car and carried nothing with them on the streets.

They entered the public relations firm of Mr. Reed Canada, a black man who is a friend of theirs. Mr. Canada said, "These black muslims came to town and have been meeting all morning out in the street."

About this time, Maurice noticed a Cadillac parked, blocking the street. He saw a tall black man, dressed in a black business suit with a black bow tie crawling to the top of the car as if to start talking.

Maurice told Johnson he was going outside to hear what the black man was saying. Maurice walked to the Temple Theatre where he found Baptiste for the first time. He saw no police officers.

The black man in the black suit began shouting to the crowd: "We have come to Baton Rouge to give you your city back. The White Devil (pointing down the street) will die here today . . ." (. . . and so on, words to that effect).

Johnson walked up to them. They became concerned for their own safety and Johnson told Maurice that they had better get away.

The man on top of the Cadillac said, "There are two of the white honkies right there." Johnson and Maurice and Henry were walking at this point. Someone in the crowd yelled, "Yeah, there are those white so-and-sos (Crouch was not exactly sure of the words). You had better get out of there while you are still alive."

As Maurice turned to head down the street, he was encountered by another black muslim wearing a black business suit and a black bow tie. Maurice asked him who they were waiting for. He answered, "The big white man (or words to that effect)." Maurice then asked, "Who are you talking about?" The black man answered, "The big white (obscenity)." Maurice replied, "Excuse me," and attempted to go down the street. As he started down, a group of blacks ran across North Boulevard and cut off his exit. They were armed with clubs, brick-bats and bottles. He realized that Bob Johnson had locked the car so he turned and started back to the direction from where he had come.

Maurice saw Bob at this point. Bob was surrounded by a group of blacks; they, too, were armed with clubs, bricks and bottles. They were beating Johnson but he was still on his feet with his hands around his head as if to protect it from the blows.

When Maurice saw this, he knew things were bad. He saw an alley to his left, alongside the Temple Theatre and he ran down it. Halfway down the alley he realized someone was following him so he turned and saw a black man with a black bandana around his head coming toward him with a raised 2 x 4. As the black man came down on him with the board, he grabbed the board and gave him a "butt stroke" with the lumber and the black man was rendered unconscious, falling to the ground. Maurice said he could see a group of black men at the entrance to the alley trying to get to the alley after him so he turned and began running.

He felt someone hit him in the back again with a board as he scrambled over a fence in the rear of the building. One of the blacks grabbed his legs but he pulled loose. He made his way approximately two blocks from the scene to an office building where he found two white secretaries. He asked them to lock the door and call the police. He called the police again. (Up until this time he had not seen one police officer).

He told the police that a riot had broken out on North Boulevard and he feared for Bob Johnson's life. Johnson had been trapped by the black men and the last he had seen of Johnson he was being beaten. He said into the phone, "My god, please hurry!" They said, "Okay, we will send a car down and see what is going on." One of the secretaries offered to drive him back to the television station since he was bloody and had been beaten by the mob.

En route to the TV station, they had to travel over Interstate 10 which crossed North Boulevard. Here he saw a Sheriff's Deputy's car with the red light going. This was the first police car he had seen in some 45 minutes to an hour which had passed since the first call.

(Note: He subsequently was taken to a hospital where he was treated, hospitalized for two days and then released).

While all the above had been going on, Henry Baptiste (the black newsman) had managed to escape with minor injuries. He circled back around to where his car was parked. Upon reaching his car he found Bob Johnson lying on the ground (near Johnson's car), unconscious with heavy bleeding from the nose, mouth and ears. There was a black man standing nearby. Henry asked him to help put Johnson in the car which he did. Henry drove him to the hospital.

(Note: Bob Johnson remains in a deep-seated coma with severe brain damage. Condition is "critical," and he is not expected to live.—this is as of noon, January 18, 1972, Al Crouch).

Around 12:30 p.m., Crouch was en route to the TV station, leaving Interstate 10 at the Louise Street Exit. To the right of the Exit is McKinley Junior High (note: a black school). Crouch noticed at least six City Police cars around the school which is highly unusual. Crouch was concerned as to why and also concerned "to chew out my news people because they were not at the school finding out what was going on."

As Crouch pulled up in front of the TV station, Ray Alexander and Walter Hill were in front waving Crouch down. As he pulled up, they told Crouch that Bob Johnson and Maurice had been involved in a riot and he had better get over there right away.

Crouch headed to the intersection of 13th Street and North Boulevard immediately (arriving on 13th street). There was a Deputy's car parked right at the intersection. Crouch pulled up in back of this car. Crouch got out of the car with his camera and walked up to the intersection.

There was another Sheriff's Deputy's car there with Major Marion M. Benning (from the Sheriff's Department) inside. Crouch observed a group of blacks, all dressed in black business suits with bow ties, lined up across the street. He noticed one slender, tall Negro dressed in a black suit with a maroon bow tie standing in front of the line. They extended from curb to curb all the way across the Boulevard.

Crouch turned to Major Benning and asked him, "What is going on?" Benning said that he had no idea. The tall slender Negro was later identified as a black named Upton. Upton walked up to Benning and asked, "Are you the spokesman for the White Caucasian Race?" Benning replied, "No." Upton then asked, "Who is?" To which Benning replied, "I don't know." Upton asked, "Is he on his way?" Benning answered, "I guess he is." "We will wait for him," Upton concluded.

Major Fred Sliman arrived on the scene and Crouch asked him what was going on. Crouch was told by Sliman that he had no idea. Sliman then said, "We were responding to a call for help because someone had called and said that Bob Johnson was being beaten by the blacks. We came to his rescue."

Crouch said that, at this time, they were aware that the blacks were unfriendly—or should have been aware.

More Sheriff's Deputies started arriving on the scene. Major Jim Dummigan (with the City Police Department) arrived. He and Major Sliman conferred for a moment and, apparently, decided they were going to call a wrecker to move the cars and clear the street.

The wrecker arrived in a few minutes. Dummigan and Sliman were in front of the wrecker. They approached the line of men as if to bring about the first confrontation, but as they started toward them, the black who appeared to be the leader turned and faced his men and clapped his hands just once. At this signal, the entire line, in unison, moved back down the street to a new position in front of the Cadillac which was parked across the street in front of the Temple Theatre.

The wrecker came and moved the first car (a compact) without incident. Another wrecker arrived about this time.

The same procedure was repeated. Dummigan, Sliman and Captain Bleedin (from the Sheriff's Department) and Sergeant Hoover (Police Department) started the same procedure, leading the wrecker toward the blacks.

This time the blacks stood their ground. The closer the police approached, the tighter the line of blacks drew together, massing toward their leader.

They were face-to-face with the blacks now with Major Sliman face-to-face with the leader. Major Sliman explained to the leader that they were blocking a public street, that they were violating the law and that the streets would have to be cleared.

The black leader (Upton) said, "White Devil, you or I, one, are going to die today."

Shortly after that, Crouch heard Sliman say, "Keep your hands off that police officer." Then the entire line of blacks started chanting something that sounded like "Ah You Wah La" and "Kop Lop."

(Note: From this time on, the blacks said nothing in English, only repeating this chant).

From here on, everything got real chaotic.

Major Sliman was either pulled into the crowd or was hit and fell into the crowd. Major Sliman went down and Major Dummigan went to the ground.

All this action is to Crouch's right. Crouch is still filming. Now Crouch hears two or three small calibre reports ("pow! pow! pow!") followed by a shotgun blast; Crouch was startled. Crouch looked up from the camera and across the line where he saw a black man in a business suit and a bow tie with a large revolver in his hand, pointed in Crouch's direction. The black man was waving the revolver back and forth, as if he were trying to pick out a target. This was all in a matter of seconds, Crouch reported.

Crouch then saw a Deputy's hand go up in the air as if he were falling backwards with blood spewing from his face into the air (later identified as Hancock). At the time, due to the facial blood as well as the shotgun blast, Crouch assumed Hancock had been shot with the shotgun in the face.

(Note: It turned out later that he had been shot with a 38 calibre pistol in the chest—the blood on the face had been gushing from his mouth).

Crouch became frightened and began backing up, facing the crowd. Crouch saw Deputy Wilder slumped by the side of a car, appearing wounded. Bottles and brickbats were raining all around Crouch on the street.

Crouch saw one or two bullets ricochet off the street nearby. Crouch became more frightened and started to run for cover toward the police car.

Another Deputy, who was facing Crouch and the crowd, took a bullet in the chest and fell. Crouch and another Deputy who had been nearby grabbed the wounded Deputy and dragged him behind a police car. Crouch yelled for medical help because he thought the Deputy was wounded seriously.

(Note: He was not wounded seriously; he was hit on his collar bone).

Two deputies brought one of the men dressed in business suits to the back of the police car and were attempting to place him under arrest. The black man was fighting them frantically, in Crouch's words, still chanting the original chant. The black man was struck in the head several times with the butts of rifles by the Deputies while they attempted to handcuff him. Two other Deputies joined them and finally subdued the black man.

Crouch, at this point, identified himself to the black man who was now on the ground, bleeding. Crouch told him he was not taking any sides in this but just wanted to hear his side. Crouch asked him where he was from and why he was here. The black man just stared at him fanatically and continued chanting.

Crouch turned and looked over the hood of the police car to where it all started and saw bodies everywhere. Some sporadic shots were still going on. By this time, more policemen had arrived on the scene and arrests were being made. They started a door-to-door checking to see if anybody was still there.

Thirty minutes after it was all over, they apprehended three more of these black men in suits hiding inside Angel's Cafe, directly across the street from the Temple Theatre. From them, police recovered a 38 calibre revolver which had belonged to Sergeant Hoover of the City Police Department.

Mr. LONG. Mr. President, I also ask unanimous consent to introduce a bill to strengthen the enforcement of provisions related to unlawful possession of firearms by any convicted felon, any person discharged from the Armed Forces under other than honorable conditions, any person judged to be mentally incompetent, anyone who has renounced his U.S. citizenship, or any alien who is illegally or unlawfully in this country. This would amend section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968.

The maximum penalties would be a $10,000 fine and not more than 2 years in prison. These are the same penalties that existed under my amendment to the 1968 law which the Supreme Court recently watered down. This was another decision by the Court which makes it so difficult for Congress to defend the country against the criminal element.

This tragedy in Baton Rouge makes me more determined to try to write laws to help our law enforcement authorities fight the criminal element. The Supreme Court declared that my amendment to the 1968 Safe Streets Law was too vague, although Chief Justice Berger and Associate Justice Blackmun dissented and said the law was "clear enough."

With all the solicitude for the rights of the criminal over the rights of society being shown by the William O. Douglas faction of the U.S. Supreme Court, it is being predicted by law enforcement people in Louisiana that none of these Black Muslims charged with murder will ever serve a day in jail for the killings.

Apparently, police officers must do everything letter-perfect. Even if they do, the Douglas faction of the Supreme Court undoubtedly will conjure up a new technicality to turn these criminals loose.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred.

Mr. LONG. Mr. President, I ask unanimous consent to have printed in the RECORD a calm and well-reasoned editorial published in the Baton Rouge Morning Advocate of January 11.

I also ask unanimous consent to have printed in the RECORD an account of the Baton Rouge tragedy, written by G. Michael Harmon, of the Associated Press, and published in the Baton Rouge Morning Advocate of January 16.

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

[From the Baton Rouge (La.) Morning Advocate, Jan. 11, 1972]

EDITORIAL: THE MONDAY INCIDENT—A SENSELESS TRAGEDY

Baton Rouge has survived a number of so-called long hot summers, with a minimum of racial disturbances.

Now, on a rainy winter day, with the general mood of the community apparently free of serious tension, suddenly has erupted a tragedy, a senseless tragedy in which has resulted deaths and in injury.

Following the eruption, once again the curfew notice went out, and once again, the National Guard was called, to keep the violence from spreading, to cool tempers.

Precisely what caused the violence has not yet been fully decided, but the immediate catalyst for the shootings and the debris tossing was a confrontation over an auto blocking a street.

The resulting fusillade of bullets and debris was senseless.

Baton Rouge has had its racial tensions before, and virtually every time leaders in both groups have been able to restore calm to the city.

Apparently, in the tragic Monday killings, there was no time for any mediation of grievances. The trouble erupted suddenly and was over in a few minutes.

However, Emmitt J. Douglas, state NAACP president, issued a statement shortly after the violence, urging citizens, black and white, to cooperate with authorities.

Violence is not the answer to any of the community's problems, he noted. These problems can be and are being worked out by Baton Rouge citizens, black and white.

His position is entirely correct.

It should be noted that one car involved in the incident bore out-of-state license plates, and that the group which was making speeches from the car tops claimed to be Black Muslims of Chicago. A Black Muslim representative in Chicago has denied this.

It appears that every time Baton Rouge has serious racial violence, some outside force is involved.

There will be considerable assessment of the Monday tragedy and, perhaps in time, the real cause will be known.

Whatever the final assessment, it cannot undo the tragedy. Hopefully, it will provide some lessons for preventing such incidents in the future.

Senseless shootings and brutal beatings have not been a part of this community's way of life.

It is time now for cooler heads to prevail and make sure that they do not become so.

[From the Baton Rouge (La.) Sunday Advocate, Jan. 16, 1972]

LOOKING BACK AT THE CONFRONTATION IN BATON ROUGE

(EDITOR'S NOTE.—Officials have conceded they may never fit together all the pieces of a jigsaw puzzle of facts and speculation surrounding the deaths of two policemen and two members of an alleged splinter group of Black Muslims in a brief but bloody volley of gunfire on a downtown city street last Monday. The following is an account of the known events leading up to the confrontation, the shooting spree and the aftermath based on interviews with police, newsmen at the scene and other eyewitnesses.)

(By G. Michael Harmon)

On Dec. 30, James Kolter, manager of the Baton Rouge Better Business Bureau, said he received a series of complaints from local downtown businessmen about a group of blacks soliciting funds for something called the "black art center" in Chicago.

After receiving the seventh call, Kolter said he and an assistant drove to Third Street, the city's main business street, and found a neatly dressed young black man attempting to sell art reproductions.

Kolter said the man identified himself as Eugene Varnado, a black Muslim who was part of a nationwide drive to raise $20 to $30 million for an art and cultural center in Chicago.

Kolter said he questioned the man about the alleged project but received little information except that he was asking businessmen to mail checks to 5335 South Woodlawn in Chicago.

The man, Kolter said, questioned him about the BBB's authority to interfere with a religious fund drive. Kolter said he asked the man to accompany him to this office for further information on the campaign but he refused.

Kolter said he watched the man for awhile, then called police, who arrested Varnado and two other members of the alleged black Muslim group. The three were taken to the police station, questioned and released.

Asked to investigate the group, Capt. Leroy Watson, head of the city police intelligence division, traced the blacks to the Bellemont Motor Hotel on Airline Highway, a major north-south thoroughfare. Watson said he sent three men to the hotel who told the blacks they were violating local ordinances. A spokesman for the group, Watson said, assured his men they would stop their activity.

CHECK OUT

Howard McBride, manager of the motel, said the group checked into the hotel on Dec. 29 and checked out Jan. 1, the morning after the visit by Watson's men. McBride said a man who identified himself as Robert Barber of Chicago checked in for the group. McBride said he did not know how many people were in the group, which took a suite and two rooms.

McBride described Barber as "very surly."

"They were out of the motel during the day and we had trouble collecting from them," McBride said. "Barber would say he would come by and pay the bill but he would never show up. We finally had to lock them out of their rooms to get him to come to the desk."

McBride said the bill was paid in cash each day, about $110 a day.

Watson said his men went back to the motel Jan. 1 to learn the group had checked out. Police, he said, thought they had left town.

Four days later, on Jan. 4, a group of blacks composed of 14 men and two women checked into the White House Inn Hotel, which is located about two blocks from the state capitol.

Watson said it was the same group which had been at the Bellemont, and the facts appeared to back him up.

White House Inn manager Frank Fry said a man who identified himself as David McKinney of Chicago checked in for the group. Under his name, on the hotel registration card, McKinney wrote "The Young Muslims."

"I asked him if they were in show business and 'The Young Muslims' was the name of their group, "Fry said. "He said 'sort of.' "

Fry said McKinney took eight rooms on the seventh floor.

PAY BILL

Unlike McBride's account of his dealings with Barber, Fry said McKinney paid his bill, which amounted to about $190 a day for the eight rooms, promptly in cash and acted very businesslike.

Fry said there was nothing out of the ordinary about the group's behavior until Friday night, Jan. 7, when an apparent guard detail of two men took up positions in the lobby and another two men by the elevators on the seventh floor. The watch, Fry said, was changed every two hours throughout each night from Friday through Sunday.

"They didn't harass anybody," Fry said. "They just stood around and watched."

Fry said he called the FBI in New Orleans and reported that a group of blacks calling themselves "The Young Muslims" were in his motel, and told about the guard detail. Fry said he did not hear from the FBI again until after the Monday shooting incident.

The men, Fry said, were all impeccably dressed in suits. He described McKinney as very intelligent.

Although there were 16 in the group when the blacks first checked in, Fry said the band dwindled to nine by Sunday, occupying five rooms, seven men and two women.

Fry said the group was driving five cars, a Toyota with California license plates, a Cadillac with Illinois license plates, a Dodge van with California plates and a Mercury.

McKinney, Fry said, acted like a business agent, issuing orders that all charges were to be signed by him. Fry said the group ordered coffee sent to their rooms but did not eat at the hotel.

Fry said he questioned his staff following the shooting incident and learned that "apparently one of the men claimed to be God. The others were disciples and the women were the wives of God."

The hotel manager said his staff could not identify McKinney as the God figure.

At this point, the first unanswered questions in the bizarre sequence of events begin to surface. It appears that the group that checked into the Bellemont could have been the same group which later checked into the White House Inn. Both Barber and McKinney were among the eight blacks arrested and booked with murder following the shooting incident.

It was not known, however, where the group went for the four days between the time Barber checked out of the Bellemont and McKinney checked into the White House Inn.

Officials, who thought the blacks had left town when they checked out of the Bellemont, did not learn that they, or another group, were again in town until Thursday, Jan. 6.

Dist. Atty. Sargent Pitcher said he received information from intelligence sources of a meeting on the roof of the Temple Theater in the 1300 block of North Boulevard, the scene of the subsequent shooting, called by Black Muslims.

REFUSED ADMISSION

Pitcher said he sent a black undercover investigator to attend a meeting but the man apparently was recognized and refused admission.

"There was tight security by this group," Pitcher said. "They were polite but denied my man admission."

Pitcher said his investigator waited outside and talked to some of the people who came out of the meeting and picked up a handbill the alleged Muslim group was distributing.

The handbill, which advertised the meeting, invited black citizens to "hear and see a right now change."

One local black who attended the meeting was Frank Millican, a businessman and Republican candidate for the state Senate. Millican said those who attended were searched at the door and escorted to a seat by one of the alleged Muslims.

"There weren't any of the really local people there that I knew," Millican said, adding that most of the small audience was composed of young people.

"One of them said they were here to deliver the city back to the black people," Millican said. "They wouldn't say how they planned to do this, but told us, if you want to see it, come out at 12 o'clock Monday."

The black businessman said the alleged Muslims did not solicit the audience for money and at one point told them they did not believe in violence.

The meeting, Millican said, broke up in a matter of minutes without any specific statement of purpose from the alleged Muslim group, but another meeting was called for 10 a.m. Monday.

Pitcher said police have no record of the group's movements over the weekend, but did not expect any violence.

"I didn't anticipate any trouble," said Pitcher, who like most officials, still is totally puzzled by the shooting incident. "We've had these things before. We either talk them out or toss a little tear gas."

The group of blacks appeared on North Boulevard, which runs east and west through a downtown section of predominantly black businesses and homes, again Monday morning.

There were unconfirmed reports all morning of an imminent demonstration and large groups of blacks on the street. Police sent undercover agents into the area, but, according to Watson, kept uniformed officers out to avoid provoking a confrontation.

One intelligence officer reported that the group was preparing to march to city hall about two miles away, but said he expected no trouble. The march never materialized.

Another meeting was held at about 10 a.m. in the four-story building which houses the Temple Theater, a rundown movie house. Police say the alleged Muslims talked about "taking over the city and returning it to the blacks" at the meeting, but there are no independent accounts of what transpired.

The first newsman to arrive on the scene was Maurice Cockerham, a reporter for television station WBRZ in Baton Rouge. Cockerham said he drove down the street shortly before noon, returned to the television station, called the police and reported crowds he saw on the street. The police, Cockerham said, denied any knowledge of the gathering and said they would check it out.

Cockerham and another WBRZ reporter, Bob Johnson, then returned to the street. They parked their car, leaving tape recorder and cameras inside the automobile, and walked up the street where they met a colleague, Henry Baptiste, a black newsman from WBRZ.

Cockerham said the three went to the business office of Reed Canada, which is located two doors from the Temple Theater, to find out what was going on. Canada owns an advertising firm and is a black community leader.

BLOCKING STREET

While they were talking to Canada, Cockerham says, a Cadillac and a Toyota, apparently the same automobiles driven by the group which checked into the White House Inn, were pulled across the street, blocking traffic.

One of the alleged Muslims climbed to the top of the Cadillac and began addressing the crowd.

The speaker was identified tentatively as Samuel Upton, 29, of Vallejo, Calif., who later died in the shooting.

The speaker told the crowd the group was in Baton Rouge to return the city to blacks and talked about "white devils."

"They talked about their faith," said Charles Granger, a young black who works for a local anti-poverty agency. "They mentioned they were great men, a black guard, and they believed in Islam and the great Elijah Muhammad. They indicated they were here to do something for the black people.

"It was mostly a non-verbal thing, however. They said that great things were going to happen and they were here to help. They said they did not need our support and told the brothers not to bring guns.

"They told us to bring out our children to see them die. They said they were ready to die," Granger recalled.

Cockerham, Johnson and Baptiste walked out onto the street when the automobiles were pulled across the thoroughfare, but were told to leave by one group of blacks.

Cockerham and Baptiste said they turned and started walking away when they were attacked. It was not known whether the attack was specifically provoked by the alleged Muslims or represented a spontaneous action by the crowd of about 200 which by this time had gathered at the scene.

TOLD TO LEAVE

"They told us to leave," Baptiste said. "As we were starting to leave, they attacked us."

Two young black eye-witnesses to the attack, said, however, the newsmen would have not been beaten if they had left when told to by the crowd.

"Bob Johnson and those guys were asked to leave," said Roland Knox. "He (Johnson) was smoking, he hesitated, and had to put out his cigarette. He even laughed.

"Somebody said, 'What are they (the newsmen) whispering about' They just stood there. The black brothers started advancing toward them and that's when it happened."

The blacks do not deny that the crowd attacked the newsmen.

Cockerham and Baptiste wriggled free and escaped, but Johnson wasn't so lucky.

"I saw Bob Johnson running by and bleeding from the head like a pig," said Canada, who was watching from his office. "Then he got hit with a bottle and went down again. I told them to leave Johnson alone and they started throwing at me."

Cockerham fled down an alley to an adjoining street and called the police from an office.

"I told them to please get out there quick," Cockerham said. "I told them there's a riot going on."

Up to this time, Cockerham said, there were no uniformed police on the street.

Baptiste, meanwhile, had worked his way back to the area, pulled the bleeding Johnson into his car, and drove him to the hospital.

Baptiste and Cockerham were not injured seriously in the attack, but Johnson remained hospitalized at week's end in critical condition with massive head injuries.

POLICE BEGIN ARRIVING

Responding to Cockerham's call, police began arriving on the scene about 12:45 p.m. When they arrived, both the compact and the Cadillac were blocking the street. A line estimated at about 15 of the alleged Muslims, all dressed in suits and bow ties, were lined up across the street in front of the compact car.

A police wrecker was called in and as it drove up to the line of men, one of the alleged Muslims clapped his hands once and the group pulled back several yards and positioned themselves in front of the Cadillac. The compact was towed away without incident.

Crowds of blacks lined both sides of the

street, in front of the theater and across the street in front of a cafe.

At this point, Maj. Fred Sliman and Detective Bob Blieden of the East Baton Rouge Parish Sheriff's Department approached the line from the front. At the same time, city Police Maj. Jim Dumigan, who was standing with Police Chief E. O. Bauer behind the line and the automobile, walked through the line from the rear and joined Sliman and Blieden.

An undetermined number of sheriff's deputies stood behind the group of three officers facing the line and a force of police officers were behind Bauer. "They were lined up like a little bunch of tin soldiers, like they wanted us to come up and talk to them," said Capt. Bryan Clemmons Jr., the son of the East Baton Rouge Parish sheriff.

WENT UP TO TALK

"Something was said that they wanted to talk and that's when Dumigan said Sliman went up to talk to them."

Sliman said he approached the line and "told them they would have to move the car from the street or we would call the wrecker to tow it away."

Sliman said the apparent leader of the group, Upton, replied, "You white devil, either you or I are going to die today. You're lying. That car is not moving."

At this point, both police and black eyewitnesses agree that one of the alleged Muslims struck Dumigan. Sliman said the blow came without warning, as he motioned for the wrecker. Black witnesses, however, say Dumigan was not struck until he tried to walk through the line.

"The officers approached them to tell them they were going to have to move the car," Granger recalled. "Then I saw someone trying to walk through their wall. Walking through their wall was like walking through their dignity.

"He (Sliman) was struck. Then Maj. Sliman was trying to go through the wall and he was struck. A policeman came in from the left and started swinging his billy club."

As the crowd moved around Dumigan and Sliman, the first gunshot went off and nobody agrees what happened after that.

FIRST SHOT HEARD

Granger, Sliman and WBRZ News Director Al Crouch say the first shot came from the right, near a vacant lot where the bodies of a black and a deputy were later found.

Another view came from Clemmons, who says he may have fired the first shot.

Clemmons, who was standing several yards behind Sliman, Dumigan and Blieden and to the right, said when the fight broke out he watched for a while and decided the officers involved "were taking pretty good care of themselves."

I looked to the left and saw one of the guys in the line pull a chrome-plated .38-caliber revolver from under his coat," Clemmons said. "I was armed with a shotgun loaded with tear gas. I didn't even have any buckshot on me. When he pulled the gun and extended his arm. I fired at him. At almost the same time, somebody else, I don't know who, must have fired at him with buckshot because he fell and the pistol dropped to his feet."

By this time, shots were coming from all directions, and no witnesses at the scene have been able to outline the sequence of events.

"Anybody who tells you they can remember what happened after the shooting started is lying," said Blieden.

SHOTGUN FIRED

"After that first shot from the right, a deputy sheriff with a shotgun fired," Granger said. "Another standing behind him with a shotgun shot."

These two shots could have been Clemmons and the unidentified officer who fired at the black who allegedly pulled the pistol, but the theory cannot be confirmed. Granger said he saw no blacks with guns, however.

"People were falling like flies, like when we went into Omaha Beach," said Canada, a World War II veteran. "It was like there was war."

It looked like a battlefield with bodies everywhere," said newsman Crouch. "One of the Muslims charged into the police line. He was chanting. They hit him with everything they had. They shot him in the leg, hit him with billyclubs and gun butts but he kept coming."

Several other witnesses also reported that the Muslims broke into a chant when the fighting broke out. To Blieden, it sounded like they were saying "Kop-lop."

Granger said the Muslims were speaking to their black god.

Crouch said he ran and crouched behind a police car when the shooting broke out. A deputy standing near him, who was later identified as Kenneth Savignol, was hit and Crouch said he pulled him behind the car.

The shooting lasted only about two minutes and when it was over, two deputies and two blacks, identified as members of the alleged Muslim group, were dead.

Dead were deputies Ralph Hancock, 30, and Dewayne Wilder, 27, and the alleged Muslims, Thomas Davis, 25, of Chicago and Upton.

Nine persons have been booked with murder in connection with the deaths of Hancock and Wilder. Charged were Robert Barber, 20, Los Angeles; Warren Hall, 25, Philadelphia; David McKinney, 22, Toussaint L'Ouverture, 21, Clennon Brown, 25, and James Barlow, 21, all of Chicago; Ridgley Williams Jr., 25, Ada, Okla.; and Baton Rouge residents Lawrence Brooks, 25, and Ramond Eames, 21.

It was not known whether Brooks and Eames were associated with the group or were charged for alleged incidental participation in the incident.

Five other police officers and five alleged Muslims were either wounded by gunfire or injured in the shooting spree.

The bodies of Hancock and Davis were found near each other in the vacant lot where some said they heard the first shot fired.

Both Wilder and Upton were found in the street. All four were believed to have been killed with shots fired from .38-caliber pistols.

At the center of the debate on the shooting, is the question of whether any of the alleged Muslims were armed before the fighting broke out.

Chief of Police Bauer, Clemmons and Crouch said they saw blacks with guns in their hands, but did not see any of the blacks fire.

A local television station, however, aired four days after the shooting an interview with a man who said he saw a member of the alleged Muslim group fire at a policeman.

In the interview, the eyewitness said he saw a city police officer, who was believed to have been Hoover, talking to one of the alleged Muslims.

KARATE CHOP

Suddenly, the man said, the black man hit the officer with what looked like a karate chop. Hoover fell, the man said, and the black drew a pistol from under his coat and fired down at the policeman three times.

The man said he did not want to be identified because he was afraid of reprisals. The man, the station said, was not an officer or a newsman.

The exact location of the alleged assault was not known.

Police recovered no guns at the scene other than weapons either dropped by or taken from police. The city police say, however, they found a .22-caliber pistol on the floor of a paddywagon used to transport those arrested to jail.

Bauer said he saw one black pull a shotgun from the trunk of the Cadillac used to block the street. Bauer, who was on the ground after being hit by a thrown object, said he saw the man pull the shotgun, then lost sight of him. When he saw the man seconds later, Bauer said, he did not have the weapon.

Clemmons said the man he saw with the .38-caliber pistol dropped it when he was shot and someone in the crowd ran out and picked it up.

Crouch said he saw Davis, one of the blacks killed, waving a gun near where his body was found, but he did not see him fire.

Police said they found a pistol belonging to Savignol near the bodies of Davis and Hancock. Hancock's weapon, police say, was not fired.

Pistols belonging to Dumigan and city Police Maj. W. L. Gunby were not found at the scene, and remain missing. Another pistol belonging to wounded city Police Sgt. Abram Hoover was found in the possession of a black, who along with about four other Negroes was found hiding in a cafe across the street from the theater about an hour after the shooting incident.

Blacks who were at the scene contend the alleged group of Muslims were unarmed and fought the police only with their fists.

"They were not violent," said Moses Williams, a young black who was at the scene. "They were nonviolent. They were only violent in defense of themselves. Wouldn't you be violent if somebody started waving guns in your face?"

"They were not offensive," Granger said. "They were defensive."

The blacks and even some members of the police department have speculated that some of the wounded officers may have been shot by their own men.

Those proposing the theory point to the positions of police on both sides of the Cadillac, all shooting toward the vehicle and the line of alleged Muslims, and officers who were fighting.

"They were shooting toward the whole hassle, toward the policemen and toward the brothers," Granger said. "They acted like they were crazy. They were just shooting."

"I'll tell you what happened out there," said Knox. "The white man in Baton Rouge has never had black people stand up to him like these black men stood up to them. It frightened them. When they attacked those black people and the black people did not run like black people have done in the past, it scared them to death and made them back off and start shooting. They were scared to fight anymore so they just started shooting."

PROOF AWAITED

Definite proof of whether or not the blacks had guns of their own or whether those policemen wounded and killed were shot with their own weapons will come when investigators get the results of ballistics tests.

A bullet was recovered from the body of Hanccck, who was shot once in the chest. The bullet that struck Wilder in the chest went through his body.

The bullet that struck Savignol first struck his helmet and then glanced down and struck his collarbone. Hoover suffered gunshot wounds in the abdomen and shoulder. Gunby was struck in the leg.

Several questions quickly surfaced following the shooting, but most remain unanswered.

Was the group of blacks lined up across the street in fact Muslims or were its members imposters? Was the violent confrontation planned or was it spontaneous? Were the alleged Muslims alone in the confrontation or were they supported by local blacks?

Blacks who talked to members of the group are convinced they were.

"Those people were Muslims," said Knox. "They may not have been in the movement. They may have got kicked out of the nation, but they were Muslims."

Police said they recovered Muslim literature from the hotel rooms occupied by the group. Investigators, however, said a small local Muslim chapter was not involved.

A spokesman for the local Muslims, a man known as Minister Lewis, called the group "renegades" and denied any association with them.

One member of the outside group, who was asked about an association with the local Muslims, was quoted as responding, "We're their bosses."

In an edition of the National Black Muslin Publication, "Muhammad Speaks," Muslim spiritual leader Elijah Muhammad disclaimed any knowledge of the group. In an earlier publication, however, Muhammed said his group was "faced with murderers and killers coming to them from our own black brothers."

In one of a series of news conferences in which he raised more questions than he answered, Baton Rouge Mayor W. W. Dumas said the blacks involved in the shootout were a splinter group of Muslims who were opposed to Elijah Muhammad.

"This Elijah Muhammad, whoever he is, had better watch out for these people," Dumas said.

Dumas referred to the confrontation with police as a planned conspiracy of revolution.

WELL TRAINED MUSLIMS

Both blacks and whites agreed that the alleged Muslims were well trained. Several were seen using what appeared to be judo or karate in the fight.

On the questions of whether the confrontation was planned, even the black police critics say they were under the impression that the alleged Muslims appeared ready for death.

Granger said he believes the men were ready and willing to face death to demonstate the brutality of white racism, "to show that whites would shoot back."

"They wanted people to take notice, to be aware of the minds of white people and show that white policemen would kill them," Granger said, comparing the Muslims' actions to the self immolation of Buddhist monks in Vietnam.

Granger said, however, he did not really expect whites to understand the logic. He said it was almost impossible for whites to understand any black mind much less the Muslim mind.

Granger said he was at first leary of the group, thinking they were maybe "con artists."

"I knew they were very intelligent men. They were trained. But I wondered if they were really going to do something," Granger said. "I think they have proven that they were heroes. Everything they said was proven true. They were great men. The greatest men we have ever seen."

Police, it was learned, were in possession of some raw intelligence data that indicated the alleged Muslims may have once belonged to the "Fruit of Islam," a highly trained group of bodyguards for Elijah Muhammad.

In addition to Muslim literature, police also uncovered what appeared to be an itinerary from the White House Inn.

The so-called itinerary was composed of a list of cities and dates, beginning in Rochester, N.Y., on Nov. 7 and ending in Phoenix, Ariz., on Jan. 17.

Even the itinerary, however, led to more questions. Police in Tampa have reported the group was in their city on the date shown on the list. Police in Canyoun, Tex., said, however, that Davis and three other members of the group charged with murder were on the campus of West Texas State University on Dec. 6. According to the itinerary, the group was scheduled to be in Atlanta Dec.

* * * * *

Another unexplained notation on the alleged itinerary said "both squads come together" in Baton Rouge on Jan. 7.

In addition, while members of the group were in Baton Rouge in late December, the itinerary called for a stop in Mobile, Ala.

It is already apparent that repercussions from the incident are far from over. U.S. Rep. John Rarick of Baton Rouge says he is asking the House Internal Security Committee for a full-scale investigation of the Black Muslims.

On the other side, the Louisiana NAACP planned a public inquiry into the shooting next week patterned after hearings conducted by the Memphis NAACP following the alleged police beating death of a young black last year.

The city was clamped under a curfew and the National Guard was called out for three days after the incident. There were no major disturbances but the city remained tense.

Mr. LONG. Mr. President, it is my hope that the appropriate Senate subcommittee—offhand my guess would be the subcommittee of the Judiciary Committee headed by the distinguished Senator from Arkansas (Mr. McCLELLAN), might be the most logical subcommittee, but any one of the properly constituted committees or subcommittees having jurisdiction over the matter would satisfy my purposes—would look into this matter not only to obtain the facts, but in the hope that the valuable services of the FBI and any other investigative agency of this Government would not be lacking in the future as they were in the case of the Baton Rouge situation. This situation could have been avoided had the diligence that is usually typical of the FBI been exerted in this case.

The Treasury Department should also be alerted to look into this matter. It is my impression that the Treasury agents have been extremely diligent in watching the affairs of the Ku Klux Klan members. I should think they would show the same interest in the affairs of the Black Muslims, if we are going to have these killings by the Muslims around the country. Perhaps with the cooperation of other agencies of Government we can see to it that this organization becomes as aware of its duty to look into the affairs of the Black Muslims as it does with respect to the Ku Klux Klan.

I hold no brief for any group which, on the basis of race, national origin, religion, or any other basis, seeks to deny any citizen, be he black or white, of the rights which are his under the Constitution. If what we experienced in Baton Rouge is to become a pattern and is to be visited upon other cities in the Nation, perhaps even including Baton Rouge a second time, it is time that the Federal Government, in line with the duties with which have been been imposed upon it in the laws passed by Congress, should provide its best efforts to protect the rights of citizens of the country, who in this instance happen to be citizens of the State which I have the honor, in part, to represent.

## QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, before a motion to adjourn is made, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## PROGRAM

PROGRAM FOR MONDAY, JANUARY 31

Mr. BYRD of West Virginia. Mr. President, the program for Monday next is as follows:

The Senate will convene at 11 a.m. Following recognition of the two leaders, there will be routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes. At the conclusion of routine morning business, the unfinished business—the equal employment opportunities bill—will be laid before the Senate. Time will then begin running on the pending amendment by the senior Senator from North Carolina (Mr. ERVIN) with a vote on the Ervin amendment to occur at 2 p.m. Although the yeas and nays have not yet been ordered, the vote on the pending amendment will be a rollcall vote. Additional rollcall votes can be anticipated during the remainder of Monday afternoon.

PROGRAM FOR TUESDAY, FEBRUARY 1

The Senate will convene at 9:45 a.m. After the two leaders have been recognized, the following Senators will be recognized for not to exceed 15 minutes each and in the order stated: Senators PEARSON, FANNIN, ELLENDER, GOLDWATER, and YOUNG.

A period for routine morning business will follow, with statements therein limited to 3 minutes, to end at 11:30 a.m.

Beginning at 11:30 a.m., there will be 1 hour of controlled time for debate on the motion to invoke cloture. At 12:30 p.m. in accordance with standing rule XXII, a mandatory live quorum call will occur. When a quorum has been established, an automatic rollcall vote will immediately occur on the motion to invoke cloture—at about 12:45.

If cloture is invoked on Tuesday, the EEOE bill will be the unfinished business, under the rule, to the exclusion of all other business until disposed of.

If cloture is not invoked on Tuesday, presumably another cloture motion will have been filed on Monday, with a rollcall vote on that cloture motion to occur on Wednesday. Meanwhile, amendments would be called up for action during the remainder of Tuesday afternoon.

Senators are reminded, therefore, of rollcall votes on Monday, the first to occur at 2 p.m.; and there will be roll-

call votes on Tuesday, the first to occur at about 12:45 p.m.

Mr. President, I think I should state that the time on Tuesday next—which has been set aside for the control of Senators FANNIN, ELLENDER, GOLDWATER, and YOUNG—will be for the purpose of eulogia to our late departed former colleague, Senator Carl Hayden. I also should state that the time on Wednesday which has been set aside for the Senators from Florida (Mr. CHILES and Mr. GURNEY) will be for the purpose of any additional eulogies that Senators wish to express in connection with the passing of our late departed former colleague, Senator Spessard Holland.

### ADJOURNMENT UNTIL 11 A.M. MONDAY, JANUARY 31, 1972

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 a.m. on Monday next.

The motion was agreed to; and (at 3:44 p.m.) the Senate adjourned until Monday, January 31, 1972, at 11 a.m.

### NOMINATIONS

Nominations received from the Commissioner of the District of Columbia and referred January 28, 1972:

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

John J. Gunther, Esq., for appointment as a member of the Board of Directors of the District of Columbia Redevelopment Land Agency for a term of 5 years, effective on and after March 4, 1972, pursuant to the provisions of section 4(a) of Public Law 592, 79th Congress, approved August 2, 1946, as amended.

Willie L. Leftwich, Esq., for appointment as a member of the Board of Directors of the District of Columbia Redevelopment Land Agency for a term of 5 years, effective on and after March 4, 1972, pursuant to the provisions of section 4(a) of Public Law 592, 79th Congress, approved August 2, 1946, as amended.

# EXTENSIONS OF REMARKS

## CLEAN WATER THROUGH DREDGING

## HON. J. GLENN BEALL, JR.

OF MARYLAND

IN THE SENATE OF THE UNITED STATES

*Friday, January 28, 1972*

Mr. BEALL. Mr. President, there is no doubt that America's expanding industrial economy has had a massive impact on our precious environment. All too often, we have seemingly been forced to choose between industrial progress or ecological protection. Hence, it is indeed refreshing to read of a major industry dedicating its resources to the reduction and elimination of water pollution.

I refer to the industry of dredging, and to the recent remarks made by Mr. Herbert Buré before the Northeastern Regional Conference of the Society of American Military Engineers.

Mr. Buré is vice president and general manager of the Ellicott Machine Corp., of Baltimore, Md. This company, for years, has been the leader of the dredging industry and is responsible for most of the modern techniques in dredging developed in this century.

He points out that improper techniques of dredging can very well lead to greater pollution levels. Hence, he boldly proposes that the industry commit themselves to the development of technology to minimize environmental disruption. Mr. Buré approaches this crucial problem directly and proposes various methods by which dredgers can effectuate positive changes to improve our ecological system.

Mr. Buré's address should not, I believe, be viewed merely in the light of one industry. His remarks can and must be applied to all industries, large and small. It offers a model for all who wish to effectively clean up this country. The responsibility lies not with the "other guy," but with ourselves. Solutions to this vast and complex problem are not easy. But with the commitment exemplified by Mr. Buré's address, these answers cannot be far off.

I ask unanimous consent that the text of Mr. Buré's address be printed in the Extensions of Remarks so that my colleagues in the Senate might read of his positive proposals.

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

CLEAN WATER THROUGH DREDGING

(Presented at the Northeastern Regional Conference of the Society of American Military Engineers by Herbert P. Buré)

I am delighted to have an opportunity this afternoon to speak in my home town on a subject which my associates and I at Ellicott have addressed at meetings all over the United States and in various other parts of the world. This subject bears the provocative title "Clean Water Through Dredging," and I can assure you that it has been selected with the most constructive intent. In fact, I hope this afternoon to present to you a brief summary of various points of fact and conviction which will hopefully present a challenge to many of you who are in one way or another associated with dredging and marine construction.

In any conference which is in some way related to military and civil engineering, or public works and construction, we must face the issue that our expanding industrial economy has a severe impact on the natural environment. The subject which I want to address is limited to the environment of water and land, and the industrial economy is represented by marine construction of various types, and in particular, dredging. It is a subject which is getting a great deal of attention, particularly on a pseudo-scientific basis with political and emotional overtones. This is an approach which is difficult to handle for people with engineering background and education, but is, of course, far more appealing to the general public. Somehow, it appears that in environmental discussions there does not seem to be the same need for substantiation, relationship to facts and the same concern for putting things in their proper perspective, as we are used to, as engineers and businessmen.

In the dredging industry we find ourselves poorly conditioned and trained to handle a situation of this type, because we are suddenly cast in the role of villains, instead of being identified, as we ourselves properly think, with the constructive progress intended to be beneficial both to the nation, its economy and our particular enterprises. We are action and results oriented, and find ourselves bridled by agencies and people who have the power to stop the operation, but still lack the ability to put together the knowledge and judgment to get it going again.

This represents such a change in pace that we get the impression that the situation is hopeless—"Like getting hit over the head". What we must recognize is that the situation may really become hopeless if we as a group and as individuals, by lack of action on our part, leave the initiative to politicians, conservationists, such as Sierra clubs and similar pressure groups, without giving these groups the benefit of the professional advice that we, as a group and as individuals, are capable of giving.

I would further like to show that the problem, although somewhat intangible because of poor definition at this time, is not all that elusive, and that it will respond to the traditional problem-solving techniques that we in business and government have used as a philosophy in many other situations. Therefore, I will assume, for the sake of brevity, but with conviction, that the technical problems associated with environmental control in way of water pollution control and the role of dredging under this new and poorly defined set of conditions, can be solved by our scientists and engineers, provided that we adopt the business and management approach to this problem, which will permit us to give our scientists and engineers the direction required, in order to come up with the desired results within reasonable time and cost. As a result, we will be able to define a number of objectives which we can set for ourselves as individuals, companies, and agencies, which should assure not only the continuation and progressive advancement of the dredge industry, but will give our dredge industry its place which it deserves, as a leader in the fight against water pollution and for constructive environmental control.

Let me state the problem in simple words. It is the danger of *further contamination* from industrial effluents and natural pollution to our rivers, streams, lakes, ponds, bays, harbors and other types of water bodies. I emphasize the word "*further contamination*" because most of the water bodies mentioned are now polluted to a degree, and if anybody did anything further in the way of construction, dredging, or other activity, *there would be increased contamination* of these waters by nature, as well as by man in the future. It is evident that there is a need to clean up the mess, to provide cleaner water, and the first step is to provide positive identification and definition. Contamination of our waters has always occurred and natural pollution is perhaps the greatest single type of pollution of water. Man-made pollution, if it goes unchecked, is probably a function of population increase and industrial growth and is, therefore, apt to become progressively greater in the future.

Natural pollution, the far greater of the two, as it will be recalled, is probably fairly constant and an ever present danger. Most