It is clear that Russia is making a determined effort to be the No. 1 military power in the world in order to expand its international political and economic influence.

There can be little doubt that the ball is in our court. We are under enormous pressures at home to pour more of our national wealth into the resolution of social and environmental problems. Simultaneously, we must decide whether world peace and U.S. political and economic interests across the globe can be served by our becoming the second best military power in the world. Ultimately, the decision rests with the American people. The debate will probably be sidestepped in the 1972 elections, but it is likely to be a major issue in 1974 and 1976.

As we reconsider our technical-military role, we would do well to take a long, hard look at our industrial posture in today's changing world. At the end of World War II, the U.S. had the most modern and efficient industrial complex in the world. A large investment in plant and equipment permitted high wages, provided high productivity, and gave us the assurance that we could sell our products competitively anywhere in the world.

Now, times have changed. Both our friends and our former enemies—partly with American taxpayers' money—have completely rebuilt their war-torn industries. They control industrial plants that are, relatively speaking, more modern and productive than ours.

It is interesting to compare the productivity of $100 in 1970 wages in a few selected countries. A Japanese company gets more than 100 hours of work for each $100 of wages. Compared with that, a French, German or British company will get about 50 hours of work. For the same wages, an American company gets only 25 hours of work. It is obvious that we must be four times as efficient to compete with the Japanese. And we have seen the results: imported products at prices well below domestic levels.

In one of our main markets, aerospace, the European governments together have committed $4 billion in taxpayers' money to the development by private companies of commercial aircraft. In this way, four different commercial aircraft will be developed. The governments and the companies intend to capture the lion's share of a $30 billion market.

It is against the traditions of the U.S. free enterprise system to use public money for commercial development. European governments, on the other hand, have already come to grips with the fact that private industry simply cannot finance the sky-rocketing costs of advanced technology. They consider the "national interest" to include healthy technological development of industries such as aerospace computers, atomic energy and electronics, and they have decided to use public money for these purposes. Over the next few years, we in the U.S. will be faced with the same decision.

The 25-year honeymoon—when we were supreme in both the competitive military and industrial worlds—is over. The government must establish new national priorities, not only of a social nature but also of a scientific and technological nature. We must decide which industries can compete in world markets over the next 25 years, despite our high wage costs. These industries should be nurtured, encouraged, and supported when necessary.

We must modify our tax system so that over the next five to ten years our plant and equipment is once again the most modern and efficient in the world. Labor and management are both going to have to work harder. Interdependence, rather than independence, will have to be developed to a much greater degree. Featherbedding and make-work projects will have to go because our economic system can no longer support them.

We are about to live through one of the most challenging periods of our history. The question is whether or not we shall rise to the challenge and energy and purpose if we do, we shall retain and strengthen our world position, our self-respect and the respect of others, if we do not, we shall become a second rate power.

YOUNG ADULTS

HON. RICHARD G. SHOUP

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 7, 1972

Mr. SHOUP. Mr. Speaker, a number of my constituents have expressed their concern for the attitude in Congress toward young adults. I have assured them that I, along with a great number of my colleagues, believe that young adults must be represented as individuals and must share equally as citizens the privileges and responsibilities of our society. The future of our country lies in creating job opportunities for our youth, and that all youth should have the chance to better themselves through vo-tech or college training.

I feel the following list of bills is of the type we have and should continue to act on:

H.R. 6531. Provided incentives for building a volunteer Army thereby eliminating need for draft.

H.R. Res. 223. Amended U.S. Constitution to lower voting age to 18 years.

H.R. 12596. Coordinates all of the Federal agencies connected with the drug abuse problem into a Special Office for Prevention of Drug Abuse.

H. Res. 739. Expanded Federal Student Intern Program to interns for employment during the summer months.

H.R. 7352. Establishes an Institute for collecting information on and training officials for the treatment and control of juvenile offenders.

H.R. 11112. Provides individual income tax deductions for Vo-Tech and other higher education cost.

H.R. 14552. Allows single individuals same tax benefits as married persons.

SENATE—*Tuesday, August 8, 1972*

The Senate met at 9 a.m. and was called to order by the Acting President pro tempore (Mr. METCALF).

PRAYER

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

Eternal Father, we thank Thee for every day Thou dost give us. Especially do we thank Thee for the occasional flashes of pure beauty, pure goodness, pure love which show us Thy nature and our possibilities—and throws into vivid contrast the littleness of man, the ugliness of the human scene, the cruelty, greed, oppression and hatred exposed by sin. Spare us from cozy acquiescence with things as they are, from turning away from man's failures when Thou hast promised grace and wisdom to those who call upon Thee.

We lift our hearts to Thee for strength to live by the moral and spiritual imperatives which lift and help and heal. Here at this place of daily prayer and hourly toil help us to empty ourselves of everything which excludes Thy spirit and help us to live the life of active collaboration with the divine in all that is human. Accept us as we say in the depths of our being "Here am I, Lord, use me."

For Thy name's sake. Amen.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 3645) to further amend the United States Information and Educational Exchange Act of 1948.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 15641) to authorize certain construction at military installations, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. FISHER, Mr. NEDZI, Mr. LENNON, Mr. HAGAN, Mr. LONG of Louisiana, Mr. DANIEL of Virginia, Mr. MONTGOMERY, Mr. BRAY, Mr. PIRNIE, Mr. CLANCY, and Mr. POWELL were appointed managers on the part of the House at the conference.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, August 7, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Environment of the Committee on Commerce; the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary; the Committee on Government Operations; the Committee on Banking, Housing and Urban Affairs; the Committee on Armed Services; the Committee on Foreign Relations; the Committee on Public Works; the Committee on Finance; and the Committee on Interior and Insular Affairs be authorized to meet during the session of the Senate today.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination on the Executive Calendar.

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

The ACTING PRESIDENT pro tempore. The nomination on the Executive Calendar will be stated.

DEPARTMENT OF JUSTICE

The second assistant legislative clerk read the nomination of Roger C. Cramton, of Michigan, to be an Assistant Attorney General.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

ENFORCEMENT OF CERTAIN SHIPPING STATUTES BY MARITIME COMMISSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 962, H.R. 755.

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

The legislative clerk read as follows:

H.R. 755, to amend the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, to convert criminal penalties to civil penalties in certain instances, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce with amendments, on page 2, after line 14, insert:

(d) By amending the first paragraph of section 23 to read as follows:

"Orders of the Commission relating to any violation of this Act or to any violation of any rule or regulation issued pursuant to this Act shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion."

At the beginning of line 22, strike out "(d)" and insert "(e)"; on page 3, line 10, after the word "penalty", strike out "to be assessed by the Federal Maritime Commission"; after line 12, strike out:

(e) By adding the following as a new section 45:

"SEC. 45. Civil penalties provided for violations of sections 14 through 21 and 44 of this Act may be assessed by the Federal Maritime Commission."

After line 16, strike out:

(f) By renumbering present section 45 to section 46.

In line 22, after the word "penalty", strike out "to be assessed by the Federal Maritime Commission"; and, at the top of page 4, insert a new section, as follows:

SEC. 3. Any civil penalty provided herein may be compromised by the Federal Maritime Commission, or may be recovered by the United States in a civil action.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1014), explaning the purposes of the measure.

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

PURPOSE AND BACKGROUND OF THE BILL

The purpose of the bill, H.R. 755, is to provide the Federal Maritime Commission with authority to enable it to more effectively discharge its regulatory responsibilities under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. This would be accomplished by (a) changing certain penalty provisions of the Shipping Act, 1916, from criminal to civil, (b) providing a civil penalty for violations of any order, rule, or regulation made or issued by the Commission in the exercise of its powers, duties, or functions, and (c) authorizing the Commission to compromise any civil penalty provided for violations of those sections of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, as to which it has jurisdiction.

Hearings on H.R. 755 were held by the Merchant Marine and Fisheries Committee of the House of Representatives on June 30, 1971. It was ordered favorably reported with amendments on September 14, 1971 and was passed by the House on September 20, 1971. The Merchant Marine Subcommittee of this committee received a number of statements raising objections to the bill. A revision of the measure was then submitted by the Federal Maritime Commission, which had originally proposed the legislation, and the hearings were postponed. Thereafter on January 7, 1972, the committee gave public notice that its Merchant Marine Subcommittee was considering the revised version of H.R. 755 and invited interested parties to submit written statements by February 7, 1972. The submissions made were given thorough consideration by the committee.

EXPLANATION OF THE LEGISLATION

The regulatory authority of the Federal Maritime Commission is derived primarily from the Shipping Act, 1916, the Merchant Marine Act, 1920, and the Intercoastal Shipping Act, 1933. Certain additional authorities and functions are provided for in other statutes: for example, the Merchant Marine Act, 1936; Public Law 89–777; and Public Law 91–224.

Penalties provided for violations of many of the provisions of the Shipping Act, 1916, are criminal. Where there appears to have been a violation of one of these provisions it is necessary to conduct an investigation of the incident, to thoroughly document the violation and then to refer it to the Department of Justice for prosecution. Adequate documentation is time-consuming and considerable time can elapse between the Commission of the offense and the actual referral to the Department of Justice. Additional time and effort is expended by the Department in its review and evaluation of the offense. A further lapse of time occurs after the filing of a complaint before the case is assigned for trial. By the time the penalty is imposed, the courts frequently are inclined to impose a much lighter sentence than if the case had been prosecuted promptly. In such instances no regulatory purpose is served, since the amount of the penalty is usually insufficent to deter the offender or others from further transgressions.

To change the penalties for violations of these provisions from criminal to civil should make the documentation of violations simpler, thereby expediting final consideration by the Commission, or the Department of Justice and the courts. Since proving a violation would be easier, the threat of imposition of the prescribed penalty should act as a more effective deterrent to further violations.

The Commission is authorized by section 43 of the Shipping Act, 1916, to make such rules and regulations as may be necessary to carry out the provisions of the act. It was brought out in hearings before the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries that the Shipping Act does not specify a penalty for a violation of an order, rule or regulation issued by the Commission. However section 806(d) of the Merchant Marine Act, 1936, provides:

"Whoever knowingly and willfully violates any order, rule, or regulation of the United States Maritime Commission made or issued in the exercise of the powers, duties, or functions transferred to it or vested in it by this act, as amended, for which no penalty is otherwise expressly provided, shall upon conviction thereof be subject to a fine of not more than $500. If such violation is a continuing one, each day of such violation shall constitute a separate offense."

The Commission is of the view that this section has application to a violation of an order, rule or regulation issued by it pursuant to the Shipping Act, 1916.

However, by specifically providing civil penalties for violation of Federal Maritime Commission orders, rules and regulations, there will be removed any uncertainty that such a violation may be subject to penalties and will eliminate the necessity of the Commission applying for a district court order to enforce its orders. It is noted that this amendment would bring the authority of the Commission in line with that of the Civil Aeronautics Board, which has authority pursuant to section 901 of the Federal Aviation Act, to impose civil penalties of not to exceed $1,000 for violation of any rule, regulation or order issued by the Board pursuant to title IV covering economic regulation of Air Carriers (49 U.S.C. 1471).

Thus, the bill would amend section 32 of the Shipping Act, 1916, to provide civil penalties for violations of "any order, rule, or regulation * * *." It is not intended however that section 32 should apply to procedural rules or regulations such as the Commission's rules of practice and procedure.

AMENDMENTS

H.R. 755 as passed by the House contained a provision which would have authorized the Federal Maritime Commission to assess civil penalties for violations of those sections of the Shipping Act, 1916, subject to the Commission's jurisdiction, and the Intercoastal Shipping Act, 1933. This also would have applied to violations of the Commission's orders, rules and regulations. Opposition was expressed to this committee to granting the Commission authority to assess a civil penalty in lieu of referring the violation to the Justice Department for prosecution. It has been contended that such a procedure would undermine the very concept of due process under law, as the very nature of the administrative agency process necessarily makes the agency peculiarly ill-suited for the imposition of punitive sanctions.

Section 3 of the bill, added by the committee, authorizes the Commission to *compromise* the amount of civil penalties rather than to *assess* the penalty. Under this procedure should the "violator" and the Federal Maritime Commission fail to arrive at an accepted compromise, the penalty could only be recovered in a *de novo* proceeding in a U.S. district court.

Concern has also been expressed that the bill might effect some changes in the evidentiary requirements with respect to future cases instituted in the U.S. district courts to recover civil penalties. Furthermore, it has been pointed out that H.R. 755 contains no provision requiring a hearing before issuance of a Commission order relating to violations of Commission rules or regulations similar to the present provision in section 23 of the Shipping Act, 1916, which requires a hearing before issuance of a Commission order relating to a statutory violation.

Concern was also expressed over the interpretation of the phrase "for each day such violation continues" appearing in the penalty provisions of section 18(b)(6) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act of 1933. It was suggested that language be added to the effect that no penalty could be imposed when the violation is cured by the carrier.

As to the concern of possible change in evidentiary requirements the Federal Maritime Commission expressly stated that the bill is not intended to effect any such change, and that the evidentiary requirements presently applicable with respect to civil actions brought by the Department of Justice for violations of the shipping statutes would continue to be applicable under H.R. 755. The committee believes this is clear from the language of H.R. 755.

As to the second point mentioned, in order to be consistent with the language already in section 23 of the Shipping Act, appropriate amendatory language is provided to section 23 to specifically require a hearing with respect to orders relating to violations of Commission rules or regulations.

The proposal to include language which would preclude a penalty from being imposed after corrective action has been taken by a carrier seems unnecessary. Numerous regulatory statutes provide penalties for each day of a continuing offense without such limiting language. The committee is unaware of such statutes having being improperly administered. It seems clear that penalties in such instances could not be assessed for any period of time after the violation was in fact cured.

COST OF LEGISLATION

Enactment of the bill will not result in any additional cost to the Government.

CONCLUSION

The Committee ordered the legislation favorably reported without objection. Its enactment should provide the Federal Maritime Commission with needed additional authority to more effectively discharge its statutory responsibilities, encourage compromised settlements for violations of the shipping statutes, and help to avoid needless litigation in our over-crowded Federal courts.

THE MAYOR OF NEW ORLEANS

Mr. MANSFIELD. Mr. President, the 12th Mexican-United States interparliamentary meeting was held in New Orleans, La., earlier this year, the reason being that it was the 100th anniversary of the death of the great patriot, Benito Juarez, who had spent considerable time in New Orleans while he was in exile during the time of revolutionary turmoil in Mexico just prior to the period of the American Civil War.

During the course of the interparliamentary meeting I had a chance to meet one of the outstanding mayors in the United States, if not the outstanding mayor, Moon Landrieu, mayor of the city of New Orleans.

I was very much impressed not only with Mr. Landrieu personally, but most especially because of the efforts he is making—and successfully—to rehabilitate and reconstruct the inner city of New Orleans which, like so many other large cities, is going the way of all flesh—decadent, dying, wearing itself out.

I think he is doing a remarkable job in New Orleans which might well be followed by many other larger cities throughout the Nation.

Mr. President, I ask unanimous consent to have printed in the RECORD an article published in U.S. News & World Report for August 14, 1972, entitled "The Real Crisis of the Cities," written by Moon Landrieu, mayor of New Orleans, which contains a statement on revenue sharing before the Senate Finance Committee in Washington, D.C., on July 25, 1972.

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

THE REAL CRISIS OF THE CITIES

(By Moon Landrieu)

Well-meaning policies of the Federal Government have contributed to the situation now facing us:

1. The national farm policy disinherited millions of farm families, driving masses of them into already crowded cities.

2. The Federal Housing Administration's policies contributed to urban sprawl by subsidizing 10 times as many units of housing in the suburbs as in the inner city.

3. The national highway program further stimulated the suburban exodus, bisecting cities with concrete, subsidizing congestion and pollution, and ignoring the need for urban mass transit.

4. Inflation, the result of federal fiscal and monetary policies, has been the greatest cause of increased city expenditures. Between 1955 and 1970, prices paid for goods and services by State and local governmental units rose at an average rate of 4.2 per cent, compared with 2.7 per cent for the economy as a whole.

State governments have also been a major cause of our plight. Remember, cities are not sovereign entities as are the federal and State governments, but rather are creatures of their States.

States have permitted a deadly combination of restricted annexation and unrestricted incorporation, forced a chaotic and uncontrollable mushrooming of special districts, and imposed severe limitations on municipal taxation and borrowing powers. . . . The litany of increased taxation is a common story that the mayors before you will repeat—cities have been forced to tax everything that moves or stands still within their borders. If it should stop and move again, it would be taxed again.

In my city of New Orleans the story is all too typical.

Starting in 1966 we have had to increase the local sales tax twice; we have imposed a garbage-collection charge; we have increased taxes on gas, electricity, and water; we bit the bullet and raised sewerage charges 80 per cent two years ago, raised them 20 per cent in the past year, and now must raise them again in order to meet Environmental Protection Agency requirements for secondary treatment facilities; we have raised fines, fees and forfeitures across the board; we have increased public transit fares by 50 per cent.

This is what we've done at the local level. Two years ago the cities of Louisiana, desperate for new revenue, went to the State and supported the Governor's tax package to increase income taxes, cigarette taxes, liquor taxes, and the sales tax in order to fund a desperately needed revenue-sharing program for the municipalities of our State.

At the same time we in New Orleans asked the State legislature to give us authority to do more on our own. But in a Statewide referendum our bills were defeated which would have allowed us to increase occupational-license taxes and paving charges, and to increase our local property tax millage for our water board, our levee board, and city government. Finally, we've tried—and failed twice—to pass legislation which would allow the levying of a metropolitan earnings tax.

Gentlemen, you are looking at a man who thinks that all this should have gotten us somewhere. But just recently, the chief administrative officer [of New Orleans] prepared a report at my request which shows that in 1973 my city will be facing over a 7-million-dollar deficit, and that by 1977 the disparity between projected revenues and projected expenditures for presently existing services will be over 30 million.

These projections are made without considering any pay raises over this period of time for local city employes. This year my total operating budget is only 80 million dollars. But while revenues are going up at 2 per cent per year, expenditures are rising at 6 to 8 per cent. In Shreveport, Baton Rouge, Monroe, Lafayette and Jefferson, the story is the same—only the numbers change.

The fact of the matter is that the cities of my State, and every State, need help—desperately and soon. Revenue sharing will provide that assistance.

Some critics of revenue sharing claim that the Federal Government cannot afford it. Our answer to that is that if the Federal Government wants to trade us the progressive income tax for the property tax, we will close the deal right now. Most mayors would even be willing to throw their sales tax into the trade.

Seriously, this argument ignores the fact that the Federal Government has had three major tax reductions in the past decade. Meanwhile, State and local taxes are rising at a rate of 3 billion dollars a year, bonded municipal indebtedness has tripled since 1955, and combined State and local governments face a staggering gap between revenues and expenditures of 67 billion by 1975. . . .

We must make it clear that two kinds of poverty exist in the cities: One is the poverty of the people who live in them. The other is the poverty of city governments themselves.

Ninety per cent of the federal funds credited to the cities and States come not from the Department of Housing and Urban Development, but from the Department of Health, Education and Welfare, and are intended to alleviate the poverty of people through welfare benefits, food stamps, medical-care payments, and the like.

But these payments do not affect the critical need for basic municipal services such as trash and garbage collection, police and fire protection, repair and cleaning of streets, education, and the whole myriad of municipal services. Hopefully, in the long run, they may reduce the costs of some of these services. But certainly not in the five years covered by the State and Local Fiscal Assistance Act.

Even the HUD programs, by stimulating new services, requiring local matching payments and creating new capital facilities which bring on additional local operating costs, add to the local tax burden. . . .

Our nation's cities are facing a fundamental fiscal crisis which can only be resolved by fundamental change in our federal fiscal structure.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from New York (Mr. JAVITS) is now recognized for 15 minutes.

Mr. JAVITS. Mr. President, a parliamentary inquiry. I understand that after I have consumed 15 minutes, according to the schedule, the distinguished Senator from Maryland (Mr. MATHIAS) is to follow me. Is that correct?

The ACTING PRESIDENT pro tempore. The distinguished Senator from Illinois (Mr. PERCY), according to the schedule of the Chair, is to be recognized and then the Senator from Maryland.

Mr. JAVITS. I understand, although I was not here yesterday, that the Senator from Maryland and the Senator from Illinois and my own staff arranged that the orders should be changed, so I ask unanimous consent that the Senator from Maryland (Mr. MATHIAS) may go first, to be followed by me, and then to be followed by the Senator from Illinois.

The ACTING PRESIDENT pro tempore. Very well. Without objection, it is so ordered and the Senator from Maryland (Mr. MATHIAS) is now recognized for 15 minutes.

RULES CHANGES REGARDING THE PROCESS OF FEDERAL ELECTIONS

Mr. MATHIAS. Mr. President, I thank the distinguished Senator from New York for the rearrangements, but as the Senate will see, this is a joint effort. We are proceeding as a team to discuss this problem of serious national consequence. The purpose is to surface and discuss and, thus, evoke help and comment from our colleagues here as well as the people of the country.

The Congress of the United States has the responsibility, under article I, sections 4 and 5 of the Constitution ,of overseeing the process of Federal elections in this country. This Congress, I am happy to say, has taken historic steps to improve that process by enacting the Campaign Reform Act of 1971 and by providing for tax deductions and credits for valid political contributions. I think that all of us on this team would like to address ourselves this morning to two remaining areas of tremendous importance: The process by which we select candidates for President and Vice President and the process by which we govern our great national political parties.

In less than 2 weeks the Republican Convention will be called to order in Miami. I am honored to have been selected as a delegate to this convention and as one of the representatives of the Maryland delegation on the convention rules committee. I am honored to be associated with Mrs. Gloria Baumgaertner who will also be representing Maryland on that committee. The rules committee is charged with the responsibility of examining and recommending changes in the basic rules by which our party is governed and our national ticket is selected.

The Republican Party this year has a luxury which it can ill afford to lose. There can be no doubt in anyone's mind that the Republican delegates and alternates will march from Miami arm in arm in support of the reelection of President Nixon and Vice President Agnew. We are united in our dedication to victory in November, and every Republican knows it.

With that fact established beyond a reasonable doubt, we can turn at this convention from the burdens of nominations and dedicate ourselves to examining the process by which we govern our party and select the most powerful men in the world. All who realize that the fate of the world can be determined by that process must realize that the failure by this party to seize this unique opportunity would be a boundless tragedy.

And all who recognize the complexity of national parties in America must realize the great importance of wise party rules. A party responsive to the challenges of the dawning of America's third century must be responsive to all segments of the electorate and all parts of the country, and still be able to function, when needed, as a cohesive unit.

In the past few weeks, much attention has been focused on reforming the Democratic Party. What has been too often overlooked is the fact that in many of the new rules, such as the order abolishing the unit rule which compelled all delegates to vote with the majority of their State's delegation, the Democrats have merely adopted longstanding Republican rules. In other cases, such as the rule encouraging the participation of women, the Democrats have merely attempted to overcome past weaknesses. For example, in 1968 women constituted 17 percent of the delegates to the Republican Convention and only 13 percent of the delegates to the Democratic Convention. This year, happily, women will make up more than 30 percent of the delegates to each convention. But Republicans must not let their pride in their past virtues blind them to the need for positive action to broaden the party's base. As a minority party we must reward such support with a meaningful voice in party affairs. This year we have the time and energy to spell out the necessary reforms, and by acting at this convention, we can give State and local parties 4 years to conform their practices to the new party rules.

The Rules Committee at this convention is fortunate in that it will have the benefit of recommendations from a number of groups that have been studying this problem. Perhaps foremost among these groups is the Republican National Committee's DO—Delegates and Organization—Committee, headed by national committeewoman Rosemary Ginn of Missouri. By examining the recommendations of these various groups, we can foresee that the Rules Committee must address itself to three general areas of reform:

First. Allocating delegates among the States;

Second. Broadening our party's base of support; and

Third. Guaranteeing open party procedures.

Along with other Senators, I have been working on the formulation of a new set of rules covering each of these areas and incorporating the general thrust of the DO Committee recommendations:

First. Allocating delegates among States: The current formula for allocating delegates among the States has been declared unconstitutional in that its "bonus" system is too weighted in favor of small States and thus violates the one-man-one-vote principle of the equal protection clause. This formula is embodied in rule 30 of the convention rules and must be rewritten at this convention. Three formulas have been suggested which I believe merit serious study. Each would give all States their fair share of delegates and would also substantially increase the number of delegates to the convention, which will help to broaden participation in party affairs. The details of the first two formulas were worked out by members of the Ripon Society, and the details of the third formula have been developed primarily by the Senator from Illinois.

FORMULA 1

For each State, two delegates for each electoral vote, plus one delegate for each 25,000 votes, or a major fraction thereof, cast for the Republican nominee for President in 1972.

This plan—using 1968 figures—results in 2,357 delegates. Of the 2,357, 1,070 are the result of the electoral votes, 1,273 the result of presidential vote, and 14 assigned—to the District of Columbia, Puerto Rico, Virgin Islands, and Guam.

FORMULA 2

For each State, two at-large delegates, plus two delegates for each seat in the U.S. House of Representatives. In addition one delegate for each 25,000 votes or major fraction thereof, cast for the Republican nominee for President in 1972, or in an election taking place after the 1972 Republican National Convention, one delegate for each 25,000 votes or major fraction thereof cast for the Republican candidate for Governor or for U.S. Senator, or for all of the Republican candidates for the U.S. House of Representatives, whichever is greater.

This plan results—using 1968 figures—in 2,403 delegates, of which 100 are at-large, 870 are the result of House seats, 1,619 the result of votes cast for the strongest Republican candidate, and 14 are assigned—District of Columbia, Puerto Rico, Virgin Islands, and Guam.

FORMULA 3

For each State, two delegates-at-large for each Senator, two delegates for each congressional district, and one additional delegate for every 35,000 votes cast in 1972 for the Republican presidential nominee, the Republican candidate for Governor or Senator, or the Republican candidates for the House of Representatives, whichever total is greatest. In addition, such delegates as necessary so that no State shall have fewer delegates in 1976 than it had in 1972. This formula results in approximately 2,100 delegates:

RESULTS OF PROPOSED DELEGATE SELECTION FORMULAS COMPARED WITH PRESENT RULE 30

State	Rule 30	1	2	3
Alabama	17	24	26	25
Alaska	12	8	6	(7) 12
Arizona	18	23	21	20
Arkansas	18	20	23	21
California	96	229	240	189
Colorado	20	30	30	27
Connecticut	22	38	37	32
Delaware	12	10	9	(9) 12
Florida	40	69	77	66
Georgia	24	39	39	36
Hawaii	14	12	11	(12) 14
Idaho	14	15	13	(13) 14
Illinois	58	139	145	120
Indiana	32	69	68	57
Iowa	22	41	39	34
Kansas	20	33	32	29
Kentucky	24	36	34	32
Louisiana	20	30	28	27
Maine	8	15	13	13
Maryland	26	41	40	35
Massachusetts	34	59	68	58
Michigan	48	97	100	85
Minnesota	26	46	50	43
Mississippi	13	18	16	17
Missouri	30	56	56	48
Montana	14	14	12	(12) 14
Nebraska	16	23	21	19
Nevada	12	9	7	(8) 12
New Hampshire	14	14	14	(13) 14
New Jersey	40	87	87	73
New Mexico	14	15	13	(13) 14
New York	88	202	211	162
North Carolina	32	51	53	47
North Dakota	12	12	10	(10) 12
Ohio	56	122	136	113
Oklahoma	22	34	33	29
Oregon	18	28	27	24
Pennsylvania	60	138	148	123
Rhode Island	8	13	14	13
South Carolina	22	26	24	23
South Dakota	14	14	12	(13) 14
Tennessee	26	39	41	34
Texas	52	101	100	88
Utah	14	18	17	16
Vermont	12	9	10	(10) 12
Virginia	30	48	46	41
Washington	24	42	44	38
West Virginia	18	24	25	23
Wisconsin	28	54	56	48
Wyoming	12	9	7	(8) 12
District of Columbia	9	7	7	(7) 9
Puerto Rico	5	5	5	5
Virgin Islands	3	1	1	1
Guam	3	1	1	1
Total	1,346	2,357	2,403	2,100

Second. Broadening our party's base: The 1968 convention, by adopting rule 32, required each State to take "positive action" to prevent any discrimination on the basis of race, religion, color, or national origin. The 1972 convention must decide, first, if rule 32 should also require positive action to prevent discrimination based on sex and age and to broaden our party's base of support; second, if one test of a State's "positive action" should be whether it has made a good-faith effort to send a "balanced" delegation to the 1976 convention; and third, what sanctions to apply to those States that do not comply with this rule 32 and what rewards to give to States that do comply. The new set of rules which we are suggesting today requires State parties to take positive action to broaden our party's base and to prevent discrimination based on sex or age as well as race, religion, color, or national origin. We believe that this is proper and just and also, that as the minority party, we must make an extra effort to attract new members. We put particular emphasis on a State's efforts to send a balanced delegation to the 1976 convention, as being the best, though not conclusive, evidence of a State's good faith efforts in this area. We would not, however, establish any fixed quotas for women delegates or any other delegates from any State. We would not spell out at this time any particular sanctions or rewards designed to assure compliance with these rules. Enforcement of party rules has always been the prerogative of the Credentials Committee and the convention as a whole, and we see no reason to change this longstanding tradition. We believe it would be helpful, however, if this year's convention would establish under rule 29 a reform council which would have the responsibility of assisting all States in complying with these rules, suggesting actions helpful to States in sending a balanced delegation to the 1976 convention, and recommending to the 1976 convention what standards it should use in judging compliance and what sanctions or rewards it should enploy to insure compliance. The current rule 32 and our proposed language for rule 32 and rule 29 are as follows:

CURRENT RULE 32

Participation in a Republican primary caucus, any meeting or convention held for the purpose of selecting delegates to a county, district, State or national convention shall in no way be abridged for reasons of race, religion, color, or national origin. The Republican State Committee or governing committee of each State shall take positive action to achieve the broadest possible participation in party affairs.

PROPOSED RULE 32

Participation in a Republican primary caucus, or any meeting or convention held for the purpose of selecting delegates to a county, district, State, or national convention shall in no way be abridged for reasons of race, religion, color, national origin, sex, or age, provided that the latter requirement shall apply to persons 18 years of age and over. The Republican State Committee or governing committee of each State shall take positive action to achieve throughout the State party the broadest possible participation in party affairs, and particularly shall make good faith efforts to achieve representation on its national convention delegation of women, racial and ethnic minority groups, and people under the age of 25 and over the age of 60 in reasonable proportion to these groups' representation in the total voter registration in the State, and to their participation in the Republican Party in the State, at the last presidential election. Nothing herein shall be construed to require a quota.

PROPOSED ADDITION TO RULE 29

The chairman of the Republican National Committee, with the concurrence of a majority of the national committee, shall appoint a council on State and national party procedures to assist the States in meeting the requirements established in the new rules adopted at this convention. The council shall consist of representatives of every segment of the Republican Party, including elected officials, State, and national party officers, women, businessmen, labor representatives, young Republicans, racial and ethnic minority groups, and rank-and-file voters. The council may conduct such public hearings as it deems necessary and shall provide legal, financial, and organizational assistance to State parties in complying with party rules. The council shall make a preliminary public report to the national committee not later than January 1, 1975, and the report shall include recommended actions for those delegations that have not complied or made reasonable good-faith efforts to comply with the rules. The council shall make a further public report to the national committee not later than 6 months before the national convention and the report shall include recommended awards to the delegations that do, and sanctions for those delegations that do not comply, or make reasonable good-faith efforts to comply, with the rules. The national committee shall transmit the report with its recommendations to the credentials committee and national convention for adoption or amendment. In no way shall the council's authority be construed to abridge the prerogatives and jurisdiction of the credentials committee, and it shall have no authority with regard to the credentials certification process as provided in the rules and in the preliminary call to the 1976 convention.

Third. Guaranteeing open party procedures: This involves questions such as whether delegate selection meetings should be open to the press and public; whether alternative delegates should be selected in the same manner as delegates; whether the number of at-large, ex-officio, or appointed delegates should be limited; whether the use of proxies should be banned in selecting delegates at district or state conventions; whether conditions should be placed on the selection of delegates to convention committees. Our proposed set of rules answers each of these questions affirmatively. Our proposals on these points are as follows:

First. Amend rule 14(a) to read as follows:

The delegates from each state elected to the National Convention, immediately after they are elected, shall select from the delegation their members of the resolutions, credentials, rules and order of business and permanent organization committees of the National Convention. The members so chosen shall reasonably reflect the composition of the delegation as a whole, consistent with the requirements of rule 32 (as amended). No delegate may serve on more than one (1) Committee of the National Convention. Alternates may not serve as members of Convention Committees.

Second. Add the following sentence to rule 31(a):

To the extent possible under State law, delegates in primary states shall be selected to represent a candidate to whom they are publicly pledged.

Third. Amend the first sentence of rule 31(e) to read as follows:

No more than 25% of the delegates from any State may be chosen on an at large basis; the remaining delegates must be selected at a level no higher than the Congressional District. No more than 10% of a State's delegation to the Republican National Convention may be appointed by Party Committees.

Fourth. Add as a new sentence to rule 31(e):

There shall be no automatic delegates at any level of the delegate selection procedure who serve by virtue of Party position or elected office.

Fifth. In rule 31(f), change the semicolon after the word "chosen" to a period and strike everything thereafter. Add a comma and the words "under the same rules" after the word "manner." The new rule 31(f) shall then read as follows:

Alternate Delegates shall be elected to said National Convention for each unit of representation equal in number to the number of Delegates elected therein and shall be chosen in the same manner, under the same rules, and at the same time the Delegates are chosen.

Sixth. Add as a new sentence to rule 31(f), the following:

There shall be no proxies at a convention held for the purpose of selecting delegates to the Republican National Convention. If alternate delegates to a convention are selected, the alternate delegate shall vote in the absence of the delegate, and no delegate shall cast more than a single vote and his alternate shall cast no more than a single vote in the absence of the delegate.

Seven. Add a new sentence to rule 31(j):

No delegates or alternate delegates shall be required to pay an assessment as a condition of serving as a delegate or alternate delegate to the Republican National Convention.

Eight. Add as a new rule 31(o):

To increase participation by all Republicans in the delegate selection process, the Republican State Committee or Governing Committee of those States using the convention method shall adopt a system whereby district conventions are held on a different day in a different community than where the State convention is held.

Nine. Add as a new rule 31(p):

Public Meetings: All precinct, ward, township, county, Congressional district, state, or other meetings held in any state for the purpose of nominating or electing delegates to district or state conventions, shall be public meetings. Participation in such meetings shall be open to all members of the party and all members of the party shall be urged to participate through written notices and other appropriate means. Instructive materials on delegate selection procedures shall be prepared by the Republican National Committee, in cooperation with the states, and be made fully available to all.

Mr. President, the proposals which we have put forward here are not meant to be carved in granite. They are merely offered as suggestions for the consideration of my colleagues in this Chamber and my fellow convention delegates. I am hopeful that others will agree that these suggestions point in the direction our party should travel, and that our discussion this morning will stimulate the hard thought needed in order that the Republican Party can make the most of the unique opportunity that is afforded by our unity at this convention.

EFFECT ON MARYLAND

I know that our proposals would require many States to change their current practices. My own State of Maryland is among these, but these rules would mean we would have to elect a greater proportion of our delegates in our State's primary; they would require that alternate be elected as well as the delegates rather than being appointed by the delegates as is now the case; they would require that our State party reach out to broaden its base and send a balanced delegation to the 1976 convention; they would require more of our party meetings to be open to the press and the general public.

These are important changes, and I believe Republicans in Maryland will support these changes because they recognize the critical need in our State and our Nation for a larger, more active Republican Party that can assume majority control of the Congress and statehouses around the country.

Mr. President, I yield now to the distinguished Senator from New York, and I ask unanimous consent that we may reserve the remainder of time that has been allotted.

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

The senior Senator from New York is recognized and is also recognized for 15 minutes of his own time.

Mr. JAVITS. Mr. President, I am very pleased to join with the Senator from Maryland (Mr. MATHIAS), the Senator from Illinois (Mr. PERCY), and the Senator from Oregon (Mr. PACKWOOD) who are compared to me, relatively newer and younger Senators in the party, in an effort in which I have been interested for many years. That is the effort to broaden my party into a more modern and responsive institution reflecting change and diversity. It is gratifying to me to join with three brilliant young Senators in presenting my views on this important subject.

My three colleagues and I, generally speaking, agree among ourselves upon many of the questions involved in the proposed rules changes to be considered at the Republican Convention. We have a body of opinion in the House of Representatives which similarly concurs about many of them. There are certain areas in which Senators MATHIAS, PERCY, and I have some additional suggestions, but the general thrust of the effort is that some revision of the process by which delegates are chosen and party policy will be made at the national conventions, should be adopted.

Mr. President, I do not consider this as solely a party question, but also a national question, and hence, we felt it was our duty to discuss it on the floor of the Senate, for the question which troubles many Americans today is whether our traditional political party system can be modernized to meet the challenges of the democratic processes in the 1970's.

Are our political parties capable of accommodating and shaping the "new politics" and converting the potential of broader citizen participation into directed political energy?

Can we facilitate choice and invite diversity, opening our doors to new ideas and new people?

Can we respond to the challenge manifested most disturbingly of all in the reports by public opinion polls that a rapidly growing proportion of the American people say they have no trust in any political party and are members of none?

I raise these questions on the Senate floor because they relate to a national and not solely a party issue.

Both national parties have undertaken efforts to reform their procedures with a view toward improving their capability to meet today's sharply increased demands for fuller participation in party processes. Both have recognized the need to revitalize themselves as meaningful, national institutions.

The Republican Party has already adopted important convention rules reforms. We have eliminated the unit rule and provisions relating to the automatic designation of delegates. The 1968 convention in rule 32 required each State to take positive action to prevent any discrimination on the basis of race, religion, color, or national origin in connection with delegate selection procedures. This represented the firm commitment of our party to strengthen the national convention, and in the process to strengthen American democracy.

Reforms aimed at broadening the participation in the Republican Party of women, minorities, and young people were placed before the party's national committee at a meeting in Denver on July 23, 1971. These reforms were the recommendations of the Delegates and Organizations Committee—the "DO" committee—chaired by Mrs. Rosemary Ginn, the national committeewoman in Missouri.

Generally speaking, I support its recommendations. I may have some additional proposals and my colleagues may, but generally speaking the total thrust of all of our points of view is that the recommendations of this committee are sound.

The principal recommendations of the committee attempt to assure equal representation to men and women on State delegations, representation for young voters in numerical equity to their voting strength within each State, and guaranteed positions on permanent committees to women, youth, and minorities. The committee has done an excellent job. I strongly support its fine work.

I want to emphasize from the start that we are sensitive to the necessity to protect democratic processes in the delegate selection process. There are no quotas imposed; we impose no sanctions respecting quotas, and there is nothing in the changes we propose that creates quotas. I hope our declaration makes that clear.

I always have been very proud of my party in that it has made an excellent effort to open the party to the fullest participation of all. In my State of New York, the Governor, myself, and my fellow Senator, and other high State officials who will be honorary delegates at large at our upcoming convention voluntarily relinquished their opportunities to serve as voting delegates so that we might have more youth minorities and women represented among our State's delegates at

large. Indeed, to show our own good faith, my colleague (Mr. BUCKLEY) and I withdrew from an unopposed election as delegates to give others a chance to serve. I have been to every national convention since 1948, but I believe it was appropriate that we should do that. I make that point to demonstrate that when I call for good faith efforts to bring about reform we have actually already been advancing this goal.

The work of the "DO" committee must now be carried on. We must find a way to insure that those for whom representation has not been adequate in our party affairs should have a full opportunity to participate in the delegate selection process.

I strongly oppose mandating reform of procedures for the selection of delegates to the Republican National Convention by imposing upon State parties quotas of delegates by age, race, sex, color, and ethnic origin.

Notwithstanding the fact that the Republican Party has made an excellent beginning toward opening the party to the fullest possible participation of all in the party, we have a great deal more to do considering the profile of voters today. We should bring more women, young people, minority and ethnic groups into our local Republican caucuses, our State party meetings, and into the national convention itself. The question is how to accomplish this critically important objective.

We now must act also to require positive action by State parties to prevent discrimination based on sex and age. We must also consider how we can assess the degree to which each State party has taken positive action to prevent the discrimination prohibited by rule 32.

The one particular point that I shall press upon the rules committee, in addition to joining with my colleagues upon all the others, is to recommend the establishment of a Republican national council of party members to assist the States in bringing about fair representation within our party processes of all Republicans who seek to participate in the Republican Convention. Such a council would be appointed by the chairman of the national committee. It would include Republicans of all segments of the party, including elected officials, State and national party officers, businessmen, labor representatives, young Republicans, racial and ethnic minorities, and rank-and-file voters. It could conduct such public hearings as deemed necessary and provide legal and financial assistance to State parties in their efforts to comply with party rules. It could hear claims and objections dealing with alleged violations of our party rules.

The council would make a preliminary public report to the national committee not later than January 1, 1975, on the progress of its work generally. The report would also include recommended actions for those State parties that have not made reasonable good faith efforts to begin the process of compliance with the rules, including possible incentives to encourage reform.

The Senator from Maryland (Mr. MATHIAS) has already spoken about increasing the number of delegates in order to give recognition to the good faith effort to reform the rules. The Senator from Illinois (Mr. PERCY) will go into that even further as he himself will make very definitive proposals on that score.

The council I have mentioned will make a second public report prior to the 1976 convention. The national committee will be required to transmit the report of the council with its recommendations to the credentials committee and the national convention for adoption or amendment.

Again, I repeat, I oppose the power of summary sanction for noncompliance with the party rules, and under this proposal the council would not have it. The ultimate authority would continue to rest with the convention itself.

I believe that Republicans will respond to any rule changes, and that meaningful implementation would be achieved through the mechanism of our proposed supervisory council which will take into consideration the points of view of every segment of the party.

In carrying out its mandate, the council, as I said, appointed by the national chairman, will be required to make certain that its actions and involvement would not abridge the prerogatives and jurisdiction of the credentials committee of the convention and be wholly consistent with the credentials certification process as provided in the rules and in the preliminary call to the 1976 convention.

In a nation which honors and demands the participation of its citizens in our governmental processes our political organization at every level and in every State must be aware of the danger of becoming quiet enclaves.

For I am concerned that in such a condition we could lose a whole generation of young voters and political activists. These young people—including the moderate majority—do not seek to avoid controversy. They thrive on it. And any local, State, or national party that joins the debate can thrive with them.

Reform will not be easy. Major support in Congress and the country will be necessary to enable the party to renew its appeal and continue its commitment on this issue. We have found serious flaws in the delegate selection process as more people have sought to participate within that system. We must continue to stress our willingness to open our party to those who seek a voice and leadership within its councils.

I wish to note that my interest in this regard is not only as a Senator, but is deeply personal. I am the son of immigrants and the product of the slums of the Lower East Side of Manhattan. My escape from poverty and my career in politics have been in large measure a vindication of the principles which we are debating today.

I believe that we have moved to broaden and open the Republican Party in recent years. To attract a majority of the Nation's voters. We must continue to encourage all of our citizens to join with us, and I deeply believe that the matter of reforming our rules will make a very important contribution toward that end.

Mr. President, I ask unanimous consent to reserve the remainder of the 15 minutes that may remain to me.

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes remaining.

Under the previous order, the Senator from Illinois (Mr. PERCY) is recognized for not to exceed 15 minutes.

Mr. PERCY. Mr. President, I am very pleased indeed to be able to join with my colleagues in this discussion. The four of us represent a cross section of our country—the distinguished Senator from Maryland (Mr. MATHIAS) from a border State, the distinguished Senator from New York (Mr. JAVITS) from a great industrial and agricultural State on the east coast, the distinguished Senator from Oregon (Mr. PACKWOOD) from the great Northwest, and I representing the Middle West. I think we also share with all of our colleagues on this side of the aisle, and I think all our colleagues in the Senate, a deep belief in a strong two-party system, a belief that we should all look to the future, not to the past, a belief that the new politics applies to both parties, because the new politics reflects a mood in America today that we are simply trying to analyze and appraise in order to reflect and keep abreast of.

I think we all are trying to reflect a movement, a current of new thought, a yearning and desire in this country to bring about, within the processes of the two-party system, the evolutionary—yes, even the revolutionary—changes that are going to be necessary in order that this country adapt itself to the conditions we face.

So this is the spirit in which we undertake these present activities. I would say that no words express this spirit better than those of President Eisenhower, when he said:

> The future will belong not to the faint-hearted but to those who believe in it and prepare for it.

We have consulted with many of our colleagues in both the Senate and the House. One of our colleagues in particular, the Senator from Oregon (Mr. PACKWOOD), has spent some 20 hours sitting in meetings of the House ad hoc committee on rules reform. He has indicated the deep desire of this group, brought together under the leadership of the Senator from Maryland (Mr. MATHIAS), supported by our senior colleague, the Senator from New York (Mr. JAVITS), to work together with a spectrum of people representing a broad spectrum of ideology for the progress and the future of the party.

I wish to commend particularly the concept of a reform council, which has been discussed by the distinguished Senator from New York. I concur with him that a reform council of this type is necessary to see us through logically and in the best possible way to the 1976 convention.

I know that there have been some concerns expressed, not necessarily by our colleagues or by Republicans, but by the press, that, somehow, this is an effort to engage in a process where we can dump a certain candidate or certain

types of candidates in the future. I can only think back 13 or 14 years, when similar comments were made, not by our own party, but by members of the press, when a number of us, including myself, thought a committee should be formed, which was subsequently named the Republican Committee on Program and Progress. A similar suggestion was made that the chairman of the Republican National Committee appoint such a committee, and that it ought to look at the future of the organization, look at the future of the party, and see where the country ought to go and see what the party's obligation was to respond to the need for change, and move ahead of the country, as leadership must always do. Some said this was an attempt to repudiate, to turn away from 7 years of Republican progress under President Eisenhower, or that this was an attempt to somehow turn the convention away from his logical successor, Vice President Nixon, and this was an attempt, somehow, to see that Governor Rockefeller was put in the White House. All those comments proved fallacious.

At that time the chairman of the Republican National Committee appointed a committee that was broadly representative of the party. I know that the kind of reform council we are proposing can be appointed to represent a cross-section of thought. That reform committee can consider where the party is going, and can bring into the workings of the party young minds who are future leaders, and give them a chance to cut their eyeteeth on a truly fundamental proposal for reform and change in the party.

I dug out the pocketbook which Doubleday entitled "Decisions for a Better America," which was the 40,000-word report of the Republican Committee on Program and Progress. A publisher thought well enough of it to bring it out in a pocketbook edition, and I would like to read what President Nixon said about the report after it was published. He said:

This Report is the most useful and constructive statement of goals and principles ever issued by a political party in the United States.

President Eisenhower said:

Every earnest Republican especially, and every other dedicated citizen, regardless of present party affiliations, can benefit greatly by a careful reading of these papers. I hope every one will do so.

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

Mr. PERCY. I yield.

Mr. JAVITS. The Senator, with proper humility, has omitted to mention that he was chairman of that committee. I would also like to mention that at that time I was extremely active in that campaign and in the designation of the now President Nixon, and that had the President run on that platform, we would have won that election.

Mr. PERCY. I would, regretfully, have to concur. But I look at that defeat in a more positive way. I think the best thing that ever happened to President Nixon was not to win that election, given the two-term Presidency requirement of the Constitution. His defeat then has permitted him to serve now. I think the intervening period of trials and adversity that he underwent probably equipped him better than any other man in American history—at least in our time—for the job he now holds.

But I will admit that many of the things that were true at the time of this document hold true today. The committee included a number of distinguished Americans, including Charles E. Ducommun, president of an industrial company, who has been closely associated for 14 years with the California Republican Party, as general chairman of the Task Force on the Impact of Science and Technology; Elmer Hess, former president of the American Medical Association; Sigurd S. Larmon, president of Young and Rubicam; Claude Robinson, chairman of Opinion Research Corp., Gabriel Hauge, eminent in financial circles, who served as chairman of our Finance Committee; Chapman Rose, who was vice chairman of the Task Force on Economic Opportunity and Progress.

Representative Charles Halleck served, as did John H. Stender, the vice president of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers of the AFL–CIO.

We were seeking then, as President Nixon is today, to bring labor into the Republican Party. It is a shame that for so many years they have considered themselves part and parcel of the Democratic Party, because they realize today that they have been taken too much for granted by the opposite side.

The committee also included John Volpe, who was then president of an industrial corporation; Albert C. Jacobs, president of Trinity College; Lev Dobriansky, professor of economics at Georgetown University; Senator Everett Dirksen; BOB TAFT, Jr., who was a lawyer in Ohio at the time; and WENDELL WYATT, of Oregon, who was then an attorney.

I mention these names because they became future leaders in the Republican Party. We have the same opportunity to bring our future leader into a reform council.

It is a fact that the reason I feel that the reform council need not be looked on with concern or fear, but with enthusiasm, by everyone in the party, is because they can have a part in structuring it. The deck is not to be stacked. The council is to be appointed by the chairman of the Republican National Committee; that is how much faith we have that a broad spectrum of viewpoints can be brought in, and how much it is needed.

I should like to turn now to the subject on which the Senator from New York indicated I would speak, so that we will in some degree have orderly progression.

I should like to start with what Judge Jones of the U.S. District Court for the District of Columbia said in a suit filed against the Republican National Committee. Judge Jones made this statement:

Plaintiffs' motion for summary judgment and its request for declaratory and injunctive relief is granted to the extent that this Court declares:

(1) That the allocation of a uniform number of bonus delegates to states qualifying for them, in the context of a formula which allocates the remaining delegates on the basis of electoral college votes, does not meet constitutionally permissible standards in that it violates the Equal Protection Clause of the Fourteenth Amendment;

(2) That a bonus system which would reward states producing Republican victories in certain specified elections, by allocating a number of delegates reasonably proportionate to the state's electoral college votes or the number of Republican votes which produced the victory, or some combination of these factors, would have a constitutionally rational basis.

I should like to read further from the court's decision, where the court discusses the defects of our present bonus system. The court said:

Although defendants contend that the present bonus system legitimately rewards those states which consistently produce Republican victories and thus provides an incentive to produce more victories, it does so unnecessarily at the expense of the larger states. The present bonus system rewards states which have in the past consistently produced Republican victories by giving them greater influence in nominating candidates and determining party policy at the national convention. The present bonus system, however, does not provide a corresponding incentive to the larger states to produce consistent Republican victories, despite the proportionately greater number of electoral college votes and elective offices that such victories would bring within the Republican camp.

So the court's dictum on the correct kind of formula is very clear indeed:

A bonus system which would reward states producing Republican victories by allocating a number of delegates reasonably proportionate to the state's electoral college vote or the number of Republican votes which produced the victory, or some combination of these factors, would have greater rationality both in terms of the decisions of the Courts discussed above and the very policies which defendants wish to promote by awarding bonus delegates.

In other words, delegations can be representative both of Republican voting strength, and the total population of the State. This is borne out by the decision of the U.S. Court of Appeals of the District of Columbia, in a case involving the National Democratic Party. In that decision the court said:

Party strength as measured by voter turnout in preceding elections has been rejected as the exclusive basis for apportionment of delegates to national political conventions. . . . At the same time the Court held that the formula for apportionment of delegates adopted by the Democratic party, which allotted 46% of the delegates to the 1972 convention on the basis of prior party strength and approximately 54% to the states under the electoral college standard of distribution, would not deprive any person of equal protection of the laws.

It is for this reason that the recommendations the distinguished Senator from Maryland has put into the RECORD, in which a group of Republican colleagues have gotten together and indicated that we feel that a proper allocation formulation should take into account the total number of voters of the State as well as the Republican vote cast

by that particular State in a previous election, relates directly to court decisions that have affected our opposite party. Certainly those are principles that must and should apply to the Republican Party as well.

So what we are trying to say is simply that we are trying to bring the Republican Party into tune with the mood of the "new politics," into the mood of this half of the 20th century and there is no need for kicking and screaming. I have found that there is a great deal of positive response to this effort.

Everyone that I have talked to feels that our party must respond to this situation. And, regardless of what anyone may presume, I can say right here on the Senate floor, in front of my colleagues, that at no time, in all of the deliberations and discussions that we have participated in, on the Senate side or the House side, have we ever discussed its effect on any particular personality. This is not a "dump" anyone movement; its aim is to move progressively the party progressively, in accordance with court orders.

I have called upon the Republican National Committee to drop its appeal of the, U.S. district court's decision, not to give the appearance of trying to struggle against what is eminently right and sensible, and to stay away from any possibility that we be ordered by a court to change our formula for delegate allocation rather than undertaking the task ourselves. Certainly, some of our State legislatures have not responded, and the courts have had to order redistricting. Let us not be caught in this position. I hope we will drop this appeal and work with all due speed to move ahead, so that a proper formulation can be adopted at this convention to apply to the 1976 convention.

Certainly one of the central issues facing our Nation is how to enable more people to participate in the political process. Our great strength and stability as a nation derive from the long tradition of our major parties in seeking to accommodate varying viewpoints. In the quarter century I have devoted to Republican Party affairs, I have tried to make it more broadly representative of all our people. In this, I believe we have been improving. We are doing a better job now, but we need to do more.

As the 1972 Republican National Convention approaches, I have been reviewing some of the problems that the Committee on Rules, of which I am a member, will address. I have had discussions with the Illinois delegation, on which I serve as vice chairman, and with party officials. The central question before the committee, and the convention, is whether our party will adopt a more equitable process for selecting delegates.

A key element of that selection process is the formula by which States are allocated delegates. This is a problem which, if not resolved, will seriously weaken any other reforms we undertake.

The complicated allocation formula now in use was first adopted in 1948. Among its provisions is a bonus system which awards six extra delegates to all States, regardless of size. if one of four criteria that relate to Republican voting strength is met. For example, a State that casts its electoral votes for President Nixon in 1968 will have six extra delegates in Miami Beach.

However, this bonus system has led to very serious disparities among the States. A delegate from New York at this convention will represent 206,713 people, based on the 1970 census, while a delegate from Alaska will represent only 25,181.

The eight largest States, with nearly half our total population, will have only 37 percent of the delegates. The bonus rule means that delegations from Alaska, Delaware, Nevada, North Dakota, Vermont, and Wyoming will be increased by 100 percent in Miami, while the New York and California delegations are increased by less than 10 percent.

It is clear that this present formulation will leave voters in larger States seriously under-represented at the Republican Convention.

The Ripon Society recently filed a suit in the District of Columbia against the Republican National Committee in an effort to revise this formula. The District court decided in favor of the society, finding the bonus rule unconstitutional under the 14th amendment.

The national committee has appealed this decision. This appeal, unfortunately, makes it seem as if Republicans are not interested in reform when, in fact, serious, widespread and broad-based efforts at reform are underway. Most Republicans generally agree that the time has come to modernize our party's 24-year-old delegate allocation system. The national committee should drop its appeal and accept the lower court ruling, and I believe a very substantial portion of the Republican Party agrees with me on this.

However, a principal problem in devising any new formula for 1976 is to account equitably both for a State's population size and its Republican voting strength. To this end, I have worked out a formula which I believe meets those requirements, and which I will submit to the rules committee when it meets in Miami Beach.

Under my proposal, each State would be allocated four delegates-at-large to correspond with its two U.S. Senators. My proposal would also allot two delegates for each seat in the House of Representatives, which would provide fair representation on a population basis.

To assure that a State's Republican voters are given proper weight in the equation, each State would receive an additional delegate for every 35,000 votes cast in 1972 for the Republican presidential nominee, the Republican candidate for Governor or U.S. Senator, or for all Republican House candidates, whichever total is greater. Each delegation would, of course, continue to have an equal number of alternates.

I realize that, under this proposal, the 12 smallest States and the District of Columbia would have fewer delegates in 1976 than this year. But, I propose that these States not have their delegate strength reduced. Each State would be permitted to send at least as many delegates to the 1976 convention as to the 1972 convention.

Thus, under my formula, the number of delegates to the 1976 Republican National Convention would total 2,130, compared to the 1,346 who will be coming to Miami Beach. This increased size, while remaining manageable, would still offer far greater opportunities for grassroots participation in the Republican nominating process, than under the present system.

I am also in full accord with the recommendations of the Republican National Committee's Committee on Delegates and Organizations—the DO committee, headed by Mrs. Rosemary Ginn—to stop levying assessments on delegates. But I would go further. I believe that no individual should be denied an opportunity to be a delegate because he or she cannot afford to pay the costs of transportation, food, lodging, and other items.

The way matters stand today, the cost of being a delegate is such that most Americans are financially locked out of one of our Nation's most important political activities, the nomination of a presidential and vice-presidential candidate.

Ultimately, I think the party should assume at least some of those costs. For example, the Republican National Committee could reimburse seated delegations for transportation costs based upon an agreed upon formula. One possibility might be a rate equal to the lowest common carrier fare. That would mean; for example, that if the least expensive transportation for the California delegation would be chartering two planes, then the national committee would reimburse them for the cost of two charters.

I believe that an approach along these lines will go far toward enabling many interested Republicans, who cannot now afford to be delegates, to participate in the nominating process.

I am looking forward to this convention. I think it is going to be more interesting and lively than some may think. I am looking forward especially to working with my colleagues from the Congress and within my own delegation. I want to commend the preparatory work undertaken by Senators JAVITS, MATHIAS, and PACKWOOD, each focusing on various areas of reform, and the efforts of Congressmen TOM RAILSBACK and JOHN ANDERSON from my own State of Illinois. They will, I believe, prove most helpful and beneficial.

I also want to commend Rosemary Ginn, who has done an outstanding job in her capacity as DO committee chairman, and Mrs. Brooks McCormick, our Illinois national committeewoman, for her efforts on the DO committee. Mrs. Ginn tells me that Hope McCormick's work on the committee has been extraordinary.

I believe we have moved to broaden the Republican Party in recent years, but I think that, if we seriously intend to become the majority party of these United States, then we must make it easier and even more attractive for people to join with us.

President Eisenhower once said the

tendency of most organizations is to organize fewer and fewer people, better and better. I believe it must be the mandate of the Republican Party to organize more and more people. By implementing President Nixon's determination that we be "the party of the open door," we will bring in more people, and we will be better for it.

I believe my proposals will help make the Republican Party the party with an open door, and I intend to press for their adoption in Miami Beach.

Mr. President, I ask unanimous consent that a table be printed at this point in the RECORD.

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

COMPARED WITH PROPOSED PERCY FORMULA

State	Rule 30	Percy plan
Alabama	17	25
Alaska	12	[1](7) 12
Arizona	18	20
Arkansas	18	21
California	96	199
Colorado	20	27
Connecticut	22	33
Delaware	12	[1](9) 12
District of Columbia	9	[1](7) 9
Florida	40	66
Georgia	24	36
Hawaii	14	[1](12) 14
Idaho	14	[1](13) 14
Illinois	58	120
Indiana	32	57
Iowa	22	34
Kansas	20	29
Kentucky	24	32
Louisiana	20	27
Maine	8	13
Maryland	26	35
Massachusetts	34	58
Michigan	48	85
Minnesota	26	43
Mississippi	13	17
Missouri	30	48
Montana	14	[1](12) 14
Nebraska	16	19
Nevada	12	[1](8) 12
New Hampshire	14	[1](13) 14
New Jersey	40	73
New Mexico	14	[1](13) 14
New York	88	175
North Carolina	32	47
North Dakota	12	[1](10) 12
Ohio	56	113
Oklahoma	22	29
Oregon	18	24
Pennsylvania	60	123
Rhode Island	8	13
South Carolina	22	23
South Dakota	14	[1](13) 14
Tennessee	26	36
Texas	52	88
Utah	14	16
Vermont	12	[1](10) 12
Virginia	30	41
Washington	24	38
West Virginia	18	23
Wisconsin	28	48
Wyoming	12	[1](8) 12
Total	1,335	2,119
Puerto Rico	5	5
Virgin Islands	3	[1](1) 3
Guam	3	[1](1) 3
Total	1,346	2,130

[1] Indicates those 15 States (including the District of Columbia and the territories) which are assigned additional delegates under the proposed Percy formula in order to give them as many delegates in 1976 as they have in 1972 under current rule 30's bonus system. Thus 13 States are "grandfathered" under this formula. The number of additional delegates so assigned is 30. The number in parentheses is the number of delegates the State receives under the Percy plan before addition of the "grandfathered" delegates.

Mr. President, I yield to the distinguished Senator from Oregon, who has been a tenacious fighter for these principles, and we respect highly his contribution to the cause.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Under the previous order, the Senator from Oregon (Mr. PACKWOOD) is recognized for not to exceed 15 minutes.

Mr. PACKWOOD. Mr. President, I am honored to be a member of the Republican National Convention rules committee, as are my distinguished colleagues Senator MATHIAS and Senator PERCY. During the convention, the rules committee will be considering many of the questions discussed here today. We will be considering many of the issues debated over the past several months by the DO committee, under the distinguished and capable chairmanship of Rosemary Ginn, and over the past 3 weeks by Republicans in both the House and Senate. I have had the privilege to meet with 10 to 15 interested Members of the House, 20 to 25 hours in all, during nine lengthy sessions. We have thrashed out, one by one, the suggested rules changes, their merits and demerits. While I agree with what has been said here, I am also now, after our deliberations, in complete agreement with what the House Members will be circulating to their colleagues and to the Members of the Senate as rules changes that should be adopted by the Republican National Convention.

I would like to emphasize, Mr. President, that members of both sides of the Capitol have performed excellent services and have given excellent cooperation in seeking to work out rules changes satisfactory to the whole spectrum of the Republican Party. I particularly want to commend our House colleagues, who have given so much of their personal time and energy from what I know are heavy schedules—for a cause that we all share, a strengthened and revitalized Republican Party.

And now, let me speak just a moment about what a political party is supposed to be and what its function is supposed to be. A political party is a collection of people sharing a reasonably similar philosophy, who gather together to nominate candidates who also share that similar philosophy and, hopefully, to elect those candidates in a general election. If a party cannot succeed in that, it will falter and fail, and eventually disappear.

We have seen, in the history of the United States, in the history of Great Britain, and in the history of other free world parliaments, political parties rise and political parties fall. The same could happen to either of our present major parties. There is no magic in the words "Democratic Party" or "Republican Party." A political party is not an end in itself. It is just a vehicle to achieve an end.

What we in the Senate, in our colloquy today and in the meetings I have had with Members of Congress, are trying to do is insure that at least the Republican Party does not fail, does not falter, and does not disappear.

In any organization, political or otherwise, it is all too easy for those in positions of leadership to assume that their leadership is perpetually good, and to assume that the world conforms to their view of it. What eventually happens is that isolated leaders soon lose touch with reality and actuality, and the organization does indeed falter and fail. Civilization does not falter and fail. It goes on, and new organizations come along to replace those who could not adjust with the changing times.

What we are trying to do is make sure that the Republican Party is representative of the thinking of the majority of Americans today and is also sufficiently responsive to be able to respond to changes in public philosophy. I use the word "philosophy" carefully, rather than "opinion." No one in this country expects a political party or a political candidate to blow back and forth with every change in public opinion. Public opinion can change dramatically, quickly, often.

But a political party must be sufficiently attuned to be able to change with public philosophy. For better or for worse, when the people of this country finally say they want change, then a political party must either represent the change or be prepared to see another political party assume the leadership position and, I might add, the majority position in this country.

The reforms we are talking about today are designed to broaden the participation and the base of the Republican Party to reflect current thinking in this country and to permit responsiveness to future changes. The reforms we are discussing are designed to make ours a majority party.

I will mention only a few of the rule changes we are talking about.

First, we are asking that all meetings of the Republican Party be open. Notices are to be published and made widely available. Anyone, regardless of age, sex, religion, color, or ethnic background, may come to those meetings and participate in them.

We ask, second, that meetings be held in places that are reasonably convenient. We recommend that State conventions and district conventions be held on different days and in different places.

For example, take a State the size of Oregon or Illinois or Texas, rather large geographically. If a meeting is held in one particularly isolated part of the State to select convention delegates for the State and for all the districts, any number of people are automatically excluded. It is a very convenient way to make sure that a select few keep control of the party organization. We hope that practice will be ended and that district meetings will be held at different places and different times than State conventions are held.

Third, we are asking that alternates to the convention be selected in the same way as delegates. Alternates are currently selected in a variety of ways many of which are arbitrary and in no way represent or reflect the thinking of rank and file Republicans. So we are asking that alternates be selected in the same way that delegates are selected.

Fourth, we are asking that there be no proxies, that those who attend conventions—be they local or district or State—may vote, and only they may vote

we hope to end the practice of one individual coming to a meeting with a pocketful of proxies and prevailing over others attending the meeting. This distortion of power must be eliminated.

Next, we are asking that there be no automatic delegates to the Republican National Convention. We are asking that every delegate offer himself for election, to give the people the opportunity to voice their choice and express their preferences.

The final procedural change we are urging is that delegates for election pledge themselves to a candidate, so that voters, when they vote, will know which delegates will support which candidates.

These are simple reforms, but they are necessary if the Republican Party is to be the party of the open door, as President Nixon has urged. These changes are designed to insure that everyone is equal when the starting gun is fired for the race for delegate selection. These changes are not designed to insure that everyone who enters that race finishes in the money. These changes are not designed to insure that solely because you are under 25, or solely because you are a woman, or solely because you are black, you are going to have a leg up in the delegate selection process. They are designed to make sure that whether or not you are a woman, or under 25, or black, you are going to have the same opportunity as anyone else to be a delegate. The Republican Party has not been, is not now, and so far as I am concerned, shall not be in the future, a party of quotas. It shall be a party of equality. It shall be a party of merit. It shall not be a party of quotas.

Let me close by echoing what my three distinguished colleagues have said today, that these reforms are not designed to change the delegate selection system in 1976 so that any particular candidate can corral the delegates and put them in his bag. These changes are not designed to benefit or hinder any potential 1976 candidate.

It is simply an honest effort by Republicans across the spectrum, in the House and the Senate, to make the party representative and responsive. I am confident that if we achieve that goal, we will have no difficulty in the next decade keeping the Republican Party viable, and hopefully making it the majority party in this Nation.

Mr. PERCY. Mr. President, I would be remiss if I did not pay particular tribute to members of our staffs who have worked so conscientiously and faithfully with us in this respect.

I refer specifically to Carol Crawford who serves on Senator PACKWOOD's staff, Brian Conboy who works with Senator JAVITS, Terry Barne who serves on Senator MATHIAS' staff, and Robert Vastine who has worked with me on this effort. I know that all our colleagues in the House have been ably served by staff members devoted to this effort, who have given so freely of their time to find ways to reform our party procedures, and sometimes at great personal expense and time on their part.

Mr. JAVITS. I yield myself the 1 minute I have remaining——

Mr. PACKWOOD. I yield back the remainder of my time to the Senator from New York if he cares to use it.

Mr. JAVITS. I thank my colleague from Oregon. First I should like to recognize, as Senator PERCY has done, the outstanding attention Senator PACKWOOD has given to this effort. The understanding which he has brought to it promises the obtaining of very positive results.

So far as I am concerned, I am for the most open delegate selection process. Whoever it benefits, nothing would please me more. I hope to be able to support the beneficiaries.

I trust that the spirit evoked here will be in evidence throughout the convention. I will affirm for myself, that with or without additional suggestions, that if the rules are reformed building upon the firm foundation provided by Mrs. Ginn's committee, it will constitute an important reform for the party which will benefit our country.

I hope that the spirit—this is what I hope I can contribute—which has animated us in laying this matter before the Senate today will persevere through the convention until whatever success is obtained so that it will be in no sense an adversary proceeding.

Mr. MATHIAS. I yield myself 2 minutes of my remaining time to comment on the remarks of the Senator from Oregon because I think he has put this whole question in a useful context by philosophically observing how a political party operates, what its weaknesses may be, and how its strengths can be preserved.

I think that what we seek to do here, rather than to establish rigid quotas, is to insure recognition.

To me, recognition is the key word. Recognition of the right of every American who chooses to belong to the Republican Party to play a part in the process of that party.

It does not mean that everyone can end up as a member of the national committee or a member of the national convention, but it does mean that we recognize the right of every single one of them to be a member and play a part. If they are not a member themselves, we recognize their right to choose one who will, in fact, represent them.

So it is the recognition of the broad rights of all Americans who want to be Republican that we seek to protect. If there is universal recognition of these rules, we will achieve a kind of broad participation in an open process—as the Senator from Oregon has pointed out, and will avoid atrophy and failure of a unit of society. With these rules, we can preserve the strong, vigorous vitality of an institution which, as the Senator from New York (Mr. JAVITS) pointed out so movingly from his own personal experience, has been important to this country.

The guarantee of recognition, of the right of every American who chooses to be a Republican, is what we seek. I think that the rules we are discussing here will go a long way toward achieving that recognition. If we do assure recognition, we assure that the Republican Party will continue for a long time in the future to produce the kind of leadership that we have produced in the past and which has been essential to this Republic.

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. HOLLINGS). Under the previous order the Senator from New York (Mr. BUCKLEY) is now recognized for a period for not to exceed 15 minutes.

(The remarks that Mr. BUCKLEY made at this point when he introduced S. 3891 are printed in the morning business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. HOLLINGS). Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., with statements therein limited to 3 minutes each.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON TRANSFER OF CERTAIN FUNDS

A letter from the Assistant Secretary of Defense, reporting, pursuant to law, on the transfer of certain funds by the Department of Defense; to the Committee on Appropriations.

APPROVAL OF LOAN TO ALABAMA ELECTRIC COOPERATIVE, INC.

A letter from the Acting Administrator, Rural Electrification Administration, Department of Agriculture, reporting, pursuant to law, on the approval of a loan to Alabama Electric Cooperative, Inc., of Andalusia, in the amount of $13,716,000 (with accompanying papers); to the Committee on Appropriations.

REPORT OF EXPORT-IMPORT BANK OF THE UNITED STATES

A letter from the Secretary, Export-Import Bank of the United States, Washington, D.C., transmitting, pursuant to law, a report of that Bank, for the period February, 1972 through June, 1972 (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Examination of Financial Statements of the Accountability of the Treasurer of the United States, Fiscal Years 1970 and 1971", Department of the Treasury, dated August 8, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Sizable Amounts Due the Government by Institutions That Terminated Their Participation in the Medicare Program", Social Security Administration, Department of Health, Education, and Welfare, dated August 4, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The Importance of Testing and Evaluation in the Acquisition Process for Major Weapon Systems", Depart-

ment of Defense, dated August 7, 1972 (with an accompanying report); to the Committee on Government Operations.

LIST OF REPORTS OF GENERAL ACCOUNTING OFFICE

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports of the General Accounting Office, for the month of July, 1972 (with an accompanying paper); to the Committee on Government Operations.

REPORT OF GEOLOGICAL SURVEY

A letter from the Deputy Assistant Secretary of the Interior, reporting, pursuant to law, activities carried on by the Geological Survey during the period January 1 through June 30, 1972; to the Committee on Interior and Insular Affairs.

REPORT OF BOYS' CLUBS OF AMERICA

A letter from the Director, Boys' Clubs of America, New York, New York, transmitting, pursuant to law, a report of that organization, for the year 1971 (with an accompanying report); to the Committee on the Judiciary.

REPORT OF ATTORNEY GENERAL

A letter from the Attorney General, transmitting, pursuant to law, his report for the fiscal year 1971 (with an accompanying report); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A joint resolution of the Legislature of the State of California; to the Committee on Agriculture and Forestry:

SENATE JOINT RESOLUTION NO. 8

Senate Joint Resolution No. 8—Relative to parental responsibility in the federal Food Stamp Program

LEGISLATIVE COUNSEL'S DIGEST

SJR 8, as amended, Bradley (Rls.). Food stamps.

Memorializes the President and the Congress of the United States to provide under the federal Food Stamp Program that the income of a minor's parents shall be considered in computing the income available to an unemancipated minor living separate from his parents.

Whereas, The federal Food Stamp Program determines eligibility solely on the basis of income available to an individual or a household; and

Whereas, Parental income is not considered when computing the need of a minor who does not reside in his parent's household, *although the parent may be claiming a dependency tax exemption for the minor; and*

Whereas, The policy of granting aid to minors without consideration of parental support capabilities is not only legally unsound but may also contribute to the breakup of families; and

Whereas, A change in the federal Food Stamp Program making parents, rather than the welfare system, directly responsible for all needy minors would result in savings at the county, state and federal levels; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California memorializes the President and the Congress of the United States to provide under the federal Food Stamp Program that the income of a minor's parents shall be considered in computing the income available to an unemancipated minor living separate from his parents; and be it further

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

A joint resolution of the Legislature of the State of California; to the Committee on Commerce:

SENATE JOINT RESOLUTION NO. 16

Senate Joint Resolution No. 16—Relative to Television Blackouts of Sports Events

LEGISLATIVE COUNSEL'S DIGEST

SJR 16, as amended, Lagomarsino (Rls.). Television blackouts: sports events.

Memorializes the President and the Congress of the United States, and Federal Communications Commission, to take such action as may be necessary to prevent blackouts of nationally televised sports events, *whenever the event is sold out at least 2 weeks in advance.*

Whereas, Millions of sports fans who are unable to attend sports events in their locality due to health, advanced age, lack of adequate transportation, or inability to purchase tickets, either because of a sellout, or the cost, should be able to watch these events on television; and

Whereas, Sports events are, however, not shown on television while they are occurring in the locality in which they take place, thus depriving these millions of sports fans of the opportunity to watch these sports events on T.V.; and

Whereas, Many sports fans have installed fringe area T.V. antennas to receive sports events from stations located outside the blackout area, thus contravening the effects of the blackout; and

Whereas, The rationale for the blackout, which is to secure the largest possible attendance at the sports events, is no longer valid after all the tickets have been sold and attendance at the game is no longer possible; and

Whereas The rationale has never been and should not be to prevent the poor, sick, aged, and disadvantaged from watching the game, yet this is the effect; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California memorializes the President and the Congress of the United States, and the Federal Communications Commission, to take such action as may be necessary to prevent blackouts of nationally televised sports events *whenever the event is sold out at least two weeks in advance;* and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Federal Communications Commission.

A joint resolution of the Legislature of the State of California; to the Committee on Interior and Insular Affairs:

SENATE JOINT RESOLUTION NO. 12

Senate Joint Resolution No. 12—Relative to the preservation and protection of an archaeological site

LEGISLATIVE COUNSEL'S DIGEST

SJR 12, as amended, Coombs (Rls.). Archaeological site.

Requests the Department of the Interior, through the Bureau of Land Management, to enter into negotiations with the State Lands Commission for the exchange of specified federal lands for state lands or for the sale of such federal lands to the state in order to preserve and protect an archaeological site located on the federal lands. Requests the Bureau of Land Management to take whatever steps are necessary to preserve and protect such archaeological site pending the outcome of negotiations.

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully requests the Department of the Interior, through the Bureau of Land Management, to enter into negotiations with the State Lands Commission for an exchange of the north one-half, or all, of Section 22 of Township 10 North, Range 2 East, San Bernardino Meridian, upon the United States having clear fee title to such lands, for state lands in the vicinity, or for the purchase of such federal lands by the state, or for such other alternative as the Bureau of Land Management may find is suitable, in order to insure the preservation and protection of an archaeological site located on the lands, and to permit the state to take the necessary steps to construct buildings and other facilities essential to such preservation and protection; and be it further

Resolved, That the Legislature respectfully requests the Bureau of Land Management to take whatever steps are necessary to preserve and protect such archaeological site pending the outcome of negotiations; and be it further

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MAGNUSON, from the Committee on Commerce, without amendment:

S. 3240. A bill to amend the Transportation Act of 1940, as amended, to facilitate the payment of transportation charges (Rept. No. 92-1026).

By Mr. ALLEN, from the Committee on Agriculture and Forestry, with amendments:

H.R. 14896. An act to amend the National School Lunch Act, as amended, to assure that adequate funds are available for the conduct of summer food service programs for children from areas in which poor economic conditions exist and from areas in which there are high concentrations of working mothers, and for other purposes related to expanding and strengthening the child nutrition programs (Rept. No. 92-1027.)

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports were submitted:

By Mr. FULBRIGHT from the Committee on Foreign Relations, without reservation:

Executive D, 92d Congress, 2d session. Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Property, signed at Oslo on December 3, 1971 (Ex. Rept. No. 92-30); and

Executive I, 92d Congress, 2d session. Convention Establishing an International Organization of Legal Metrology, signed at Paris on October 12, 1955, as amended (Ex. Rept. No. 92-31).

By Mr. FULBRIGHT, from the Committee on Foreign Relations, with one reservation and six understandings:

Executive B, 92d Congress, 2d Session. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (Executive Rept. No. 92-29).

The following favorable reports on nominations were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

Donald Kready Hess, of Maryland, to be an Associate Director of Action; and

Milton Kovner, of Maryland, and sundry other persons for promotion in the Diplomatic and Foreign Service.

Mr. FULBRIGHT. Mr. President, as in executive session, I also report favorably sundry nominations in the Diplomatic and Foreign Service which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

RESOLUTION PLACED ON THE CALENDAR

Under authority of the order of the Senate of June 22, 1972, the resolution (S. Res. 299) to establish a select committee to study questions related to secret and confidential Government documents was placed on the calendar, the Committee on Government Operations not having acted thereon.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that today, August 8, 1972, he presented to the President of the United States the enrolled joint resolution (S.J. Res. 254) to authorize the printing and binding of a revised edition of Senate Procedure and providing the same shall be subject to copyright by the author.

INTRODUCTION OF BILLS AND JOINT RESOLUTION

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. BUCKLEY (for himself, Mr. BROOKE, Mr. BENNETT, Mr. COOPER, Mr. GRAVEL, Mr. JAVITS, Mr. SCHWEIKER, Mr. THURMOND, Mr. BAKER, Mr. SCOTT, and Mr. DOMINICK):

S. 3891. A bill to amend the Small Business Act to assist in the financing of small business concerns which are disadvantaged because of certain social or economic considerations not generally applicable to other business enterprises. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. PERCY:

S. 3892. A bill to amend section 518 of the National Housing Act to broaden and improve the existing authority of the Secretary of Housing and Urban Development to protect homebuyers by correcting or compensating for substantial defects in mortgaged homes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. MAGNUSON (by request):

S. 3893. A bill to amend the Interstate Commerce Act to provide increased fines for violation of the motor carrier safety regulations, to extend the application of civil penalties to all violations of the motor carrier safety regulations, to permit suspension or revocation of operating rights for violation of safety regulations, and for other purposes. Referred to the Committee on Commerce.

By Mr. TUNNEY:

S. 3894. A bill to amend the Public Health Service Act to provide for reservation of funds for research into the possible social consequences of biomedical technologies. Referred to the Committee on Labor and Public Welfare.

Br. Mr. PROXMIRE (for himself and Mr. PACKWOOD):

S. 3895. A bill to provide for full deposit insurance for public funds, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUCKLEY (for himself, Mr. BROOKE, Mr. BENNETT, Mr. COOPER, Mr. GRAVEL, Mr. JAVITS, Mr. SCHWEIKER, Mr. THURMOND, Mr. BAKER, Mr. SCOTT, and Mr. DOMINICK):

S. 3891. A bill to amend the Small Business Act to assist in the financing of small business concerns which are disadvantaged because of certain social or economic considerations not generally applicable to other business enterprises. Referred to the Committee on Banking, Housing and Urban Affairs.

MINORITY BUSINESS EQUITY INVESTMENT ACT OF 1972

Mr. BUCKLEY. Mr. President, I rise to introduce a bill which is designed to help us achieve our goal of full equality of opportunity for all Americans by opening new sources of financing for minority enterprises. It is a bill which will hasten the development of the managerial skills and self-confidence which are so essential to the advancement of those minority groups which are still to have a full participation in our economic life.

The major victories in the march toward full equality have been accomplished through the striking down of laws which discriminated among Americans on the basis of race, and through the passage of others to guarantee that no one will be denied employment or advancement because of race. These laws against discrimination must be vigorously enforced, but they will not in themselves bring about the conditions of full equality among Americans of different origins. The legal barriers are down, but other barriers—social and psychological—still remain. These we cannot legislate away, but we can work to overcome them by creating the climate which will encourage the growth of mutual respect and self-respect among all Americans. I believe that nothing is more certain to bring this about than the rapid vertical integration of our minorities into the economic life of the Nation.

This economic integration is not something that can be accomplished by government edict. It must be achieved in fair competition. Self-respect requires the knowledge of earned success. Mutual respect will follow on the fact of achievement. But government, and our society at large, must recognize that certain handicaps still exist which make the road to achievement more difficult for some groups of Americans than for others.

Certain of these groups, notable black Americans, suffer from the psychological effects of generations of dependency. As a result, they are handicapped by a deficiency of business traditions and of the skills and self-confidence in commercial matters which have made it possible for other minority groups to take full advantage of the dynamics of the American system of free competitive enterprise.

On January 22, 1970, in his state of the union message, President Nixon said:

> We can fulfill the American Dream only when each person has a fair chance to fulfill his own dreams.

President Nixon's words go to the heart of the problem. Our system of free enterprise has brought to the people of this Nation economic and social gains unparalleled in history. The opportunity to fulfill one's own dream through participation in the system has been an integral part of what America has always stood for. While the opportunity to test one's own ideas and resources and courage in the marketplace does not guarantee success, the denial of such an opportunity guarantees a loss of faith in the ultimate justice of our economic system.

When an American reaches the conclusion that our economic system is inequitable, he is making a philosophical as well as an economic judgment. He is criticizing ultimately basic principles rather than economic techniques. Such a criticism cannot be answered by references to the gross national product. It must be answered in the terms in which the criticism is framed. The member of a minority group who feels he has been left out of the American Dream says: "Show me." It is not enough to provide statistical data or inspirational rhetoric demonstrating the abstract fact of progress. He must be shown the worth of the American system in the only way that demonstrates that worth—by making sure that he has fair access to it. "A piece of the action" is not just a catch-phrase; it is a shrewd and precise summing up of what is necessary to prove that our system works for all Americans.

The core of our national existence is the irrevocable and profound commitment to the individual. If an American is denied an equal opportunity to take his chances in the marketplace, he is, in effect, being denied not only as an "economic man" but in his totality as a human being.

The present administration has gone far in the work to expand the access of our minority groups to our economic system.

The Federal Government's budget for fiscal year 1972 concerning minority loans, grants, guarantees, and purchases, shows more than a threefold increase over 1969.

Small Business Administration lending to minority enterprises has increased

nearly fourfold since Richard Nixon took office.

Federal purchases involving minority firms rose from $3 million in fiscal 1969 to $142 million in fiscal 1971. Minority businessmen are now receiving 18 percent of the SBA dollar, double that of 3 years ago.

While I am gratified to see the progress being made in the creation and administration of programs intended to foster progress in this area, a great gap still remains unfilled. To date, virtually the entire emphasis on the financing of minority business has been through the extension of loans. These are made either directly by the Government or through private lending institutions, such as commercial banks and minority enterprise small business investment companies—organized pursuant to the Small Business Investment Act of 1958 and the Minority Enterprise Small Business Investment Act—which are provided special Government incentives in the form of loan guarantees.

These Federal programs recognize the fact that minority enterprises face certain inherent obstacles when seeking financing in the marketplace. The minority groups which these programs are designed to assist simply have too little in-built business experience and too limited a pool of managerial skills on which to draw.

Therefore the risk of failure in their enterprises is necessarily higher on the average than is the case with others competing for available dollars. Thus either through direct preferences in the case of SBA loans, or through special incentives provided to commercial banks and to MESBIC's, Government policy has sought to equalize these risks.

The problem, however, is that these governmental efforts have concentrated on the device of facilitating debt financing while virtually ignoring the entire area of equity financing which is the more usual, desirable source of funds for high risk ventures.

One result of this approach has been the large rate of defaults—more than 30 percent—which has been experienced on SBA guaranteed bank loans which have been made pursuant to the legislation. Now there is nothing surprising or shameful in the fact that a significant percentage of new enterprises should fail, whether or not they are sponsored by members of minority groups. What is novel is that there should be so large a record of loss in loans extended by lending institutions, such as commercial banks, which usually have a very low bad debt experience because of the collateral and other safeguards they normally require. Therefore, an unusually large record of losses has the undesirable result of unfairly stigmatizing minority entrepreneurs.

What we must understand, in assessing the limitations of the present approach, is the consequence of placing too great a reliance on loans as a source of financing for minority entrepreneurs. Commercial banks and other such institutions are simply not in the business of assuming significant risks. They are accustomed to measuring collateral, demonstrated earning power and managerial experience as a precondition to the extension of credit. They are not in the business of weighing the dreams which are the stuff from which new ventures are built. Yet most of the minority enterprises in need of financing have little but future prospects to offer as security. Thus the granting of loans too often requires a willingness to risk beyond the boundaries normally permitted the ordinary commercial banker.

The unwillingness to risk is understandable considering that risk taking is prudent only when the risk/reward ratio is reasonable. Taking open-ended risks for a return of perhaps 10 percent—the approximate average interest rate charged on small business loans—is neither reasonable nor sensible. Recognizing this, the Government has tried to limit the lender's risk through mechanisms such as the SBA 90-percent loan guarantee. It was thought that this would do the trick by enhancing the risk/reward relationship. This device has helped, but not to the desired degree.

There is another problme in the attempt to route minority enterprise financing through conventional banking channels. It simply does not create the sort of relationship between the parties which is best designed to bring to the new venture the interested help of an experienced management. Yet it is the lack of managerial skills and of a broad base of business experience which so often prove fatal to fledgling enterprises no matter how soundly based in concept. It is simply not the business of commercial banks to help supply these needs. Their prime interest is in the security of their loans; and to the extent that a commercial bank is protected against loss by a Government guarantee, to that extent is its concern for the basic economic health of the borrower diminished.

This fact may account in part for the high rate of default among the loans which they have extended to minority businesses, but there are other factors. Because of the moral suasion which has been applied to them, because of the genuine desire on the part of so many to lend a helping hand, and because the risk of loss has been made so low, lending institutions have too often been careless in the screening process which leads to making a loan; and once made, some have a tendency to write off the loan as a form of charity. In too many instances, this has had the effect of providing financing for ventures which are predestined to fail.

Finally, by channeling financing through the medium of loans, these Federal programs have the unfortunate effect of saddling new businesses with so heavy a burden of debt that it becomes even more difficult for them to succeed. The prior claim on working capital of excessive debt service obligations is a common cause for the failure of otherwise viable ventures.

These shortcomings in the current approach can be overcome by making equity financing more readily available to minority businessmen. Under current conditions, the higher degree of risk which is inherent in their ventures makes it infinitely more difficult for them to secure equity financing through normal business channels. The purpose of the bill which I am introducing today is to reduce that element of risk to a point where minority businessmen can be assured of an interested hearing, and of the needed capital in the event that their concepts are basically sound. My bill, which is cosponsored by 10 of my colleagues, would accomplish this goal by amending the Small Business Investment Act of 1958 so as to provide short-term guarantees limiting the size of potential losses while placing no limits on potential gains.

There are a number of institutions—investment banking firms and others—which are in the business of mobilizing venture capital for investment in the shares of new companies. Their relationship to the enterprises they finance is entirely different from that of the commercial banker. They are in the habit of dealing in futures. They are looking not for a return of capital plus interest, but for the chance to participate on the ground floor in new enterprises whose potential may be unlimited. In a very real sense, such an investor becomes a partner in the enterprise, and will bring to it not only a broad base of experience, but a high degree of commitment to its success.

Investment banking firms will usually be represented on the Board of Directors of the companies which they help launch so as to safeguard their own investment and that of their clients. Through this relationship, investment firms develop a detailed knowledge of the special needs and problems of each of the companies in which they have made important financial commitments, and they are in a position to make specific recommendations as to a broad range of business needs. These firms have an intimate experience with the special problems faced by any new venture, and their advice can be of critical importance in assuring the maximum chance for success of a new minority business. Finally, they can provide inexperienced businessmen with expert advice on the best form of financing—straight equity, or debt, or a combination of both—for each stage in the organization and growth of a new enterprise. Such advice can help the founders preserve a maximum ownership in their business without incurring an extensive level of debt.

I believe it is important that any measure intended to encourage the establishment and growth of minority enterprises be designed to do no more than overcome the special handicaps to which I have already alluded. It will benefit no one if the element of risk is eliminated to such an extent that potential investors lower or abandon their standards in their assessment of the inherent merits of a business proposal. To encourage an abnormal rate of failure through careless screening procedures would retard the achievement of economic integration by destroying confidence and discouraging further investment.

What we must seek is an approach which will make certain that investment bankers and others engaged in the busi-

ness of investing venture capital will welcome proposals from minority businessmen and assure that these will be examined on the basis of their inherent merits. Beyond adjusting the element of risk to reflect the special handicaps under which minority businessmen must too often operate, it is essential that the relationship between investor and entrepreneur be built on realistic, sound, tested business principles. A business venture built on such a foundation will not only have the best chance for success, but the fact of success will have a tremendously important effect within the minority community itself. A man who succeeds not because he is a member of a minority who is a businessman, but because he is a good businessman who happens to belong to a minority, can do more for the pride and economic development of his community than a dozen Government programs that seek to shelter him from the realities of risk and reward that are at the heart of our economic system.

I have sought to accomplish this, in my bill, by granting qualified investors the right, sharply limited in time, to sell their investment to the SBA at 70 percent of cost. I believe that the risk of loss would thereby be sufficiently large to make certain that no investment is lightly made. By the same token, the investor's stake in the new enterprise is sufficiently large to make sure that any reasonable assistance will be extended to insure its success—especially as the investor will participate fully in that success. I would also hope that the provisions contained in the bill would encourage large manufacturers to assist in the organization and financing of minority subcontractors, thus forming a relationship which would have the greatest mutual benefits while benefiting the country at large by hastening the full participation by our minorities in our economic life.

Mr. President, as my bill is written, it will bring the SBA's authority to enter into equity guaranteed agreements within the overall limits on existing loans and guarantees which is established pursuant to section 7 of the Small Business Investment Act of 1958. I believe that in this manner the greatest flexibility is assured in enabling an investment firm or other qualified investor to tailor a financing package, including debt as well as equity, to the needs of the particular enterprise to be financed. By the same token, I believe that the overall ability of the SBA to incur contingent liabilities pursuant to section 4(c)(4) should be expanded so as to accommodate the higher risk equity investments which my bill is designed to encourage.

I have not, at this time, proposed an amendment to section 4(c)(4) to accomplish such an expansion because I believe that the extent to which the authorization should be expanded can be better determined after hearings have been held on my proposal. The opinions of firms experienced in equity financing, of the SBA and of others who may have had direct experience of the financing of minority businesses will be most useful in determining the optimum authorization with which to inaugurate the approach incorporated in my bill.

Mr. President, it seems to have become fashionable of late, at least in certain circles to make ritualistic attacks on our Nation's basic institutions. Among these is our system of free, competitive enterprise. I suggest that the best argument in favor of our system is the argument of opportunity.

I believe my bill will help reinforce that argument by encouraging access to our economic system. Mr. President, I send my bill to the desk and ask that it be appropriately referred. I also ask unanimous consent that it be printed in full at this point in the RECORD.

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

S. 3891

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 71 of the Small Business Act is amended by adding at the end thereof a new subsection as follows:

"(g)(1) Whenever the Administration determines that such action is necessary or desirable to assist small business concerns the participation of which in the free enterprise system is hampered because of social or economic considerations not generally applicable to other business enterprises to obtain the equity capital needed for viable and prudently managed business operations, it may guarantee equity investments in such concerns made by investment companies or other qualified investors. Any such guarantee shall be made pursuant to an agreement by the Administration to purchase equity securities evidencing the interest of an investor in such a concern in accordance with terms and conditions prescribed by the Administration subject to the following limitations and restrictions:

"(A) No such agreement shall obligate the Administration to purchase securities covered by the guarantee after the expiration of two years following the date on which the agreement is entered into.

"(B) The small business concern issuing such securities is an eligible concern in accordance with standards and criteria prescribed by the Administration having regard to the purposes of this subsection.

"(C) The financing required by such concern cannot reasonably be obtained except with assistance provided under this subsection.

"(D) The Administration determines that the risks assumed pursuant to any such agreement are reasonable having regard to the purposes of this subsection.

"(2) A guarantee agreement entered into under this subsection by the Administration shall obligate the Administration to purchase securities covered by the agreement and held by an investor. An agreement may, having regard to whether the securities will be privately or publicly held, specify either one but not both of the following conditions giving rise to the obligation to purchase:

"(A) If at any time after the expiration of one year following the date on which a guarantee with respect to securities becomes effective the book value of such securities is less than 70 per centum of their book value at the time of purchase by an investor the Administration shall on demand of the investor purchase such securities from the investor at a price equal to 70 per centum of the price paid for the securities by the investor.

"(B) If at any time after the expiration of one year following the date on which a guarantee with respect to securities becomes effective the market price of such securities is less than 70 per centum of the price at which the securities were first offered for sale, the Administration shall on demand of the investor purchase such securities from the investor at a price equal to 70 per centum of the price paid for the securities by the investor.

"(3) The Administration shall fix a uniform fee which it deems reasonable and necessary for any guarantee issued under this subsection, to be payable at such time and under such conditions as may be determined by the Administration. Such fee shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. The Administration shall also fix such uniform fees for the processing of applications for guarantees under this subsection as it determines are reasonable and necessary to pay administrative expenses incurred in connection therewith."

SEC. 2. Paragraphs (1), (2), and (4) of section 4(c) of the Small Business Act are amended by inserting "7(g)," after "7(e),".

Mr. BROOKE. Mr. President, I am pleased to cosponsor the Minority Business Equity Investment Act of 1972, introduced by the distinguished junior Senator from New York (Mr. BUCKLEY).

Economic opportunity continues to bypass a substantial proportion of minority citizens, and even of minority businessmen. Admission into the ranks of the economically successful has come slowly and in some cases painfully. Only in the last decade have we passed through a "time of confrontation" between the white majority of Americans and our racial minorities. If we are to move away from a closed economic society, the 1970's must become a "time for negotiation."

The problem of broadening economic opportunity has been argued best in the testimony of James F. Hansley, chairman of the MESBIC section of the National Association of Small Business Investment Companies, when he appeared before the Small Business Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs:

Minority businessmen are fighting a life and death type struggle to gain a little greater share of the business sales of the economy. The Commerce Department presented the plight of black businessmen particularly, very clearly, last year when it reported that in 1969 the 163,000 black owned businesses had sales of $4.5 billion.

In the same year, 1969, all businesses had sales of more than $1.8 trillion. Those statistics indicate that although blacks represent 11% of the population, the sales of black owned companies were less than (.3%) three tenths of one percent of the sales of all U.S. businesses. Even more disturbing is the fact that the average black owned business had sales of less than $30,000 per year. In a society where free enterprise is the byword, this situation should be considered to be intolerable.

The legislation introduced today affords a remedy for this problem. The proposal would encourage equity financing for minority owned businesses through the same channels generally available to other businesses.

This proposal offers a viable alternative for providing economic opportunity to minority businesses. It possesses several advantages derived from the unlimited return and the short-term guarantees of the equity investment.

In the first instance, the proposal will result in an increase in equity capital made available by investment companies for minority-owned businesses. Heretofore, most investments have been made by commercial bankers providing only operating funds. Investment bankers have been hesitant to invest without a guarantee because of the high risk involved. This fact coupled with the fact that the return on an SBA-guaranteed loan was too low, has resulted in very little venture capital being invested in minority-owned firms. The unlimited return allowed by this legislation and the 70-percent proposed guarantee will produce the incentive needed to encourage participation.

Second, an equity investment creates a partnership between the investor and the entrepreneur. The anticipated increase in equity investments under this legislation will result in increased guidance and assistance to minority-owned businesses by investment bankers. One of the most important needs of many minority businesses is managerial expertise.

As long as the banker is secure in his loan, he has no incentive to lend his managerial talents. But, the legislation being introduced today provides an incentive for investor concern. Whether the goal is to minimize losses or to maximize gains, this proposal will encourage active participation by the equity investors.

The Minority Business Equity Investment Act of 1972 represents a new initiative in the area of financing minority-owned businesses. It is an attempt to build on the business expertise that has been developed to date. It will provide the necessary economic and managerial assistance to minority-owned enterprises so that they can compete effectively in the open market.

The Senator from New York is to be commended for his efforts to assist realistically the growth of minority-owned businesses. I am pleased to be a cosponsor of this important legislation and hope that it will be given early consideration.

By Mr. PERCY:

S. 3892. A bill to amend section 518 of the National Housing Act to broaden and improve the existing authority of the Secretary of Housing and Urban Development to protect homebuyers by correcting or compensating for substantial defects in mortgaged homes. Referred to the Committee on Banking, Housing and Urban Affairs.

PROTECTING THE HOMEBUYER FROM DEFECTS IN FHA-INSURED HOMES

Mr. PERCY. Mr. President, I am today introducing legislation to broaden and substantially strengthen the existing authority of the Secretary of Housing and Urban Development to protect homebuyers by correcting or compensating for substantial defects in mortgaged homes.

This legislation is in response to the well-documented criticism of many Federal housing programs which serve both the central city and the suburbs—particularly sections 235 and 236, the interest-subsidy programs.

We cannot ignore the mounting body of evidence that unscrupulous speculators and builders have been taking advantage of the section 235 program to peddle defective homes at inflated prices to a large new class of inexperienced and unsophisticated low-income homebuyers. In some cases speculators—after making cosmetic repairs on existing properties—are selling the properties to low-income buyers for profits of as much as 60 or 70 percent in 3 months.

Auditors from the Housing and Urban Development Department inspected a sample of over 1,200 new and existing houses insured under section 235. About a third of these houses were found to have serious problems. Deficiencies were noted in 25.7 percent of the new houses inspected and in 42.7 percent of the used houses inspected. Fully 53 percent of the inner-city existing homes inspected were found to have deficiencies. In the judgment of the auditors, 35 used houses inspected had problems severe enough that the houses should never have been insured.

The litany of deficiencies is truly astounding. The inspectors found examples of the following in new houses:

A drain pipe from the kitchen and bath leaking, resulting in water standing under the house at the point of the leak;

A sheetrock ceiling in a den sagging in several places;

Two to six inches of water standing in crawl space due to poor drainage;

Cracking in a garage slab floor extending into the house slab floor;

A wing wall settling and separating from the main part of the house;

Severe settling of concrete porch steps resulting in their separating from the porch;

No handrails on porches;

Drainage problem because of improper lot grading;

And on and on.

In the case of used homes, inspectors found examples of the following deficiencies:

A house requiring complete rewiring;

Walls cracked throughout a house;

Ceiling tile falling down;

Paneling loose on all walls;

A rotting subfloor and floor joists under the bathroom and utility area;

An exterior foundation base cracked in several places, with the ground eroded significantly away from foundation in rear;

Roof leaks into three upstairs bedrooms;

Rotten and broken gutters and downspouts;

Water in the basement due to leaky foundation walls in very poor condition;

Bricks loose and coming out of walls;

And on and on.

In a masterful bit of understatement, the HUD auditors concluded:

> In our opinion, too many houses—particularly used houses—were insured which contained deficiencies that should have been corrected prior to final endorsement.

The end result of this process, as the auditors rightly point out, is that many unsophisticated buyers of older inner city housing—and, it should be added, of newly constructed suburban development houses as well—have not been fairly treated.

To put the matter simply, the low-income consumer is taking it in the neck. And in many cases he is at a loss about how to deal with his situation. Understandably enough, frustration, abandonment, default, and foreclosure sometimes follow.

I ask unanimous consent that the major findings of the HUD audit be incorporated in the RECORD at the conclusion of my remarks.

Unfortunately the evidence from Chicago, St. Louis, New York, Detroit, and from other areas of the country as well, indicates that homes purchased under the traditional FHA 203 program as well as the 221(d)(2) program aimed at the low-income home buyer have also been found defective.

The bill I am introducing today is aimed primarily at promoting greater HUD and FHA involvement in protecting the legitimate interests of the housing consumers. The authority provided in this bill to compensate the homeowner—both subsidized and unsubsidized—who suffers abuses at the hands of fast-buck artists and unscrupulous builders and speculators need never be used if FHA carries out the letter of the law. FHA must see to it that a quality product meeting all State and local code requirements is the only product which ever reaches the consumer.

This legislation is similar to a bill introduced in the House of Representatives by Congressman DANTE FASCELL. The bill provides for a 3-year instead of a 1-year builder warranty on new housing. A home is the single largest investment a consumer is likely to make in his lifetime. If the auto industry can provide a 1-year guarantee, then surely the housing industry can stand behind their product for 3 years.

In addition, the legislation authorizes the Secretary to correct or to compensate the homeowner for correcting any substantial structural defects or nonconformities with building plans which show up in new or existing houses for up to 5 years after a mortgage on the property is insured by FHA. The Secretary shall pay or compensate for the defects or nonconformities if the owner requests assistance and if a proper inspection could have identified the defect or nonconformity when the mortgage was insured.

My bill also provides a grace period of 6 months for owners of housing purchased more than 4½ years ago to apply for compensation under the terms of this legislation. Too many people are now suffering because of FHA past laxity in protecting the interests of the consumer. Investigations are bringing many of these laxities to light now, and I wish particularly to commend the Chicago Sun-Times for its series in this area. It was an excellent example of public service by the news media.

Congress can no longer permit families in major cities across the country who buy older homes to discover after they move in that the place is unlivable without substantial unforeseen expendi-

tures. Nor can we permit buyers of new homes to face similar problems because of shoddy construction.

I urge swift action on this badly needed legislation.

I ask unanimous consent that the text of my bill be printed in the RECORD together with the data from the HUD audit of 235 homes.

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

EXHIBIT 1

HUD OFFICE OF AUDIT SUMMARY OF FINDINGS IN INTERIM REPORT ISSUED TO SECRETARY ROMNEY ON INSPECTIONS OF NEW AND USED SINGLE FAMILY HOUSING INSURED UNDER THE SECTION 235 PROGRAM

FINDINGS

This report contains three findings. The first finding covers the results of our inspections of new houses under the statistical sample; the second covers the results of our inspections of used houses under the statistical sample; and the third finding covers the results of houses inspected, both new and used, on which complaints had been made or referred to HUD.

DEFICIENCIES NOTED IN 173 OF 672 NEW HOUSES INSPECTED

We found deficiencies in 173 (25.7%) of 672 new houses inspected during our random statistical audit sample. One hundred houses showed evidence of poor workmanship or materials that were inadequate or did not meet the minimum property standards; in 73 other houses we noted more significant deficiencies affecting the safety, health or livability of these properties. The inspections of new houses are summarized below:

Statistical audit sample	694
Less, houses could not enter to inspect	22
Houses inspected	672
Number inspected that had:	
Evidence of poor workmanship or materials	100
More significant deficiencies affecting safety, health or livability	73
Together	173
Number inspected with problems (%)	25.7

We found no significant difference in the extent of deficiencies in new houses inspected in innercity areas as compared with other than innercity areas.

Our property inspection workpapers established 10 categories for the interior and 8 categories for the exterior of each house on which we made comments as to whether we found the house acceptable or whether it had problems of varying degrees. Based on questioning of the homeowners and the advice of the FHA technician accompanying us, we made judgments as to whether deficient conditions probably existed at the date of final endorsement of the property. Where deficiencies were clearly caused by the homeowner's negligence or were due to normal wear and tear, we have excluded deficiencies from our tabulation. A summary of the number of problems found in new houses by each of the 18 categories covered in our inspections is shown in Exhibits I and II.

POOR WORKMANSHIP OR MATERIALS (100 HOUSES—15 PERCENT)

Examples of poor workmanship or materials included matters that evidenced nonconformance with minimum property requirements, poor or lax inspection procedures, finish work not completed, and other examples of lack of enforcement of the builder's warranty including the following:

Electric ceiling heat in bathroom does not work; no switch to operate kitchen light; all wall corners cracked from ceiling to floor—workmanship extremely poor; various areas where terrazzo floor not bonded to slab—delaminating from slab; stairway handrail to upper story loose and attached to sheetrock rather than studding; concrete slab uneven with 2" differential between high and low; half-bath lavatory not mounted properly, coming loose and creating a leak in hot water line; large 2-pane picture window has inside portion of center mullion missing allowing air to enter crack that extends full height of window; plywood roof sheathing does not extend to apex (ridge), can see several inches of paper from attic interior—technician advised us leaks could be imminent; underside of roof overhang plywood buckling in several places—does not appear to be exterior grade; concrete steps not installed at rear entry as required by plans—had makeshift wood steps for 24" drop.

SIGNIFICANT DIFFERENCES (73 HOUSES—11 PERCENT)

More significant deficiencies noted which we consider would affect the safety, health, and livability of the property included structural faults, hazards to health and safety, drainage problems on the lot on which the houses is situated, and other significant matters as noted below:

Drain pipe from kitchen and bath leaking resulting in water standing under house at point of leak; electric furnace disconnected due to inefficiency—inadequate insulation; gas furnace in second floor closet overheating and heat not circulating properly to ground floor—heat level approaching danger point per FHA technician (inside doorknob too hot to hold on to), duct work not properly insulated; electric circuit breaker cuts power off at various times particularly when heat and range both on; sheet rock ceiling in den sagging in several places, ceiling has wavy appearance, troughs are about 2"—probably requires renailing and installation of new ceiling; hardwood floor noticably cupping in all rooms; 2" to 6" of water standing in crawl space due to poor drainage, inadequate slopes away from house, no splash blocks; cracking in garage slab floor extends into house slab floor; no attic ventilation; roof leaks; wing wall settling and has separated from main part of house; severe settling of concrete porch, steps separating from porch, no hand rails; drainage problem because of improper lot grading, yard slopes to house from ditch on one end, water ponding in front of house with no place to go except under house or in ground.

In our judgment, the significant deficiencies noted and included by us on Exhibit II were items that should have been corrected before final endorsement if the condition was apparent at that time. We express no opinion, however, as to how many of the problems we noted could have been observed based on a reasonable inspection at time of final endorsement.

SIGNIFICANT DEFICIENCIES AFFECTING SAFETY, HEALTH OR LIVABILITY OF HOUSES WERE FOUND IN 260 OF 609 USED HOUSES INSPECTED

We found that 260 (42.7%) of 609 used houses inspected as part of our statistical sample had significant deficiencies as summarized on Exhibits I and II. We found a significantly greater incidence of deficiencies in used houses in inner-city areas (53% of sample had deficiencies) as compared with suburban, rural or small town areas (34.5% of sample had deficiencies).

The inspections of used houses are summarized below:

Statistical audit sample	638
Less, houses could not enter to inspect	29
Houses inspected	609
Number inspected that had:	
More significant deficiencies affecting safety, health or livability	225
Aggregate deficiencies which should have made house not insurable	35
Together	260
Number inspected with problems (%)	42.7

Our definition of significant deficiencies includes conditions which probably existed at the date of final endorsement of the property such as structural faults, electrical wiring, heating, and leaks or drainage problems which were potential hazards to the occupant's health and safety, and other matters which were so severe that in our judgment the conditions should have been repaired before the house was insured. In our judgment, 35 used houses inspected had an aggregate of significant problems to the degree that we feel the houses should not have been insured.

As indicated earlier in this report, our inspections were made in the company of a qualified FHA construction analyst or staff appraiser or other qualified representative from the regional office, each of whom concurred as to the significant problem areas noted.

Representative significant problems in a number of the 18 categories covered in each of the existing houses inspected that were insured under Section 235 or 233(e) follow:

Electric hot water heater set directly on bare ground under house in excavation in crawl space, has begun to rust; old heating system removed and cold air from crawl space comes through registers which were not removed; central furnace did not heat house—moved in 4/69, replaced furnace 10/69; inadequate electrical wiring, wall plugs hanging loose; bathroom electric fixtures defective and shorting; house requires complete rewiring—owner received notice of code violation from city; red tag on fuse box—wiring condemned by city; walls are cracked throughout house, ceiling tile falling down, panelling loose on all walls; subfloor and joists under bathroom and utility areas rotting; extremely weak floor on both first and second level—all floors pitched at east side of house ranging from 2" to 6" off level due to sinking; basement staircase dangerous without handrail and with treads and stringers constructed from other than building material normally used for staircases; ground underneath house wet since purchase—also large wet areas in front and backyard—owner believes water may come from spring under house; exterior foundation base cracked in several places—ground eroded significantly away from foundation in rear; can see daylight in several places through exterior wall in pantry, ceiling very uneven, and roof leaks; substantial accumulation of water in basement; sewer backed up in basement—odor prevalent, corroded pipes leak; all windowsills rotten, several window frames rotting; roof leaks in kitchen, back porch, dining room and hall since house purchased; roof over south bedroom sagging; wooden exterior siding shows signs of rotting and broken in places; wood rotting and daylight can be seen through walls—very poor workmanship on additions to house; chimney leans and has some loose bricks; roof leaks into all 3 upstairs bedrooms, gutters and downspout rotten and broken; water in basement due to leaky foundation walls in very poor condition—bricks loose and coming out of walls; front porch ceiling is buckling in places and boards are starting to pull loose; porch deteriorating—steps rotted and dangerous to walk on, holes in steps, dry rot, handrails rotted and weak; wooden garage on property leaning and rotting; retaining wall between the owner's and adjoining property badly deteriorating and in need of immediate re-

pair to support grade and foundation on each side of the house; lot drainage improper—water from roof runoff drains into crawl space.

INSPECTIONS OF SELECTED HOUSES ON WHICH HOMEOWNERS MADE COMPLAINTS

As part of our examination at the 52 Area/Insuring Offices where we inspected houses, we reviewed complaint procedures. These procedures were reviewed to determine how responsive the office was to complaints received from mortgagors and the extent of required corrective action. Our examination included visiting and inspecting selected properties to determine the condition of the properties, the validity of the complaints, and the adequacy of the action taken by the field office.

In addition to the above we examined more than 2,000 items of correspondence reflecting complaints received by the Office of Subsidized Housing, HPMC, general and Congressional correspondence sent to the Office of the Secretary, including more than 350 items of correspondence referred to HUD by the staff of the House Committee on Banking and Currency. We screened the complaints to ascertain whether the complaint related to the Section 235 program, whether it identified a specific insured property, and whether the complaint, in our judgment, appeared to be substantive. We referred to our field audit offices 138 complaints reviewed in Washington which in our judgment were related to the Section 235 program, identified a specific property, and were substantive. Thirty-eight of these complaints related to items of correspondence referred to HUD by the House Banking and Currency Committee.

We inspected 201 new and 83 used houses included in our review of complaints. The results of our selective examination of houses involved in complaints follow:

	New houses	Used houses
Houses inspected	201	83
Number inspected that had:		
Evidence of poor workmanship or materials	53	(1)
More significant deficiencies affecting safety, health, or livability	45	52
Aggregate deficiencies which should have made house not insurable	1	21
Together	99	73
Number inspected with problems (percent)	49	88

[1] Not applicable.

A summary of the number of deficiencies we found in "complaint houses" by each of the 18 categories covered in our inspections is shown in Exhibit II.

Examples of poor workmanship or materials and more significant deficiencies noted which we considered would affect safety, health and livability of the property are similar to those noted earlier in this report.

CONCLUSIONS

While our statistical audit sample was based on a nationwide review, we found that, generally, the number and significance of deficiencies was greatest in larger population centers with a volume of home insurance applications. In our opinion, too many houses—particularly used houses—were insured which contained deficiencies that should have been corrected prior to final endorsement.

While most of the home buyers under the Section 235 program have received good value and undoubtedly are living in better houses than they previously lived in, we believe many unsophisticated buyers of older inner-city housing have not been fairly treated. The values stated on appraisals have been high and the condition of a number of properties at final endorsement have been poor to bad. We believe this general condition results from a combination of factors including the relaxing several years ago of inspection and appraisal requirements in declining urban areas. Also, when production goals vs. quality appraisals and inspections were at issue, the matter often was resolved on the side of production. Further, prior to the implementation of Section 518(b) many buyers of used houses were unsuccessful in getting corrective action on complaints.

Many improvements in procedures and staff training requirements have been prescribed recently. During our next audit of Section 235 we will follow up to ascertain whether the strengthened procedures are being implemented successfully. In the meantime, we have furnished each Regional and Area/Insuring Office covered in our review with specific information in writing on deficiencies noted during our inspections for discussion and follow up with them to ascertain the reasons for the incidence of deficiencies, assure corrective action to benefit the home owners, and provide a basis for recommending further changes in procedures, as necessary, to preclude similar problems under the program in the future.

SUMMARY OF HOUSES INSPECTED BY OFFICE OF AUDIT AS PART OF STATISTICAL SAMPLE AND NUMBER INSPECTED WITH PROBLEMS

	Total	New construction			Existing construction		
		Total	235	223(e)	Total	235	223(e)
Statistical audit sample	1,332	694	408	286	638	354	284
Less: Houses could not enter	51	22	10	12	29	12	17
Houses inspected	1,281	672	398	274	609	342	267
Number inspected that had:							
Evidence of poor workmanship or materials	100	100	67	33	(1)	(1)	(1)
More significant deficiencies affecting safety, health, or livability	298	73	34	39	225	99	126
Aggregate deficiencies which should have made the house not insurable	35				35	19	16
Total	433	173	101	72	260	118	142
Number inspected with problems (percent)		25.7	25	26	42.7	34.5	53

[1] Not applicable.

EXHIBIT II

TYPE AND NUMBER OF PROBLEMS DISCLOSED IN OFFICE OF AUDIT INSPECTION OF HOUSES

	Selected by statistical sample, 1,281 houses			Houses inspected as a result of review of complaints, 284 houses		
	New construction		Existing construction (significant deficiencies affecting safety, health, or livability)	New construction		Existing construction (significant deficiencies affecting safety, health, or livability)
	Poor workmanship or materials	Significant deficiencies affecting safety, health, or livability		Poor workmanship or materials	Significant deficiencies affecting safety, health, or livability	
INTERIOR						
1. Plumbing and hot water	9	4	97	2	4	22
2. Heating system	17	12	62	2	3	28
3. Electrical system	10	4	81	1	2	29
4. Walls	21	7	75	23	3	24
5. Floors	28	5	86	19	4	22
6. Stairways	3		49	3	1	14
7. Basement and foundation	21	17	81	17	17	29
8. Bathroom and kitchen fixtures	18		53	19	2	11
9. Windows and doors	26	1	65	20	2	24
10. Other	10	1	25	15	2	15
EXTERIOR						
1. Roof and gutters	12	8	98	12	4	26
2. Siding and trim	19	4	54	22	3	15
3. Masonry	7	5	27	5	1	11
4. Concrete (walks, driveways, etc.)	12	2	31	5	4	7
5. Porches	10	2	62	3		21
6. Garage or carport	3		26	2	2	8
7. Grounds and septic systems	20	39	36	19	17	3
8. Other	1	1	23			5
Total	247	112	1,031	189	71	314
Number of houses in which we found 1 or more of conditions shown	100	73	260	53	46	73

S. 3892

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 518 of the National Housing Act is amended to read as follows:

"REQUIREMENT OF SELLER'S WARRANTY; EXPENDITURES TO CORRECT OR COMPENSATE FOR SUBSTANTIAL DEFECTS IN MORTGAGED HOMES

"SEC. 518 (a) (1) In any case where a mortgage covering property improved by a one- to four-family dwelling is insured under any provision of this Act and the mortgage is approved for such insurance prior to the beginning of construction, the seller or such other person as may be required by the Secretary shall deliver to the mortgagor a warranty that the dwelling (A) is constructed in substantial conformity with the plans and specifications (including any amendments thereof, or changes or variations therein, approved in writing by the Secretary) on which the Secretary based his valuation of the dwelling, and (B) has no structural or other defects which could seriously affect the use and livability of the dwelling. This warranty shall apply only with respect to those instances of substantial nonconformity or defects as to which the mortgagor has given written notice to the warrantor within three years from the date of conveyance of title to, or initial occupancy of, the dwelling, whichever first occurs.

"(2) The warranty required by paragraph (1) shall be in addition to, and not in derogation of, all other rights and privileges which the mortgagor may have under any other law or instrument. The Secretary is directed to permit copies of the plans and specifications (including any amendments or variations approved in writing by the Secretary) for dwellings covered by warranties under this subsection to be made available in the appropriate local offices for inspection or for copying by any mortgagor or warrantor during such periods of time as the Secretary deems reasonable.

"(b) If the owner of any property which is improved by a one- to four-family dwelling covered by a mortgage insured under any provision of this Act requests asistance from the Secretary within five years after the insurance of the mortgage, the Secretary is authorized—

"(1) to correct structural defects in any such property or any other defects in such property which seriously affect the use and livability of the dwelling;

"(2) to pay the claims of such owners arising from any such defect or from any substantial nonconformity with any plans and specifications (including any amendments thereof, or changes or variations therein, approved in writing by the Secretary) on which the Secretary based his valuation of the dwelling; or

"(3) to acquire title to property in which any such defect or nonconformity exists.

"(c) The Secretary shall, with all reasonable promptness, make expenditures, for any of the purposes specified in subsection (b), with respect to structural or other defects which seriously affect the use and livability of any single-family dwelling which is covered by a mortgage insured under any section of this Act and is more than one year old on the date of the issuance of the insurance commitment, or with respect to any substantial nonconformity with the plans and specifications on which the Secretary based his valuation of any such dwelling, if (a) the owner requests assistance from the Secretary not later than five years after the insurance of the mortgage, and (B) the defect or nonconformity is one that existed on the date of the issuance of the insurance commitment and is one that a proper inspection could reasonably be expected to disclose. The Secretary may require from the seller of any dwelling an agreement to reimburse him for any payments made pursuant to this subsection with respect to such dwelling.

"(d) The Secretary shall by regulation prescribe the terms and conditions upon which expenditures and payments may be made under the provisions of this section. The determinations of the Secretary regarding such expenditures or payments, and the terms and conditions under which the expenditures and payments are approved or disapproved, shall be final and conclusive and shall not be subject to judicial review.

SEC. 2. In the case of a mortgage which is insured under any provision of the National Housing Act more than four and one-half years prior to the date of enactment of this Act, the Secretary may furnish assistance under section 518 of the National Housing Act, as amended by the first section of this Act, if the owner of property eligible for assistance under such section 518 requests such assistance within six months after the date of enactment of this Act.

By Mr. MAGNUSON (by request):

S. 3893. A bill to amend the Interstate Commerce Act to provide increased fines for violation of the motor carrier safety regulations, to extend the application of civil penalties to all violations of the motor carrier safety regulations, to permit suspension or revocation of operating rights for violation of safety regulations, and for other purposes. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, I introduce by request, for appropriate reference, a bill to amend the Interstate Commerce Act to provide increased fines for violation of the motor carrier safety regulations, to extend the application of civil penalties to all violations of the motor carrier safety regulations, to permit suspension or revocation of operating rights for violation of safety regulations, and for other purposes, and I ask unanimous consent that the letter of transmittal, and section-by-section analysis be printed in the RECORD with the text of the bill.

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

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 25, 1972.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The Department of Transportation has prepared and submits herewith as a part of the legislative program for the 92d Congress, 2d Session, a draft of a proposed bill:

"To amend the Interstate Commerce Act to provide increased fines for violation of the motor carrier safety regulations, to extend the application of civil penalties to all violations of the motor carrier safety regulations, to permit suspension or revocation of operating rights for violation of safety regulations, and for other purposes."

This bill amends several provisions of Part II of the Interstate Commerce Act to strengthen the Motor Carrier Safety Regulations administered by the Bureau of Motor Carrier Safety, which govern the safety of operation of all commercial vehicles in interstate commerce. The bill would vest the Secretary of Transportation, who is primarily responsible for highway safety, with adequate authority to carry out his responsibilities in the field of motor carrier safety.

Subsection 1(1) of the bill would increase the fines for violating the Motor Carrier Safety Regulations (49 C.F.R. Parts 390–396) to a range of $250 to $1,000 for first offenses and $500 to $2,000 for subsequent offenses. Section 222 of the Interstate Commerce Act presently provides permissible penalties of $100 to $250 for first offenses and $200 to $500 for subsequent ones. We do not feel that the present penalties are sufficient to serve as an adequate deterrent for violations of these Motor Carrier Safety Regulations. The existing criminal penalty provisions require the Government to show knowledge and willfulness on the part of defendants. Under the new subsection the doing of an act which violates the motor carrier safety regulations is sufficient for possible conviction. Some courts have interpreted the knowledge and willfulness provision under the present statute so narrowly that ignorance of the law or the regulations constitutes a defense to prosecution for violating them. This is clearly an inappropriate requirement where the unsafe practice, rather than the intent to commit it, is what is proscribed for the public's protection. The new subsection also provides that each day of a violation constitutes a separate offense.

Subsection 1(2) would extend the application of civil penalties to all violations of the Motor Carrier Safety Regulations. The present law (49 U.S.C. 322(h)) allows the assessment of civil forfeitures against common and contract motor carriers which fail to comply with the Motor Carrier Safety Regulations governing the keeping of records and the filing of reports. All other violations of these regulations are subject to criminal sanctions only. This requires resort to the criminal process for many relatively minor infractions; further, imposition of criminal sanctions is a lengthy and ineffective means of enforcing these safety regulations.

Also, a civil action carriers with it the intrinsic advantage of a lesser burden of proof, thus freeing an already overburdened investigative and legal staff for further implementation of the statute. Further, it is felt that in many instances violations of these regulations should not carry the stigma of a criminal prosecution.

Subsection 1(2) also deals with the problem of uneven application of sanctions. Presently the civil penalty provisions for violations of reporting and recordkeeping regulations apply only to "common" and "contract" carriers by motor vehicle. This subsection would also make these civil penalty provisions applicable to private carriers of property and carriers of migrant workers in interstate commerce.

Subsection 1(3) would amend the Interstate Commerce Act to authorize the Secretary of Transportation, in administering his responsibility for enforcing laws governing the safety of interstate bus and trucking operations (formerly vested with the Interstate Commerce Commission (ICC) prior to the enactment of the Department of Transportation Act) to initially suspend or revoke operating rights for violation of safety regulations.

This new authority would be applicable to all classes of interstate over-the-road carriers subject to regulations under the Interstate Commerce Act, whether common, contract, or private carriers and including carriers of migrant workers by motor vehicle.

This subsection authorizes the Secretary to issue a cease and desist order for up to 60 days against a carrier to prevent it from operating in interstate commerce where he finds, for good cause, that the carrier's operation will create an unreasonable risk of accident, injury, or death to persons or damage to property. Before the Secretary issues such an order, he must first determine that the application of other available sanctions are impracticable, unduly time consuming, or inadequate to protect the public health and safety; and second, he must give the carrier written notice of his intent to issue a cease and desist order and identify the portion of the carrier's operations which are

affected by such order and set forth the reasons for issuance of the order. If the carrier operates under an ICC certificate, the Secretary shall petition the ICC, and after notice and hearing, the ICC may revoke or further suspend the operating rights of the carrier, in whole or in part, if it is determined that revocation or further suspension will protect the public safety.

The Secretary's cease and desist order is subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code.

The last sentence of subsection 1(3) of the bill eliminates the need to convene a three-judge district court to entertain a carrier's suit to enjoin an order of the Secretary. Such a court is now required by 28 U.S.C. 2325 and is carried over from ICC practice to the Secretary's proceedings by section 4(c) of the Department of Transportation Act (49 U.S.C. 1653(c)). We feel that the cumbersome procedures of three-judge district courts are neither appropriate nor necessary to review instances of motor carrier safety violations. The effect of this amendment would be to provide review by a single-judge district court. It is settled law that when Congress neither expressly negates judicial review nor provides a specific manner of proceeding to obtain it, administrative action is reviewable on suit of a party adversely affected by any single-judge district court having venue in the action and jurisdiction over the parties.

Indeed, we note that the ICC itself is on record as favoring the elimination of the three-judge court requirement, and is supported in its contentions by the Administrative Conference of the United States.

We recommend enactment of this draft bill in order to continue our program of increased emphasis on motor carrier safety.

The enactment of the subject legislation would have no substantial effect on the environment.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this proposed legislation to the Congress.

Sincerely,

JOHN VOLPE.

SECTION-BY-SECTION ANALYSIS OF A BILL TO AMEND THE INTERSTATE COMMERCE ACT TO PROVIDE INCREASED FINES FOR VIOLATION OF THE MOTOR CARRIER SAFETY REGULATIONS, TO EXTEND THE APPLICATION OF CIVIL PENALTIES TO ALL VIOLATIONS OF THE MOTOR CARRIER SAFETY REGULATIONS, TO PERMIT SUSPENSION OR REVOCATION OF OPERATING RIGHTS FOR VIOLATION OF SAFETY REGULATIONS, AND FOR OTHER PURPOSES

GENERAL

This bill is designed to vest the Secretary of Transportation, who is primarily responsible for highway safety, with adequate authority to carry out that responsibility in the field of safety of operations of interstate bus and trucks, and, to provide realistic penalties for violation of the Motor Carrier Safety Regulations sufficient to serve as effective deterrents against operations that imperil the public. The substance of statutory provisions governing violations of the Interstate Commerce Act and orders, rules, and regulations issued thereunder, now covered by the provision amended, would not be changed but renumbered where necessary.

SECTION 1(1)

This subsection would renumber existing subsection 222(a) of the Interstate Commerce Act (49 U.S.C. 322(a)) as subsection 222(a)(1) and enact a new subsection 222(a)(2). The new subsection would increase the fines for violating the Motor Carrier Safety Regulations (49 C.F.R. parts 390–396) to a range of $250 to $1,000 for first offenses and $500 to $2,000 for subsequent offenses. The present range of permissible penalties, $100 to $250 for first offenses and $200 to $500 for subsequent ones, is not sufficient to serve as an adequate deterrent. Many carriers simply write off the present low fines as a minor cost of doing business and continue their dangerous and unsafe practices in volation of the regulations.

The new subsection is also drafted to make clear that the doing of an act which violates the motor carrier safety regulations is sufficient for conviction. Some courts have held, in effect, that the present statute makes ignorance of the law or the regulations a defense to prosecution for violating them. This is clearly an inappropriate requirement where the unsafe practice, rather than the intent to commit it, is what is proscribed for the public's protection.

SECTION 1(2)

This subsection would redesignate existing subsection 222(h) (49 U.S.C. 322(h)) as subsection 222(h)(1) and enact a new subsection 222(h)(2). The new subsection would extend the application of civil penalties to all violations of the Motor Carrier Safety Regulations. The present law (49 U.S.C. 322(h)) allows the assessment of civil forfeiture against common and contract motor carriers which fail to comply with the Motor Carrier Safety Regulations governing the keeping of records and the filing of reports. All other violations of these regulations are subject to criminal sanctions only. This requires resort to the criminal process for many relatively minor infractions. The change made by this provision will allow the criminal sanctions to be reserved for repeated offenders and gross or flagrant flouting of the safety rules.

This subsection would also deal with the problems of uneven application of sanctions. The civil penalty provisions for violations of reporting and recordkeeping regulations presently apply only to "common" and "contract" carriers by motor vehicle (49 U.S.C. 322(h)). For the identical type of violation, carriers of private property and migrant workers are subjected to criminal sanctions. This unjustified distinction would be eliminated by making the civil penalties applicable to all classes of interstate motor carrier operators. In this way criminal sanctions could be reserved for flagrant or repeated offenders.

SECTION 1(3)

This subsection would add a new subsection 222(i) to the Act (49 U.S.C. 322(i)). Section 6(e) of the Department of Transportation Act (49 U.S.C. 1655(e)) transferred responsibility for enforcing the laws governing the safety of interstate bus and trucking operations from the ICC to the Secretary of Transportation. However, the Secretary was not authorized to suspend or revoke operating rights for violation of safety regulations; this authority remained with the ICC. Section 1(3) would add a new subsection 222(i) to the Interstate Commerce Act to give the Secretary such suspension and revocation authority. This will equip the responsible agency with expertise in highway and traffic safety to deal expeditiously and effectively with unsafe operators.

New subsection 222(i) would be applicable to all classes of interstate over-the-road carriers subject to regulation under the Interstate Commerce Act, whether common, contract, or private carriers and including carriers or migrant workers by motor vehicle. The Secretary may issue a cease and desist order for up to 60 days against such a carrier to prevent it from operating in interstate commerce where he finds, on good cause, that the carrier's operations will create an unreasonable risk of accident, injury, or death to persons or damage to property. Before the Secretary issues such an order, he must first determine that the application of other available sanctions are impracticable, unduly time consuming, or inadequate to protect the public health and safety; and second, he must give the carrier written notice of his intent to issue a cease and desist order and identify the portion of the carrier's operations which are affected by such order and set forth the reasons for issuance of the order. If the carrier operates under an ICC certificate, the Secretary shall petition the ICC, which after notice and hearing, shall determine whether the operating rights of the carrier should be revoked or further suspended in whole or in part, if it is determined that revocation or further suspension will protect the public safety.

The Secretary's cease and desist order is subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code.

Finally, the last sentence of this subsection eliminates the need to convene a three-judge district court to entertain a carrier's suit to enjoin one of the Secretary's orders. Such a court is now required by 28 U.S.C. 2325 and carried over from ICC practice to the Secretary's proceedings by section 4(c) of the DOT Act. (49 U.S.C. 1653(c)). The cumbersome procedures of three-judge district courts are neither appropriate nor necessary to review instances of motor carrier safety violations. It is settled law that when Congress neither expressly negates judicial review nor provides a specific manner of proceeding to obtain it, administrative action is reviewable on suit of a party adversely affected by any single-judge district court having venue in the action and jurisdiction over the parties. Indeed, we note that the ICC itself is on record as favoring the elimination of the three-judge court requirement, and is supported in its contentions by the Administrative Conference of the United States.

S. 3893

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 222 of part II of the Interstate Commerce Act, as amended (49 U.S.C. 322), is amended:

(1) by redesignating subsection 222(a) (49 U.S.C. 322(a)) as subsection 222(a)(1) and adding a new subsection 222(a)(2) to read as follows:

"SEC. 222. (a)(2) Any person who knowingly commits an act in violation of any requirement, rule, regulation, or order promulgated by the Secretary of Transportation under section 204 of this part relating to qualifications and maximum hours of service of employees and safety of operation and equipment shall be fined not less than $250 nor more than $1,000 for the first offense and not less than $500 nor more than $2,000 for any subsequent offense. Each day of such violation shall constitute a separate offense;

(2) by redesignating subsection 222(h) (49 U.S.C. 322(h)) as subsection 222(h)(1) and adding a new subsection 222(h)(2) to read as follows:

"SEC. 222. (h)(2) Any motor carrier, private carrier, carrier of migrant workers by motor vehicle, or other person who violates any requirement, rule, regulation, or order of the Secretary of Transportation described in subsection 222(h)(1) or promulgated under section 204 of this part as it relates to qualifications and maximum hours of service of employees or safety of operations and equipment shall be subject to the penalties specified in subsection 222(h)(1); and (3) by adding a new subsection 222(i) (49 U.S.C. 322(i)) to read as follows:

"SEC. 222. (i) In administering the functions, powers, and duties transferred by section 6(e) of the Department of Transportation Act (80 Stat. 931, 939–940), the Secretary of Transportation may order any common, contract, or private carrier to cease and desist from engaging in all or a specified portion of its operation of motor vehicles in interstate commerce for not more than sixty

days when the Secretary, for good cause, finds that the carrier's operations will create an unreasonable risk of accident, injury, or death to persons or damage to property. Before issuing a cease and desist order authorized by this subsection, the Secretary shall (1) determine that the application of other available sanctions would be impracticable, unduly time-consuming, or inadequate to protect the public health and safety; and (2) give the carrier written notice of his intention to issue a cease and desist order, identifying the portion of the carrier's operations that would be affected by the order and setting forth the reasons why he intends to issue it. If the carrier is operating under a certificate or permit issued by the Commission, the Commission may, upon petition of the Secretary and after notice and hearing, revoke or further suspend the carrier's operating authority in whole or in part upon determining that revocation or further suspension will protect the public safety. An order of the Secretary issued under this subsection is reviewable in accordance with chapter 7 of title 5, United States Code. The provisions of title 28, United States Code, respecting three-judge district courts, do not apply to a proceeding to review an order of the Secretary issued under this subsection."

By Mr. TUNNEY:

S. 3894. A bill to amend the Public Health Service Act to provide for reservation of funds for research into the possible social consequences of biomedical technologies. Referred to the Committee on Labor and Public Welfare.

THE SOCIAL ASPECTS OF BIOMEDICINE

Mr. TUNNEY. Mr. President, I am pleased to introduce a bill which would apply one-quarter of 1 percent of all research funds which are authorized and appropriated under section 301 of the Public Health Service Act to a consideration of the possible social consequences of the research.

I am introducing this bill to serve as a catalyst and as a commencement in the effort to bridge the considerable gap which separates the biomedical sciences from the rest of society. The issues raised by the biomedical sciences are momentous. Their impact upon society will be profound—and should be evaluated by a cross-section of the citizens of this land, by representatives of a variety of professions and disciplines. The social and ethical issues raised by the biomedical sciences must be evaluated by interdisciplinary groups of persons. They should be raised whenever Federal funds are expended on health research.

A number of the concerns which I have, particularly those which relate to the ethical, social, and philosophical aspects of the biomedical sciences, are set forth in an article which I and my legislative assistant, Mel Levine, wrote and which was published in the August 5, 1972, edition of the Saturday Review of Science.

In reviewing both the technical and the ethical aspects of this general area, it has become evident to me that the public knows very little about these new technologies—or, indeed, about the social impact of the biomedical sciences in general. At the same time, the scientific community has not focused nearly enough of its time and attention upon the social and ethical implications of the research it is pursuing in a number of complicated and important areas.

Accordingly I believe that it is imperative for the Federal Government to begin to make it easier for the rest of society to understand the powerful and important implications of the biomedical sciences.

This effort could be pursued in a variety of ways. I believe that a number of approaches are important. I have set forth some of them in my article in the Saturday Review and I shall have more to say about those at a later date.

But I do believe that a simple and effective way to begin to achieve this technological assessment is through the bill I have just introduced, or, in amending section 301 of the Public Health Service Act, we reach research funds which are administered by the Food and Drug Administration—see page 383 of the fiscal year 1973 budget; the Health Services and Mental Health Administration—see page 388 of the fiscal year 1973 budget; the National Cancer Institute—see page 413 of the fiscal year 1973 budget; the National Heart and Lung Institute—see page 414 of the fiscal year 1973 budget; the National Institute of Dental Research—see page 415 of the fiscal year 1973 budget; the National Institute of Arthritis and Metabolic Diseases—see page 416 of the fiscal year 1973 budget; the National Institute of Neurological Diseases and Stroke—see page 417 of the fiscal year 1973 budget; the National Institute of Allergy and Infectious Diseases—see page 418 of the fiscal year 1973 budget; the National Institute of General Medical Sciences—see page 419 of the fiscal year 1973 budget; the National Institute of Child Health and Human Development—see page 419 of the fiscal year 1973 budget; the National Eye Institute—see page 421 of the fiscal year 1973 budget; the National Institute of Environmental Health Sciences—see page 422 of the fiscal year 1973 budget; the Research Resources program—see page 423 of the fiscal year 1973 budget; the appropriations for Health Manpower—see page 424 of the fiscal year 1973 budget; National Library of Medicine—see page 427 of the fiscal year 1973 budget; and General Research Support Grants—see page 433 of the fiscal year 1973 budget.

It is important to effect as broad as a biomedical base as possible, to require that as many research projects as possible in the biomedical sciences consider the social implications of that research. For, to the extent that the public and the Congress understand the biomedical sciences, we will be able better to evaluate their importance. To the extent that we understand in advance what social and ethical questions are raised by these sciences, we will be better prepared for the developments that follow.

The agencies which I have just mentioned carry out the major biomedical research programs within the Federal Government. Therefore, I believe that this change in section 301 of the Public Health Service Act will effectively begin to focus on the important biomedical programs which involve Federal funds.

I think it is imperative at this point to make it abundantly clear that by no means am I suggesting any controls whatever on science or on scientific research. To the contrary. I believe that, if the public does not understand well in advance the social implications involved in this research, such controls might be more likely to occur at a later date. For an uniformed public is more likely to react to scientific breakthroughs out of fear and skepticism, while an informed citizenry will better understand the positive value of biomedical research and technology.

I understand the problems that are involved in any ethical, moral—that is, subjective—evaluation. I do not mean to suggest by this legislation that objective answers are possible in this area. It will be impossible to quantify this social analysis.

Nevertheless, the analysis is urgent—and it must be conducted both by scientists and nonscientists. For, if we do not understand the possibilities inherent in the biomedical sciences, we will be less likely to approach these issues through reasoned analysis. If their dramatic potential astounds the lay—nonscientific—community rather than inspires it, that community will be less likely to welcome such new developments. Accordingly it is imperative that we all understand the social implications of the biomedical sciences.

This closer relationship between the biomedical sciences and the rest of society must begin at once. I hope, therefore, that this bill will receive the immediate attention it deserves. Though it is short in length, I believe very deeply that it is long in merit. I hope that it will be considered carefully and promptly.

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

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

S. 3894

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301 of the Public Health Service Act is amended by adding at the end thereof the following new subsection:

"(j) apply one quarter of one per centum of amounts provided for grants for research or research training projects for any fiscal year as are recommended under subsection (d) of this section, toward research into the possible social consequences of biomedical technologies."

ADDITIONAL COSPONSORS OF AN BILL

S. 3644

At the request of Mr. HUGHES, the Senator from California (Mr. TUNNEY), the Senator from Maine (Mr. MUSKIE), and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 3644, a bill to amend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, and other related acts, to concentrate the resources of the Nation against the problem of alcohol abuse and alcoholism.

SENATE RESOLUTION 347—ORIGINAL RESOLUTION REPORTED PROVIDING ADDITIONAL FUNDS FOR THE COMMITTEE ON GOVERNMENT OPERATIONS

(Referred to the Committee on Rules and Administration.)

Mr. ERVIN, from the Committee on Government Operations, reported the following resolution:

Resolved, That Section 4, S. Res. 258, Ninety-second Congress, second session, agreed to March 17, 1972, is amended by striking out the amount "$830,000" on page 2, line 22, and inserting in lieu thereof the amount "$929,210."

NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT—AMENDMENT

AMENDMENT NO. 1417

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

Mr. SPONG submitted an amendment intended to be proposed by him to the bill (S. 945) to regulate interstate commerce and to provide for the general welfare by requiring certain insurance as a condition precedent to using the public streets, roads, and highways in order to have an efficient system of motor vehicle insurance which will be uniform among the States, which will guarantee the continued availability of such insurance, and the presentation of meaningful price information, and which will provide sufficient, fair, and prompt payment for rehabilitation and losses due to injury and death arising out of the operation and use of motor vehicles within the channels of interstate commerce and otherwise affecting such commerce.

AMENDMENTS NOS. 1420 AND 1421

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

Mr. EAGLETON submitted two amendments intended to be proposed by him to the bill (S. 945), supra.

HANDGUN CONTROL ACT OF 1972—AMENDMENT

AMENDMENT NO. 1419

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

Mr. STEVENS submitted an amendment intended to be proposed by him to the bill (S. 2507) to amend the Gun Control Act of 1968.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 1391

At the request of Mr. SAXBE for Mr. SCHWEIKER, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Iowa (Mr. HUGHES), the Senator from Delaware (Mr. BOGGS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Nevada (Mr. BIBLE), the Senator from Colorado (Mr. DOMINICK) and the Senator from Connecticut (Mr. RIBICOFF) were added as cosponsors of amendment No. 1391 intended to be proposed to the bill (S. 3755) to amend the Airport and Airway Development Act of 1970.

ADDITIONAL STATEMENTS

HAM RADIO OPERATORS PERFORM A SERVICE

Mr. ROBERT C. BYRD. Mr. President, February 26, 1972, will be a date long remembered by West Virginians. At 8 a.m., a slag dam gave way at the head of Buffalo Creek in Logan County. Torrents of water swept over the narrow valley, leaving total devastation in the flood's wake. I viewed the damaged area, and I can personally attest to the overwhelming chaos and destruction wrought by the savage waters.

Out of the ruins of disaster often come tales of heroic actions performed by individuals who act in response to human need, with little thought to personal comfort and safety. I want to acknowledge a group of such individuals today: A group of ham radio operators, led by Mr. Willie Flannery, of Mallory, W. Va.

Minutes after the flood, Mr. Flannery alerted a number of West Virginia hams to the disaster, giving what proved to be ar amazingly accurate estimate of the scope of the damage. An emergency net frequency was quickly chosen. Stations were set up in key areas to coordinate the activities of the various relief organizations through instant radio communication, answer the hundreds of frantic requests from concerned relatives, and make arrangements for the disposal of food and supplies, which poured in.

Many of the ham participants sacrificed vacation time or took leave from jobs to give round-the-clock service in this crucial emergency. One ham drove from Chillicothe, Ohio, in response to a request for a radio-equipped jeep. With the aid of another ham, he set up and operated the Lorado station for the first 3 days.

There were at least 4,000 amateur radio stations in the Eastern United States which aided in transmitting emergency information. Relief groups, such as the Salvation Army and the Red Cross, were able to use the radios to transmit vital information about medical emergencies, needed medical supplies, emergency rations, and sources of food and clothing.

In these impersonal times, it is reassuring to know that there remain people all over America who respond to emergencies in the manner of these ham radio operators. In behalf of all of the people of West Virginia, I want to say a heartfelt, grateful "Thank you."

SENATOR ALLEN J. ELLENDER IN MEMORIAM

Mr. TAFT. Mr. President, Time, in this great building, is often an elusive intangible, frequently an abhorred catalyst. We get caught in the "rat race," losing perspective. Or we see only the annals of history before us, guiding our lives. When a great Senator falls, however, we are forced to view this man's life, now completed, and understand, with great humility, the impact he has had on us all.

Much has already been said about Senator Ellender. He was the Dean of the Senate, the President pro tempore, the chairman of the Committee on Appropriations, and the former chairman of the Committee on Agriculture and Forestry.

Great eulogies have expounded the thrust of this man's intelligence, personal charm, wisdom, and influence on agriculture.

I feel, that just as important, Senator Ellender should be remembered by future generations by the insight gained from his travels.

He visited the Soviet Union five times. He was a leader in realizing that Russia was not a deadly menace to us after all. Senator Ellender should be known as an innovator in thought and practice, a man of insight and commonsense.

Senator Ellender will not be soon forgotten, by the Nation, my own State of Ohio, the Senate, and myself. I consider it a privilege to have served in the same Congress as the late Senator Allen J. Ellender. He was a great person and a great Senator.

DEPARTMENTS OF STATE AND DEFENSE RESOLVE SAM–D CONFLICT WITH SALT

Mr. PROXMIRE. Mr. President, on June 26, 1972, I wrote Secretary of Defense Laird and Secretary of State Rogers to express my concern regarding the compatibility of the Army's SAM–D system with the terms of the SALT Treaty on ABM's.

I noted in my letters that several Pentagon witnesses had told Congress in recent years that SAM–D would have a capability, not only against enemy aircraft, but against enemy ballistic missiles as well. I queried whether such a capability would bring SAM–D within the definition of an ABM system in article II(1) of the treaty or within the article VI prohibition against the testing of nonABM systems in an ABM mode. The answer, I pointed out, was not clear on the face of the treaty, since that document fails to address the question directly. I therefore called upon the administration to either demonstrate SAM–D's compatibility with the treaty or to cancel the system along with prohibited parts of the Safeguard ABM system.

Both the Defense and State Departments have now replied to my letters. Both take the position that development and deployment of SAM–D would not violate the ABM Treaty.

The key to their argument is the distinction which they draw between strategic and tactical ballistic missiles. The ABM Treaty, they point out quite correctly, applies only to systems designed to counter strategic ballistic missiles. They argue that SAM–D, on the other hand, is being designed to provide defense only against tactical ballistic missiles.

And the category into which a given missile falls, they suggest, depends on the velocity and trajectory altitude of its reentry vehicles. Only if a missile's reentry vehicles have a maximum velocity exceeding two kilometers per second or a maximum altitude exceeding 40 kilometers is it to be regarded as a strategic ballistic missile.

It is highly important that this distinction has now been placed on the public record. The ABM Treaty itself fails to spell out what dividing line between the two classes of missiles the two parties had in mind during the course of their negotiations. At least the U.S. view on this matter is now clear. This in itself should serve to clarify potential issues when SALT II negotiations begin this fall. And since present design specifications for SAM–D do not call for it to intercept strategic ballistic missiles as here defined, continued development of SAM–D as those negotiations continue would be compatible with U.S. interpretation of the ABM accord.

This does not mean, however, that we should cease to be concerned about SAM–D's potential ABM capabilities or that these potential capabilities would not become an issue during SALT II negotiations. During SALT I negotiations, U.S. representatives repeatedly voiced their concern about a possible Soviet upgrading of their Talinn air defense system into a nationwide ABM network. SAM–D would be much more sophisticated than the Talinn system and considerably more susceptible to upgrading. Given our own concern about Talinn, we should not be surprised if Soviet negotiators become increasingly concerned about SAM–D if that system's development proceeds along the path toward deployment.

Nor should we be oblivious to the fact that SAM–D deployment, or any changes either in SAM–D design characteristics or the present U.S. distinction between strategic and tactical ballistic missiles, might reawaken many of the dangers laid to rest by the recent ABM accords.

There are other reasons, too, why a U.S. option to deploy SAM–D should not be construed as a U.S. obligation to deploy the system. Its projected costs have more than doubled in the past 3 years, to the point where it is expected to be every bit as expensive as the C–5A and F–14 programs and much more costly than a possible National Command Authority ABM site. And these increased projected costs of recent years have been accompanied by lingering doubts regarding the system's military efficacy. Its field army air defense role in Europe might be served quite well by other existing and projected weapons, such as the Redeye, Vulcan-Chapparal, and improved Hawk family of Army SAM missiles and the new F–15 fighter. Perhaps some supplement to these weapons might be needed for defense in depth of the field army. But proliferated smaller SAM systems might be more reliable under combat conditions and also more survivable. Finally, SAM–D's bomber defense role in CONUS remains exceedingly dubious, for the simple reason that any defense of our population against a bomber threat is suspect once defense against missiles has been foreclosed.

The Senate Armed Services Committee has promised to conduct in-depth hearings on SAM–D's military capabilities in the next year. I hope that these hearings will be of the same depth and quality as its recent hearings on the Close Air Support and F–14 issues, and that the recommendation emerging from the hearings will not be predetermined by the fact that SAM–D is technically in compliance with the recent ABM Treaty as interpreted by the United States.

Mr. President, I ask unanimous consent to have printed in the RECORD my June 26 letter on SAM–D to Secretary of Defense Laird, the reply of the Defense Department, and the reply of the State Department to a similar letter.

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

JUNE 26, 1972.

Hon. MELVIN R. LAIRD,
Secretary, Department of Defense,
Washington, D.C.

DEAR MEL: One purpose of the recently concluded ABM Treaty with the Soviet Union was to place clear restrictions not only on ABM systems as commonly understood, but also on other systems, such as air defense systems, which could be made to perform an ABM role. On several occasions during the past few years, Administration spokesmen have expressed concern that the Soviets' Talina Line air defense system might be upgraded for just such a role.

My purpose in writing today is to inquire as to the compatability of a new United States air defense system—the Army's SAM–D program—with the terms of the recently concluded treaty.

Several Defense Department witnesses have told Congress in recent years that SAM–D will have some capability not only against aircraft, but also against tactical and strategic ballistic missiles. The following are two examples of the testimony in this regard which has appeared on the public record:

(1) "SAM–D would be capable of defeating tactical ballistic missiles with ranges less than (deleted), air to surface missiles, and sub-launched cruise missiles. This system represents a radically new approach to . . . air defense. The application of the latest advances in miniaturized electronic circuitry, computer technology, radio data link techniques, and the phased array radar concept will give the system a mobility and multimission capability never before achieved in an air defense system." Lt. Gen. A. W. Batts, Army Chief of Research and Development, to the Senate Armed Services Committee, March 5, 1970.

(2) Question: "What capability will the SAM–D have against a CONUS SLBM and ICBM threat?"

Answer: "Based on the results of studies completed to date, the SAM–D system used as a defense against strategic ballistic missiles (even if SAM–D is modified) would be critically senstitive to variations in a number of threat parameters. To obtain a capability against a reasonable range of possible threat characteristics would probably require SAM–D to be supported by the SAFEGUARD Missile Site Radars. Therefore, SAM–D may be useful as a possible future augmentation to SAFEGUARD should the need arise, but it does not appear by itself to provide a viable defense system."

Question by Senator John C. Stennis and reply by Director of Defense Research and Engineering, Dr. John B. Foster, Jr., before the Senate Armed Services Committee, Februray 26, 1970.

In light of these acknowledged capabilities, it appears to me that continued developments, testing, or deployment of SAM–D could violate the ABM Treaty. Here are the reasons why.

First, Article II(1) of the Treaty defines an ABM system as any "system to counter strategic ballistic missiles" which includes interceptor missiles or radars "constructed and deployed for an ABM role, or a type tested in an ABM mode."

It would seem to me that a system with any capability against strategic ballistic missiles, however limited, would be covered by this definition. And if SAM–D is an ABM system within the meaning of the Treaty, several things follow.

Its deployment in a nation-wide bomber defense network would be a violation of Article I(2)'s prohibition against the deployment of, or laying a base for, a nation-wide ABM system.

Its further development, testing, or deployment would be in violation of Article V(1)'s prohibition against mobile land-based ABM systems.

And its deployment in defense of NATO would be a violation of Article IX's prohibition against the transfer to other countries or the deployment outside the United States of ABM systems or their components.

Second, even if SAM–D is not covered by Article II(I)'s definition of an ABM system, it would appear covered by Article VI of the Treaty. Under Article VI, the United States undertakes not to give non-ABM interceptor missiles or radars any ABM capabilities and not to test such missiles or radars in an ABM mode.

It would appear that this provision—the language of which closely parallels that of Article II(I)—was included in the Treaty specifically to forestall arguments that a system like SAM–D was not a true ABM system. This impression is strengthened by Secretary Rogers' statement in the State Department's interpretation of the Treaty submitted to the President on June 10, 1972, that this undertaking "would, for example, prohibit the modification of air defense missiles (SAMS) to give them a capability against strategic ballistic missiles."

Finally, it appears that deployment of SAM–D and its phased-array radar in Europe might violate Article VI's prohibition against the deployment of radars for early warning of strategic ballistic missile attack anywhere but on the borders of one's own nation.

It is difficult to believe that SAM–D and its limited capabilities against ballistic missiles were not specifically considered by both sides during the recent SALT negotiations. If SAM–D was considered, however, and a decision made to permit its deployment, this is not made clear anywhere in the Treaty or its supporting documents.

I have tried nonetheless to anticipate the arguments which might be made in support of a contention that SAM–D was not covered by the Treaty. Unfortunately, I find such arguments quite unpersuasive.

It might be argued, for example, that while SAM–D has a capability against ballistic missiles, its capability is against tactical ballistic missiles only and does not extend to strategic ballistic missiles as the latter term is used in the Treaty's Article II(I) definition of an ABM system.

But no definition of a strategic ballistic missile is actually given in the ABM Treaty itself, and it is difficult to believe that anyone would subscribe to a definition which excluded the CONUS SLBM and ICBM threat against which, according to Dr. Foster, SAM–D would have at least a limited capability.

Moreover, the United States has made the unilateral statement that the phrase "tested in an ABM mode" covers the situation when "an interceptor missile is flight tested against a target vehicle which has a flight trajectory with characteristics of a strategic ballistic missile flight trajectory." It seems arguable to me that the flight trajectories of "tactical" and "strategic" ballistic missiles are sufficiently alike in their characteristics as to be covered by this statement.

Turning to another point, one might argue that agreed understanding D is, in any event, sufficent evidence that SAM–D's deployment in Europe would not violate Article VI's prohibition against the deployment of radars for early warning attack outside one's own borders.

Agreed Understanding D *does* constitute a commitment that the Parties will not deploy phased-array radars having a potential exceeding "three million watts" except under certain conditions. It is also true that SAM-D's phased-array radar does have a potential well within that limit. But Agreed Understanding D does not specifically state that all phased-array radars within that limit are automatically in compliance with the early warning limitation of Article VI.

I believe it is important to clarify the question of SAM-D's compatibility with the ABM Treaty prior to congressional ratification. A failure to do so could spark controversy later and complicate the second round of the SALT negotiations.

Accordingly, I would appreciate it if you would address yourself to the issues raised by this letter, with particular attention to the following questions:

(1) Does SAM-D's capability against ballistic missiles bring it within the scope either of Article II(1)'s definition of an ABM system or provsion (A) of Article VI, as interpreted by the United States?

(2) If SAM-D is within the scope of Article II(1) or provision (A) of Article VI as interpreted by the United States, have any plans been made for termination of the program, and if not, why not?

(3) Would it be feasible to develop SAM-D in such a way that its capability against ballistic missiles was deleted? If so, what consideration is being given to this approach, and what are the arguments against it?

(4) If SAM-D's capability against ballistic missiles does not bring it within the scope of Article II(1) or provision (A) of Article VI as interpreted by the United States, what is the reasoning by which this conclusion is reached?

(5) As interpreted by the United States, what is the meaning of the term "strategic ballistic missiles" as used in Article II(1), and if the term is meant to exclude "tactical" ballistic missiles, which of the following classes of Soviet missiles is, in fact, excluded—SRBMs? MRBMs? IRBMs? ICBMs? SLBMs? Is it true that SAM-D would have no capability whatsoever to intercept "strategic ballistic missiles" as so defined?

(6) What is the meaning of the phrase "flight trajectory with characteristics of a strategic ballistic missile flight trajectory" as used in the unilateral statement of the United States as to the meaning of the phrase "tested in an ABM mode?"

(7) Would deployment of SAM-D in Europe violate Article VI's prohibition against deployment of radars for early warning of strategic ballistic missile attack outside national boundaries, as interpreted by the United States? Why or why not?

(8) Was SAM-D specifically discussed during negotiating sessions with the Soviets? What certainty do we have that the Soviets' interpreattion of its compatibility with the ABM Treaty is identical to ours?

I apologize for the length of this letter and the detailed nature of the questions raised. I think it important, however, that considerable additional light be shed on this very complex subject. I would very much appreciate a reply to my questions prior to the start of Senate floor debate on the ABM Treaty.

Sincerely,

WILLIAM PROXMIRE,
Chairman, Subcommittee on Priorities and Economy in Government.

THE DIRECTOR OF
DEFENSE RESEARCH AND ENGINEERING,
Washington, D.C., July 24, 1972.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Priorities and Economy in Government, Joint Economic Committee, Congress of the United States, Washington, D.C.

DEAR MR. CHAIRMAN: I have been asked to answer your letter of June 26, 1972, concerning the relationship of SAM-D and SALT. As you are well aware, DoD has been concerned about the use of SAM's in an ABM mode for a considerable period of time. The DoD efforts in this regard have been focused on the potential degradation of the U.S. deterrent if the Soviets upgraded their extensive SAM deployments to defend urban areas.

Based on this concern, substantial analysis within DoD has been directed at understanding the interrelationship among SAM equipment limitations, the technical limitations on upgrading SAM's, and the effectiveness of various offense responses to counter upgraded SAM's. During the negotiation of the ABM Treaty, both sides were well aware of SAM-D, and the Treaty does not preclude this system. However, the Treaty precludes testing such systems as SAM-D in an ABM mode and we will not do so.

The answers to your specific questions are provided in the attachment. If I can be of further assistance in this matter, please let me know.

Sincerely,

LEONARD SULLIVAN, JR.
(For John S. Foster, Jr.).

QUESTIONS OF CHAIRMAN PROXMIRE, SUBCOMMITTEE ON PRIORITIES AND ECONOMY IN GOVERNMENT, JOINT ECONOMIC COMMITTEE WITH ANSWERS. SUBJECT: SAM-D SALT RELATIONSHIP

(1) Does SAM-D's capability against ballistic missiles bring it within the scope either of Article II(1)'s definition of an ABM system or provision (A) of Article VI, as interpreted by the United States?

The SAM-D program is not in conflict with either Article II(1) or Article VI(a) of the ABM Treaty.

(2) If SAM-D is within the scope of Article II(1) or provision (A) of Article VI as interpreted by the United States, have any plans been made for termination of the program and, if not, why not?

As stated in (1) above, the SAM-D program is not in conflict with either of these provisions, and thus does not need to be terminated.

(3) Would it be feasible to develop SAM-D in such a way that its capability against ballistic missiles was deleted? If so, what consideration is being given to this approach, and what are the arguments against it?

If the SAM-D program were redirected so that the system had *no* capability against any ballistic missile, even short range tactical ballistic missiles, the system would not be operationally effective in an air defense role. This is true primarily because there is an overlap in the attack characteristics between tactical ballistic missiles, aircraft, and aircraft-launched air-to-ground missiles. Thus, deletion of a capability against all ballistic missiles would deny a capability against aircraft and aircraft-launched missiles. There is, however, a distinct separation in attack characteristics between the above class of threats and long range strategic ballistic missiles. No consideration is being given to reducing SAM-D performance capabilities.

(4) If SAM-D's capability against ballistic missiles does not bring it within the scope of Article II(1) or provision (A) of Article VI as interpreted by the United States, what is the reasoning by which this conclusion is reached?

Simply stated, SAM-D is not in conflict with Articles II(1) or Article VI(a) for the following reasons:

SAM-D is being designed and developed as an Air Defense system, not as an ABM system to counter *strategic* ballistic missiles.

SAM-D will not be tested in an ABM mode.

(5) As interpreted by the United States, what is the meaning of the term "strategic ballistic missiles" as used in Article II(1), and if the term is meant to exclude "tactical" ballistic missiles, which of the following classes of Soviet missiles are, in fact, excluded—SRBMs? MRBMs? IRBMs? ICBMs? SLBMs? Is it true that SAM-D would have no capability whatsoever to intercept "strategic ballistic missiles" as so defined?

The term "strategic ballistic missiles" is meant to exclude "tactical" ballistic missiles. The distinction between these two classes of missiles results from the different flight characteristics of the re-entry vehicle, e.g., velocity, which is related to the range of the missile, and trajectory altitude. A strategic ballistic missile operated at or near maximum range reaches an altitude well above the atmosphere and a peak flight velocity of about four to seven kilometers per second. By comparison, other ballistic missiles operate at lower velocities and altitudes which are in or near the aircraft regime.

The SAM-D system does not have the capacity to intercept strategic ballistic missiles and will not be tested in an ABM mode. SAM-D, therefore, will not have the operational capability to intercept strategic ballistic missiles in flight trajectory.

(6) What is the meaning of the phrase "flight trajectory with characteristics of a strategic ballistic missile flight trajectory" as used in the unilateral statement of the United States as to the meaning of the phrase "tested in an ABM mode"?

As stated in my testimony before the House Armed Services Committee on June 13, 1972, this phrase means, in my view, a flight trajectory with a maximum velocity exceeding two kilometers per second, or a maximum altitude exceeding 40 kilometers.

(7) Would deployment of SAM-D in Europe violate Article VI's prohibition against deployment of radars for early warning of strategic ballistic missile attack outside national boundaries, as interpreted by the United States? Why or why not?

SAM-D is neither an ABM system, nor is its radar a system to provide early warning of strategic ballistic missile attack and, therefore, its deployment is not restricted by Article VI.

(8) Was SAM-D specifically discussed during negotiating sessions with the Soviets? What certainty do we have that the Soviets interpretation of its compatibility with the ABM Treaty is identical to ours?

SAM-D was not discussed with the Soviets. The ABM Treaty places no limits on air defense systems per se. However, certain collateral constraints have been placed on air-defense systems as an extension of the limits placed on ABM systems. These include limits on power aperture product of phased-array radars and the obligation not to give air defense systems an ABM capability or to test air defense systems in an ABM role.

DEPARTMENT OF STATE,
Washington, D.C., July 31, 1972.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Priorities and Economy in Government, Joint Economic Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to respond to your inquiry as to the compatibility of a new United States air defense system—the Army's SAM-D program—with the terms of the recently concluded ABM Treaty. I understand that a similar inquiry has been sent to Secretary of Defense Laird and that the Defense Department is answering your technical questions.

SAM-D is an advanced surface-to-air missile system, which is in early engineering development. The primary mission of SAM-D is air defense of the field army against high-flying supersonic enemy aircraft and air-launched missiles.

The ABM Treaty does prohibit the testing of SAM-D in an ABM mode, and the development and deployment of SAMXD as an ABM system. The U.S. has no intention either to test or to deploy SAM-D in an ABM mode. The ABM treaty does not preclude continuing development or deployment of SAM systems.

I hope the above information will be helpful to you and the Committee.

Sincerely,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

ST. LOUIS NATIONAL STOCKYARD

Mr. PERCY. Mr. President, the July 1–2 issue of the St. Louis Globe-Democrat contains a most interesting article on the National Stockyards in St. Louis for contrast with the Chicago Stockyards that have only a past. The future of the National Stockyards looks bright in serving the whole middle or heart of America.

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

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

THE NATION'S RED MEAT CAPITAL—ST. LOUIS NATIONAL STOCKYARDS IS BOOMING SINCE BEEF CATTLE OPERATIONS HAVE BEEN SNOWBALLING IN MISSOURI'S OZARK COUNTIES

(By James Floyd)

The men wear boots, straw stetsons and the weathered look that comes from too much sun and wind. They eye the feeder cattle driven into the arena and make their bids with almost imperceptible nods of the head or flicks of the hand.

"Forty, forty, forty . . . I got forty," auctioneer Col. Bill Serman singsongs.

Sherman punctuates his rapid-fire auctioneering with raps from the rubber hose he uses for a gavel until the lot of five, six, seven or eight feeder cattle are sold.

The cattle are then headed out to Missouri, Illinois and Iowa feeder lots. They will be back at St. Louis National Stockyards within a year for sale as fat cattle.

The feeder auction is a colorful small part of the action at the massive 99-year-old National Stockyards.

The stockyards are the hub of an important area industry, an incorporated town with its own police and fire department, a place where you can get a steak and a great Bloody Mary at the plush Stockyards Inn while you buy and sell cattle, hogs and sheep.

"We're just starting to take wing," Cap Smith, public relations director of National Stockyards, said, "We're going to expand tremendously."

National has the room to expand—the stockyard covers only 100 of the 640 acres National owns on the East Side—and the plan.

"We're now trying to start an industrial park," National Vice President Len Wittich said. "What we want to do is build and then lease. We're interested in the meat industry but we're open to anybody.

"St. Louis is the red meat capital of the nation, you know," he said. "We've got National, we've got the packers, we've got rail, water and highway transportation.

And in Southeast Missouri there is a growing beef cattle operation, well within National's 150 mile radius trade area.

"They're doing some great things in Southeast Missouri knocking down the brush and making pasture," Smith said.

Glenn Grimes, professor of Agriculture Economics at the University of Missouri-Columbia, agrees.

"There's no question that they're getting into beef cattle," Grimes said.

The beef cattle herd in Missouri's South Central Ozark Region—including Douglas, Howell, Ozark, Shannon, Oregon, Texas and Wright counties—has increased 200 per cent from 1958 to 1972.

And National is going to get its share of any growth.

"There's a potential for (beef cattle production) growth in the Ozarks, at a price," Grimes said. "It takes considerable expenditure for improving the land but current beef cattle prices are high enough to make it profitable."

That improvement includes aerial herbicide spraying to kill brush and aerial fertilizing and seeding to make usable pasture land, as well as using bulldozers to knock down the brush.

"It's one of the areas in the country that has the growth potential," Smith said. "The Southwest (United States) is limited by moisture and the Corn Belt land is too valuable to use for beef cattle production."

"Let me put it to you like this," Smith said, "We get buyers from California and Washington, New York and Pennsylvania. They're meeting here on the banks of the Mississippi in the middle of the country. This is the hub. Where else are they going to go?"

In April alone, cattle, hogs and sheep were bought at National by packers from 17 states and Canada.

One of the biggest buyers was the Swift & Co. plant at National Stockyards.

"The new Swift plant is the largest pork kill plant in the nation," Smith said.

The hogs and fat cattle are not sold at public auction like the feeder cattle. They are sold under the 1,000-year-old Danish "private treaty" system.

The livestock are driven into the pens of one of the traders that line National's trading allies and he makes a bid on them. They then go to another trader and he bids without knowing what the other bids have been.

"I think it's the best system," Smith said. "It comes closer to bringing the true value of the livestock. The true value of anything is what someone else is willing to pay for it.

Smith is convinced that National gives the livestock raiser his best chance of a fair price.

A dozen or more packers bid on every lot of hogs and fat cattle and in top months "there aren't enough seats in the arena for the feeder cattle auction," Smith said.

Last year more than 2.1 million head of cattle, hogs and sheep went through National

"There's some direct buying (farmer to packer) but whenever you talk to a farmer, they know the price is established right here every morning by competitive buying. That's why it goes on and on," Wittich said.

The farmers get the word on prices from Robert Reardon, executive secretary of the Livestock Exchange, and the radio voice of the exchange.

"We broadcast over a 14 station radio network that covers the National trade area," Reardon said.

Those prices are set by the U.S. Department of Agriculture office at National.

"It's not always right but it's official," Bill Kenney needled.

Kenney is a hot order buyer . . . one of the buyers who serves distant packers on an order basis.

After the hogs are brought in the 99-year-old brick hog trading alley, they are driven to the hog heaven pens in the hog shed where there is plenty of corn and running water for the hogs to dring and wet their bellies in.

"And then we sort them," Kenney said.

All hogs are not alike.

"The biggest item buyers look for is yield," Kenney said. "They want trim bellies and good hams."

And sometimes packers want other things from their hogs.

"Right now I'm sorting 265 white hogs. White hogs are a premium because they're easier to clean to standards and that cuts time and labor costs," Kenney said.

The U.S. Department of Agriculture and Illinois Department of Agriculture both maintain livestock inspections stations at National.

"We inspect all livestock before sale and (on feeder cattle) again before they go back to the farm," Dr. Charles Hertich, an Illinois Department of Agriculture veterinarian, said.

"We're eradicating quite a few diseases and this inspection helps. Our department considers the stockyards kind of a screening area," Dr. Hertich continued.

Inspected, the livestock is then penned to the buyers for shipment out.

And the farmers and traders can relax over a drink and a steak at the Stockyard Inn, go talk the commodities market with George Jentsch in his office in the Exchange Building or take care of their banking at the unique National Stockyards National Bank.

"In a 100 years, no farmer has ever lost a dollar here because of a bad check or nonpayment and in the millions of dollars of transaction no one ever signs anything, or even initials anything," Smith said. "We operate strictly on integrity."

Smith says that integrity is another plus that will make National grow.

"And that's good help for us, the East Side and St. Louis.

"Downtown St. Louis is the financial center. Anything that happens here is another shot in the arm for St. Louis," Smith said.

REGULATING REGULATORS

Mr. MUSKIE. Mr. President, during the last few months, the Subcommittee on Intergovernmental Relations has conducted several days of hearings on S. 448 to bring the budget requests of our regulatory commissions directly to Congress rather than going first through the President's Office of Management and Budget. Testimony during those hearings, from chairmen and commissioners, pinpointed areas where their agencies have been significantly weakened by OMB cutbacks.

An excellent series of articles, written by Miss Kay Mills for Newhouse News Service, expands on many of the regulatory problems discussed during and since these hearings. I ask unanimous consent that the articles be printed in the RECORD.

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

REGULATING REGULATORS IS TOPIC OF HEARINGS

(By Kay Mills)

WASHINGTON.—Virtually unnoticed, Sen. Lee Metcalf, D-Mont., has quietly conducted hearings over the last several weeks which go directly to the heart of protecting the American consumer.

The central question concerns how much power the White House, through its Office of Management and Budget has over supposedly independent regulatory agencies.

They are the agencies which regulate how much you pay for phone service, who runs your local television station, what claims a drug manufacturer can make about his product, or how much you are going to pay for gas heat.

These agencies, "originally established to protect the consumer," have become the "message carriers of the giant interests," said Sen. Fred R. Harris, D-Okla. To invigorate them means giving them the money to do their job properly—and to return control over their budgets to Congress, Harris added.

"We have a case here of a field mouse trying to control a rampaging rogue elephant, and the executive has left the mouse half-starved at that," Harris adds.

In addition to budget control, the White House also exerts its influence through naming commission chairmen, requiring clearance of agency legislative proposals through OMB, and keeping tabs on what information agencies seek from the industries they regulate, Metcalf's investigators learned.

"As long as the regulatory agencies are

under the thumb of the OMB," Metcalf contended, "they will be reluctant to, or foreclose from, asking for what they really need in money and manpower."

The Senate Subcommittee on Intergovernmental Relations heard testimony on these budget cuts for the current fiscal year 1972:

The most publicized of all, at the Federal Communications Commission, led to temporarily dropping an investigation of American Telephone and Telegraph Co. rates. OMB had cut the FCC request by $3 million—meaning the commission lost 128 additional jobs it wanted. After great public clamor, FCC announced it would resume the probe.

The Securities and Exchange Commission, which regulates the stock brokerage business, wanted to increase its staff from the 1,410 positions authorized by Congress in fiscal 1971 to 1,875. OMB cut the request by 313.

Federal Power Commission Chairman John N. Nassikas testified that $71,000 for an Alaska power survey was cut from his 1972 budget request. The survey, which would have indicated the states existing power capacity and growth requirements, "could make a worthwhile contribution to regulation," Nassikas said.

Looking at the current budget for fiscal 1973, Federal Trade Commission Chairman Miles Kirkpatrick said he had asked for $11.4 million and 582 staff jobs for the commission's antimonopoly regulation. OMB cut that to $9.7 million and 512 positions.

For consumer protection, FTC asked $17.2 million and 877 jobs which OMB cut to $14.5 million and 771 jobs.

Dean Burch, Communication Commission chairman, said someone must coordinate budget requests and set priorities, and added "we have no particular quarrel with the present system of an initial budget presentation to OMB."

But Rep. John D. Dingell, D-Mich., cosponsor with Metcalf of a bill which would return budget control over these agencies to Congress, disagreed. "Many people tend to regard this agency (OMB) as a tool for efficiency in government," he told the subcommittee.

"I tend to regard it as perhaps one of the really outstanding examples of abuse of executive power in America," Dingell added.

Metcalf objects to have OMB's power extended to the regulatory agencies. He said the present procedure provides "a dangerous potential" for restraining the effectiveness of the independent commissions.

The agencies covered by the Metcalf-Dingell bill are the FCC, FTC, FPC, SEC, Federal Maritime Commission, Interstate Commerce Commission and Civil Aeronautics Board.

FTC chairman Kirkpatrick was one of the few agency heads who clearly backed the bill. But he also testified that OMB had advised him the measure is "not in accord with the program of the President."

Some of the congressmen are anxious to return budget control to Congress because they contend the White House is more easily influenced by the industries the agencies regulate.

"It is easier for a Henry Ford or the head of AT&T to slip the right word into the ears of a single man in the White House than in the ears of all of our senators and Congressmen," Harris said.

If Congress controlled regulatory agencies' budgets now, the Oklahoma Democrat went on, "I am certain that . . . we would not have seen earlier this year the sorry spectacle of an FCC chairman, appointed of course by President Nixon, attempting to quash an investigation of the rate structure of AT&T, the first in history, on the grounds that staff was lacking."

That chairman—Dean Burch—testified that FCC had 20 auditors keeping an eye on the telephone company. He added that they would need about 50 more in the FCC's Common Carrier Bureau "to do about a halfway decent effort."

Yet after the Defense Department, one of the phone company's biggest customers, offered FCC the auditors to do the job, Burch expressed reservations. He questioned whether a customer and party to legal proceedings should "supply the investigative talent that determines their own complaint or their own allegation."

Harris said the White House erosion of congressional influence of the agencies has been gradual. But by 1968, he said the process had gone so far "that the Republican nominee was able to send a form letter to 3,000 executives and industry leaders pledging that during the Nixon administration, the Securities and Exchange Commission would follow a soft line."

Budget cuts can affect the number of personnel regulating an industry, the subcommittee heard. But OMB can also inhibit the amount an agency asks for in the first place, staff aide E. Winslow Turner said. Turner cited a memorandum the budget office sent to agency heads outlining the need to control escalation of grade levels of civil servants.

In that memo dated Aug. 5, 1971 OMB said that while the number of government workers declined by nearly 12,000 from 1969 to 1970, the number in high-paid categories went up 14,600. Even a fractional increase in the pay scales adds $160 million to the budget, OMB said.

The memo went on to outline ways to cut back high grade level personnel, then asked for regular reports on agency to accomplish this.

Sen. Edward J. Gurney, R-Fla., called the OMB memo a "meat ax approach" to reducing the cost of personnel without consideration for the needs of the agencies.

What may also have rankled the senators was the fact that while the memo was directed to the heads of executive departments, yet the "independent" regulatory agency chairmen received it, too.

The memo again underlines what congress considers a slippage of its power. When the Budget and Accounting Act was passed in 1921, the regulatory agencies—such as existed then—were considered arms of congress. But in 1939, President Roosevelt pushed through a Reorganization Act and brought the agencies under what is now OMB.

In addition to the power of the purse-strings, the subcommittee was reminded that the White House now appoints regulatory commission chairmen. Before 1950, the chairmanships rotated among commission members.

"Another control used by the OMB," Harris testified, is the requirement that OMB approve agency questionnaires seeking information "from more than 10 industries they regulate."

"These agencies also must seek the approval of OMB for any legislative proposals they wish to submit to the congress," Harris added, "and the solicitor general has veto power over the desire of regulatory agencies to seek Supreme Court review of lower court decisions."

But most of the commission chairmen who testified said that they had encountered little problem from OMB in these areas.

White House Assailed for SEC Budget Cuts

(By Kay Mills)

Washington.—Sen. Lee Metcalf (D- Mont.) charges that interference from the White House Office of Management and Budget (OMB) has "thwarted and frustrated" attempts to police the crisis-ridden securities market.

Specifically, Metcalf pointed to million-dollar budget cuts and reduced manpower requests from the Securities and Exchange Commission. He called the reductions "the worst example we have that OMB influence in a regulatory agency destroyed the enforcement effectiveness of that agency."

In hearings just concluded, SEC Chairman William J. Casey, disagreed vehemently, sometimes pounding the witness table with open palm, saying, "Senator, that's an assertion that cannot be justified . . . I'm going to do the job with what I have."

Metcalf just smiled and asked more questions to illustrate what he contends is undue power OMB and the executive branch hold over "so-called independent regulatory agencies."

Metcalf chaired the hearings of the Senate Subcommittee on Intergovernmental Relations, which is considering his bill to transfer control of the budgets of these seven agencies from OMB to Congress.

In addition to SEC, agencies which would be affected are the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Federal Maritime Commission, Federal Trade Commission and Interstate Commerce Commission.

The Montana Democrat contends these agencies—charged with policing such consumer concerns as charter flights, the broadcasting industry, advertising claims, household moving companies and utility rates—have been "prevented from doing their jobs because they haven't been given the proper budget" by OMB.

Since 1970, SEC has had added to its workload enforcement of the Securities Investor Protection Act, involving an insurance system for investors when brokerage houses collapse. It also faces pressure for increased surveillance of the financial status of broker-dealers.

SEC must also police the industry so people with inside information don't buy or sell stocks in advance and others don't defraud investors by misusing their money.

With all this turmoil, the industry "was and still is in a state of crisis," Metcalf told Casey. Yet the subcommittee has documented material showing "OMB pulled the string" on SEC and "completely shattered" attempts to build a staff to handle the work, he added.

For example, Metcalf said that in fiscal 1971 OMB cut 65 positions from the commission's request. In fiscal 1972 it cut 313 requested positions and 283 in fiscal 1973.

In terms of money cuts, subcommitte figures show that in fiscal 1971, SEC requested $22.5 million, from which OMB lopped $463,000. In fiscal 1972, it asked for $28.7 million and OMB cut $2.4 million. In fiscal 1973, OMB cut $4.1 million from the $32.3 million requested by SEC.

Casey countered by saying that his agency still grew despite the cuts—at a time when "the federal establishment was being asked to cut back by five per cent."

The SEC chairman said he has no difficulty with the present budget arrangement, understanding that there must be concentrated responsibility for setting national priorities.

Evidently, "OMB thinks that personnel must be built up on a more gradual basis in light of other considerations. I am ready to adapt" to that broad principle, Casey added.

Metcalf said Casey's testimony ends hearings spread over several months on his bill. "We're going to try to get consideration of the legislation," he said. But he added that Casper W. Weinberger, designated as the new OMB director, indicated he would recommend the President veto the bill.

"Confronted with a potential presidential veto," Metcalf said, "this bill may get pushed aside if we run into a logjam later in the session."

He added, however, that having the subcommittee chairman—Sen. Edmund S. Muskie (D-Maine)—devoting more time to legislation since ending active presidential campaigning won't hurt his bill's cause.

FTC Plans Run Into Snags Due to Manpower Cuts

(By Kay Mills)

Washington.—Cuts by the executive branch into manpower at an independent regulatory agency—the Federal Trade Com-

mission—have killed FTC plans to investigate costs of hospital supplies, medicines and surgical instruments.

FTC Chairman Mile W. Kirkpatrick said cutbacks by the Office of Management and Budget (OMB) have also:

Interrupted a study on concentration in the auto-making industry.

Eliminated any immediate chance to punish violators of the commission's program to back up advertising claims.

Slowed down checks on compliance with FTC orders to stop unfair or illegal trade practices.

Cancelled an investigation of business conduct of multinational corporations—such as International Telephone and Telegraph—to determine whether their practices adversely affect domestic competition and raise prices.

Kirkpatrick detailed these effects of OMB cuts in his budget for the fiscal year starting July 1 in a letter recently released by Sen. Lee Metcalf (D. Mont.).

The Montana lawmaker is sponsoring a bill to bring budgets of regulatory agencies directly under congressional supervision. Thus his concern with OMB practices.

The FTC chairman said OMB cut 208 jobs from his 1973 budget request, which meant eliminating 46 positions requested for consumer protection activities.

These cuts followed a $620,000 trimming from last year's budget—after Congress had granted the money, Kirkpatrick added. FTC had to abolish 72 jobs for half this fiscal year following that action, he said, adding that 31 of those positions would have been attorneys and consumer protection specialists working in regional offices.

Metcalf said Kirkpatrick's letter "portrays a picture of fiscal manipulation by the chief executive—a grinding down on personnel and funding—which, in my opinion, can only be translated into an 'anti-consumer' and 'anti-public interest' budget for this independent regulatory agency."

SORDID STORY

The senator labeled the situation a "sordid story" and said OMB cuts for next fiscal year represent "a disastrous impact on (Kirkpatrick's) consumer protection, competition, economic investigation and regional support programs."

Kirkpatrick said that at present the commission has only one man spot-checking business compliance with its cease-and-desist orders. A proper program would "require five attorneys full time in Washington" with substantial help from regional offices. "However, this program will now have to be handled on a limited basis."

On ad claims, the commission chairman said, "We probably could bring enforcement actions against roughly 5 to 10 per cent" of the claims for which substantiation was asked.

Even assuming most of those cases wouldn't go to trial, Kirkpatrick said, the program would require 15 lawyers fulltime, "and we do not have the resources for that kind of program at this time."

OMB disallowed 48 jobs—and $735,000—in FTC's section handling competition.

"The commission had plans," Kirkpatrick said, using past tense, "to enter the field of hospital and medical costs, including the cost of hospital supplies, surgical instruments and other medical items. . . ."

It wanted "to determine whether or not restraints of trade or unfair practice were contributing materially to the high cost of medical care."

FCC GIVES BANKS BREAK ON BROADCASTING STOCK

(By Kay Mills)

WASHINGTON.—The Federal Communications Commission has changed its rules to permit banks which had been openly violating FCC policy to retain nearly $900 million in broadcasting stock rather than sell it.

On the surface, it looks like a dry—although multi-million dollar—decision. But a closer look reveals the stake big banks have in broadcasting—often owning stock in stations whose viewing areas overlap and therefore compete.

The banks maintain they have no intention of trying to control the stations, that they simply hold the stock as trustees for investment purposes.

Critics, such as FCC maverick Commissioner Nick Johnson, have raised the antitrust issue and the dangers they see in multiple ownership of broadcasting properties.

The rule in question involves the percentage of a stock a bank may hold in a broadcasting station before triggering FCC ownership restrictions. It had been 1 per cent, the FCC increased that to 5 per cent, while the American Bankers Association wanted 10 per cent.

The figures may sound low, but a communications lawyer said that in many publicly owned corporations, control can be exercised with such minor percentages. The ABA has countered that much federal law presumes control only at 10 per cent ownership or higher.

The FCC itself reported that if the rule had not been changed, 25 banking companies were violating the 1 per cent rule and would have had to divest—or sell—stock worth $976 million. The report was based on bankers association figures submitted in 1970.

With the rule at 5 per cent, nine companies must divest stocks worth $84 million—but the FCC gave them three years in which to do it. But the FCC move eliminated the necessity for all the banks involved to sell nearly $900 million in broadcast stock.

Neither the commission nor the ABA has identified the banks affected.

With the rule at 10 per cent as the bankers wanted, only one company would have had to sell stock—$4 million worth.

True to form, Commissioner Johnson dissented, saying that decision was made "to satisfy banks and bank-held broadcasters—a change adopted only to avoid divestiture."

Johnson, joined by retiring Commissioner Robert T. Bartley, wrote: "Those seeking relaxation of the Commission rules have totally failed to show how the public interest will be improved."

The majority, he said, did not discuss "the important issues concerning institutional ownership of the stock of other companies—questions of control, influence, collusive or parallel behavior, where a number of institutions own a company, and the impact of institutional ownership" on management decisions to serve the public.

"The majority is content to rely on the assurances" that banks won't interfere with the stations, Johnson said. He added, "One looks in vain for any suggestion that the views of the Antitrust Division of the Department of Justice were requested, despite the fact that the division has pending a suit against a bank's trust holdings of the stock of firms which compete with each other."

Stock ownership by banks figured in the controversy over attempts by Time-Life to sell five TV stations to McGraw-Hill. Ultimately, McGraw-Hill decided to buy only four of the stations.

But in the course of petitioning in the case, lawyers for minority groups protesting the sales sketched a portrait of bank ownership in broadcasting.

Each of four banks—Chase Manhattan, First National City and Bankers Trust in New York and First National of Boston—votes in excess of 1 per cent of McGraw-Hill stock, the lawyers said.

They also had at least 1 per cent voting stock in stations which would overlap with the new McGraw-Hill stations.

For example, in Indianapolis, where McGraw-Hill bought WFBM-TV, there were two other stations operating directly in the market.

Bankers Trust votes about 5.9 per cent of the stock of Dun and Bradstreet, owner of one Indianapolis station, while First National City votes more than 1 per cent of the stock of the other owner, Avco Broadcasting, the lawyers said in their FCC petitions.

The petitions also said:

Stations serving Louisville, Cincinnati, Dayton and Ft. Wayne overlap some of the area served by Indianapolis stations. Some of these stations also are owned by Avco and Dun and Bradstreet as well as Taft, Cox and Sonderling Broadcasting.

First National of Boston holds stock in Sonderling and Cox, while Chase Manhattan holds stock in Sonderling and to the other banks' interests in Avco and Dun and Bradstreet.

In the Midwest in general, the lawyers said, the four banks own more than 1 per cent of the stock in companies which run 31 stations.

BANKS CAN KEEP RADIO-TV STOCK

(By Kay Mills)

The Federal Communications Commission has changed its rules to allow banks which had been openly violating FCC policy to retain nearly $900 million in broadcasting stock rather than sell it.

On the surface, it looks like a dry—although multimillion-dollar—decision. But a closer look reveals the stake big banks have in broadcasting—often owning stock in stations whose viewing areas overlap and therefore compete.

The banks maintain they have no intention of trying to control the stations, that they simply hold the stock as trustees for investment purposes.

Critics such as FCC's maverick commissioner, Nick Johnson, raise the antitrust issue and the dangers they see in multiple ownership of broadcasting properties.

The rule in question involves the percentage of a stock a bank may hold in a broadcasting station before triggering FCC ownership restrictions. It had been 1 percent; FCC increased that to 4 percent, while the American Bankers Association wanted 10 percent.

The figures may sound low but a communications lawyer said that in many publicly owned corporations control can be exercised with such minor percentages. The ABA counters that much federal law presumes control only at 10 percent ownership or higher.

The FCC itself reported that if the rule had not been changed, 25 banks were violating the 1 percent rule and would have had to divest—or sell—stock worth $976 million. The report was based on American Bankers Association figures submitted in 1970.

With the rule at 5 percent, nine banks must divest stocks worth $84 million—but the FCC gave them three years in which to do it. But the new FCC move eliminates the necessity for all the banks involved to sell nearly $900 million in broadcast stock.

Neither the commission nor the association has identified the banks affected.

FCC ADMITS IGNORANCE OF BANK IT REGULATES

(By Kay Mills)

WASHINGTON.—The Federal Communications Commission has confirmed that it lacks the names of banks which must sell millions of dollars of broadcasting stock to comply with a recent FCC decision limiting such ownership.

Sen. Lee Metcalf (D-Mont.), frequent critic of both banks and regulatory agencies, says FCC's position is hardly unique. "Collection of data on financial concentration is so inadequate that the government becomes ludicrous in its feeble efforts to determine facts and enforce laws and regulations," he said.

When the FCC issued its decision in May, it gave the banks three years in which to sell—or divest—any stock they held in excess of 5 per cent in any one broadcasting company. Holdings had been limited to 1 per cent.

At that time, the most up-to-date information the FCC had on bank-owned broadcast stock came from a survey conducted by the American Bankers Association in the fall of 1968 and submitted to the Commission May 27, 1969.

The ABA material contains no names of banks, referring instead to firms as Bank 1 or Bank 2. John Doherty, an ABA spokesman, said the survey was confidential. "As to who held what," he added, "that we couldn't release."

And "that is the only thing available," says Neal McNaughten, head of the FCC's rules and standards section. A thorough check of the files in the case indicates "there isn't a thing" which gives the names, he added.

That survey, quoted in the FCC ruling, said that if the stock limit were set at 5 per cent unidentified banks would have to sell $84 million in stock in nine firms.

Had the limit been left at 1 per cent, banks would have had to sell $976 million in stock in 25 companies. In a recent Senate speech, Metcalf said, "The commission's rules had been blatantly disregarded by the banks, and instead of enforcing the rules, the commission simply rewrote them.

"And it gave the banks three years to comply with the new 5 per cent rule. Then the banks may come in and get a 10 per cent limit."

As for how FCC could get the names when the time comes to enforce the rule, McNaughten said presumably the commission could require that the stations submit them. Such financial records generally are regarded as confidential at the commission.

The stock ownership level is considered important because of potential control by outside institutions over what programs a broadcaster runs or what news coverage he gives. In publicly owned firms, some laws presume control when one institution owns 10 per cent of the stock; some broadcast lawyers say that if stock is widely held, control can be exercised with 5 per cent or less.

The banks contended in their arguments at the FCC that they held the stock simply as investments, not to attempt to control broadcast policies. Doherty said the ABA doesn't know how many banks at present hold more than 5 per cent broadcasting stock, "there's no reason to think they have stayed the same, especially with the new order in effect."

While the bankers' survey names no names, it does draw a portrait of bank ownership in the broadcasting field, at least as of late 1968.

For example, Bank 1—whatever it was—owned 3.5 per cent of Taft Broadcasting stock, 9.5 in the Tribune Co. and 1.6 of Warner Brothers.

Bank 2 owned 8.4 per cent at Capital Cities Broadcasting, 1.5 of CBS, 50.8 Corinthian Broadcasting; 5.6 in Crowell-Collier; 2.8 in Metromedia.

Bank 4 owned 4.4 per cent of Capital Cities, 1.3 of CBS, 2.0 in Metromedia, 1.4 in RCA and 4.9 in Westinghouse.

Bank 6 owned 7 per cent of ABC, 6.6 in Capital Cities, 1.6 in CBS, 8.1 in Metromedia, 1.4 in RCA, 5.1 in Storer Broadcasting and 2.5 in Taft.

Critics contend that in this way banks often own stock in broadcasting chains whose stations compete in various areas of the country.

Looking at it another way, three banks each owned 7 per cent or more of ABC with another three each owning more than 1 per cent. The same three banks which owned the biggest percentages at ABC also owned the highest totals at CBS with another five banks each owning at least 1 per cent.

For RCA, parent firm of NBC, five banks each owned at least 1 per cent.

In terms of stocks which banks would have to sell to meet the new ruling—again in 1968 figures—$28.6 million shares of CBS would have gone, $9.5 million of Metromedia; $1.1 million of Time, $22.1 of Crowell-Collier, $3 million of Capital Cities, $10 million of ABC, $3 million of Corinthian and $500,000 of Taft.

SENATOR BEALL URGES SENATE ACTION ON SURVIVORS BENEFITS BILL

Mr. BEALL. Mr. President, today I appeared before the Armed Services Committee to urge swift action on survivors benefits legislation, which is of the highest priority for the professional military men and women of the country, both active and retired. This legislation is cosponsored by the 40 Senators.

I ask unanimous consent that the complete text of my testimony and a list of Senators who have cosponsored S. 325 with me be printed in the RECORD.

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

STATEMENT OF SENATOR J. GLENN BEALL, JR., BEFORE THE SENATE ARMED SERVICES SUBCOMMITTEE ON SURVIVORS BENEFITS, AUGUST 8, 1972

Mr. Chairman, I want to thank you and the members of the subcommittee for allowing me to testify on H.R. 10670. I also want to congratulate the Chairman of the full Committee, Senator Stennis, for naming this Subcommittee to consider this high priority legislation.

The subject of your hearings today and tomorrow is of utmost importance and urgency to the men and women, both active and retired, of the Armed Forces. This legislation, often referred to as the "Widow's Equity Bill," provides for a permanent survivors benefit plan for dependents of retired military personnel. Retirees under this program will be able to leave up to 55% of their retired pay to their survivors. The bill also provides for a minimum income maintenance program for present widows, for whom the new program would come too late and whose needs in many cases are desperate.

On January 27, 1971, I introduced S. 325, a bill similar to H.R. 10670. Forty members of the Senate cosponsored this legislation with me. In addition, Senator Bentsen has introduced a bill on the same subject.

The Fleet Reserve Association in April 1969 completed an excellent study entitled "Widow's Equity". This study helped to spotlight the lack of an equitable survivor annuity program for military retirees. Legislation was introduced in the 91st Congress to implement the study's recommendations. This legislative interest and the support of military and Veterans organizations, as well as the many moving letters received by Members of Congress, resulted in the creation by the then Chairman of the House Armed Services Committee, L. Mendel Rivers, of a Special Subcommittee on Survivor Benefits under the capable leadership of Congressman Otis Pike and the Ranking Minority Member, Charles Gubser. I was pleased to be named to this Subcommittee and in my judgment, they did an excellent job both in analyzing the problem and in recommending a legislative solution. The Subcommittee's work included seven days of open hearings and five days of executive session.

The final product of the Subcommittee's careful deliberations was a report issued October 1, 1970 entitled "Inquiry Into Survivor Benefits". An examination of this study will demonstrate the thoroughness with which the Subcommittee examined this subject.

The Subcommittee's conclusion was that the benefits available to survivors of retired personnel were woefully inadequate.

In January 1971, I introduced S. 325 on the Senate side and H.R. 984 was introduced on the House side to implement the recommendations of the Special Subcommittee. The House Armed Services Committee again held hearings on H.R. 984 on August 2, 1971. As a result of the hearings and the recommendations of the Administration, which supported the necessity for a survivor benefits program, H.R. 10670, a clean bill, was unanimously recommended to the full House by the House Armed Services Committee.

H.R. 10670 was then passed by the House of Representatives on October 21, 1971 by a vote of 372 to 0.

I know the Armed Services Committee has had both a tremendous Committee and Senate floor work load. Now that the Committee's legislation backlog has been cleared, I urge this Subcommittee and the full Committee to give this legislation the priority consideration it deserves and merits. Time is running out. The recess for the Republican Convention and Labor Day will begin shortly, the subsequent political campaign and the heavy agenda of unfinished business will then face the full Senate.

Because I feared the Survivors Benefits legislation was going to get lost, I introduced the Survivors Benefits bill as an amendment to the Military Procurement legislation, which recently passed the Senate. While I do not believe that it is good practice to circumvent the normal legislative procedure, I have made a commitment to the military men and women in my State and the Nation to do everything I can to secure Senate action and final enactment of a Survivors Benefits Program this year. As a result of the floor colloquy I had with Chairman Stennis, Senator Thurmond and Senator Goldwater of the Senate Armed Services Committee and other members of the Senate, I did not press the amendment at that time. I was assured that hearings would be held and persuaded that the Armed Services Committee indeed did plan to move on the legislation. Senator Thurmond's statement that the Subcommittee "will report back to the Committee and it will be acted to the Senate this year", was particularly reassuring. In addition, Chairman Stennis said, "If they (the Subcommittee) report the bill to the full Committee, I will certainly see that the full Committee has a chance to pass on it".

The Survivors Benefits Program to be enacted needs prompt action by this Subcommittee.

While I know of the busy schedules of each of the Members of this Subcommittee, I strongly urge this Subcommittee to complete these two days of hearings, proceed to Executive Session this week in an effort to report this legislation to the full Committee before the recess, or certainly no later than the first week following the reconvening of the Congress. If the Subcommittee does not move expeditiously, we will risk losing the legislation this year.

Mr. Chairman, I believe that it would be a tragedy if after years of examination of this subject by the various military association; if after the careful inquiry and report of the House Special Subcommittee on Survivors Benefits; if after the further examination and unanimous recommendations of the House Armed Services Committee followed by the unanimous vote by the House of Representatives; if after the endorsement by the Defense Department; and the most recent endorsement by the President reiterating in his Older Americans Message of March 23, 1972, that the Senate of the United States failed to enact this legislation.

The tragedy of our failure to act can be illustrated by a call I had received in early 1971 from a Maryland constituent.

This lady, the wife of a Navy enlisted man, called me and expressed her gratitude for my introduction of S. 325 and conveyed how much she thought there was a need for such a measure. In the late Fall of the same year, the same lady again called my office. This time, however, she was very distraught. She told me that little did she know when she called earlier how important the Widow's

Equity Bill would be for her. She explained that her husband had a heart attack and was now lying in a hospital bed in critical condition. She asked about the status and chances of early passage of the legislation. Unfortunately, I had to advise her that, although the legislation had passed the House of Representatives, no action would be taken by the Senate in 1971.

In the beginning of this year this same lady called me advising me that her husband had passed away and that the "Widow's Equity Bill" would be "too late for her." I explained that there was a provision in the bill providing a minimum income maintenance to present widows. Notwithstanding the fact that the survivors benefits program was too late for her, she said she prayed that Congress would act so that other widows would not find themselves in similar financial circumstances.

This story indicates why we cannot allow this year to go by and not act on this legislation. We must make certain that there are no more military wives and families for whom this legislation will come "too late."

I know that the Administration and the Department's recommendations are for liberalization of the House bill. For the most part, their suggestions are constructive and I have little, if any, problems with them. But it is late. If we want a bill, we need to move and move quickly. If making substantive changes will jeopardize final enactment, I feel certain that I speak for the military personnel, both active and retired, when I urge passage of the House bill with one exception.

I urge deletion of the garnishment provision. This section provided for the attachment of up to 50% of military retired or retainer pay in order to comply with court orders in conjunction with divorce or separation proceedings. This is a controversial provision. It was proposed by the Administration on the grounds that it was extraneous to the Survivor Benefit Bill and that "if there is sufficient reason to attach retired pay, the same reason undoubtedly exists for attachment provisions applicable to other Federal pays and annuities. Accordingly, the broader subject of attachment of all Federal pays and annuities for support of dependents may well deserve Congressional attention as a matter in its own right."

This is precisely what has happened. As my colleagues are probably aware, the Senate Finance Committee has added to H.R. 1, the Welfare Reform Bill, a provision providing for the attachment of the pay of all federal employees, including the military, both active and retired. Thus, H.R. 1 would seem to be the appropriate vehicle for the Senate to work its will on the attachment provisions and whatever that will is, it will be applicable to federal employees across-the-board.

Most Americans would be surprised, as were many Members of the Congress, to learn that the widow of a retired military man does not automatically receive part of the earned retirement pension her husband was receiving at the time of his death. Thus, for example, should a military retiree pass away a day after his retirement, the surviving dependents would not be entitled to a penny of his retirement pension. The surprise of the American public and the Congress to learn of this situation is minor compared to the shock of the widow of these cases, many of whom, according to the Department of Defense's testimony, do not realize that the retired pay stops immediately upon the death of the military retiree.

In such a situation, the only benefit that the military retiree's widow would have, assuming that the death was not service connected, that the widow was not yet eligible for Social Security, and that her husband was among the 85% of Armed Forces personnel who do not participate in the retired serviceman's protection plan—RSFPP—are those paid by the Veterans' Administration program. Under the Veterans Program, the widow must meet a "needs test", and if eligible she then would receive only a meager pension varying from $17 to $87 per month. This pension is not a special provision for career servicemen's dependents but is available to dependents of any Veteran who served three months or thirty years.

The lack of basic survivor protection for retired career personnel is a serious shortcoming in the benefits available for those who elect to make serving their country their career. Basic survivor protection is usually a standard feature in employee fringe benefits. The Federal Civil Service employees, for example, can assure his surviving spouse 55% of his Federal retired pay. This survivors benefit is automatic unless the employee in writing elects not to participate in the survivor annuity plan. This lack of survivor benefits is a particularly serious problem because of the relatively early retirement of career military personnel.

A military retiree, if he lives the normal life expectancy, may spend in retirement one and one-half times the number of years he served on active duty. Congress has not been blind to the need of the career military man to provide a portion of his pension for survivors. In 1953, Congress enacted the retired serviceman's family protection plan—RSFPP—an optional, self-supporting, actuarially sound, survivor annuity program. The program has not worked. The most telling indictment of the RSFPP Program is that during the 18 years it has been part of our national laws, and despite the adoption of seven amendments, only 15 per cent of those eligible have elected to participate. The participation rate of enlisted retirees, who may need it the most, is only 10%. The widows of 85% of the military retirees have no claim to a portion of their husband's retired pay.

The primary reason for this low participation rate is that the RSFPP Program is prohibitively expensive for the serviceman. Unlike the survivors' annuity program available to the Federal Civil Service employees, the Federal Government does not contribute to the RSFPP. As a result, the military retirees have to pay between 2.5 and 5 times for equivalent survivor benefits as the Civil Service retiree. I ask unanimous consent that tables depicting this disparity be printed at this point in the RECORD. (Exhibit A).

In addition to the fact that the retired serviceman's family protection plan is too expensive, the complexities of the program have also deterred greater participation. RSFPP then by any yardstick, must be judged a failure. It is clear that a new plan is needed.

Mr. Chairman, the Nation is aware of the great sacrifices made by the Nation's career military men and the great debt we owe to them. Their daily duty is the defense and security of the Nation. The country is probably not as aware of the sacrifices and demands as the military wife.

The old saying that "behind every successful man is a successful woman" has a special truth for military wives. Long separations and months of loneliness, and frequent changes in duty stations and the necessary family uprooting that often follows, are among the many problems with which the career serviceman's wife must cope. Added to this is the fear in the mind of the military wives that their husbands may not return at all. After standing alongside their husbands throughout their military careers, these brave and special breed of women are not presently assured of a single cent of the retired pay of their husbands.

Mr. President, I am convinced that the survivor annuity program is important for the all-volunteer army concept to which the military has been moving under the leadership of President Nixon and Secretary Laird. The Congress, and particularly this Committee, in cooperation with the Administration, has taken steps to help make the all-volunteer army possible by substantially increasing the military pay and other fringe benefits which are necessary preconditions if we are going to attract and retain sufficiently skilled manpower for National defense requirements.

The career military man shares the universal desire to provide adequately for his surviving loved ones after his death. The lack of such survivor benefits is a glaring weakness in the benefits presently available to the professional soldier. The adoption of a survivors' benefit program will help make the military more attractive as a career, and thus help move the country toward our goal of an all-volunteer Armed Forces.

Mr. Chairman, the case of the Maryland constituent, which I cited earlier, as well as the inequities of the present program, are compelling reasons why the Senate must act this year. This bill will make it possible for retired military personnel to leave up to 55% of their retirement pension at a reasonable cost to their loved ones, so that they might better enjoy the freedom and prosperity of this great Nation for which they and their spouse are in no small part responsible.

In closing, I want to applaud Chairman Stennis for creating this Subcommittee and the members for assuming the responsibilities for serving on this Subcommittee. The eyes and hopes of the career soldiers and sailors, both active and retired, and their loved ones are on you and the Senate. They are counting on us. They have never let us down. We must not let them down. I urge prompt and favorable action on this priority legislation by the Subcommittee and the full Committee so that a survivors benefits plan will be signed into law this year.

TABLE 1.—COMPARISON OF COSTS OF RETIRED PERSONNEL SURVIVOR ANNUITY PLANS—MILITARY VERSUS CIVIL SERVICE

Grade	Years of service	Age at retirement	Survivors annuity payable (monthly)	Military deductions (options 1 and 4 at ½)	Civil service deduction for the same annuity
Staff sergeant	20	40	$86.42	$12.71	$3.93
Technical sergeant	24	44	120.75	20.94	5.49
Master sergeant	30	50	201.88	43.77	14.21
Do	30	60	195.15	57.24	12.98
Do	30	65	191.46	64.62	12.31
Major	24	46	256.95	48.23	24.22
Lieutenant colonel	26	48	330.65	66.84	37.62
Colonel	30	52	$461.42	$107.00	$61.40
Do	30	60	449.06	131.72	69.15
Do	30	65	440.56	148.71	57.60
Major general	30	54	600.09	148.03	86.61
General	30	56	749.23	196.25	113.72
Do	30	60	738.98	216.75	112.86

TABLE 11.—COMPARATIVE COSTS OF CENTS PER DOLLAR OF COVERAGE

Annual annuity	Dollar cost per year		Cents per dollars of coverage	
	RSFPP	Civil service	RSFPP	Civil service
Man 55, wife 53:				
10,000	3,764	1,548	37.6	15.5
8,000	2,521	1,185	37.6	14.8
6,000	1,890	821	37.6	13.7
4,000	1,260	457	37.6	11.4
2,000	630	94	37.6	4.7
1,000	315	45	37.6	4.5
Man 60, wife 58:				
10,000	3,764	1,548	37.6	15.5
8,000	3,011	1,185	37.6	14.8
6,000	2,258	821	37.6	13.7
4,000	1,505	457	37.6	11.4
2,000	753	94	37.6	4.7
1,000	376	45	37.6	4.5

COSPONSORS OF S. 325, INTRODUCED BY SENATOR BEALL

1. Allen.
2. Bayh.
3. Bible.
4. Bennett.
5. Case.
6. Cranston.
7. Dole.
8. Dominick.
9. Eagleton.
10. Fannin.
11. Gravel.
12. Gurney.
13. Hansen.
14. Harris.
15. Hart.
16. Hatfield.
17. Hollings.
18. Humphrey.
19. Inouye.
20. Mathias.
21. McClellan.
22. Metcalf.
23. Mondale.
24. Montoya.
25. Moss.
26. Muskie.
27. Pastore.
28. Pell.
29. Smith.
30. Stevens.
31. Thurmond.
32. Tower.
33. Tunney.
34. McGee.
35. Jackson.
36. Bellmon.
37. Goldwater.
38. Gambrell.
39. Schweiker.
40. Cotton.

UNITED STATES LEADS IN EQUIVALENT MISSIONS

Mr. PROXMIRE. Mr. President, in the debate over the SALT talk agreements, much misleading information has been put forward by the critics of that agreement and even by some of its administration supporters, especially from the military side.

The United States, while having fewer nuclear land-based and submarine-based "launchers" than the Soviet Union, is very much ahead in other areas.

U.S. SUPERIORITY

Our missiles are far more accurate than the Soviet Union's.

Our Minuteman missiles are now being MIRVed, so that each missile carries three warheads.

Our Poseidon submarine missiles are being MIRVed and will carry up to 10 warheads each.

The Soviet Union has no MIRV capability at this time, is months away from testing a MIRVed missile, and years away from deployment comparable to ours.

Furthermore, we far outstrip the Soviets in our strategic bomber capabilities. As of June 1972, we have 530 bombers to the Soviets 140 very old bombers.

Furthermore, we have some 3,000 to 4,000 tactical nuclear weapons which can be delivered on the Soviet Union from fighter planes and medium bombers on the periphery of the Soviet Union.

U.S. LEAD IN EQUIVALENT MEGATONS

But in an article in the Saturday edition of the Washington Post, the very able writer on military subjects, Mr. Michael Getler, points out yet another area where we have superiority even though many try to frighten us about the Soviet lead in this area. The area is "megatons."

While the Soviet missiles carry more "megatons" than the U.S. missiles by about 3 to 1, because of the accuracy of our missiles, we are equal to or superior to the Soviets in "equivalent megatons." There are simple reasons for that.

First of all, a 10-megaton weapon is not 10 times more powerful than a 1-megaton weapon. It is only about three times more powerful.

Second, if a 1-megaton bomb lands very close to a target—and our warheads can land very close to a target—they are vastly superior to a 10-megaton bomb that lands a mile away from a target. And the Soviets are far less able to put their missiles on target than are we.

POINTS IGNORED BY CRITICS

Many of us have been making these points over the past few months while they have been disregarded by the military and Senate critics of the SALT agreements.

But Mr. Getler's accurate article puts this matter in perspective. The fact is that even in one of the places where the Soviets are said to be stronger than we are—namely, in megatons carried by their missiles—the fact is that we are actually superior to them because of the accuracy of our weapons.

I commend the article to the Senators and ask unanimous consent that it be printed in the RECORD.

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

COUNTING MEGATONS

(By Michael Getler)

For many years now, American missile and bomber forces have been described in public statements as lagging far behind their Soviet counterparts in the total amount of brute nuclear explosive power—or megatons—they carry.

And, though there are many important measures of the nuclear power balance the so-called "megaton gap" continues to provide a simple way to dramatize and sometimes exploit a view of Soviet military supremacy.

Government defense agencies, however, have another way to measure the megaton balance. But this yardstick of power—known as "equivalent megatons"—never shows up in public statements even though specialists in these agencies say it is a much more realistic way to measure the actual military effectiveness of nuclear weapons.

Furthermore, closely guarded U.S. estimates of the Soviet-American power balance measured in equivalent megatons rather than gross megatons reportedly show that U.S. forces actually carry a bigger and more effective nuclear punch.

A one-megaton nuclear weapon is a missile warhead or bomb that explodes with the power equivalent of one million tons of TNT.

But under the complex rules of nuclear arithmetic, a nine-megaton nuclear weapon, is not nine times as effective as a one-megaton blast. It is actually about three times as effective. Thus, three well-aimed one-megaton warheads would do about as much damage and maybe even more than the single larger weapon.

The comparisons of "gross megatonnage" that are usually made public show a gap of 9-to-3 in favor of the Soviets. The more closely held "equivalent megatonnage" estimates show forces that are about even in terms of militarily useful destructive power.

Primarily because the Soviet missile force contains some 300 huge SS-9 missiles each able to carry about 25 gross megatons in a single warhead, the Soviets are currently estimated to have a total of between 8,000 and 9,000 gross megatons in the entire missile-bomber force.

That is about 40 per cent more, according to reliable sources, than the U.S. has.

But in terms of equivalent megatons, where the "wasted" gross energy of huge warheads is discounted, the U.S. force is measured as about 4,100 militarily effective megatons as opposed to between 3,800 and 4,000 for the Soviets.

The U.S. lead here—and sources stress that estimates of Soviet levels are very rough—is based upon the smaller but more numerous and more accurate U.S. arsenal of multiple warheads missiles and upon the superior U.S. strategic bomber forces.

These estimates also project that by 1977—when the initial U.S.-Soviet agreement to limit offensive arms either runs out or is made permanent—the U.S. will still be about even with the Soviets or perhaps slightly ahead at a U.S. level of about 4,400–4,500 megatons.

The Soviets are expected to install MIRV-type multiple warheads of their own on some of their missiles during that period, but the U.S. is also adding large numbers of short-range Attack Missiles (SRAM) to its bomber force and continuing to convert older Minuteman and Polaris missiles to the MIRV warhead variety.

Gross megatons can be important in the sense that a very large warhead on a missile can compensate in part for lack of accuracy in trying to knock out an enemy missile protected in an underground concrete and steel silo. But an attacker would need thousands of such big warheads to attack the 1,000 U.S. Minuteman ICBM silos, and most weapons experts agree that accuracy would still be more important than megatons.

For example, a one-megaton warhead that lands one-third of a mile from a missile silo has about a 65 per cent chance of knocking it out of commission. That is about the same chance that a 25-megaton weapon landing a mile away has.

There are indeed legitimate defense worries—such as the proliferation of multiple warhead systems by both sides—that confront the public and those in government responsible for national security. But a one-sided public view of the "megaton gap" does not help the debate.

ALASKA'S BOUNTIFUL TIMBER HARVEST

Mr. STEVENS. Mr. President, one of the Nation's most valuable resources is the bountiful timber harvest in Alaska. It

has been estimated that Alaska's enormous forests could produce an annual sustained yield of 1.5 million board feet of lumber—enough to construct 100,000 three-bedroom houses. It is understandable that the people of Alaska have a keen interest in the debate that continues over the timber harvesting practice of clearcutting.

An editorial written by Debra J. Schnabel and published in the Chilkat Valley News of July 20, 1972, clearly and concisely states one viewpoint of this vital issue. I ask unanimous consent that the editorial be printed in the RECORD.

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

A PAGE OF OPINION: CLEARCUTTING THE FOREST—A GOOD LOGGING PRACTICE

(By Debra J. Schnabel)

If a game is to be won, playing the defense can be frustrating. However, games are competitively by nature, and can be avoided if respect exists between two potentially antagonistic factions. I see reason to avoid game playing by commanding respect through information and education.

The timber industry throughout the nation has been playing a defensive role for several years. Industry has traditionally played a defensive role, but it is only recently that the game has had a new challenger: the environmentalists. Through an intensive program of education, the timber industry has been able to justify its activities to a skeptical offense headed by the verbal and energetic Sierra Club. But it is my belief that one does not have to be a member of such an organization to question the activities of the timber industry in its timber harvesting practices. All of us pay our dues each day in witnessing these activities, and no matter how closely or remotely they affect our life's pattern, the use of our natural resources for one purpose deprives another user of free exercise.

I won't allow you the chance to let me be defensive, but instead will take this opportunity to try to command some of that respect I believe the industry deserves. Through the course of several weeks I plan to focus on several issues dealing with the industry and its forest management practices, particularly in Southeast Alaska. I welcome any comments, questions or rebuttals from anyone at any time. Industry is answerable to the people, and though you may not agree with its reasoning, all of its activities are justifiable.

So this week I will deal with the most personal and obvious issue, our method of timber harvest:

CLEARCUTTING

Clearcutting is only condoned—not accepted—and one reason is that our aesthetic sense is insulted by it. Clearcutting as a sound forest practice is questioned because of its visual impact.

However, clearcutting is recognized by the U.S. Forest Service as the best method of harvest in Alaska's unique coastal forests. Patterned after nature's method of renewing the forest, clearcutting is systematically planned and compatible with the natural forest cycle. Where nature rids itself of the burden of an overmature forest through windblow and disease, man can harvest the crop and utilize it, thus shortening the regeneration cycle by the time usually allowed for natural removal and decay.

At the same time, clearcutting does not deny the soil the nutrients it derives from natural forest litter. Logging debris and culls, or rotten, decayed trees and stumps are left in the forest to return to the soil its needed nutrients.

The reason clearcutting is approved over more selective methods of harvesting in the Tongass National Forest is found in the very nature of the trees. These forests, primarily Western Hemlock, but including a 30 per cent mixture of Sitka Spruce, are classified as mature or overmature, being 150 to 200 years old. Both of these species are shallow-rooted, so the strong winds of coastal Alaska make these trees vulnerable to blowdown. Therefore, trees support each other, and those allowed to remain after selective cutting are not likely to stand long enough to be harvested at a later date. Besides being shallow-rooted, these species are also thin-barked. Trees left after selective cutting are often damaged by falling trees during logging. It is impossible to log selectively in a stand of old growth timber without harming other trees, and it is better, given Alaska's soil and topography, to cut all the trees within an area rather than leave individual trees.

Beneath mature timber stands the cool temperatures and the thick insulation of a mossy carpet retard the release of nutrients to the soil. Clearcutting apens the stand and permits light and additional heat to reach the ground, stimulating the decomposition of forest litter and increasing soil fertility. A clearcut also favors the growth of both spruce and hemlock. These two species will grow in the same area if the mature area is cut all at once, as both are shade intolerant trees. Spruce especially needs much sunlight and the additional nutrients released by the warming of soil in a clearcut. Though seedlings are not always evident under the browse of a new forest, it is not surprising that new stands have a higher yield of the more desirable spruce if natural reseeding is allowed to take place in a clearcut. The even-aged second growth supports itself against windblows, also.

In addition to yielding more volume, timber stands that grow back on clearcut areas are healthier. The overmature spruce is susceptible to damage by the Spruce Bark Beetle. A serious tree disease in Alaska is dwarf mistletoe, a parasitic plant that infests hemlock. Removal of all infested trees during and/or after clearcutting prevents the spread of this disease to young hemlock. As a logging technique, therefore, clearcutting reduces the incidence potential of insect and disease problems that could affect the new forest on that site, and the new forest will be more vigorous.

According to Forest Service pamphlet j-72-10, under selective cutting, approximately four times as much area would have to be cut each year to get the same amount of wood that clearcutting yields. Aside from reducing logging traffic in the overall forest and the elimination of potentially destructive road construction, this more concentrated logging procedure allows more of the forest to be left undisturbed.

The fact that clearcutting opens up for recreational and mining use much of the forest is merely an added benefit, and not a justification. Foraging and other wildlife benefit by having a new forest growth, though the special needs of fish in forest streams are taken into consideration by leaving enough trees along the banks to supply the necessary shade to keep water temperatures stable. Respect for eagles is exercised by leaving intact a generous area surrounding the nesting tree.

But what considerations are given the people who must witness the results of this logging operation? Landscape architects play an active role in determining the size and shape of a sale area. By designing smaller, irregularly-shaped cuts to fit existing topography, and by dispersing these cuts, the visual impact of clearcutting is minimized.

Those who are still dissatisfied must learn to think of trees as a crop, and the forests as a field, much like the wheat fields from which we harvest annually. Nature, if honored, respected and nursed, will continue to reward man for his honest efforts by replenishing the land's resources for his and her benefits.

TRIBUTE TO SENATOR ALLEN J. ELLENDER, OF LOUISIANA

Mr. ALLEN. Mr. President, it is with deep sorrow that I take the floor today to mourn the loss of Alabama's friend and the Nation's friend, Allen Joseph Ellender.

There will be those who will chronicle the many accomplishments of this great man, but to me his most evident and worthwhile attribute was his ardent patriotism.

The question this man always raised first was: "Is it good for America?"

Even though he was a forceful advocate for his southern home, Allen J. Ellender was a national man who quietly and forcefully worked for every American. Nowhere was this more evident than in his tireless efforts to demand that his country get a dollar's value for a dollar spent.

He was a true watchdog of the Treasury, fighting those who would spend this country into bankruptcy. Yet he was not a negative man. In fact, he initiated many of the most worthwhile Federal programs on the books today. Most fittingly, he was one of the principal authors, in 1938, of the agricultural legislation on which our present farm programs are based. And then he put that bountiful harvest of American agriculture to its best use by joining with the late, great Richard Russell to write the original school lunch legislation.

It has been a privilege and great learning experience for me to serve under Senator Ellender on the Committee on Agriculture and Forestry. He was one of the great men in this body who did not take the production of food and fiber for granted.

Mr. President, the people of my home State of Alabama knew and loved Senator Ellender as a man who created jobs for them when there were no jobs. As chairman of the Subcommittee on Public Works Appropriations for many years, he consistently supported and assisted our State in the God-given resources that are the great waterways of Alabama.

There was a time when water traffic on our inland rivers ground to a halt; when the primary product of these rivers was silt deposits and floods; when there was not a single barge line operating in the Nation.

But Senator Ellender helped to change all of that, creating new rivers that were the friends, rather than the enemies of man, making them the creators of employment rather than its destroyer.

In all of these things, Senator Ellender was a builder. For these and many other reasons his Nation owes him a great debt that it can never now repay.

I admired him as one of America's greatest statesmen. Then too, truly, he

was one who "could walk with kings, nor lose the common touch." All America mourns his passing.

ILLEGAL FISHING IN ALASKAN WATERS

Mr. STEVENS. Mr. President, the recent capture of Japanese fishermen in the Gulf of Alaska who had willfully violated the International North Pacific Fisheries Convention, and earlier depradations into our waters by Japanese and Russian fishermen, have focused international attention on the problems our Coast Guard has had in the patrol and enforcement of our conservation laws and protection of contiguous fisheries areas of the United States.

Much less attention has been given to violations by our good neighbors to the north, yet incursions into our waters by Canadian fishermen are all too common. Recently a Canadian vessel was apprehended in Alaskan waters by State fish and wildlife protection officials who saw the Canadian fishing inside the American border without lights or gear markings. The State ship was able to block an attempt by the Canadian vessel to flee with her nets still out—a flagrant violation of basic conservation practices.

I ask unanimous consent to have printed in the RECORD a news release from the office of Alaska's Governor, Bill Egan, which states that the State Attorney General is asking for a large fine, plus confiscation and forfeiture of the $20,000 vessel and all her gear and fish.

Mr. President, we must enact the harshest penalties possible if we are to stop reckless forays into our waters by alien fish pirates. Also, the patrol of our coastline must be increased to a point where we can protect this national resource.

Alaska's fish and wildlife protection division is to be commended for its splendid behavior in the seizure of this vessel. The four protection officers involved went without sleep for 44 hours, according to Governor Egan.

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

JUNEAU.—A Canadian vessel has been seized and her captain arrested for allegedly fishing in Alaskan waters some 20 miles south of Hyder in the Portland Canal, Governor William A. Egan said today.

He said Attorney General John E. Havelock's office asked the Superior Court in Ketchikan today for a large fine plus confiscation and forfeiture of the $20,000 vessel, all her gear and fish.

Vessel Captain Masato Nishi pleaded innocent to a charge under state statutes prohibiting certain alien activities and bail was set at $10,000. Superior Court Judge Hubert Gilbert ordered the vessel and all its gear to be held in state custody until the completion of legal proceedings.

Egan said Frank Sharp, district officer for the state fish and wildlife protection division, and three aides saw the vessel Karen West of Vancouver, B.C., early Monday morning approximately three-fourths of a mile inside the American border fishing without lights or gear markings.

The state officers had taken a ship into the area the preceding evening to investigate reports of Canadian fishing violations in the Toombstone Bay area, some two miles north of Breezy Point, the Governor said.

He said maneuvering by the state ship blocked an attempt of the Canadian vessel to flee with her nets still out, after which the captain obeyed orders to stop.

In making the seizure and escorting the ship to Ketchikan, the four protection officers went without sleep for 44 hours, Egan said.

OF CONSUMING INTEREST

Mr. MAGNUSON. Mr. President, for those of us who work closely with consumer issues, the publication "Of Consuming Interest," edited by Mrs. Jane S. Wilson, has been one of our most widely used publications. It condenses and interprets the issues in the field and keeps tabs on the status and progress of important consumer legislation and developments at all levels.

In this publication, Mrs. Wilson covers a broad spectrum of areas. Her insight into the legislative process and administrative proceedings provides a unique perspective to the "consumer movement."

A demonstration of Mrs. Wilson's abilities is a recent article relating to the Commerce Committee's oversight hearings on the National Highway Traffic Safety Administration's implementation of the National Traffic and Motor Vehicle Safety Act. The article proved to be a concise and accurate forecast of the major issues which the committee dealt with at the oversight hearings. I ask unanimous consent that that article be printed in the RECORD.

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

NHTSA PAYS FOR, BUT FAILS TO USE, "ELEGANT RESEARCH"

The story behind the story, when, on June 29, Consumer's Union held a Washington press conference to demonstrate the inadequacy of children's car seats and to call for improvement of the federal safety standard to which they are manufactured, is that before the National Highway Traffic Safety Agency set that standard they paid $684,914 to the University of Michigan for a study of child seating and restraint systems. The Michigan recommendations are nearly identical to those now being advocated by CU, but are not reflected in the present standard.

This is the second example on record of an NHTSA standard which is at wide variance with agency-ordered research findings, and the subject is sure to come up when the Senate Commerce Committee holds oversight hearings on automobile safety legislation beginning July 18. The possibility also exists that this testimony will convince lawmakers that they should cling to those tenets of the product safety legislation now moving through Congress which isolate the safety standards-making process from outside pressures (See story this issue).

At the CU press conference, films showed the inadequacy of all but two children's car seats when a 30 mph crash test was substituted for the static test which they must pass to be in conformance with the existing federal standard. The tests, using anthropomorphic dummies, showed that a typical three year old child's head would slam into the dashboard, that there would be spinal distortion, or that the seat belt would dig into the child's abdomen causing internal injury.

It is significant therefore that after three years of research Michigan concluded that "it is obvious that child restraint devices should limit the motions experienced by a child occupant" and recommended a "dynamic test procedure" such as the "impact sled" used by CU.

The other question about NHTSA's lack of use of research findings for which it has paid came during this year's appropriation hearings for the agency. Clarence Ditlow and Carl Nash of Ralph Nader's Public Interest Research Group referred to the $17 million NHTSA has paid for "elegant research" and the standards it has issued "completely devoid of input from research."

Ditlow and Nash used as an example the agency's standard for placement, identification, and lighting for automobile instrument panels and controls. They said that although the agency paid for two reports giving detailed criteria and specific suggestions for this standard which differentiate between persons with varying physical characteristics, the standard specifies only that "a person" seated at the controls and wearing a safety belt be able to operate them.

EXTRADITION AND THE GENOCIDE TREATY

Mr. PROXMIRE. Mr. President, in the present debate on the Genocide Convention, opponents of the treaty are attacking it because of the provision concerning extradition contained in the treaty. They feel that our acceptance of the treaty may compel us to extradite American citizens, if charged with genocide, to less competent, foreign courts which do not have our procedures of due process.

Article VII of the Genocide Convention says:

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

However, there is no reason to fear that this provision will subject our citizens to unfair trials.

First, the treaty clearly states that extradition is to be granted according to the "laws and treaties in force." Presently, the United States has no extradition treaty that includes genocide as one of the crimes for which extradition is to be granted. Adoption of the Genocide Treaty does not automatically change this status. Rather, an extradition treaty covering genocide would have to be negotiated by us with other countries and would have to be acceptable to the Senate before it becomes law. Ratification of the Genocide Treaty will not cause Americans to be extradited.

Also pertinent is the Justice Department's policy on extradition specifically outlined by a representative of the Department before the subcommittee of the Committee on Foreign Relations. That policy, which will remain unchanged by acceptance of the Genocide Treaty as well as any new extradition treaty, is to agree to extradition of a person to a foreign court only after the Justice Department determines that the trial will take place in a competent court which follows our procedures of due process. This policy has long insured the rights

of American citizens and it will continue to do so.

The argument that innocent American citizens will be extradited to incompetent, foreign courts is without any foundation. We need not fear the Genocide Treaty. I urge early Senate approval.

BETTER MANAGEMENT OF NATION'S FOREST LANDS

Mr. METCALF. Mr. President, for many months the senior Senator from Oregon (Mr. HATFIELD) and I have attempted to develop a legislative program which will provide a basis for better management of our Nation's forest lands. A recent speech delivered by Senator HATFIELD at Virginia Polytechnic Institute has come to my attention. The Senator has developed in a most impressive manner the urgent need for a better management program of our forest lands. I share the Senator's concern and have introduced S. 1734, which also deals with the problem.

Senator HATFIELD and I are continuing in our efforts to develop legislation which will meet the need. I urge Senators to read Senator HATFIELD's remarks carefully, and I ask unanimous consent that his remarks be printed in the RECORD.

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

REMARKS OF SENATOR MARK O. HATFIELD AT THE THIRD ANNUAL FORESTRY AND WILDLIFE FORUM, VIRGINIA POLYTECHNIC INSTITUTE, MAY 4, 1972

For several reasons, I was most anxious to be here for this occasion. One was to share some thoughts about the great forestry resource of this nation and our responsibility to it and to the people of the nation. Another was that you are honoring on this, your Centennial weekend, a very distinguished Oregonian; a man who not only has his roots in Virginia and particularly in VPI, but a distinguished leader in the forestry industry of the State of Oregon, who, along with his charming wife, Alyce, has contributed so much to the civic life of our State. We are all most appreciative of the continued input of Julian Cheatham into the life of this University, and also the contributions of Mr. Thomas Brooks in establishing an important and distinguished Chair of Forestry. He is putting back into this University, into the industry itself, and into the resource, some of that from which he has prospered. It is in keeping with the scriptural precept that everything we have in this world is only in our stewardship. We own nothing.

I feel very strongly, therefore, that when you give recognition to a team like Julian Cheatham and Alyce, you are not only complimenting yourselves but also the people of Oregon. I want to take this occasion to pay tribute to these richly deserving friends.

I want to talk about a great social problem in this country today, the inadequate housing of our people. America cannot be strong, America cannot really fulfill its responsibilities to the citizens of this nation until we concern ourselves more adequately with the underhoused, the ill-housed, and those who are over-crowded and live in substandard dwellings. More than 16% of our total housing inventory is so classified today. Inadequate housing is no longer a problem only of the poor; it is an increasing problem of the middle income groups as well. When you consider that ⅓ of the total substandard housing in this nation is now found in communities of 2,500 population or less, it represents a broad based social problem that must be the concern of all Americans.

In 1968 the U.S. Congress passed the National Housing Act in which we set as our goal 26 million new and rehabilitated units by the year 1978, an average of 2,600,000 units a year. Since 1968 we have produced an average of 1,600,000 units per year. Part of the cause of this failure to achieve our annual goal is that Congress did not approve companion legislation which would provide the materials for meeting the housing goals. For home construction, 80% of the materials are from the forest product field. Now we might ask ourselves, "Should wood continue to be the prime homebuilding material?" People have appeared before the Subcommittees of the Interior and Appropriations Committees to testify that there are alternatives, that there are substitute materials, that, therefore, it is possible to lock up the forests and make them into single use areas or reduce the multiple use base to which we are presently committed. We must be honest, direct, and forthright and ask ourselves, "What are the alternatives?" without doing violence to other building materials and without denying their proper role.

Analyzed objectively, in the aluminum area we must recognize a basic fact: the production of aluminum is tremendously energy consumptive. It takes 29,860 BTU's of power to produce one pound aluminum. Mining and the reduction wastes have large environmental impacts, and use of aluminum depletes a finite resource. Those who say that it is a very simple matter to substitute aluminum and oher light metals for wood products have to recognize these impacts.

Consider using concrete as a wood substitute. We find that concrete is just a step down from aluminum in the magnitude of energy consumption. Consider plastics as another alternative. In addition to heavy power requirements, synthesis of plastics releases into the environment a wide variety of reagents and intermediates which are foreign to the natural ecosystems. Often they are highly toxic. Ecologically speaking, the synthetic polymers are literally indestructible, accumulate in the environment, and generate important and often poorly understood environmental impacts. As we consider the production of aluminum, cement, and chemicals, which account collectively for about 28% of the total industrial use of the electrical supply in the U.S., we must give full broad consideration to the question, "What are the alternatives?"

Aside from the environmental impact of electrical power generation, projected shortages in the near future remind us that we have no energy to waste. In fact, this summer we will face an energy crisis on the eastern seaboard of the U.S. We can no longer afford the luxury of extravagance in energy consumption. Dr. Barry Commoner of Washington University in St. Louis points out that the chief reason for our current energy crisis in the U.S. is not population, is not affluence, but is the technology of production. Since World War II he points out, productive activities with intense environmental impacts have consistently displaced activities with less serious environmental impacts; the pattern has been patently counter-ecological. Ecologically speaking, wood is clearly the most desirable material to use to meet our national housing goals. Because the energy utilized in growing trees is solar, it is free of charge. With sound forest practices, there is little strain on the environment, and wood is perfectly recycleable. An organic matter, it can return to the soil as part of the natural cycle of life. Also, wood is a renewable resource.

Getting back to the demand that we face today, we must realize that 1972 is expected to be a record year for housing starts with around 2,200,000 projected for this year.

We must remember that the total demand for saw-timber is expected to double during the decade of the '70's. How are we going to meet this demand? Research and development at our universities and the abilities of the professional foresters are a part of the solution, but we must also recognize where the resource exists. As we look at the present problem of our forest lands we immediately are confronted with the large resource existing in our national forests. I come from a public land state in which the federal government is owner of more than 50% of our land. This kind of ownership provides some of the great national forests of our country. We must also recognize that in the far West as well as the rest of the nation, we are increasing the recreational opportunities for our people in the national forests. We are committed to this as part of the mutliple-use concept. Lastly, we need to recognize that the need for forest products is an increasing demand upon our forests.

Polarization of recreation and timber interests is unnecessary. Polarization creates the impression that it is either/or; it is either recreation and "environment," or harvest and timber management that produces the forest products. Lack of funding has often caused the squeeze that is responsible for this conflict. I speak a little bit from my experience during eight years as Governor of the state that is the largest forest production state in the nation. Working with the Interior Department and the Forest Service, I have found that over the years many of these agencies of government have been so underfunded, so limited in tools and resources with which to do their work, that much of the criticism and polarization is a direct result of the failure of Congress and the Executive Branch to provide adequate funding. Therefore, it is our responsibility as citizens to correct this inadequate funding. With increased demands and all the multiple uses to be enhanced, the stress must be relieved.

One of the finest examples of what can be accomplished when people concern themselves with the resource rather than trying to advance the interests of their own specific organizations, by reconciling the various interest groups, occurred before the Appropriation Committee of the Senate in the spring of 1971. Industry and conservation groups agreed on a high priority alternative budget, collectively suggesting increases in it by which recreation management would be increased by 76%; wildlife habitat by 51%; forest fire protection by 51%; soil and water management by 31%; and timber management by 7%. To me this is an example of how men can reconcile their differences and keep their eyes upon the management of the resource and its proper conservation. We can and must bridge gaps or misunderstanding and not continue in the false luxury of polarization.

Where are the timberland resources outside of our national forests? By far our greatest resources are on private lands. Only nineteen percent of our commercial forest land is in the national forests and we find that forest industries themselves, mostly the larger ones, have about 13% of the nation's supply of commercial lands. The remainder, about 60%, is in private non-industrial ownership. When we look at this pattern we realize that we must not only do more with lands in public ownership in general, but we must undertake programs that will incorporate the reforestation, utilization, and conservation practices on private lands as well.

We pay about $3 billion a year for farmers to do nothing with their land in America. It is about time we apply public resources to

those private lands which once grew trees and, through federal incentives working through state agencies and local governments, reforest some 2 to 3 hundred million acres of land. We need to do this not only from the standpoint of meeting our housing needs, but we find that the beleaguered forest wildlife often will be enhanced, particularly in the East where it is under great strain. An average acre of young trees consumes 5 to 6 tons of carbon dioxide a year and gives off 4 tons of fresh oxygen, obviously a positive environmental by-product that would be provided by reforestation. The net cooling effect of a young tree is equivalent to 10 room-sized air conditioners operating 20 hours a day. Trees also lessen noise pollution. In other words, we are cultivating a resource that has multiple uses, that makes multiple contributions to the environment and to human lives.

This leads to the proposition that government must be a catalyst to bring together these groups, the interests, the various organizations, and provide through its leadership a way to satisfy people who want to see esthetic values maintained while meeting the needs of wildlife, the problems of soil erosion, watershed, and wilderness. Wilderness is not a four-letter word. It cannot be excluded from our vocabulary because it tends to be misused by some who want to turn the whole nation into a wilderness. Wilderness is a legitimate objective of the multiple-use concept and must be so treated. By the same token, we cannot exclude the needs of forest production.

The American Forestry Act, introduced as Senate Bill 350, was intended to rehabilitate the back-log of 5 million acres of unreforested federal lands by providing a funding system which would project management needs years and generations ahead. We cannot conduct a forest management program on an annual budgetary basis. Forests have a 60 to 90 year growing cycle. Many times forest management programs are so constricted by the annual appropriations approach that they cannot provide for future needs. We have 111 million acres of commercial forest land in the United States that have less than 40% tree stocking; we have 35 million acres that are nonstocked; ¾ of this land is in the eastern United States. The American Forestry Act had as its objective the securing of a funding system that would aid reforestation and maintain our commitment to multiple-use principles. The Act also would provide, for the first time, meaningful incentives to reforest private lands.

Under the present policy, the annual harvest from the national forests would have to triple in the 1970's to meet the 1980 demands. It would be unconscionable to put this kind of pressure on national forest lands, but unless we adopt an aggressive and daring new program for reforestation, that's the kind of pressure that will be applied. Sadly, there is little support in comparison with what there should be for this middle-ground approach. One of the best signs that perhaps we have the right approach is the fact that we have had so much criticism from both groups—the environmentalists and industry. We evidently have struck a pretty good middle ground, but unless we can bring these groups together and find a mutually satisfactory approach, we are going to continue to neglect the forest resources of this country. We can build with materials that are ecologically sound at reasonable cost, because 80% of the materials of our homes come from wood, while only 10% of the cost is represented by the wood. Therefore we can meet the demands while we protect our forests and our environment and enhance all the multiple uses of our forest lands.

As you continue an expanded program here at Virginia Tech from 70 students to 600 in your Forest Education program, I am sure you will see not only opportunities to extend and expand the number of students participating in the development of professionals to meet this nation's need, but also we can see in Julian Cheatham Hall additional emphasis on research that must come with the assistance of the federal government. It is a natural and a reasonable cause for federal expenditures. For example, we have about 55 million tons of wood waste annually from our forests and manufacturing plants. A very interesting pilot project has been developed in Pennsylvania under the direction of the Bureau of Mines of the federal government which we plan to expand in Albany, Oregon. The concept is development of a process to convert wood waste to a low-sulfur oil. For each ton of wood waste, one and a quarter barrels of oil can be produced. Look at that from the standpoint of the environment—pests and fire and all other threats that this kind of waste now represents in our forests. If we were able to retrieve only 10% of that wood waste annually it would produce 7 million barrels of oil. We have reached our oil production peak in this country and are on the decline as the demand curve continues upward. This would mean a move in the direction of full utilization of a resource, which is the highest type of conservation practice. It is an opportunity for the forestry departments of our universities to help not only to meet housing needs, but also to practice the highest type of conservation.

NO-FAULT INSURANCE

Mr. SPONG. Mr. President, as a member of the Commerce Committee, I voted to report S. 945 despite having reservations about its high benefit levels and rigid restrictions on the tort system.

There were two major considerations in my support for bringing the bill to the floor.

First, I recognize the shortcomings of the present system for insuring and compensating auto accident victims. So long as recovery of losses is wholly dependent upon proving fault, the individual claimant is at a great disadvantage in seeking compensation from an insurance company. These companies negotiate from the comfortable position of knowing they can always challenge the claim in court and have the resources with which to do it. The legal right available to the claimant, by contrast, is often circumscribed by financial pressures to pay medical and other bills and the uncertain outcome of a long legal battle. Additionally, I believe reforms are long overdue in the matter of cancellations and nonrenewals of policies which has been the issue of greatest concern to constituents writing me.

The second factor favoring consideration of the committee-reported bill is that it takes the form of minimum State standards and no provision is made for Federal intrusion on the States traditional role in the insurance field. I understand, however, that several amendments will be offered to tighten up Federal standards, including one to empower the Secretary of Transportation to pass judgment on State plans to assure that they are in compliance with the standards of S. 945. Such a provision is felt by certain large insurance companies to be critically important to avoid interminable court challenges of State plans on grounds of noncompliance with Federal standards.

In my opinion, the addition of such a provision would radically change the character of the bill and would bring the Federal Government directly into the insurance field.

I concede to those who raise the issue that the bill as now drafted could create confusion and costly delays for insurance companies. I submit, however, that a better approach to the noncompliance problem would be to allow States wider latitude in drafting their own no-fault plans. The more discretion left to the States under the bill, the less chance there will be of a question of noncompliance arising. This course also is counseled by the desirability of having some experimentation and further experience in the field.

The record of State legislatures over the past three or four years may support the case for a Federal minimum standards bill, but I do not believe the situation is yet that urgent or that the States have demonstrated such resistance to the no-fault concept that Congress is justified at this juncture in enacting what in all but name would be a Federal program.

To take one example, my own State of Virginia is often cited as one of the States which has rejected no-fault insurance. The fact is that even proponents of no-fault lobbied against the bill in the last session of the general assembly because it was judged to be deficient in a number of respects. But can the rejection of a bad bill be taken as evidence of opposition to the no-fault concept?

In any event, I believe the Congress should content itself at this time with launching the States on the road to auto insurance reform and not attempt to impose on them a model bill. Whatever first-party benefits are mandated and whatever restrictions on the tort system are required by this bill are, after all, minimum standards only. A State would be free to establish much higher standards if it chose. It should also be free to experiment with different ways of reducing small claims auto cases

In my individual views, printed as part of the committee report, I pointed to the arbitrariness of restricting torts for intangible damages to individuals who suffer a disability of 6 months. Who is to say that a person hospitalized for 3 months with a painful rib or back injury is not as entitled to compensation for his suffering as the man who has a less painful injury but whose recuperation happens to extend to 6 months? I believe the States should be given latitude to establish their own minimums and standards and also the option of trying other approaches such as the evidenciary exclusions used in Delaware. That plan merely restricts use in evidence of tangible losses already recovered. Even so, it is expected to reduce auto accident claims cases by half.

Mr. President, I want to make my position on this bill as clear as possible. I am not one who opposes all action on no-fault insurance. Neither am I one who would support a Federal bill which leaves

very little discretion to the States. I will support a bill that is truly a minimum standards approach and which leaves it principally to the States to strike their own balance between first-party protection and restrictions on the tort system.

This is all that I believe we are justified in doing at this time. But in going that far I think we will have accomplished our major objective—to prod the States to reform their auto insurance systems and provide for them some basic directions in which to proceed.

THE 1972 ESKIMO OLYMPICS

Mr. GRAVEL. Mr. President, the uniqueness of Alaska's "Great Land" is best exemplified by some of the Native people who live there. They work hard, live hard, and play hard.

An outstanding example of their unique heritage can be found every year at the Eskimo Olympics. The traditional meet draws rugged Alaskan and Canadian Eskimos to compete in events such as the knuckle hop, ear-pulling, seal skinning, and muktuk eating contests.

An article published recently in the Washington Post recounted the vivid story of the 1972 Eskimo Olympics. The article was written by Lael Morgan, one of Alaska's outstanding reporters and photographers. I ask unanimous consent that the article be printed in the RECORD.

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

ESKIMO OLYMPIC

(By Lael Morgan)

FAIRBANKS, ALASKA.—Records were smashed and so were a few of the contenders at the 12th annual Eskimo Olympics. The traditional meet, as tough as the Arctic environment that spawned it, attracted a number of rugged Alaskan and Canadian Eskimos, despite forest fires and erratic plane schedules that deterred some titleholders.

Reggie Joule, a young Alaskan competing for the second year, jumped to victory in the one-foot high kick and blanket toss, while Gordon Killbear of Barrow, Alaska, cracked his own record for the knuckle hop. A Canadian, Mickey Gordon, captured the two-foot high kick record but nearly severed his ear in the process of placing second in a later event.

The games provide tests of pain, endurance and agility that have been handed down for centuries in Arctic villages. Some contests, like seal skinning and fish cutting require practical skills for which competitors must have a good grasp of their native heritage. Others, like the knuckle hop, demand such high tolerance of pain that they were once banned by missionaries because of the potential for crippling and maiming.

The knuckle hop requires the competitor to get down on all fours and hop on his knuckles in a battering push-up fashion. Few men can stand the pain and the average distance covered by Eskimos (hardened by their cold world) is about 20 feet. However, Gordon Killbear broke all records last year by covering 61 feet and came back (20 pounds lighter) this year to hop a grinding 70 feet 5 inches.

"It doesn't pay to practice for this sport," he grinned, brandishing a battered fist. Last year it took his hands two months to heal to a point where he could again compete.

Killbear also won a new event called "Drop the Bomb," introduced by the delegation from Inuvik, Canada. The contest requires a man to stay absolutely rigid while four others carry him by his hands and feet. Muscle strain was so great that all contenders emerged trembling, but Killbear held out a full lap longer than William Day, the Canadian who was second.

Blood was let for the first time this year in the ear-pulling contest, in which a cotton cord is looped from the ear of one contestant to the ear of another. Joe Kaleak pulled with such force he twice broke the string and finally cut deeply into the ear of Mickey Gordon.

"I didn't mean to do it, but he just wouldn't give up," Kaleak said. Gordon, who has a reputation as being immovable, appeared unperturbed by the mishap.

"If you lose an ear, you lose an ear," reasoned one of his teammates. "In Inuvik we have a man who carried 20 pounds in the ear weight contest and went 22 laps. We had to stop him or he'd have lost an ear. He didn't want to give up, either."

Kaleak also was the ear-weight champion, carrying 14 pounds 720 feet. The Olympic record is 17 pounds for 860 feet but Kaleak had worn out one ear pulling with Gordon and was not inclined to try for another round.

The world record for the one-foot high kick is 8 feet 3½ inches, set by Gordon last year at the Canadian Winter Games. He did not arrive at the Olympics in time to compete in that event and Joule, from Kotzebue, took the trophy by kicking 7 feet 10 inches.

Both Gordon and Joule were surpassed in the swing-kick competition, which requires a contentant to place legs and head in a belt loop, lift himself off the ground and swing his feet at the target. The honors went to Buck Dick, a 19-year-old Inuvik Eskimo, who set the mark at 52 inches.

Morgan Segak plodded 32 feet in the body weight contest carrying four men (600 pounds).

Also collecting trophies were Elizabeth Lampe, an Eskimo grandmother from Barrow who skinned a seal in 1 minute 27 seconds, and Roy Katairoak, 17, of Barrow, who won the muktuk eating contest by downing a sizable chunk of whale skin and fat in 20 seconds.

Katairoak believes, like most Eskimo athletes, that muktuk is the breakfast of champions.

"And a beer or two on occasion never hurts, either," concluded Joule, who takes his training seriously.

A FALSE COMPARISON

Mr. DOLE. Mr. President, an article published in the Arizona Republic of July 24, 1972, demonstrates the enduring perceptiveness of a Member of this distinguished body.

That Member, Senator GOLDWATER, has served his country and his party in many capacities during his years of public service. He has always been a leader and an outstanding example of a forceful and effective public figure.

Oftentimes, aspiring politicians of varying capabilities are compared to established leaders such as Senator GOLDWATER. And, oftentimes, these comparisons miss the mark.

The following article demonstrates how these "comparison tests" are misleading, confusing, and inaccurate. I ask unanimous consent that the article, from the Los Angeles Times syndicate, be printed in the RECORD.

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

SENATOR BARRY GOLDWATER

On September 8, 1964, one of my Senate colleagues placed in the Congressional Record his opinion of my candidacy for President on the Republican ticket. It said, "I regard Mr. Goldwater as the most unstable, radical, and extremist ever to run for the Presidency in either political party."

The identity of my well wishing colleague was Senator McGovern, of South Dakota. What happened in Miami Beach on Wednesday, July 12, permits me to relinquish that title.

If there ever was any truth to the claim that my views were radical in 1964, they pale by Mr. McGovern's posture in 1972. If any of my proposals were radical, they were carefully screened by a credible platform committee headed by Secretary of Defense Melvin Laird as chairman and a Congressman named Charles Goodell of New York State as co-chairman. If my ideas were radical or extreme, they were radical and extreme in the right direction; in the direction of strengthening the United States at home and abroad, in the direction of moving in and ending the Vietnam War in the year 1965, in the direction of correcting the vast imbalance for liberalism in the nation's courts for returning law and order to the streets of our nation's capital and throughout the country. Yes, I guess some of my ideas were extreme and radical in the sense that they believed there was a point beyond which permissiveness could not move if we were to stave off anarchy and keep the nation safe.

Ever since McGovern began to move up as the likely Democratic candidate for Presidency, I have read and heard a lot of hogwash from the national pundits to the effect that McGovern's campaign closely resembles the Goldwater effort in 1964. I reject the premise completely, and I believe that as one of the principals I am entitled to a few observations.

(1) If my program was radical, it was that way only because the Democratic liberals in charge of the Congress and the White House had failed to provide leadership and permitted this nation to drift into irresponsibility, lawlessness, and a determined effort to reject our assigned role in the world and become isolationists. I believe that in 1968, when people began to understand what the Republican Party meant, myself included, they opted for responsibility and elected Mr. Nixon.

(2) Anyone who thinks my campaign has any similarity to the one conducted and built by George McGovern better understand that I wouldn't touch, much less vote for, his ideas on amnesty for this nation's deserters and draft dodgers; for his strong views in favor of busing little children, sometimes 30 or more miles, merely to give the appearance of a racially balanced school; or his ridiculous defense proposal which merely suggested cutting $32 billion out of our budget, regardless of what that might do to the nation's security or his plan for unilateral reduction of U.S. forces assigned to NATO, our European shield and his suggestion to cut the number of our aircraft carriers from 16 to 6.

(3) Let me be very frank: Even tacitly I resent any linking of my name with a man whose plans for the security of this country have been called "simple minded" by some of the top experts I know of in this country.

(4) If you want to get radical, you might read carefully McGovern's suggestions for a welfare program to pay $1,000 to every American family or a tax program which would cost $55 billion more per year than is taken in. It is explained glibly that this money would come from steeper taxes on the upper and middle class. Some estimates have claimed that his tax program would cost persons earning $20,000–$25,000 for a family of four an increase over existing taxes of $1,000 and an enormous $4,021 for those on

an income of $25,000 or more. It should be understood that these figures would be in addition to the tax rates already paid.

(5) When you start comparing McGovern with Goldwater, you must remember that I never suggested or threatened to bolt my party on the assumption that it would not go along with what I wanted.

And finally, I should like to have it remembered that Goldwater never changed a single principle in his quest for votes. Mr. McGovern is already paving the way to go back on his word in a number of important areas. His strong protestation for clean politics went right down the drain in Miami when it became necessary to start wheeling and dealing to make a first-ballot nomination. And, accept the fact, even Mr. McGovern's running mate, Senator Eagleton, of Missouri, explained to reporters that he has been chosen because it was felt he would help the ticket by being from a large urban area, by being a Roman Catholic, and a number of other strictly vote-getting propositions. Prior to that, McGovern had stated many times that he wanted primarily a man who could step in and do a good job as President if anything happens to him. With all due respect to my many good Catholic friends, I believe a Protestant could maybe do the job.

LADY LOBBYIST RATES TOPS

Mr. HUMPHREY. Mr. President, I invite the attention of Senators to an article published recently in Roll Call describing the diligent and effective work of Dorothy Ellsworth, one of the few female legislative representatives working in Washington.

Mrs. Ellsworth, a lobbyist for the Brotherhood of Railway, Airline, and Steamship clerks, assumes her responsibility with a serious dedication and dignity that makes her a credit to the lobbying profession and serves as an excellent example of the increasingly important role women are taking in the governing process. When lobbying is sometimes looked upon as a world dominated by cigar-smoking, back-slapping men, Mrs. Ellsworth sets an excellent example of the positive and productive aspects of this profession. She is an intelligent, gracious, and effective spokesman for the union she represents.

I ask unanimous consent that the article entitled "Lady Lobbyist Rates Tops" be printed in the RECORD.

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

LADY LOBBYIST RATES "TOPS"

A female lobbyist?

The image of a Dita Beard, ITT's tough, hard-drinking, chain-smoking, back-slapping representative to The Hill, swirls into mind and flushes any possibility of an alternative from your thoughts.

The existence of Dorothy A. Ellsworth, the soft-spoken, non-drinking, non-smoking legislative representative for the Brotherhood of Railway, Airline and Steamship Clerks proves that such an opposite can and does exist.

Ms. Ellsworth is an attractive blonde mother of an 18-year-old daughter and the first woman to be named as one of the directors of the First Sierra Fund—a fast-growing mutual fund.

The Fund made an excellent choice.

Dorothy Ellsworth is used to being in the minority. There are 1,471 registered lobbyists who flock to Capitol Hill each day, but only 28 of them are women.

Dorothy sees no problem being a woman in the very male-oriented political atmosphere. "I'm treated as an equal on The Hill, although I do think Congressmen enjoy seeing a female on business a little bit more than another man."

Because of the male dominance in the lobbying field, Dorothy feels she must try harder, be dependable and know she can produce. "You really have to prove yourself."

Advantages? "Lobbyists often have to humble themselves walking into an office. Men don't like to do that."

Dorothy says the Hill lobbyists are like a large family. "We respect each other and do anything to help one another." And she means it. One of her cohorts wanted to ask a member Dorothy knows well to be a keynote speaker for a dinner. Dorothy simply planted herself and the other lobbyist in the tunnel connecting the Capitol and the office buildings and waited until the member came hurrying through. She introduced the two and casually excused herself as her friend brought up the topic of the speaking engagement.

Dorothy is serious about her responsibilities as a lobbyist—describing her job as that of a "middleman." "I represent seven modes of transportation—300,000 working men and women.

"It's not glamorous; it's challenging. I depend on followthrough and stamina."

She arrives at work as early as 7:00 AM to have time to get through her mail, do reports on bills and activities, and organize a book she keeps on everything she does. She has coffee and outlines an agenda for the day.

"The agenda may change ten times. Walking around The Hill, you meet numbers of people who are related to BRAC legislation our membership would like to see passed. I stay flexible, but I never waste time."

Dorothy tries to have two or three appointments before 10:00 AM when Committee hearings begin. Members are difficult to see until the hearings end at about 12:00 noon, and Dorothy often has hearings she must sit in on to help her contribute to a weekly newsletter for the BRAC members.

"I walk down a hall and, if I have a little time, I just stick my head in and say hello, or what's going on, or how's the mail? I try to find out any problems in the Congressman's state and get back to my local people to see if anything can be done."

Lunch is always business. You can find her at the Democratic Club or the Republican Capitol Hill Club and even at the Longworth cafeteria.

"I often have two luncheons a day. And if I don't, I'll stick my head in other luncheon places in case someone has some information they need to get to me. That's how I keep in touch."

The afternoon is again filled with appointments aimed at letting the Representatives know how BRAC members feel about certain legislation.

"On a hot bill, I may stop in to see each member on the appropriate committee or his legislative assistant. For example, the Interstate and Foreign Commerce Committee has 43 members. If important legislation is before that committee, I'll see each of those members either in his office or running from one appointment to another."

Dorothy estimates that she can recognize 350 of the 435 Congressional members and just about every Senator. "But, the 'mportant thing is, do they know you?"

They do. Chuckling, Dorothy tells how she has sat in the galleries and had members motion her for a thumbs up or down gesture when voting is occurring on the floor.

Rep. Harley Staggers (D-WVa) says Dorothy is "efficient and effective . . . and always does a fine job for her organization." Rep. William Stuckey's (D-Ga) administrative assistant Wallace Jernigan agrees. "She's very effective as well as attractive—and that helps in her field. She has all the attributes a man or a woman needs in that profession."

When she enters a member's office, she is ready for any and all questions. "I do my homework." She has a file on every member which is filled with clippings from the *Congressional Record* and voting needs.

When the going is rough, Dorothy is inevitably in the middle. On one important Committee vote that was expected to be 15–15, it was her job to talk a member into not attending the Committee session.

"I knew the member who could swing the vote and waited outside his door for half an hour. When he walked out I simply walked up to him and said, 'We need to pass this bill. Would you please do what you can to help us in this regard?' This distinguished Congressman simply didn't show and we won."

Dorothy has only two prescheduled meetings each week. One at 10:00 AM Monday morning is a legislative rundown for labor lobbyists giving a breakdown on what is going to happen that week on the floor and what bills to follow. The second is at 2:30 that afternoon—a BRAC strategy meeting which she usually does not have time to attend. She does not often even get back to the office to make phone calls or organize for the following day. "I just never seem to make it back," she shrugged exasperatedly.

Evenings are filled with receptions. Sometimes there are three affairs in one night. "I change shoes a couple of times each day."

Dorothy has only two prescheduled meet- BRAC membership in the fifty states—meetings that are predominantly attended by men. She explains the committees, amendments, what a letter to a Congressman can do, and tries to relate federal action to what is going on in that state. She speaks extemporaneously drawing her audience to her with a smile that encompasses everyone in the crowd—plus she knows her business.

"My travelling is done mostly on weekends, but I often arrive at work and am told at 11:00 AM that I've got to be on a plane at 4:00 that afternoon." She writes the outline for her speech on the plane, gives her presentation at 9:00 the next morning and has left at 3:00 to catch a 1:00 plane back to Washington and returned to California all in one week.

All flights are not as hectic as the one on which she had to monopolize the ladies room changing into an evening gown and a fall in an effort to make a White House correspondents dinner that evening. Dorothy smiles and says she made it in the middle of the meal. "And I think that's pretty good, considering the circumstances."

Dorothy's schedule leaves little time for a personal life. Her dating is further limited by a self-imposed restriction on seeing anyone who works on the Hill. She was explaining to one date how busy her travel schedule was and why she couldn't see him when he yelled "See you in September," and slammed the phone down.

"My boss overheard the conversation and suggested that I should have corrected him and said, 'See you in November.' You know what?—he was serious."

Her words of advice to any female who wants to break into male-dominated lobbying? "You just can't let anything bother you."

REGISTERED NURSES AS FAMILY PRACTITIONERS

Mr. METCALF. Mr. President, earlier this week I discussed the two-pronged health crisis in this Nation. One prong occurs in our overcrowded cities that have an abundance of medical personnel, but where the crowded conditions

create seemingly inescapable health hazards. The other prong occurs in our rural areas where we lack sufficient numbers of medical personnel but have healthy living conditions.

I contended that our medical personnel now located in areas subject to air pollution alerts, bordering on air pollution crises, must recognize from their own training the necessity to provide better living conditions for their families and for themselves. I have offered, and I continue to offer, all assistance to any medical personnel in the Washington, D.C., area or elsewhere along the eastern seaboard who wish to escape to practice in the clean air of Montana.

However, I also noted that Montana recognizes the problem of insufficient numbers of medical personnel and is experimenting with innovative approaches to provide quality health care to all its citizens, whether in rural or urban locations. One such innovative approach now being developed offers registered nurses expanded training to develop them into family practitioners. Recently this program was described in the Montana Collegian, published by the alumni association of Montana State University. Since this program may offer insights helpful to other rural areas in meeting their health needs, I ask unanimous consent to place the article in the RECORD.

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

FAMILY PRACTITIONERS

Health care in many isolated rural communities of Montana will improve as a result of a new educational program under development at the MSU School of Nursing.

The project will be carried out by the School of Nursing under a contract with the U.S. Public Health Service.

"Some details of the contract remain to be worked out," Dr. Laura Walker, director of the School of Nursing, said, "but it is expected the agreement will be signed this summer and the program will start with the opening of the fall quarter of school."

"The program," she continued, "is designed to make 'family practitioners' out of registered nurses presently working full or part time in rural communities. The program would include some who graduated ten or 15 years ago and who now want to get further involved in the improvement of the health services of the small towns and rural areas in which they live."

The new program will help nurses expand their responsibilities and areas of service, enable them to better assist individuals and families with their health needs, and direct those they cannot help to the proper physicians or other health authorities for treatment. In some instances these greater responsibilities will help relieve overworked doctors of some of the medical routine of their offices, so they will have more time to devote to the more seriously ill.

Montana physicians have already nominated 45 rural area nurses as first participants in the program. Names of three times as many more who desire this advanced training are on file, Dr. Walker said, and will be considered for training in future courses.

Participants will be assigned one quarter of study in the School of Nursing on the MSU campus. Another quarter will be spent in various medical and health facilities in the Great Falls area, and during the final quarter, under proper guidance, the nurses will put their newly-acquired skills to work in their own communities.

In a departure from usual teaching practices in the School of Nursing, three practicing medical doctors will assist in the teaching program.

Areas of study which will be covered include taking of health histories, making assessments of the general health of patients, giving screening physical examinations, conducting minor laboratory tests and developing a greater knowledge of the use and control of drugs, including alcohol.

Dr. Walker also announced another innovation in the education of nurses at MSU.

Beginning with the 1972 fall quarter, Dr. Walker said, students enrolled in the regular baccalaureate program will be offered the opportunity of expanding their education into some area of concentration such as surgical nursing, emergency room practice, intensive care procedures, pediatrics, medical nursing or geriatrics.

This program of giving undergraduate nurses a field of concentrated study in nursing, together with a broad education in all areas of nursing and health care, will greatly enhance their employability, Dr. Walker pointed out. It will prepare them for positions of greater responsibility, which in turn will command higher salaries and at the same time bring them a wider range of job offerings upon graduation.

Only senior students will be eligible for this advanced preparation, Dr. Walker said, which will be carried out during the final year of their studies.

THE MENTALLY RETARDED CHILD

Mr. KENNEDY. Mr. President, the Senate recently accepted an amendment which I offered to increase the appropriations to $65 million for fiscal year 1973 for the developmental disabilities program. The Development Disabilities Act specifically supports State and local programs for the mentally retarded. Far too little has been done in the past to provide humane care, treatment, and rehabilitation of the Nation's mentally retarded children and adults. The Senate's recent approval with strong bipartisan support increased appropriations for such programs indicates an increasing commitment to assure quality care and rehabilitation for the mentally retarded.

Of vital concern in this area is the need for innovative and creative approaches to develop the inherent potential for rehabilitation in the mentally retarded child. Special interest has focused on methods and techniques to overcome serious impediments and deficits in the retarded child's learning to speak. Mr. D. Balfour Jeffrey, a doctoral student in clinical psychology, has developed a most interesting method to develop the speaking ability in a mentally retarded child. His impressive research and treatment demonstrate the increasing advances being made in treatment of the disabilities of the retarded.

Mr. President, I ask unanimous consent, that an article by Mr. Jeffrey on his recent work, be printed in the RECRD.

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

[Reprinted From Mental Retardation, Vol. 10, No. 2, April 1972]

INCREASE AND MAINTENANCE OF VERBAL BEHAVIOR OF A MENTALLY RETARDED CHILD

(By D. Balfour Jeffrey)[1]

ABSTRACT

Operant and imitative techniques were used in programming generalization of verbal behavior in a child. In the individual training sessions a high rate of phoneme imitation and tacting sounds with pictures was established using contingent positive reinforcement. A self-programming procedure using a Language Master enabled the child to practice independently sounds and words learned with the therapist. In addition, two of the child's peers, who were mentally retarded but verbal, were trained to practice words with the child. The data indicated that the program was able to: (1) increase phoneme imitation from 41% during baseline to 95% during treatment; and (2) increase the rate of classroom verbalization from 15% during baseline to 46% during treatment. Classroom follow-up data indicated the child's average rate of verbalization decreased slightly from the treatment phase, but remained at a level substantially above the baseline level.

Applied research using operant conditioning principles has provided numerous demonstrations that a child's behavior can be modified by the manipulation of consequences (Summaries: Bandura, 1969; Gelfand & Hartmann, 1968; Kanfer & Philips, 1970; O'Leary & Drabman, 1971; Ullmann & Krasner, 1965; Ulrich, Stachnik, & Mabry, 1966). During the past decade, the use of these principles in remedial speech development has increased with particular rapidity. Lovaas (1967), Peine, Gregerson, and Sloane (1970), and Wheeler and Sulzer (1970) were able to establish speech in nonverbal mentally retarded and schizophrenic children by using reinforcement techniques. These and other studies in this area have focused almost entirely on techniques for speech acquisition (e.g., Brookshire, 1967; Girardean & Spradlin, 1970).

In the applied setting, however, it is apparent that techniques for the maintenance and generalization of newly acquired speech are of equal importance. Several investigators have discussed the importance of these issues (e.g., Barton, 1970; Cook & Adams, 1966), but there are few demonstrations of techniques that might be used to promote the generalization and maintenance of verbal, behavior. Baer, Wolf, and Risley (1968) have emphasized that generality is not automatically accomplished whenever behavior is changed; rather it should be systematically programmed. In an article on behavior modification with the severely retarded. Nawas and Brown (1970) discussed general principles for establishing the self-maintenance of behavior, but they did not present specific procedures and data in support of the general principles. Thus the purpose of this case study was to develop a practical program for both the development and maintenance of verbal behavior in a speech deficient mentally retarded child.

METHOD

Subject

Judy was an 11 year old, mentally retarded girl. The school records indicated that she was able to hear and was in good health. Her records also indicated that attempts to administer the Stanford-Binet were unsatis-

[1] The author is grateful to the staff of the Opportunity Center, Salt Lake School District for help in conducting portions of the study and to Dr. Donald P. Hartmann and Richard Kale for reading earlier drafts of this manuscript.

factory because of her serious verbal deficits. The psychologist who administered the test estimated her IQ at 30. Judy was referred to the behavior therapist by the school staff because she was thought to have few sounds or words in her repertoire. Her teachers indicated that she did not verbally answer their questions, make requests, or speak to her peers in class. They did indicate, however, that she was able to communicate through hand and facial gestures, and did so quite effectively. They also indicated she occasionally had temper tantrums.

Assessment procedures

Classroom assessment. After the teachers' initial reports were substantiated by informal observation of Judy's free time classroom behavior, formal assessment procedures were instituted (Johnston & Harris, 1968). These procedures included frequency counts of the following behaviors: (a) auditory discriminative stimuli directed at Judy; (b) Judy's verbal and nonverbal responses; (c) verbal consequences directed at Judy's verbal and nonverbal responses. The following are definitions and examples of the behaviors scored:

(*a*) *Auditory discriminative stimuli directed at Judy.* These cues included any verbal sounds emitted by either the teachers or students which were directed specifically at Judy or at the class in general, and which were understandable to the observer (*O*), who was not more than 15 feet away from Judy. If a student asked Judy a question or if the teacher gave directions to the whole class, the responses were scored.

(*b*) *Judy's verbal and nonverbal responses.* A verbal response was scored whenever Judy emitted verbal sounds which could be heard by *O*, who was not more than 15 feet away from her. This definition excluded sounds such as whistles, grunts, or coughs. For example, if she said the teacher's name, the response was scored. Nonverbal responses were scored whenever Judy made a hand movement, facial gesture, smile, or head nod that was directed at either the teachers or students. If the child waved her hand to the teacher or shook her head "no," these responses were scored; if she swung her hand in jump rope or kicked a ball, these responses were not scored.

(*c*) *Verbal consequences directed at Judy's verbal and nonverbal responses.* Verbal consequences included any verbal sounds emitted by either the teachers or students which were directed specifically at Judy or at the class in general, and which followed Judy's verbal or nonverbal response within approximately 5 seconds. For example, if Judy said "toast" and the teacher said within 5 seconds "very good," it was scored.

The classroom observations were taken during the free play period a minimum of three times during the baseline, treatment, and follow-up phases of this study. One or more raters coded the three categories of behaviors for 45 consecutive, 20 second time intervals (15 minutes). If any of the three designated categories of behavior occurred in any part of the 20 second time interval, it was scored; if it did not occur in any part of the 20 second time interval, it was not scored for that interval. The total scores for each observational session were then a percent of time intervals in which a particular behavior occurred.

Individual assessment. This assessment consisted of an evaluation of the child's ability to imitate the base phonemes in individual testing sessions with the therapist. Each of 39 phonemes was presented orally to the child. If she imitated them according to the standard phonetic pronunciation (Karr, 1953) it was scored correct. Responses that failed to meet the standard criteria were scored incorrect.

Treatment procedures

Standard treatment procedures. The therapist conducted 15 30 minute individual training sessions one to three times a week with the child. The basic procedures employed were those described in the language studies of Lovaas (1967) and Sloane and MacAulay (1968). The sessions were conducted in a room that contained as few distractions as possible. An outline of the procedures used follows:

1. Nonattending and disruptive behaviors were eliminated by administering time-outs for inappropriate behaviors and contingent reinforcement for appropriate behaviors.

2. Specific sounds were shaped to come under imitative control.

3. A high rate of phoneme imitation was established through the use of contingent positive reinforcement.

4. Two or more sounds were chained together, e.g., my teacher.

5. Objects and pictures were associated with added imitative auditory discriminative stimuli, e.g., the therapist held a picture, vocalized a sound, and then had Judy imitate the sound.

6. Imitative discriminative stimuli were faded from step 6.

7. Single mands were established, e.g., after Judy had learned to name an object, this name was required in appropriate situations before reinforces were dispensed.

The following is an example of a typical training session to illustrate how these procedures were utilized. At the designated time the teacher sent Judy to the training room adjacent to the classroom. The therapist would have a cupful of assorted candies in full view of Judy. He would place himself directly in front of her and then very slowly enunciate a sound or word and have the child imitate the sound after him. If she was correct, he would immediately give her a piece of candy, smile, and say, "very good." If she was incorrect, he would wait for 15 to 30 seconds and would then repeat the sound.

Additional treatment procedures. To help maximize the probability that the verbal behaviors learned in the individual sessions would generalize and would be maintained in the classroom, the following additional strategies and procedures were instigated:

1. *Selection of functional terminal behaviors.* Rather than teaching a long list of words which Judy could have imitated perfectly in the individual sessions but which probably would not have had much relevance to the classroom, Judy was taught in a short list of words which would have maximal relevance to the classroom. The selection of terminal behaviors which have high relevance and/or positive consequences in the environment is a very simple but often overlooked procedure in learning programs.

2. *Practice on a self-managed language training machine.* In order to insure greater practice of her increasing verbal repertoire, Judy was taught to use the Bell and Howell Language Master. This was accomplished by the therapist first modeling how to use the machine and then fading control over to the child until she could operate the machine independently. Use of the Language Master involved the following 4-phase sequence for each word: First, Judy looked at the word card and then sent it through the Language Master and recorded orally her response. Second, she sent the card through the machine on the instruct button which played the correct pronunciation of the picture or word. Third, Judy played her card back to make the discrimination of whether she had a correct or incorrect response. Fourth, if her response was correct, she placed that card in the "good pile" and if it was incorrect, she placed it in the "not so good pile." She was taught to go through the same sequence for each card in her pack without the therapist being in the room. This technique was started after Judy had established a high rate of phonema imitations. It was continued 1 to 3 times a week for about 10 minute durations throughout the treatment phase.

3. *Peer trainers.* To further promote generalization to the classroom, Judy's peers were also involved in the program. After finding out from the teachers who were Judy's two most verbal friends, and gaining their cooperation, the following procedure was instituted: Two 20 minute sessions were spent teaching the two peers how to use the review word cards that Judy had already learned in the individual session. They were tested to make sure they knew the cards, and also taught to praise Judy every time she made a correct verbal response, and to repeat any card she did not do correctly. Judy's two friends then reviewed the cards regularly with her. In addition to the specific formal practice sessions, the peer tutors were encouraged to use the words they formally practiced with Judy in their daily interactions with her.

4. *Teacher training.* The program to train the teachers was minimal. The language program for Judy was explained to them and they were encouraged to positively reinforce any verbal behavior and not to respond to nonverbal behavior. They were also asked to remind the two peer trainers to tutor Judy regularly.

RESULTS

Individual sessions

Figure 1 shows the number of correct phoneme imitations that Judy emitted to the therapist's prompts. During baseline, Judy imitated 16 of the possible 39 phonemes, or approximately 41% of the total possible. During treatment when candy and social consequences were applied to correct imitations, the percentages of correct phoneme imitations stabilized at 95% by the eleventh session. These results were also maintained in the follow-up probe completed approximately 1 month following the last training session. Because Judy had difficulty learning two phonemes (the remaining 5%) and they were not crucial to the development of her verbal behavior, they were dropped from further learning trials. She also learned to name picture-word cards, to use the names of the teachers and other students, and to use social amenities such as "please" and "thank you."

Classroom verbalizations

Figure 2 summarizes the effects of the learning and maintenance program on the percentage of auditory discriminative stimuli and verbal consequences directed at Judy by the teachers or students, as well as the percentage of verbalizations emitted by Judy in the classroom. During baseline (Panel II), Judy's average rate of verbal responses was 16%. Her rate almost tripled to 46% during treatment. The follow-up data for both 1 and 3 months showed a slight decrease in rate (35%) when compared to training, but this rate was substantially higher than baseline. Nonverbal responses remained at a relatively constant rate throughout the study.

The percentage of auditory discriminative stimuli and verbal consequences (Panels I and IIII) directed at Judy by other students increased substantially during treatment and was maintained at a high level through follow-up.[2] There was no substantial change in the teachers' verbal behavior directed at Judy during any of the three phases.

[2] The classroom observation data excluded any of the formal practice sessions between the peer tutors and Judy.

Reliability

In order to estimate the interobserver reliability of the behavioral categories, four classroom observations were made with two raters present. The interobserver reliability was calculated for each behavior using the percentage of effective agreement procedure (Jensen, 1959). The reliability coefficients varied somewhat across the different behaviors, but in general they were mostly in the .70's and .80's. The coefficients for Judy's verbal behaviors were as follows: .76, .81, .67, and .86.

DISCUSSION

The present program was successful in substantially increasing the rate of verbal responses made by a mentally retarded girl. Furthermore, follow-up data suggested that the program was successful in maintaining these results for at least 3 months after the treatment phase had terminated.

Although this case study has provided data which indicate that the combination of techniques employed increased the child's verbal behavior in the classroom, it obviously does not show the specific functional relations involved nor the relative contributions of the various techniques used. However, the study does suggest some of the important variables, some of the areas in need of further research, and some of the implications of a behavior modification approach.

The effectiveness of the standard operant training procedures, such as contingent reinforcement and shaping have been amply demonstrated elsewhere (Sloane & MacAulay, 1968; Ullmann & Krasner, 1965; Ulrich, Stachnik, & Mabry, 1966). As in other studies these procedures seemed essential to the effectiveness of this study. The additional procedures used in this program also seemed essential for both the acquisition and maintenance of Judy's verbal behavior. One procedure employed was that advocated by Risley and Wolf (1967) in their discussion of generalization training. They argued that the selection of terminal behaviors (sounds or words) should be determined by their functional use in the child's environment. Teaching Judy the basic phonemes would provide her with the basis for learning new words and generalizing her verbal behavior to the classroom. Consequently, her phoneme imitation skills were quickly shaped up to a high level of accuracy during individual training sessions. In addition, words were selected for training which would have immediate positive consequences for her ("I want some candy;" teachers' names, social amenities).

Another technique which may have contributed to the results was practice on the self-managed Language Master. The semi-automated practice sessions were made possible by training the child to use the Language Master in reviewing sounds and words learned in the individual training sessions. The additional time spent in emitting verbal responses and making discriminations of whether the response was correct or incorrect seems to have increased the probability of Judy's verbalizing in the classroom. Other researchers, including Holland and Mathews (1963), have shown that sound discriminations could be taught to school children by using a teaching machine.

A final procedure which may have contributed to the results was the use of two trainers. Judy's mentally retarded peers were trained to quiz her regularly on items learned in the individual training sessions, and thereby provided additional practice sessions and facilitated generalization to the classroom. The use of peers in the formal practice quiz sessions seems to have led, in part, to the increase of verbal interaction in the classroom between Judy and her peers. This intercation was indicated by the increase in both Judy's verbal behavior and consequences directed at Judy by her peers. Other investigators have provided data which indicate that children can modify the behavior of their peers in the classroom and in the laboratory (Surratt, Ulrich, & Hawkins, 1969; Wiesen, Hartley, Richardson, & Roske, 1967). The use of peer tutors holds great promise for many classroom applications and should be further studied to determine how peers can be used most effectively.

The contribution of the teachers' verbal behavior to Judy's speech development is not clear. The fact that there was no substantial change in their pattern of verbal interactions with her suggests that their direct influence was minimal. However, they were helpful in specifying the desired terminal behaviors, sending Judy out to the individual sessions, and reminding the peer trainers to quiz Judy.

Several questions may be raised concerning whether the words learned in individual sessions generalized to the classroom setting. The data indicated that the percent of Judy's classroom verbal responses increased substantially over baseline. Whether the classroom increase included words learned in the individual sessions cannot be determined from the data collection technique used in this study. Additional work with a speech deficient child such as Judy should include data indicating the specific content of the child's verbal repertoire during baseline, as well as during treatment.

A final and more general issue is the growing need to undertake systematic follow-up evaluations to determine the durability of the effects of training programs. In order to accomplish this systematic evaluation, there must be an appropriate assessment of the relevant variables before, during, and after treatment (Goldfried & Pomeranz, 1968). The case study presented attempted to include some of these points by conducting an individual and classroom assessment through all stages of the study.

There is an urgent need to systematically and regularly evaluate some sample of the programs and services that are rendered to determine whether or not they are having any immediate and/or long-term effects. Feedback information of this type is crucial if schools and clinics are to improve their programs and make efficient use of their resources.

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VIETNAM-ERA VETERANS READJUSTMENT ACT OF 1972

Mr. FULBRIGHT. Mr. President, I am particularly pleased that the Senate has passed S. 2161, the Vietnam-era Veterans Readjustment Act of 1972. One of the tragic consequences of the Vietnam war has been the bittersweet homecoming for over five and a half million Vietnam-era veterans. In addition to the obvious problems arising out of an unpopular war, they have come home to face employment and educational difficulties which the present GI bill of Federal benefits has failed to solve.

S. 2161, which I was pleased to cosponsor, marks a good beginning in terms of meeting the pressing needs of the veteran who seeks to further his education or seeks the training which is necessary for gainful employment. It increases the educational assistance and subsistence allowances under the GI bill from $175 to $250 per month, including proportional increases for veterans with dependents. These allowances will be

paid under a new system insuring the veteran that his entitlement check will be available at the start of the school year. Corresponding increases have been made in the vocational rehabilitation subsistence allowance from $135 to $200 per month and in the basic rate for full-time farm cooperative training from the present $141 to $201 per month.

The bill includes an expanded loan program under which a returning veteran would be eligible for direct assistance of up to $1,575 per year for educational costs not provided under other Federal loan or grant programs.

Other provisions in this legislation will improve the existing GI bill programs to insure further that the Vietnam-era veteran will receive the readjustment assistance which he so richly deserves.

The predischarge program—PREP—has been expanded so that payments can be authorized to veterans and in-service personnel to allow them to complete secondary school courses toward a high school diploma, and to facilitate their participation in furthering their higher education. A work study, outreach program has been established whereby veterans would be able to earn additional sums above and beyond their basic entitlements for performing services in Veterans' Administration programs.

Important new opportunities are made available to veterans' dependents which will allow them to pursue their education and job training under programs currently available to veterans and the farm cooperative training program and other special programs for educationally disadvantaged veterans and servicemen have been expanded and strengthened by S. 2161.

In addition to these features, the bill is designed to stimulate the employment of veterans through improvements in the operation of the Veterans Employment Service and through employment preferences to be included in Federal contracts for certain Vietnam-era and service-connected disabled veterans.

Mr. President, I have actively supported previous measures to improve the GI bill and to bring the benefits to which veterans are entitled up to levels which are consistent with their needs. In doing so, it has always been my belief that we as a nation have an obligation to those who have disrupted their lives and education to serve in our Armed Forces, and a duty to do everything possible to assist them in readjusting and reestablishing their lives. It is with this in mind that I am gratified to see the Senate meeting its responsibility by passing this much needed legislation.

NEW MILITARY TACTICS AND TECHNOLOGY USED BY UNITED STATES ON VIETNAM

Mr. FULBRIGHT. Mr. President, Mr. Milton Leitenberg, of the Swedish Institute of International Affairs, has sent me a copy of an essay entitled "The War in Vietnam: Vietnam and the United States."

Mr. Leitenberg's essay catalogs the new military tactics and technology used by the United States in Vietnam and discusses the results of these tactics and technological innovations. His essay does not make pleasant reading, but I think that it deserves to be read by thoughtful Americans. I therefore ask unanimous consent that it be printed in the RECORD.

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

THE WAR IN VIETNAM: VIETNAM AND THE UNITED STATES

The Vietnam war has been an unprecedented situation in the history of the United States. It would be comforting to be able to foresee now the ultimate effects of the war, on the American population, on the office of the presidency, on the military services, on subsequent US foreign policy and US behaviour overseas. No matter what the severity of the outcome, the foreknowledge would be comforting simply by providing a resolution of events. Unfortunately one cannot, and the inability leaves much to fear. It would also be comforting to be able to know that the several nations in Indochina, Vietnam, Laos and Cambodia and their respective societies will be able to reconstitute themselves. But writing in the beginning of 1972, that too is unanswerable now. Rates of ordnance use continue to rise, and in the last two or three years the earth and the populations in the area have in fact been suffering increasing punishment, with little hint of when the present situation might be expected to cease.

One may roughly group the themes under which the war in Vietnam could be considered as:

The effects on, or the damage done to Vietnam,

The effects on, or the damage done to the United States,

The international political effects and precedents.

Should this essay have been written by a military historian, very general parallels might have been found with United States' action in the Mexican-American War, or with the Spanish-American War and the subsequent suppression of the Philippine insurrection. However, the parallels are probably closer, if not as much in cause, in policy consideration and in goals, then in the manner of operation and in effect, to other and more recent wars which did not directly involve US forces, such as the Italian campaign in Ethiopia and the Japanese invasion of China. The American population has witnessed the simplicity by which the might of a nation can be moved by facile sophistry into a disastrous and unpardonable war of destruction. The context of the war, the reasons for which and the manner in which it has been carried out by the United States are at the bounds of belief, but despite that impeded only in the slightest over the many years of its duration, and supported by a large sector of the national population and of the Congress. We have witnessed how such historical mysteries come to happen, and we have learned the meaning of the broken haunted commandment that "we cling to our humanity by our fingernails in this world."

Perhaps one should look first at Vietnam and the military aspects of the war. The rough outline drawn above arbitrarily omitted mention of France, under whose aegis the war was carried out from 1946 to 1954, and any aspects of the impact of the war on France's political and military development. Such aspects will have to be left for a French author. The United States bore some 80% of the French costs of the war and of the ammunition used in this first phase of the Vietnam war.

The war has seen extensive introduction of new military tactics and technology by the United States. Under tactics one might list the following:

Very extensive use of airborne (helicopter) troops;

The use of herbicides against crops in food denial programs, and against forests in area denial programs;

The use of bulldozing over smaller land areas, also for area denial;

The designation of "free fire zones", which held for artillery as well as for air-dropped weapons, and within which there were few distinctions as to "civilian" and "military" targets;

"Interdiction by fire", again both by artillery and by air-delivered ordnance;

The battlefield use of CS gas, in coordination with conventional firepower; and the use of CS for area denial and for interdiction;

The use of meteorological warfare, the purposeful production of rain;

The intentional "population relocation" programs. At times these were forcible, accompanied by subsequent destruction of local habitation by fire, bulldozing or artillery, at times what might be called semi-forcible, as populations moved from free fire zones as soon as they appeared, and at times populations moved from direct battlefield areas;

"Carpet bombing" by B–52s (the "adaptability" of the B–52), the exceedingly high air ordnance tonnages;

The use of "mercenary" military forces from Thailand, Korea and the Philippines, the costs for which had to be paid for by the USA. This kind of development, as "political" as it is "military", was carried a step further by the entire subsidy of "secret" armies—of 65,000 men in Laos, of 20,000 Cambodian Khmers fighting in Vietnam, often in ambiguous uniform and under unstated leadership,—and of an entire "air force", Air America, by the United States Central Intelligence Agency, in Laos;

Though not "new", the relatively very extensive use of air support;

The extensive use of the incendiary, napalm;

The regular introduction of special forces teams, "SEALS", and irregular mercenaries into North Vietnam for sabotage and for other military purposes; and

Programs of the selective killing of members of the civilian population with communist affiliation, the Phoenix program and some of its predecessors.

In the hundreds of thousands of U.S. bombing sorties executed in the course of the war only a handful involved any air combat with opposing aircraft. There was no opposition to U.S. Naval operations, the aircraft carriers and the "Market-Time" coastal blockades, or to the use of bomber bases in Thailand, the Philippines, Okinawa and Guam.

Gas warfare had not been used since World War I and in Italy's Ethiopian campaign. Despite official denials to the public, the intent of CS use as used in the field in Vietnam was explicitly to increase enemy combat casualties. The use of CS ran a great risk in weakening international restraints against the use of more toxic chemicals in war and was curtailed only after strong international diplomatic opposition, marshalled in the UN General Assembly. There had been only very minor herbicidal operations carried out before, by the British in Malaya and by the French in Algeria. The fact that herbicides had been used in these previous military operations was largely unknown, and had had little impact on international law in the area of chemical and biological warfare, or on military systems in different nations. The large scale use of herbicides in war was thus, in effect, unprecedented. Meteorological warfare is entirely unprecedented, never before recordedly having been used as a weapon of war. The Pandora's box that it opens is awe-

some. In particular the use of such novel methods by the United States, the world's most advanced and strongest military power, is certain to risk all the more the further deterioration of international restraints.

Under technology, though some of the notations simultaneously include further information on tactical methods of application, one might single out the following:

The development of some 30 delivery systems, mostly for battlefield application, for CS gas;

The use of lightships and "gunships", lighting up the nighttime sky and carrying "miniguns", multiple barrelled machine guns with extraordinary high rates of fire (6,000 rmp per gun: 18,000 rmp, or more per aircraft);

Light gathering and heat gathering devices for nighttime ground based antipersonnel target acquisition;

First actual combat use of (U.S.) Terrier SAMS (Surface to Air Missiles) and Shrike antiradiation (radar) missiles;

Extensive use (against North Vietnam) of antipersonnel air delivered weapons: Cluster Bomb Units (CBU), flechettes, pellet bombs, etc.;

Laser guided and television guided bombs, weapons in the "Pave" and "Eye" series;

Ground based fire location sensors; portable field radars for mortar and artillery location;

Extensive use of special aircraft for airborne tactical air control and electronic countermeasures, largely over the China Sea and North Vietnam. Ground based air navigation electronics was also used in northern Laos;

The use of drone aircraft for photo reconnaissance and for electronic countermeasures; and

The use of ground based sensors to detect personnel and motor traffic movement behind enemy lines, the "McNamara line", which then grew into project Igloo White. These sensors detect in various modalities (seismic, thermal, etc.), telemeter their information to circling aircraft or to drones, which telemeter in turn to ground based computers, which call for aircraft strikes. This system has been popularly referred to as "the electronic battlefield", or "electronic warfare". Airborne sensors capable of detecting tunnel networks were also developed.

The effects of the use of these methods and technology over a period of some ten years has been, not surprisingly, substantial. In the 1946 to 1954 phase of the war, it is estimated that some 1,250,000 Vietnamese, in both North and South, lost their lives. The toll for the 1959 to 1972 period is highly unlikely to be any less, though firm estimates for either the North or the South are not available.

In World War II a little over 2,000,000 tons of bombs were dropped by the USA in the combined African, European and Pacific theatres of war, and a little less than 1,000,000 tons in Korea in 1950 to 1953. Some 6,200,000 tons have been dropped in Indochina between 1965 and the end of 1971. More than half of this total has come in the 1969 to 1972 period, after the exit of the Johnson administration. 140,000 sorties[1] were flown by the U.S. Air Force alone in the single year 1971. This omits the number of strikes flown by U.S. Naval aircraft. Official US figures indicate that attack sorties[1] by fixed wing US aircraft over *South* Vietnam alone totalled 796,262 from 1966 to 1971. 23 million craters have been made and the total cratered area is about the size of the state of Massachusetts. Between 1965 and 1970 air delivered munitions and surface delivered munitions were being used at equal rates, 11,112 million pounds by air and 11,777 million pounds by artillery. Thus the total tonnage of ordnance delivered in the Indochino area is double the bombing figure, although most of the artillery expenditure has been in South Vietnam. All of Indochina is an extended rural Rotterdam.

Some 90,000 tons of US chemical warfare agents have been employed in Vietnam. Seven thousand tons have been CS gas, the remainder herbicides. Herbicide application rates were twelve of fifteen times those used in commercial agricultural operations, and about ten percent of the area sprayed received multiple treatment. Crop cultivation sufficient to feed two million people for a year was destroyed while the program ran, from 1962 till the end of 1970, and affected about ten percent of all the cultivated land in South Vietnam. U.S. data indicates that 20,000 square kilometers (km^2) of forest was sprayed and largely laid waste, about 5½ million acres. 300,000 acres, or half the total coastal and delta mangrove forest area, was destroyed, while the 4,000,000 acres of mature upland forest sprayed comprise about a fifth of the total area of that type in South Vietnam. (The total is again roughly the size of Massachusetts. The Vietnamese claim that three times that area, 58,029 square kilometers, of forest were exposed to herbicide spray.) Attempts were also made to burn already defoliated forests by use of incendiaries and Napalm. The bulldozer, or "Rome Plow", program scrapes the land bare at a rate of 1,000 acres a day (44 million square feet) and by now has cleared an area of 750,000 acres, roughly the size of the state of Rhode Island.

These novel programs have earned the accusation of "ecocide" or "ecological warfare", permanent or very long term large scale military derangement of an area's ecology. The programs came at exactly the time that domestic ecological considerations began to penetrate to the policy making levels of governments in the already developed nations. The decision to use herbicides as weapons of war in Vietnam was made as a further effort to control and to move populations from one area to another within the country. The destruction of crops was expected to achieve this aim, and crop and forest destruction were thus means, and not ends. In that they were successful, but not nearly so much so as were more "conventional" military techniques, the wide-ranging use of unprecedented quantities of high explosive. Despite the fact that the military regarded herbicide as a "gimmick" and an "R & D effort", that official reports found it "ineffective" against enemy combatants, and perceived that it "had its greatest effects on the enemy-controlled civilian populations" and "created widespread misery and many refugees", the herbicide program accelerated rapidly and when publicly criticized was strongly supported by the highest government officials. Only after extensive opposition grew within the US scientific community was the herbicide program phased out in 1970. There is no reason to suppose that it would have been curtailed otherwise, despite its failure to fulfill any military objectives, as it was fulfilling political objectives through its effect on the civilian population, though this is explicitly proscribed by the Laws of Warfare. The program of land clearing by use of bulldozers continues and is increasing.

These various military programs account for the generation of perhaps 85 percent or more of the refugees. For example the generation of nearly all the Loation refugees was extremely rapid and took place in a period of weeks following the shift of bombing sorties from North Vietnam to Laos in 1968. Even when local populations move from direct battlefield areas it is usually to avoid US shelling and bombing, and the certainty that if the area is captured by NLF or North Vietnamese forces it will become a free fire zone and any habitation bombed into rubble. In all one third of the South Vietnamese, Laotian and Cambodian populations are dislocated and are classified as refugees: 6,000,000 South Vietnamese in a population of 18,000,000, from 800,000 to over a million Laotians out of 2–3 million, and 1,600,000 to 2,000,000 Cambodians out of 7,000,000. Large numbers of North Vietnamese have been evacuated from urban areas as well. Physical reconstruction will take extensive time. Rubber plantations and commercial forests have been destroyed in the South, and industry in the North. Numerous towns in both North and South Vietnam have been leveled to the ground with not a wall left standing. Craters will need leveling but the return of their fertility is questionable, once the thin layer of top soil has been spread by the bomb blast, and the underlying lateritic soil is exposed.

The disruption of the Indochinese social fabric has been extensively documented in Congressional testimony. In earlier years of the war various religious and minority groups still held some political power in the South. Their influence disappeared with successive military coups, and especially after the large influx of United States troops. The government in the South is itself somewhat of an anomaly, largely made up of the Catholic minority, many being refugees from the North in 1954. Vietnamese have been fighting Vietnamese since 1946, under the French and under the Americans, mercenaries in their own land. My Lai was to be expected if not inevitable, in a war in which free fire zones were standard operating procedure, in which the enemy was a majority of the civilian population, and in which Vietnamese combatants and non-combatants wore "black pajamas". The Vietnamese claim a hundred or so "My Lais". Yet it is actually foolish to single out My Lai in a context of area saturation weapons such as high altitude pattern bombing, CBU's and miniguns, and criteria as vague as a dead person in black clothing for determining numbers of "VC" in body counts. Operation Phoenix, a part of the "Pacification program" was more specific. Under it some 84,000 members of the "VC infrastructure" in South Vietnam were "neutralized", likely more than half of them killed, in a period between 1967 and 1971. Some years before the initiation of the Phoenix program American military commanders in Vietnam were using the phrases "sanitization" and "sterilization", terms which were transformed into "rural development", and devising relocation camp programs and programs of individual personal identity and location cards for all of South Vietnam. These in turn had been preceded by the strategic hamlets, often little more than internment camps. Some of these programs were unpleasantly reminiscent of WW II German programs in Eastern Europe and in France. Though seldom explicitly, they all pointed back to and revolved around the basic questions:

Who was the enemy;

What was the war being fought for; and

What kind of war was it, or had it become.

Before turning to the second major area of concern, it might be particularly appropriate to remark on the question of availability of information about Vietnam and the nature of the war. In addition the question of information played a significant role in the public debate on Vietnam policy especially in the years 1965 to 1968. I do not think there is much, if anything, that one might want to know that is not available in the open literature. This author knows of over 500 books that have been published in the West on Vietnam since the end of World War II. There are some eleven bibliographies pertaining to Vietnam, well over 150 US Congressional reports and hearings, well over a thousand articles in scholarly journals and in magazines marketed to the general public, another three or four hundred articles in US military journals, and several other categories of printed information, aside from the daily

[1] A "sortie" is a single mission by a single aircraft.

press. By 1968 or 1969 there was no information that could not be found in print somewhere.

Wendell Phillips wrote:

"When a nation sets itself to do evil, and all its leading forces, wealth, party, and piety, join in the career, it is impossible but that those who offer a constant opposition should be hated and maligned, no matter how wise, cautious, and well-planned their courage may be."

So it was in 1964 to 1967 for those who opposed the war in Vietnam. However by late 1968 or 1969, that situation had changed. The reasons are undoubtedly several, among them the role of increasingly available information, the views expressed by prominent senators contradictory to the government's position, and the disaffection of recently resigned high-level government officials. Nevertheless the *effect* of these factors, though reducing the vilification of the opposition, was able to do very little to alter war policy. This is especially true of the availability of information. To quote J. S. Mill this time, "Against a great evil, a small remedy does not produce a small result, it produces no result at all".

American involvement in Indochina began with World War II OSS operations against the Japanese, and our ally in these was none other than Ho Chi Minh and the forces he led. FDR's terse directive to his diplomatic representative in Indochina was "Don't let the French back in". However at the conclusion of the Pacific War a British general on his own authority rearmed the French troops released from Japanese captivity, and with this single simple move the succeeding twenty-seven years of history began. Clubb writes that "In 1945 and 1946 the Ho Chi Minh government looked mainly to the United States and Nationalist China for foreign political support", and communist response was far from enthusiastic to Ho's declaration of independence. But with the entry of the Truman administration prime interest was given to French cooperation in European defense, and as a direct corollary her retention of Indochina was respected and aided in every way. With the entry of John Foster Dulles as Secretary of State in the Eisenhower administration, the policy of American support for the French in Indochina was further intensified, and it was Sec. Dulles that was instrumental in the US abrogation of the Geneva Accords which had ended the first phase of the war.

Perhaps the most important of all the books concerning Vietnam are those that deal the most with "policy process"; Hoopes, Cooper, Pffeffer-Stevenson, Chomsky, Stavins, Barnet, and Raskin, the Pentagon papers. How and why were the decisions made in the United States government at various stages, to go to war in Vietnam, and to carry out the war in the way it has. These decisions and the process of their formulation were mirrored in the practices of the war's operation, and thus before they were explicitly written about they could be reasonably plotted from the best books that described the course of the war in the field, books by Fall, Lacouture, Corson, Halberstam, Browne, the Schells, the CCAS volume, etc. What the documents of the Pentagon Papers achieve is the ability to explicitly link governmental policy, purpose and intent with the readily observable military programs of various sorts.

The effort of various administrations to justify American policy in Vietnam have been manifold and extensive. In justifying to the US Congress the costs of aid to Vietnam, President Eisenhower in one instance invoked the need of Japan for Indochinese markets,[2] and in another instance US requirements itself for various raw materials found in the area. Secretary Rusk and other subsequent administration officials successively invoked an aggression and invasion from North Vietnam, our presence and involvement under the terms of the SEATO Treaty, our invitation by the South Vietnamese governvent, the need to contain China, the "domino theory", and the necessity to remain and fight once involved, whatever the reasons for first having gotten involved lest our "commitments" to other nations be weakened both in the eyes of those nations and/or in in the eyes of our presumptive prime opponents, the USSR and China.

The credibility of administrations was successively shaken on such general bases, as well as on particulars of the war's operation, such as the bombing of civilian targets in the North, the use of anti-personnel weapons in the North, the methods of use of CS gas and herbicides, and the target populations of various military programs in the South. The 1964 Presidential election was won, in part, by the winning candidate pledging no further involvement in Southeast Asia. The promise was by then unintended, and was quickly withdrawn once the election was won. The entire war has been carried out without a declaration of war, and produced on enduring constitutional crisis concerning Presidential war powers and executive-legislative relationships. Some six years after its passage, the tarnished and compromised Tonkin Gulf Resolution was quietly withdrawn by the Senate. As part of the process of misleading the public as to the actual magnitude and consequences of the war, the President delayed revealing war costs, their effects on the national budget, and raising the necessary federal income to meet the additional costs, and initiated an inflationary spiral that still endures. As of 1970 it was calculated that the costs of the war in Vietnam, (combining monies already expended, and which would be subsequently expended in veterans' benefits, survivors' benefits, the war debt, etc.) would reach 300 billion dollars. In the 1965 to 1967 period there were repeated official denials of all the events and decisions that subsequently came to be known, leading to the ironic phrase used by journalists that "the President played the war up his sleeve". The government's White Paper, intended to prove "flagrant aggression" from the North and to act as a moral justification for U.S. intensification of the war, was hastily patched together in a few days and managed instead to prove by its own statistics that there were no North Vietnamese military in South Vietnam, and that 98 percent of the NLF weapons came from captured or purchased U.S. supplies. This process of falsification was to be extended throughout the war and to culminate in the type of blatant cynical euphemism which coined phrases such as "armed reconnaissance" and "reinforced protective reaction". This was a process which would not only corrupt a segment of the public and of the press, but could not fail to have the same effect on the most important segment of the government, the executive branch. The effect would range from the lowest levels of military operations and intelligence in the field to the office of the President. The mechanisms by which information, perceptions, assessments, reports are narrowed and circumscribed by what is perceived as desired by higher officials, from the battlefield to the deliberations of the National Security Council, are pervasive and profound. These are institutional processes, and only time can tell how persistent they will be after the war's end, and how enduring will be the precedents set. These can only damage foreign policy, in all areas, by making the informational and conceptual bases for policy formulation inaccurate, unrealistic, and unreliable. It is also pertinent in this respect that not a single high official resigned in protest over the Vietnam war, though several, even in the cabinet, opposed it, and some spoke out publicly against the war after having left office.

As examples in the field, both the Air Force and the Navy exaggerated the effectiveness of their bombing of North Vietnam. Both recognized that the postwar dispute over the Navy's bombing role—and hence Naval procurement of new aircraft, numbers of aircraft carriers maintained, internal service debates over allocation of the defense budget—would be critically affected by evaluation of their bombing operations in Vietnam. Criteria for categorizing villages as "pacified" were almost completely unrelated to realities of the affiliations of the local population, their attitude towards American forces, Saigon or its field commands, or the effects of various military and "civilian" programs. In 1966 U.S. official government estimates were that the "war will last from three to seven years." In 1972 the Secretary of Defense offered that the war might continue another five years at its level of intensity at the time. In 1965 Languth predicted that "military victory was possible (only) if Vietnam were more or less obliterated," a policy subsequently followed, while officials spoke of a contest "for hearts and minds." When "Munich" was being raised as an analogy to the war by the government, Bernard Fall, flying with U.S. bombing missions, wrote in a journal article "No, rather Barcelona." American—and European—TV viewers were able to see literally hundreds of TV films made by U.S., British, French, and Swedish TV newsmen which portrayed the course of the war. Military operations were often initiated in the very midst of peace initiatives by third parties, effectively destroying any negotiating credibilty scuttling the efforts. While the government felt, and spoke of the link between the war and the perceptions of other nations to our "commitment," the spectacle of the war in reality could not but degrade America's international stature, and the strength with which the nations could subsequently support more legitimate foreign policy concerns. Sec. MacNamara summed up these various effects by saying that the effort "to pound a tiny backward nation into submission on an issue whose merits are hotly disputed . . . would conceivably produce a costly distortion in the American national consciousness and in the world image of the United States—especially if the damage to the North Vietnam is complete enough to be successful." The question of war guilt has come home to roost.

Another important effect of the war pertaining to the United States has been the effects on the military services themselves. Again there are both general and specific effects. The Dominican and Indochinese in-

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[2] President Eisenhower: "There is Japan, vital to the security of the free world. Japan is an essential counterweight to Communist strength in Asia. Her industrial power is the heart of any collective effort to defend the Far East against aggression. Her more than ninety million people occupy a country where the arable land is no more than that of California. More than perhaps any other industrial nation, Japan must export to live. For Japan there must be more free world outlets for her products. She does not want to be compelled to become dependent on a last resort upon the Communist empire, should she ever be forced to that extremity, the blow to free world security would be incalculable. One of Japan's greatest opportunities for increased trade lies in a free and developing Southeast Asia. The great need in Japan is for raw materials. In southern Asia it is for manufactured goods. The two regions complement each other markedly. So by strengthening Vietnam and helping insure the safety of the South Pacific, and Southeast Asia we gradually develop a great trade potential between this region rich in natural resources, and highly industrialized Japan to the benefit of both. In this way freedom in the western Pacific will be greatly strengthened and the interests of the whole free world advanced."

volvements precipitated substantial re-examination and criticism of the cold-war concepts still underpining much of U.S. foreign policy. Similarly the Vietnam war and the degree of public dissatisfaction with it in the United States certainly contributed in very large measure to the rise of pressure against the "military industrial complex" and the pre-emption of foreign policy formulation and alternatives by extensive international military deployments.

In the beginning of the Vietnam war military publications freely discussed the function of Vietnam as a "proving ground":

"Just as Vietnam has become a test-bed for the proof-testing and de-bugging of new hardware, new tactical concepts, new logistics systems, so is it a test of the validity of Defense's basic policy—not an exception to it."[3]

In the early 1960s the nation's military programs and strategic theories had placed heavy emphasis on the ability to contain "brushfire wars" and "wars of national liberation" as well as its reliance on strategic nuclear weaponry. The Statements of defense spokesmen were thus explicit: Sec. McNamara: "We can afford whatever is necessary":[3] "Vietnam is the proof of theory"[4] and Deputy Secretary Vance: "From the lessons we've learned (in Vietnam) we would probably deal with another conflict in the same way"[5] and "The ability to support our forces in Southeast Asia . . . is the acid test".[4] However the questions of the aims of the war, the methods of the war, the relations between Saigon's military forces and efforts (or lack of them) and those of the United States were most immediately and most forcefully experienced by the front line soldier. The effect on the Army was unexpected and decidedly adverse. Deterioration of morale and its effects on discipline and command were widely publicized in the later stages of the war, and are far from trivial matters. Soldiers did not want to fight and did not want to obey. A military publication discussing a case in which orders had been refused by a patrol in the field commented that it "delivered a funeral oration on the U.S. Army in Vietnam".[5] The use of drugs was widespread; marijuana use nearly universal and heroin use had reached proportions such as to introduce concern about the numbers of addicted soldiers being returned to the civilian population upon discharge. My Lai and "fragging", (attacks on officers) were other symptoms of serious trouble. Draft evasion (and desertion) resulted in some 50,000 young Americans in Canada, and the war opposition movement entered the military services themselves and reached to Vietnam. The entire system of draft military service was shaken as a result of the distaste for the war by the prospective soldier. At the same time as military influence was growing stronger and stronger on the course of the war, particularly in Cambodia and in Vietnam, it became a legitimate concern of the military and of the Army as to whether it was not in fact desirable to end the war in order to save the Army, to permit it to return home and to rebuild its morale. Since deterioration of morale had not reached to the Air Force and Navy, the Vietnamization policy not only served to placate American public opinion but ameliorated the Army problem as well.

There is much more concerning Vietnam that could be discussed:

The French re-entry into Vietnam after World War II;

The history of the two warring halves of Vietnam, the legitimacy, or lack of it, in speaking of two separate countries;

The Geneva Accords of 1954 and their destruction;

The war in Laos from 1960 to 1962, and a continual war there since its reinitiation in 1965;

The involvement of Thailand and Korea;

The Buddhist protest against the war in South Vietnam;

The protest movement against the war in the United States;

The effects of the war on the U.S. economy, on youth, on political disillusionment;

The history of some dozen negotiation attempts to end the war;

The kinds of aid given to North Vietnam by the Soviet Union and China, but most important, the obverse of this, the kinds of military aid and involvement not given by these nations in the face of a massive U.S. conventional air and naval attack;

The complete failure of the United Nations to find any means or ability to halt the war, or even to moderate it; and

The lack of effect of Congressional opposition to halt or to moderate the war.

All of these and more are part of the meaning of Vietnam. In 1971 the administration attempted to intimidate the television media because of their reporting of the war. Next it attempted, for the first time in our history, to silence the press by the threat of prior censorship over the issue of the publication of the Pentagon papers. Finally it attacked the constitutional privileges of a member of a co-ordinate branch of government, the Senate, again on publication of the Pentagon papers. Henry Steele Commager has called this:

". . . part and parcel of what can only be described as a concerted campaign to deny the American people that knowledge about the operation of their Government so essential to the sound functioning of democracy."

In the face of what is actually occuring in Vietnam, it is perhaps necessary to apoligize for having stressed the effects of the war on the United States. However the effects are just as real. Our own nation has suffered serious damage, if not of the same sort as has Vietnam. Perhaps worst of all, the brutal, extravagant and unjustifiable military exercise mocks international law and reaffirms every worst cliche concerning the exercise of military power on the world scene. It was a precedent of past history and of other nations that America dare not have acceded to—but did. It was a precedent that America dare not have made for the world—but did.

[3] *Armed Forces Management*, Nov. 1965.
[4] *Armed Forces Management*, Oct. 1966.
[5] *Armed Forces Journal*, 1972.

ANOTHER RESPONSE ON FEDERAL CONSUMER AGENT INTRUSION

Mr. ALLEN. Mr. President, the Federal Deposit Insurance Corporation is the 34th Federal agency that has responded to my request for a list of the proceedings and activities that would be subject to intrusion by Federal consumer protection agents under S. 1177, a bill now being considered by the Government Operations Committee on which I serve.

FDIC Chairman, Frank Willie, advises me that the bill is "sufficiently broad to encompass any action of the Corporation," and has listed 25 types of FDIC proceedings as examples of areas subject to Federal consumer agent intrusion.

These 25 proceedings bring to 1,206 the total of proceedings in which the new Federal agents could intrude as described by the 34 agencies that have responded to date. Not included in this total are the many general responses from agencies to the effect that all of their actions would be subject to Consumer Protection Agency intrusion.

As I have done on July 17, 25, and 31 and August 7 to prepare the Senate for enlightened debate on S. 1177, I ask unanimous consent to have printed in the RECORD this 34th response from FDIC on the Federal Consumer Protection Agency bill.

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

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, D.C., August 4, 1972.

Hon. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: This responds to your July 27, 1972 letter requesting a list of Corporation activities that would be within the jurisdiction of a new Consumer Protection Agency (CPA) that would be established by S. 1177, 92nd Congress, a bill to be cited as the "Consumer Protection Organization Act of 1972."

Your letter specifically directs our attention to sections 203 and 204 of the bill, which would authorize the CPA to intervene as a party or otherwise represent the interests of consumers in any rulemaking, adjudicatory, or other type of Federal agency proceeding or activity whatever, whether formal or informal. The CPA could also petition any Federal agency to initiate a proceeding or take any other action within the agency's jurisdiction, and the CPA would have standing to seek judicial review of any reviewable Federal agency action and to participate in any civil proceeding to enforce any Federal agency action.

Sections 203 and 204 seem sufficiently broad to encompass any action of the Corporation. An illustrative schedule of Corporation activities which would be covered by the bill is attached.

Because the urgency of your request, we have confined our comments to sections 203 and 204, as you suggested, and have not undertaken a general review of the bill's provisions.

Sincerely,

FRANK WILLE,
Chairman.

FEDERAL DEPOSIT INSURANCE CORPORATION

Activities affected by S. 1177, 92nd Congress, a bill to be cited as the "Consumer Protection Organization Act of 1972."

FORMALIZED PROCEEDINGS

Rulemaking

1. Payment of insured deposits.
2. Receiverships and liquidations.
3. Voluntary termination of insured status.
4. Minimum security devices and procedures of insured nonmember banks.
5. Assessments.
6. Advertisement of membership.
7. Interest on deposits.
8. Clarification and definition of deposit insurance coverage.
9. Insurance of trust funds.
10. Powers inconsistent with purposes of Federal deposit insurance law.
11. Extension of corporate powers.
12. Bank service arrangements.
13. Securities of insured State nonmember banks.
14. Employee responsibilities and conduct.
15. Any other rulemaking proceedings held in accordance with section 4 of the Administrative Procedure Act.

Adjudications

1. Termination of deposit insurance coverage.
2. Issuance of cease-and-desist orders or a

removal or suspension order under section 8 of the Federal Deposit Insurance Act.

3. Any other adjudicatory proceedings on the record as to which a hearing is either required by statute or granted in the Board's discretion.

INFORMAL ACTIVITIES

1. Preparation of competitive factor reports under Bank Merger Act.

2. Applications by nonmember insured banks to establish new branches or to change existing office locations.

3. Applications by State nonmember banks for deposit insurance coverage.

4. Applications for Board approval of mergers resulting in nonmember insured banks.

5. Enforcing compliance by nonmember insured banks with Fair Credit Reporting Act.

6. Enforcing compliance with Truth in Lending requirements applicable to nonmember insured banks.

7. Other investigative, supervisory, and insurance activities as authorized by statute.

SENATOR ALLEN J. ELLENDER, OF LOUISIANA—IN MEMORIAM

Mr. DOMINICK. Mr. President, I join Senators in expressing a great sense of loss with the death of Senator Allen Ellender. Senator Ellender was an inspiration to us all through his vigorous character and persevering nature. His political career, dating from 1921 in Louisiana, has been as distinguished as it has been long. He will be very much missed, I express my deepest sympathy to his family and his staff.

FLOOD AND STORM DAMAGE TO MARYLAND CLAM INDUSTRY

Mr. MATHIAS. Mr. President, the Senate's prompt action on President Nixon's request for flood relief legislation is justified by the urgency of the need. We do not yet have a full account of the total loss or of the ultimate consequences. A story in today's Baltimore Sun of the devastation in the Maryland clam industry is a case in point, and I ask unanimous consent that it be printed in the RECORD.

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

CLAM INDUSTRY RAVAGED: STORM WATERS, HEAT KILL 90 PERCENT OF BAY BIVALVES

(By Barry C. Rascovar)

ANNAPOLIS.—Maryland's $4 million-a-year soft-shell clam harvest has been wiped out this year by tropical storm Agnes and the extended July heat wave, officials of the state Department of Natural Resources said yesterday.

"It's damned near disastrous," one official said, noting that it could be as long as three years before the industry returns to normal.

"It really looks bad," remarked Gordon P. Hallock, the director of the state's Seafood Marketing Authority. "A lot of people are going to be out of work" because of the massive clam mortality rate this season, he said.

He estimated that about 5,000 Marylanders earn their living by harvesting, shucking or shipping the soft-shell clams.

The areas hardest hit by the large clam-kill have been Queen Annes, Anne Arundel and Talbot counties, the areas where the clam harvest is usually the largest.

WIDESPREAD MORTALITY

Other bay areas severely affected include St. Marys, Kent and Calvert counties.

A spokesman for the Department of Natural Resources said that samplings indicate that the clam mortality rate is at least 90 per cent in nearly every portion of the Chesapeake Bay.

"This pretty well shoots the clam business" for at least the next two years, he said.

The combination of too much fresh water and constantly high temperatures was blamed for the high clam-kill rate.

"Possibly the clams could have survived the influx of fresh water (as a result of tropical storm Agnes) if the temperature hadn't been so high," one bay expert concluded.

Agnes washed millions of gallons of fresh water into the bay, drastically lowering the salt content of the water. A minimum level of salinity in the bay is essential for clams and oysters to survive for any length of time.

CLAMS NEED COOL WATER

Then the July heat wave sent temperatures soaring into the 90's throughout the area. The soft-shell mollusk usually thrives only in cool waters.

"The clams just couldn't take it," one official said.

Compounding the crisis in Maryland are fears that the oyster industry could also be hard hit.

"We don't really know how bad an oyster kill it was," a shellfish expert said. He noted that the department would have a more definitive answer in several weeks after a new sampling of the state's oyster bars.

"Oysters are hardier animals than clams," he said, and can withstand higher temperatures and lower levels of salinity than the soft-shell clams.

But the official added that he believed the oyster situation was "pretty critical." The oyster season is scheduled to open September 15.

Yesterday, Matthew Tayback, an assistant secretary of health and mental hygiene, announced that the department's ban on the harvesting of soft-shell clams would be continued indefinitely, although the bay waters have returned to normal.

CRABBING PERMITTED

The ban covers all areas of the bay except the extreme lower portions, which were not drastically affected by the tropical storm. The ban does not forbid crabbing or catching finfish.

One Health Department official explained that the clams "are not in good enough shape to withstand harvesting. There's nothing else we can do" except continue the ban.

Additionally, James B. Coulter, the secretary of natural resources, announced that his department would ban all softshell clamming in Maryland September 1.

ECONOMIC AID

Mr. Coulter's announcement would extend the ban to all areas of the bay indefinitely.

Mr. Hallock said the state Division of Economic Development and the Department of Natural Resources have begun discussions on what steps might be taken to aid those in the clam industry.

"A lot of fellows are already doing other things to earn a living, like crabbing. But the sale [of crabs] has not been too good," he said.

COMEBACK EXPECTED

A spokesman for the Department of Natural Resources said that chances are good for the clams to make a comeback in 18 to 24 months. "Clams are very good breeders," he said.

State biologists will wait until the fall to see whether the surviving clams are reproducing in sufficient quantities. "If not," the spokesman said, "we will look into artificial means of spawning."

Soft-shell clams make up the bulk of the state's clam industry. They are elliptical in shape with a neck extending from one end. The shell is soft enough for a person to crush in his hand.

Hard-shell clams are rounder in shape and must be pried open like an oyster. These clams are harvested in the southern portions of the bay, which were not severely affected by the tropical storm. Last year, the dockside value of hard-shell clams in Maryland was only $175,000.

THE BUSTLING PORT OF BALTIMORE

Mr. MATHIAS. Mr. President, each State is proud of its individual successes in the area of economic benefits derived from its chief industries. These successes, of course, result in needed jobs, better housing, and an increased standard of living for its citizens.

The Port of Baltimore, the single most important economic contributor to the State of Maryland, each year processes nearly 50 million tons of short cargo valued at $2.2 billion. Marylanders can be proud of the port's performance. The success of the port is indicative of its keeping up with advances in shipping, such as containerization. The Dundalk Marine Terminal, operated by the Port Administration, will have seven 15-story high container cranes in operation by this fall. New container facilities are being built at Dundalk Terminal which will cover about 500 acres.

The Washington Post reported on these important activities of the port in a July 9 article and I ask unanimous consent that it be printed in the RECORD.

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

BALTIMORE'S PORT IS BUSTLING—CONTAINERIZATION SIGNIFICANT KEYSTONE OF ITS GROWTH

(By William H. Jones)

BALTIMORE.—One day last week, a big oceangoing freighter loaded with bananas from Central America docked at a modern pier here operated by the United Fruit Co.

Four big gantry cranes—each 80 feet high—were immediately put to work as were four banana conveyors, unloading boxes from the ship's hull. The machines were dropped down in the hold where workers place boxes of bananas on the conveyor belts for an automated trip through a modern warehouse and on to dozens of waiting trucks.

As the dawn's early light was evident over historic Fort McHenry, across the waters of Baltimore Harbor, trucks loaded with bananas were already departing the United Fruit pier for metropolitan New York and Philadelphia, the food centers around Baltimore, and the giant supermarket warehouses in Prince Georges County that service Giant and Safeway stores throughout the region.

By this weekend, some of the bananas are on the shelves of neighborhood markets and stores throughout the Northeastern states, and the ship either is being loaded with merchandise for export or on its way to calls at other ports.

Elsewhere along 45 miles of the port's shoreline, some 30 other ships of commerce were at the docks and 10 more ships were scheduled to arrive that day.

The Liberian ship Acamar was here for repairs at one of several major shipbuilding and repair yards, the Banat from Yugoslavia carried general cargo, and the Dona Horencia from the Philippines brought sugar.

But the most unusual sight was the American Argosy, a United States ship based in New York that was loaded with several hundred truck-like containers. It appeared impossible that the huge boxes, stacked one on top of the others, could stay in place for an ocean voyage.

Every day of the year, however, the containers do stay in place as more and more tons of merchandise are moved in the boxes that have revolutionized world ocean trade and created a significant keystone for growth of the present Maryland Port of Baltimore.

From zero tonnage in the mid-1960s, when the concept of containerization—shipping merchandise in long boxes that can be transformed into a truck body or hauled by "piggyback" on railroad flat cars—was still controversial, container traffic rose to 1,317,073 tons in 1971 (a gain of 33.4 per cent from 1970).

The 1971 record was achieved despite a two-month strike by East Coast longshoremen and Maryland Port administrator Joseph L. Stanton predicts 1972 container traffic could total 1.8 million to 2 million long tons. Already, Baltimore is second only to New York in container shipping volume.

The average container holds about 13 tons of goods, but has a capacity of 20 tons. Huge unloading cranes built by the Port Administration or private firms can unload about 25 containers each hour from a ship, and transfer the boxes to waiting trucks or rail cars.

As an example of containerization's efficiency, the American Argosy had left port by night, bound for Norfolk.

By this autumn, there should be seven 15-story high container cranes in operation at Dundalk Marine Terminal, operated by the Port Administration, plus an additional crane operated by Sea-Land Service in the Canton area (so named because of earlier trade with China).

Through 1977, the MPA plans to have spent $23 million just to expand container facilities at Dundalk, on about 500 acres. Vast space is needed for storage facilities and parking and transportation facilities for trucking and rail lines.

The Port of Baltimore ranks as third or fourth in the nation, in terms of total tonnage. New York is first, followed by Norfolk Hampton Roads (primarily because of coal shipments), and then Philadelphia and Baltimore in a close race for third place.

The port is considered Maryland's single most important economic contributor, each year processing nearly 50 million tons of short cargo valued at over $2.2 billion. Associated businesses in steel and shipbuilding are the state's biggest employers and economists believe the port is second only to the federal government in its impact on the economy of the Washington-Baltimore region.

Foreign trade volume in Baltimore last year was down to 24.3 million long tons from 29 million tons in 1970, but a rebound is anticipated this year because of an expected rise in the U.S. economy and the absence of a strike.

For the first four months of 1972, however, tonnage has declined because of a 4 per cent drop in imports which has not been offset by a 4.5 per cent gain in exports. Slightly less than 75 per cent of all shipping through Baltimore is currently imports.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business?

If not, morning business is closed.

REMOVAL OF THE NAME OF THE LATE SENATOR ELLENDER AS A CONFEREE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the name of our late departed colleague, Mr. Ellender, be removed as a conferee on H.R. 15417 and H.R. 15586, the appropriation bills for Labor-HEW and public works, respectively.

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

HANDGUN CONTROL ACT OF 1972

The PRESIDING OFFICER. Under the previous order the Chair lays before the Senate S. 2507, which the clerk will report.

The assistant legislative clerk read as follows:

Calendar No. 953 (S. 2507) a bill to amend the Gun Control Act of 1968.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that under the unanimous-consent agreement limiting time on debate, 1 hour from the time on the bill be allocated to the Senator from Illinois (Mr. STEVENSON). That time is in addition to the time already agreed upon, giving him 2 hours on his amendment.

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

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum briefly, with the time to be taken from neither side.

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1397

Mr. STEVENSON. Mr. President, I call up an amendment which I have at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 10, immediately after line 19, insert the following new sections:

"SEC. 5. (a) Chapter 44 of title VIII of the United States Code is further amended by adding immediately after section 923 the following new section:

"'§ 923A. Registration and licensing of handguns; transfer of handguns and handgun ammunition

"'(a)(1)(A) No person other than a licensed importer, licensed dealer, or licensed manufacturer shall knowingly possess any handgun unless such handgun is registered with the Secretary pursuant to this subsection. The Secretary shall not register any handgun, the handgun model for which has been disapproved for sale or delivery by a person licensed under section 923.

"'(B) No person shall transfer possession of any handgun or ammunition of a caliber other than .22 rimfire to another person for use in a handgun unless the transferee (other than a licensed importer, licensed dealer, licensed collector, or licensed manufacturer) displays a Federal handgun license issued under subsection (b) of this section and temporary evidence of registration of the handgun to be transferred (as provided in paragraph (3)(E) of this subsection). Where the transferee is a licensed importer, licensed dealer, licensed collector, or licensed manufacturer, no person shall transfer possession of any handgun or ammunition other than .22 rimfire for use in any handgun unless such transferee displays a license issued under section 923, and in the case of a licensed collector, temporary evidence of registration of the handgun to be transferred (as provided in paragraph (A)(E) of this subsection).

"'(2) Notwithstanding subsection 925(a)(1) the Secretary shall prescribe such regulations as he deems reasonably necessary to provide procedures for the registration of any handgun possessed and for which registration is applied by (i) the United States or any department or agency thereof, or (ii) any State, or department, or agency, or political subdivision thereof. Any regulations so prescribed may authorize any such department, agency, or instrumentality of the United States or any State or political subdivision thereof to prescribe its own procedure for registration of handguns subject to the approval of the Secretary.

"'(3) The application for registration of a handgun shall be filed in such place as the Secretary by regulation may provide and be in such form and contain such information as the Secretary shall by regulation prescribe including—

"'(A) the name, address, and social security or taxpayer identification number of the applicant,

"'(B) the number of the Federal handgun license issued to the applicant pursuant to subsection (b),

"'(C) the name of the manufacturer, the caliber or gage, the model and the type, and the serial number of the handgun,

"'(D) the date, place, and name and address of the person from whom the handgun was obtained, the number of such person's certificate of registration of such handgun if any, and, if such person is licensed under section 923, his license number, and

"'(E) a form containing sufficient copies to allow the applicant to retain a duplicate of the original application which duplicate shall be retained by the applicant and shall be temporary evidence of registration.

"'(4) Each applicant shall pay a fee for registering each handgun as follows—

"'(A) for the first handgun, a fee of $2,

"'(B) for each additional handgun, a fee of $1, and

"'(C) for a collection of handguns (as that term is defined in regulations which the Secretary shall prescribe), a fee of $2.

The provisions of this paragraph shall not apply, and no registration fee shall be charged for registration of any handgun possessed and for which registration is applied by—

"'(i) the United States or any department or agency thereof,

"'(ii) any State, political subdivision, or law enforcement agency thereof.

"'(5) Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue to the applicant a numbered registration certificate identifying such handgun and such applicant as the registered owner of such handgun.

"'(6) Any person shall be ineligible to register or to apply to register a handgun pursuant to this subsection who—

"'(A) is under eighteen years of age;

"'(B) is, because of alcoholism, drug addiction, or mental disease or defect, an individual who cannot possess or use handguns safely or responsibly;

"'(C) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

"'(D) is a fugitive from justice;

"'(E) is not of good moral character; or

"'(F) is not qualified under all applicable Federal, State, and local laws to register a handgun pursuant to this subsection.

Any purported registration by any of the persons described in this paragraph shall be void.

"'(7)(A) Any person to whom a handgun registration certificate has been issued by the Secretary under this section shall notify the Secretary of any change in such person's name or address within thirty days of the date of any such change. Such notice shall contain (i) the registration number of each handgun registration certificate issued under this subsection, and (ii) the license number of each Federal handgun license issued to such person under subsection (b) of this section.

"'(B)(i) Any person to whom a handgun registration certificate has been issued by the Secretary under this section who transfers possession of any handgun so registered, shall within five days of such transfer, return to the Secretary his registration certificate, noting on it the name and residence address of the transferee, and the date of such transfer.

"'(ii) Any person licensed under section 923 shall not accept possession of a handgun by way of pledge or pawn without also taking and retaining, during the term of such pledge or pawn, the Federal registration certificates issued under this section. If such pledge or pawn is not redeemed. such licensee shall return such registration certificate to the Secretary and register the handgun in his own name.

"'(iii) The executor or administrator of any estate containing a registered handgun shall promptly notify the Secretary of the death of the registered owner, return the certificate of registration of the deceased registered owner, and register the handgun in the name of the estate according to the provisions of this section. The executor or administrator of an estate containing an unregistered handgun shall promptly surrender such handgun to the Secretary or his designee without compensation and shall not be subject to any penalty for any prior failure to register such handgun.

"'(iv) Any person possessing a handgun shall within ten days notify the Secretary (in a manner to be prescribed by the Secretary) of the loss, theft, or destruction of the handgun, and shall notify the Secretary of any recovery of such handgun occurring subsequent to the date of notification of loss under this clause.

"'(8) Any person to whom a handgun registration certificate has been issued by the secretary under this section shall exhibit his registration certificate upon demand of a law enforcement officer.

"'(b)(1) No person other than a licensed importer, licensed dealer, licensed manufacturer or licensed collector shall knowingly, possess or receive possession of any handgun or ammunition of a caliber other than .22 rimfire for use in any handgun unless such person has filed an application with and received a Federal handgun license from the Secretary pursuant to this subsection.

"'(2) No person (except as provided in subsection (d) of this section), shall transfer possession of any handgun or ammunition of a caliber other than .22 rimfire for use in any handgun unless such person has filed an application with and received a Federal handgun license from the Secretary.

"'(3) No person shall transfer possession of any handgun or ammunition of a caliber other than .22 rimfire for use in any handgun unless the transferee (other than a licensed importer, licensed dealer, licensed manufacturer, or licensed collector) displays a license issued under this subsection. Where the transferee is a licensed importer, licensed dealer, licensed manufacturer, or licensed collector, or person shall transfer possession of any handgun or ammunition other than .22 rimfire for use in any handgun unless such transferee displays a license issued under section 923.

"'(4) the application for a Federal handgun license shall be in such form and contain such information as the Secretary shall by regulation prescribe, including—

"'(A) the name, current address, date of birth, place of birth, and signature of the applicant;

"'(B) a statement signed by the applicant (in such form as the Secretary shall by regulation prescribe) that the applicant may lawfully possess handguns and ammunition under the laws of the United States and of the State and political subdivision wherein he resides; and

"'(C) a complete set of the applicant's fingerprints and a photograph reasonably identifying the applicant.

"'(5) Upon the filing of a proper application and payment of the prescribed fee, the Secretary shall issue a Federal handgun license to the applicant, and such license shall be valid for a period not to exceed three years. Any such license may be renewed upon the expiration of the initial licensing period, and periodically thereafter, for periods (not to exceed three years each) to be prescribed by the Secretary. The Secretary shall by regulation prescribe the application requirements and form for such renewal applications.

"'(6) An applicant for a Federal handgun license shall pay a fee for obtaining such a license in the amount of $5, and a fee for renewing any such license in the amount of $5.

"'(7) The Secretary shall not approve any application submitted under this subsection if—

"'(A) the applicant is under eighteen years of age;

"'(B) the applicant is, because of alcoholism, drug addiction, or mental disease or defect, an individual who cannot possess or use handguns safely or responsibly;

"'(C) the applicant has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

"'(D) the applicant is a fugitive from justice;

"'(E) the applicant is not of good moral character; or

"'(F) the applicant is not qualified under all applicable Federal, State, and local laws.

"'(c) Denials by the Secretary of an application for registration of a handgun, or for a Federal handgun license, or renewals shall be subject to the provisions of chapter 5, title 5, United States Code. Any person aggrieved by the action of the Secretary shall have the right to judicial review of such action in accordance with the provisions of chapter 7 of title 5 of the United States Code.

"'(d) Notwithstanding the provisions of subsection (b), and except as otherwise prohibited by this chapter or by the laws of any State, or political subdivision thereof, any person licensed under section 923, may transfer a handgun or handgun ammunition of a caliber other than .22 rimfire to a person only if such license confirms that the purchaser has been issued a valid Federal handgun license or a Federal dealer's license and notes the number of such handgun or dealer's license in the records required to be kept by section 923(g).

"'(e)(1) Information required to be included in any application, form, certificate, or license submitted to or issued by the Secretary under this section shall not be disclosed by him except to the National Crime Information Center established by the Federal Bureau of Investigation, and to law enforcement officers requiring such information in pursuit of their official duties.

"'(2) When requested by the Secretary, Federal departments and agencies shall assist the Secretary, to the extent permitted by law, in the administration of this section.

"'(f) Whenever the Secretary makes a finding under section 922(n) that a handgun model is not approved for sale or delivery by a licensee under this chapter, the Secretary shall cause notice to be given to all persons in possession of handguns, the handgun model of which has not been approved, of such disapproval. Notwithstanding any other provision of law, not later than sixty days after receipt of such notice, any person so notified may transfer such handgun as provided in section 926. No criminal penalty shall attach by reason by possession of any such handgun in violation of the provisions of this chapter until sixty days have passed since receipt of such notice.

"'(g) For purposes of this section—

"'(1) the terms "possess" and "possession" mean asserting ownership or having custody and control;

"'(2) the term "transfer" means all sales, gifts, bequests, loans, and other means of acquiring possession of a handgun from the transferor to another person;

"'(3) the term "person" means all individuals, corporations, companies, associations, firms, partnerships, clubs, societies, joint stock companies, and estates; and

"'(4) the term "registered owner" means the person in possession of a handgun which is registered under this section and to whom the Federal registration certificate has been issued.'

"(b) The table of sections for chapter 44 of title 18, United States Code, is amended by inserting—

"'923A. Registration and licensing of handguns.'

immediately after.

"'923. Licensing.'.

"SEC. 6. Section 924 of title 18 of the United States Code is amended by adding at the end thereof the following new subsections:

"'(e) Whoever violates any provision of section 923A of this chapter shall be fined not more than $5,000, or imprisoned not more than five years, or both.

"'(f) Whoever knowingly falsifies any information required to be filed with the Secretary pursuant to section 923A of this chapter, or forges or alters any certificate of registration, or license issued or retained under such section, shall be fined not more than $10,000, or imprisoned for not more than five years, or both.'."

Beginning on page 10, line 20, strike out through page 11, line 2, and insert in lieu thereof the following:

"SEC. 7. (a) Section 925(a) of title 18 of the United States Code is amended by—

"(1) inserting in paragraph (1) immediately after 'chapter' the following: '(except as provided in section 923A(a))', and

"(2) inserting in paragraph (2) immediately after 'chapter' the following: '(except as provided in section 923A(a))'.

"(b) Section 925(d)(3) of such title 18 is amended to read as follows:

"'(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954; is not a surplus military firearm; and if a handgun, has been approved by the Secretary pursuant to section 922(n) of this title; or'".

On page 11, line 3, strike out "SEC. 6." and insert in lieu thereof "SEC. 8.".

On page 11, after line 24, insert the following new section:

"SEC. 9. Section 927 of such title 18 (as redesignated by section 8 of this Act) is amended to read as follows:

"'§ 927. Rules and regulations; periods of amnesty

"'(a) The Secretary may prescribe such other rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter, including—

"'(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of such license;

"'(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection;

"'(3) regulations providing reasonable requirements for the marking of handguns that do not have serial numbers; and

The Secretary shall give reasonable public notice and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

"'(b) The Secretary may declare periods of amnesty for the registration of handguns under section 923A or the transfer to any Federal, State, or local law enforcement agency of any handgun under section 926.'."

On page 12, line 1, strike out "SEC. 7." and insert in lieu thereof "SEC. 10.".

On page 12, strike out lines 4 through 6, and insert in lieu thereof the following:

"SEC. 11. (a) The provisions of this Act shall take effect immediately upon enactment, except that sections 3 and 7 of this Act shall take effect sixty days after the date of enactment and section 923A(a) of title 18 of the United States Code, as added by section 5 of this Act, shall take effect as provided in subsection (b) of this section.

"(b) The provisions of section 923A of title 18 of the United States Code (as added by section 5 of this Act), shall become effective six months after the date of enactment of this Act. Each person within any State who possesses any handgun on such effective date shall within sixty days following such effective date complete the registration and licensing required by the provisions of such section 923A. Each person within any State who purchases a handgun after such date shall within sixty days after such date or thirty days following such purchase, whichever is later, complete the registration required by the provisions of such section 923A."

Mr. STEVENSON. Mr. President, I yield myself such time as I may need.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. STEVENSON. Mr. President, I have a modification of the amendment. The principal effect of the modification is to eliminate provisions of the amendment which provide for confiscation of so-called Saturday night specials. The effect of the amendment, as modified, would be to leave intact the prohibitions of S. 2507 against future sales of Saturday night specials by licensed dealers, and add provisions setting up a national system for the registration of all handguns and the licensing of all handgun owners.

I send to the desk a copy of the modification and ask that my amendment be so modified.

The PRESIDING OFFICER. The amendment is so modified.

The modification is as follows:

On page 2, line 1, insert the following: beginning immediately after "subsection", strike out all through "section 923" on page 2, line 4.

On page 2, line 22, strike out "Notwithstanding subsection 925(a)(1) the", and insert in lieu thereof "The".

On page 11, beginning on line 1, strike out all through line 12.

On page 11, line 13, strike out "(g)" and insert in lieu thereof "(f)".

On page 13, between lines 3 and 4, insert the following new subsection:

"(b) Section 925(c) of such title 18 is amended to read as follows:

"'(c) A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of any section of this chapter except section 923A or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter by reason of such a conviction, shall not be barred by such conviction from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.'"

On page 13, line 4, strike "(b)" and insert in lieu thereof "(c)".

On page 13, between lines 13 and 14, insert the following:

On page 11, beginning on line 15, strike out all through "chapter" on page 11, line 17.

Mr. STEVENSON. Mr. President, S. 2507 would simply ban the future sale and delivery of Saturday night specials by licensed dealers, manufacturers, collectors, and importers. It does not apply any controls or restrictions to other handguns. At the present time, 40 percent of all handguns manufactured and sold are Saturday night specials. It does not apply any controls or restrictions to any of the estimated 25 to 30 million handguns already in circulation in the country. It does not in any way affect Saturday night specials now in circulation. It does not affect the future sale of Saturday night specials by persons other than licensed dealers, manufacturers, importers, and collectors.

The rumor is that S. 2507 is aimed at the elimination of one of the chief instruments of crime and violence, the cheap and useless handgun, the so-called Saturday night special. If that is so, then S. 2507 takes very poor aim. In fact, it will have little effect, if any, on the rate of crime and violence in the country. It is difficult for me to see what effect except a higher price in the marketplace for Saturday night specials, as future sales by dealers of these weapons are dried up.

The amendment I am offering is substantially the same as S. 3528, the Federal Handgun Registration and Licensing Act of 1972, which I introduced last April. It requires every handgun to be registered and every person owning a handgun to obtain a Federal license. Excepted from the licensing provision are all authorized military and law enforcement personnel—Federal. State, and local—and those who would be licensed under the 1968 act, such as dealers and collectors.

The amendment would in no way interfere with State and local laws and regulations concerning gun licensing and ownership. It provides for the confiscation of no firearms and has nothing to do with shotguns and rifles.

The system for licensing and registration under this amendment would be administered by the Secreatry of the Treasury. It would require the handgun owner be at least 18 years of age, and that he be free of alcoholism, drug addiction, or mental disease or defect.

It requires that a licensee be free of any criminal conviction carrying more than 1 year's imprisonment. The Secretary of the Treasury could waive that requirement 1 year after conviction. It requires the licensee also not be a fugitive from justice, that he be of good moral character and qualified to own a handgun under applicable Federal, State, and local laws.

To apply for a license, an individual would fill out a simple application form, sign a statement to the effect that he may lawfully possess handguns and handgun ammunition under the laws of the United States and of the State and political subdivision of his residence, and submit a set of his fingerprints and a photograph. Most law-abiding handgun owners, like myself, would gladly go to such minor inconvenience in order to strike a blow for law and order.

There is no provision in the amendment to ban or confiscate handguns except those unregistered or found in the possession of unlicensed owners.

Mr. President, the fear of crime in America is first and foremost a fear of violence by gun: violence against citizens and violence against policemen in the performance of their duties.

Each year more than 20,000 citizens are killed and 200,000 are maimed or injured by guns. Between 1964 and 1971, armed robberies increased 230 percent, about 63 percent of these robberies committed with guns. Also, by the end of this same 8-year period, 65 percent of all

murders were being committed with guns.

And in this grisly pageant of crime and death the chief villain is the handgun—too easily obtained and concealed, too easily used to coerce, maim, and kill. Nationally, the crime gun is the handgun. Though only 27 percent of the Nation's firearms are handguns, they account for most firearms crimes: in recent years, nearly 80 percent of firearms homicide, 86 percent of firearms assaults, and 96 percent of firearms robberies have involved handguns. Most violence crimes are committed with handguns. Seventy-five percent of policemen killed in the line of duty are killed at the point of a handgun.

Let me cite Chicago as an example of this increasing handgun violence. In 1965 there were a total of 8,080 armed robberies in Chicago, of which 48 percent were committed with handguns. In 1971, however, there were 16,000 armed robberies, of which 71 percent were committed with handguns. This works out to an armed robbery increase of 92 percent, but an even more astounding increase of 192 percent in the number of armed robberies committed with the use of handguns.

In the decade 1961 through 1970, 633 policemen were murdered in the Nation—most of them with handguns. Last year 125 policemen were murdered 96 percent of them with firearms and 74 percent of them with handguns. And in the first 6 months of this year, 56 more law officers have been slain, most with handguns.

The evidence shows beyond doubt that the crime gun is the handgun, and it demonstrates beyond doubt the need to control access to all handguns, not only the Saturday night specials.

This amendment recognizes the legitimate uses for handguns. It does not confiscate handguns. It does not deprive handgun owners of handguns for legitimate purposes, but it also recognizes that you do not shoot ducks with a snubnosed .38. Coupled with S. 2507, it would provide a workable and also a fair answer to the plague of handgun violence.

Mr. President. I ask unanimous consent that a letter from Mr. John Gunther, the executive director of the U.S. Conference of Mayors to me, dated today, be placed in the RECORD. The letter supports my efforts at handgun control and in general supports my amendment. I would also like to place in the RECORD a copy of the recent resolution of the Conference of Mayors supporting various handgun control measures.

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

U.S. CONFERENCE OF MAYORS,
Washington, D. C., August 8, 1972.

Hon. ADLAI E. STEVENSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENSON: The United States Conference of Mayors, representing the cities of the nation with populations of 30,000 or more, commend you for your efforts to bring about sensible handgun control. The nation's Mayors know what the uncontrolled manufacture, importation, sale and private possession of handguns means.

The Mayors will do their part in law enforcement, but they believe it is time that the Congress does its part.

Handguns cannot be controlled on a city-by-city basis. National leadership and responsibility are clear. We hope that the Senate will accept this fact and do its duty to the American people.

We enclose herewith a resolution on this subject adopted at the 40th Annual Meeting of the United States Conference of Mayors in New Orleans, Louisiana, June 21, 1972.

Sincerely,

JOHN J. GUNTHER,
Executive Director.

RESOLUTION ON HANDGUN CONTROL

Whereas, over 8,000 Americans were felled by handguns in 1970 and nationally 80% of all homicide victims knew their killers as a relative or friend; and

Whereas, 95% of the policemen killed in the line of duty between 1961 and 1970 were felled by handguns; and

Whereas, gun dealers today sell to the mentally ill, criminals, dope addicts, convicted felons, juveniles, as well as good citizens who kill each other; and

Whereas, those who possess handguns cannot be divided into criminals and qualified gun owners; and

Whereas, handguns are not generally used for sporting or recreational purposes, and such purposes do not require keeping handguns in private homes; and

Whereas, the United States Supreme Court ruled in 1939 that firearms regulation is not unconstitutional unless it impairs the effectiveness of the State militia,

Now, therefore, be it resolved that the United States Conference of Mayors takes a position of leadership and urges national legislation against the manufacture, importation, sale and private possession of handguns, except for use by law enforcement presonnel, military and sportsmen clubs; and

Be it further resolved that the United States Conference of Mayors urges its members to extend every effort to educate the American public to the dangerous and appalling realities resulting from the private possession of handguns, and that we urge the Congress to adopt a national handgun registration law; and

Be it further resolved that (i) effective legislation be introduced and approved by the states not having adequate legislation to that effect; (ii) the proposed legislation shall provide for the registration of all firearms; (iii) state legislation shall require all citizens interested in carrying a weapon to obtain a license after showing just cause and good conduct; (iv) federal legislation shall provide, in addition to existing restrictions, that any person not having a state license to carry a firearm shall commit an offense for transporting such in interstate commerce.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. On whose time? Divided time?

Mr. MATHIAS. Divided time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STEVENSON. 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. STEVENSON. Mr. President, I yield such time as he may require to the Senator from Kentucky.

AMENDMENT NO. 1413

Mr. COOPER. Mr. President, I call up my amendment No. 1413, which is an amendment to the amendment offered by the distinguished junior Senator from Illinois (Mr. STEVENSON).

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 9, strike out lines 7 through 9.

The PRESIDING OFFICER. The amendment is not in order until all time on the amendment of the Senator from Illinois is either consumed or yielded back.

Mr. STEVENSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENSON. I believe this is an amendment to my amendment. Is it not therefore in order?

The PRESIDING OFFICER. Unanimous consent is still required.

Mr. COOPER. Mr. President, I will explain my amendment now, so that it can be voted on at the proper time.

The language my amendment would strike from the amendment offered by the distinguished Senator from Illinois is found on page 9, lines 7 through 9, which read as follows:

An applicant for a Federal handgun license shall pay a fee for obtaining such a license in the amount of $5, and a fee for renewing any such license in the amount of $5.

I assume that the purpose of the langauge is to provide revenue for the cost of administering the program, the cost of obtaining a Federal license, and for renewing it from time to time. It would provide to the Treasury several million dollars for the purpose of administration.

I offer the amendment for a reason, which I will explain. There is opposition in the country to the registration of handguns. The language of my amendment would strike, requiring a fee for registration. I consider the loss of revenue it would be small compared to the value of removing another objection to the registration of firearms. That is the purpose for which I offer the amendment.

I want to explain briefly why I will support the amendment offered by the Senator from Illinois. I did not support the amendment offered by the distinguished Senator from Michigan, Senator Hurt, although it would have clearly removed, as far as possible, the production, and consequently the use of handguns in the perpetration of murder and other crimes and the accidental shooting of persons. I did not support it for a reason, based on the experience of the past. Right or wrong, there exists in our country resistance to the registration of firearms. Senator HART's amendment would have required the confiscation of handguns, with pay. I recall the experience I had when I was a judge in Kentucky during prohibition. The motives of the 18th amendment were good but it provoked such overwhelming opposition from the American people to their right, as they saw it, to meet their personal satisfactions and needs, that

opposition to the 18th amendment resulted in a long period of crime. It was a time of great trouble in this country.

I believe, as the Senator from Michigan, Senator HART, a man of rectitude himself stated, that the time has not arrived for his amendment, it could not be supported, and resentful opposition would develop, as with the 18th amendment. I did not support the amendment offered by the Senator from Massachusetts (Mr. KENNEDY) and others because it added to the legislation concerning handguns, the registration of rifles and shotguns.

Today, the amendment of the Senator from Illinois has brought this issue down to the problem which is of greatest importance to our country, and that is the possession and use of handguns.

My State of Kentucky has a tradition of bearing firearms for the security of the State and in the early days personal protection. It grew out of the fact that Kentucky was the first State west of the Alleghenies and settlers had to protect themselves. Firearms were made in Kentucky. They were used in the War of 1812 in Ohio and Michigan and of course in the Battle of New Orleans. That tradition still exists in Kentucky, as well as in other States.

The amendment the Senator from Illinois has offered does not apply to rifles or shotguns but to the illegal possession of handguns, pistols, and revolvers. On this subject I am following the same position I have held on previous bills, I have always voted for handgun control.

Now, the time has come to have stricter controls on handguns, the instruments of death. The amendment of the Senator from Illinois has offered is directed to that end. It would prohibit the possession or the receipt, transfer, of handguns to persons who are enumerated in his amendment. It would not prohibit registration or possession of a handgun by a law-abiding citizen who meets the requirements of his amendment. But his amendment would, by requiring Federal registration, insure that, insofar as possible, the persons to whom possession is prohibited, would not be able to secure or possess a handgun. It would also provide an effective method of tracing ownership of handguns used in the commission of a crime.

Mr. BAYH. Mr. President, will the Senator from Kentucky yield?

Mr. COOPER. I yield.

Mr. BAYH. I know that the Senator is operating under a strict time schedule following his responsibility in the Public Works Committee, but I want to direct a question or two to him to try to get his thoughts about the relative merits of the Stevenson amendment which he is describing so eloquently, and in trying to put the Senator's amendment in proper perspective relative to another amendment which will be coming before us. As I understand it, the Senator from Kentucky is striking the key provision of the amendment of the Senator from Illinois, and that the basis for his argument that this is an expense which should be really supported by the Government is that by getting the handguns registered and licensed, that is a price the Government should be willing to pay——

Mr. COOPER. Exactly.

Mr. BAYH (continuing). And that he is not concerned about the cost involved.

Mr. COOPER. I am not. It would not be large. The Senator is correct.

Mr. BAYH. I thank the Senator. Could I ask one further question? I ask it although it may not be specifically relevant, but it is clearly akin to the preceding question. There is a compensating feature in efforts to try to get guns off the market. If an individual wants to turn in a firearm, is it not in the public interest to reimburse that person, as an incentive, to get that gun out of circulation? Does the Senator concur in that policy judgment?

Mr. COOPER. Yes. I believe that is a fair provision. But the point I am making now concerns the fee. I think, to require a person who is not a criminal, who does not fall within the categories to whom possession is prohibited, to pay a fee is a burden and one which should be borne by this country as a whole. The imposition of a fee imposes another argument for opposition to handgun control.

The reason I believe the amendment of the Senator from Illinois is superior to the committee amendment is that we have essentially tried the committee amendment for years. The committee bill strengthens it somewhat by specifying the kind of handgun that could be possessed; but even with that, we have tried this system since 1968 and, as I see it, all that has happened has been an explosion of manufacture and possession of cheap handguns, crime and death.

I believe that a uniform provision for registration throughout the country would bring about stricter compliance with the requirements that those who are prohibited from possessing firearms shall not be permitted to possess handguns, and will lead to more effective detection, prosecution, and convictions of criminals. It will not, except for some inconvenience, affect in any way law-abiding citizens

Mr. BAYH. There is a great deal of merit to that. For procedural reasons on how to make the bill work, I come down on the other side of the question. But there is significant merit to what the Senator from Illinois has to offer and what the Senator from Kentucky says. I will not interrupt further, but I wanted to get the Senator's thinking on the public policy position of the measure that is on the Senator's bill as well as in the bill before us, to compensate those who would voluntarily turn in a weapon and if that makes good sense from a public interest standpoint, I am glad the Senator from Kentucky concurs.

Mr. COOPER. The value of the amendment offered by the Senator from Illinois will far outreach that consideration. If this amendment is adopted, law abiding citizens will still be able, under the conditions laid down by the act of 1968 and this amendment, to possess rifles and shotguns. But what is the reason for the possession of handguns? The bill and the prior law permitting the use or possession of handguns by certain groups—law enforcement officers—will still be the law. Under the Senator's amendment, any person not otherwise prohibited, because of conviction of a felony, or mental defects, or being a fugitive from justice, or a drug addict, could by registering, possess a handgun. But it would prohibit criminals and people who intend to use these handguns for criminal purposes from possessing handguns. What is wrong with this amendment? Nothing I know that some people will object. But the time has come when law-abiding people of this country must bear some burden, some inconvenience, to protect themselves, and protect the public at large against criminals.

I cannot see any other logical course of action. Therefore, I wholeheartedly support the amendment offered by the distinguished Senator from Illinois (Mr. STEVENSON). It is in my view the best amendment that has been offered to make a start toward controlling the crime that can ruin our country.

Mr. STEVENSON. Mr. President, I thank the distinguished Senator from Kentucky for his support.

The Senator from Kentucky recognizes the legitimate interests of most handgun owners. He also recognizes that the handgun is the crime gun in America. He supports the amendment because he believes as I do that it is possible to strike a fair balance between the legitimate interests of the handgun owners and the necessities of law enforcement in the country.

I might add that the public at large agrees with this position.

The most recent Gallup poll taken last May shows that fully 71 percent of the American people favor a law "which would require a person to obtain a police permit before he or she can buy a gun." That is a concept similar to the one I am proposing in my amendment for handguns.

The same poll showed that 62 percent of all handgun owners favor such a permit system as a means of reducing the tides of blood, violence, and crime in the country.

I am very grateful to the Senator from Kentucky for his support. Mr. President, I have just conversed with the Senator from Kentucky about his amendment. Unfortunately, he must now return to a committee meeting.

The licensing and registration fees in my amendment are not intended to be onerous. They provide for a registration fee of $2 for the first handgun, $1 for additional guns registered, $2 for collections, and a $5 license fee. Certainly it is not unusual to require fees in connection with the licensing and registration of possessions and instruments. We do it in connection with automobiles. We do it in connection with dogs. We do it in connection with all sorts of items or property. However, I can see that the licensing fee especially would invite opposition from some quarters and be perceived by others as a form of harassment.

My amendment does require a licensing fee for all handgun owners. It is my understanding that the Senator from Kentucky has offered an amendment which eliminates that licensing fee. I have no objection to his amendment. I have discussed it with him.

I think that the most practical way of

agreeing to his amendment to my amendment would be for me at this point to ask unanimous consent that my amendment be modified to conform with the amendment offered by the Senator from Kentucky, which is:

On page 9, strike out lines 7 through 9.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Illinois? The Chair hears none, and the amendment is accordingly modified.

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

Mr. STEVENSON. I yield.

Mr. COOK. Mr. President, I wonder if in the course of the debate on the Senator's amendment as modified, he might put into the RECORD the language on page 5, particularly the language reading: "is, because of alcoholism, drug addiction, or mental disease, an individual who cannot possess or use handguns safely or responsibly."

Mr. President, I wonder if the Senator would put into the RECORD how he intends that the interpretation should be made, how he intends to delegate this—to what authority or State official at what level—the decision that an individual is an alcoholic or that an individual has a mental disease or a defect so that we might have some clear expression in the RECORD of this. For instance, as far as mental disease is concerned, we would have an indication whether it is an adjudication or whether this becomes an objective decision of a licensing individual who can make this decision on his own without any criteria, or just exactly what the Senator intends as the basis for this kind of a decision and who might make the decision.

The reason I ask is that I felt that one of the defects in the Kennedy amendment yesterday was that it had this language. But yet there was no determination as to how it was to be done, whether a local official or county court clerk just says to an individual who wants a license, "I will not give it to you. You are an alcoholic." Is that to be a civil decision, or do we want to render a legal decision and do we have the authority?

The other thing that bothers me is that the Kennedy amendment provided that one could not obtain a license if he is under indictment. There are hundreds of indictable offenses that do not include the use of firearms. I might also say that there are many convictions requiring a term exceeding 1 year that have nothing to do with the utilization of firearms at all. Let us take a case involving income tax problems and that sort of thing.

I am not criticizing the amendment. However, I am merely asking if we could put some things into the legislative history that might shed some light on who makes this interpretation and how it should be made, because it causes serious doubt in my mind as to whether a local official can make this decision on his own and, therefore, deny the right to an individual, not to possess, but to possess a certificate that he is entitled to possess.

Mr. HUGHES. Mr. President, would the Senator yield?

Mr. STEVENSON. I would be glad to yield after I explain this matter.

Mr. HUGHES. I would like to propound a further inquiry, being a cosponsor of the amendment.

Mr. STEVENSON. Mr. President, I yield to the Senator from Iowa.

Mr. HUGHES. Mr. President, I thank the Senator from Illinois.

Mr. President, being a cosponsor of the amendment with the Senator from Illinois and having looked at the provisions in the law, I want to say with respect to the amendment, that I share the concern and I shared the concern on amendments offered yesterday. Being a recovered alcoholic, never having been diagnosed an alcoholic by any physician or any other medical authority at any point in my life, I do not know under the law what sort of application could be held.

I would state also that probably 95 percent of the people who call themselves alcoholics in America have never been so diagnosed by any medical authority or any other authority. They would be excepted under the law.

My fear is that unless the language is added, there would be problems since we have declared, the Congress of the United States and the President of the United States, that alcoholism is an illness that people are basically suffering from, a disease concept of illness in relation to this. I might also add that this concept has been spread to the field of addiction generally. There are some questions raised. I feel that some modification would be in order.

I just do not wish it to be placed in the hands of some local official some place and for that local official to determine whether during a period of drinking over the course of 20 years some man may have been seen in an intoxicated condition a couple of times and, therefore, be deemed unworthy to be a licensee under this section of the amendment.

If the Senator could broaden his concepts and ideas on that, I would appreciate it also.

Mr. STEVENSON. The Senator from Iowa and the Senator from Kentucky have raised two questions, one about the standards for alcoholism, drug addiction, and mental disease, and the other about prior convictions.

The amendment I have offered, as modified, simply incorporates the existing terms of the law which basically are that no one is entitled to own a pistol after conviction of a felony unless the individual receives dispensation from the Secretary of the Treasury. That is what the amendment states, and that is what the law now provides.

The other question raises a more difficult question. It is a question with which I first came to grips in the Illinois Legislature when I offered a similar amendment some 7 years ago. There is no easy way to answer except to say we can do nothing and permit drug addicts and others suffering from mental disease to acquire, own, or use pistols with impunity. Certainly Congress cannot determine which individuals from hundreds of thousands of individuals suffering in one degree or another from these afflictions should or should not be entitled to own a pistol.

This language does not say all persons suffering from alcoholism, drug addiction, and mental disease cannot possess handguns. It does say that those who, because of drug addiction, alcoholism, and mental disease or defect, cannot possess or use handguns safely or responsibly, are not entitled to licenses. The question of who decides whether someone is suffering from one of those afflictions to that degree cannot be determined by Congress on an individual basis, but would have to be determined by someone to whom we delegate the authority. Here that person is the Secretary of the Treasury. It is an authority which can be exercised responsibly and fairly by the Secretary of the Treasury. It will be possible to adopt regulations and standards with the cooperation of experts, including experts from the medical profession, which apply and enforce the provisions of this amendment, not only fairly, but also uniformly throughout the country.

I do not know what else can be done except, as I said, nothing, and continue to make it almost as easy to buy pistols as it is to buy a Kewpie doll.

Mr. HUGHES. My experience is dealing with public officials in relation to alcoholism is almost 100 percent totally negative. There is little, if any, understanding anywhere in this country of the major problems of alcoholism nor is there a general public willingness to admit this. Even after 10 or 15 years the terminology remains the same. The Federal system, after we have passed the law requiring the institution of Federal programs, has been very reluctant to deal with this program.

I am speaking in support of the amendment. I am speaking to suggest what I consider to be a mild modification, that in the event a license application is denied, based on this terminology, the applicant have the right to present a medical certificate stating quite the contrary.

In my opinion this would not be a deterrent to the law and would not deprive, in my opinion, hundreds of thousands of people in this country from being licensed to own handguns who are perfectly normal, capable individuals, in every respect. I see no reason to take the chance of denying those people this right.

Can the Senator respond to that, perhaps?

Mr. STEVENSON. I share the Senator's concern. The amendment does set up an administrative procedure for appealing license denials. It is certainly possible in the course of such a review to present the medical evidence, the certificate of a doctor, and to effectively challenge the determination of the licensing authority. I am not sure we really do not have the protections in the amendment now that the Senator is seeking.

Mr. HUGHES. The Senator from Iowa will point out to the Senator that 99 percent of the people affected by this would not have the knowledge, money, or wisdom to carry out such an appeal without going to exceeding difficulty, expenses, hiring an attorney to represent them, and so forth.

What I am talking about is a simple procedure that would allow the filing of a medical certificate from a person's own personal physician, either along with the application or after the application was denied, if that was the stated reason. I cannot say that this is an appeal procedure entirely, but simply a clarification procedure.

Mr. STEVENSON. I would be glad to accept language, if we could work it out, or alternatively, perhaps, in the legislative record, to make clear our intentions in cases of alcoholism, that the individual should be permitted in those cases of doubt to submit to the Secretary or his representative the opinion of responsible medical authorities to the effect he is qualified to own a handgun and that in such cases the opinion of the medical authority should be accepted by the Secretary.

Mr. HUGHES. Under section (a) on page 5, with reference to the age of 18 years, there are questions with respect to the use of handguns by young men and women under the age of 18 years. This language states that they may not possess or own, if I understand it correctly. Presuming I have a son 14, 15, or 16 years old, who wants to fire and use a handgun I own, and whom I would like to have own a handgun, being responsible for his actions, the nature of his use of it, is there any method where under this amendment the boy or girl, the teenager under 18, can possess or use a handgun?

Mr. STEVENSON. The Senator raises a question that I have been concerned with before. I have young sons and I also go shooting with them occasionally. I have shot handguns with them. I do not believe the Senator has anything to be concerned about in this amendment. The amendment states that the terms "possession and possess" mean asserting ownership, or having custody and control. That is found in section (g) on page 11. I believe in the circumstances the Senator poses, the parent would have the ownership and also exercise the custody and control of the weapon.

In those cases in which it was anticipated that the minor son or daughter would have use of the gun, the Senator would more likely encounter difficulties under State laws, many of which now make it a crime for minors to possess firearms of all descriptions.

Mr. HUGHES. If the Senator will yield further, the Senator from Iowa is aware of that fact. He does not want to further compound the problem in relation to this matter. Having grown up, as the Senator from Illinois did, in the Midwest, in my own instance having used guns from the time of my earliest memory with my father in the field and along traplines, hunting, and every other way, even though I have great objection against the use of weapons when they are used to take human life and when they are involved in crime, I have great reluctance to see the age completely disappear when, under proper supervision, your son or mine could be properly instructed and could be given the opportunity to share in the outdoor relationship in which most of us in my generation have grown up.

I am simply trying to build up the legislative history to try to see that we are not by this amendment eliminating pistol clubs, for example, or the ability of men or women to go out and train teenagers, under proper supervision, in the use of weapons for sport, rather than for death and destruction.

In relation to this question, we are frequently met with the fact that at 18 years old we are still drafting our young men and training them to use weapons for deadly purposes. Perhaps, in relation with this, the legislative background should show it is not the intent of this amendment to deny, under proper supervision, instruction in and utilization of handguns by parental guidance or other guidance.

Mr. STEVENSON. I share the Senator's concern. It is certainly not my intention to do so. The whole intent of this amendment is to strike a reasonable balance between legitimate rights to gun ownership, which the Senator has described, and described eloquently, and the real necessities of law enforcement in the country.

The amendment does not affect rifles and shotguns. It is not its purpose to keep handguns out of the hands of legitimate owners, including, under the supervision of parents, out of their children's hands. The purpose is to keep handguns out of the hands of those most likely to misuse them, and those most likely to misuse them, as the Senator well knows, are children, young people, with too easy access to handguns, causing not only crime but accidental injuries, and doing it without parental guidance, control, and custody.

Those cases—where there is parental guidance and control—would not be affected by this amendment, and certainly that is not the intention. It is the intention of the amendment to keep those guns out of the hands of unsupervised children.

I thank the Senator, I think this colloquy is very useful and does help to clarify the intent of the Senate. I certainly share the Senator's concern.

Mr. HUGHES. Will the Senator yield further?

Mr. STEVENSON. I yield.

Mr. HUGHES. I would like to state now to this body why I support this amendment. As I stated earlier, I had grown up and been instructed in the use of firearms almost since my earliest memory.

The PRESIDING OFFICER. All the time the Senator from Illinois has on the amendment has expired.

Mr. BAYH. Mr. President, I yield 5 minutes to the Senator from Iowa.

The PRESIDING OFFICER. Five minutes are yielded to the Senator from Iowa.

Mr. HUGHES. I thank the Senator from Indiana.

Among my earliest memories are walking as a young boy the streams and valleys of northwest Iowa and being instructed in the proper use of firearms. My father trapped in the wintertime, not because he enjoyed it but because it was the way he made a living in the depression.

Under those circumstances, today I own eight handguns. In addition to that, I own over 20 so-called long guns. These are guns that I have used and enjoyed for many years, not destructively but creatively, believing fully and wholeheartedly in conservation. I am a hunter. I have hunted all over this Nation, and I make no apologies for it. I enjoy it. I value the lives of animals, birds, and other forms of life as much as any other individual, at least those who eat meat. There are those who value life so highly that they refuse to eat meat under any circumstances.

Under those circumstances, I feel very strongly that we have reached a point in our society when a balance is absolutely essential, when those people who own, possess, and use firearms for sporting reasons, for reasons of producing food for their table under some circumstances, and those who oppose the possession of firearms in our society must come to a reasonable balance. Firearms are being used for purposes of destruction and death in our society when used improperly. There is a method, a way by which we can reach such a balance.

As a sportsman, as an owner of firearms, I have absolutely no objections to the registration of those firearms. I have no objection whatsoever to constructive legislative and legal means for me to own and possess those arms while at the same time keeping out of the hands of those in our society firearms which they should not own, possess, or utilize and who in all probability would use them in destruction and harm to our society.

The reason why I am supporting this amendment is that the short gun, the handgun, is the gun most used in a criminal act in this country and in a destructive way.

I have had reluctance in supporting such legislation in the past because of the history of my own background and own upbringing, but at the same time I recognize the devastation and destruction being reaped as a result of the use of guns by some persons in the social structure of this Nation.

So I think we have finally reached the hour when those of us who own and possess and utilize weapons should strike a balance of supporting decent regulation so that all of us can be protected, including those who are alien to our way in society, and who would use those weapons for purposes of destruction and taking lives and property and causing devastation to law and order in our society.

For that reason I am supporting this amendment, even though I have some doubts and some questions about some sections in it.

I wonder if it would meet with the approval of the Senator if we could have a short quorum call while I might discuss at least one brief possibility of a modification of his amendment?

Mr. PASTORE. Mr. President, will the Senator yield before he makes that request?

Mr. HUGHES. Yes, I yield.

Mr. PASTORE. I want to congratulate the Senator from Iowa. I think what he just said must be considered the creed of this legislation. It is unfortunate we do not have more Senators on the floor who

could have heard what he just said. I believe what he said in such a rational way and in such a fair way is the one thing that has motivated the senior Senator from Rhode Island to vote for the Kennedy amendment, and also now I shall vote for the Stevenson amendment.

I agree with him that the time has come when society must strike a reasonable balance between liberty and security in the possession of firearms—between the sportsman and the assassin.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. Mr. President, I yield 2 minutes to the Senator.

The PRESIDING OFFICER. Two minutes have been allocated to the Senator from Rhode Island.

Mr. PASTORE. I believe we have some representatives in the galleries from the National Rifle Association. This is a fine association well represented in Rhode Island. Back home I have been questioned from time to time by sportsmen, "Why do we need a law at all?" The regrettable fact is that when one discusses or debates this law back home, he naturally happens to be talking to a law-abiding citizen, who begins to feel that he is, somehow, being made suspect and penalized by suggested rules and regulations.

The only argument that one can make is that sometimes we must invoke a slight inconvenience on the part of the good people in order to protect society against the bad ones. That is all this amounts to.

Again I congratulate the Senator from Iowa (Mr. HUGHES) for one of the finest explanations of this entire matter that I have heard thus far.

Mr. HUGHES. I thank the distinguished Senator from Rhode Island. I would just like to add an addendum, to say that those of us who enjoy the use of sporting firearms are not those who run about the country shooting everything in sight and destroying everything that we see just for the sake of killing. Our value of life is as high as anyone's value of life. Our support of conservation of wildlife in this Nation and in this world will compare favorably with anyone's support of the conservation of wildlife in this Nation and this world. I make no apology for the heritage, the upbringing, or the life history that I have had, and I expect to continue to use sporting firearms probably the rest of my life, or at least as long as I am physically able.

But I believe that somewhere a reasonable balance can be found, and that now is the hour to try to strike it. We should not set up two alien camps opposed to each other, with accusations that one side values life more highly than the other. That is just not true.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HUGHES. Will the Senator from Indiana yield time for a quorum call?

Mr. BAYH. The Senator from Indiana wishes to cooperate. I understand that the Senator from Nebraska desires some time on this issue. I am reluctant to yield for a quorum call, because we may run out of time completely. I am prepared to yield now to the Senator from Nebraska.

Mr. HRUSKA. Will the Senator yield me 10 minutes?

Mr. BAYH. I am glad to yield the Senator 10 minutes.

Mr. HRUSKA. Mr. President, I want to say at the outset that I am in full agreement and sympathy with and in active support of any measure, including this amendment, if it will achieve its declared objective. What we have before us, however, is an amendment which is a reenactment, in principle, with a slightly different arrangement, of the amendment that we considered here yesterday, the amendment introduced and sponsored by the Senator from Massachusetts (Mr. KENNEDY) and the Senator from New York (Mr. JAVITS), respectively, for registration of all guns.

That amendment was rejected by a vote of 11 to 78, a pretty precise and emphatic judgment of the Senate on this particular approach to a very vexatious and very serious problem.

Registration and licensing of firearms, Mr. President, have been tried in this country, and have failed dismally and significantly. I recite again a few elements from the experience of New York City, which officially and otherwise boasts of having the most strict gun laws in the country. For over 50 years they have had the famous Sullivan Act. For many years they have had a registration and licensing act within the city of New York, which has been broadened, in more recent years, to cover the entire State.

Yet even there they have estimates, Mr. President, of 500,000 to a million illegally possessed guns, because they are not registered and permits have not been issued on them. Possession of such guns is a State violation as well as a local violation, with severe penalties. Between 9,000 and 10,000 illegal guns are seized on the streets of New York every year. They have a police force there of some 32,000 to 33,000 policemen, but they say that they are unable to cope with the problem.

The use of handguns in the commission of crimes within New York is increasing. Pistols and revolvers will be used in 1972, according to current estimates, three times as often—in three times the number of crimes—as 5 years ago. Mind you, this is in a city where there are only 20,000 permits issued for handguns, and the rest of them, in a city of 8 million people, are not registered and thus illegal.

The same type of experience has been found to be true in Washington, where, in 1968, a registration law was passed. Mr. Hechinger, then President of the Council, testified in our hearings on this bill:

> I must regretfully report the effort was a total failure.

There were reasons for that failure, and he recited the reasons.

In the city of Detroit they have had a similar experience, in connection with which we had testimony from the chief prosecutor of Wayne County, which includes the city of Detroit, to the effect that there are some 500,000 guns within Detroit that are not registered. In one city, 500,000 law violators on this kind of measure.

We could go to Kansas City, Mr. President, we could go to Chicago, or we could go to other cities that were chronicled in our hearings, and receive similar reports.

Why is it that such laws are not successful? It is not only legitimate but necessary that we inquire into that. It is found, and the testimony by these witnesses supports the finding, that the public does not support that kind of law. People do not think it is reasonable. They do not think it is a serious matter to break this law. That is self-evident, when millions of people in the cities, knowing of the law, do not comply with it. They will not support an effort to enforce the law. And, most unfortunate—and what a sad commentary on a nation that purports to exist under a system of law—there is not the necessary sympathy, cooperation, and understanding of the seriousness of the violation of registration laws on the part of the criminal justice systems of these various cities. That has been documented, and it is a part of the RECORD. I shall not repeat the arguments which I made in yesterday's debate on these similar points.

As I say, those elements which are necessary to make such a law effective are lacking. It is said, in many of these instances, "Well, we cannot enforce this law in New York City, for example, because of the surrounding territory. Guns come in from Pennsylvania, they come in from New Jersey, and they come in from other States."

Mr. President, there is already a national law on the books—the Gun Control Act 1968—that controls and makes illegal such transportation of guns across State lines. So of what avail would another law be, to make that same act illegal all over again?

There is also this proposition, Mr. President: That fundamentally and principally, the enforcement of the laws must rest with the States and with their local authorities. It has to be so under our system of Government. There should be an effort made in America to find those States and those localities where the elements for the successful enforcement of a registration and licensing law will obtain, and then we should go in there and, on the basis of either a State or a city law or ordinance, enact a law and enforce it. But to try to inflict it upon the whole Nation, so as to make widespread over all the 50 States the dismal failure that has existed and exists today in the city of New York, is an exercise in futility and useless expense.

What is the expense, Mr. President? In New York it costs $25 to process the registration of a gun. That cost has been certified to in testimony before our committee. Multiply $25 by 30 million handguns in this country, and we have the magnificent sum of what? $750 million. That is what it would come to. It would be a terrific expense. And that is only the initial cost, because those registrations and those licenses must be kept current with additional costs each time. So the cost itself is a tremendous persuasive item.

It seems to me that it would not be well to vest in the national authority the

necessity to administer this law and to enforce it. To do that in 50 States would require the manpower that would be the basis for a national police force.

It is difficult for this Senator to understand that the so-called humanitarian, more liberal members of our society are fearful of a national police force that would investigate and prosecute a system of organized crime, and yet they would suffer the creation of a vast, vast army of enforcers for the purpose of registering handguns and laying the foundation for assignment to that manpower force of other duties by Congress, which becomes very excited and emotional at times. In that evolutionary process would come about a national police force.

No one I know of yet has stood on the floor of this Chamber and asked for the creation of a national police force as such. Yet, we have in a proposal of this kind such a potential.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. I yield 5 additional minutes to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, the objectives are fine, the declared purposes are good, but it is a method which has not worked. It is not working. It is too expensive in terms of money and manpower. It is in the wrong jurisdiction. That problem should be served on a State or local basis. It is said that they will not act. Mr. President, if they will not act, it shows that there is not the public support in that community or in that State to make it possible for that law, wherever it is imposed—locally, statewide, or nationwide—to make it a successful registration or licensing law.

For these reasons, this amendment should be rejected as resoundingly as was done yesterday in the instance of the Kennedy-Javits amendment, which perhaps was arranged a little differently as to its coverage but nevertheless had the same principles, the same arrangements, and the same objectives.

Mr. President, if any time remains, I yield it back.

The PRESIDING OFFICER. The remaining time allocated to the Senator from Nebraska has been yielded back to the manager of the bill.

The manager of the bill has all remaining time.

Mr. HRUSKA. Mr. President how much time remains on each side?

The PRESIDING OFFICER. The Senator from Illinois has no time.

Mr. HRUSKA. How much time remains on either side? Has it all expired on this amendment?

The PRESIDING OFFICER. All time of the sponsor of the amendment, the Senator from Illinois, has expired; 27 minutes remain to the manager of the bill.

Mr. BAYH. Mr. President, I yield 10 minutes to the Senator from Illinois, on the other side of this issue.

Mr. STEVENSON. Mr. President, I am grateful to the Senator from Indiana. I do not intend to use all 10 minutes. I am grateful for a few minutes in which to respond to some of the arguments made by the Senator from Nebraska.

First, it is said that this proposal would be expensive. I do not know how one places a dollar price tag on blood, crime, and violence. I do not know exactly how many dollars this proposal would cost. I am reasonably certain it would not cost very much. And I am convinced that the price would be low indeed, in terms of the bloodshed, crime, and accidental injuries it would prevent.

In fact, as the distinguished Senator from Massachusetts mentioned yesterday in connection with his amendment, I cannot conceive of a less expensive, more simple single step for a country—an advanced country—to take than this one, as a means of striking a balance between the legitimate rights of gun owners and the real necessities of law enforcement.

It has been said that this proposal would create a national police force. It would not create a national police force. The responsibilities of the Secretary of the Treasury are relatively simple. There would be some administrative responsibilities which he would have to exercise with some additional personnel in Washington. Otherwise, all the licensing and registration responsibilities would be delegated to existing authorities in the States and at the local level, including, in the discretion of the Secretary, national authorities throughout the country.

It has been said, also, that it has not worked. The facts are to the contrary. The evidence is strong that in cities such as Boston and New York, where gun control is strict, it has worked. The use of guns in homicides is more than 40 percent less than the national average in New York and 30 percent less in Boston. But we have to go to other nations to find national laws and an experience which will tell us something about the effectiveness of such a national law. Our present laws do not work well.

They are a patchwork. There are approximately 20,000 laws—some ancient, some unenforced or unenforceable, or too narrow and inconsistent to be nationally effective. But that is an argument for, not against, a national law.

Look to the experience in such countries as Great Britain and Japan, and you will find national restrictions on handgun ownership. You will also find rates of violent crime which are a fraction of our own.

It has been said that gun control does not enjoy public support. I do not want to extend the debate, but in the course of this debate it has been indicated by Senator KENNEDY, Senator HART, and others that reasonable restrictions on access to guns is supported by the experts. I might add to what they have said about the experts an exchange which took place in a committee hearing last March between the distinguished Senator from South Carolina (Mr. HOLLINGS) and the late Director of the FBI, J. Edgar Hoover. It was placed in the RECORD of July 28 by Senator HOLLINGS.

At one point, Senator HOLLINGS asked Mr. Hoover if "it"—gun control—could be done. Mr. Hoover's answer was simple:

> Of course it could be done—they say it would hamper law-abiding citizens from having guns but it wouldn't deter the criminal. I don't share that view at all. I think if you have a law that makes it a crime to have a gun unless it is licensed, it will deter a criminal from possessing it because he might be searched by a law enforcement officer.

Mr. Hoover went on to say that he supported gun control. He said:

> My position is that I believe there should be a firm and foolproof gun control act, particularly for handguns.

This amendment, Mr. President, is confined to handguns.

The necessity for reasonable restrictions on access to firearms, especially handguns, is also recognized by the people. There is public support for reasonable restrictions. A most recent Gallup poll taken in late May shows that fully 71 percent of the American people favor a law which "would require a person to obtain a police permit before he or she could buy a gun," a concept similar to the one proposed in this amendment for handguns. That poll also showed that 62 percent of all handgun owners favored such a permit system.

Mr. President, I will conclude by saying that we have heard a great deal in this country, we have heard a great deal in our politics, about law and order. I heard a great deal in Illinois in 1970. I pledged to the people of my State in that election campaign that when I came to the Senate I would do more than just talk about law and order. I pledged that I would introduce a handgun control bill, as I had in the Illinois legislature back in 1965.

The people of Illinois sent me to the Senate by the largest plurality of any Senator from my State. To say that there is no public support for reasonable restrictions on access to the principal instruments of crime and violence in our society is inaccurate. The people recognize the need for a reasonable balance—not prohibitions against gun ownership—but a balance between the legitimate rights of gun ownership and the necessities of law enforcement and a peaceful society. That is all this amendment would do. It would strike that reasonable balance. It would deprive no one entitled to a handgun for any legitimate interest of his handgun.

After a conversation with the Senator from Iowa (Mr. HUGHES) in which he expressed his concern for the standards in this bill particularly regarding alcoholism and how they might be enforced, I should like for the sake of the record to say that it would be hoped and expected that enforcement authorities to whom licensing and registration responsibility was delegated by the Secretary, would, when requested, hold a hearing on the alcoholism, mental disease, or drug addiction, or accept a medical certificate that a man—even though he has an alcoholic history—would be able to possess a handgun safely or responsibly—in order to make a reasonable determination as to whether the individual could be entrusted to own, possess, or use a handgun safely and responsibly.

In this amendment, we do not intend to permit law enforcement authorities to act arbitrarily and deny individuals the right to use handguns for peaceful, harmless purposes.

I thank the Senator from Indiana for yielding.

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

Mr. HRUSKA. Will the Senator from Indiana yield me 5 minutes?

Mr. BAYH. I am glad to yield 5 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

Mr. HRUSKA. Mr. President, reference is made to polls and the fact that 70 percent of the public seems to be for gun control.

Yesterday, I gave three examples of polls which belie the question.

The Detroit Free Press asked its readers to comment on this question in 1971:

> Do you agree with Senator Hart's proposal that the Government buy and destroy all handguns in the United States and that a five-year prison sentence be handed out for their possession?

In response, 74.5 percent disagreed; 25.5 percent agreed.

Another instance of a poll which is quite persuasive happened not too long ago. Last November, a public television program carried a debate on this subject. The debate was on a program known as The Advocate, and it was broadcast from Los Angeles and from Boston. The question debated was whether there should be a national ban on handguns, a very simple proposition, totally understandable. The public's response by mail was the second largest in the 3-year history of the program; 31,000 viewers, writing in to express their opinion on this subject answered to the call for an opinion. Eighty-three percent of those writing in, or 25,690 members of the public opposed a national ban on handgun ownership.

About the same time—November 19 of last year, to be exact—Life magazine published an article about the attitude of New York City residents toward crime. Readers were asked to express an opinion by way of a brief questionnaire. The results, based on responses from 43,000 members of the public, were published in Life's issue of January 14. That is a sizable amount in a poll. The result reveals that some 30 percent of those who responded keep a gun at home for protection. The percentage ranged from 20 percent in the larger cities to 36 percent in towns under 50,000. Of particular interest in this regard is Life's observation that:

> Gun control laws, particularly those by Senator Hart of Michigan and Mayor Lindsay of New York, found no sympathy among the letter writers.

These polls and statistics are cited not to indicate that Senators should vote one way or another on the pending amendment, but to suggest that there is a deep feeling in this country in opposition to registration, licensing, or confiscation. It is this feeling which will make the enforcement of this proposal difficult, if not impossible.

Mr. STEVENSON. Mr. President, will the Senator from Nebraska yield so that I might ask for the yeas and nays?

Mr. HRUSKA. I yield.

Mr. STEVENSON. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. HRUSKA. Mr. President, in summary, let me say on the subject of polls that we should be guided by specifics rather than a general recitation that there is a public demand for gun control ownership.

Mr. BAYH. Mr. President, I do not intend to use all the 14 minutes that remain to me, but, as floor manager of the bill I have some obligation to expressed an opinion on this issue. I must say, out of deference to my friends from Nebraska, Illinois, and Massachusetts that before the next 48 hours are over, the Senate will be tested as to whether it is willing to stand up and do what is right—and not necessarily what is popular.

We can argue endlessly about who responds to polls and who does not. All the polls that I have ever seen show a significant majority in favor of gun control laws. These polls, such as the recent Gallup poll, are objective, scientific samplings of public opinion.

The political impact of this issue comes not so much from the actual numbers of people who oppose gun control, but from the intensity of their feeling about it. Let us face fact. For that percentage, however small, who oppose gun control, it is a do-or-die issue.

I find myself in a rather difficult position as chairman of the subcommittee and floor manager of the bill. I have listened to the arguments of the Senator from Illinois and the Senator from Iowa, and I find them quite persuasive. I am opposed to stricter controls of rifles and shotguns for the reasons that I mentioned yesterday. They are not the weapons used in street crime. However, handguns, especially the cheap, easily concealed Saturday night specials, are used frequently in street crimes. If I had my druthers, I would prefer to see the amendment of the Senator from Illinois limited to the licensing provision.

I know that some of those in the sportsmen clubs see red when one talks about licensing. However, I cannot see any legitimate purpose in someone walking around the street with a handgun or having one in the car or in the glove compartment of the car without a license. That is a concealed weapon. That is the type of weapon that is used most often in crime. And I certainly am sympathetic to that part of the amendment offered by the Senator from Illinois.

I find myself, as the architect of a very small caliber bill—and I do not mean that as a pun inasmuch as we are dealing with Saturday night specials, most of which are small-caliber weapons—trying to find out how we can make some small inroads into the problems involved in the possession of firearms.

I know that the Senator from Illinois and others in good conscience do not feel that the Saturday night special bill makes a significant contribution.

But, I have listened to law enforcement officials tell me that it does. I have listened to prosecuting attorneys tell me that it does. And I have listened to J. Edgar Hoover and his successor tell me that it does. And I concur.

If this bill passes we will take off the streets about 900,000 of the kind of firearms that now are readily available to criminals. We will not license or register them. We will say, "You cannot even sell them." That is a significant contribution. It is not as significant a contribution as I would like to make. However, I can count. I have looked at the rollcall votes of yesterday. I am deeply concerned that if we go as far as the Senator from Illinois would like to have us go, we will not make any progress at all. I have tried to weigh the situation. And I am no newcomer to the field. Everyone has to make that judgment for himself. I am not asking anyone to let me make that decision for him. He will have to make it for himself.

The Senator from Indiana has made the judgment that the pending bill is as much as we can get adopted in this body this year.

With the deepest respect for my friend, the Senator from Illinois, I will have to vote no.

Mr. PERCY. Mr. President, I am pleased that my colleague from Illinois (Mr. STEVENSON) has offered this amendment to establish a comprehensive system of handgun registration and licensing. The intent of the bill, S. 2507, is to strike at the handgun problem in this country. In attempting to eliminate Saturday night specials, we should also go one step further and require that those citizens who own handguns obtain a license and register the gun itself.

In yesterday's debate we heard that handguns are involved in 52 percent of the murders committed nationwide, while in some parts of the country that figure may go as high as 73 percent. We also heard that one of the prime sources of handguns for criminals are actually stolen weapons.

I therefore believe that we must have a standardized system of registration and licensing which will aid law-enforcement officials and act as a deterrent against those individuals obtaining a handgun who do not meet the minimum standards. It makes little sense for one State—say Illinois—to have strong laws if another State does not.

For my own State of Illinois, this amendment would have only a slight impact, since we already have a statewide system of licensing gun owners. Hence, a citizen will merely have to register his handgun, unless he lives in Chicago, where registration is already mandatory.

It is interesting to note that in a recent Gallup poll 72 percent of the persons polled in the Midwest strongly favor police permits to buy a gun.

Mr. President, I can support Senator STEVENSON'S amendment in good conscience because it is not a confiscation measure. It does not affect sportsmen who own rifles and shotguns. I believe that it is a worthwhile addition to the Saturday night special bill.

Mr. STEVENS. Mr. President, although amendment 1397, which was proposed by

the distinguished Senator from Illinois (Mr. STEVENSON), differs significantly from amendment 1398, which was introduced yesterday by the Senator from Massachusetts (Mr. KENNEDY), the licensing and registration of all handguns continue to pose the same problem under both amendments.

The people of Alaska, as I indicated on the Senate floor yesterday, must utilize handguns for protection. Many of them must also utilize these weapons for subsistence. Alaskans often carry these weapons also for use in hunting and fishing in order to dispatch the animals humanely.

Because so many Alaskans live so far from civilization and have such desperate need of these weapons, the comprehensive licensing and registration requirements in amendment 1397 would pose severe hardship to the people of my State. Many of them must purchase handguns by mail and also must acquire ammunition in the same manner.

While I can sympathize with those residents of the inner cities who are particularly susceptible to crimes of violence and while I can also understand the desire to increase the safety factor of all weapons, I do not believe that amendment 1397 utilizes the proper method. The registration and licensing of all handguns under the complex procedures set forth in the bill would impose virtually insurmountable obstacles to many people in Alaska. These people are, in many cases, not skilled in the use of the English language and easily frightened by the Federal bureaucracy. Two results would likely occur were this amendment to be adopted. The first would be a confiscation and criminalization of people throughout Alaska. The second would be a probable widespread violation of the statute. Neither of these results is desirable.

For these reasons, I strongly oppose amendment 1397 and urge Senators to vote against it.

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

Mr. BAYH. Mr. President, I am prepared to yield back the remainder of my time. And I think that is all of the time remaining.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Illinois as modified. 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. ROBERT C. BYRD. I announce that the Senator from Georgia (Mr. GAMBRELL), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Rhode Island (Mr. PELL), the Senator from Virginia (Mr. SPONG), the Senator from Louisiana (Mrs. EDWARDS), and the Senator from Oklahoma (Mr. HARRIS), are necessarily absent.

I further announce that, if present, and voting, the Senator from Georgia (Mr. GAMBRELL), would vote "nay."

On this vote, the Senator from Rhode Island (Mr. PELL) is paired with the Senator from Virginia (Mr. SPONG).

If present and voting, the Senator from Rhode Island would vote "yea" and the Senator from Virginia would vote "nay."

Mr. SCOTT. I announce that the Senator from Tennessee (Mr. BAKER) and the Senator from Michigan (Mr. GRIFFIN) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because illness.

The result was announced—yeas 16, nays 75, as follows:

[No. 354 Leg.]

YEAS—16

Brooke	Javits	Ribicoff
Case	Kennedy	Stevenson
Cooper	Mondale	Tunney
Fong	Muskie	Williams
Hart	Pastore	
Hughes	Percy	

NAYS—75

Aiken	Eagleton	Miller
Allen	Eastland	Montoya
Allott	Ervin	Moss
Anderson	Fannin	Nelson
Bayh	Fulbright	Packwood
Beall	Goldwater	Pearson
Bellmon	Gravel	Proxmire
Bennett	Gurney	Randolph
Bentsen	Hansen	Roth
Bible	Hartke	Saxbe
Boggs	Hatfield	Schweiker
Brock	Hollings	Scott
Buckley	Hruska	Smith
Burdick	Humphrey	Sparkman
Byrd, Harry F., Jr.	Inouye	Stafford
Byrd, Robert C.	Jackson	Stennis
Cannon	Jordan, N.C.	Stevens
Chiles	Jordan, Idaho	Symington
Church	Long	Taft
Cook	Magnuson	Talmadge
Cotton	Mansfield	Thurmond
Cranston	Mathias	Tower
Curtis	McClellan	Weicker
Dole	McGee	Young
Dominick	McIntyre	
	Metcalf	

NOT VOTING—9

Baker	Griffin	Mundt
Edwards	Harris	Pell
Gambrell	McGovern	Spong

So Mr. STEVENSON'S amendment (No. 1397), as modified, was rejected.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BROCK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Geisler, one of his secretaries, and he announced that on August 7, 1972, the President had approved and signed the following act and joint resolution:

S. 2945. An act to amend title 10 of the United States Code to permit the appointment by the President of certain additional persons to the service academies; and

S.J. Res. 208. Joint resolution authorizing the President to proclaim the third Sunday in October of 1972 as "National Shut-In Day."

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. BIBLE) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Joint Committee on Atomic Energy.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 2854) to amend title 28, United States Code, relating to annuities of widows of Supreme Court Justices, with an amendment, in which it requests the concurrence of the Senate.

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

S. 484. An act to authorize and direct the Secretary of Agriculture to classify as wilderness the national forest lands known as the Lincoln Back Country, and parts of the Lewis and Clark and Lolo National Forests, in Montana, and for other purposes; and

S. 1819. An act to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide for minimum Federal payments after July 1, 1972, for relocation assistance made available under federally assisted programs and for an extension of the effective date of the act.

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

H.R. 9198. An act to amend the act of July 4, 1955, as amended, relating to the construction of irrigation distribution systems;

H.R. 11357. An act to amend the National Labor Relations Act to extend its coverage and protection to employees of nonprofit hospitals, and for other purposes;

H.R. 15376. An act to amend the Service Contract Act of 1965 to revise the method of computing wage rates under such act, and for other purposes; and

H.R. 15883. An act to amend title 18, United States Code, to provide for expanded protection of foreign officials, and for other purposes.

HOUSE BILLS REFERRED

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

H.R. 9198. An act to amend the Act of July 4, 1955, as amended, relating to the construction of irrigation distribution systems; to the Committee on Interior and Insular Affairs.

H.R. 15376. An act to amend the Service Contract Act of 1965 to revise the method of computing wage rates under such Act, and for other purposes; to the Committee on Labor and Public Welfare.

H.R. 15883. An act to amend title 18, United States Code, to provide for expanded protection of foreign officials, and for other purposes; to the Committee on the Judiciary.

HANDGUN CONTROL ACT OF 1972

The Senate continued with the consideration of the bill (S. 2507) to amend the Gun Control Act of 1968.

Mr. BROCK. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 11, after line 24, insert the following new section:

Sec. 7. Section 4182 of title 26 of the United States Code is amended by adding the following subsection (d):

"(d) Records—Notwithstanding the provisions of sections 922 (b) (5) and 923 (g) of title 18, United States Code, no person holding a Federal license under chapter 44 of title 18, United States Code, shall be required to record the name, address, or other information about the purchaser of .22-caliber rimfire ammunition."

On page 12, line 1, strike out "Sec. 7" and insert in lieu thereof "Sec. 8".

On page 12, line 4, strike out "Sec. 8" and insert in lieu thereof "Sec. 9".

The PRESIDING OFFICER. The time on this amendment is 1 hour. How much time does the Senator from Tennessee yield himself?

Mr. BROCK. I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BROCK. Mr. President, I ask unanimous consent that the Senator from Oregon (Mr. PACKWOOD) be listed as a cosponsor of the amendment.

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

Mr. BROCK. I yield to the Senator from Arizona.

Mr. GOLDWATER. Will the Senator add me as a cosponsor?

Mr. BROCK. Mr. President, I ask unanimous consent to add the name of the Senator from Arizona as a cosponsor.

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

Mr. CANNON. Mr. President, will the Senator add my name as a cosponsor?

Mr. BROCK. Mr. President, I ask unanimous consent that the Senator from Nevada be added as a cosponsor.

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

Mr. BROCK. Mr. President, I rise for the purpose of offering an amendment to eliminate the burdensome, time-consuming and costly recordkeeping requirements adopted by the Internal Revenue Service and applied to the purchase of ammunition under the Gun Control Act of 1968. My amendment is identical to a bill introduced in this and the last sessions of Congress by the distinguished senior Senator from Wyoming (Mr. MCGEE). This year the bill has over 40 cosponsors. My amendment would simply eliminate the ammunition recordkeeping requirements only as they apply to .22-caliber rimfire ammunition. This is the most popular type of ammunition commonly used in rifles by sportsmen.

During the first session of the 91st Congress, an exemption was granted shotgun and rifle ammunition from the requirements of the act. Many of us were disappointed when that bill was amended to exclude .22-caliber rimfire ammunition. In December 1970, the Senate Finance Committee favorably reported an identical companion proposal which had overwhelmingly passed the House of Representatives. This, too, would have eliminated .22-caliber ammunition from the 1968 Act.

The most prevalent type of .22-caliber ammunition comes in a small box of 50 cartridges costing only approximately $1. Each time a sale of a box of of these shells is made, the licensed dealer must make a permanent record of information on the purchaser and the type of sale. This process adds substantially to the cost of the retailed businessman's operation and indirectly adds to the price of ammunition which, in most cases, is being purchased by a bona fide sportsman for lawful use. Since the passage of the Gun Control Act, the price of ammunition has continued to increase at a fast pace. Three separate price increases were announced in 1970 alone. This is unfair and punitive in that the persons really affected so adversely are the law-abiding citizens pursuing shooting as a hobby or form of recreation. Furthermore, many small retail outlets have been driven out of business by complicated Federal recording practices.

Mr. President, the recordkeeping provisions for rifle and shotgun ammunition have been eliminated for more than 2 years with no serious adverse effects. My amendment is yet another step toward perfecting the Gun Control Act by removing provisions which have serious impact on legitimate sportsmen.

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

Mr. BROCK. I yield.

Mr. GOLDWATER. I think it would be wise if the Senator made it clear that he is talking only about .22 rimfire ammunition.

Mr. BROCK. The Senator is correct.

Mr. GOLDWATER. Not the so-called high speed, high velocity .22, .222, and .223 that come as center fire cartridges that can be quite lethal, but are not used for sport. This amendment applies only to the rimfire long and short ammunition that we have used since we were children and first learned how to shoot.

Mr. BROCK. I thank the Senator from Arizona for his clarification. He is absolutely correct. The old .22 rimfire ammunition has limited ability to hit a target, at least with me as the marksman, but this is the sportsman's ammunition. My amendment does not touch those center fire types of ammunition which could have a far more lethal effect than this does.

I appreciate the Senator's contribution.

Three years of experience under the Gun Control Act have demonstrated that ammunition recordkeeping requirements have the sole effect of imposing troublesome redtape on sportsmen, retail dealers, and other law-abiding citizens but have no effect on criminals and do not deter crime.

Moreover, an official of the Treasury Department testified before the House Ways and Means Committee that he knew of no instance where any of the recordkeeping provisions relating to sporting-type ammunition had been helpful in law enforcement. A representative of the Department of Justice has advised that:

> There is not a single known instance, as we have learned from our discussions with IRS, with the firearms people there, not a single known instance where any of this recordkeeping has led to a successful investigation and prosecution of a crime.

I repeat, he knows of no instance in which it has been helpful in a successful investigation and prosecution of a crime.

In fact, the volume of transaction in .22-caliber rimfire ammunition has made the recordkeeping requirements so burdensome that they tend to detract from the enforcement of other significant provisions of the firearms law.

The amendment offered today would exclude only .22-caliber ammunition from the recordkeeping requirements. It should be remembered that persons engaged in the business of selling ammunition must still be licensed and otherwise comply with the terms of the 1968 act. The licensed dealer would still have the responsibility of not selling ammunition to any person who they know or have reasonable cause to believe is a felon, under indictment for a crime punishable by imprisonment for a period exceeding 1 year, a fugitive from justice, an unlawful user of drugs, a mentally incompetent or under 18 years of age. Furthermore, all types of handguns still come within very restrictive provisions of the 1968 Gun Control Act.

Mr. President, perhaps the most compelling reason for granting an exemption to .22-caliber ammunition is the significant step we will be taking in the first eight sections of this bill to control the proliferation of handguns commonly known as Saturday night specials. In the Handgun Control Act we are eliminating the production of a special class of weapons most closely associated with violent crime.

When the recordkeeping provisions for rifle and shotgun ammunition were eliminated more than 2 years ago, there were several arguments offered for maintaining the requirement for .22-caliber rimfire ammunition. Chief among these was that the Saturday night specials used in the commission of countless acts of violence were one of the largest consumers of .22-caliber ammunition. The conclusion drawn by proponents was that by controlling the sale of this type of ammunition, we could limit the use of these lightweight guns in illegal acts.

As I pointed out earlier, that has not been the case. But now, as we are on the threshold of removing any Saturday night special from U.S. sales, there is no longer any basis for maintaining troublesome and ineffective recordkeeping requirements for .22-caliber rimfire ammunition.

Mr. President, with these safeguards and other limitations of the existing gun control law, I believe it is reasonable and desirable to adopt my amendment.

Let me point out the existing situation with regard to the 1968 act, just to illustrate the nature of the problem that we have.

The Internal Revenue Service, pursuant to the requirements of the 1968 Gun Control Act, has issued and established regulations pertaining to the sale of ammunition which still apply to .22-caliber rimfire amunition. In order to illustrate the cumbersome procedure which is required to purchase a box of .22 shells, I would like to state the relevant parts of the regulations—Code of Federal Regulations, section 178.125 (a), (c), and (d):

(a) Each licensed dealer shall maintain records of all ammunition he receives for the purposes of sale or distribution. Such record may consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records he maintains, and be readily available for inspection. Such record shall (1) show the name of the manufacturer and the transferor, and the type, caliber or gauge, and quantity of the ammunition acquired in the transaction, and the date of such acquisition, and (2) be retained on the licensed premises of the dealer for a period of not less than two years following the date of the acquisition.

(c) The sale or other disposition of ammunition, or of an ammunition curio or relic, shall, except as provided in paragraph (d) of this section, be recorded in a bound record at the time such transaction is made. The bound record entry shall show (1) the date of the transaction, (2) the name of the manufacturer, the caliber or gauge or type of component, and the quantity of the ammunition transferred, (3) the name, address, and date of birth of the purchaser (transferee), and (4) the method used by the licensee to establish the identity of the purchaser (transferee). The bound record shall be maintained in chronological order by date of sale or disposition of the ammunition, and shall be retained on the licensed premises of the licensee for a period of not less than two years following the date of the sale or disposition of the ammunition recorded therein. The format required for the bound record is as follows:

Date	Manufacturer	Caliber, gauge or type of component	Quality name	Address	Date of birth	Mode of identification driver's license (x) other (specify)

(d) When a commercial record is made at the time of sale or other disposition of ammunition, or of an ammunition curio or relic, and such record contains all information required by the bound record prescribed by paragraph (c) of this section, the licensed dealer or licensed collector transferring the ammunition, or ammunition curio or relic, may, for a period not exceeding 7 days following the date of such transfer is: (1) maintained by the licensed dealer or licensed collector separate from other commercial documents maintained by such licensee, and (2) is readily available for inspection on the licensed premises until such time as the required entry into the bound record is made.

All I am trying to do, Mr. President, is point out the enormous difficulty involved in a section of the bill which is no longer relevant or meaningful for the purpose for which it was originally intended. In 1968, there was an argument, and I will concede that in one way it was a legitimate argument, that the recordkeeping requirement could be beneficial in some instances in impeding the course of crime in this country. But the fact of the matter is that it has not done so. The fact is that the argument for keeping records on .22 rimfire ammunition, because it pertained to or was used in so-called Saturday night specials, has been eliminated by the provisions of this bill.

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

Mr. BROCK. I am delighted to yield.

Mr. KENNEDY. As I understand, there were no hearings held on this matter in the Finance Committee, were there?

Mr. BROCK. I am not familiar with that.

Mr. KENNEDY. There was an amendment proposed yesterday on licensing and registration. The Senator was present and listening when the principal opponent of those provisions, the distinguished Senator from Nebraska, pointed out that one of the principal reasons not to consider that amendment in the Senate was that hearings had not been held on it.

It is always interesting, about these procedural matters, that it makes a difference whose ox is being gored. Yesterday we were talking about stricter restrictions on gun control, and questions were raised about whether hearings had been held on that measure. Today we have an amendment that has had no hearings before the Committee on the Judiciary or the Finance Committee. But I have heard no one mention that fact about today's issue. I would like to ask the Senator whether he can tell us how many of those policemen who were shot by handguns in the line of duty were killed by .22 rimfire ammunition. Do we not need hearings to get the full story on the number of murders committed with .22 caliber ammunition?

Mr. BROCK. First of all, Mr. President, to say that there were no hearings is not a matter of fact, because there were perfectly adequate hearings held in 1968. The subject was exhaustively discussed at that time.

Mr. KENNEDY. In what committee?

Mr. BROCK. In committee and on the floor, when the matter was brought before the Senate.

Mr. KENNEDY. In what committee was the .22 rimfire ammunition considered? I sit on the Committee on the Judiciary. It is interesting that the .22 rimfire and other ammunition provisions in 1968 were sent to the Judiciary Committee, and then, before we were even able to schedule hearings, they were reintroduced and sent to the Committee on Finance, which reported them out without any hearings. It is interesting to me, as one who has been interested in this issue, that we always hear how we ought to consider adequately the various provisions on stricter gun controls, and that we cannot consider them here because we have not had hearings, and then we have a measure designed to weaken the bill, and have it come right out here on the floor without any hearings whatever.

This is not the principal thrust of my argument. I shall be glad to discuss the issue on the merits. But I think it is important to point out once again that the issue of the adequacy of hearings is really a phony issue, because, as the Senator knows, there have not been any hearings on this proposal this year, and yet we are asked to consider it.

Mr. BROCK. When the bill was first brought out——

Mr. KENNEDY. Which bill is the Senator referring to?

Mr. BROCK. The 1968 Gun Control Act. At that time, the issue was more than adequately discussed. I do not question the wisdom of that, nor the wisdom of the majority leader in taking up this bill without hearings.

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

Mr. BROCK. I yield.

Mr. GOLDWATER. Are there any moneys that accrue to the United States from the registrations of those people who buy .22-caliber rimfire ammunition?

Mr. BROCK. No.

Mr. GOLDWATER. So would there be any need of the Finance Committee hearing it, inasmuch as it brings no funds into the Treasury at all? I did not think the Finance Committee heard legislation on gun control otherwise; is that correct?

Mr. BROCK. Well, they did in this instance, with what logic I am not entirely sure.

Mr. KENNEDY. That question ought to be addressed to the Parliamentarian. That is where they sent the measure, and it is a matter which is generally controlled by the Treasury Department, as I understand. But let the Parliamentarian respond on that issue. The fact remains that no hearings were held on this amendment this year or last year, and a member of the Judiciary Committee, which considered the 1968 act, I do not remember any specific hearings on it then.

Mr. BROCK. The Senator will certainly remember the debates in which the matter was discussed at some length, and the argument was well made, I think by the Senator from Massachusetts, or certainly by those who share his views, that the reason for their amendment which required .22 rimfire ammunition to be covered by the act and by the recordkeeping situation was that the ammunition could be used in the so-called Saturday night specials.

Now, here is a bill which takes them out, which invalidates the entire premise of the earlier argument.

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

Mr. BROCK. I yield.

Mr. BAYH. I must say that I have listened to that argument about two or three times now, and I think we had better recognize how limited its effect really is.

No one can state with absolute precision how many million Saturday night specials are out on the streets right now, but several million of them are there. I wish there was some practical way to deal with them.

Some sort of provision like this is the only way we have any opportunity to get at them. If we take the Saturday night specials off the marketplace, what the Senator from Tennessee says is accurate so far as future sales of Saturday night specials are concerned, but it does not apply to the millions of weapons already on the street. Is that not accurate?

Mr. BROCK. The Senator says he is concerned about those already on the market. He voted against the measure which would have taken them off the market.

Mr. BAYH. To what is the Senator referring?

Mr. BROCK. The previous amendments in relation to handguns.

Mr. BAYH. The Senator was not even on the floor when I made my explanation as to why I voted that way. If he wants me to repeat it, I will.

Mr. BROCK. I was on the floor. I was in agreement with him. Now we change the argument. Now the shoe is on a different foot.

Mr. KENNEDY. The shoe is not on a different foot so far as this Senator is concerned.

Mr. BROCK. This act has been on the books for 4 years now. In those 4 years I do not know how many millions of these Saturday night specials have been produced; but I do know that there is criticism from the Department of Justice. We have not learned of a single known instance, from discussions with the firearms people there, in which any of this recordkeeping has led to a successful investigation of a crime.

Mr. BAYH. May I ask an additional question? Since the Senator has the hearing record and since the Senator from Indiana has talked to some of the same officials, can the Senator from Tennessee point to one instance mentioned in the record where either IRS or Justice tried to use these records to find a law violation?

Mr. KENNEDY. Perhaps the Senator could tell us how many people are working in that area in the Justice Department.

Mr. BAYH. As a matter of fact, the Justice Department has no interest in pursuing this, and neither does the IRS. They are not taking advantage of the records that are kept now, but that does not mean that an administration that wanted to keep these records could not use them to great advantage.

Mr. BROCK. The Senator knows that the Department of Justice would use any legitimate device to bring a criminal before the court if they could. As a matter of fact, it has not worked.

Mr. BAYH. The Senator from Tennessee cited very specifically the testimony of IRS and Justice that there was not one example of a prosecution or a conviction. Can he cite one example where the Department has tried?

Mr. BROCK. I will put the shoe on the other foot and ask the Senator to demonstrate to me his knowledge that they have not tried.

Mr. BAYH. I will tell the Senator that this has been their clear and persistent attitude. I know that the Senator from Tennessee has not had the opportunity to sit on this committee. I wish he had. The Senator from Massachusetts has had the opportunity. These officials have come before our committee many times. They came in 1970 and told us that there was a glaring loophole in the 1968 act, and they said a million firearms were coming in. Senator Kennedy asked them: "Are you not going to do something about it?"

They said, "Yes, we are going to do something about it." A year later, nothing had been done. I succeeded to the chairmanship of that committee, and I asked them, "Are you not going to do anything?" They said, "In 45 days we are going to have a recommendation." That was a year ago, and we still do not have any recommendations.

This alone should be ample proof that the administration is really not trying to pursue the means available to plug up the loopholes. I have seen no evidence that they pursue this recordkeeping with greater diligence.

Mr. BROCK. I do not see why the Senator would want to require the recordkeeping when it does not work. There is no method of tracing these pieces of ammunition. There is no numbering or serialization. The Senator knows that it is not a viable tool in law enforcement as it is written today. If it is not working, why does the Senator want to penalize the legitimate people in this country for something with which they have nothing to do?

Mr. BAYH. I would be glad to respond, but I fear that I have interrupted the Senator from Massachusetts.

Mr. KENNEDY. I wish the Senator would respond. It is right on point.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. I yield time to myself.

The present law suggests that, from the standpoint of public policy, certain categories of individuals should be denied access to ammunition. In the judgment of the Senator from Indiana—the Senator from Tennessee can reach a contrary conclusion—the best screening device to prohibit the sale of ammunition to those who are now denied access to it under the law is for those individuals to know that a record is going to be kept. For the Department of Justice and IRS to say that there is no record of a prosecution or a conviction stemming from this recordkeeping really does not deal with the merits of this requirement as a deterrent, because I do not think they have made an effort to prosecute or even to compile the information that has been collected for them.

Second, how can anybody at Treasury, at IRS, or at Justice know how many people have been deterred from going in and buying ammunition because they know a record is going to be kept? The law says now that you cannot sell to a juvenile. If a juvenile comes into a store and knows that a record is going to be kept and he perjures himself by saying he is not a juvenile and yet the storekeeper sells him ammunition, the juvenile has committeed perjury, under Federal law. He would be much less likely to attempt the purchase because he knew the evidence would be recorded.

I suggest that this is a significant incentive for a young person who does not qualify, who is a juvenile, not to buy ammunition. Neither IRS nor Justice can tell us anything about the tens of thousands of people who may be so deterred.

A drug addict cannot purchase ammunition under the statute. I suggest that the record keeping requirement is a significant deterrent to the drug addict or the felon or someone under indictment. The Senator from Tennessee knows the whole list of people who cannot buy. If they know a record is being kept and they have to perjure themselves, I suggest that it will be a significant deterrent that prohibits them or denies them access to that information.

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

Mr. BAYH. I yield.

Mr. BROCK. When I was growing up, I used to ask my dad to buy me ammunition when I wanted to do target practice. That was not a violation of the law.

Mr. BAYH. It is not a violation of the law now.

Mr. BROCK. Does it deter the 14-year-old from asking his dad to go in and buy ammunition today? The Senator said it does that.

Mr. BAYH. I did not say it does.

Mr. BROCK. Does it deter the felon from asking his friend down the street to buy ammunition for him?

Mr. BAYH. I did not suggest that at all.

Mr. BROCK. Then, what purpose does the Senator achieve other than to penalize legitimate people?

Mr. BAYH. There is a much different case to be proved. If I go in and buy .22 caliber rimfire for my son, I know he has it, and I have a responsibility to see how he uses it. That is far different from some 14-year-old or 16-year-old youngster on the street who has purchased a Saturday night special second-hand from a friend, so he would not be excluded from our act, from going in, if he appeared to be a pretty good-sized lad, and buying ammunition. No record need be kept. He gets the .22's. That is an entirely different situation from one in which a father purchases it for his son. It would be so for my son, and I suggest that it would be so for the son of the Senator from Tennessee.

Mr. BROCK. In effect, the Senator is saying that a father should not even be allowed to buy it for his son.

Mr. BAYH. No.

Mr. BROCK. That is what the bill says.

Mr. BAYH. The bill does not say that I cannot buy them with my son and use them with my son.

Mr. BROCK. The bill says that it is a subterfuge at best.

Mr. BAYH. Can the Senator find anything in the law that says a father cannot buy .22 caliber rimfire for his son and then go out and shoot with him?

Mr. BROCK. No.

Mr. BAYH. I have talked with many people who have bought this ammunition. I have talked with store owners. I know that some inconvenience is involved. But I also know that there is a real distinction, and the best case is the one that the Senator from Tennessee just brought up. A real distinction can be made in the case of a father who goes in and buys this ammunition for his son and thus has the moral obligation, and probably the legal obligation, to see that it is used properly. That is entirely different from the situation of a big 14-, 15-, or 16-year-old going in, with no record being kept, and the dealer feeling that he is not accountable and selling the juvenile the ammunition.

Mr. BROCK. No, no. The dealer is accountable—fully accountable.

Mr. BAYH. But there is no way of ever proving a violation of the law if there is no record kept of the sale.

Mr. BROCK. The Senator knows, if we should eliminate the fathers or the friends, we achieve the same purpose for the same reason. To me, the fact is anyone that wants to get ammunition can get it. There is no deterrent here. All we do is create difficult problems for the retailer, the small merchant, and for the customer, and run up the prices. It would have no effect. It would not stop one crime. It would incarcerate not one criminal. All you have done is infringe on the rights of millions of people who are decent and law-abiding citizens.

Mr. BAYH. I appreciate the Senator's remarks.

Mr. KENNEDY. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I yield.

Mr. KENNEDY. If we were to follow the argument of the distinguished Senator from Tennessee, why do we not do the same thing about liquor? If the Senator is saying that someone can go in and buy some liquor for a juvenile, why not use that same argument and abolish all the liquor laws that keep liquor away from young people? If we are prepared to take that step, let us hear that argument from the Senator from Tennessee. Does he suggest that we register liquor and keep records? The Senator is talking about the question of licensing procedures and the response to the argument made by the Senator is that we cannot possibly police this issue because we are making the father go in to buy ammunition for his son.

I want to go on to a more significant argument in which I would be very much interested. I want to know how the Senator would respond to the strong evidence offered by these figures.

The fact is, of the gun murders in this country in 1968 42 percent were committed with .22 caliber rimfire ammunition. I repeat, 42 percent of all handgun murders were committed with .22 rimfire ammunition.

On the question of long guns used in murders, the ratio was about 1 to 4, with 65 percent of long gun murders committed with .22 rimfire ammunition.

Let us hear the response to that one. It is the height of hypocrisy to go ahead and pass handgun legislation that attempts to do something about Saturday night specials and then open up the door in terms of ammunition. If the Senate is serious—and I am not so sure that it is—about doing something about violence, then let us do it. But we must not hide behind the facade that we can do a little something here on the Saturday night specials which will free up the question of ammunition. If we are interested in doing something about crimes of violence—42 percent of people murdered in one year with .22 caliber ammunition, why does the Senator not respond to that, does the Senator have some figures to show, in terms of murders taking place; can the Senator show that .22 rimfire ammunition has not been used? The fact is that .22 caliber was used in many murders. The Senator knows the issue is a serious one, and the judiciary committee knows it, and every law enforcement officer knows it. Let us not kid around about inconveniencing the sportsman on this matter. We have to balance the inconvenience of the sportsman against the question of security for all the people in this Nation.

We inconvenience those who drive a car, those who go down to get a fishing license, those who go down to get a hunting license. We are inconveniencing them. But when it comes to weaponry and the ability to kill, we back away from it. We are still backing away from it today, just as we backed away in 1969 when we freed up other ammunition from the recordkeeping requirements of the 1968 gun law. At that time the Senate acted, to free up the ammunition for long guns. The Senate recognized that .22 rimfire ammunition was being used primarily in handguns. The Senate, in its good judgment, deferred any kind of action, and here we see the Senate about to consider this amendment to further gut the 1968 act, that is the way I would label this amendment. I think it will have that effect—and the effect is a seriously tragic one.

The Senator talks about the number of sportsmen. Why does he not quote from the law enforcement people? Why does he not repeat what is said by the leading representatives of the Fraternal Order of Policemen and the International Chiefs of Police and every other law enforcement organization in the country? By exempting this ammunition from the recordkeeping requirement, there will be no impact on crimes of violence. But we will not hear that from the Senator from Tennessee. He knows it. I know it. Everyone knows it. The American people know it. The NRA knows it. The Senator and I have heard from them. We have received a great deal of mail on this subject. We know their power. That is why I think this amendment is in danger of passing.

Mr. BAYH. Mr. President, what is the time situation now?

The PRESIDING OFFICER (Mr. NELSON). The Senator from Tennessee has 5 minutes remaining and the Senator from Indiana has 20.

Mr. BAYH. Mr. President, could I address a question to the Senator from Tennessee on my time? I want to try to clarify a statement. The Senator referred in his opening remarks to the number of small businessmen driven out of business by recordkeeping requirements. Could the Senator tell us how many that is?

Mr. BROCK. I do not have any statistics. I have only the testimony from many people in Tennessee who have told me they cannot afford to carry that particular item any more. It is burdensome and not worth it. They have eliminated the product so that the sportsmen there have to go a distance of some 20 to 30 miles to a larger city in order to acquire the ammunition. That is, I think, unfortunate.

Very few Senators can get that kind of information for their statements to back them up. I simply say that what happened is a matter of fact, that there are many sporting stores that simply do not carry this kind of ammunition any more. It is too expensive and too much trouble to administer. Take the small rural general store who sells a variety of products including .22 caliber rimfire ammunition. If he sells 40 boxes of this ammunition per week, that is a gross sale of $40. This means for each sale he must fill out a separate form with separate information on each individual sale. Such a requirement is extra added work for this man and it is particularly noisome to him when he knows it is for no reason at all. This is form filing solely for the sake of form filing.

Mr. KENNEDY. As I understand it in 1968, about 2,200 people were killed in this country with .22 rimfire ammunition. The kind of ammunition the Senator from Tennessee was talking about. I dare say that with this increase in murders generally and in any kind of projection of statistics, we could safely and conservatively say that at least this number—and probably a good deal more, were killed with .22 caliber ammunition in 1971. As we all know the rate of murders has doubled over a period of 4 to 5 years, so that from these statistics we could safely and conservatively say that up to 5,000 people were killed last year with the kind of ammunition we are talking about here today. To try to free up this ammunition from any restrictions and to make it more available because of the interest of sportsmen is a sorry condition.

I would ask the Senator from Indiana if those figures would seem reasonable to him, based on the statistics I mentioned earlier, that 65 percent of those murdered in this country by long guns were killed with .22 rimfire ammunition, and 42 percent of those killed by handguns were also killed by .22 rimfire ammunition?

Mr. BAYH. That is an accurate statistic. And the Senator is correct that more than half of the police officers killed this year will be killed by firearms using .22 rimfire ammunition. More than half of the police officers killed last year were. That is why it seems inconsistent to me that ostensible supporters of law and order do not support these constructive suggestions for dealing with the ultimate weapon of death.

Mr. KENNEDY. Mr. President, I am reminded of the testimony of Mr. Rossides who appeared before the House Judiciary Committee when he was asked about the various reporting and recordkeeping procedures for ammunition. He indicated to the House on June 29, 1972, at page 272 of the hearing record that:

> The point is that we favor anything we can properly analyze as the best way to get the job done; the fellows tell me that the ammunition thing is worthless—they may be wrong and I am going to take a look at it . . .

This is the statement of the fellow in charge of administering the procedures to enforce this ammunition recordkeeping provision. He says that the administration may be wrong in believing the ammunition requirements are difficult to administer and that he will take a look at it to determine a firm position.

I ask the Senator from Tennessee

whether he has a statement from Mr. Rossides on whether he has made a decision and study of the matter. On June 29, 1972, Mr. Rossides indicated that he was going to look at it. And this is the fellow that is charged with the responsibility of administering and enforcing the existing law. He said he was going to review it. I would like to know whether in the preparation for the Senator's argument he has talked to Mr. Rossides or visited with him to find out what conclusions he came to, if any.

Mr. BROCK. Mr. President, the only response I can make to the Senator from Massachusetts is that when one reads the report of the Finance Committee, the testimony from the Treasury and Justice Department officials states that they know of no instance in which the recordkeeping requirement has been helpful. Furthermore, they also say:

> Because of the volume of the transactions on this ammunition, the recordkeeping requirements have become so burdensome that they tend to detract from the other provisions of the law.

I submit there are other provisions far more meaningful and more enforceable and more workable in the combatting of crime. Why would the Senator want to dilute the effect of these provisions?

Mr. KENNEDY. What can the Senator from Tennessee tell me about the administration's position on this? Are they for the amendment?

Mr. BROCK. I have no word on this particular amendment.

Mr. KENNEDY. The Senator must have consulted with those who administer this law to find out whether they favor this or are opposed to it. They are the people who live with this and, not just quoting from comments, the Senator must have heard from them as to what they feel. They have a responsibility. Have they indicated to the Senator and said, "We are right behind you. We do not think it will do the job."

I have testimony here from the administrator, as late as June 29, 1972, where he said, "We will take another look at it."

Mr. BROCK. Mr. President, in 1971 the Treasury Department did support the identical language which was introduced by the Senator from Wyoming (Mr. McGEE).

Mr. KENNEDY. We know how they change on different issues. I was interested in whether they had changed on this one.

Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 2 minutes.

Mr. BROCK. Mr. President, to briefly respond to the Senator and to summarize my position, the argument of the Senator from Massachusetts is that we should not loosen up the law. The fact is that the law is already loose. It is not working. If it were working, that would be a different matter. However, it is not. Not one case has been recorded to commend the continuance of recordkeeping requirements. As a matter of fact, the thrust of the testimony from the enforcement officials is that their recordkeeping sanction makes them spend time in areas that are not productive in reducing the cause of crime. To the contrary, all the legitimate provisions have been damaged.

It seems to me that if we are going to start talking about the number of people killed by .22 rimfire, either from short or long guns, the only way that we can stop this is to eliminate the sale of any ammunition whatever. I have never heard that proposed. However, we know that the law as it is damages legitimate citizens and does nothing at all to help the enforcement officials. It does nothing to impede the cause of crime. It has been ineffective, and it has become burdensome.

I can see no reason for maintaining it despite the statistics, because the statistics have not been affected. If they were, it would be different. However, they have not been.

The fact of the matter is that the 1968 act as written did nothing in this area. I think it is time to remove this burden from the legitimate people of the country.

Mr. BAYH. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Indiana has 11 minutes remaining.

Mr. BAYH. Mr. President, I yield 3 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have listened to the argument of the Senator from Tennessee on recordkeeping requirements for .22 caliber rimfire ammunition. We find that the person in charge of administering these procedures is making a study of the matter and is not sure whether it is effective or, if so, how effective it is.

Even given what the Senator from Indiana has stated about the record of this administration generally on the whole issue of gun control, I am reminded of the survey taken by the former chairman of the Juvenile Delinquency Subcommittee, the late Senator Dodd of Connecticut. Senator Dodd dispatched his staff to go into the surrounding Maryland areas to various stores that were selling ammunition at that time. The staff obtained the records of 177 purchases of ammunition that were made. They submitted those records to the FBI for investigation. And of the 177 persons whose names, addresses, and dates of birth were submitted to the FBI 66, or 37 percent, had criminal records.

That was on the basis of a study made by the staff of the Juvenile Delinquency Subcommittee in 1969. Also included was the fact that 250 misdemeanor convictions were involved.

Mr. President, I would like to know, when the Senator comes up with an amendment that would strike out any kind of recordkeeping, what he can tell us about investigations. We find out an investigation was made by the Juvenile Delinquency Subcommittee where they learned that 66 of the 177 persons, or 37 percent, who brought this ammunition, were people with criminal records.

What kind of assurance can the Senator give us that his amendment is not simply another vehicle that would fail to do anything about crime and violence in this country? He cannot do so. He has been unable to. He does not have the figures here today. However, he has asked the Senate to gut the most effective provision of the act.

Mr. BROCK. Mr. President, if the Senator would yield to me——

Mr. BAYH. Mr. President, I am trying to get straight on the allocation of time.

Mr. KENNEDY. Mr. President, the Senator from Tennessee was very generous in allocating time.

The PRESIDING OFFICER. The Senator from Tennessee has 3 minutes remaining.

Mr. KENNEDY. I yield to the Senator from Tennessee any remaining time I have.

Mr. BROCK. I thank the Senator from Massachusetts very much. I would agree with the Senator if there were evidence; however, I cannot find any evidence that it has had any effect in diminishing the rate of crime. I cannot see the argument. I cannot see the logic of that.

The PRESIDING OFFICER. The time of the Senator from Massachusetts has expired.

Mr. BROCK. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 2 minutes.

Mr. BROCK. Mr. President, there is not a shadow of doubt that the amendment agreed to in 1968 has worked. And I cannot see after 4 years any reason to maintain this burden for the American people. If it had worked, there would have been an entirely different response on my part, I assure the Senator.

But it has not. There is not one scintilla of evidence that it has worked in catching a criminal or reducing the course of crime.

Therefore, I think the amendment is logical and should be agreed to. I do know this. As the situation is, it has been a burden on the people of this country without any redeeming quality whatsoever.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, will the Senator yield to me for 2 minutes?

Mr. BAYH. I yield 2 minutes to the Senator from Massachusetts. I want to save a few minutes for myself.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I wish to mention again that in the survey conducted by the Subcommittee on Juvenile Delinquency in 1969 that there were 177 purchasers of ammunition in Maryland gun stores.

A summary of the major charges against these ammunition buyers includes: two murders; one attempted murder; 38 assaults, including 14 assaults with dangerous weapons involving at least five guns; 11 grand larcenies; five rapes; eight "carrying dangerous weapons"; seven robberies, including two armed robberies; one sale of marihuana;

seven housebreakings; two "fugitive from justice" charges; 136 drunk charges and related offenses; one possession of a gun after conviction of a crime of violence in the District of Columbia; one interstate transportation of firearms; eight auto thefts; and eight carrying dangerous weapon charges, including at least two guns.

I wonder if we in the Senate want to provide easier access for ammunition to these "sportsmen" and this type "hunter."

Mr. President, I yield the floor.

Mr. BAYH. Mr. President, the final sentence of the concluding thought of the Senator from Massachusetts is probably as good a note to end on as we could find.

As the floor manager of the bill and as the successor to the Senator from Connecticut as chairman of the Juvenile Delinquency Subcommittee, to my knowledge that subcommittee is the only one in Congress ever to hold any hearings on this matter. We have to be very frank with ourselves. Let us look at what happened. Those representatives of the administration who have appeared before the subcommittee—Mr. Santarelli of the Justice Department and others—have been opposed to the Saturday night special ban before us. They have been advocates of a safety test, designed to make a gun safe to the user; they have not been in favor of banning the sale of all Saturday night specials.

I point out that if that is their attitude with respect to the Saturday night special, it is proper to assume they would oppose ammunition controls.

Second, I would like to repeat the argument of the Senator from Massachusetts that .22 rimfire is the one single most prevalent type of ammunition used in committing crimes and murders across the country.

The Senator from Tennessee is accurate and sincere when he suggests that if we ban the sale of Saturday night specials, the ammunition requirements might be seen from slightly different perspective. But the committee bill does not make meaningless the present recordkeeping requirements on ammunition because we still have millions of Saturday night specials that will not be affected by the bill now before us. The only way we can hope to have any impact on the use of .22 caliber Saturday night specials is to keep records of ammunition sales.

Third, I suggest that perhaps this recordkeeping is a small burden on some people—sportsmen and storekeepers. But I suggest that any storekeeper operating on such a fragile profit margin that filling out this simple form is going to make him go out of business is operating on a very fragile margin, indeed. I would also suggest this burden of filling out a very simple form imposed upon the sportsman is really not a very significant burden.

I suggest it is a reasonable burden, perhaps even an obligation, that is borne by the law-abiding sportsmen and merchants, the large majority in both categories. That burden must be weighed against what I feel is a very significant contribution.

I cannot go along with the Senator from Tennessee when he said there is no evidence of this having worked. I suggest the contrary and say that there probably have been hundreds, even tens of thousands of people prevented from having access to this ammunition because records are going to be kept. It just makes good common horsesense to me to suggest that if I plan to commit an illegal act, and I know that they have my name, rank, and serial number when I buy that ammunition, I am going to think about it. I am going to think longer than I would if all I have to do is toss my money on the counter, with no record, before committing my crime.

That is the information we are now gathering. I think this has prevented sales to juvenile delinquents, those using narcotics, and those who are felons.

Mr. President, I think this is a burden that all of us should be willing to share.

Mr. BROCK. Mr. President, again in making a brief and quick summary, I wish to say that the Senator said he has evidence. He does not have any evidence and he has no facts to indicate this section is reducing crime; not a scintilla, not a drop, no fact to demonstrate that it has had any effect at all. He assumes; he bases it on Indiana commonsense. We do not have that evidence at our command.

He talks about these little, simple forms being a tiny burden on a small businessman, and states that a small businessman should not be in business if he is that thin. The fact is there are hundreds of thousands of businessmen in this country who are burdened by people who come in by the droves from Washington. They come in one at a time, but the fact is they are burdened by pressure from Washington.

It cannot be argued that this would make the bill meaningless, when the law today is meaningless. If the bill had any effect we would have seen that effect, but we have had testimony to show that it has not had that effect and has not worked.

Again, I must emphasize that there has not been one criminal indictment, there has not been one man brought to trial or placed in jail after 4 years of application of this law.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. BAYH. Mr. President, does the Senator from Indiana have any remaining time?

The PRESIDING OFFICER. Not on the amendment.

Mr. BAYH. Is it possible to use time on the bill?

The PRESIDING OFFICER. Under the agreement it is possible to use time on the bill.

Mr. BAYH. I yield myself time on the bill.

I do not think there is any need to burden this debate. The Senator from Tennessee has made his argument and we have made ours. But I suggest it will not be possible for the Senator from Tennessee to find any evidence of the Justice Department pursuing prosecutions under this particular provision. You do not have any record of their making prosecutions. Why is that?

It is not that this record is not used in the conviction of some criminal. But if someone has held up a store with a weapon using .22 rimfire ammunition, he is not prosecuted for violating ammunition control laws. That record may be used to help put that person in jail for murder or burglary, but the violation of the ammunition control provisions of the Gun Control Act is not what is going to be on the record.

Mr. BROCK. But the testimony is that it has not even done that. It has not helped bring them to jail.

Mr. BAYH. That is not what the Senator said.

Mr. BROCK. Perhaps I should repeat it: "There is not a single known instance where any of this recordkeeping has led to a successful investigation and prosecution of a crime"—not one.

Mr. BAYH. Is there any evidence of any effort being made to use the record?

Mr. BROCK. If the recordkeeping does not work, if it is ineffective, if it in effect burdens them and keeps them from applying their time in other useful and constructive work which is not done, why should it be maintained?

Mr. BAYH. I am suggesting that there are certain people who do not use the tools available because they do not think firearms control or ammunition control has any place.

Mr. BROCK. The Senator is not talking about that. He is talking about a person who came into the Chamber with the intention of supporting the bill.

Mr. BAYH. I have talked with some of the people who made the statements the Senator is using as the basis of his argument. They do not support this bill. I hope I have not lost the Senator's vote as a result of this colloquy, but these officials do not support this bill for a number of reasons, which I do not think there is any need to discuss at this time. But let me stress the unmeasurable deterrent effect of ammunition recordkeeping. The Senator from Tennessee suggests that the people in Tennessee use horsesense. The Senator from Indiana suggests that horsesense is used in his State. And horsesense suggests that if the purchaser of this kind of ammunition knows that a record is being kept in the full light of day, he is going to be a great deal more careful in the way the ammunition is used.

I have no statistics to prove how many cases are involved. I have to rely on commonsense. I do have statistics showing that over half of the policemen killed in this country were killed with this kind of ammunition, and statistics showing that 15,000 people are killed that way.

Mr. BROCK. The law has been on the books for 4 years. As a result, there were no fewer killed.

Mr. BAYH. How much worse would it have been without a law on the books?

Mr. PASTORE. Mr. President, will the Senator yield for an observation?

Mr. BAYH. I yield.

Mr. PASTORE. We are arguing now that we ought to do away with the old way of keeping records on the sale of narcotics because we still have drug addiction. It is an axiom that nobody is able to prove positively a negative fact. It cannot be done. As the Senator from

Indiana has pointed out, we will never know mathematically just how many people were unable to obtain ammunition because of the legal restraints that were imposed. No one can answer that question one way or the other.

The mere fact that we still have crime does not necessarily prove that everything we have done on the control of weapons has been ineffective. I have heard that argument advanced time and time again by the Senator from Nebraska. That is an impossible statement to prove one way or the other. We know from bitter experience that we still have murder when we have laws against murder from time immemorial and so it may be argued that capital punishment has not discouraged murder. Equally good logic reasons that it has operated as a restraint. We have many laws in many areas requiring licensing. Pawnbrokers for example have to be licensed. The reason for that is so we have proper surveillance. And so on—regulation in every sphere of human contact.

I know that as long as there is man with his human failings, we are going to have crime. Then as we have more and more people, we will probably have more and more crime. But I disagree with the argument made this afternoon that regulations are illogical because it has not been proved that requiring a restraint on the part of certain individuals has been effective—that these individuals otherwise might disobey the law and may not have engaged in violence only because this surveillance was in effect. Of course, it cannot be absolutely proved because one cannot say for sure whether it did or did not so happen. That is the only argument I am making. I cannot be convinced by the argument that if we do have restraints one way or another, we do not discourage certain people from committing crime.

Not too long ago—and, perhaps, this does not prove much—three youngsters boarded a bus here in Washington and, without any provocation at all, put a pistol up against the neck of the operator of that bus and shot him dead. How do these kids get guns?

The argument is made here that just because some improper people get guns, let us forget the whole thing. I do not think we can do that. I do not believe we ought to go that far. I do not think we ought to harass the legitimate gunowner. I do not think we ought to harass the legitimate hunter. As I said before, the unfortunate thing about this problem is that we are quarreling with people who are law abiding. They feel a certain amount of harassment. They feel a certain amount of punishment and fear a certain violation of their constitutional rights, but the law has to work that way time and time again. I have said to good friends of mine that, as far as I am concerned, the only time I ever put my hand on a gun was when I was a prosecutor trying cases against criminals. I do not have a gun. I am indeed afraid of a gun. I do not have a rifle. So this measure does not affect me personally. But there are certain people who enjoy guns and use them legitimately. We are saying to those people, "We realize that we are putting you to a slight inconvenience, but the public good and your own good requires that we do it, and that is the only reason why we are doing it."

There is no man in the Senate who wants to punish a good sportsman. There is not a single Senator here who wants to do that. But we are concerned about crime. Gangsters will always get guns. We know that. If they do not buy them, they will steal them. The underworld will get guns, whatever their source of supply.

They will always get them. What we are trying to do is to make it harder and perhaps keep the guns away from some of these younger people, and older people, too. Let us also make it tough enough that if we catch them, we can throw away the keys to the jail.

I spoke of a busdriver who was murdered by three kids. Not too long ago a Navy man was being tailgated. When he got out of the car his pursuers mercilessly shot him and shot his son. Where do criminals get guns? That is all we are talking about here. That is what this debate is all about. We do not want to punish a good sportsman. I would be the last man in the world to do that. But, somehow, sometime we have to do something about illicit guns.

The committee has come to the Senate with a reasonable bill. Let us hope we can do something with it. We are talking about keeping records. This is one way of restraining the wrong people who otherwise might have ammunition and guns. That is what we want to do. Do not tell me that if we do away with this restraint it is not going to be worse. Let us not excuse inaction by saying nobody will ever be able to prove it one way or the other.

We will have crime as long as we have society. But it is our responsibility to cut crime down as much as we possibly can. That is all we are trying to do with this bill. Let us try to do something about crime. Let us try to cut it down. If some good soul complains because he has to register his rifle or his gun, I will say to him, "You are doing it for the benefit of your family, because while you are out there hunting, some hoodlum is going to burst through your door and shoot your wife and murder your children."

That is the violence we are trying to get at. It is not to take guns away from the good man, but to take them away from the bad guys. That is what this is all about.

I pray we can do something about it in this session.

Mr. BROCK. Mr. President, I ask unanimous consent to add as cosponsors of the amendment the names of the Senator from Texas (Mr. BENTSEN), the Senator from Wyoming (Mr. MCGEE), and the Senator from Kansas (Mr. DOLE).

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

Mr. MCGEE. Mr. President, as a sponsor of this amendment I urge its adoption by the Senate.

Last year I introduced an identical measure, S. 144, together with 38 cosponsors. The Senate will recall that during the 91st session of Congress the House of Representatives passed this measure with a substantial majority. Following the House action, the Senate Finance Committee reported this bill to the floor of the Senate during the last days of the 91st Congress. Unfortunately, there was insufficient time to obtain final passage in the Senate.

The pending amendment would simply exempt .22-caliber rimfire ammunition from the burdensome recordkeeping requirements of the Gun Control Act of 1968. This ammunition is the most popular type used by sportsmen, and therefore, places an unreasonable burden on not only sporting enthusiasts, but also on many small businessmen who make this ammunition available for legitimate purposes.

The Department of the Treasury has recommended that this legislation be adopted in testimony before the House Ways and Means Committee and also in reports to the Senate Finance Committee.

The Internal Revenue Service advises me that there is no known instance where any of the recordkeeping requirements relating to sporting type ammunition, including .22-caliber rimfire ammunition, has been helpful in law enforcement. We are advised quite to the contrary, that the recordkeeping requirements have become so burdensome that they tend to detract from the enforcement of other provisions of the firearms laws.

For these reasons, Mr. President, I again urge adoption of this amendment.

The PRESIDING OFFICER (Mr. CHILES). The question recurs on agreeing to the amendment of the Senator from Tennessee (Mr. BROCK). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Rhode Island (Mr. PELL), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Oklahoma (Mr. HARRIS), and the Senator from Georgia (Mr. GAMBRELL) are necessarily absent.

On this vote, the Senator from Georgia (Mr. GAMBRELL) is paired with the Senator from Rhode Island (Mr. PELL).

If present and voting, the Senator from Georgia would vote "yea" and the Senator from Rhode Island would vote "nay."

Mr. SCOTT. I announce that the Senator from Tennessee (Mr. BAKER) and the Senator from Michigan (Mr. GRIFFIN) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from New York (Mr. BUCKLEY) is detained on official business, and, if present and voting, would vote "yea."

The result was announced—yeas 71, nays 21, as follows:

[No. 355 Leg.]

YEAS—71

Aiken	Brock	Cranston
Allen	Burdick	Curtis
Allott	Byrd, Harry F., Jr.	Dole
Anderson	Byrd, Robert C.	Dominick
Beall	Cannon	Eagleton
Bellmon	Chiles	Eastland
Bennett	Church	Fannin
Bentsen	Cook	Fulbright
Bible	Cotton	Goldwater
Boggs		Gravel

Gurney	Metcalf	Smith
Hansen	Miller	Sparkman
Hart	Mondale	Spong
Hatfield	Montoya	Stafford
Hruska	Moss	Stennis
Humphrey	Packwood	Stevens
Jackson	Pearson	Stevenson
Jordan, Idaho	Percy	Symington
Magnuson	Proxmire	Taft
Mansfield	Randolph	Talmadge
Mathias	Roth	Thurmond
McClellan	Saxbe	Tower
McGee	Schweiker	Weicker
McIntyre	Scott	Young

NAYS—21

Bayh	Hartke	Long
Brooke	Hollings	Muskie
Case	Hughes	Nelson
Cooper	Inouye	Pastore
Edwards	Javits	Ribicoff
Ervin	Jordan, N.C.	Tunney
Fong	Kennedy	Williams

NOT VOTING—8

Baker	Griffin	Mundt
Buckley	Harris	Pell
Gambrell	McGovern	

So Mr. BROCK's amendment was agreed to.

Mr. DOMINICK. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BROCK. I move to lay that motion on the table.

The motion was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 1401

Mr. DOMINICK. Mr. President, I call up my amendment, No. 1401.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 12, line 7, insert the following new section:

(9) Section 924(c) of the Gun Control Act of 1968 (Public Law 90-618; 18 U.S.C. 924(c)) read as follows:

"(c) Whoever—

"(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States; or

"(2) carries a firearm during the commission of any felony for which he may be prosecuted in a court of the United States,

shall, in addition to the punishment provided for the commission of such felony, be sentenced for the additional offense defined in this subsection to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years.

"The execution or imposition of any term of imprisonment imposed under this subsection may not be suspended, and probation may not be granted. Any term or imprisonment imposed under this subsection may not be imposed to run concurrently with any term or imprisonment imposed for the commission of such felony."

The PRESIDING OFFICER. Is this one of the Senator's two amendments on which there is a 2-hour limitation?

Mr. DOMINICK. The Chair is correct, although I want to inform Senators that I do not anticipate taking anywhere near 2 hours on this amendment, nor do I think the manager of the bill will do so. I hope we can get to a vote on it—if we have to have a vote on it—at least within an hour or perhaps before that.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. I yield myself 10 minutes.

Mr. President, for the benefit of my colleagues, I first should like to amend my amendment in two respects. These are technical amendments.

First, on line 2, page 1, add the words "as amended to."

Second, on page 2, line 11, the word "or" should read "of."

I modify my amendment accordingly.

The PRESIDING OFFICER. Does the Senator request unanimous consent?

Mr. DOMINICK. I would be happy to do so. I did not think I need to do so. The yeas and nays have not been ordered.

The PRESIDING OFFICER. Unanimous consent is required, because of the specific agreement on this amendment.

Is there objection to the request of the Senator from Colorado? The Chair hears none, and it is so ordered.

Mr. DOMINICK. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of this amendment: The senior Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Alaska (Mr. STEVENS), the Senator from California (Mr. TUNNEY), the Senator from Connecticut (Mr. WEICKER), the Senator from Nevada (Mr. BIBLE), and the Senator from Oklahoma (Mr. BELLMON).

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

Mr. DOMINICK. Mr. President, this is not a difficult amendment. We already have in the law what is commonly referred to as the Mansfield amendment to the Omnibus Crime Control Act of 1970, although I must confess that I have taken considerable credit for this myself, having put this kind of amendment in the District of Columbia criminal law when I was serving on the District of Columbia Committee. This amendment is known as 924(c).

Section 924(c) provides that—

(c) Whoever—

(1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or

(2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States,

shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than 10 years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than 25 years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

Mr. President, this language has passed the Senate on at least three separate occasions, and this amendment is designed to insure congressional intent in this regard. The intent of Congress in passing Senator MANSFIELD's amendment was to create a separate crime for carrying or using a firearm in the commission of a felony, and to have sentencing for the two felonies run consecutively.

The necessity for this amendment springs from a recent Colorado case, and I ask unanimous consent that the official reports of this case be printed at this point in the RECORD. [*U.S. v. Sudduth*, 330 F. Supp. 285 (1971) and 457 F. 2d 1198 (10 Cir. 1972).]

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

[U.S. District Court, D. Colorado. July 22, 1971]

UNITED STATES OF AMERICA, PLAINTIFF, AGAINST DALE EDWARD SUDDUTH, DEFENDANT, CRIM. A. No. 71-CR-82

Prosecution on a two-count indictment including a count for the sale of heroin and a count for knowingly carrying a firearm unlawfully during the commission of such felony. The District Court, Winner, J., held that the federal statute providing for additional sentence if a defendant is convicted of a felony prosecutable in a court of the United States and is shown to have used or to have been unlawfully carrying a firearm in the commission of such offense does not and was not intended to create any substantive offense.

Second count dismissed.

Richard J. Spelts, Asst. U.S. Atty., Denver, Colo., for plaintiff.

William R. Young, Theodore B. Isaacson, Denver, Colo., for defendant.

MEMORANDUM OPINION

Winner, District Judge.

Defendant was charged in a two count indictment. Count I charged a sale of heroin in violation of 26 U.S.C. §§ 4705(a) and 7237. A jury convicted him of this offense. Count II of the indictment charged:

"That on or about January 27, 1971, in the vicinity of Denver, State and District of Colorado, Dale Edward Sudduth willfully and knowingly carried a firearm unlawfully during the commission of a felony prosecutable in a court of the United States, that is, the said Dale Edward Sudduth carried a small caliber revolver during the time when he did sell, barter, exchange and give away to Ronald L. Wilson a narcotic drug (approximately 77.4 grams of heroin) not in pursuance of a written order of the said Ronald L. Wilson on a form issued in blank for that purpose by the Secretary of the Treasury or his delegate as required by Section 4705(a), Title 26, United States Code; all of the foregoing in violation of Section 924(c), Title 18, United States Code, as amended January 2, 1971."

Count II of the indictment was dismissed by the Court at time of trial for failure to state an offense since 18 U.S.C. § 924(c) does not create an offense. Instead, 18 U.S.C. § 924 (c) provides only for an additional sentence if a defendant is convicted of a felony prosecutable in a court of the United States and is shown to have used or to have been unlawfully carrying a firearm in the commission of that offense. The statute is new, and no reported case has been called to our attention, nor have we found a case interpreting the particular subsection of the statute here considered. However, an analysis of that subsection's language and the legislative history leads inevitably to the conclusion that this particular subsection of the statute does not and was not intended by Congress to create a substantive offense.

We start with the Omnibus Crime Control and Safe Streets Act of 1968, and more particularly with Title IV of that Act. 1968 U.S. Code Cong. and Adm. News p. 2163 has to do with "Title IV—Firearms Control and Assistance." At page 2216 et seq., the scope of the Act's coverage is discussed, and it appears that Congress wished to control (a) the interstate traffic in mail-order firearms, other than rifles and shotguns, (b) acquisition of firearms by juveniles and minors, (c) out-of-state purchase of concealable firearms, (d) importation of nonsporting and military sur-

plus firearms, (e) highly destructive weapons, (f) licensing of importers, manufacturers and dealers, and (g) certain record keeping procedures. The sectional analysis of Title IV commences on page 2197 of 1968 U.S. Code Cong. and Adm. News, and it is there said that Sec. 922 sets forth the prohibitions of the Act. Sec. 923 is said to contain the licensing provisions, while Sec. 924 is described as the *penalty and forfeiture provisions* of the Act. Nothing comparable to present Sec. 924(c) was contained in the original Act, [P.L. 90–351—82 Stat. 197] but, rather, Sec. 924(c) of that Act is Sec. 924(d) of the present law.

Section 924 was first amended in 1968 by P.L. 90–618, 82 Stat. 1223, the Gun Control Act of 1968, and that year's U.S. Code Cong. and Adm. News p. 4411 says that the principal purpose of the amended Act "is to strengthen Federal controls over interstate and foreign commerce in firearms and to assist the States effectively to regulate firearms traffic within their borders." With this amendment, a subsection approximating present subsection (c) was added, and effective October 22, 1968, 18 U.S.C. § 924(c) provided:

"(c) Whoever—

"(1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or

"(2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States,

"shall be sentenced to a term of imprisonment for not less than one year nor more than 10 years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than 25 years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence."

1968 U.S. Code Cong. and Adm. News p. 4431 comments with reference to the Conference Report on the new subsection as follows:

"Use of firearms in commission of crimes.—The House bill provided—in a provision added to chapter 44 of title 18—for a sentence of from 1 to 10 years for a first offense, and a sentence of from 5 to 25 years for a subsequent offense, where a person uses a firearm to commit, or carries a firearm unlawfully during the commission of, a Federal felony. The House bill further provided that such sentence could not be suspended, that probation could not be granted, and that such sentence could not be imposed to run concurrently with any sentence imposed for such Federal felony committed.

"The Senate amendment provided—in a new chapter 116 added to title 18—for the imposition of an additional sentence of an indeterminate number of years up to life upon any person armed with a firearm while engaged in the commission of certain enumerated Federal felonies. The Senate amendment further provided that in the case of a subsequent conviction, the court could not suspend the sentence or grant probation.

"The conference substitute is identical to the House bill, except that the prohibitions on suspension of sentence and probation are applicable only to second and subsequent convictions and that concurrent sentencing under the section is not prohibited."

As background to the 1968 amendment, in the July 19, 1968, Congressional Record—House, p. 22229 et seq. we find that Mr. Casey offered an amendment seemingly making the use or carrying of any firearm in the commission of specified major offenses separately punishable. Mr. Poff then offered a substitute amendment which later became § 924(c). It is true that Mr. Poff said (p. 22231), "My substitute makes it a separate Federal crime to use a firearm in the commission of another Federal crime and invokes separate and supplemental penalties." However, on the next page of the Congressional Record the following exchange appears:

"Mr. ICHORD. * * * Are you contemplating—the gentleman makes it a Federal offense, another separate Federal offense to use a firearm to commit any felony which may be committed. If during the commission of any felony wherein such firearm is used the party may be prosecuted in any court of the United States? Does the gentleman contemplate the second criminal proceeding or can this man be tried in the original proceeding where he was first tried?

"Mr. POFF. * * * The answer (to Mr. Ichord's) question is in the affirmative; namely, it would be expected that the prosecution for the basic felony and the prosecution under my substitute would constitute one proceeding out of which two separate penalties may grow."

In the September 16, 1968, Congressional Record—Senate, p. 26896, we find that Senator Hruska said:

"Penalty Provisions. Section 924 of title I of the committee bill contains an amendment offered by this Senator to increase the maximum penalties for violation of the law * * * *This amendment substantially increases the maximum penalties for violation of the act* but retains flexibility in the hands of appropriate Federal correctional officials to deal with those who show a substantial potential for rehabilitation * * *"

In the next day's Senate Congressional Record it appears that Senator Dominick offered an amendment entitled "Use of Firearms in the Commission of Certain Crimes of Violence." That amendment provided:

"Whoever, while engaged in the commission of any offense which is a crime of violence punishable under this title, is armed with any firearm, may in addition to the punishment provided for the crime be punished by imprisonment for an indeterminate term of years up to life, as determined by the court * * *"

As to his proposed amendment, Senator Dominick said:

"No new crime would be created. Penalties have just been increased when one particular element—a gun—is presented in the perpetration of the enumerated crimes. As a result, there would be no additional strain on already overburdened courts."

This, then, is most of the legislative history of 18 U.S.C. § 924(c) as it was amended in 1968. It is difficult, indeed, to spell out of this legislative history any Congressional intent to create a separate substantive crime, and it is even more difficult to read into the language of the subsection a meaning which would in fact create such a crime.

As has been noted, the indictment here lies under a still later amendment—P.L. 91–644, Title II, § 13, 84 Stat. 1889, effective January 2, 1971. A study of that law discloses that Sec. 924(c) was the only section of 18 U.S.C. Chapter 44—Firearms—which was amended by the 1970 Act, and that study lends no support to the government's argument. The definitions (§ 921), the unlawful acts (§ 922) and the licensing provisions (§ 923) all remain unchanged. The amendment in question appears in Laws of 91st Congress, 2nd Session, at page 2216. The full amendment was:

"TITLE II—STRICTER SENTENCES

"Sec. 13. Section 924(c) of title 18, United States Code, is amended to read as follows:

"(c) Whoever—

"(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States, or

"(2) carries a firearm unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States,

"shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years, and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, *nor shall the term of imprisonment imposed under this subsection run concurrently* with any term of imprisonment imposed for the commission of such felony."

To us, it is impossible to read this section as creating a separate substantive offense. The statute says only that a person who uses a firearm in the commission of a felony or who carries a firearm unlawfully during the commission of a felony, "shall, in *addition to the punishment provided for the commission of such felony, be sentenced.* * * *" The statute does not say that use of possession of a gun is a separate crime. It deals only with punishment to be imposed upon conviction of "the commission of such felony," i.e., a felony prosecutable in the Federal Court. No other reading could be grammatical.

Admittedly, the Congressional Record underlying the 1970 amendment is somewhat self-contradictory. Senator Scott said as to the amendment [Congressional Record—vol. 116, pt. 26, p. 35734] that the Act "was to provide stricter sentences for criminals using firearms in the commission of Federal felonies." On the same page, Senator Mansfield described the amendment:

"* * * what this does is to make it a crime itself the mere carrying of a gun in the commission of a crime. The sentence imposed will be in addition to and not concurrent, with the sentence for the underlying crime."

However, on December 17, 1970, [Congressional Record, vol. 116, pt. 31, p. 42150, Senator Mansfield said:

"It was for this reason as well that I introduced S. 849, the stricter sentencing bill and am gratified to know that the bill—having passed the Senate unanimously—has become Title II of the pending measure * * * With this stricter gun sentencing provision we have taken an effective step in the right direction."

The same page of the Congressional Record discloses that Senator McClellan said:

"It is quite simple. It means that the gun offender will be required to serve a separate and additional sentence for his act of using a gun. There is no discretion given. There is no way this additional sentence can be avoided."

1970 U.S. Code Cong. and Adm. News p. 5848 describes the amendments as being an amendment of the 1968 Gun Control Act and says:

"AMENDMENT TO THE GUN CONTROL ACT OF 1968

"The Senate amendment contained a provision not in the House bill *amending a section of the Gun Control Act of 1968 that imposes additional penalties for the use of a firearm to commit, or for carriage of a firearm unlawfully during the commission of, a Federal felony.* The Senate amendment reduced the minimum sentence for a second or subsequent offense from five to two years, and also provided that a sentence could not run concurrently with any sentence imposed for the underlying Federal felony. The conference substitute adopts the Senate amendment."

With all of this, the argument of the United States Attorney that 18 U.S.C. § 924(c) creates a separate substantive offense just does not jell. When Congress devoted several pages to phrasing Sec. 922 which creates the unlawful acts, it is difficult to accent an argument that Congress impliedly intended to create an offense under the section of the Act headed "Penalties." It may well be that from a defendant's standpoint, it doesn't

make a whole lot of difference, because, if convicted, and if the factual requirements of Sec. 924(c) are established, he is going to get the same sentence anyway. But, this fact doesn't justify or permit the Government to charge a separate substantive offense, and a defendant can't be required to have a separate count of an indictment submitted to a jury. Also, whether the offense is separate could be of vital importance under some habitual criminal laws.

It is elementary that there are no constructive criminal offenses. United States v. Alpers, 338 U.S. 680, 70 S.Ct. 352, 94 L.Ed. 457. Nothing is better settled than is the proposition that criminal statutes are to be strictly construed. United States v. Gaskin, 320 U.S. 527, 64 S.Ct. 318, 88 L.Ed. 287. We are not here directly concerned with the myriad of cases involving vagueness in a statute; rather, we are confronted with a statute which by its terms does not create an offense, although another section of the same Act spells out in careful detail the acts made unlawful by the statute, but omits from its coverage any suggestion that the act charged in Count II of this indictment is, in and of itself, a separate crime. Sec. 924(c) is not a true recidivist statute, but it has many similarities. It is more nearly a "second offender's" statute, quite similar in impact with 26 U.S.C. § 7237(c), and under that section, counts charging a second substantive offense merely because of a prior conviction are not recognized—rather, the section is treated as one requiring stricter and additional punishment. United States v. Bell, (7 Cir.) (1965) 345 F.2d 354; Munich v. United States, (9 Cir.) (1964) 337 F.2d 356; Sorey v. United States, (5 Cir.) (1961) 291 F.2d 826; United States v. Wilson, (2 Cir.) (1968) 404 F.2d 531; United States v. Beltram, (2 Cir.) (1968) 388 F.2d 449.

In Gryger v. Burke, (1947) 334 U.S. 728, 68 S.Ct. 1256, 92 L.Ed. 1683, under consideration was Pennsylvania's habitual criminal law. The Court there said:

"The sentence as a fourth offender or habitual criminal is not to be viewed as either a jeopardy or additional penalty for the earlier crimes. *It is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.*"

Here, Congress has directed that where a man is unlawfully carrying a gun in the commission of an offense which is subject to prosecution in a Federal Court, a stiffer penalty must be imposed, and the evidence showed that defendant's possession of a gun was unlawful because of a prior state court conviction. Under that evidence, the stricter penalty demanded by 18 U.S.C. § 924(c) must be imposed, but it is to be imposed after and as a result of defendant's conviction under Count I—not on the basis of an attempt to charge in Count II that defendant violated the sentencing provisions of Section 924(c).

It is for these reasons that Count II of the indictment was dismissed.

[U.S. Court of Appeals, 10th Circuit, No. 71–1423, March 1972 Term]

UNITED STATES OF AMERICA, APPELLANT, AGAINST DALE EDWARD SUDDUTH, APPELLEE

(457 F. 2d 1198 (10 Cir. 1972))

Appeal From The United States District Court For The District of Colorado (D.G. No. 71–CR–82).

Richard J. Spelts, Assistant United States Attorney (James L. Treece, United States Attorney, with him on the Brief), for Appellant.

Tom W. Lamm, Denver, Colorado, for Appellee.

Before Seth and Barrett, Circuit Judges, and Mechem, District Judge.

Seth, Circuit Judge.

The defendant was charged in a two count indictment, Count I thereof being for the sale of heroin in violation of 26 U.S.C. § 4705 (a). Count II charged that the defendant carried a firearm "unlawfully" during the commission of the felony charged in Count I in violation of 18 U.S.C. § 924(c). At the pretrial of the case the trial court dismissed Count II. The trial was had on Count I and the defendant was convicted by a jury and the court imposed a sentence of five years. The trial court also imposed a sentence of one year to run consecutively with the five-year term. This one-year sentence was imposed under 18 U.S.C. § 924(c), the trial court thereby treating the subsection as relating to the matter of the penalty to be imposed. It thereby held that the subsection did not create a separate crime. The trial court also construed the wording of the subsection to require that the one-year term under section 924(c) was required to be a consecutive sentence on the first "offense."

The principal issue on the appeal is whether or not the construction of 18 U.S.C. § 924(c) by the trial court was correct. The Government here urges that the subsection creates a separate crime rather than an enhancement of the penalty as found by the trial court. The issue is also presented as to whether or not the subsection requires the sentence, whether it be an enhancement in penalty or a separate offense, to be consecutive to the confinement imposed under Count I, or whether for a "first offense." 18 U.S.C. § 924(c) reads as follows:

"(c) Whoever—

"(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States, or

"(2) carries a firearm unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States.

"shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently wtih any term of imprisonment imposed for the commission of such felony."

Some examination of the legislative procedure which was followed in the enactment of section 924(c) and its predecessor is necessary in order to properly construe the section. This present subsection of Title 18 was part of the original Omnibus Crime Control and Safe Streets Act of 1968. The section originally contained penalties in subsection (a) thereof which related to Chapter 44 as a whole. These penalties thus related directly to the recitation of "unlawful acts" in the body of the Act. Section 924(c) was added and the original section 924(c) was redesignated (d) as a House Floor Amendment during the course of the debates on the Gun Control Act (H.R. 17,735). Apparently no public hearings were held on this Bill. The floor debate in the House was extensive and several amendments were there considered. Finally the amendment which became the basis of section 924(c) in the 1968 Omnibus Crime Control Act was passed by the House. Some of the amendments considered during the course of the floor debate presented somewhat different methods of handling the use of guns during the commission of a felony. It should be pointed out that the use of a gun during the commission of a felony constituted an entirely different subject than had theretofore been considered during the course of the debates on the original Omnibus Crime Control Act of 1968. The penalties in the original Act related to the acts which were declared unlawful in the Omnibus Bill, and which acts were for the most part related to the sale, importation and transportation of firearms.

The Senate considered its Gun Control Bill which was S. 3633, after the House had passed its Gun Control Act considered above. During the course of the Senate debate various methods to increase the penalty under the Omnibus Crime Control Act of 1968 were discussed on the floor and amendments were then offered. Among these amendments was the first by the Senate directly related to the possession and use of a gun while committing a felony. The Dominick amendment to the Gun Control Act was passed by the Senate and the matter went to the House Senate Conference Committee which adopted the House version of section 924 but with some reduction in the penalties originally proposed. The committee report was adopted and the Bill became the Gun Control Act of 1968, P.L. 90–618. It was an amendment to Chapter 44, Title 18 of the United States Code.

In 1970, the matter of the use of firearms during the commission of a felony was again considered, and it arose by way of floor amendments. This was during the course of debate on the Omnibus Crime Control Act of 1970. The provisions were suggested as a "rider" to the Bill. The subject matter thereof had been formerly contained in a separate Senate Bill. The floor debate centered on the matter of increasing the severity of the punishment and the debate was directed to this point. The Omnibus Bill of 1970 with the "rider" referred to was passed by the Senate, went to the House Senate Conference Committee and the Senate version was adopted by the committee and the committee report was adopted by both houses and became the present 18 U.S.C. § 924(c).

The manner in which section 924(c) was adopted by Congress and the fact that it originated in both 1968 and 1970 versions by way of floor amendment helps in understanding why the subsection was placed in the Act where it was. This legislative procedure shows why the subject matter of the subsection is somewhat foreign to the balance of section 924. The subject matter was in fact not related to the basic provisions of the Act which relate primarily as we have indicated to restrictions and control in the sale and transportation of firearms. The Act started with the general penalty provisions relating to such matter and can be related directly to the substance of the Act. We have seen how the present subsection (c) was added to meet a somewhat different problem and one which was not covered in the substance of the Act. It was a new subject which was added and its placement and wording give rise to the doubts which prompted the appeal in this case. This general placement of the subsection obviously causes much of the present concern as to the intention of Congress. The penalty section of the Act was probably the best place to insert such a rider, but as we have seen, it has to stand on its own feet since it cannot be related to any recitations in the body of the Act.

In addition to the placement of the subsection, the construction is complicated and is by no means free from doubt by reason of the fact that it refers to and is dependent upon the basic felony. Its placement and the initial wording thereby gives the appearance that the matter relates to the enhancement of the penalty and not to the creation of a separate crime.

As might be expected, the record of the debates of the floor amendments are not particularly helpful in determining the intention of Congress as the attention of the members was directed to the severity of the penalty rather than how the penalty was to be imposed. The several Senators and Congressmen referred to the subsection as "an offense," or as "a penalty" or as "a crime,"

or as "a felony." Since the emphasis was otherwise directed, it appears that no unanimity should be expected from such references to the subsection and are not of assistance to us in determining the intention of Congress. The severity and the need for severity of the penalty was debated at length.

An examination of the events surrounding the enactment of section 924(c) and an evaluation of its wording leads us to the conclusion that it was intended to create a separate crime. It is obvious, however, that the matter is by no means free of doubt and we have given careful consideration to the views of the trial judge in this respect, but are led to a contrary result.

If the subsection 924(c) is considered as a separate Act taken out of the context in which it was placed, it takes on the appearance of an ordinary provision defining a crime. As the wording is typical of such a definition, it is perhaps unusual to take such a subsection out of context, but we think it should be done because it is in fact a stranger where it is placed. It is apparent also that the language in the subsection making the crime dependent upon the proof of another crime is unusual, but again it does not necessarily convert it into merely an increase in the penalty for the basic crime. This aspect does not overcome the other indications of the construction of the subsection as an independent crime.

Perhaps the strongest single phrase in the subsection to indicate it as a separate crime is the reference to "...subsequent convictions under this subsection...." This, of course, is typical of a definition of a separate crime and provisions relating to the increase in punishment upon the second or third conviction thereof.

In construction of the Act, we must consider the acts sought to be punished as something done which must be demonstrated to have taken place or to have existed during the commission of the basic felony. This showing can in some instances become a relatively uncomplicated matter. Provisions relating to the use of a firearm during the commission of a crime are not unusual in the criminal statutes but for the most part they are facts to be proved by the prosecution during the course of the proof and as part of the basic crime, and not as a separate felony. Under the statutory provision we are considering the basic crime and the use of firearms are separated into two felonies, otherwise the matter is much the same as under statutes where both are combined. The issue will frequently involve a group of facts or inferences which will be disputed or contested and from which different inferences may be drawn. We are of the opinion that these possibilities make the matter properly to be demonstrated to the satisfaction of the jury rather than to be handled, for example, in the manner in which prior convictions are presently demonstrated under most recidivist statutes, as would be done if a penalty only was intended. The proof here used by the trial judge in sentencing the defendant demonstrates the point to a limited extent. The proof on the implementation of the penalty before the trial judge included the testimony relating to certain Denver city records by a witness who apparently handled for the city the matter of issuance or recordkeeping for permits to carry firearms in the city. There was also proof introduced that the defendant was not eligible for a permit, or that he could not lawfully carry a gun in Denver or Colorado by reason of previous convictions. The proof was thus of a relatively simple fact situation, but it is apparent that complications can arise by reason of the place where the felony may have been committed or by reason of the delays in arrest after the commission of the felony and many other situations. We thus conclude that the subject matter of the subsection persuades us to hold that it was intended and should be proved as a separate crime. See United States of America v. Chick, et al, U.S.D.C., District of Arizona, No. CR–71–381–Tuc., which reaches the same result.

As to the question of first offenses, we hold that the limitations on concurrent sentences and suspended sentences in 18 U.S.C. § 924(c) refer only to second and subsequent offenses.

We have considered only the construction of the statute concerned as it relates to the issue of a separate crime or an enhancement of penalty and express no opinion as to whether the 'unlawful" carrying of a firearm refers to state or municipal regulations, and if so whether it creates a federal offense for the violation of a state law, and if it does so, whether this may properly be done.

We thus conclude that the statute was intended to create a separate offense, and that Count II of the indictment here concerned should not have been dismissed. The dismissal of and the sentence on Count II therefore are vacated, the case is remanded to the trial court for further proceedings in conformance herewith.

Mr. DOMINICK. Mr. President, in this case, the defendant was charged with one count of selling heroin and one count of carrying a firearm during the commission of a felony under section 924(c) of the Mansfield amendment. To the best of my knowledge, this is the first reported case involving this new legislation. At a pretrial hearing, the district court dismissed the count under section 924(c) on the grounds that the section did not and was not intended by Congress to create a substantive offense. The defendant was convicted of selling heroin; and the court imposed an additional 1 year consecutive sentence under section 924 (c) on the theory that this section, like habitual criminal statutes, is directed to punishment rather than defining substantive offenses.

On appeal to the 10th Circuit Court of Appeals, the district court was reversed and it was ruled that section 924 (c) did create a separate chargable offense, but the consecutive sentence imposed by the district court could not stand because the second count under section 924(c) was dismissed. The appeals court also ruled that the section's consecutive sentencing provisions apply only to second or subsequent convictions so that a first offender under this section could receive a concurrent sentence.

Mr. President, my amendment would drop the present requirement that the carrying of a firearm be "unlawful" during the commission of a felony. Prosecutors would only have to prove an actual or constructive—within each reach—carrying of the firearm during the crime.

I bespeak the obvious in indicating that one Circuit Court of Appeals decision, while it may be persuasive, is not binding on the other circuits. This issue might be litigated in each circuit. My amendment clarifies this situation and only gives effect to congressional intent as manifested on at least three prior occasions.

This amendment clearly states that use of or carrying a firearm during the commission of a felony creates a separate and distinct chargeable felony, sentencing for which must be consecutive with the sentence imposed for the underlying felony. The terms of imprisonment remain the same as are presently embodied in section 924(c). Upon imposition or execution of the terms imposed by the courts, probation may not be granted and the sentence may not be suspended.

Mr. President, this amendment clarifies existing law as recently interpreted by two Federal courts and clearly establishes in law Congress' intent as expressed on several occasions. It is my earnest hope and belief that this amendment, when compared with a prohibition in the domestic manufacture of Saturday night specials, will operate as a more effective deterrent to the use of firearms in crimes.

Mr. President, we have had three votes indicating that the Senate does not care to go much beyond what the Saturday night special bill does in terms of either registration or prohibiting people from the purchase or use of guns for lawful purposes. There has been an outcry in many areas of the country that we should prohibit all guns because of crimes committed with them. It seems to me that this just does not make sense. I had the decided displeasure—I put it that way—from a listener's or viewer's point of view, of watching a CBS television special, I think it was Saturday night before last, concerning two criminals who had run amuck in Salt Lake City, in which they described with obvious detail and obvious relish their participation in several murders. They also went further than that, to describe in some detail their own sensations while they were going through this. I, for one, thought it was too bad that CBS even put it on because there are enough people in this country who think that if this is the only way to get publicity, maybe they should do exactly the same thing. But, in any event, without criticizing the program, in answer to a question by the interviewer as to what he would think about outlawing all guns, one of the criminals replied very distinctly and carefully, with a broad smile:

I think that would be wonderful because then the only people who would get guns would be the guys who wanted to commit a crime, and the honest citizen would not have access to them.

What I am trying to point out is that we have been concentrating on the weapon when what we really should be doing in addition is concentrating on the person who uses the weapon. Over and over again, we have been trying to get at the person behind the gun. This was the intent of section 924(c), title XVIII of the Mansfield amendment. This is the intent of the amendment which I am offering here, to act as a deterrent, so that anyone who decides he will commit a crime will realize that if he uses a gun he will be far more substantially punished than he otherwise would be and for purposes of the habitual criminal statute, if he uses a gun in the commission of a felony, he will be convicted of two felonies and be much closer to the habitual criminal law which then would cause him to be incarcerated for a very considerable period of time.

I think it is time we got to the real motivation of criminal activities rather than just concentrating on the instrument used. Let us take hijackers. Presumably, if we carried the wording about

barring all guns from the citizens of this country into the hijacking situation, we would bar all airplanes. That is the kind of syndrome that we would have. What I am saying is, let us get to the person behind the gun. Let us not concentrate solely on the guns themselves, which so many people in this country own and use for sporting purposes or for self-protection.

We are trying just as diligently as possible to get at crime and reduce its rate in this country. We have made substantial progress, but obviously we still have a long way to go.

The tragic situation involving Governor Wallace is a classic example of some person who conceives himself as an executioner of some kind.

We have the situation involving the television program that I recounted where two men ran amuck in Salt Lake City. All of us know of hideous crimes that have been committed recently. We want to get a deterrent, and I am trying to get a deterrent that is meaningful rather than one that just looks good on paper.

I would earnestly solicit the support of my colleagues for this amendment which, frankly, does not change existing law very much. However, it does clarify the intent of the Senate as expressed on three other occasions.

Mr. President, I ask unanimous consent that the name of the Senator from Florida (Mr. CHILES) be listed as a cosponsor of my amendment.

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

Mr. DOMINICK. Mr. President, I hope that the manager of the bill will take another look at this. I did not have an opportunity to talk to him personally about it. However, I did have an indication from some of his staff members that they did not think he would take it.

To me, this amendment is a very reasonable approach. It is not one that is designed to be injurious to the bill. It is not one that is designed to be injurious to anyone except the man or woman who decides to use a gun in the commission of a felony. And that is exactly the person we are trying to reach.

I would hope and trust that the Senator from Indiana would accept the amendment.

Mr. President, I reserve the remainder of my time.

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

Mr. BAYH. Mr. President, I yield to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, I am most interested in the amendment offered by the distinguished Senator from Colorado. Admonishing the "gun" criminal in this fashion has long been of vital concern to me. In this regard, I would point out, so that the RECORD will be clear, just what title II of Public Law 91-644, H.R. 17825, under date of January 2, 1971, provides. It reads:

TITLE II—STRICTER SENTENCES

SEC. 13. Section 924(c) of title 18, United States Code, is amended to read as follows:

"(c) Whoever—

"(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States, or

"(2) carries a firearm unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States,

shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony."

Is my understanding correct on the basis of the amendment which the distinguished Senator from Colorado has now called up, that there would be a mandatory sentence for a first offense and that this represents a departure from the provision just referred to which is the current law?

Mr. DOMINICK. The Senator is correct. There would be, because there is an additional felony, and, as such, there would be an additional penalty which would be consecutive to that for the other, basic or additional felony committed. In other words, there are two felonies. If one burglarizes a store or hits someone on the head and uses a gun in the process, there are two felonies and two sentences.

Mr. MANSFIELD. Mr. President, I thank the Senator. I recall that the provision of present law covering this matter was based on the mandatory sentencing bill I introduced in the 91st Congress. At the time it was considered, I discussed this matter with the distinguished Senator from North Carolina (Mr. ERVIN), and unless I am mistaken—I am not absolutely positive about this—I think I discussed it with the distinguished Senator from Nebraska (Mr. HRUSKA), the distinguished Senator from Indiana (Mr. BAYH), and the distinguished Senator from North Dakota (Mr. BURDICK), as members of the Judiciary Committee.

My original proposal sought to make the first offender sentence mandatory. However, those Senators with whom I talked raised a question concerning the giving of a youngster who was, say, 16, 17, or 18 years of age a chance if the judge in his opinion thought that this might help to bring about the creation of a rehabilitated citizen rather than the beginning of a life as a hardened criminal as taught in so many of the penal institutions today.

We all know, of course, that our prisons leave much to be desired. We all know that rather than rehabilitate, we make a lot of people permanent hardened criminals on the basis of confinement. Prisons too often serve to foster recidivism rather than reconstruction. So, on the advice of these Senators, all of whom are lawyers—and I am not—I went along against my own feelings and made only the second offense of the same nature mandatory with no probation or suspension. At the same time I sought to have both the first and second offenders sentenced consecutively or in addition to the penalty for the crime itself and not concurrently. If there is confusion in the courts on this point as the Senator from Colorado indicates then it should be clarified.

Mr. DOMINICK. Mr. President, would the Senator yield at that point?

Mr. MANSFIELD. Mr. President, I was going to ask the Senator a question as to what the Senator's idea would be on the question of leniency for youngsters who were caught for the first time and who might be sentenced, but who might be given probation by a competent judge who, after assessing the presentence investigative report decides that this may be the only way such an offender may be rehabilitated.

Mr. DOMINICK. Mr. President, I would say first of all to the Senator that in reply to the statement that he was going to have a mandatory consecutive sentence on the first and second crime, not a mandatory one on the first one, but a consecutive sentence, that this is what the court said was not necessarily required. And that is one of the major reasons why I put this in. The court ruled that this could run concurrently. This was the Circuit Court of Appeals that said this. That is what I am trying to prevent. That is why we need the amendment on mandatory sentencing.

I have not been very much disposed toward mandatory sentences myself in the past. I put an option in the law on the District of Columbia so that the judge at his discretion could do it, which would make it non-mandatory.

One judge in the District of Columbia tried to use that law and he immediately got reversed on the grounds, as I recall, that this was some kind of harsh or cruel penalty when he used that law. So, they went back to the original penalty which was very lenient for carrying a gun and committing a crime. If there is a young man who shoots somebody but does not kill him and this is the first offense, there is no reason why he should not spend a year in jail if he is 18, as much as the similarly situated 19-year-old should.

It seems to me that the rehabilitation would come about in whatever way the prisons can provide it. And the option is there for a sentence of from 1 to 10 years for a first offense, and 2 to 25 years for the second offense.

So there is a great deal of flexibility within these provisions as provided by the Senator from Montana, whose amendment I cosponsored last time. I do not think this changes it too much other than to make it two separate and distinct felonies and to make the sentences for each felony run consecutively.

Mr. MANSFIELD. I thank the Senator. I just wanted to raise that question. I appreciate the Senator's response.

Mr. BAYH. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER (Mr. WEICKER). The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, I have sympathy for the efforts of my friend from

Colorado to accentuate the severity of the punishment when an instrumentality of death is used.

I think the original amendment of the Senator from Montana (Mr. MANSFIELD), as it is now incorporated in the law, is a very salutary provision, and, as I said earlier, I salute the Senator's effort to try to increase the severity of the penalty when the crime committed also encompasses the use of a firearm. This is one of the things we should do to deal with the gun problem.

I concur with his effort to make it clear once and for all that the use of the firearm under these circumstances constitutes a separate Federal offense. I concur with his efforts to end the ambiguity that exists here.

As I said a moment ago, I have no hesitancy to say that if a criminal is going to snatch someone's purse, steal his car, rob the grocery store, or rob a home, and if he is carrying a firearm, that should be a separate penalty. We should not hesitate to prosecute people who misuse firearms.

Despite all this, a problem remains. Unless the Senator from Colorado can convince me otherwise my inclination is to oppose his amendment because of the mandatory provision as far as first offenders are concerned.

The specific example the Senator from Colorado used in response to the Senator from Montana I would say "Amen" to. If there is a young man involved in a holdup, and he shoots someone, add an additional penalty to the crime for which he is convicted. But that particular crime is not necessarily typical of all those in which young first offenders are going to be involved. Take the example of the teenager who gets one of these Saturday night specials we are trying to make it more difficult to secure. Through some channel or another he get hold of one of these $12.98 specials. He has it in his pocket, let us say, and he sees his neighbor's car with the keys in it. He takes that car on a joyride and thus becomes involved in an automobile theft, a crime, a felony, with a penalty that must not be ignored. But if he has this gun in his pocket, although the gun is not used in the commission of the act, according to the amendment of the Senator from Colorado, the sentence might well become mandatory.

I hope I can convey my sincerity to the Senator from Colorado. When someone uses a firearm in the commission of a felony, then I am for putting the hammer on him. I think we have to look at each case on its merits.

For the last year and ε half, I have been chairman of the Subcommittee on Juvenile Delinquency. I have had a chance to examine some of the reformatories and institutions available for juveniles. I see the chairman of our committee, who helped create the Subcommittee on National Penitentiaries. He is trying to do something about reforming those institutions.

If we had in each community or in most communities the type institution that the Senator from Colorado would like to have and the Senator from Indiana would like to have, a first offender who was carrying a gun on the streets, could be placed in an institution for rehabilitation. If we had effective rehabilitation programs, then I would not have the reservations that I have. But by mandating the sentence for that young man on the charges described, we are forcing him to be thrown into an institution which more often than not can be described as a snakepit. The hard statistics demonstrate that once a young person gets into that jail or reformatory, or adult institution, 70 percent of the time he is going to be back in there again. If the judge were able to put him on probation or if we were able to strengthen assistance at the State level, then we could do something about this 70-percent recidivism rate.

Following the specifics of the amendment of my friend from Colorado, I do not think that the young man who goes on the joyride in the car should be ignored. The court needs to make that young man realize the importance of the joyride. But the judge, and, indeed, the jury, might look at all the circumstances involved and say, "Given the alternatives available, the best chance to rehabilitate that young person is to put him on probation." But despite that assessment, if that youngster has a firearm in his possession, the judge would not be permitted the discretion to prescribe what he thought was the best avenue of rehabilitation. That is my concern.

Mr. President, once we commit a young person or an older person to a correctional facility, for all intents and purposes there is no rehabilitation, there is really no correction; they are really advancing their skills on how to become more effective criminals. To force the person who makes that first mistake into those environs, might cause him to make two, three, or four subsequent mistakes. In my judgment, this mandatory provision will be self-defeating if we are going to find ways to lessen the causes of lawlessness.

Mr. DOMINICK. Mr. President, will the Senator yield on my time?

Mr. BAYH. Yes, I am glad to yield to my friend.

Mr. DOMINICK. I would just say to the Senator from Indiana that I happen to have devoted what little criminal work I have done to the defense side. I have never been a prosecuting attorney. I have always felt that the law should be used to make the prosecution prove each instance of any crime prior to conviction. So, ideologically, if one wants to put it that way, I am interested in the Senator's concern.

How would the Senator feel if I modified my amendment so that at the top of page 2 we change the word "shall" to "may"? That would give the judge the option to either impose a sentence or not impose a sentence on conviction of the first offense of use of a gun in the commission of a felony? If, however, the judge did impose a sentence, the defendant would not be eligible for probation and would not be eligible for suspension of the sentence imposed. However, upon conviction for a second or subsequent offense of carrying or using a firearm in the commission of a felony, the judge would have no such discretion, and would be required to impose a consecutive sentence, consistent with section 924(c).

It seems to me that if this language were acceptable to the Senator from Indiana, we would still have accomplished my objective of making sure this is a second and separate felony for purposes of the habitual criminal statutes, and it also provides a mechanism by which the court can add another consecutive sentence where a heinous crime has been committed.

I would be willing to accept that suggestion and modify my amendment accordingly if it would take care of the problem which the Senator from Indiana and the Senator from Montana have raised.

Mr. BAYH. I must say to my friend from Colorado that makes it a good deal more palatable, and it may accomplish exactly what I am after. I would like to have a minute or two to discuss it with him, and have our staffs discuss it.

Perhaps if our staffs could get together and look at that specifically now, in the meantime I could address myself to another point I want to raise, which involves a change from the existing law in the printing of the amendment. Perhaps the Senator from Colorado did it intentionally. Perhaps there is a reason for it. On the first page, in subsection (2), the subsection reads: "carries a firearm during the commission of any felony for which he may be prosecuted in a court of the United States." I wonder if we both would not rest a little easier if we had there the wording "carries a firearm unlawfully"?

Mr. DOMINICK. Actually, I will say to the Senator from Indiana, we took that word out on purpose as an artistic word, because then it would have to be proved that the defendant was unlawfully carrying a firearm, in other words, either in violation of a licensing statute or one relating to interstate sales, or whatever it might be——

Mr. BAYH. Before the Senator's amendment can take effect there has to be sufficient proof that a felony has been committed. Is that accurate?

Mr. DOMINICK. That is correct; no conviction could be realized without sufficient proof of a separate felony.

Mr. BAYH. And then in that process, if a person had carried a firearm to help commit that felony, that is unlawful. What concerns the Senator from Indiana—and this may be nit picking, but perhaps, if we are talking about criminal laws, we had better look at our periods and commas—is that he can envision corporate executives sitting down to conspire to fix prices in restraint of trade when, for one reason or another, one had a firearm on his person. I can see John Q. Public sitting down to fraudulently fill out his income tax form when he may, in plain sight, have a weapon on his hip. Yet one could interpret the language to mean that he, too, would come under the provisions of the act. I do not think that is the kind of character we are after. Is it?

Mr. DOMINICK. No, Under those circumstances, as I understand it, he

might be guilty of carrying a concealed weapon. What we are trying to do is prevent the use or carrying of the weapon during the commission of a felony, because almost anyone who carries it to start a criminal career sooner or later uses it.

Mr. BAYH. I want to do something about that act, but I do not want to do anything the Senator from Colorado or I do not want to do. We are talking about someone who carries a firearm during the commission of a felony. Does it not make sense to limit the application of the language to situations in which the gun would be of use in the commission of the crime? If a person had in his possession a firearm while he was fraudulently filling out an income tax form, a possible Federal felony, does he not qualify under an exceedingly literal reading of the provisions of the Senator's amendment?

Mr. DOMINICK. I would think so.

Mr. BAYH. Does the Senator really want that result?

Mr. DOMINICK. I see no harm in it. If he is already a crook and he is carrying a gun while doing it, sooner or later he is going to use it. That is what we want to prevent him from doing. It would make it optional. I would think the court is not going to impose any sentence except as a result of prosecuting him, to take the Senator's example, for a fraudulent tax return. If he would commit two felonies rather than one, he is close to being a habitual criminal. That is the purpose of the amendment.

Mr. BAYH. But the habitual type of felony that concerns the Senator from Colorado and I think the Senator from Indiana—I know the Senator from Indiana—is the kind of felony in which the gun can reasonably be expected to be a useful, contributing part. It is the one where a person wants to rob, rape, murder, and in the process he is carrying a weapon. We want to hit him a second lick. I concur in that, but I cannot see that a person sitting with a group of corporate executives, conspiring to restrain trade in violation of an antitrust law, if he happens to be carrying a firearm because he has a license as a result of carrying large amounts of money back and forth to a bank, should be subject to the mandatory penalty. This is especially true since his carrying the weapon could be totally lawful, under the provisions of this amendment.

Mr. DOMINICK. That is a good point, I think, and that is why I said I would be willing to modify my amendment, among other reasons, to make it not mandatory but optional.

Mr. BAYH. Might I suggest a brief quorum call?

Mr. DOMINICK. Mr. President, I suggest the absence of a quorum, to be taken equally from both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMINICK. Mr. President, I ask to modify my amendment by striking the word "shall" on line 1, page 2, and inserting in lieu thereof the word "may".

The PRESIDING OFFICER. The amendment will be so modified.

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

I say to my colleagues that as soon as we can get enough Senators here, I shall ask for the yeas and nays, even though I think we have an agreement. I do this, which I ordinarily would not do, for the purpose of fulfilling certain commitments I have previously made to other people. I also do it for the purpose of showing what I hope will be nearly unanimous agreement of the Senate to this amendment.

I say to my friend from Indiana, the manager of the bill, that what we have done by this modification is say that the first time that a person commits a felony using or carrying a gun, the judge will have the option to determine whether or not he is going to give him an additional consecutive sentence, instead of making such a sentence mandatory. However, on a second or subsequent conviction for a violation of that section, a minimum consecutive sentence must be imposed, and the judge would have no options in such a case. Hence, if we get into first offense and a white-collar type of crime, if one may put it that way, for example, an income tax fraud or something of that nature, the judge would not be required to give the defendant an additional penalty simply because he had a gun on his person, and particularly, of course, if he had a permit for that gun.

But as to cases such as robbery, rape, murder, and other violent crimes, a second count under section 924(c) could be added and upon conviction, a consecutive sentence would be imposed. For example, a great friend of mine was in a drug store one night, picking up some supplies for his family, when two young people came in and said, "This is a holdup." One of them did not have any gun visible. The other had a bulge in his pocket, and my friend figured they were just bluffing. So, although the other two people in the store, the druggist and another person, agreed that it was a holdup, and agreed to do whatever the kids said, my friend just went up to them and said, "I don't believe you." He did not do it in any belligerent manner, he just walked up and started getting closer and closer as he talked to them.

All of a sudden the guy with his hand in his pocket pulled the trigger and shot him. Fortunately, it did not kill him, and he managed, despite the gunshot wound, to attack one of these intruders and did quite a job on him.

All I can say is, if a person does undertake to commit a felony, and has a gun on him, he is very likely to use it. This proposal would give the judge an option, the first time, to give him more or less punishment. However, upon a second conviction, this amendment would insure that a minimum penalty of 2 years in prison would be imposed.

I wish to make one further comment in reply to my friend from Indiana, on the question of recidivism. I have wondered for a long time whether this is the result of what happened to them in prison, or because they had that kind of psychological makeup to begin with, that they are just going to go ahead and do it. Whether that is true or not, very few people inject that type of argument into the situation, but I think it is well worth considering.

I appreciate very much the cooperation of my friend from Indiana, and I hope this will be helpful in the interpretation of the bill.

Mr. BAYH. Mr. President, I yield myself 5 minutes to respond to my friend from Colorado.

I think the Senator has made a distinct improvement in the language of his measure. For that reason, I intend to vote for it when the roll is called.

I am impressed by the observation that the Senator made relative to the reasons for recidivism. I do not think any of us really know, but the evidence that has been brought to our committee indicates that quite often by the time a young person is referred to the penal institution for some reason or other, so many things have had an impact on that youngster that he is a pretty good candidate to become a recidivist. For that reason, I have introduced legislation in this session, and I hope to hold continued hearings over the next year, and for it to be reintroduced in the next session——

Mr. DOMINICK. Mr. President, will the Senator yield so that I may request the yeas and nays?

Mr. BAYH. I yield.

Mr. DOMINICK. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, will the Senator yield? Either of the Senators, whoever has the floor.

Mr. BAYH. Yes, if I may just finish this sentence, I shall be glad to yield to the Senator from North Carolina.

The new approach of this bill is to try to emphasize the need to start those programs of prevention at a very early age, when we have the first signal that a child might be a candidate for a juvenile delinquency center, the boys' school, or the girls' school, and then on up to the State prison.

I hope the Senator from Colorado will have a chance to examine that, because I do not think there is any one simple solution to the problem of lawlessness. I think the earlier we get started in recognizing the imperfections a child has, the better opportunity we will have to deal with it.

I might make one further observation: Is it fair to say, in providing some legislative history and guidance for those judges who may look at what we are doing here today, that the Senator's amendment is directed to the type of crime as it relates to the simple carrying of a gun, in which the gun could reasonably play a part? Is it not true that for the section to be operative the gun would have to be an important part of the act necessary to commit the underlying felony?

Mr. DOMINICK. I would certainly think so. In other words, we are not talking about a man who is carrying a gun with a legitimate permit and signs a fraudulent income tax return. What we are talking about is the fact that someone has a gun on or near him, where that

gun might be used. Of course, we have the separate situation where the concealed weapon is involved, but that is another provision of the law and is not combined with other felonies.

Mr. BAYH. The Senator from Colorado put it well in our earlier discussion during the quorum call, when he said that we should make clear in the legislative history that he did not mean this provision to apply to paper frauds. I agree. I would also exclude, as to the carrying provision, the traditional white-collar crime in which the gun happens to be in the accidental possession or the intentional possession of someone, but the weapon is not a part of and does not relate to the commission of the felony or could not reasonably be expected to be part of the commission of the felony.

Mr. DOMINICK. The Senator is correct. As he pointed out, we are not talking about a fellow who is about to go rabbit shooting or gopher shooting somewhere and in the process of this signs a fraudulent tax return.

Mr. BAYH. Mr. President, I yield to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I ordinarily follow the leadership of my distinguished friend from Colorado, but I cannot do it on this occasion.

I am opposed to mandatory sentences. I think mandatory sentences deprive a judge of what I consider the highest attribute of judicial office—that is, the capacity to use his discretion and to judge each case on its own facts.

This amendment, as I understand it, as modified, provides, among other things, that whoever carries a firearm during the commission of any felony for which he may be prosecuted in a court of the United States may, for a first offense, be sentenced to a term of imprisonment of not less than 1 year nor more than 10 years. It is to be noted that this man would be subject to this penalty if he merely carried a gun and did not use it.

A Federal felony, under the law, is any offense punishable by more than a year's imprisonment.

Those of us who, like myself, used to practice law in the moonshiners' and blockaders' convention—namely, the Federal district court—were accustomed to having judges give them a year and a day, because the charge was a felony.

Here is an authorization to a judge to send a man to the penitentiary for a first offense, a first felony, for as much as 10 years in addition to the punishment he receives for the felony, if he carried a gun at the time he committed the felony, even though he did not use the gun. To me, to give a judge the discretionary power to imprison a man for 10 additional years for committing an offense which might only be punishable by a year and a day in prison is rather drastic.

I read from the amendment:

> In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than 2 nor more than 25 years.

I am opposed to such long sentences, because I found in my experience as a practicing lawyer that many judges have an incapacity to distinguish between time and eternity when they start sentencing people.

I have always shared with a great deal of sympathy the view expressed by a North Carolina judge to the effect that before anyone is permitted to be a prosecuting attorney or a judge, he should serve a short term in prison so that he would find out how long a year is in prison, how many long months there are in it, how many long weeks and how many long days there are in a month, and how many long hours are in each day of 24 hours.

I cannot vote for this amendment because of my aversion to mandatory sentences, which disable a judge to exercise his intelligence and to judge each case on its merits, and because I think these authorizations are unduly long, particularly in view of the fact that it says:

> Any term of imprisonment imposed under this subsection may not be imposed to run concurrently with any term or imprisonment imposed for the commission of such felony.

Despite my great respect for the good judgment of the distinguished Senator from Colorado, I cannot go along with his amendment on this occasion, and I felt that I should state my reasons for my inability to do so.

Mr. DOMINICK. I yield myself 3 minutes to respond to the Senator from North Carolina.

I am not sure the Senator was in the Chamber when I modified my amendment. At the top of page 2 I changed the word "shall," which is in the present law, to the word "may." This gives the judge an option, and it is not mandatory for the first offense. It seems to me that all I have done by this, at this point, is to make sure that use of or carrying a gun during the commission of a felony is another felony and a different offense.

Mr. ERVIN. I was aware of the modification the Senator made, and I took note of it in the remarks I made to the effect that for a first offense the judge was given the discretionary power to refrain from imposing additional sentence; but it does provide that he has the authority—which he does not necessarily have to exercise—to give 10 additional years' punishment to a man who was convicted of an offense which may be punishable only by a year and a day in prison. I think that is a little too much extravagant use of another man's time. Of course, the second one is the mandatory sentence.

I thank the Senator for his explanation.

Mr. DOMINICK. I thank the Senator. I can understand his basic philosophical position.

Mr. ERVIN. I might state that I voted against the existing law.

Mr. DOMINICK. I understand that.

Mr. STEVENS. Mr. President, I am very much pleased to join with the distinguished Senator from Colorado (Mr. DOMINICK) as a cosponsor of amendment 1401 to S. 2507. Amendment 1401 strengthens the provisions of subsection (c) of section 924 of the Gun Control Act of 1968 (18 U.S.C. 924 (c)). Section 924 sets forth the penalties for violating the Gun Control Act of 1968.

The major purpose of the Senator from Colorado's amendment is to remove all doubts that it was Congress' intent to require consecutive sentencing, not only for second and subsequent offenses, but for first offenses as well. This amendment makes it crystal clear that if the court finds the defendant guilty under the act, it must, if imprisonment is imposed, sentence the defendant consecutively for first offenses as well as subsequent offenses. The terms of imprisonment may not be suspended, nor may probation be granted.

Mr. President, the carrying as well as the use of firearms in the commission of felonies are themselves serious and distinct offenses. The Alaska Supreme Court said in discussing the Alaska statute, A.S. 11.15.295, that the inherent nature and purpose of a firearm is such as to create a danger of loss of life or serious injury to the person so as to merit the inhibiting force of a law in imposing a minimum prison term for one who commits a robbery in this manner. *Whitton* v. *State*, 479 P. 2d 302 (Alaska 1970). This is the case even if the firearm itself is not used. It is the case whether the accused had actual or constructive possession of the firearm; whether he physically carried the weapon or had it within his control in any manner. As such, because the crime creates considerable danger, not only to the intended victim, but to all persons in the area, and to property in the area as well, the use or carriage of a firearm merits strong penalties.

Amendment 1401 achieves one other result as well. In subsection (2) it deletes the requirement that the firearm must be carried unlawfully during the commission of the Federal felony. This will relieve the prosecution from the necessity of introducing records or other evidence indicating an unlawful carriage. Whether or not the firearm was lawfully in the possession of the accused should not be the basis of the crime. The fact a firearm was carried in the commission of a felony is sufficient to merit society's punishment. In fact, I would strongly argue that those persons lawfully carrying firearms and committing felonies indicate a greater need for legislation of this type. We must strike at the root of the evil and prohibit the carriage and use of firearms in all felonies. That is the intent of the amendment.

Mr. President, on February 17, 1971, I introduced S. 794. That bill would also have amended this subsection to increase the penalties for second or subsequent convictions to require from 5 to 10 years imprisonment. Amendment 1401 retains the present imprisonment of 2 to 25 years. However, my introductory remarks on that bill are germane to this amendment as well as to S. 794. I ask unanimous consent to have printed in the RECORD at the close of my remarks my introductory statement on S. 794.

I urge Senators to support this amendment. Its beneficial purpose will certainly be recognized by people across the country. The high crime areas at which S. 2507 is designed to strike should particularly benefit from the inclusion of this amendment.

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

S. 794—INTRODUCTION OF A BILL TO STRENGTHEN THE PENALTY PROVISIONS OF THE GUN CONTROL ACT OF 1968

Mr. STEVENS. Mr. President, today I am introducing legislation which presents a viable alternative to the onerous provisions of the Gun Control Act of 1968.

My bill would punish those who misuse firearms while preserving the constitutional right of law-abiding citizens to purchase and own guns and ammunition. Specifically, this measure would impose mandatory penalties on those who use a firearm in the commission of a Federal felony or unlawfully carry a firearm during the commission of such a felony. The penalty assessed under this legislation would be in addition to the punishment provided for committing the felony itself. Under my bill, first offenders would be subject to a prison sentence of not less than 1 year nor more than 3 years. If a person is convicted of a second or subsequent offense, he would be subject to a sentence of not less than 5 nor more than 10 years. Notwithstanding any other provision of law, the trial court would be prohibited from suspending the sentence for a first or subsequent conviction. Similarly, the court would not be permitted to impose a probationary or concurrent sentence.

The bill which I have just outlined preserves the right of law-abiding citizens to purchase and own guns and ammunition. Moreover, it takes cognizance of the fact that regulatory legislation, such as the Gun Control Act of 1968, has failed to accomplish any useful purpose. Law-abiding citizens have been unduly burdened and harassed; yet, criminals have been able with great ease to acquire unregistered firearms. Thus, in the period since the enactment of the Gun Control Act, the incidence of crimes involving the use of firearms has significantly increased.

Some people have used these statistics to argue that more stringent regulatory controls should be enacted. I oppose this well meaning but misguided philosophy. More restrictive legislation would do nothing more than create a more lucrative black market in the sale of guns and ammunition. The end result would be to enlarge the already swollen coffers of organized criminal syndicates. Furthermore the enactment of more stringent legislation would leave peaceful citizens at the mercy of gun brandishing hoodlums.

If restrictions on the purchase of guns and ammunition are ever necessary, such controls should emanate from State and local governments, which are uniquely capable of responding to local needs and problems. The gun control problems in my State of Alaska, where many people rely on firearms for their subsistence, are different in nature and scope from those of a State like New York. Hence, a uniform Federal law is not capable of meeting the problems which do exist and necessarily results in the imposition of an extremely onerous burden on many citizens. The most graphic example of the latter observation is in rural Alaska, where the provisions of the Gun Control Act have resulted in great hardship for many citizens living in areas which are not easily accessible to sellers of firearms and ammunition.

For these reasons, I have strongly opposed the onerous provisions of the 1968 act. During the last Congress, we were successful in enacting legislation to exempt rifle and shotgun ammunition sales from the recordkeeping requirements of the Gun Control Act. I am hopeful that this will be but the first step in a total reevaluation of the policy and language of the act. The next logical step would be to eliminate the recordkeeping requirement for .22-caliber rimfire ammunition, since this ammunition is used almost exclusively for sporting purposes. We should also reexamine the advisability of using the interstate commerce clause of the U.S. Constitution to regulate the sale of firearms, a subject which traditionally has been under the exclusive jurisdiction of State and local governments, I am confident that such a reexamination would reveal the dangerous precedent inherent in using the interstate commerce clause to regulate activities of this kind.

Mr. President, for the reasons outlined above, I am hopeful that we will soon adopt the alternative approach which is exemplified by legislation which would impose mandatory penalties on those who abuse their constitutional right to keep and bear firearms.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, if the Senator from Indiana is ready to yield back the remainder of his time, I am ready to do so and to go forward with the vote.

Mr. BAYH. I yield back the remainder of my time.

Mr. PERCY. Mr. President, will the Senator yield me 30 seconds?

Mr. DOMINICK. I am happy to yield.

Mr. PERCY. I should like to indicate my support for the modified Dominick amendment. I think it does a great deal to clarify what I understand to be existing law but which certainly is not clear. I think this amendment clarifies it, and I commend the distinguished Senator for making this proposal.

Mr. DOMINICK. I thank the Senator from Illinois for his help and support.

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

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment, as modified, of the Senator from Colorado. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS) and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "yea."

Mr. SCOTT. I announce that the Senator from Michigan (Mr. GRIFFIN) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 84, nays 11, as follows:

[No. 356 Leg.]

YEAS—84

Aiken	Cook	Jackson
Allen	Cotton	Javits
Allott	Cranston	Jordan, N.C.
Baker	Curtis	Jordan, Idaho
Bayh	Dole	Magnuson
Beall	Dominick	Mansfield
Bellmon	Eagleton	McClellan
Bennett	Eastland	McGee
Bentsen	Edwards	McIntyre
Bible	Fannin	Metcalf
Boggs	Fong	Miller
Brock	Fulbright	Mondale
Brooke	Goldwater	Montoya
Buckley	Gravel	Packwood
Burdick	Gurney	Pastore
Byrd, Harry F., Jr.	Hansen	Pearson
Byrd, Robert C.	Hartke	Pell
Cannon	Hatfield	Percy
Case	Hollings	Proxmire
Chiles	Hruska	Randolph
Church	Humphrey	Ribicoff
	Inouye	Roth
Saxbe	Stennis	Tower
Schweiker	Stevens	Tunney
Scott	Stevenson	Weicker
Smith	Symington	Williams
Sparkman	Taft	Young
Spong	Talmadge	
Stafford	Thurmond	

NAYS—11

Anderson	Hughes	Moss
Cooper	Kennedy	Muskie
Ervin	Long	Nelson
Hart	Mathias	

NOT VOTING—5

Gambrell	Harris	Mundt
Griffin	McGovern	

So Mr. DOMINICK's amendment (No. 1401), as modified, was agreed to.

Mr. DOMINICK. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, I yield myself 1 minute on the bill.

The PRESIDING OFFICER. The Senator from Montana is recognized for 1 minute.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1412

Mr. DOMINICK. Mr. President, I call up my amendment No. 1412 and ask that it be reported.

Mr. BAYH. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. DOMINICK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

On page 11, between lines 2 and 3, insert the following new section:

"SEC. 6. (a) Section 921(a) of title 18, United States Code, as amended by section 2, is further amended by adding the following:

"'(23) The term "immediate family" means direct lineal descendants (including adopted children) and ascendants of the transferor.

"'(24) The term "sporting firearm" means a firearm which is generally recognized as particularly suitable for or readily adaptable to sporting purposes.'

"(b) Section 922(a)(3) of title 18, United States Code, is amended by redesignating clause '(C)' as clause '(E)', and by inserting after clause (B) the following new clauses: '(C) shall not apply to the importation into the United States of a sporting rifle or sporting shotgun in conformity with the provisions of section 925(d)(3): *Provided*, That not more than one sporting rifle and one sporting shotgun shall be imported by a person during any calendar year; (D) shall not apply to the transportation or receipt of a sporting rifle or sporting shotgun transferred

by its lawful owner to a member of his immediate family;'.

"(c) Section 922(a)(5) of such title is amended by redesignating clause '(B)' as clause '(C)', and by inserting after clause (A) the following new clause: '(B) the transfer, transportation, or delivery of a sporting rifle or sporting shotgun by its lawful owner to a member of his immediate family.'

"(d) Section 925(d)(3) of title 18, United States Code, as amended by section 5 of this Act, is further amended by inserting immediately after 'the Internal Revenue Code of 1954' a comma and the following: 'and meets the definition of a sporting firearm as defined in this chapter, excluding surplus military firearms, except that in any case in which a person who is not a member of the United States Armed Forces and is not a licensed importer, manufacturer, dealer, or collector seeks to import a sporting rifle or sporting shotgun by mail order, such person must be at least twenty-one years of age;'.

"(e) (1) Section 926 of title 18, United States Code, is amended by adding at the end thereof the following new sentence: 'The Secretary shall compile and maintain an importation list containing descriptions of rifles and shotguns which he determines to be generally recognized as particularly suitable for or readily adaptable to sporting purposes.'

"(2) The caption of such section is amended to read as follows:

"'§ 926. Rules and regulations: Importation list'.

"(3) Item 926 of the analysis of chapter 44 of such title is amended to read as follows:

"'926. Rules and regulations; Importation list.'."

On pages 11 and 12, redesignate sections "6", "7", and "8" as sections "7", "8", and "9", respectively.

REVISION OF UNANIMOUS-CONSENT AGREEMENT ON AMENDMENT NO. 1412

Mr. DOMINICK. Mr. President, I ask unanimous consent that the 2-hour time limitation on the amendment be reduced to 1 hour, and I presume that amendments to the amendment, if any, will be one-half hour.

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

CONSIDERATION OF NO-FAULT BILL LATER TODAY

Mr. MANSFIELD. Mr. President, first I wish to announce to the Senate that after the Dominick amendment is considered and disposed of, it is the intention in line with the statement made by the joint leadership yesterday that the Senate turn to the consideration of S. 945, the so-called no-fault insurance bill, at which time the motion to recommit made by the Senator from Nebraska will be pending.

The PRESIDING OFFICER. The Chair can hardly hear the Senator from Montana. The Senate will be in order. The gallery will be in order.

Mr. MANSFIELD. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from Montana is recognized for 1 additional minute.

Mr. MANSFIELD. Mr. President, I yield to my colleague from Montana.

CLASSIFICATION AS WILDERNESS OF CERTAIN NATIONAL FOREST LANDS, MONT.

Mr. METCALF. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 484.

The PRESIDING OFFICER (Mr. WEICKER) laid before the Senate the amendments of the House of Representatives to the bill (S. 484) to authorize and direct the Secretary of Agriculture to classify as wilderness the national forest lands known as the Lincoln Back Country, and parts of the Lewis and Clark and Lolo National Forests, in Montana, and for other purposes which were to strike out all after the enacting clause, and insert:

That, the area known as the Lincoln Back Country as generally depicted on a map entitled "Proposed Scapegoat Wilderness", dated May 19, 1972, which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture, is hereby designated as the Scapegoat Wilderness within and as part of the Helena, Lolo, and Lewis and Clark National Forests, comprising an area of approximately 240,000 acres.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file a map and a legal description of the Scapegoat Wilderness with the Interior and Insular Affairs Committees of the United States Senate and House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 3. The Scapegoat Wilderness shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

And amend the title so as to read: "An Act to designate the Scapegoat Wilderness, Helena, Lolo, and Lewis and Clark National Forests, in the State of Montana."

Mr. METCALF. Mr. President, I move that the Senate concur in the House amendment.

Mr. MANSFIELD. Mr. President, before the Presiding Officer acts on that motion, I take this occasion to compliment my colleague, Senator METCALF, for his fine initiative in getting this bill through the Senate three times unanimously and finally getting the House to agree to it with a minor amendment.

I take this occasion to express my personal gratitude and, I am sure, the gratitude of the people of Montana for the passage of the bill finally.

Mr. METCALF. Mr. President, the passage of the bill is directly attributable to the leadership of the Senator from Washington (Mr. JACKSON), the chairman of the Committee on Interior and Insular Affairs, with the assistance of the Senator from Colorado (Mr. ALLOTT), the ranking minority member of the committee, who cooperated and assisted at all stages of the enactment.

The House amendment is only a minor subtraction from the bill which has twice passed the Senate and has had two conferences. It was an example of cooperation on the part of the Democratic and Republican leaders which accomplished this very important and fine result.

The PRESIDING OFFICER. The question recurs on the motion of the Senator from Montana.

The motion was agreed to.

HANDGUN CONTROL ACT OF 1972

The Senate resumed the consideration of the bill (S. 2507) to amend the Gun Control Act of 1968.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. DOMINICK. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of the amendment: Senators HRUSKA, MCGEE, ALLOTT, and TOWER.

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

Mr. DOMINICK. Mr. President, the amendment is identical in effect to S. 950, which I introduced last year on behalf of myself and 17 cosponsors—Senators ALLEN, ALLOTT, BAKER, BENNETT, BUCKLEY, CURTIS, EASTLAND, FANNIN, HANSEN, HRUSKA, MCGEE, METCALF, MOSS, PEARSON, PROXMIRE, TOWER, and YOUNG. It would amend the Gun Control Act of 1968—Public Law 90-618—in order to permit persons who are not members of the Armed Forces of the United States and are not licensed importers, manufacturers, dealers, or collectors under that act to import into the United States rifles and shotguns used for sporting purposes, and to permit transfers of sporting rifles and sporting shotguns between close family members, regardless of their States of residence.

This amendment would modify certain provisions of the act which I think are unduly restrictive in their application to rifles and shotguns designed for sporting purposes. The amendment would not affect handguns or surplus military firearms. It would apply only to sporting rifles and shotguns, which are defined as those which are "generally recognized as particularly suitable for or readily adaptable to sporting purposes."

The act provides for the licensing of manufacturers, importers, dealers, and collectors of firearms. A person who is not licensed under the act is prohibited, with certain limited exceptions, from transferring a firearm to another nonlicensee who resides in another State. Such a transfer, even where the firearm is only being loaned, must be made through a licensed dealer in the State where the transferee resides. A father, who lives in Virginia and wants to give a shotgun to his son who resides in Colorado, cannot send it to him, or even take it to him personally. Nor, for that matter, can the son receive the shotgun in Virginia and then return to Colorado with it. Arrangements must be made to have the shotgun delivered to a licensed dealer in Colorado, who would then, upon payment of a fee, deliver the shotgun to the son.

Mr. President, the act also provides that, with certain limited exceptions, only federally licensed manufacturers,

importers, dealers, and collectors may obtain permits to import firearms into the United States. This means that a sportsman who wants to purchase a hunting rifle or shotgun while abroad, or mail order such a rifle or shotgun from abroad, cannot obtain a permit for importation. He must effect the importation through a licensee in the State where he resides. And the licensee will, of course, charge a fee. Such arrangements may be difficult or impossible to make, especially on short notice. For example, a sportsman who purchases a Browning shotgun while traveling in Belgium and discovers when checking through customs that he cannot bring it back into the United States with him will be forced to leave it with customs while he returns to his home State and makes arrangements for a licensed dealer to apply to the Alcohol, Tobacco, and Firearms Division of the Internal Revenue Service for an importation permit. There is an exception to this provision which permits a member of the Armed Forces serving abroad to import sporting and war-souvenir type firearms without going through a licensee.

The ostensible reason for these requirements of the act, together with the recordkeeping requirements imposed on the dealer through which transfers must be made, was to cut down on the flow across State lines of firearms potentially usable in crime, and to give the States better control of firearms within their borders. Well, any firearm is potentially usable in the commission of a crime, and the only way we will ever keep firearms out of the hands of criminals is by confiscating all firearms—including those of the vast majority of gun owners who are law abiding citizens. Mr. President, I will strongly resist any step in that direction. And I would feel that way even if I did not represent a State populated by thousands of avid, law-abiding sportsmen, because there is no place in a democracy for laws which ignore the rights of a majority in order to get at a problem created by a small minority.

Any gun legislation has to strike a proper balance between the competing interests of deterring the use of firearms in crime and protecting the rights of law-abiding citizens to obtain and use firearms for legitimate purposes. I do not believe the 1968 Gun Control Act strikes that balance.

Mr. President, this amendment does not attempt to make all the changes which I think are necessary to achieve a proper balance. Rather, it would make changes to create two very narrow exceptions in the situations I outlined earlier. First, it would permit the lawful owner of a sporting rifle or sporting shotgun to transfer it directly to a member of his immediate family who resides in another State without going through a licensed dealer in the transferee's State. "Immediate family" is narrowly defined to include only direct lineal descendants and ascendants, Thus, direct transfers between brothers and sisters, and other collateral relatives who are not residents of the same State, would continue to be prohibited.

Second, it would enable a person who is not a member of the Armed Forces, and is not a licensee under the act, to obtain a permit to import one sporting rifle and one sporting shotgun annually, without going through a licensee. In order to import such firearms by mail order, he would be required to be at least 21 years of age. In order to expedite the process of obtaining permits, which are issued by the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service—the Secretary of the Treasury would be required to maintain an importation list containing descriptions of rifles and shotguns which meet the definition of "sporting firearms." This would avoid unnecessary delay in the situation where a person acquires a sporting rifle or shotgun on the spur of the moment while traveling abroad, and wants to return to the United States with it.

Mr. President, the 1968 Gun Control Act states that its purpose was not—

> To place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity.

The changes my amendment would effect are, I believe, consistent with this statement of purpose.

I hope the mood of the Senate is to take this amendment.

As I said, it was introduced with 17 cosponsors last year, but the Judiciary Committee did not have time to schedule hearings. I emphasize that it applies only to shotguns and rifles which meet the definition of "sporting firearms" under the act. I think it is totally consistent with the purpose of the 1968 Gun Control Act, and will remove two unreasonable restrictions.

Mr. HUGHES. Mr. President, will the Senator yield for a question?

Mr. DOMINICK. I am happy to yield to the Senator from Iowa.

Mr. HUGHES. If I understand the distinguished Senator from Colorado, and I am not as familiar with the law as I should be, if I decided to ship one of my guns to my daughter or son in the State of Iowa where I am presently residing, I could not do that without going through a licensed dealer?

Mr. DOMINICK. The Senator is correct. The Senator would be required to send it to a licensed dealer, who would either deliver it or they would have to get it. It does not make good sense to me to have this restriction in effect.

Mr. HUGHES. Suppose I drive back in my automobile and deliver the rifle to my son or daughter. Would the same thing apply?

Mr. DOMINICK. No. As I understand it, since you both would be residents of the same State under those circumstances, the transfer would not be prohibited.

Mr. HUGHES. Apparently it is all right to transport the gun if it is taken in one's car and then given to them.

Mr. DOMINICK. Yes. But only where you are both residents of the same State, and the transfer takes place in that State. But if you attempted to ship the firearm from your residence in the Washington area, as I understand it, that would be illegal, even though you are also a resident of Iowa. I do not think this restriction deters crime in any way.

Mr. HUGHES. If I understood the Senator, if I go to Belgium and decide to buy a Browning shotgun it would have to be shipped to a licensed dealer in my State who has a permit.

Mr. DOMINICK. Yes, it does have to be sent to a licensed dealer who has a permit from the Alcohol, Tobacco and Firearms Division of IRS to import that specific shotgun. And such arrangements would have to be made with the dealer in advance. This means it would be very difficult to buy the shotgun on the spur of the moment, and get it back into the country with you. Making arrangements with a dealer results, of course, in additional cost and delay.

Mr. HUGHES. I thank the Senator.

Mr. DOMINICK. My amendment would allow a person to import one rifle a year from overseas without going through this Mickey Mouse rigmarole. He would, however, still be required to obtain a permit from the Alcohol, Tobacco and Firearm Division, but this would be greatly facilitated by the requirement in my amendment that the Treasury Department maintain a current list of shotguns and rifles which meet the definition of "sporting firearm." Presumably, the permit could be obtained on the spot while going through customs if the particular model of shotgun or rifle he is bringing back into the country is on the importation list.

Mr. BAYH. Mr. President, I wonder if I could ask my friend from Colorado to engage in a colloquy with me on my time?

Mr. DOMINICK. I am happy to do so.

Mr. BAYH. As I mentioned a moment ago in a private conversation, my hasty perusal of this measure would lead me to see no overriding interest in opposing it. I am a bit concerned about the kind of precedent we would establish if we permit a major act to contain an exception for a minor incident, but perhaps for the individual involved, that minor incident is a major one. I know the Senator from Colorado does not pursue this just in his own behalf.

Let me ask the Senator from Colorado a couple of questions. Is the understanding of the Senator from Indiana correct that this does not involve in any way opening the doors to the importation of military surplus weapons?

Mr. DOMINICK. The Senator is totally correct.

Mr. BAYH. With reference to the transfer between members of a family, is there any requirement that this be done in person, or could it be done by common carrier? I would like the Senator from Colorado to think with me about that for a moment not only as it applies to relatives within a family but, perhaps even more significantly, as it applies to foreign imports.

I have really no reservation at all about the hunter who goes to Belgium or Mexico to participate in a big shoot and finds a weapon particularly suitable to

him and wants to buy it and bring it back with him. I am a bit concerned about someone sitting over here in Denver, Colo., or Indianapolis, Ind., who wants to use the secrecy of public transport to secure a weapon. What would be the story on shipping imports?

Mr. DOMINICK. They would be permitted to do so provided they had a permit for the particular type of firearm they were importing. In other words, that particular person has to obtain a permit from the Alcoholic Tax Division of the Internal Revenue Service.

Mr. BAYH. In other words, if I am out on the farm in southern Indiana and want to buy a particular brand of foreign-made sporting weapon, first, that weapon would have to be on a list filed with the Secretary; and, second, I would have to apply in advance and have received permission to purchase that weapon and bring it into the country?

Mr. DOMINICK. Yes; that is correct. That is what the amendment provides. What it does is eliminate the necessity which now exists that it must go from dealer to dealer. Under the amendment, a person could do it directly.

Insofar as the first question the Senator asked is concerned; namely, whether he could send it to his son or a direct descendant, within the United States—I am talking about importing—the answer is, yes, he could. He could do it either by truck or by personal delivery. The reason for that is that when we are dealing with rifles and shotguns of this kind, I think half of the people—those of my age, at least—if they buy them, do so for the purpose of giving them as Christmas presents to their sons or grandchildren, or whoever they may be.

Mr. BAYH. Does the Senator have any thoughts relative to what we can do, if anything—I just raise this for his consideration—to notify somebody in the community where the rifle or shotgun is about to arrive that that shotgun is on its way? I am concerned about shipments going to individuals, and not dealers There is something purifying about going in to a dealer and saying, "Here, I want to buy a weapon. Here I am."

To take perhaps an extreme example, it would be possible, would it not, under the Senator's amendment, to ship a shotgun to a relative? That relative could be one who had been in all sorts of trouble in the community, perhaps was even mentally deranged. Does the Senator have any comment on that? I am not nit-picking. I am just looking for possibilities where this provision might be used in ways in which neither one of us wants it to be used.

Mr. DOMINICK. The act excepts newly inherited firearms from the prohibition of interstate transfers. So, we have a situation now where, let us suppose, a gentleman who has been collecting guns for quite a long time lives in Indiana, whose relatives have moved out West and are now living in Colorado. After he dies, the executor can ship those guns to anyone named in the will or anyone who would get his personal effects. All we are saying is it can be done while he is alive, and not have to wait until he is dead.

Mr. BAYH. Would the Senator have any objection to writing just a brief sentence in his amendment which would read, *"Provided, however,* said relative shall not be in that classification of individuals who would be prohibited from buying a weapon through normal channels"—for example, a felon? The Senator knows the categories of ineligible persons—juveniles, felons, those who are mentally deranged. I do not think we want to open up that Pandora's box just because one person happens to be related to another.

Mr. DOMINICK. I would be opposed to that. What I want to do is not impose on the vast majority of people in our country unnecessary restrictions in order to take care of what might be a miniscule situation.

When we are dealing with shotguns and rifles, I just cannot see any reason for imposing more restrictions with respect to getting a family transfer, back and forth between father and son—unless it is a "godfather" situation, and there we are not going to do any good under this law, anyhow. That would mean basically that the transferee would have to go down, give his citizenship, tell all he has to tell——

Mr. BAYH. No, that is not what the Senator from Indiana is suggesting.

Mr. DOMINICK. That is what he would do by the time he gets through with the regulations.

Mr. BAYH. No; I am suggesting that if a father wants to ship a gun to a son or to a member of his immediate family, or to one of his relatives up and down the line, that person has the responsibility of knowing that the other person would not otherwise be disqualified from going into a store and buying a gun in his own State of residence. Just because my son is my son and is 12 years old, I should not be able to use the provision of the Senator from Colorado to go ahead and send him a weapon across State lines.

I am not trying to impose any requirement that any application form be procured in advance. I am saying that the sender ought to have that responsibility, of knowing that the person he is sending the gun to is otherwise qualified to receive it.

Mr. DOMINICK. There is no such restriction now. To state an example, if I went to New York and bought a gun, sent it to a licensed dealer in Colorado, my son could go down and pick it up. That is all there is to it now. I cannot see any sense in putting additional restrictions on it.

Mr. BAYH. I would like to read to my friend from Colorado, just so that the record will be clear that his amendment would not negate the present law, Public Law 90–618, section 922(h), which reads as follows:

It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 21(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Mr. DOMINICK. To the best of my knowledge and belief, and on advice of staff and everyone else I can think of, this amendment does not affect that at all.

Mr. BAYH. All right, fine. If that is the intent of the author of the amendment, I am willing to cease and desist. I just did not want to open up something that neither of us wanted to open up.

Mr. DOMINICK. No, I did not intend that at all. I am glad to have the Senator from Indiana make that record.

I yield back the remainder of my time.

Mr. BAYH. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. WEICKER). All remaining time has been yielded back. The question is on agreeing to the amendment of the Senator from Colorado (Mr. DOMINICK). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Louisiana (Mrs. EDWARDS), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "yea."

Mr. SCOTT. I announce that the Senator from Michigan (Mr. GRIFFIN) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kansas (Mr. DOLE) is detained on official business.

The result was announced—yeas 89, nays 4, as follows:

[No. 357 Leg.]

YEAS—89

Aiken	Ervin	Montoya
Allen	Fannin	Moss
Allott	Fong	Muskie
Anderson	Fulbright	Nelson
Baker	Goldwater	Packwood
Bayh	Gravel	Pastore
Beall	Gurney	Pearson
Bellmon	Hansen	Pell
Bennett	Hart	Percy
Bentsen	Hartke	Proxmire
Bible	Hatfield	Randolph
Boggs	Hollings	Roth
Brock	Hruska	Saxbe
Buckley	Hughes	Schweiker
Burdick	Humphrey	Scott
Byrd, Harry F., Jr.	Inouye	Smith
Byrd, Robert C.	Jackson	Sparkman
Cannon	Javits	Spong
Case	Jordan, N.C.	Stafford
Chiles	Jordan, Idaho	Stennis
Church	Long	Stevens
Cook	Magnuson	Symington
Cooper	Mansfield	Taft
Cotton	Mathias	Talmadge
Cranston	McClellan	Thurmond
Curtis	McGee	Tower
Dominick	McIntyre	Tunney
Eagleton	Metcalf	Weicker
Eastland	Miller	Williams
	Mondale	Young

NAYS—4

Brooke	Ribicoff	Stevenson
Kennedy		

NOT VOTING—7

Dole	Griffin	McGovern
Edwards	Harris	Mundt
Gambrell		

So Mr. DOMINICK's amendment was agreed to.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMINICK. I move to lay that motion on the table.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield me 2 minutes on the bill?

Mr. BAYH. I yield.

The PRESIDING OFFICER. Does the Senator from West Virginia request unanimous consent? The order indicated that the Senate would proceed right to S. 945.

Mr. ROBERT C. BYRD. I am getting ready to do that shortly, if the Chair will indulge me.

The distinguished Senator from Arizona (Mr. FANNIN), has an amendment to the gun control bill which he will call up at this time and make the pending question, following which the Senate will proceed to the no-fault insurance bill.

Mr. President, I ask unanimous consent that the distinguished Senator from Arizona (Mr. FANNIN) may now be recognized for the purpose of calling up his amendment and having the clerk state it, and that the Senate then proceed to the consideration of S. 945, the National No-Fault Motor Vehicle Insurance Act.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Arizona is recognized.

Mr. FANNIN. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. FANNIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

AMENDMENT NO. 1418

On page 8, line 16, strike all after the parenthesis (3) through the period on page 9, line 4.

CHANGE IN TIME FOR VOTE ON GUN CONTROL BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, with reference to the Gun Control Act, that the vote on final passage thereof tomorrow come no later than 5 p.m., rather than 6 p.m., as previously agreed to.

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

Does the Senator from West Virginia also request to the Chair that rule XII be waived relative to the vote on S. 2507?

Mr. ROBERT C. BYRD. Yes; I do. For the purpose of having a better understanding of the rules, that rule was waived last evening when the agreement was entered into providing for a final vote on S. 2507 at no later than 6 p.m. tomorrow. Is it necessary to again waive the rule in order to change that vote to 5 p.m.?

The PRESIDING OFFICER. The Chair informs the Senator from West Virginia in the affirmative.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER FOR RECOGNITION OF SENATOR JAVITS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, immediately after the two leaders have been recognized under the standing order, the distinguished senior Senator from New York (Mr. JAVITS) be recognized for not to exceed 15 minutes.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the amendment of the Senate to the bill (H.R. 1462) to provide for the establishment of the Puukohola Heiau National Historic Site, in the State of Hawaii, and for other purposes.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 9545) to amend the Revised Organic Act of the Virgin Islands to provide that the Legislature of the Virgin Islands shall prescribe the minimum age for membership in the legislature.

The message further announced that the House had agreed to the amendment of the Senate to the bill (H.R. 14106) to amend the Water Resources Planning Act to authorize increased appropriations.

HOUSE BILL REFERRED

The bill (H.R. 11357) to amend the National Labor Relations Act to extend its coverage and protection to employees of nonprofit hospitals, and for other purposes, was read twice by its title and referred to the Committee on Labor and Public Welfare.

NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

The PRESIDING OFFICER (Mr. WEICKER). Under the previous order, the Senate will now proceed to the consideration of S. 945, the National No-Fault Motor Vehicle Insurance Act, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 945) to regulate interstate commerce and to provide for the general welfare by requiring certain insurance as a condition precedent to using the public streets, roads, and highways in order to have an efficient system of motor vehicle insurance which will be uniform among the States, which will guarantee the continued availability of such insurance, and the presentation of meaningful price information, and which will provide sufficient fair, and prompt payment for rehabilitation and losses due to injury and death arising out of the operation and use of motor vehicles within the channels of interstate commerce, and otherwise affecting such commerce.

The PRESIDING OFFICER (Mr. WEICKER). Under the previous order, the distinguished Senator from Nebraska (Mr. HRUSKA) is now recognized to offer a motion to recommit the bill to the Committee on the Judiciary. On that motion, there is 4 hours of debate, to be equally divided and controlled by the Senator from Nebraska (Mr. HRUSKA) and the Senator from Washington (Mr. MAGNUSON), the vote coming no later than 8 p.m. today.

Mr. HRUSKA. Mr. President, I move that the pending bill, S. 945, be committed to the Committee on the Judiciary.

Mr. President, it has been suggested in some quarters that the motion to commit to the Committee on the Judiciary is a dilatory motion, one calculated to result in delay, and not of substance.

My hope is, when we complete the discussion of this motion to commit to the Committee on the Judiciary, any such feeling and any such misgiving will be totally dispelled.

There are serious constitutional questions involved. One of them is the seventh amendment which provides for a guarantee of jury trials in civil suits involving a value of more than $20. Another is the 14th amendment calling for due process. At a later time, those ideas will be elaborated on.

At this time, I want to say that there is some question as to whether the venue of cases brought under the bill, S. 945, will be Federal or whether it will be State. There is very little doubt that if the venue will be a Federal court, the seventh amendment will prevail and jury trials may not be eliminated from the choice of those who want to avail themselves of a jury trial notwithstanding any statute that might have been enacted.

Insofar as the 14th amendment is concerned, there are many questions to which I shall make reference as we go along in this discussion. They are not dilatory. They are not something of small moment. They are significant. They are important. They are of great value to those who possess them. In addition to the two constitutional provisions, however, there is another consideration. Mr. President, starting in 1945, this country adopted and has been following the national policy embodied in the McCarran-Ferguson Act. Again, when we get into a discussion of the McCarran-Ferguson Act and its history and origins, we will go into greater detail.

In brief, however, that act results in the vesting of the jurisdiction for antitrust and monopoly purposes and for supervision and regulation of the insurance industry in America in those States that would undertake to regulate by statute and then to supervise the affairs of insurance companies in the fashion discussed.

On the McCarran-Ferguson Act, all

the States have had, in timely fashion, enacted the requisite statutes. So ever since that time, there has been a regulation and supervision and a taxing of the insurance companies by State jurisdictions.

Now along comes a measure which will drive and which will affect a very substantial breach in that national policy. Ever since the passage of the McCarran-Ferguson Act, the jurisdiction over matters pertaining to that act have been vested, committeewise, in the Committee on the Judiciary. That has been followed for all these 25 or 27 years. That is not to say that there would not be concurrent jurisdiction. That is not to say there would not be supplemental jurisdiction, but this would say that each time a measure has been proposed in the Senate, certainly in this body, that affected this general national policy, it has been referred to the Committee on the Judiciary.

Certainly that was the case in the subcommittee hearings that commenced in 1958 and 1959 under the chairmanship of the late Senator Joseph O'Mahoney of Wyoming. There were two series of hearings at that time that had to do with ocean and aviation insurance as well as general application and condition of the regulation of the insurance companies by the States.

Certainly it was true in the case of the measure introduced in regard to the insolvency of automobile insurers. It was the case in a measure that affected and that what was introduced involving foreign insurers in surplus lines coverage. It was a situation also when measures were introduced for high risk automobile insurance. There are other illustrations as well.

Now then, Mr. President, it just seems to those of us who have followed this line of legislation and the oversight that has been exercised by this body that in order to preserve the effectiveness of this national policy and in order intelligently to consider any exceptions to that national policy, or any amendment thereon, there should be a reference to the parent committee for that line of national policy, so that it can be—and this is in the full text, in the full context of the national policy—thus embodied and further discussed.

Mr. President, a careful review has been made of the record developed by the Senate Commerce Committee on S. 945 to see what the experts had to say on the constitutionality of this bill. I am very frankly, extremely disappointed that the record is almost bare of any discussion of the subject.

I am convinced that the record is not there, not because S. 945 in its present form does not raise many serious constitutional problems, but because the bill which was pending before the Senate Commerce Committee and the subject of public hearings bears little or no resemblance to the bill which we are debating today.

There were two series of public hearings on S. 945. Both sets of public hearings dealt with legislation which would have created an outright Federal preemption of both the automobile reparation system and the automobile insurance system. The bill pending before the Senate, however, purports to establish minimum Federal standards in both these areas. States failing to establish the standards within the required period of time would then be penalized by having the Federal Government preempt both systems.

It seems most unfortunate to me, Mr. President, that the public was not provided an opportunity to express views on the constitutionality of the bill before us. My reading of the bill has created a number of serious constitutional questions in my mind. I would frankly find it very difficult to vote for this bill—even if I favored its contents—without being given the opportunity of discussing the constitutional issues with experts.

Let me give you some examples of the questions which have come to my mind.

There is a basic issue under the Federal constitution as to whether the Federal Government has the constitutional authority to enact legislation which would abrogate the tort remedy in automobile accident cases and, to some extent, eliminate the right to a trial by jury in those cases. I am aware of the publication "Constitutional Problems in Automobile Accident Compensation Reform" published by the Department of Transportation. This study, composed of three papers written by eminent constitutional law scholars does raise some valid constitutional questions. Prof. C. Dallas Sands, of the University of Alabama says specifically:

> The seventh amendment is a serious obstacle to Federal legislation dispensing with jury trials for determining eligibility for compensation.

And:

> Congressional legislation parlaying the power of Congress over interstate movement or over federally financed facilities into a general system of federal law governing automobile loss compensation might get by but it is questionable.

The papers written for the Department of Transportation on the constitutional problems in automobile accident compensation reform are generic in nature. They were written in April 1970 and do not address themselves specifically to the legislation pending before the Senate. Thus, even assuming that the record discusses the generic issue of the constitutionality of Federal accident compensation reform, it is totally silent as it relates to the specific provisions of S. 945.

S. 945 raises a number of constitutional questions concerning the interaction of State and Federal law. Let there be no mistake about it, compliance with title 2 would require the States to adopt laws that contravene their own constitutions. My limited research would indicate that at least eight States have constitutional limitations on the right to prohibit recovery in death and/or injury actions. Arizona, Arkansas, Kentucky, Pennsylvania, and Wyoming prohibit any abrogation of the right to recover for either injuries or death and prohibit the limitation of the amount of damages recoverable. New York, Oklahoma, and Utah prohibit the abrogation of the right to recovery in death cases only.

Assuming that the Federal Government does have the authority to enact legislation providing for Federal standards with respect to automobile accident reparations, including some type of abrogation of the tort remedy, then there arise several questions with respect to compliance to these standards by the States.

Implicit in the Federal standards approach is the option offered to the States of either enacting State legislation conforming to certain minimum requirements or accepting Federal preemption in the field. If a State chooses to enact legislation meeting the minimum requirements, there is still State lgeislation which must meet the tests on constitutional validity under the State's constitution, and the fact that such legislation was enacted in order to meet Federal standards will not operate to stay what is otherwise unconstitutional. As I have said, my research points to the fact that at least eight State constitutions would prohibit the abrogation of the tort remedy contained in title 2 of S. 945, and as to these States, the option between choosing between State legislation and Federal preemption is illusory.

Of course, it can be argued that those States which have a constitutional prohibition are still not precluded from enacting legislation embodying the title 2 Federal standards in that such States wishing to do so could take action to secure a constitutional amendment removing the disability. Even if this were theoretically correct, practically speaking it would seem to be virtually impossible for any State to take such action within the time period contemplated in S. 945, and once having undergone Federal preemption, a State could not at some point in the future, resume control over its reparation system by enacting legislation after a constitutional disability had been removed. S. 945 does not allow this. It would not allow a State to be sent to purgatory. The State is damned forever under Federal control in such an event.

These are the procedures in the eight States for amending their constitutions.

ARIZONA

Article XXI of the Arizona Constitution provides that an amendment may be introduced in either house of the legislature, or may be proposed by an initiative petition signed by a number of voters equal to 15 percent of the voters for Governor in the last general election. The amendment must be approved by a majority vote of both houses and then submitted to a vote of the people at the next election or at a special election called by the legislature. The proposed amendment in order to be effective must be approved by a majority of voters voting upon it.

Arizona also has a procedure whereby the constitution can be amended by constitutional convention, as do the other seven States. However, in all cases this requires action in at least two sessions of the legislature and referral to a popular vote both as to the calling of the convention and approval of the convention's action. Therefore, in all cases this process

would be considerably longer than an amendment proposed by the legislature.

ARKANSAS

Article XIII, section 1—This provides that an amendment may be proposed in either house of the legislature and must be approved by a majority vote of both houses. The amendment is then voted on again at the next session of the legislature and must be approved again by a majority vote. It is then submitted to the people at such time as the general assembly shall provide. In order to be effective, it must be approved by a majority of those qualified voters voting for the general assembly.

KENTUCKY

Section 256 of the Kentucky constitution provides that an amendment may be proposed in either house of the general assembly at a regular session and must be approved by 3/5-vote of each house. It is then submitted to the voters at the next general election for Members of the House of Representatives, but not less than 90 days from the date of approval of the proposed amendment by the legislature. The amendment must be approved by a majority of those voting on the amendment and if it fails it cannot be resubmitted for 5 years.

OKLAHOMA

Article XXIV, section 1 of the Oklahoma Constitution provides that an amendment may be proposed in either house of the legislature and must be approved by a majority vote of each house. It is then referred to a vote at the next general election unless the legislature by a 2/3-vote of each house orders a special election thereon. It must be approved by a majority of all voters voting at such election, not merely a majority of those voting upon the amendment.

NEW YORK

Article XIX, section 1 of the New York constitution provides that an amendment may be proposed in either house of the legislature and then referred to the attorney general who shall render an opinion within 20 days as to its effect on the constitution. It must then be approved by a majority vote of both houses. It is then referred to the next legislative session convening after the next election of the general assembly and must be approved again by a majority vote of both houses. It is then submitted to the people for a vote at such time as the legislature provides, and must be approved by a majority of voters voting upon the amendment. The amendment is then effective on the following January 1 after such approval.

PENNSYLVANIA

Article XI, section 1—provides that an amendment may be proposed in either house of the legislature and must be approved by a majority vote of both houses. It must then be resubmitted to the next general assembly chosen after the next general election, and must again be approved by a majority vote of both houses.

The amendment is then submitted to the people at such time as agreed to by the legislature but not sooner than 3 months after approval by the legislature. In order for the amendment to be effective, a majority of those voting upon it must approve. No amendments shall be submitted oftener than once in 5 years.

UTAH

Article XXIII, section 1—provides that an amendment may be proposed in either house of the legislature, and must be approved by a 2/3-vote of all members of both houses. It is the submitted to the voters at the next general election and must be publicized at least 2 months prior to such general election. The amendment must be approved by a majority of voters voting thereon in order to be effective.

WYOMING

Article XX, section 1 of the Wyoming Constitution provides that an amendment may be proposed in either house of the legislature, and must be approved by a 2/3-vote of all members in each house. It is then submitted to the voters at the next general election and must be published for at least 12 consecutive weeks prior to such election. In order to be effective the amendment must be approved by a majority of all voters voting in the election, not merely a majority of all voters voting upon the amendment.

In view of the above procedures in these eight States for amending their constitution, it seems to be that it should be virtually impossible for any one of them to propose and approve a constitutional amendment which would permit them to put into effect a title 2 no-fault motor vehicle insurance plan by the second July 1 following the first day of its first general legislative session after enactment. This should be particularly true in those States which require that the proposed amendment must be submitted to and voted on in two separate sessions of their State legislatures. Therefore, there is a serious question as to whether the Federal Government can enact a law purporting to give the States a choice between enacting legislation containing minimum standards or accepting a Federal preemption when, in fact, some States are constitutionally prohibited from enacting the minimum requirements of the Federal law.

Another issue which should be considered under title 2 is the time period in which the States must act to enact legislation embodying the minimum requirements or be exposed to Federal preemption. If the Federal standards bill purports to give the States an option, then it can be assumed that the States should be given a reasonable time in which to enact legislation conforming to the Federal standards. Obviously, some limitation on the time set for deliberation can be imposed in the Federal bill. However, if the limitation is too short, even those States which are not under a constitutional disability and wish to enact State legislation embodying Federal standards might be precluded by virtue or shortness of time from so doing.

The time period specified in S. 945 should be carefully scrutinized. In effect, it requires State action within one legislative session after the effective date of the Federal law. In view of the fact that a great many States have extremely short annual legislative sessions, I think that there is a serious question as to whether this time limitation is reasonable in providing such States sufficient time for proper consideration.

Assuming a valid Federal standard law providing for Federal preemption in the event that a State either fails or is unable to comply with the Federal standards, then there arises a number of questions with respect to the administration of the law in those States in which the Federal law preempts.

Under title 2, S. 945, there is apparently a great deal of reliance upon the utilization of State officials, including the State insurance commissioner and the State courts, in the administration of the Federal law. How far can the Federal Government go in delegating or mandating authority to State officials to administer provision of the Federal law? No one was able to comment on this issue on the record since this issue was not pending at the time that the Commerce Committee held hearings on this legislation. Yet, it seems vital to me that a record should be developed so that some determination could be made as to what the proper delegation or mandating of authority in this area should be, and if there are apparent limitations, what type of Federal regulatorial authority might be necessary to administer the law in preempted States. In the Department of Transportation report on the constitutionality of a Federal automobile accident compensation reform system, Professor Sands states:

> Although there are no precedents the supremacy clause could hardly be called on to support a federal judiciary remedy to compel state officials to administer a state law which the state's own courts had ruled invalid under the state's constitution.

Another question which arises with respect to the administration of a Federal standards law in preempted States is what effect does this have upon the judicial mechanism. This is a question which, as a member of the Judiciary Committee, bothers me very specifically. Can disputes arising under the Federal law be adjudicated in State courts, as S. 945 would require, or would it be necessary ultimately to transfer this burden to the Federal courts? What problems would this create in an already overburdened Federal judiciary if the bulk of disputes arising under auto reparation laws were to be required to be adjudicated in the Federal courts? Finally, as a member of the Senate Judiciary Committee, I am concerned as to the impact again of S. 945 on Public Law 15—the McClarren-Ferguson Act. A primary objective of Public Law 15 is to insure the maintenance of competition in the insurance business. This is a special concern of the Antitrust and Monopoly Subcommittee. Although we tend to think about insurance as big business this just is not so. In fact, I understand that there are over 3,000 insurance companies in the business of automobile insurance. Many of these companies are very, very small. They can, however, compete with the giants

because they have been allowed, under strict State regulation, to post certain of their data in order to develop statistics on their own. Section 108 of the bill would severely limit the extent to which the small companies could pool their statistical data and would cripple many of them in their daily operations. Before I can vote for this bill I would want to hear from State insurance regulators and other experts as to what this section would do to competition in the industry. I am not ready to legislate the small automobile insurance companies out of business and to let the giants operate without the very salutary effects which these small companies have had on the price we all have to pay for our automobile insurance, without further inquiry.

Parenthetically, I mention this aspect of the McCarran-Ferguson law with regard to supervision. There is no question if S. 945 becomes law it will be necessary for the Federal Government to engage in examination, regulation, and supervision of the insurance companies that issue automobile insurance policies. There is no question about that at all. Certainly as to those which will fall under the latter title of the bill, where the States would be preempted, that plan will be under the jurisdiction of the Federal Government, and if there will be any administration of that bill the Federal Government will perforce be compelled to examine, supervise, and regulate the affairs of that company. How long will it be before there will be a dual system of regulation, supervision, and examination and can the business, can the industry, and the consumers of that industry pay for a dual system of regulation and supervision? Can such a dual system survive the conflict and the confusion which will result where the Federal Government will say to a company, "You must do such and so with your reserves," and the State insurance commissioner will say, "No, you must not do it that way; you must do it in another way." All these considerations will creep into the picture and be the displacing force of the national policy embodied in the McCarran-Ferguson Act.

Presently there is a collection by State governments of taxes on premiums, occupation taxes, and other taxes on insurance companies, in the range of a billion dollars a year. If there will come the time when their plan of supervision and regulation will be displaced by Federal regulation and supervision, no longer will they be allowed to collect those taxes and a billion dollars will be much more than in the future, even though it is a considerable sum to reckon with in the financing of a State government.

There are other examples of questions. I shall not extend the discussion too much by way of encyclopedic examples, but among other things are those referred to yesterday by the Senator from Kentucky (Mr. COOK), such as whether the 2 percent in the bill is a tax? If so, is it a revenue measure that we are involved with here? If that is so then the bill must originate in the other body. That is as elementary as any rule and concept we have in Congress.

Is it constitutional for Congress to impose such a levy to be collected by the States and used by them?

Can Congress require a plaintiff awarded a judgment for damages in a court action to do certain acts such as to make use of certain rehabilitation services, in default of which he is deprived of a part of that judgment award? What becomes of our court system if that is permitted?

There are other questions. Anyone who claims there are no serious questions, constitutional questions related to no-fault insurance, or more specifically to S. 945, is kidding himself.

Moreover, they have not been considered in the committee which reported the bill. I will repeat that: They have not been considered in the committee which reported the bill where these specific provisions of S. 945 can be placed under the microscope of legalistic examination to which they are entitled.

The constitutional questions involved are real and substantial. Congress is entitled to the study and recommendation of the Committee on the Judiciary.

Moreover, the consuming public and the public generally are entitled to that kind of study and consideration. Hence, it is my earnest hope that the motion to commit the bill to the Committee on the Judiciary will be agreed to.

Mr. President, I yield 10 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOK. Mr. President, the issue before the Senate is whether to refer S. 945, a measure reported by the Committee on Commerce to the Committee on the Judiciary. Before enumerating some of the vital issues which compel this referral, let me quote to the Members of the Senate from the Standing Rules of the Senate, rule 25(1)(L):

> Committee on the Judiciary, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects: (I) judicial proceedings, civil and criminal, generally (3) Federal courts and judges (4) local courts and the territories and possessions (5) revision and codification of the statute of the United States.

Certainly any legislation which proposes to eliminate or diminish the access of individuals to both Federal, State, and local courts in the United States must surely be referred to the committee which is primarily responsible for consideration of all such measures. Let me add that the standing rules of the Senate do not provide that the committee may have jurisdiction over such legislation. Rather standing rule 25(1)(L) stipulates that the committee shall have jurisdiction over all legislation dealing with judicial proceedings in Federal and local courts. To hold, as the proponents of this legislation do, that S. 945 is essentially a bill dealing with interstate commerce, and thus should be referred to the Committee on Commerce alone, is to defy all logic and to ignore the true impact of this legislation; namely, a severe restriction on the rights of individuals to seek redress of damages on a fault basis in the courts of this country. If however, logic is to be ignored, and apparently that is what we are being asked to do, and the Senate decides that the commerce clause does justify denying referral to the Committee on the Judiciary, there are other constitutional and statutory problems inherent in S. 945 as reported by the Committee on Commerce, which again compel referral to the Committee on the Judiciary.

One of my primary concerns is the provison in section 109(b) that requires any insured person under a no-fault policy who receives benefits for 3 months to avail himself of rehabilitation programs unless he shows good cause to avoid that requirement. If he refuses, the insurer—not any agency of government, Mr. President; the insurer—can withhold up to 50 percent of the insured's benefits.

What does an insurance company want to do? It wants to hold down its claims, and it is going to force certain individuals who have been injured to avail themselves of rehabilitation services. If not, the insurance company makes a judgment that he shall be denied up to 50 percent of his recovery.

This provision poses a serious problem of whether a person can be forced to undergo rehabilitation programs; and second, whether the right to withhold benefits would constitute a breach of contract by the insurer—unless every insurance company in the United States changes its contract, because that contract calls for the payment of a sum of money in the event a judgment is rendered. Under this proposal we impose an additional condition on recovery—namely that a person must be rehabilitated. If a person refuses—even under the Cranston amendment—it still has the right to deny 50 percent of the amount he would have recovered as a result of his injury.

I think that we are treading just about as seriously on due process of law as we can tread. I think we are saying, in effect, that contracts that insurance companies now have with owners of automobiles are going out the window, because there is a new provision we are going to make as a matter of law, and that is that if a person is injured, he needs to be rehabilitated, and if he does not avail himself of rehabilitation services, the insurance company is going to withhold 50 percent of his benefits.

The provision does not say where that withheld amount goes. It does not say to what use it must be placed. As a matter of fact, if one reads the bill, he will find that the insurance company can keep it. They need not do anything with it. It is kept in their pockets, and they therefore reduce their claim costs.

Another serious statutory problem which must be considered by the Committee on Judiciary involves the obvious weakening of the McCarran-Ferguson Act embodied in 15 United States Code, section 1012. This statute specifically provides that all regulation of the business of insurance shall be within the purview of State authority. I quote the pertinent sections of the statute.

Section 1012, subsection A states:

> The business of insurance and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

Subsection B reads:

No act of Congress shall be construed to invalidate, impair, or supercede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such act specifically relates to the business of insurance.

Section 109d of S. 945 requires every insurer writing qualifying no-fault policies pursuant to section 301 to invest, until January 1978, 1 percent per annum of the total amount of premiums collected each year from the sale of qualifying no-fault policies within the State in programs for rehabilitation.

Section 110(c) requires an identical investment for development of emergency medical and transportation services.

As I read the provisions relating to this mandatory 1-percent investment, I cannot construe this provision in any other manner than to be an imposition on the State's authority to tax insurance companies in an area unrelated to the business of insurance, as stipulated in 15 U.S.C. 1012.

Again, I would not argue that Congress has no authority to overturn this provision of the U.S. statute. However, consideration of the statutory authority should certainly be made in reference to the intent of the Congress in passing the McCarran-Ferguson Act initially. No such discussion was conducted during the deliberations of the Committee on Commerce, despite this Senator's attempt to raise that question. I would hope that the Committee on the Judiciary would consider this important statutory problem in greater depth than did the Committee on Commerce.

I might add finally that in the State of Illinois, only last year, a no-fault insurance measure was enacted into law and then ruled unconstitutional by the State supreme court. In the course of moving from the traditional tort system to a newly enacted no-fault system and, following the decision, back to the tort system, insurance companies in the State of Illinois were forced to assume losses in excess of $75 million.

I raise this point to try to give an indication of the magnitude of the system which we are attempting to reform, and also the magnitude of the potential losses which we would impose upon a segment of the economy if we fail in writing an effective, workable no-fault system. It is doubtful that many insurance companies could endure the losses which would be occasioned by a similar set of circumstances on a national level.

Since the Congress has also had to deal from time to time with the proposition of insolvency laws for insurance companies, an area, as a matter of fact, which the Congress decided to leave to the States, I would hope that any bill dealing with national automobile insurance systems would be most carefully considered by everyone whose expertise could be valuable in drafting the most flawless law possible. This I feel cannot possibly be achieved by the Senate if the Committee on the Judiciary does not have the opportunity to view this legislation from the standpoint of its concern with the court system and the effects on existing statutory authority.

I know that the attempt to refer S. 945 to the Committee on the Judiciary has already been labeled as a move to gut the bill, and as an anti-consumer position. I contend, on the other hand, that any effort to avoid constitutional roadblocks either at the State or Federal level will more readily serve the consumer by assuring him that, whatever no-fault insurance bill is passed, be it during this session of Congress or a subsequent session, that system will not be overturned and that system will offer him the maximum protection for the fewest possible premium dollars. As head of a family of five drivers, I would want the assurance that any system that insures my life and health and the health and safety of my family on the highways, would be an effective, balanced, judicious system of insurance.

May I have 5 minutes more?

Mr. HRUSKA. I yield 5 minutes to the Senator.

Mr. COOK. I contend that this can best be achieved by the Senate and the Congress by exposing any proposal to the most careful scrutiny by each committee that might offer constructive input and revision. This is certainly the case in regard to the pending motion to refer S. 945 to the Committee on the Judiciary. I fully support that move and urge my colleagues to join me.

Let me go into something here that I want to put in the RECORD for the benefit of those who may read the RECORD later. This bill calls for the States to impose, by reason of a Federal statute, a levy of 1 percent on all insurance premiums paid under the rehabilitation section, and then 1 percent on all premiums under the emergency vehicle section.

Last night I was of the opinion—and I quoted back to 1970—that the premiums amounted to $7 billion. I find I was slightly in error. To show how premium costs have gone up, for 1971 they are more in the magnitude of $14 billion. They would want us to believe, and apparently the chairman of the Commerce Committee is going to argue, that 2 percent of $14 billion that would be imposed by a Federal statute, which amounts to $280 million, is not a tax on insurance companies.

Well, if it is not a tax, what is it? If the States levy this charge and if the insurance companies do not pay it, they will have their license to do business in the respective States taken away from them.

In regard to imposing this type of tax on insurance premiums, I would like to put into the RECORD two very important cases. One is the case of Aetna Fire Insurance Co. against Jones, Supreme Court of South Carolina. This is a case in which the community in which this case arose sought to impose a $2 tax per $100 of premiums on insurance companies.

This was for the benefit of firemen, and they said obviously this was the public interest, because the firemen were on the public payroll, and they were assuming a responsibility, because, after all, the insurance companies had a great deal to do with the fire departments, and the fire departments, as a matter of fact, saw to it that their losses were less by reason of their duties and services.

The courts had very little trouble saying that this was an unconstitutional levy. As a matter of fact, they not only said it was an unconstitutional levy in Aetna Fire Insurance Co. against Jones, but also in a later case, the City of Hampton against Insurance Co. of North America.

By the way, Mr. President, the 2 percent is going to be levied against the insurance companies, whose funds come from the individuals who pay the premiums; therefore the insured are the only people who will pay this 2 percent; no one else.

There is some very interesting language in the case of City of Hampton against the Insurance Co. of North America. Referring to the assessment of $2 on $100 worth of premium, the court said:

Under the enactment being considered, the class of citizens who carry insurance must pay the whole of the imposition, while the latter get the benefits and have no burden to bear. On this reasoning, the tax is not uniform.

In this instance, when a pedestrian walks across the street and gets hit, he does not pay 2 percent in, but he automatically collects everything. Passengers in the automobile pay no 2 percent, but they automatically collect.

Mr. President, I ask unanimous consent that the opinions in these two cases be printed in the RECORD in full.

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

(78 S. C. 445)

AETNA FIRE INS. CO. ET AL. VERSUS JONES, COMPTROLLER GENERAL

(Supreme Court of South Carolina. Nov. 6, 1907)

PENSIONS—STATUTES—VALIDITY

Act May 9, 1906, requiring fire insurance companies to pay annually a specified sum on premiums to create a pension fund for disabled firemen, violates Const. art. 3, § 32, prohibiting the granting of pensions except for military and naval services, a pension being an annuity from the government for past services.

Petition by the Aetna Fire Insurance Company and others against A. W. Jones, as Comptroller General of the state, to enjoin respondent from collecting a tax. Granted.

Smythe, Lee & Frost, and King, Spaulding & Little, for petitioners. J. F. Lyon, Atty. Gen., Geo. F. Von Kolnitz, and Mitchell & Smith, for respondent.

Pope, C. J. This is a petition to this court in its original jurisdiction whereby the plaintiff insurance companies, for themselves and others in like situation, seek to have the Comptroller General enjoined from proceeding to collect certain taxes provided for by an act of the General Assembly approved May 9, 1906, on the ground that the said act is unconstitutional, null, and void. Counsel for petitioners discuss at length the preliminary question as to the jurisdiction of this court to hear the cause, but an identical question having been passed upon in the recent case of Ware Shoals Mfg. Co. v. Jones, Comptroller General (S. C.) 58 S. E. 811, September 20, 1907, we proceed at once to the merits of the case.

The title of the act is: "An act requiring the payment of certain premiums to the fire departments of incorporated cities and towns by the fire insurance companies doing business in the state, for the purpose of creating a fund for the benefit of the members of the fire departments of such cities and towns, and providing for the collection and distribution of the same." The act is as follows: "Section 1. Be it enacted by the General Assembly of the state of South Carolina: Every fire insurance company, corporation or association doing business in any incorporated city or town of this state, having or that hereafter may have a regularly organized fire department under the control of the mayor and council, or intendant and council of said city or town, and having in serviceable condition for fire duty fire apparatus and necessary equipments belonging thereto to the value of ($1,000) one thousand dollars, and upwards, shall return to the Comptroller General a just and true account verified by oath that the same is a true account of all premiums received from fire insurance business done in such incorporated cities or towns during the year ending December the 31st, or such portion thereof as they may have transacted such business in such cities and towns.

"Such returns must be made by said companies, corporations or associations within sixty days after the 31st day of December of each year." Section 2 requires such companies to pay within the said 60 days to the State Treasurer the sum of $2 on every $100 premiums collected on fire or lightning insurance business done in said cities and towns. Sections 3 and 4 require said insurance companies to keep accurate books of account of all business done in said cities and towns, and provide a penalty for failure so to do. Section 5 enacts that, in case of failure to pay said tax or any penalty imposed, the Comptroller General shall have power to revoke any license previously issued to said companies. Section 6: "That the State Treasurer shall pay over the money so collected from the insurance companies, associations or corporations doing business within the cities or towns having or that may hereafter have a regularly organized fire department as aforesaid in section 1 of this act, to the treasurer of the Firemen's Relief Association to be composed of the members of the fire departments of such cities or towns, and to be incorporated under the laws of this state; provided that all money so collected from the insurance companies, corporations or associations doing business within the cities or towns having or that may hereafter have a paid department, being such department in which the members are paid for full time or part of their time employed as firemen, and on duty at all times to respond to all duties required of them, and otherwise in accordance with the provisions of section 1 of this act, shall be paid by the State Treasurer to the treasurer of such city, and all the money so received shall be set apart and used by such cities or towns solely and entirely for the objects and purposes of this act by the Firemen's Relief Association of (or) Board of Trustees of Firemen's Pension funds of such cities or towns under such provisions as shall be made by the mayor and council or board of trustees thereof." Section 7: "All money collected and received under the provisions of this act shall be held in trust and used as a fund for the relief of any member of the fire department of such city or town who may be injured or disabled, and for the relief of, or the payment of gratuities to the widow or those dependent upon any member of such fire department who may be killed; for the payment of necessary funeral expenses of any member of such fire department, and for the purchase of accident insurance upon the members of such fire departments: Provided further that the boards of trustees of such cities having pension funds may also use said money for pensions to superannuated and disabled firemen: Provided that the fire department of such city or town should also be a member of the State Firemen's Association of this state."

The act is attacked on numerous grounds, but we think the pivotal question is: Has the General Assembly power to enact such legislation? In other words: Is the Constitution violated, in that the tax here under consideration is not uniform and for no public purpose? That the imposition is an attempted exercise of the taxing power conferred by the Constitution the respondent practically admits, in that it is sought to sustain the exaction on the ground that it is for a public purpose. "A tax," according to Webster's Dictionary, "is a rate or sum of money assessed on the person or property of a citizen by the government for the use of the nation or state." Cooley in his Constitutional Limitations, § 479, says: "Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes." Applying either of these rules to the legislation here in question, if it be conceded that the aid of firemen is a public purpose, it clearly falls under the head of taxation for all of the requirements are fulfilled; namely, that it is an imposition on person or property by the government for a public purpose. In the case of Henderson v. Insurance Co., 135 Ind. 23, 34 N.E. 565, 20 L.R.A. 827, 41 Am. St. Rep. 410, where a question almost identical was under consideration, it is said that the decided weight of authority holds that such impositions are attempts at taxation and the cases of San Francisco v. Insurance Co., 74 Cal. 113, 15 Pac. 380, 5 Am. St. Rep. 425, State v. Wheeler, 33 Neb. 563, 50 N.W. 770, Philadelphia Association for Relief of Disabled Firemen v. Wood, 39 Pa. 73, and State v. Merchants' Ins. Co., 12 La. Ann. 802, are quoted as sustaining that view. The respondent here contends, however, that the imposition is not a tax, but is one of the conditions upon which foreign insurance companies are permitted to do business in this state. Such a contention we think cannot be sustained. In the first place, the act is general, applying both to domestic and foreign corporations. In the second place, the act itself does not purport to be conditional. It applies to "every fire insurance company, corporation or association doing business in incorporated cities or towns in this state." The participle "doing" is important here as throwing light on the intention of the Legislature. The word implies that the corporations are already in existence, and are carrying on business. The license has already issued. True, the act does provide that under certain circumstances the certificate shall be revoked, but we regard this as merely a means for securing the collection of the imposition, and not as a condition subsequent. That the Legislature might have imposed such a condition upon foreign corporations, as well as domestic corporations, it is not our duty here to decide. Suffice it to say that no such condition was imposed.

Again, the respondent contends that the present enactment is a lawful exercise of the police power inherent in the state as a sovereignty, the exercise looking to the protection of the property of all the citizens of the state. Perhaps no subject is more fraught with difficulty than is the proper limiting and defining of the police power of a sovereign state. Generally courts refuse to attempt such definition, leaving each case to be decided as it arises. In our state, however, in the comparatively recent case of Stehmeyer v. City Council, 53 S. C. 277, 31 S. E. 331, where this power is discussed at length and numerous authorities are reviewed, the court with deference lays down the following: "The police power is that attribute of sovereignty in a state, by which it clothes the Legislature with power to regulate persons, natural and artificial, and property, in accordance with the provisions of the state Constitution, in all matters relating to the public health, the public morals, and the public safety." Again, in the case of Beer Company v. Massachusetts, 97 U.S. 33, 24 L. Ed. 989, it is said: "Whatever difference of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection, health, and property of the citizens, and to the preservation of good order and the public morale." In 22 A. & E. Ency. of Law, p. 938, the following proposition sustained by much authority is laid down: "In order that a statute or ordinance may be sustained as an exercise of the police power, the courts must be able to see (1) that the enactment has for its object the prevention of some offense or manifest evil, or the preservation of the public health, safety, morals, or general welfare; and (2) that there is some clear, real, and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, and that the latter do in some plain, appreciable, and appropriate manner tend towards the accomplishment of the object for which the power is exercised. The police power cannot be used as a cloak for the invasion of personal rights or private property, neither can it be exercised for private purposes, or for the exclusive benefit of particular individuals or classes." In other words, the exercise must have in view the good of the citizens of the sovereignty as a whole.

This brings us then to the question as to whether or not the legislation here under consideration has in view a public purpose. The money secured from the imposition on the insurance companies is to "be held in trust and used as a trust fund for the relief of any member of the fire department of such city or town who may be injured or disabled, and for the relief of, or payment of gratuities, to the widow or those dependent upon any member of such fire department who may be killed, for the payment of necessary funeral expenses of any member of such fire department and for the purchase of accident insurance upon the members of such fire departments," and in certain cases to be used for the payment of pensions.

New York and Alabama and perhaps one or two other states, proceeding upon the theory that the prevention of conflagrations is a public duty which prior to the establishment of fire departments devolved upon the community; that in the discharge of these duties the firemen sustain such relation to the public as to become, in the true sense, public servants, have sustained the position that such enactments are for public purposes. Trustees of Exempt Firemen's Benevolent Fund v. Roome, 93 N. Y. 313, 45 Am. Rep. 217; Phoenix Assurance Company of London v. Fire Department of Montgomery, 117 Ala. 631, 23 South. 843, 42 L. R. A. 468. In each of these cases, however, the legislation was sustained on the ground that it provided conditions upon which foreign insurance companies would be permitted to carry on business in the state. The above reasoning as to the publicity of the purpose of such enactments was considered and expressly repudiated by the Indiana court in the case of Henderson v. Insurance Co., supra. A like view is maintained in Philadelphia Association v. Wood, supra, where the court uses this language: "Of course, there was a good motive for this. The relief of disabled firemen is a purpose worthy of society; and firemen contribute much to save insurance companies from losses. And hence it is inferred that insurance companies ought to contribute to the support of those who have been disabled in working for their benefit. But the same argument might be

quite as effectually used as a reason for imposing a burden in favor of this society, upon those who obtain insurance, and much more upon those who do not insure at all. Therefore, since the chief characteristic of justice is its equality, the justice of this provision is very far from being apparent. An untrained and unthoughtful benevolence is very apt to be unjust to those interests which do not attract its special attention." Likewise, in Louisiana v. Merchants' Ins. Co., supra, the court says: "But in the case before us there is no property improved or assessed. All is conjectural and arbitrary. One class of corporations is taxed an invariable sum for the benefit of another class. There is no possibility of ascertaining whether the tax is a quid pro quo. The fire companies are not compelled by the law to do anything for the insurance companies. A bounty is secured to the fire department by confiscating the money of the defendants, without providing that any service shall be rendered to the defendants by the fire departments; and, even if this could, for a moment, be regarded as an assessment for benefits conferred, its inequality is glaring. Every owner of buildings and other combustible property in New Orleans, who is either wholly or in part his own underwriter, is presumed to be benefited by the fire department in the same way as the insurance companies are.

Why should the companies alone pay for this common benefit?" The question is exceedingly close and difficult, and the authorities, as we have seen, are conflicting, but we are inclined to give adherence to the latter view, especially where the benefits go to a Firemen's Benefit Association the public purpose seems to be lacking. Therefore we hold that the act cannot be sustained on the ground that it is a police regulation; the important characteristic, publicity of purpose, being wanting. It cannot be doubted that incidentally the public derives much benefit from fire departments of municipal corporations. Any organization that tends to enhance the value of property or the security of its possession, that gives work to unemployed persons in a given locality, or bridles powers hitherto unused, is certainly after a manner beneficial to the public at large. The wealth and welfare of a state lies in the well being of its individual citizens. Thus, if a factory employing hundreds of hands and annually turning out thousands of dollars worth of products is built, or a mine which yearly puts on the market hundreds of tons of mineral is opened up the incidental benefit to the public is great, yet the highest legal tribunal of the country was held that public funds cannot be appropriated for such a purpose. Loan Association v. Topeka, 20, Wall. (U.S.) 663, 22 L. Ed. 455. A fire department is a municipal institution. Its organization and control is purely a matter of municipal concern. True, interest in the establishment of such agencies would extend further than the municipal boundaries, but whether that interest could be manifested in action on the part of the General Assembly, otherwise than to encourage, seems a matter of doubt; the spirit of our law being that the Legislature may invest municipal governments with power, leaving the exercise of it to their discretion and corporate needs.

In the present case the Legislature has gone further than attempting to raise money for fire departments, municipal organizations, in that it seeks to raise a fund by taxation for what seems to us merely a benevolent purpose. The money collected under the act of 1906 is not for the use of the fire department, but it is to be paid to certain Firemen's Associations for benefits, gratuities, and pensions. These associations are incorporated under the law, and their sole purpose is to take charge of the funds collected and disburse them in the manner provided for by the act. As was said in the cases above quoted from, such a purpose is certainly a worthy one, and it would no doubt be a source of much comfort to the members of the various departments, and would have a tendency to allure men to the vocation; but can this effect justify the seemingly arbitrary appropriation of the income of the insurance companies? It is argued that the fire company by its work saves the insurance company from loss, and therefore the insurance company should compensate them. Let us see what this argument would lead to. It is well known that all insurance companies regulate their rate by the risk and expense relative to the insurance of a certain piece of property. Therefore the only reasonable view is that the insurance companies would in the end make the insured pay gratuities to the associations.

It is likewise well known that in all cities and towns there are numerous persons who do not carry insurance. Now, it cannot be denied that such persons are even more benefited by the fire departments than those who carry insurance, for their entire risk is intrusted to the efficiency of such departments. Under the enactment being considered, the class of citizens who carry insurance must pay the whole of the imposition, while the latter get the benefits and have no burden to bear. On this reasoning the tax is not uniform.

That the fireman's work is a meritorious one, and that he deserves the highest regard of the community for the faithful performance of his duties, are facts that cannot be controverted. Yet his work is not altogether gratuitous. More and more is it the present day tendency to establish paid departments. In these the members are paid for their services. In the volunteer departments, too, the members are usually compensated in one way or another. There is also the fact that, where it is made a permanent vocation, as is usually the case in the paid departments, the individual assumes the responsibility of his own free will. That it is fraught with danger no one will deny, but it is not necessarily more dangerous than other callings in which numbers of men are employed daily. Can the engineer of a locomotive dashing across the country at the rate of from 50 to 90 miles an hour or the miner working hundreds of feet below the surface of the earth be said to be more secure than the fireman who answers the alarm bell? Can one be said to render a greater service to humanity than the other? We think not. Nor can it be said that the fireman's duty is more public than that of the engineer. There are numerous callings in a sense quasi public, but not of such a nature as to justify the state in granting gratuities or pensions on the ground that the services are public. Any speculation as to this subject, however, is estopped by the constitutional inhibition (article 3 § 32) which provides: "The General Assembly * * * shall not grant pensions except for military and naval services." A pension has been defined to be an annuity from the government for services rendered in the past. That the pensions provided for by the act of 1906 fall within this rule is evident. The money is to be obtained by a government enactment, and is to be paid to superannuated or disabled firemen who in time past had been in active service.

We do not deem it necessary to continue the discussion further. In our opinion the act is clearly unconstitutional. Therefore it is the judgment of this court that the petition be granted and the prohibition issue as prayed for.

CITY OF HAMPTON VERSUS INSURANCE CO. OF NORTH AMERICA

(Supreme Court of Appeals of Virginia, April 21, 1941)

1. TAXATION

A city ordinance levying tax on certain stock fire insurance companies for benefit of firemen's relief fund for injured firemen and their dependents, and the statute on which ordinance was based, are violative of constitutional provision requiring uniformity of taxation upon same class of subjects and the levy of tax under general law, since burden was placed upon a limited class of insurers or taxpayers for relief of another limited class. Code 1936, §§ 3144t to 3144w; Const. § 168.

2. TAXATION

The constitutional requisite of "uniformity of taxation" means that all property of the same class shall be taxed alike. Const. § 168.

See Words and Phrases, Permanent Edition, for all other definitions of "Uniformity of Taxation".

Appeal from Circuit Court, Elizabeth City County; John Weymouth, Judge.

Suit by the City of Hampton, etc., against the Insurance Company of North America, etc., to collect a tax on fire insurance companies for the benefit of the city firemen's relief fund. From a decree denying the relief prayed for and enjoining the City from collecting the tax, the City appeals.

Affirmed.

Argued before Holt, Hudgins, Gregory, Browning, Eggleston, and Spratley, JJ.

Walter M. Evans, of Richmond, J. Wilton Hope, Jr., of Hampton, and Virgil R. Goode, of Richmond, for appellant.

J. Gordon Bohannan, of Petersburg, for appellee.

Browning, Justice.

The city of Hampton, Virginia, pursuant to authority vested in it by chapter 387 of the Acts of the General Assembly of Virginia of 1934, passed an ordinance on the 25th of April, 1935, providing, among other things, for the levy of a tax on fire insurance companies for the benefit of what is designated as a "firemen's relief fund", and for assessing and collecting the tax, and for the election of trustees for the administration of said fund, including the method of its payment to the designated beneficiaries. The levy is assessed upon each and "every person, partnership, company or corporation, which contracts on his, their, or its account, to issue policies or contracts for or agreements for fire insurance."

The annual tax is $1 on each $100 of gross premiums, except reinsurance premiums, collected and received by them, less returned premiums, from fire insurance policies covering property situated within the limits of the city during the preceding calendar year. The purpose of the fund so created is the relief of firemen injured or disabled under certain circumstances and the relief of their dependents, and firemen referred to being members of the fire department or fire departments of the municipality.

The ordinance is an extended and detailed one. The above statement of a portion of its provisions is deemed sufficient for the purposes of this opinion.

The statute which is the basis of the ordinance is designated in Michie's Code of Virginia 1936, as sections 3144t, 3144u, 3144v, and 3144w.

The city of Hampton levied the assessment authorized by the statute and the ordinance and sought to collect the amounts of the tax for the years 1936 and 1937, which were $4.19 and $22.11 respectively, by a suit in chancery instituted in the Circuit court of Elizabeth City county, Virginia, the insurance company having refused to pay the same. The trial court denied the relief prayed for by the city and enjoined it from collecting the tax. It declared the act and the ordinance unconstitutional and void. The city appealed from the decree.

The validity of the statute and, of course, that of the ordinance, is now brought in question as being violative of sections 11, 67 and 168 of the Constitution of Virginia, and of section 1 of Article 14 of the amendments to the Constitution of the United States. Sec-

tion 11 of the Constitution of Virginia provides that no person shall be deprived of his property without due process of law. Section 67 provides for limitations on appropriations by General Assembly to charitable and other institutions, with certain exceptions. Section 168 of the Constitution is as follows:

"All property, except as hereinafter provided, shall be taxed; all taxes, whether state, local, or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general law. The general assembly may define and classify taxable subjects, and except as to classes of property herein expressly segregated for either State or local taxation, the general assembly may segregate the several classes of property so as to specify and determine upon what subjects State taxes, and upon what subjects local taxes may be levied."

[1] It is an alleged contravention of the last section that we shall be concerned with. It is, as we see it, the major question. It is the alleged constitutional infraction which is most palpable.

An examination of the Act of 1934 and the ordinance in question imposing the tax reveals its lack of equality and uniformity. It is seen at once that a burden is placed upon a limited class of insurers or taxpayers for the purpose of the relief of a certain other limited class of persons or citizens. Under the guise of taxation, money is taken from the pockets of a certain class or type of persons and put in the tills of another class of persons. When we look for a reason for this apparent disregard of the spirit which underlies all forms of taxation, we find its alleged justification in the suggestion of a quid pro quo; that certain fire insurance companies should be required to pay a tax to provide a fund for needy members of the fire departments of the municipalities in which they are because the fire insurance companies are benefited by the existence and the functioning of the fire departments.

With the thought of the constitutional requirement of equality and uniformity of taxation, we are led a step further to the inquiry, are there others, who are benefited as much or more than those smarting under the tax imposition, who go unwhipped of its burden?

The answer, manifestly, is that, of the persons who own property within the corporate limits of municipalities, there are those who carry no fire insurance at all. They are benefited as much or more than insurance companies by the activities of fire departments. Likewise, there are those who are insured for less than the full value of their property, and they benefit directly from the same cause. If the state, county and municipality own property within the corporate limits, they receive direct benefits. Indeed, the public generally is benefited by the protection afforded from conflagrations which damage and destroy property and subject the public itself to injury and death.

The above is a paraphrase of the enumeration of those benefited which was made by the court in the very illuminating case of Continental Insurance Co. v. Smrha, 131 Neb. 791, 270 N.W. 122, which points out that there can be no question that the duty of a fire department is the same towards all combustible property within the municipality, and that it owes no greater duty towards property insured for its full insurable value than it does to property that is only partly insured, or not insured at all. It is said that if a fire company were faced with the choice of selecting for the duty of quenching a house afire, that was fully insured, or one that was not insured at all, it would, in all human probability, select the one which was uninsured. This was said to be in harmony with human characteristics.

Thus it is seen that as to a classification founded upon benefits bestowed, which this is said to be, uniformity is non-existent.

This court said in Helfrick's case, Helfrick v. Com., 70 Va. 844, 29 Grat. 844, 849:

"If * * * inequality and want of uniformity in the burthen it imposes * * * are stamped upon the face of the law, * * * the law must be pronounced invalid."

[2] The constitutional requisite of uniformity of taxation means that all property of the same class shall be taxed alike. There is a quotation from Mills' Political Economy, book 5, chapter 2, paragraph 2, from the case of Adams v. Mississippi State Bank, 75 Miss. 701, 23 So. 395, 397, which is this:

"Equality of taxation means apportioning the contributions of each person towards the expenses of the government so that he shall feel neither more nor less inconvenience from his share of the payment than every other person experiences."

In the cast of Commonwealth of Virginia v. National Fire Insurance Co. of Hartford, 161 Va. 737, 172 S.E. 448, 451, this court quoted, with approval, from the case of Aetna Fire Insurance Co. v. Jones, Comptroller General, 78 S.C. 445, 59 S.E. 148, 13 L.R.A., N.S., 1147, 125 Am. St. Rep. 818, the following:

"In the present case the Legislature has gone further than attempting to raise money for *fire departments, municipal organizations,* in that it seeks to raise a fund by taxation for what seems to us merely a *benevolent purpose.* The money collected under the act of 1906 is not for the use of the fire department, but it is to be paid to certain Firemen's Associations for benefits, gratuities, and pensions. These associations are incorporated under the law, and their sole purpose is to take charge of the funds collected and disburse them in the manner provided for by the act. As was said in the cases above quoted from, such a purpose is certainly a worthy one, and it would no doubt be a source of much comfort to the members of the various departments, and would have a tendency to allure men to the vocation; but can this effect justify the seemingly arbitrary appropriation of the income of the insurance companies? It is argued that the fire company by its work saves the insurance company from loss, and therefore the insurance company should compensate them.

Let us see what this argument would lead to. It is well known that all insurance companies regulate their rate by the risk and expense relative to the insurance of a certain piece of property. Therefore the only reasonable view is that the insurance companies would in the end make the insured pay gratuities to the associations. It is likewise well known that in all cities and towns there are numerous persons who do not carry insurance. Now, it cannot be denied that such persons are even more benefited by the fire departments than those who carry insurance, for their entire risk is intrusted to the efficiency of such departments. Under the enactment being considered, the class of citizens who carry insurance must pay the whole of the imposition, while the latter get the benefits and have no burden to bear. On this reasoning, the tax is not uniform.

* * * * *

"The act is attacked on numerous grounds, but we think the pivotal question is: Has the general assembly power to enact such legislation? In other words: Is the Constitution violated, in that the tax here under consideration is not *uniform* and for *no public purpose?* That the imposition is an attempted exercise of the taxing power conferred by the Constitution the respondent practically admits, in that it is sought to sustain the exaction on the ground that it is for a public purpose. 'A tax,' according to Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by the government for the use of the nation or state.' Cooley in his Constitutional Limitations, § 479 [6th Ed., p. 587], says: 'Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes.' Applying either of these rules to the legislation here in question, if it be conceded that the aid of firemen is a public purpose, it clearly falls under the head of taxation for all of the requirements are fulfilled, namely, that it is an imposition on person or property by the government for a public purpose. * * *

"This brings us then to the question as to whether or not the legislation here under consideration has in view a public purpose. The money secured from the imposition on the insurance companies is to 'be held in trust and used as a trust fund for the relief of any member of the fire department of such city or town who may be injured or disabled, and for the relief of, or payment of gratuities to, the widow or those dependent upon any member of such fire department who may be killed, for the payment of necessary funeral expenses of any member of such fire department and for the purchase of accident insurance upon the members of such fire departments,' and in certain cases to be used for the payment of pensions. * * *

"The question is exceedingly close and difficult, and the authorities, as we have seen, are conflicting, but we are inclined to give adherence to the latter view, especially where the benefits go to a Firemen's Benefit Association *the public purpose seems to be lacking.* Therefore we hold that the act cannot be sustained on the ground that it is a police regulation; the important characteristic, publicity of purpose, being wanting. It cannot be doubted that incidentally the public derives much benefit from fire departments of municipal corporations. Any organization that tends to enhance the value of property or the security of its possession, that gives work to unemployed persons in a given locality, or bridles power hitherto unused, is certainly after a manner beneficial to the public at large. The wealth and welfare of a state lies in the well being of its individual citizens. Thus, if a factory employing hundreds of hands and annually turning out thousands of dollars worth of products is built, or a mine which yearly puts on the market hundreds of tons of mineral is opened up the incidental benefits to the public is great, yet the highest legal tribunal of the country has held that public funds cannot be appropriated for such a purpose. Citizens' Sav. & L. Ass'n v. Topeka, 20 Wall. [655], 663, 22 L.Ed. [455], 461. *A fire department is a municipal institution.* Its organization and control is purely a matter of *municipal concern.* True, interest in the establishment of such agencies would extend further than the municipal boundaries, but whether that interest could be manifested in action on the part of the General Assembly, otherwise than to encourage, seems a matter of doubt; the spirit of our law being that the Legislature may invest municipal governments with power, leaving the exercise of it to their discretion and corporate needs." (Italics supplied.)

From the case of Henderson v. London, etc., Ins. Co., 135 Ind. 23, 34 N.E. 565, 568, 20 L.R.A. 827. 41 Am.St.Rep. 410, we quote further as follows:

"It is said that the act is an attempted exercise by the legislature of the power of taxation, and that, being local, *not uniform,* and for no public purpose, is in violation of the taxing powers as conferred by the constitution, (article 10, § 1.) That provision of the construction is as follows: 'The general assembly shall provide by law for the *uniform* and *equal rate of assessment and taxation,* and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literacy, scientific, religious, or charitable purposes as may be specially exempted by law.' Is the enactment of the law before us an attempted exercise of the power of taxation as conferred by the constitution? In several states this character

or legislation has been before the courts for construction, and we find the decided weight of authority holding that it is such an attempt.

"Here we have a law enacted in the pretended exercise of the taxing power of the state, exacting a penalty from that part of the class of foreign insurance companies which do business in the four counties of this state having cities with paid fire departments; and the fund thus exacted by the power of the state is not for the benefit of the state, is not for the benefit of those portions of the state whose business with such companies must contribute to said fund. The business done in each of the four counties affected bears the burden of the exaction, and the fund is devoted to the benefit of firemen within four cities only. The property of such counties outside of such cities get no protection from such firemen, and the owners have no pecuniary interest in them.

"Here the taxing power of the state is exerted for the *benefit of a few of the citizens of the state who hold the obligation of their respective cities for their courage and their valued service,* and the purpose is that this power shall be exerted for the discharge of that obligation. We do not regard this as the most objectionable feature of this act. We have 92 counties in this state, whose united power is thus exerted in levying a tax upon certain foreign insurance companies.

As to the state, all foreign insurance companies constitute a class, and of this class all are not subject to the operation of this act,—only those who do business in four of such counties. The *taxing power of the state cannot thus be made the means of levying municipal taxes upon a fraction of a class and of bestowing the tax so levied upon a small fraction of the citizens of the state, all of her citizens standing in like relation to her, unless she owes them some peculiar obligation, not existing in serving as firemen for some city.* The taxing district of the state wherein taxes are directed for the benefit of those serving the state is the whole state. State taxes are not of uniform and equal rate when they apply to a portion of a class only, and omit a portion of the same class, and this is no less true because the class may be divided by county lines.

"Uniformity in rate as required by the constitution, means that the same rate shall apply alike to all in any given taxing district." (Italics supplied.)

The citations quoted elaborate the points to which we have adverted, and are interesting judicial pronouncements of their soundness.

It will be noted that the case of the Commonwealth of Virginia v. National Fire Insurance Co. of Hartford, supra, while very like the case we are considering in the principles enunciated, was predicated upon a different tax structure, the act of 1932.

There can be no question but that the inequality and lack of uniformity of the act and the ordinance we have been considering is glaring. It is the more so when we realize that the tax here is upon certain stock fire insurance companies which are admitted to do business in Virginia, while non-admitted companies, mutual companies, reciprocals, and property owners who insure in such companies, or do not insure at all, or who insure for less than the full value, are not subjected to the onus of the tax, but are advantaged and benefited, as are those against which the tax is imposed.

In the case of Robinson v. Norfolk, 108 Va. 14, 60 S.E. 762, 763, 15 L.R.A., N.S., 294, 128 Am.St.Rep. 934, this court quoted from Cooley on Taxation (2nd ed.) ch. 5, pp. 140, 141, 142:

"A state purpose must be accomplished by state taxation; a county purpose by county taxation; or a public purpose for any inferior district by taxation of such district. This is not only just but it is essential. To any extent that one man is compelled to pay in order to relieve others of a public burden properly resting upon them, his property is taken for private purposes, as plainly and palpably as it would be if appropriated to the payment of the debts or the discharge of obligations which the person thus relieved by his payments might owe to private parties.

"It is certainly difficult to understand how the taxation of a district can be defended where people have no voice in voting it, in selecting the purposes, or in expending it."

And in the opinion in the case last cited, this court said:

"Certainly the legislative department of the government cannot arbitrarily take the property of one citizen to give it to another, and, of course, cannot authorize others to do so."

One of the most instructive and logically reasoned cases to which we have been pointed is that of Lowry, Insurance Commissioner, v. City of Clarksdale, 154 Miss. 155, 122 So. 195, 197. We feel justified in quoting from it at rather unusual length:

"Thus there is at once presented the inquiry, What is the reason, the substantial reason, not one which is merely arbitrary or artificial, for the difference or distinction here made by which a cetrain class, from among all those directly and materially concerned in the subject-matter, is segregated, and upon that class the burden of a certain fixed tax is laid, while no such tax or the relative equivalent thereof is laid upon others likewise concerned? The principal answer that has been offered is that the establishment and adequate maintenance of a fund of this sort tends to attract to the fire-fighting service a better character of men and to make that service a more dependable and loyal branch of the municipal administration, with the result that there will be an improved efficiency in the prevention of fires and the lessening of losses by fire, thereby saving more to insurance companies than the amount of the tax imposed.

"We cheerfully concede the worthiness of the object and the soundness of the considerations mentioned touching the betterment of the service; and the answer made, we may also concede, would be good in point of law if all combustible property in the municipality were insured in admitted companies at or near its full insurable value. Unfortunately, however, in weighing the aforesaid answer, we are confronted, not with the situation last mentioned, but with what is true to the contrary as a matter of common knowledge:

First, that a part of the valuable combustible property is not insured at all; second, that a yet larger part, if not most of it, is not fully insured; and third, that some part is insured in outside companies not formally admitted and which therefore are not subject to the tax in question. There can be no question that the duty of a municipal fire department is the same towards all combustible valuable property within the municipality. It owes no greater duy towards property insured for its full insurable value than it does in respect to property not insured; its duty to partly insured property is the same as that in regard to fully insured property or to property not insured at all, and still the same towards property insured in outside companies. Such is the legal duty, but we may as well be candid enough to admit at the same time that if the average fire department should find that it could save only one of two burning buildings, one of them insured and the other not, the uninsured building would be the more likely to be saved. This would be but a natural human impulse and personal course of action.

If then the legal duty of the firefighting department is as much owed towards uninsured property as towards that which is insured, and if, as we know, the personal element in an extreme emergency would favor the uninsured, it must be obvious that the answer above adverted to becomes no answer at all in point of substantial reason for the attempted distinction or classification; and no other answer as good as that mentioned has been advanced. For instance, among these answers it is in effect argued that although the duty to all species of combustible property insured and uninsured is the same, yet there is in the status of owners as owners, as distinguished from insurers as such, a sufficiency of distinction that upon this difference in status the classification may be legally upheld. It is true that such a difference might serve for a classification for some purpose, but the argument and every similar argument overlooks the requirement that the reason upon which the classification is grounded must be a reason which has a just and substantial relation to the particular object to be accomplished—an object which is a public one, *for it is fundamental that no tax may be laid to raise funds for a mere private or personal purpose.*

The contemplated public object to be accomplished here is the improvement of the service in the fire-fighting department, and since that improvement moves in its benefits and advantages as much and in exactly the same way towards the uninsured owner of property of a certain value as it does towards an insurance company carrying a policy in an equal amount in value on another piece of property, there is no actual difference between the two in relation to the object to be accomplished. And every argument advanced to sustain this tax runs likewise into a corner.

"Under those arguments, if the tax here in question may be imposed upon fire insurance companies, then upon like principles it may be extended and these companies could be required to pay the *entire expense of a city fire department,* and by a parity of reasoning there could be added all the costs of construction, extension, and operation of the waterworks department, since a modern fire-fighting department is essentially dependent upon an adequate water supply. By like, or even by better, reasoning, the banks and jewelers of a city could be required to pay the entire costs of the police department on the ground that banks and jewelry stores are distinct beneficiaries of police protection against burglaries and robberies; and so on as to many other features of municipal administration." (Italics supplied.)

The purpose of this statute and ordinance, and similar ones, is altruistic and praiseworthy, and it seems phlegmatic and stolid to put an obstacle in the way of their being. This impulse, however, must not cause us to hesitate in the preservation of the integrity of the Constitution, which is the foundation of our structure of government.

We are conscious of the fact that efforts to create funds like this one have been a prolific source of litigation, and we are aware that there has not been a unanimity of judicial determination of the matter; but the weight of authority and reasoning, we think warrant the thoughts and expressions we have indulged. Other questions and kindred ones of exceeding importance and interest have been discussed and amplified in the briefs of counsel. To discuss them would far extend this opinion, which is already longer and more detailed than we would have wished it to be.

The statute and ordinance are unconstitutional and void, for the reasons herein expressed.

Affirmed.

Mr. COOK. I would like 5 more minutes, if I may have them, from the distinguished Senator from Nebraska, because I think there are a couple of other things here that are important.

Mr. HRUSKA. Three more minutes. We have other requests, I am sorry to say.

Mr. COOK. All right. Mr. President, we have another very interesting thing here: the right of insurance companies to request, for instance, of other insurance companies, under workmen's compensation laws, that they be paid a specific amount of money.

I pose these questions to the chairman of the Committee on Commerce, and I would like to have something in the RECORD by way of answer:

Can Federal law contravene State workmen's compensation laws, including workers not in interstate commerce, whereby they would be required, under this act, to pay a portion of their insurance benefits into such a program?

Can or should the Federal Government require the executive branch of the State government to interpret and enforce Federal laws?

Can or should Federal law delegate to the States the optional authority to interpret, make regulations for, and enforce a Federal law?

Should a Federal law grant insurers an ambiguous and broad right to reimbursement for benefits paid? And can a Federal statute regulate attorneys' fees in State courts, as this act attempts to do?

Last but not least, Mr. President, can a Federal statute impose a tax, not to be collected by the Federal Government but to be collected by the State government, and then not even to be paid into the State treasury and not even to be allocated by the State legislatures, but to be allocated by the commissioner of insurance in the State?

If the State does not have a rehabilitation program and does not have an emergency vehicle program, the insurance company, to do business in the State, sits down and writes out its 2 percent check to the Secretary of HEW, and it is not accounted for in the Federal Treasury. Those funds are unbudgeted, unappropriated funds. The Secretary of HEW builds himself a little fund, and he writes checks out of it back to the States from whence it came for grants or other programs or private rehabilitation services, all without permission of the insured people, or of any court, in Washington or wherever the case may be.

Mr. President, what we have done is that we started to write a no-fault insurance bill and wound up writing a rehabilitation and emergency vehicle service bill. As a result, it is a revenue measure assessing $280 million a year. Therefore, it should originate in the House of Representatives, because it is a revenue measure and does not belong here to start with. A true no-fault bill would belong here, Mr. President, except for all they have put in it, for all they have imposed on the insured and on the insurer. They have denied him due process by letting an insurance company take away 50 percent of his recovery.

So I can only say, Mr. President, if this legislation does not need a second look, then we as Members of the U.S. Senate care not for due process, care not for the Constitution, and care not for the McCarran-Ferguson Act, which some will not admit we are modifying.

Therefore, I think that without any exception, the bill should be referred to the Committee on the Judiciary.

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

Mr. COOK. I yield on the Senator's time.

Mr. MAGNUSON. If the two provisions the Senator talked about were eliminated, would he vote for the bill?

Mr. COOK. I would be much more inclined to do so, Mr. President. As I have stated time and time again, I am very much in favor of a no-fault concept. I think it is necessary. As I said on this floor last night, 98 percent of the accidents that occur in this country involve only glass and steel. We should have a program to solve that kind of cases immediately, and there should be no question about it.

Mr. MAGNUSON. I just wanted the Senator's position on that.

Mr. COOK. Mr. President, even if we were to take all of that out relative to rehabilitation——

Mr. MAGNUSON. I know in all honesty the Senator from Nebraska has talked about this 2 percent and 1 percent. It is my understanding that that is permissive in the bill. If it is not, we will make it that way.

Mr. COOK. May I have 1 minute, and say that even if it is permissive, Mr. President, we still would be giving authority to State insurance commissioners, not even the State government; even under the Cranston amendment we are giving the authority to the State insurance Commissioner to impose a 2-percent levy on insurance companies, and I have a notion that even if we made it permissive, we may run into a lot more constitutional and statutory problems, because State insurance commissioners, I would suspect, have no authority to make such a levy at the State government level.

Mr. MAGNUSON. They do not in my State. In my State he would have to get legislative permission. He is an elected official himself, but he would have to get legislative permission.

Mr. HRUSKA. Mr. President, I yield 10 minutes to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I join with the Senator from Nebraska in urging that S. 945 be referred to the Committee on the Judiciary for consideration.

This bill would do away with a whole school of law and so should be carefully studied as to its constitutional and legal implications. The only committee which has the requisite knowledge and experience to review these implications is the Committee on the Judiciary. The standing rules of the Senate set out very clearly that all bills concerning judicial proceedings, civil and criminal, generally should be considered by the Committee on the Judiciary.

I know that the Commerce Committee has done a fine job in its work on this bill, particularly because this bill represents such a new and major conceptual change in our automobile insurance system. The Commerce Committee has a great deal of knowledge in the areas of national transportation problems. However, this bill proposes to change a whole school of law which poses problems in which the Committee on Commerce does not have the jurisdiction or knowledge to assess.

The Commerce Committee held its hearings on the original version of S. 945, which was introduced over a year ago. The present bill was introduced on June 20, 1972, and has been changed greatly from its first form. Hearings should be held on this bill because the earlier hearings are not applicable to this substantially different format.

Mr. President, no-fault insurance would also do away with the guaranteed right of trial by jury. Damage payments for personal injury would be made without the benefit of having a jury determine and assess the amount of damages against the wrongdoer. Trial by jury is an essential constitutional right, and there should be no attempt to deprive an insured of this right. I can perceive no legitimate reason to take one who operates an automobile out from under the general common law rule of liability without first considering this aspect. Certainly, hearings would help on this point.

The complexity of the problem regarding the insurance needs of automobile operators has created a large amount of controversy and honest disagreement among informed people as to what remedial measures are necessary. It is true that there exists genuine concern as to the unknown and essentially unknowable price implications of any major change in the automobile insurance system. Obviously, any change would ultimately affect the cost and quality of service to consumers of insurance. Because of these factors, careful study and consideration must be given to our present system before blithely throwing away a whole school of law.

Under the common law, our tort system has historically developed as a sensitive means of determining equities when two parties are involved in an accident. Since its origin, this system has been in an uninterrupted state of evolution. We should not throw out a whole school of thought or body of law without first making sure that the substitution proposed is equitable. It may be that the existing problems within our transportation system can be corrected by changes at the State level, rather than resorting to Federal action. I believe this proposal should be completely studied from all sides before abruptly overturning our present reparations system.

Mr. President, the Senate also needs to consider the fact that S. 945 extensively revises existing statutes and for this reason clearly should be considered by the Judiciary Committee. The bill completely changes the manner in which the Federal court system as well as the State court system deals with tort liability and makes sweeping changes in the relationship of the judicial branch to certain types of proceedings. It would seem most unwise for this body to treat S. 945 as dealing merely with the business of insurance and thus not receive the benefit

of the Senate committee established to review changes in existing statutes. It seems to me this is a clear case where the jurisdiction of the Judiciary Committee is involved, and I urge my colleagues to send this bill to the Judiciary Committee.

In closing, Mr. President, I want to say that a very important question here is whether the Federal Government should enter this field. Why cannot each State handle this matter? That is a question, too, that seems to be worthy of consideration by the Judiciary Committee: whether we should preempt the State in this field or in certain aspects of this field and take complete jurisdiction, as this bill would attempt to do in some facets, or whether we should leave the entire matter to the States, to let the States determine what they need in each State.

Mr. President, during the 18 years I have been in the Senate, I have seen the Federal Government enter one field of jurisdiction after another. I have seen Congress preempt one field after another. It has long been my contention that the government closest to the people is the best government, and, therefore, the governments of the States and the cities—the legislatures and the city councils—generally can solve problems much better, more effectively, and with more wisdom than would Congress, sitting thousands and thousands of miles away.

So from any standpoint we look at this question, it seems to me that we should let the Judiciary Committee study this bill and make recommendations to the Senate as to what course should be followed.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. I yield 10 minutes to the Senator from Tennessee.

Mr. BAKER. Mr. President, I have read with interest the comments of my colleagues in the RECORD of yesterday's proceedings regarding S. 945, and I have listened to the debate this afternoon with great interest as well.

I feel that several important issues are involved in this debate, and I am appreciative of the attention which is being given them. This colloquy will assist the Senate in making a careful and objective determination of the appropriate jurisdiction of the bill.

I would call special attention to the memorandum in response to the specific questions of constitutionality raised by the Senator from Nebraska (Mr. CURTIS) which the Senator from Michigan (Mr. HART) submitted last evening. I find these comments very instructive, since questions of constitutionality were extraneous to the insurance program contained in S. 945 and were, therefore, not considered by the Committee on Commerce.

I agree that there are some very difficult questions regarding the constitutionality of S. 945. Basic to most of these is the concept of Federalism which is fundamental to our form of Government. I feel that S. 945 in its present form is a definite encroachment upon the responsibility and jurisdiction of the States in the area of insurance regulation.

In the debate of last evening many considerations were raised over which there exists substantial dispute. But there were several matters over which there can be no question, and which I feel are relevant to the debate today:

First. S. 945 will seriously and substantially curtail the rights of the citizens of the States to bring civil actions. Civil actions are within the jurisdiction of the Judiciary Committee.

Second. S. 945 will have a substantial impact upon the jurisdictions of the courts of the States and of the United States. The jurisdiction of the courts is within the jurisdiction of the Judiciary Committee.

Third. S. 945, if adopted, will force the repeal of every existing no-fault insurance program and will have an obviously devastating impact upon all State insurance programs. The McCarran-Ferguson Act states that it is a matter of congressional policy that the States shall retain jurisdiction over insurance. The McCarran-Ferguson Act is within the jurisdiction of the Judiciary Committee.

I feel that these issues are important and require attention quite aside from the program implications of S. 945, so I shall vote for referral of this bill to the Judiciary Committee.

I strongly support the concept of no-fault insurance. Were there no problem with Federal jurisdiction and were I not from a State in which this bill, S. 945, would impose an inappropriate and costly insurance program, I could vote for some such bill, although not S. 945 in its present form. I feel that there are substantial questions with regard to the administrability of the program and with regard to its impact upon certain classes of claimants. These are issues which can only be answered by experience and experimentation such as is going on in the States at this time.

Mr. President, if the proponents of this bill are interested in proving that their program can meet the criticisms which have been leveled at it in these two regards, I would seriously suggest that the bill might be put into effect in the District of Columbia on a demonstration basis.

There would be no question of usurping the State's role and the cost impact would be the most beneficial which the program is capable of producing since the District is totally urban and has no rural traffic situations.

It is not my purpose to demean the function of the Commerce Committee of which I am a member. I sat and participated in the deliberations of that committee under the able leadership of the distinguished Senator from Washington (Mr. MAGNUSON) and its ranking minority member the distinguished Senator from New Hampshire (Mr. COTTON) as we proceeded through several committee prints.

I listened carefully to the documentation of the arguments, pro and con, as we proceeded through those committee prints, before S. 945 was ordered reported.

Throughout the proceedings, I expressed my concern over the pervasive effect of the bill, but not my opposition to no-fault as a concept because I feel that the time for change is at hand and that no-fault has its place and, I believe, a vital place in the function of our reparations system. But this is no simple no-fault bill. It is a sweeping repeal of every effort made by every State to enact its own no-fault bill. This is the end of experimentation as conducted in Massachusetts, Florida, Delaware, and many other States. This is the final, definitive statement on no-fault insurance on a broad and sweeping basis. I am not prepared to do that until we examine fully the consequences of S. 945 upon the driving public, and until we examine the consequences of killing the judicial system of the United States as it serves the people of this country in the reparations area of automobile accidents.

Mr. President, in the past several days there has circulated a memorandum regarding the four amendments which I have filed on S. 945. This memorandum contained many statements which I feel are fallacious and misleading. I did not receive a copy of this memorandum and was not advised that it was being circulated, so I have not had time to prepare a response to all of the items in that letter which warrant response.

I feel that I owe a duty to those Senators who have expressed support for my amendments and to those who are genuinely seeking information on this complex matter to be able to formulate a sound position to clarify one very major discrepancy contained in that memorandum.

One of the very central issues in the development of these amendments has been the question of costs. S. 945 is an expensive program. The amendment which I have filed and shall offer during consideration of this bill dealing with the benefits levels of the bill will reduce the costs of the bill substantially.

Since the thrust of all of my amendments and this one in particular is to increase the flexibility of the States in responding to their insurance needs, it is impossible to predict the exact costs savings. The States would be free to determine this by the design of their program.

However, during an executive hearing held on this bill after it had been ordered reported, I requested that the three actuaries furnishing information to the committee on S. 945 evaluate the impact of my benefits levels for no-fault insurance.

The following are their reports:

The American Mutual Insurance Alliance stated:

> The exact impact [of the Baker amendments] would necessarily depend on the specific limitations enacted by each state. Assuming, for instance, a "threshhold" of $100, this would reduce costs of package #1 . . . to $105 (a 3.7% reduction over present cost) and would also reduce the cost of package #2 . . . to $192 (a 19% reduction over present cost).

Package No. 1 is a minimum coverage—10/20 BI, 10/20 UM, 5 PD. Package No. 2 is a higher program of coverage—25/50 BI, 10/20 UM, 10 PD, $1000 medical payments, $100 deductible collision and full comprehensive. The threshhold of $100 for civil liability ac-

tions is substantially lower than that contained in S. 945 and is lower in fact than threshholds in effect in several of the State programs. Under my amendment the State could increase the threshhold level and increase the cost savings.

The NAII estimated the costs of the amendment with a modest threshhold to be 16 percent less than the present costs for minimum coverages and 4 percent less than the present system for maximum coverage with the threshhold presently contained S. 945.

As the memorandum states the American Insurance Association estimated that the Baker amendments would result in no change in the present costs without any limitation on the right of injured persons to recover all their damages in a civil action.

I hope that this will help to clear up any confusion which may have resulted from the circulation of this memorandum.

HAZARDS OF NO-FAULT INSURANCE

Mr. HANSEN. Mr. President, I fully agree with the distinguished ranking minority member of the Commerce Committee (Mr. COTTON) in his opposition to S. 945, the National No-Fault Motor Vehicle Act, as it was reported by that committee.

In fact, the minority views of Senator COTTON in the committee report and also those of the distinguished Senator from Tennessee (Mr. BAKER) and the able Senator from Maryland (Mr. BEALL) as well as those of the able Senator from Kentucky (Mr. COOK) all confirm my doubts about the benefits that might accrue from such an important and precedent-setting proposal such as this.

In my own State of Wyoming, the distinguished chairman of the Commerce Committee (Mr. MAGNUSON) advises me, the rates will rise an average of somewhere between 14 and 18 percent. But according to one of the major insurance trade associations, premium rates for a motorist carrying minimum coverage would be 41 percent higher, medium coverage 54 percent higher, and full coverage would be 17.7 percent more than present rates.

A look at the actuarial figures shows that people in the more sparsely populated areas—the farmer, the rancher, and the rural resident—would be hardest hit.

Wyoming has, in fact, already taken the initial steps toward adopting a no-fault insurance plan.

Last April, the Joint Judiciary Committee of the Wyoming Legislature completed public hearings on the subjects of no-fault insurance and comparative negligence.

Twenty-two witnesses, representing the insurance industry, bar associations, and consumer interests, testified at the hearings.

The chairman of that committee, Lawrence A. Yonkee, has written me concerning the hearing. I ask unanimous consent that his letter and a news release issued during the hearing be printed in the RECORD.

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

STATE OF WYOMING,
HOUSE OF REPRESENTATIVES,
Sheridan, Wyo., July 31, 1972.

The Honorable CLIFFORD P. HANSEN,
U.S. Senator,
Washington, D.C.

Re: No-Fault Insurance

DEAR SENATOR HANSEN: We understand that no-fault insurance proposals are presently being considered by the Senate. In April of this year our Joint Judiciary Interim Committee held a public hearing on the subject of no-fault insurance. We enclose for your information a copy of the Committee report and a copy of the Committee minutes which are, in part, relevant thereto.

It was generally agreed by our Committee that no-fault insurance would not decrease automobile insurance premiums in Wyoming. In Wyoming we do not have court congestion and some of the other problems which require change or reform in other states. Our Committee did not favor the proposals for federal insurance regulation and national no-fault administered at the federal level.

We recognize that there are improvements to be made in the existing system in Wyoming. We anticipate that bills will be introduced in the coming legislative session which hopefully will improve what is now a reasonably good system for our state. It is quite possible that a modified no-fault proposal will be passed in 1973.

We hope you will find these materials helpful.

Yours truly,

LAWRENCE A. YONKEE,
Chairman, Joint Judiciary Committee.

Enclosures.

Date: April 12, 1972.

From: Representative Lawrence A. Yonkee, Chairman, Joint Judiciary Interim Committee.

The Joint Judiciary Interim Committee of the Wyoming Legislature has completed public hearings on the subjects of no fault insurance and comparative negligence. Twenty-two witnesses, representing the insurance industry, bar associations and consumer interests, testified at the hearings.

Witnesses representing the insurance industry proposed laws requiring a motorist's own insurance company to pay medical expenses, loss of earnings and other economic loss resulting from an automobile accident. Some industry proposals would permit an injured party to sue the other driver for pain and suffering and similar losses. Other proposals would provide that the motorist could not, regardless of circumstances, sue in court for damages.

Wyoming trial lawyers testified that no fault insurance eliminates basic individual rights and prevents an automobile accident victim from receiving full recovery for losses.

With one exception, the witnesses were opposed to federal insurance regulation and national no fault laws. The witnesses generally agreed that no fault insurance would not decrease automobile insurance premiums in Wyoming.

The Committee concluded that it is highly questionable whether no fault insurance would benefit Woming citizens. The Committee is continuing a general study of various no fault insurance proposals and invites any interested party to submit suggestions or recommendations on this subject to the Legislative Service Agency, 213 Capitol Building, Cheyenne, Wyoming 82001.

Members of the Joint Judiciary Interim Committee are: Representative Lawrence A. Yonkee, Chairman, Sheridan County; Senator Harry E. Leimback, Vice Chairman, Natrona County; Representative Marvin E. Emrich, Secretary, Natrona County; Senator John W. Patton, Sheridan County; Senator Robert W. Costin, Albany County; Senator W. G. Vanderpoel, Goshen County; Senator Robert H. Johnson, Sweetwater County; Representative Alan K. Simpson, Park County; Representative John T. Langdon, Washakie County; Representative Harold E. Meier, Fremont County; Representative Walter B. Oslund, Weston County; Representative Edwin H. Whitehead, Laramie County; Representative John R. Smyth, Laramie County; and Representative Gary M. Greenhalgh, Sweetwater County.

In the legal and constitutional realm, there is a serious question as to whether the Federal Government can or should countermand the States' tort law. It is certainly doubtful that the Commerce Clause gives the Federal Government the right to alter application of contract and tort laws in the States. The 10th amendment reserves this area to the States. Extension of the Commerce Clause to allow Federal preemption of matters indirectly involving activities affecting interstate commerce would mean that the Federal Government could change or nullify virtually all of the State law. This would certainly be a shattering blow to the rights of States. As specific examples of this Federal preemption, let me refer you to sections 302 and 303 of S–945, print 3, which would directly abolish State common law, statutory and constitutional rights to sue in tort for almost all automobile accidents. State contract law would be changed by sections 103 and 106 which deal with such subjects as insurance cancellation, and offsets to insurance companies.

Another question is whether the Federal Government can or should require the executive branch of State government to interpret and enforce Federal laws. Sections 107, 110(a)(2), and 302(c) place such burdens upon the States in such areas as assigned risk or assigned claims plans.

Still other questions should be considered by the Senate Judiciary Committee. For example, can or should a Federal law contravene State laws regulating the legal rate of interest on contracts. Section 104(a)(1) provides for interest up to 24 percent per annum on policy claims under certain circumstances.

It is interesting to note, also, that S. 945 would evidently put the Federal Government in the business of repealing State Constitutions. Article X, section 4 of the Wyoming constitution prohibits limiting the amount recoverable for personal injuries and death. The same thing is true in the constitutions of the States of Arizona, Arkansas, Kentucky, and Pennsylvania. It is also my understanding that in several other States limitations on the amount recoverable for death are constitutionally prohibited. This is true in the States of New York, Ohio, Oklahoma, and Utah, according to my information.

Therefore, if these State constitutional questions exist, either these States would have to change their constitutions in order to pass these so-called minimum Federal standards, if S. 945 should become law, or else they would be forced to take a Federal no-fault law immediately.

My preference is that Wyoming's constitution should be changed by Wyoming people to meet needs and conditions in

Wyoming, and that my State of Wyoming should not have Federal insurance laws and regulations imposed on it that are contrary to the Wyoming constitution.

Also, Mr. President, I have just today received a letter from the President of the Wyoming State Bar who opposes S. 945. The American Bar Association is also opposed to any Federal no-fault legislation.

I fully agree with Joseph B. Sullivan, president of the Wyoming State Bar that this is a field which the individual States should solve without Federal interference and I am sure, given the chance, they will.

I fully agree with Senator COTTON who said in his minority views that it is premature to act on this legislation at this time and that we should have at least until early next year during the 93d Congress to see how this matter is being handled and is being worked out at the State levels before proceeding with Federal legislation such as S. 945. I, therefore, will vote to refer the bill to the Judiciary Committee for its determination on the vital issue of constitutionality before it is finally considered here on the Senate floor.

Mr. CHILES. Mr. President, I shall vote today to refer S. 945, the Uniform Motor Vehicle Insurance Act, to the Judiciary Committee.

I believe the principle of no-fault automobile insurance is a very useful one and should continue to be tested at the State level. But to me, the immediate installation of a Federal system of no-fault is not the best way to go about it.

It is the purpose of this measure, as I understand it, to foster State reform of the present inadequate, inefficient, and unfair liability-based automobile insurance system by the establishment of standards for a no-fault automobile insurance system that would save and restore lives. While I am very much aware of the needs of our present system of automobile reparations—the need to reduce the economic waste; to improve scope of coverage and adequacy of compensation; and the need to build incentives into the system which can reduce the waste of human resources—I am reminded that insurance regulation has traditionally been a State function. State activity and reform thus far in Delaware, Illinois, Maryland, Connecticut, New Jersey, and my own home State of Florida has been and will no doubt continue to be subject to solid criticism and careful scrutiny. And I am hopeful these local experiments will eventually lead to better no-fault plans in other areas.

It is my understanding that much of the public support generated for the no-fault concept has depended on the assumption that this system would reduce premium costs to the public. And yet some evidence indicates to the contrary. In fact, I am informed that even in a special session called while the Commerce Committee was marking the bill up in executive session, a variety of actuarial predictions was produced that ranged from a 6-percent decrease in premium to an 18-percent increase if the bill were in effect as reported.

I strongly favor the idea of individual States experimenting with no-fault plans so they can be adapted to local conditions. And I also strongly favor State-level regulation and innovation rather than the creation of yet another national bureaucracy. While I urge the States to respond to this pressing need on a State-by-State basis, I stand opposed to S. 945 as now written which would involve the Federal Government in this insurance reform.

Mr. HRUSKA. Mr. President, I now yield 5 minutes to the Senator from Alabama (Mr. ALLEN).

The PRESIDING OFFICER (Mr. GRAVEL). The Senator from Alabama is recognized for 5 minutes.

Mr. ALLEN. Mr. President, I thank the distinguished Senator from Nebraska for yielding me this time so that I might state my position with regard to the pending legislation.

Mr. President, perhaps no topic has monopolized the collective time and energies of the U.S. Congress, the legislatures of the several States, the faculties of our schools of higher learning, the policymakers of the insurance industry, and the executive staffs of memberships of virtually every bar association more than the topic of no-fault insurance.

Countless hours were devoted to investigations of our automobile accident compensation system by committees of both Houses of Congress.

The Department of Transportation expended $2,000,000 and 2 years of time in completing an exhaustive study of the matter.

A special committee of the National Conference of Commissioners on Uniform State Laws was commissioned by the Department of Transportation to develop a uniform law.

Many States have formed various types of committees to study the subject of no-fault.

Where has this intense study led us?

The upshot of the Department of Transportation study was a report from Secretary John Volpe which suggested two highly crucial elements:

First. While improvements are needed, they should be developed through evolutionary means.

Second. The most desirable method of producing meaningful changes would be through State-by-State experimentation.

Secretary Volpe concluded with a recommendation that the Federal Government should consider no alternatives for at least 25 months—a period which has not yet expired.

The special committee of the National Conference of Commissioners on Uniform State Laws has been deliberating on this matter for over a year and I am told have just completed draft No. 10 of a proposal which will be submitted to the national conference in August. From all reports, whether there was unanimity within the special committee, a divergent response is expected of the national conference.

Where "no-fault" proposals were submitted to the State legislatures the results were enlightening, if not conclusive. Many States enacted proposals—no two of which were similar. Many States did not yet feel compelled to act and either delayed further action for the present or rejected the proposals before them. Many States cautiously continue to deliberate, preferring caution to a precipitate action from which it might find it difficult, if not impossible, to extricate itself.

With this background where do we find the U.S. Senate? I believe, Mr. President, we find ourselves in a precarious and inopportune position. We are asked by the sponsors of S. 945 to ignore the recommendations of the Department of Transportation, the efforts and achievements of the Special Committee of the National Conference on Uniform State Laws, and the brief experience thus far gained from States by enacting into law a proposal which far exceeds, by any standard, the types of laws which have heretofore been enacted and which have gained success and acceptance within the States which have most directly addressed themselves to the matter. By what divine revelation does this Senate discern with more accuracy a universal solution to a problem in which State responses have been so divergent?

If I had no reservations whatsoever over the provisions of S. 945, I would still be concerned that we are moving too hastily in an area the very nature of which demands and requires more caution, study and deliberation.

But I have reservations about S. 945.

I am concerned over Federal intrusion at this time into this entire area. And I draw no distinction between a federally mandated law and one which compels State conformity with federally mandated minimum standards. There is no difference. The effect would be the same. Whatever fine distinctions are drawn, I consider them to be the same. Either portends Federal surveillance and control in areas traditionally and appropriately reserved to the several States.

Despite the conflicting views in the matter, I am concerned over the potential impact should the reported cost increase of the proposed system become a reality. We are asked to take responsibility if there is dissatisfaction attendant to a system substantially constricting the right of recovery for pain and suffering and elimination of the right to hold a wrongdoer accountable for his reckless deeds. I do not believe I am prepared to assume a much greater responsibility if a system, which deprives these rights, also must be delivered at a higher cost.

I am also concerned that S. 945, in a most vicarious manner, emasculates, if not destroys, the State regulatory scheme developed under Public Law 15, the McCarran-Ferguson Act. S. 945 would create new stringent and intractable regulatory standards quite inconsistent with prior congressional recognition that what constitutes a valid system of regulation for one State under one set of conditions need not necessarily constitute a universal panacea for all the States. If McCarran-Ferguson needs revision, let us forthrightly address ourselves to it on its own merits, based on its own experience and not through the indirection of a program professing to correct the short-

comings of our automobile accident compensation system.

But if I am concerned over these and a myriad of other provisions of the proposal, I am doubly concerned over the impact which its enactment will impose on the business operations of many fine smaller insurers.

Currently 385 casualty companies are licensed in my home State of Alabama. While many are large multi-State writers, many more are small single State or regional writers. The insurance climate in Alabama is a healthy and vibrant one, and this latter group of companies has contributed a large share to the healthy conditions. In a State in which the factors which influence insurer success differ substantially from the same factors in other States, these parochial insurers have responded to the needs and demands of the people in the locale. In so doing they have created the mold to which the larger out-of-State insurers have conformed, thereby creating an enviable condition for writing insurance and servicing its policyholders and claimants. We are jealous of this condition, and I would imagine that there are other States equally jealous of similar conditions.

The enactment of S. 945 would seriously jeopardize this situation, for it would surely jeopardize the very existence of the smaller companies. A study of the provisions of S. 945 will disclose two features which will produce this impact.

First, the mandatory coverages payable without regard to the fault of the insured create in my judgment a far greater exposure than the current financial responsibility limits of $10,000, $20,000 and $5,000, the $10,000 being for one person's bodily injury; the $20,000 being the limit in any one accident; and the $5,000 being for property damage. With this greater risk many smaller companies presently operating within a safe solvency level will need to consider either a merger with larger insurers or accept the unfortunate choice of withdrawing from the market.

Second, the uniform procedures mandated by S. 945 will create a disproportionate burden on the smaller companies in striving to achieve conformity and, by eliminating one method by which they can control operating costs, will deprive them of an ever critical competitive edge.

It is not the small active auto insurers who are clamoring for a Federal solution. To the contrary, the smaller companies with virtually a single voice are pleading for the retention of state prerogatives and for a good reason. They are pleading to preserve their very existence. I join them in that plea, Mr. President. I again repeat the matter is too urgent and the stakes too high for this Congress at this time to intervene. I urge the continued deliberate study of this whole matter. In my view, the place for such deliberate study is the Senate Judiciary Committee and I heartily recommend the adoption of the motion of the distinguished Senator from Nebraska to commit the bill, S. 945, to the Judiciary Committee.

S. 945 makes several changes in the basic American system of jurisprudence which need further study, but the one which I find really incomprehensible is that it takes away a person's rights to sue for damage to his automobile and it gives him nothing in return. On the bodily injury side, S. 945 would, at least, give new no-fault insurance benefits covering medical expense and wage loss in return for taking away the right to sue for pain and suffering. But collision insurance is available right now, and so it gives nothing in return for taking away property damage liability rights. Now what kind of a benefit to the consumer is this? And remember that, according to the DOT studies, an average motorist is involved in a property damage accident once every 3 years, but only once in 40 years in a bodily injury accident.

Mr. President, this is a facet of this bill that needs study. Workmen's compensation took away common law rights to sue an employer but it gave something valuable in return. No piece of social legislation has ever taken away anything so basic as the right to sue for property damage and give no substitute in return.

For all these reasons I urge that this bill be sent to the Judiciary for much needed study of both technical defects and general legal principles. It is sorely in need of improvements and is too important to pass in its present condition.

Mr. President, I ask unanimous consent that there be printed in the RECORD excerpts from a speech by Hon. T. M. Conway, chairman of the Alabama State Bar's Auto Insurance Law Committee. These excerpts are from a speech which he is to deliver on August 12, 1972, before the National Conference on Bar Presidents in San Francisco.

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

EXCERPTS FROM SPEECH BY T. M. CONWAY

There may be some who think the organized bar should not take a position for fear of the "self-interest" criticism. Our position on that is this:

It is true that a segment of our profession earns a portion of its livelihood in representing clients whose rights would be abolished, but the majority of our bar does not. Yet, we are virtually unanimous in our stand. It is our duty to speak out in the public interest on matters where our knowledge and understanding of issues particularly qualifies us to do so. We speak in the interest of the future auto crash victims whose legal rights would be abolished, and of those who pay automobile insurance premiums. They are being misled by misrepresentations that their premiums will be significantly reduced, despite the fact that only the high risks drivers would get meaningful reductions while the good risks—the stable family man in particular—will pay more.

We invite scrutiny of our position and stand ready to defend it on the merits. At the same time we suggest like questioning of the motives of certain insurance companies which are spending vast amounts in advertising and propaganda favoring no-fault. Those are premium dollars they are spending, undoubtedly from the approximately six million dollars pocketed by insurance companies last year in Massachusetts by not having to pay for the rights abolished by that State's no-fault law.

Our basic position is as follows:

The Alabama State bar favors no-fault insuance in the sense that it affords to the public insurance which should pay, promptly, and without regard to fault, medical expense, wage loss and auto damage. We question that it is in the interest of the public to require by law that every car owner buy such insurance regardless of need, desire, or ability to pay for it, in addition to his other similar insurance or wage continuation plans. We vigorously oppose abolition of the present financial responsibility of the guilty to the innocent, and the abolition of the right of the innocent to full and just compensation for his injury. We are dedicated to the preservation of the right to a jury trial where necessary to determine those rights. We believe that moral and legal responsibility go hand in hand to deter recklessness which produced injury, and the elimination of either one of them will tend to increase the frequency and severity of auto accidents.

We specifically criticize the present Federal bill as follows:

Senate bill S. 945, which I call the sledgehammer bill, represents the fifth revision of the fifth Hart-Magnuson bill. The rest were discarded when they proved to be unsound, because among other reasons, they could not promise premium savings. Yet this bill was reported out . . . despite evidence from the National Association of Independent Insurers, made up of companies writing more than 50% of the automobile insurance in the country, showing that it would result in increased premiums across the board nationally. For example, Alabama stands 40th in average premium cost, and if we pass a law to meet the standards it sets, the average premium cost will increase 30.4% for minimum coverage, 42% for medium coverage and 16.3% for full coverage.

The inevitable consequence of passage of this Federal bill would be socialization of the reparations system. The car owners simply cannot pay this increased cost. The Government would take it over for handling under something like social security, and there are those in Senator Hart's camp who advocate just that as the ultimate solution, one of whom recently said in Birmingham that cost is immaterial. The National Association of Mutual Insurance Agents says this about S. 945:

"If this legislation passes in its present form, the ultimate result will be an inversion of the rate structure. Companies will have to make the rates on the basis of sustaining loss rather than on the basis of causing loss. Can you visualize the reaction of your typical married insured with children if his rates are increased significantly and the rates of the irresponsible driver are decreased substantially? Will our customers become so disenchanted with injustice of the system that they will demand that the State or Federal Government write auto insurance directly?"

We don't need in Alabama a Federal bill designed to meet problems existing in Boston, New York, Chicago, Newark, Hartford and Miami. We don't have the kind of problems they have, either in our courthouses or in insurance costs. Our insurance costs less than in 40 States, and in Alabama premiums should now be reduced, either by dividends to policyholders or reductions in next year's rates. One company has just announced a 10% dividend. While in some Alabama courts there is delay in trial of automobile cases, it is due in large part to criminal and priority condemnation cases. In almost all courts, trials may be had with reasonable promptness. On a composite basis, our circuit judges who try civil cases average roughly one automobile case per month. 90% of all claims are settled in Alabama without suit or lawyers. The automobile accident represents only 9% of all circuit court cases and approximately 90% of those are settled without trial.

The bill is opposed by those who understand it best, including President Nixon, the commissioners of insurance from all 50 States, all segments of the insurance indus-

try (including those which press hardest for no-fault legislation at the State level), the American Bar Association, and I believe all State and City bar associations. All of these agree that the States can do a better job of tailoring legislation to meet their own widely divergent needs.

We believe that Alabama's need will be satisfied by a moderate approach, such as that taken by Oregon. There, all policies are required to pay $3,000 in medical expense and $6,000 for income loss, without regard to fault. This will provide immediate relief from economic pressure brought on by auto accidents, and this $9,000 package is 4½ times Massachusetts' no-fault benefits and almost twice as much as Florida's. Reports indicate that the profit picture for insurance companies there was such that this coverage was added without any increase in cost of many policies, though for those who did not carry any medical expense coverage, there was a modest increase.

Oregon's brief experience indicates that more claims are being settled, and quicker. The anticipated ultimate result will be a decrease in the cost of bodily injury liability insurance, and all of this has been done without abolishing the rights of anyone.

We would not oppose enactment of a law such as Oregon's, or those of some other States which have taken somewhat similar action. We are encouraged to see that some four Alabama companies are now offering like coverage, without a law requiring it. Competition will soon force others to do the same.

We agree with USF&G's board chairman who said in the 1971 report to stockholders:

"But Massachusetts is a State by itself, having had compulsory auto insurance for 40 years. Abuses grew up, under which each person involved in an auto accident, knowing the other party had insurance under the compulsory law, brought claim for all he could possibly collect against the party presumed to be at fault. 6.73 claims per 100 cars registered was the 1969 frequency of claims made in Massachusetts. In all other States combined, claim frequency was only 2.09 claims per 100 cars. Thus the rate reduction proposed for 1972 in Massachusetts is not persuasive that the same pattern will occur in other States, nor that adoption of an 'ignore fault' law will develop lower rates in States which already have low claim frequencies." [For Alabama it is 1.70 and declining.]

It would be well for Congress and legislatures to heed the advice of USF&G's president who has notified its agents that since the differences in no-fault laws already adopted are so significant, "shouldn't your legislature refrain from taking any positive action until it is known which, if any, of the no-fault laws is going to operate successfully. Of the no-fault laws already adopted, one type will probably operate more successfully than another type. Who knows which one will operate best? Do you? Do your legislators? Do the owners of the motor vehicles registered in your State know? The answer to these questions is obvious. No one knows. No one will know until these no-fault plans have stood the test of time. Don't let your legislature take the chance of guessing wrong. Urge the legislators to go slowly and learn from the other experiments, then decide which is the best."

Mr. DOMINICK. Mr. President. The no-fault insurance bill (S. 945) which is now before the Senate has prompted a nationwide debate in newspapers, periodicals, television and radio. The concept has been the subject of extended debate before many State legislatures this past year. The letters, telegrams, position statements and reports received in my office have been overwhelming. I have followed the debate before the Commerce Committee and on the Senate floor with interest.

The question of no-fault insurance submitted to the Colorado State Legislature this past year was rejected and will be presented for the consideration of my constituents on the ballot in November. This referendum was initiated by Common Cause in Colorado. We have all heard from the trial lawyers, insurance companies, insurance commissioners, consumer groups, local, State and national bar associations.

Mr. President, I have reviewed this bill, the history of no-fault insurance in this country and the possible impact of this Federal legislation on the people of Colorado. The following facts emerge:

First. The Federal bill imposes extreme standards on each of the States. If a State does not enact a plan that meets the requirements of title II, then title III is automatically imposed on that State.

Second. Massachusetts was the leader in the no-fault field. Legislation has been effective since January 1, 1971—20 months ago.

Third. The following States have adopted some form of no-fault insurance plan—Massachusetts, Delaware, Florida, Connecticut, New Jersey, Maryland, South Dakota, Oregon. Not one of these States would meet requirements of the Federal plan.

Fourth. The plan adopted by Illinois was recently declared unconstitutional. However, the problems as set forth in the court's decision are capable of correction by the Illinois Legislature.

Fifth. Studies of the National Association of Independent Insurers indicate that premiums would increase 40 percent in Colorado under the "minimum" requirements of title II. There has not been ample time to consider such cost implications among the various States.

Sixth. The Federal plan has not been tested and differs from each of the existing State plans. The differences among the various State no-fault plans are obvious because each State has varying needs and circumstances. Some are rural, some are urban, and so forth. This is the reason that insurance premiums vary from State to State at the present time.

Mr. President, S. 945 is simply one more type of no-fault insurance proposal. Eight States have enacted varying no-fault plans and I am certain that more and more States will enact some type of no-fault insurance program as a result of the attention this subject has received. To impose on the States a national no-fault program, such as S. 945, could have disastrous consequences. I oppose a plan which is completely untried and untested—a plan which some studies indicate could result in a substantial increase in premiums to the citizens of Colorado and 25 other States in this country.

Mr. President, evidence presented for reform in the field of compensation for the motor vehicle accident victim is substantial. Such reform is directed toward a system that has developed over a period of several centuries. After ample opportunity for analysis of the cost implications of no-fault, the desirable features of the State programs might be adopted and molded into a reasonable uniform plan.

At that time, we would have the benefit of experience, something that is totally lacking as we consider S. 945. Since no State which has enacted no-fault insurance would qualify under this legislation, and since the most conservative estimate indicates that Colorado premiums would be raised some 40 percent, I will oppose this bill at this time, hoping that State experience and some additional actuarial work will enable us to meld the good features of State bills into better Federal legislation.

Mr. CANNON. Mr. President, as we consider the very controversial no-fault legislation, I suggest to Senators they listen carefully to their Governors and to their State insurance officials. These are the people on the firing line of insurance regulation, and as we so well know, each State has its own problems, that quite often must be handled by an approach that in all probability might not be applicable in any other State.

My own Governor, the Honorable Mike O'Callaghan, of Nevada, has appointed a statewide committee to draft no-fault legislation to be presented to our legislature in the 1973 session. He urges me to oppose S. 945, and leave this matter to the various States.

In addition the board of bar governors has pointed out that a committee is working on proposed legislation to be submitted to the Nevada Legislature.

I agree, at least to the extent that this is not the time to impose a no-fault plan on the Nation. I hope we will give the States additional time to work out their own problems in this area.

I ask unanimous consent that Governor O'Callaghan's letter be printed in the RECORD as well as the letter from the executive secretary of the State bar.

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

CARSON CITY, NEV., *August 2, 1972.*

HON. HOWARD CANNON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CANNON: I have learned that the Federal No-Fault Bill, S. 945, will be considered by the Senate in the near future.

After reviewing the provisions of this bill, I urge you to vote against its passage. I feel strongly that the several states should be given more time to develop no-fault measures that fit their individual needs. Nevada's experiences with automobile accident compensation are considerably different in scope than those of Illinois, New York or even California. This proposal represents such a substantial change from the current systems of insurance, that each state should be able to tailor its plan to fit the needs of its citizens.

The enactment of S. 945 would pose a serious threat to the McCarran Act, which provides for the state regulation of insurance, by undermining its entire rationale. In addition, one reliable cost estimate indicates S. 945 would require up to a 41 percent cost increase for Nevada motorists.

I have appointed a state-wide committee to draft no-fault legislation which will be presented to the 1973 session of the Nevada Legislature. I respectfully urge you to vote against S. 945 and give Nevada an opportunity to develop a law to meet its own needs.

Sincerely,

MIKE O'CALLAGHAN,
Governor of Nevada.

STATE BAR OF NEVADA,
Reno, Nev., August 31, 1972.

Senator HOWARD W. CANNON,
Senate Office Building,
Washington, D.C.

DEAR HOWARD: The Board of Governors of the State Bar of Nevada asked me to again write you to express the Bar's opposition to the Federal no-fault legislation now under consideration by the United States Congress.

The No-Fault Insurance Committee of the State Bar of Nevada rendered a report to the Board of Governors in which it recommended that the Oregon type no-fault legislation should be adopted in Nevada. The Committee indicated that it would prepare a bill along these lines to be submitted to the next meeting of the Nevada State Legislature.

In light of the fact that adoption of no-fault legislation at the State level is under serious consideration in Nevada, our Board of Governors believes that it would not be in the public interest to have Federal legislation in this field. The Board solicits you to oppose this Federal legislation. With kindest personal regards.

Yours very sincerely,

ROBERT R. HERZ,
Executive Secretary.

Mr. TOWER. Mr. President, I wholeheartily support the motion by the Senator from Nebraska (Mr. HRUSKA) to commit S. 945, the no-fault insurance bill, to the Committe on the Judiciary. There is no doubt that this bill contains features that could have wide-ranging repercussions on the Federal court system. It could put Federal courts in the business of deciding distinctly local matters where there is not even a hint of a Federal question under currently accepted standards.

I believe that to federalize this system without even so much as a hearing by the Senate committee that is charged by our rules with the oversight of our federal judicial system would be a travesty. The committee must have an opportunity to take testimony from interested parties to determine, to the extent possible, just what the effect on our federal system will be with Federal courts deciding matters where there is no Federal question, where Federal courts are, in effect, substituted for State courts. This is a matter of such precedence that I believe we in the Senate must know what we are doing before we can judiciously act. To make such a change in our system of federalism without the most thorough examination would be most unwise.

There are other questions, Mr. President, that must be closely examined by the Judiciary Committee before we can consider this question in the Senate. Under the McCarran-Ferguson Act, the regulation of the insurance industry was specifically delegated to the States. By the current bill we are proscriptively overriding this delegation, at least as far as automobile insurance is concerned. There have been no hearings on the implications of this matter and I believe that the Judiciary Committee would be the obvious place to examine the effect of S. 945 to the McCarran-Ferguson Act.

Mr. President, I have other reservations to S. 945 at this time. However, I believe that the ones that I have raised to this point must be cleared up before we can proceed to the consideration of this measure on its merits. Without having the answers to these basic questions, we will spend a lot of time debating the peripheral issues of S. 945 without being able to get down to its basics. I commend the distinguished Senator from Nebraska for making this most worthwhile motion, and I urge Senators to support it.

Mr. CHURCH. Mr. President, I shall vote for the motion to commit this bill to the Judiciary Committee. There is no question that the bill would restrict the jurisdiction of the Federal courts in tort cases, a matter which properly lies within the province of the Judiciary Committee. The committee should, therefore, have an opportunity to review the bill.

I can see nothing to be lost by the referral. Even if the Senate were to pass the bill at this time, there is no chance for it to be acted on in the House of Representatives before the end of the session. So the bill will have to be considered anew next year in any case.

At that time, we will have an opportunity to study and debate the measure in an unhurried fashion, which, in the long run, will likely produce the best legislation in this complicated field.

For these reasons, and not because I oppose in principle a well-considered no-fault bill, I shall vote for the motion to refer.

Mr. TUNNEY. Mr. President, I have decided to vote in favor of the Hart-Magnuson no-fault auto insurance bill and oppose its referral to the Judiciary Committee where it will die an untimely death. I support the bill because the present auto insurance system is a disaster and because I believe that the American consumer demands and deserves a better way.

Anyone who examines the present system cannot help but conclude that it perpetuates monumental economic waste and terrible inequities among victims. In March 1971, the Department of Transportation released its final report on a 2-year 24 volume study of the present motor vehicle insurance system. Some of the conclusions of that study were these:

First. The present system returns only about 44 cents in benefits to auto accident victims for each dollar paid in premiums to insurance companies.

Second. One third of claimants with losses between $1 and $500 recovered over 4½ times their medical and wage losses.

Third. Seriously injured victims with medical expenses of $5,000 or more recovered only 55 percent of those expenses while victims with medical expenses of less than $5,000 recovered 90 percent of their losses.

Fourth. Innocent victims with different economic or educational background are treated in vastly different ways. A college educated accident victim receives on the average 63 percent of his loss; but a victim with no formal education or less than 12 years of school gets about 38 percent. Similarly a victim with $10,000 income gets about 61 percent of his loss, but a person with income under $5,000 gets only 38 percent.

Fifth. For fatal accident victims who work, the average loss was $40,000, including lost future wages, yet the average settlement his family received from all recovery resources, including liability insurance, was $2,080 or 5 percent.

Sixth. No benefits are received in many cases such as where both parties are without fault, persons injured in one car accidents, and victims who are themselves at fault.

In other words, those who tell the public that the present system compensates the innocent victim for both economic and intangible—that is, pain and suffering—losses are perpetrating a monstrous hoax. The present system does not even come close to compensating the basic economic loss of a victim, let along his pain and suffering.

In fact, as the Senate Commerce Committee report on the bill puts it: "The odds are better in Las Vegas." And there is some truth in that. Compare the 44 cents on the dollar return provided by auto liability insurance with the fact that the New York Off-Track Betting Corp. returns 83 cents as winnings to bettors for every dollar in wagers.

And not only is reimbursement inadequate; it is also incredibly delayed. A recent New York State Insurance Department study shows that an injured auto accident victim faces delays in collecting under auto liability insurance 10 times as long as delays for collection under other insurance such as collision, homeowners, or theft. And when compared to accident or health insurance, the delay is 40 times as long.

For all of these reasons, I believe the time has come to junk the fault system and adopt a more equitable system of no-fault coverage as provided in S. 945.

This bill provides a Federal minimum standard for no-fault auto insurance and requires each State to adopt a no-fault plan meeting that minimum, or an even stronger Federal plan will go into effect in that State.

Under the no-fault system contained in S. 945, all of a victim's medical and hospital bills up to $25,000, all of his rehabilitation bill up to $25,000 and all of his lost wages—or the lost future earnings of a person who dies—up to $75,000 are paid by his insurance company regardless of who is at fault.

In addition, the proposed system will pay benefits as the loss occurs; if an insurance company tries to delay payment it will get socked with interest payments to the victim at the rate of 24 percent per year. In an era when the consumer must pay finance charges whenever he does not pay on time, it is only fair that insurance companies be treated the same way when they do not pay on time. In addition, if the victim is forced to sue his insurance company to collect, the company must pay for his lawyer.

In summary form, the advantages of this bill are these:

First. A far greater percentage of premiums paid by consumers will be paid out in benefits.

Second. Overpayment of small claims will be ended by eliminating the "nuisance" value of those small claims. Damages for pain and suffering would be available only to those who are seriously injured.

Third. Adequate compensation for fatally and seriously injured victims is provided for the first time.

Fourth. Incentives to reduce the waste in human resources are built into the bill. It pushes injured persons to accept re-

habilitation services; it provides sure payment for emergency services; and it encourages stronger, safer cars because the characteristics of a person's own car would affect his rate.

Fifth. Timely payment is assured, with interest at 24 percent per year if a claim is not paid within 60 days.

Sixth. Insurance will be available to everyone, with a maximum limit on any assigned risk pool premium.

COST

A final point is the question of cost. There have been a lot of claims made by all sides about the effect of a no-fault system upon the cost of premiums. I think it is critical that there be a full understanding about the expected cost of no-fault and the reality or unreality of cost estimates.

The Senate Commerce Committee obtained estimates of the nationwide cost effect of its no-fault proposal from four industry sources. The American Insurance Association which favors no-fault, projected a 6-percent premium savings on a nationwide average. The American Mutual Insurance Alliance, which opposes no-fault, projected a 2-percent savings. The National Association of Independent Insurers, which oppose no-fault, projected an 18-percent increase. And State Farm Insurance Co., the largest auto insurer in the United States, projected no change in premium costs.

The committee also attempted where possible to provide separate estimates for individual States. For California, the AIA estimated a 6-percent savings under no-fault. State Farm estimates a 7-percent savings. Allstate Insurance, which plans to sell a more expensive package, estimates a 17-percent increase. The AMIA did not provide a separate State breakdown.

Based upon those estimates and further study conducted by the Commerce Committee it would appear that the effect of a shift to the no-fault system is likely to be a small decrease in premium costs or no change at all. It is possible that a more substantial decrease might result if cost estimates prove too conservative. And it is also possible that no-fault might increase some premium costs.

And therefore, I believe it would be irresponsible to promise consumers dramatic decreases in premiums. There may be some such decreases, but where they are likely to occur is where the present system has had its worst failures—in Massachusetts, for example, where every nickel bumper used to result in a personal injury claim, real or imagined.

The important point is this: The no-fault system is a vastly more equitable system, one which goes a long way toward providing fair and swift compensation for all accident victims. Even if adoption of that system were to result in a modest increase in premium cost, I believe its advantages over the present system make it worth whatever it costs.

The savings in human terms offered by this bill make it one of the most important measures to come before the Senate this year, and I am, therefore, pleased to join in supporting it.

During the past year I have discussed the various no-fault proposals with a great many persons, including extensive discussions with trial attorneys. The principal arguments which have been raised in those discussions have dealt with the effect of no-fault insurance upon recovery for intangible losses—that is, pain and suffering—premium cost, and deterrent effect on bad drivers. I have considered those points with care and have come to the conclusion that S. 945 presents substantial advantages over the present system on each count.

I have already discussed the fact that the present system fails to compensate injured victims for even their direct economic costs, much less their pain and suffering. But in addition, under this bill, persons who are seriously injured retain their right to sue for pain and suffering.

As to cost, I have stated my own conclusion that the advantages over the present system offered by this bill make it worthwhile, particularly when three of the four estimates obtained by the Commerce Committee project no increase in premiums. In addition, through the opportunity for deductible provisions to prevent duplication of benefits and the loss reduction incentives contained in the bill, it is possible that further savings may occur.

Finally, with respect to deterrent effect upon bad drivers, I continue to believe that the most effective deterrent is strict enforcement of our licensing and traffic laws.

Mr. HART. Mr. President, the issue before us today may bear the greatest number of teeth marks of any in recent memory. Reform of the auto insurance system has been chewed on for years, until it is probably impossible to find one facet which has not been the subject of thousands of words of discussion and dissection.

The Antitrust and Monopoly Subcommittee has published 11 volumes of hearings and appendix material—beginning back in 1966. The Commerce Committee added five volumes to that. Backing up and greatly supplementing all this verbiage is the $2 million study done by the Department of Transportation. On top of that are numerous books, papers, and such by academicians and State legislators.

The conclusion reached by each source was that the present auto insurance system is serving consumers poorly.

As elected representatives, we did not need this much study to discover what a dismal job the present system is doing. Many of us—I am sure—has file drawers full of letters from constituents giving chapter and verse on how, when they truly needed it, they did not have the protection they thought they had bought.

During all this time of study, consumers have waited with amazing patience for their elected officials to come up with a solution.

They have done this when 50,000 deaths and 2 million injuries annually were demonstrating dramatically how little protection this system was providing. For each family involved with these accidents, this bill is already too late to help with the problems that are so real to them.

Now, we are asked to pause again and refer this bill to the Judiciary Committee for more study. May I suggest two things: First, such additional study is not needed. The issues have been debated. We are all as aware as we can possibly be before passage of the impact of this legislation. Second—and why blink the fact—a yea vote on this referral is in effect a vote to kill the bill for this session of Congress.

The clock is running—at best guess we have 7 or 8 weeks of time before the end of this session. In that time—if we are to deliver auto insurance reform to consumers—the Senate and the House must both act, and likely a conference report must be accepted by each body. Not a schedule guaranteed to reach the goal, but an effort worth making.

If this session should end without each of these steps taken, we must begin all over again next year. Realistically, then, a vote to refer this bill to Judiciary would mean at least another year will go by without delivering on our promise to reform the auto insurance system.

And for what purpose? So we can talk more about this bill?

Mr. President, for 50 years thoughtful voices have urged us to abandon the negligence principle in the automobile insurance system and go to compensation without regard to fault for victims of automobile accidents. Detailed analyses have been built up over the years, with the DOT study confirming the need to go to no-fault. The bill before us is the end product of thorough and extended hearings. To the extent this congressional system works, it is the product of the system fully engaged. The argument is made that it must go to the Judiciary Committee, because there are some features in the bill with which some Members disagree. But that is not the way to decide whether these features are wise or unwise; in our congressional system such questions should be debated right here and on the merits, propose amendments and then vote. Use this amendment process, not the device of "sending it back." Our committee has given the Senate its best judgment after lengthy study, debate and decision. Let the Senate do the same, now, here.

Mr. HRUSKA. Mr. President, I yield 10 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 10 minutes.

Mr. BELLMON. Mr. President, I urge the Senate to support the motion to recommit S. 945 to the Judiciary Committee. The reasons for my support are quite simple.

Let me first say, that I have long been aware of the need for reform in our automobile reparations system and that the "no-fault" principle, applied correctly, could alleviate many ills and guarantee a more efficient and less costly system.

The Commerce Committee has worked long and hard studying the various ramifications of this measure, and I wish to commend the chairman and committee members for their efforts. However, there is no question in my mind that this bill, if enacted, will have a dramatic and far-reaching impact on our legal system and

traditional legal concepts. Therefore, it is only reasonable that the Judiciary Committee be given ample opportunity to examine this proposal.

This bill, unlike the modified no-fault plans now in effect in Massachusetts, Illinois, Florida, and other States, would drastically limit and alter an individual's fundamental legal right to seek redress in the courts of law. Although I am not an attorney, I do know that inherent in our legal system is the basic principle of personal accountability—the duty of each citizen to use reasonable care not to injure his fellow man, and if he does injure him, to bear the responsibility of compensating him for his injuries.

As the Special Committee on Automobile Accident Reparations of the American Bar Association has so aptly stated:

There is a deep rooted instinct that one should not profit by his own wrong.

The Judiciary Committee should examine this measure in order to determine the important question of whether the fault principle should be maintained, at least in part, and to decide whether a combination fault/no-fault system, a modified no-fault plan, would be the most reasonable and equitable course to follow in seeking reform.

In addition, I have some very serious reservations concernnig the merits of this bill which, in my view, require additional committee consideration.

First is the question of cost. I am firmly convinced that public support for the "no-fault" concept has largely rested on the presumption that a no-fault plan would reduce the soaring cost of automobile insurance. Due to the high benefit levels in title II, statistics indicate that rather than a reduction, S. 945 would result in significantly increased premium costs to the average American driver.

Mr. President, in recent conferences with representatives of insurance companies and others knowledgeable in insurance matters in my State, I was informed that increases in insurance rates in Oklahoma would likely occur if S. 945 became law as it is presently written. These individuals are not opposed to the no-fault approach. Rather, they felt it was too soon for high-national standards to be set, and unanimously they prefer a State-by-State approach and the gathering of information and opinions before a Federal law was passed.

The various estimates presented to the Commerce Committee and received by my office predict that the average Oklahoma driver could expect an increase in premium costs from 18 to 45 percent. If these estimates are accurate, this legislation would hurt—not help—American motorists.

Second, S. 945 would force the abolition and repeal of all existing State programs and completely eliminate State flexibility in developing a program tailored to meet local conditions. A wiser approach is for each State to develop a program which takes into account local factors, concepts, values, and attitudes. These may vary dramatically from State to State.

Average incomes, medical costs and facilities, motor vehicle programs and geographic conditions which create different accident pictures, vary greatly from State to State. I do not believe that an insurance program which meets the needs of the residents of New York City would necessarily be appropriate for residents of Red Rock, Okla.

In my view, the minimums in S. 945 are excessively high. These high levels would result in increased premiums for many States and a severe limitation on State initiative and ability to deal with their respective problems. More reasonable standards should be required in all jurisdictions.

The better approach is the one advocated by Senator BAKER which would require no more than a $1,000 minimum for medical coverage and $5,500 for other economic categories, including lost wages on a first-party basis without regard to fault. Studies indicate these minimums will reimburse in full more than 95 percent of the victims of automobile accidents without an increase in premium costs and also permit the States flexibility in developing programs geared to their respective needs.

We frequently hear about a taxpayers' revolt. In my opinion the problem is much deeper. What we are witnessing in this country is a citizens' revolt against the growth of government. Premature passage of the legislation in the no-fault field and the subsequent increase in insurance premiums would, in my opinion, produce a policyholders' revolt.

Mr. President, I have in my hand a small sample of the many letters and telegrams received by my office. These communications are heavily in opposition to no-fault insurance and they come from knowledgeable people who have spent their lives, careers, and activities in this field.

For example, I have a wire from Lewis Munn who says:

We urge you to oppose senate bill 945X as it is not in the best interest of Okla. since several states have enacted this type legislation it would seem appropriate to wait until their experience is available for evaluation. Furthermore it would appear feasible for this type of legislation to be enacted and administered at the state level to fit local needs. Also the level of benefits as written in SB945 appears to be excessive for this area and would cause an increase in rate for Oklahomans. It appears that farm vehicles could be substantially increased.

LEWIS H. MUNN,
President, Oklahoma Farm Bureau and Affiliates.

I have many similar communications and the theme is the same: That it is too soon; that this would mean an increase in rates.

Mr. President, for those reasons I urge that the Senate support the motion to permit the Committee on the Judiciary the opportunity to study the serious problems which this legislation raises.

Mr. MAGNUSON. Mr. President, will the Senator yield on my time?

Mr. BELLMON. I yield.

Mr. MAGNUSON. Does the Senator have any idea when the Committee on the Judiciary would ever report the no-fault bill?

Mr. BELLMON. That question really should be addressed to the Senator from Nebraska.

Mr. MAGNUSON. The Senator knows or should know there would not be any hearings this year or in this session. If I could get assurance there would be hearings, that would be one thing, but I cannot get that from anybody on the Committee on the Judiciary. I refer to hearings in depth, or a date certain when the bill will be reported back. Can the Senator give me that?

Mr. BELLMON. As the chairman knows, I am not a member of the Committee on the Judiciary. Perhaps the Senator from Nebraska, who is in the Chamber, can answer the question.

Mr. MAGNUSON. I should not have asked the Senator.

Mr. HRUSKA. That bill rested in the haven of the Commerce Committee for 16 months. It would be unfair to expect the Committee on the Judiciary to report it back in 16 days after the Committee on Commerce had it for 16 months.

Mr. MAGNUSON. How long does the Senator think they would take on it?

Mr. HRUSKA. If we are going to get in the business of saying we want to pass it this session and we do not care how inadequate or how deficient it is, we want to pass something——

Mr. MAGNUSON. Oh, well.

Mr. HRUSKA. I yield 15 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. ERVIN. Is it not a fact that this country has gotten along without a bill like this from the time of George Washington to the present moment and the heavens have not fallen?

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. HRUSKA. I am sorry.

Mr. ERVIN. I would like to ask the Senator a question.

Can the Senator show me where in this bill, if a man is driving a truck on a highway and has a no-fault insurance policy, and he runs off the road and runs into my house, that I can get any damages under the provisions of this bill?

Mr. MAGNUSON. The Senator may sue anybody under section 204, where there is damage to your property.

Mr. ERVIN. Where is that? I have looked for it. I cannot find it in the bill. I have looked from one end to the other.

Mr. MAGNUSON. Section 204. If the Senator will sit down and read it I will be glad to answer his question later.

Mr. ERVIN. Will the Senator tell me the words in section 204. It is a rather short section.

Mr. MAGNUSON. Section 3—Physical Damage to Property Other Than Motor Vehicles in Use.

Mr. ERVIN. I thank the Senator and accept his statement as valid.

Mr. MAGNUSON. I do not want to get into a discussion of the merits. The motion to refer the bill to the Committee on the Judiciary is before the Senate. We are going to debate the merits if the motion is not agreed to and if it is referred to the Committee on the Judiciary the Senator can take it up to the

Committee on the Judiciary and get an answer to his question.

Mr. HRUSKA. I yield 15 minutes to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I do not claim to be an expert on this bill. Like every other Member of the Senate I have had hundreds and hundreds of other tasks to perform and it was only in recent days that I could even get a copy of the bill in its present form. Prior to that time I tried to get copies, but obtained copies that had been substantially changed from time to time.

I say to my good friend from Washington we should not place upon a nation of 200 million people a bill of this importance without affording Congress and the Senate an adequate opportunity to ascertain what is in the bill.

If enacted into law the bill would make the most drastic change in our system of government. Up to the present moment the regulation of all matters of liability——

Mr. MAGNUSON. Mr. President, if the Senator will yield on my time, so the RECORD will be straight, we reported this bill in June, it has been here since June. We have held hearings, all kinds of hearings, we have had a study costing $3 million which lasted 3 years, which was distributed to every Senator. It was reported in June and the Committee on Commerce had many witnesses. The Senator from North Carolina could have submitted amendments. We listened to everybody. We took our time. The bill was reported in June.

Mr. ERVIN. In June——

Mr. MAGNUSON. If I may finish, on my time—it was reported by the Committee on Commerce with three votes against it. The Committee on Commerce looked at it very carefully. So do not suggest we would just come down here last night or the day before yesterday and give the Senate a bill. That is not true.

Mr. ERVIN. This bill was reported on the 20th day of June 1972, a few days before we went into recess and at a time when we had little opportunity to study it. The Senator from North Carolina, who works about all the daylight hours, has had other tasks to perform and has had to stay on the floor of the Senate since we reconvened and he did not get a copy of this bill in its final form until about after the recess. It was some days after it was reported; that is, after the committee acted on it.

Mr. MAGNUSON. We print hundreds of copies of the bill and the report. They are available to the public, to Senators, to everybody. The Senator said he did not get a copy of the bill.

Mr. ERVIN. No.

Mr. MAGNUSON. Who did the Senator ask?

Mr. ERVIN. I have asked your committee a number of times to furnish me copies and it turned out that when the bill came out it was quite different from all previous copies.

Mr. MAGNUSON. Well, we change bills all the time. The Senator does in his committee.

Mr. ERVIN. But the Senator from Washington must recognize that it took his committee about 16 months to study this bill, and this bill is so complicated that other Members of the Senate should have some time to study it, and especially members of the Judiciary Committee. It is not essential to pass the bill this session.

Mr. MAGNUSON. That shows we gave it careful consideration.

Mr. ERVIN. Yes, but the Senator does not seem to want anybody else to have an opportunity to give it careful consideration.

Mr. MAGNUSON. That is not right. The Senator could get a copy of the bill any time he wanted it. All he had to do was ask a page to get a copy of the bill.

Mr. ERVIN. I could not get a copy of the bill until after the bill was reported to the Senate on the 20th of June, and it was not available at that time—only the copy that the Senator reported.

I can understand why some insurance companies like this bill, because it robs every person injured in a motor vehicle accident in the United States of some very basic rights. It virtually robs everybody of the right to recover for damages for physical suffering. Such suffering is classified in the bill as an item of intangible damage. It is well recognized in every State in the Union that in an accident for personal injury the plaintiff is entitled to compensation for his physical pain and suffering directly resulting from the wrongful acts of the defendant.

Under this bill a man cannot recover a single penny for physical pain and suffering unless he suffers a permanent loss of a bodily function or a serious disfigurement or is totally incapacitated for at least 6 months from following his vocation.

Not only that; it is well settled in every jurisdiction of this country that a person has a right to recover damages for mental suffering against the operator of a motor vehicle who is negligent.

Under this bill he cannot recover anything, not a penny, for mental suffering or mental anguish.

He not only has the right under the law of every State of this Union at the present time to recover damages for future pain and suffering; under this bill he cannot recover a scintilla of damages for future pain and suffering, and future pain and suffering, both bodily and mental, is really more serious than a broken leg.

I am going to read a statement from the law of damages:

> A pregnant woman who by reason of injuries negligently inflicted suffers a miscarriage is entitled to recover such damages as will fairly compensate her for the physical and mental pain and suffering and any impairment of her health occasioned by the miscarriage.

I cannot find a syllable in this bill which will permit a woman in that situation to recover a single penny for those injuries.

This is called a consumer bill. It would rob consumers of the right they now have under the law to recover damages for physical pain and suffering in times past from an injury and for future pain and suffering. It would rob them of the right to recover damages for mental anguish, and those injuries, as I say, in most cases, are more serious than such injuries as a broken leg.

There are other bugs in this bill that ought to be considered and removed. For example, it has a provision here, which I shall read to the Senate, on page 36, in regard to attorneys. Now, attorneys may be in low repute in some quarters, but I would say that nobody can get justice in our courts unless he is represented by a competent attorney. In fact, as far as criminal cases are concerned, our Constitution recognizes the right to an attorney as being a basic right by saying that every person charged with crime shall be entitled to the services of an attorney for his defense, and I think the due process clause requires that a person be given the right to the services of an attorney in a civil action. Legal representation is certainly essential to a fair trial.

Let us see what it says on page 36, subsection (b), starting on line 17:

> (b) No part of loss benefits paid under a qualifying no-fault policy or mandatory optional coverages or under an approved self-insurance plan shall be applied in any manner as attorney's fees for services rendered in pursuing a claim under a qualifying no-fault policy. Any contract in violation of this provision shall be illegal and unenforceable, and it shall constitute an unlawful act for any attorney to solicit, enter into, or knowingly accept benefits under any such contract.

This provision outlaws any contract between a client who has sustained an injury in a motor vehicle accident and his attorney for the payment of fees for representing the client in a claim under this act.

And I want to call attention to another provision relating to attorney fees, which is on page 38. This is what it says:

> SEC. 105. A person making a claim under a qualifying no-fault policy or mandatory optional coverages or under an approved self-insurance plan, may be allowed an award of a reasonable sum for attorney's fee (based upon actual time expended) and all reasonable costs of suit in any case in which the insurer or self-insurer denies all or part of a claim for benefits under such policy or plan unless the court determines that the claim was fraudulent, excessive, or frivolous.

It will be noted that this provision stipulates that the attorneys' fees must be calculated, not on the skill of the attorney, not on the difficulty of the case, not upon the experience of the attorney, not upon the wisdom of the attorney, not upon the result of the attorney's efforts, but must be calculated solely upon actual time expended.

In other words, it provides that a professional man must be compensated on an hourly basis ignoring his skill, his experience, the benefit of his services to his client, and the vast experience he may have had in litigating claims.

The language so providing ought to be stricken out. All these matters should be taken into consideration in fixing attorney fees. This is one of the bugs the Judiciary Committee could properly and wisely remove.

I have pointed out that under a previous provision of this bill, which I have read to the Senate, the client is prohibited from making any agreement with

his attorney for compensation for the services which his attorney renders him in prosecuting claims for injuries suffered in motor vehicle accidents.

I call attention to another provision, which says, in effect, that the fees of an attorney for a successful claimant must be fixed by the court, and paid by the insurance company. This provision does not really secure for the attorney any fees. It says that the judge "may" allow him compensation. The attorney has no right to his compensation. He cannot make a contract with his client for it, and he cannot compel the court to give him any compensation whatsoever. The judge merely has the discretionary power to award him compensation, and even this judicial power is subject to an exception. The judge cannot award the attorney compensation, no matter how much he recovers for his client, no matter how great his skill is, no matter what the value of his services to his client is, if the claim his client makes is "excessive."

Mr. President, I have spent the major part of my active life in the courtroom, either as a trial attorney or as a judge. With the exception of a few suits on promissory notes and other contracts, I have never yet seen a plaintiff who did not make an excessive claim. By that I mean that plaintiffs always claim more than they ultimately recover.

Under this provision a lawyer, instead of representing his client as he should represent him, is either going to have to be one of those wizards gifted with the uncanny, divine, prophetic power to foretell exactly what the judge or the jury trying the case is going to award his client, or he is going to have deliberately to underestimate the claim of his client in order to get any compensation whatever.

This bill needs to go to the Committee on the Judiciary. I have high respect for my good friend from the State of Washington. I know his zeal for the cause of the consumers. But it took his committee, with all of the staff that they have—and they have an able staff—16 months to reach a conclusion as to this bill; and after they have worked on it for 16 months, the Commerce Committee reports a bill which denies any injured person, for all practical intents and purposes, any right to recover damages for physical pain and suffering or for mental pain and suffering, and in addition to that a bill which is so phrased that the lawyer for a claimant cannot get any compensation if he overestimates the value of his client's claim.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. HRUSKA. I yield the Senator 10 more minutes.

Mr. ERVIN. I cannot understand why the Senate should be reluctant to let this bill go to the Judiciary Committee, which has jurisdiction of court proceedings and questions involving the jurisdiction of Federal courts and State courts.

There should be no great hurry to pass a bill which will take away from the States, for the first time in the history of this Nation, jurisdiction over automobile accidents, and vest it in the Federal Government.

"Oh," Senators say, "the bill will allow the States to carry out its provisions." But the States are required to carry out the orders of Congress, just as they are given in this bill. And I would say, Mr. President, that the necessity of enacting as well as sound legislation wise conduct on the part of the Senate, requires that the Senate vote in favor of the motion of the distinguished Senator from Nebraska that thi bill be referred to the Committee on the Judiciary, and that that committee be given an opportunity to look at the bill and improve it.

Personally, I think the bill could be amended so as provide a satisfactory solution to this problem. There is no doubt of the power of Congress to regulate insurance as an interstate business. But I do question the power of Congress to regulate the power of the State, to regulate tort actions within their borders.

Irrespective of that, this bill ought to be studied by the Judiciary Committee, to see if it could not propose amendments which would accomplish the objectives of this bill without destroying the jurisdiction of the States to legislate in respect to tort law within their borders, as this bill would do.

I think this could be done by providing that no insurance policy could issue unless it provides minimum things, in respect to no-fault insurance but that the State could legislate generally outside the scope of the measure if it did not contradict it.

I hope the Senate will send this matter to the Committee on the Judiciary, and I thank the Senator from Nebraska for yielding.

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

Mr. ERVIN. I yield.

Mr. HRUSKA. There is a provision in this bill, at page 46, which indicates and provides that if a person is entitled to benefits and he refuses, without good cause, to accept rehabilitation services available to him——

Mr. ERVIN. That he loses them.

Mr. HRUSKA. That the insurer is authorized to make deductions from any payment under that judgment——

Mr. ERVIN. Up to 50 percent.

Mr. HRUSKA. Up to 50 percent. Would the Senator have any particular thoughts as to the impact upon the sovereignty of the court, the State court, of that provision, and how it would be impaired by a provision of this kind, notwithstanding going through all of the procedures that are supposed to be given full faith and credit by anyone who is bound by such a judgment?

Mr. ERVIN. I think it would ignore the rights of the States, as well as the rights of the individuals concerned. I do not see why an individual should be denied 50 percent of his damages because he does not choose to undergo rehabilitation. He may not have any faith in the people who are going to rehabilitate him.

Mr. HRUSKA. So, having a secure judgment for damages, and having refused to accept rehabilitation for what he may think is good cause, because he has a difference of opinion with the insurer, he will have to go through another lawsuit to prove that the reason he did not accept those rehabilitation services is for good cause. Is that not about the way it adds up?

Mr. ERVIN. That is exactly what it provides. I think the Senator is making it clear that this bill has many defects which need correcting.

The PRESIDING OFFICER (Mr. GRAVEL). Who yields time? If no one yields time, the time will be charged equally to both sides.

Mr. HRUSKA. Mr. President, is it the intention of the Senator from Washington to take any time at all?

Mr. MAGNUSON. I want to take some time, though not too long, because we do have a serious problem here with many Senators, at least 10 or 12, who must leave before 7 o'clock. So I am not going to take too much time.

Mr. HRUSKA. I thought our time was almost taken up, and I thought perhaps the Senator——

Mr. MAGNUSON. I do not know how much time the Senator has left.

The PRESIDING OFFICER. The Senator from Nebraska has 18 minutes remaining, and the Senator from Washington has 1 hour.

Mr. MAGNUSON. I will say to the Senator that I did not intend to take much time, anyway, because everyone knows what this motion is all about. It buries the bill. It is as simple as that.

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, will the Senator yield me 30 seconds?

Mr. HRUSKA. I yield.

Mr. ERVIN. In reply to what the Senator said, it would not bury the bill; because on motion of the Senator from Washington, the Senate at any time, by a majority vote, could bring the bill back and put in on immediate passage.

Mr. MAGNUSON. That is an Alice in Wonderland procedure—to vote to refer and then vote to bring it back. If the majority voted to refer it, the majority would not vote to bring it back. The Senator from North Carolina has been around here long enough to know that.

Mr. ERVIN. I have been around here long enough to know that a majority of the Senate at any time can discharge a Senate committee from further consideration of a bill.

Mr. MAGNUSON. That is true. And I have been around here long enough to know that any Senator who wants a copy of a bill can get it in 5 minutes.

Mr. ERVIN. Not before it is printed.

The PRESIDING OFFICER. Who yields time?

Mr. MOSS. Mr. President, will the Senator yield to me?

Mr. MAGNUSON. I yield 5 minutes to the Senator from Utah.

Mr. MOSS. Mr. President, we are hearing very emotional pleas now to refer his bill to the Committee on the Judiciary, and a little discussion seems to be going on as to whether it will get a violent burial or a decent burial when it gets over there. But I do not think it is anybody's feeling that it will have anything but a burial.

So I agree with the chairman that we will be voting, in effect, on a motion whether or not to kill this bill, at least for this session of Congress, meaning

that we would start over again in January if we are to have a no-fault insurance bill.

Mr. President, I believe, with the President of the United States, that no-fault insurance is an idea whose time has come. This, obviously, is the feeling of our committee; because after working for 2 years on this bill—in fact, more than that, because we authorized the study that was made by the Department of Transportation which began over 2 years before our present consideration, and a report was made that no-fault insurance was the appropriate answer to the mess we have in connection with the present tort liability insurance.

As every consumer in this country knows, his insurance premiums go up annually; he is subjected to cancellation without any ceremony, and this particularly strikes at the young, the old, and the minority groups. So something has to be done if we are to give any relief to the consumers in this country.

The Senator from North Carolina seemed to be very exercised, because he said that this bill would take away from those who were injured in automobile accidents their right for recovery under the tort liability law. This is not the case. Their tort liability recovery is limited, and I would submit that this is not an unusual situation. We already have federally legislated workmen's compensation, where the right of a workman who is injured on the job is circumscribed in some degree, and he is assured that he will be able to recover for his injury on the job regardless of contributory negligence. This bill does no more to interfere with the traditional rights of persons who operate motor vehicles than the workmen's compensation law does with those who are injured at work, our railroads and elsewhere.

But the second part, in section 204, provides for tort liability recovery as soon as it goes beyond the categories that are specifically named and guaranteed to every person who is injured in an automobile accident—either injury to his property, physical injury, or loss of wages.

Section 204 of the bill clearly states that the tort liability arising out of the operation, maintenance, or use of a motor vehicle is abolished, except—and then it sets forth five different instances in which tort liability will apply, in which a person has all his rights to go into a court—State court, Federal court, wherever the jurisdiction attaches—and make recovery in any of these areas. Included is the type of injury that the Senator from North Carolina was talking about, where a person has intangible damage, if he dies or sustains permanent, significantly incapacitating, loss of body function, permanent serious disfigurement, or an injury resulting in more than 6 months of complete inability of an injured person to work in his occupation, and so forth.

It gives the details of the situation in which a person may bring a tort action for intangible damages that would be based on negligence; and the general law of negligence would apply, whatever the law is in the State where this applies.

Another thing that perhaps is overlooked is that in this bill provision is made for the States to enact no-fault insurance laws. Certain basic provisions are required; but if the State fails to meet these, the Federal law would attach. If the State, however, adopts no-fault insurance, then the State law would govern entirely.

It is expected fully by the committee that the States would administer this law with their State insurance departments and their proximity to those who are using the highways and driving motor vehicles within their jurisdiction, because the State has the police power there and has capability for administering a law of this sort.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. MOSS. I am glad to yield for a question.

Mr. ERVIN. It says that any State no-fault motor vehicle insurance plan must restrict tort liability to at least the felony extent:

(a) Tort liability arising out of the authorization, maintenance, or use of a motor vehicle is abolished except as to:

(2) A person engaging in criminal conduct.

Under the law of North Carolina, a man engages in criminal conduct when he drives on the wrong side of the street, when he follows another vehicle too closely, when he drives while drunk, when he drives in a reckless manner, or when he drives above certain speeds. If he does that, then under this provision the whole bill would fall to the ground.

Mr. MOSS. If criminal conduct is involved and the driver is guilty of criminal conduct, then tort liability would attach.

Mr. ERVIN. The violation of a motor vehicle law would be criminal conduct. So that type of situation has not ever been taken care of. That shows that the bill ought to be studied by a committee that would find out exactly what engaging in criminal conduct means.

Mr. MOSS. I think it means that he is driving his vehicle in a manner that is against the law of the State in which he is driving, and he is engaged in criminal conduct if he is involved in that.

Mr. ERVIN. That involves almost every motor vehicle accident.

Mr. MOSS. It might involve a great deal. If he seeks recovery for any of these damages, he has the tort jurisdiction so to do in a case where the driver is engaged in criminal conduct.

Mr. ERVIN. The point I am making is that that shows the bill is worthless, because it would not cover a normal situation which exists.

Mr. MOSS. There is another section where criminal conduct is defined as an offense punishable by more than 1 year in prison.

Mr. ERVIN. It is, but under most laws in most States, driving while drunk or driving in a reckless manner is punishable by more than 1 year in prison——

Mr. MOSS. It might be in some States. It is a misdemeanor in most States—6 months.

Mr. ERVIN. Then why not pass a law making all violations punishable by more than 1 year?

Mr. MOSS. That is where a State, by enacting its own no-fault insurance, can meet the basic conditions put into this statute. We have been talking about no-fault insurance in this country for 10 to 20 years. Some States have moved already in this field. But when the matter came up 2 years ago, the plea from the States was to let them have time to move. About three or four of them are all that have ever taken any action on it.

Mr. ERVIN. This illustrates after 16 months to 2 years, the time they worked on the bill, that they did not come up with the best kind of bill as to phraseology. It says here that a State no-fault motor vehicle insurance plan must abolish tort liability except other than as to a person engaged in criminal conduct. Criminal conduct is defined on page 25 in subsection 3 of section 101 as meaning the conviction of a person. So there is a contradiction here. In other words, criminal conduct means the conviction of a person, that a person must be convicted. A person is not engaging in criminal conduct after his conviction.

Mr. MAGNUSON. The Senator from North Carolina takes a bill that is sent to the Senate for the purpose of amendment, rejection, or approval. The Senator can amend this bill on the floor and his advice would, I think, be sought by many Senators on the legal aspects. This is a complex bill. Why pick at a bill, when this is about the seventh draft we have made of it in committee because it is so complex?

I want to suggest to the Senator that there are 16 members on the Commerce Committee who are lawyers. Does the Senator know that? They all have good backgrounds. Only one member of the committee is not a lawyer. I do not believe that other lawyers in the Senate have any particular monopoly on legal expertise. We looked at this from a lawyer's viewpoint. Some of the very fine lawyers we have on the committee are the Senator from Kentucky (Mr. COOK) and the Senator from Tennessee (Mr. BAKER), and other Senators. So this was not put out by a bunch of nonlawyers on the committee. We went over it word by word and comma by comma. We authorized $2 million on a study which was distributed to every Senator over a year ago. Each one could have looked at and studied it. We have some pretty good lawyers on the committee. The Senator from North Carolina is suggesting we could run around and write a bill not knowing legally what we were doing.

Mr. PASTORE. Mr. President, we are beginning and I think ultimately that we are going to have no-fault, whether we do it in 1972 or whether we do it in 1973. We have recognized the fact that four States have already adopted it.

Now, here is the Senator from Rhode Island who starts out from his home to come to Washington to do his job as an elected U.S. Senator. I have to travel. I have to travel through Connecticut. Connecticut will have a no-fault insurance on January 1, 1973. I have to go through New Jersey. It has no-fault insurance. I am not going to go to Florida, because I do not enjoy being down there too much as I do not have the time nor the money,

but the fact still remains that when I go from my home to go to my job in Washington, D.C., I have to go through two States which have no-fault insurance.

I am told that I forfeit my right to sue because Rhode Island does not have no-fault.

One criticism I have made before the committee, and it will be sustained by the Senator from New Hampshire, I am sure, is that if we are going to have no-fault, it has got to be national. That is the trouble. If we do this piecemeal, we will not have a uniform law.

The point I am making here this afternoon—and I realize that this is not a perfect bill, that it can be perfected—is that although it has been disclaimed by the Senator from Nebraska that if it goes to the Judiciary Committee it will not go over to the graveyard, I think that is exactly what will happen to it. It is going to go there to die. Then where are the rest of us left?

Governor Rockefeller is for it—in time it will come; the Governor of Rhode Island is for it, and in time it will come; the Governor of Delaware is for it, so the time will come. The big question is, if it is going to be at all, it has got to be national.

A man has to know where he stands. Just imagine the Senator from Rhode Island traveling through the State of Connecticut and just because Rhode Island does not have no-fault, and some man who is a drunken driver crosses over the median, but he is an operator out of Connecticut, and he strikes my car, do you realize, Mr. President, that I have forfeited my right to sue? I repeat, I have forfeited my right to sue. But I have been hit by a drunken driver out of the State of Connecticut. So, we have got to do something about it. That is what this is all about. I would hope that we would do something about it here this evening.

Mr. MAGNUSON. I thank the Senator from Rhode Island for his remarks.

The President of the United States said recently, and I quote him verbatim, "No-fault insurance is an idea whose time has come."

Now there has been some argument—I shall be brief—about the constitutionality of this bill. Through all the years since I came to the Senate, I have gone through many arguments about the constitutionality of bills. Lawyers have different opinions. Lawyers in the Senate have different opinions, and so do lawyers on the Commerce Committee. I repeat, we have some good legal talent on that committee. It does not all rest in the Judiciary Committee.

Now we pass bills that have been discussed on both sides as to constitutionality. Yesterday I put in the RECORD my opinion of the argument as to the constitutional questions raised by the Senator from Nebraska. He disagrees with me, but we have done that. If every time a bill came up, we would get into arguments as to the bill's constitutionality, we would never pass a bill in this body. So we try to decide its constitutionality before it comes to the floor of the Senate.

I do not care what you do in these bills. I like to think what Shakespeare said in Richard II or Richard III——

Mr. PASTORE. Richard III is right.

Mr. MAGNUSON. Richard the Third. When they were trying to write Magna Carta and they had been arguing and nitpicking with lawyers, and doing everything else—and this had been going on for 4 or 5 days, and they were not getting anywhere—a butcher who was one of the free men at the convention went into town and had a few beers and he came back and got to the platform——

Mr. PASTORE. I hope the Senator does not finish telling the story because he has already said that all but one of the members of the committee are lawyers——

Mr. MAGNUSON. Sometimes this nitpicking with us is all a matter of argument. We lawyers can always find an argument. We can always find a lawyer who thinks that a bill is unconstitutional, no matter what it is.

Anyway, he came to the platform and he said:

> Take all the lawyers back to town and hang them, and we will come back in the morning and start all over again.

No-fault insurance is getting into the situation where there is a legal question here and there. Sure, there are some problems here.

I want to leave one thought with the Senate tonight. I do not think that anyone in the Senate or within the sound of my voice, my friends from the press or anyone else, would disagree with the statement that auto insurance is a mess in this country. It is bordering on a national scandal.

Mr. President, I call the attention of the Senator from North Carolina to this. When the American people pay $14.6 billion in premiums and get back $7.1 billion, something is wrong. And we had better stop and look at all of these things and get going. I think that a referral to the Judiciary Committee will stall us at least a year or two.

Mr. PASTORE. Mr. President, I merely want to say that I do not want to take up too much time. America is on wheels. Most people travel and they travel quite a bit. My point right along has been that in all of this process we can come up with some sort of plan that is a national plan. This idea that one State has one rule, another State has another policy, and another State has another policy in the long run means that Americans will suffer because of this.

If we are going to have no-fault insurance, I say that it has to have national guidelines for the insurance. Otherwise, we will be in serious trouble. Some problems will be more severe in some States than others. Other States will be more lenient.

The fact remains that if a man is going to travel from one State to another, he ought to know pretty much what his rights are. As it stands now we do not know. We have Massachusetts that has a plan. Connecticut will have a plan. New Jersey is going to have a plan. Florida already has a plan.

I tell the Senate that unless we begin to do this on a national level, in the long run the individual American will suffer.

Mr. MAGNUSON. Mr. President, there would be 2 years lost if the motion to commit were agreed to, with a consequent loss to the American public of quite a few hundreds of millions of dollars. I do not think that even the Senator from Nebraska would say that we should not do something about this. According to the best figures we can get, $14.6 billion is paid in. And the best that a person who is hurt can get is only half of what he pays in. Out of every dollar we pay, we get only 50 cents back.

The argument that no-fault will cost more is in dispute. We had all kinds of testimony. The Senator from Tennessee (Mr. BAKER) asked for 2 or 3 days of hearings. and we went through those hearings. Some actuaries said it would cost less. One said he thought that it would cost more. However, even if it cost a little more, at least a fellow has a chance to receive more than 50 percent of what he pays in. Las Vegas has better odds than that, much better.

Something has got to be done. We have 25 volumes of studies, and all come to the same conclusion. We paid something like $2 million for a study we commissioned. Any Senator will have a chance in the coming week to offer amendments to the bill.

I think the Senator from Nebraska may have some good amendments. The Senator from North Carolina may have some. They can present them. The Senate can vote on them. They may agree to some of them. But what is the use of our sitting around and suggesting a commital to the Judiciary Committee. It will delay the matter 2 years, just as sure as I am standing here.

In the meantime the mess is getting worse. It is a national scandal. If there is one thing that affects every American home, it is auto insurance.

Premiums are going up and the payments to the people who get hurt are going down. That is the trend now. And how we can justify a man putting up $1 and only getting 50 cents if he is hurt is more than I can understand. I do not know how any Senator could defend that.

The purpose of the bill is to try to do something about it. On some questions, there may be a difference of opinion, however, Senators can submit amendments. We will be on the bill for a while unless the motion carries. I might vote for some of the amendments. I do not know of any bill that comes from any committee that is not subject to that procedure. Surely I do not suggest that I know every bill that comes out of the Judiciary Committee. I do not know them thoroughly until they get on the floor. If I do not like them, I vote against them. However, if I think they should be perfected, I submit an amendment. If I like a bill, I vote for it. That is the way the Senate works. We cannot all keep track of all the hearings. If some of the Senators were on the Commerce Committee they would find that they were involved in hearings every day of the week.

I do not want the American consumer to sacrifice another $7 billion in 1973.

I am hopeful that the motion will not carry.

Mr. President, let me suggest that in

1933 the first major independent study was made of this problem.

I have good reason to feel that I know something about this theory. When I was in the legislature of my home State in 1933, I introduced the first workmen's compensation bill there and it passed. That is how long we have had this idea. No-fault insurance is not a new idea. It is involved in all kinds and phases of insurance.

I want as good a bill as we can get. However, I do not want to wait 2 more years to clean up this mess. It will cost the American consumers another $14 billion, and they will not get any benefits out of it.

Mr. President, I oppose the proposal to delay a vote on the national no-fault insurance bill by referring it to another committee.

In 1933 the first major independent study of the liability-based automobile insurance system rejected the fault mechanism and proposed no-fault reform. Since 1966 this committee has been seeking the answers to the automobile insurance mess. More than 25 volumes of studies by the Department of Transportation, day after day of committee hearings, page after page of scholarly articles, editorials, public opinion polls, and, most of all, the outraged reaction of American consumers have brought us to a point that further delay becomes intolerable.

If we delay action now meaningful no-fault reform will be postponed for at least 2 more years. In those 2 years consumers will have to spend $28 billion for automobile insurance and receive back in benefits only $14 billion. In other words, supporters of delay will be asking American consumers to sacrifice more than $10 billion while Congress waits for yet another committee to study the problem.

Secretary Volpe has testified that "no-fault insurance is needed and is needed now." President Nixon has said that "no-fault is an idea whose time has come." Let us now vote on the merits of this important legislation.

Mr. HRUSKA. Mr. President, I yield 3 minutes to the Senator from Arizona.

Mr. FANNIN. Mr. President, I rise to support the motion of the Senator from Nebraska to commit the bill by referring it to another committee. Some have said that the concept of no-fault insurance is an idea whose time has come. Perhaps that may be true, but I do not feel that S. 945 is the medicine that will cure the evils that exist in our auto insurance system today.

Certainly I do not oppose the no-fault concept, but I do feel that the distinguished Senator from Nebraska is correct in his feeling that this bill is of such great consequence that it deserves the study and attention of the Judiciary Committee.

It is difficult, Mr. President, to rationally resolve such complexities on the floor, absent scrutiny by committees concerned. The questions are serious—the consequences widespread—the legal ramifications great—so before we fully consider the issues we must have the imput and expertise of the Judiciary Committee.

Certainly, we know there have been many instances where we have recommitted legislation because further study was needed. I feel this applies to this particular bill.

We are proposing the imposition of a national program which will turn our philosophy of automobile insurance a full 180 degrees.

In most States motorists have been required to carry insurance to pay for any damage caused by their negligence. No-fault would require each person to buy first-party insurance to protect himself.

I feel that with the experience we have to date we cannot make some of these decisions without going into it to a greater extent than has been done. It is an untested plan.

It is true several States have enacted some form of no-fault insurance, but still they all have been limited no-fault programs and not the total no-fault concept we are discussing here today. The States which have no-fault systems have not been in operation long enough to give concrete evidence of their reliability. We cannot afford to experiment on a national level.

It is my belief that S. 945 as presently constituted is the wrong approach to implement the concept of no-fault insurance.

I oppose the bill as presently constituted:

First. This is a total no-fault concept which is unproven and even untested;

Second. This bill does not allow sufficient latitude for State governments to adjust the program to meet the different local conditions reflected in different parts of the Nation;

Third. It most likely will bring increases in insurance premiums across the Nation and especially in the more sparsely populated States such as Arizona;

Fourth. Motorists with good traffic records could be penalized while those with poor records would benefit.

In most States motorists have been required to carry insurance to pay for any damage caused by their negligence. The no-fault approach dictates that each person buy insurance to protect himself, that the negligent motorist is no longer responsible for the damage, pain, and suffering he causes others—at least no longer responsible to the victims except in extreme cases.

UNTESTED CONCEPT

Now, let me elaborate on what I mean by saying this is an untested plan. It is true that several States have enacted no-fault legislation in the last few years. But these all have been limited no-fault programs, not the total no-fault concept we are discussing here today. And, I must point out that the programs in the States which have no-fault systems have not yet been in operation long enough to give us concrete evidence as to how well they are operating.

Time and again in the past decade the Congress has enacted programs based on high idealism without any experience as to how they will work out. These programs frequently have been disastrous.

If an idea appears to be good, we should not be afraid of testing it before trying to impose it on the entire Nation.

When we finally decide to impose a new concept or policy on our 50 States, I do not see why we cannot provide for an orderly transition rather than acting with undue haste.

And I do not see why we cannot allow States to have responsible and meaningful options.

INSUFFICIENT LATITUDE

Sometimes I wish that we had this Capitol on wheels and could move it around from State to State during our sessions. Then all Members of Congress would learn that there are, indeed, great differences in the geography and living conditions in our States, and within our States.

The bill we are considering, S. 945, will abrogate every existing State motor vehicle insurance program. It will impose Federal standards that will allow the States no flexibility in determining the program or benefits most appropriate for their various situations.

Any no-fault legislation should give consideration to the fact that there are considerable variations in average incomes, medical costs and facilities, and basic motor vehicle programs in the States.

INCREASED COST

No-fault insurance has been sold to the public as a concept which will lower the cost of insurance and make it easier to collect on claims.

It is obvious to me that under the program we are considering in the Senate the cost of insurance to Arizona motorists will jump significantly. One estimate, by Charles C. Hewitt, actuary of the Allstate Insurance Co., is that the insurance premiums for Arizonans would go up an estimated 35.8 percent as a result of the non-fault program we are discussing.

Rates would rise very little for the highly urbanized States, but would soar in the more rural and the sparsely settled States.

Indications are that there would be some advantages in the densely populated States such as those along the eastern seaboard, but why should the rest of the Nation be penalized in the process.

It has been pointed out that this bill would limit safe driver discounts, thus penalizing the middle-income, middle-aged, average driver. At the same time, drivers who have been considered high risks could benefit.

The new basis for rating policyholders will become the likelihood of their being involved in an accident rather than the likelihood of their causing an accident.

This, I believe, will work to the detriment of the average man.

Mr. President, this is one of those bills—we have had so many of them in recent years—which promises so much but which can deliver so little.

No one can say exactly what effects it will have, and that is perhaps the most powerful argument against it. The chances of it complicating the lives of our citizens is every bit as great as the chance that it will simplify things.

It will limit rather than expand the amount of legitimate damages that most victims of auto accidents can collect. It is very possible that this legislation will

not reduce legal redtape as advertised by its proponents.

This bill is an unwise attempt to implement a reasonably sound idea. After all, we have had no-fault insurance for many years in the form of medical payment, collision, and comprehensive coverages.

This concept can be and should be expanded through prudent pilot programs.

To impose it upon the Nation in one fell swoop is irresponsible and foolhardy. We in Congress owe it to our constituents to do more than close our eyes and hope for the best.

Again Mr. President, for the reasons I have expressed and those objections others have expressed on the floor this afternoon I support the motion of the Senator from Nebraska to commit to the Judiciary Committee.

The PRESIDING OFFICER. Who yields time?

Mr. MAGNUSON. I yield 10 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. I thank the distinguished chairman of the committee.

Mr. President, I think it is a good thing that the rule of germaneness expired at 12 o'clock noon today because most of the arguments I have heard here this afternoon since the inception of the no-fault insurance bill have hardly been germane to the issue before the Senate.

The issue before the Senate is not the merits of no-fault insurance, but rather whether or not this bill should be referred to the Committee on the Judiciary.

In opposing such a referral, it is for the very reason I would like to hear the arguments for and against no-fault insurance by those that are now attempting to block even its discussion by a parliamentary maneuver.

To be candid, I can only say if we vote to send no-fault back to the Committee on the Judiciary, the Senate will have used a not so subtle parliamentary maneuver, and the Senate will have perpetrated what can only be labeled as another consumer fraud.

I think it indicative that those arguing for referral to the Committee on the Judiciary have used this occasion to get off their chest the doubts over the benefits, the supposed benefits of the system called no-fault insurance.

Now, let us get to the question of assignment to the appropriate committee. If I am not mistaken, and distinguished members of the Committee on Commerce who have been on the committee longer than I can testify to this; the spadework, the homework, the testimony has been going on not for a matter of weeks, not for a matter of months, but for a matter of years. During the course of those years, or months, or weeks, where were the cries of those who felt this was being done by the wrong committee? Where were those who said it should have been before the Committee on the Judiciary? Not a word, except when the bill comes before the Senate for action. Then, all of a sudden, the question arises as to whether it was before the appropriate committee.

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

Mr. WEICKER. I am happy to yield to the Senator from Rhode Island.

Mr. PASTORE. The Senator from Connecticut is an experienced man and he has been a Member of Congress for a long time. I realize this disclaimer is made here that there is no attempt to send this to the graveyard. But that is what is going to happen. No one thus far has argued to send this to the Committee on the Judiciary who is not opposed to no-fault insurance. We are not that naive. Let us stop kidding ourselves. The purpose here is not to vote it down but to send it to the Committee on the Judiciary where it will die a natural death. Everybody knows that.

Mr. WEICKER. Mr. President, I concur with the comments of the distinguished Senator from Rhode Island.

I can stand before this body and I cannot say whether or not I would vote to approve the final bill because I do not know what will be in it. There are some aspects of the final bill I may disagree with or there may be proposals of Senators that would change the import of the bill. But that is the purpose after years of hearings, and not to bury it on the floor of the Senate. The job of the Senate is to take this particular legislation, work on it, mold it, shape it, but not in a quick parliamentary maneuver to go ahead and kill it. There is no question, as I said before, that this is not a perfect piece of legislation, but it is fair to say the public expects us to pass some sort of attitude toward this area of national concern.

That is what we are trying to do if we can get over this particular hurdle. As the arguments have developed, I repeat, go through the RECORD and find out how much was said about the fact that from a technical or parliamentary point of view this legislation should have gone to the Committee on the Judiciary, and not the Committee on Commerce. There were a few remarks by the Senator from Nebraska at the outset, but otherwise it is clear the arguments against no-fault are being made at this time. That is why I say it is fortunate the rule of germaneness expired at 12 o'clock noon, because 90 percent of what was said by opponents has been absolutely nongermane to this motion, and without in any way, shape, or form indicating my attitude toward the legislation, we owe it to the American public to debate the bill back and forth on the floor of the Senate.

I am in an embarrassing position. My State of Connecticut, and I am sure others will rise to make the same claim, but I will get it out first, is generally considered the insurance capital of the world, and insurance people of Connecticut are just about split down the middle as to whether this is good or bad; it is a State where the actuaries themselves disagree. It is possible this is a matter for debate by seriously intentioned persons. This legislation needs our attention, but we cannot do that if the motion of the Senator from Nebraska succeeds.

I think we will have done a disservice to the American public whichever way no-fault comes out. Perhaps by debate and probing we can prove it to be wrong. Fine; that is the result of logic and argument, but it should not be done in this way.

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

Mr. MOSS. Mr. President, I yield 3 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I feel responsible to a certain extent for the problem our committee faces in regard to this bill because when the Hart-Magnuson bill was before the committee I, and several other Senators joined me, suggested we should inject into it a concept of Federal standards for State action in order that the States might have the opportunity to act, believing, as I do, that the States, if given the opportunity and they face the alternative of a total Federal system, will enact meaningful and somewhat uniform insurance laws.

I hope the present motion is rejected because I join with the Senator from Connecticut. I have other amendments I would like to present to the bill and I would like to have it hammered out now without regard to its fate in the House of Representatives. I think that the mere action by the Senate in this session would be a signal to State legislatures to get off the dime and enact meaningful no-fault legislation so that Federal legislation in this area will not be necessary.

Mr. President, it is the unqualified and unanimous opinion of the authors of materials and articles on the subject that S. 945 is constitutional. Arguments to the contrary are specious and generally based either on an inadequate understanding of the provisions of the bill or an inadequate study of the relevant constitutional law decisions of the Supreme Court.

Permit me to respond briefly to the two principal constitutional law arguments advanced by opponents of no-fault:

First. The bill is unconstitutional under the 14th amendment and violative of the right to trial by jury under the seventh amendment because an automobile accident victim is deprived of the right to have a jury decide whether the defendant was negligent and the plaintiff free from negligence and, if so, how much damage, including pain and suffering, the plaintiff suffered.

The best answer to this argument is to quote from a decision of the U.S. Supreme Court in 1917, when it upheld the constitutionality of legislation substituting no-fault workmen's compensation for common-law employer liability based on negligence. The Court declared in the case of *New York Central Railroad Co.* v. *White*, 243 U.S. 188 at pages 201 to 202:

> The statute under consideration sets aside one body of rules only to establish another system in its place. If the employee is no longer able to recover as much as before in case of being injured through the employer's negligence, he is entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence

of proving the amount of the damages. . . . We have said enough to demonstrate that, in such an adjustment, the particular rules of the common law affecting the subject matter are not placed by the Fourteenth Amendment beyond the reach of lawmaking power.

The same answer was gven in 1971 by the only State supreme court to be faced with deciding whether a true no-fault automobile compensation insurance law was constitutional. The Massachusetts Supreme Judicial Court declared in Pinnick against Cleary:

We thus perceive no basis for treating a legislative alteration of the tort action for personal injuries differently from an alteration of any other preexisting rule of the common law. . . . [T]he Legislature has not attempted to abolish the preexisting right of tort recovery and leave the automobile accident victim without redress. On the contrary . . . the statute has affected his substantive rights of recovery only in one respect and has simply altered his method of enforcing them in all others. Therefore, c. 670 may be judged by the stricter test which the plaintiff urges upon us and for which there is considerable authority in workmen's compensation cases: whether the statute provides an adequate and reasonable substitute for preexisting rights.

The Massachusetts court held that the limited but true no-fault law of that State met the test. The Supreme Court of Illinois, in a decision that has been widely advertised as "proving" that no-fault is unconstitutional, accords with the rationale of the workmen's compensation cases and the Massachusetts no-fault case but finds simply that the Illinois "overlay" auto insurance law did not make an adequate substitution of benefits for preexisting rights.

Second. It may be constitutional for a State to enact no-fault legislation, but it is not constitutional for the Congress to do so.

Why not? Congress is expressly granted the power to regulate commerce among the States. There is no question but that this includes the power to regulate the use of interstate highways and to impose conditions and requirements on the use of the facilities of interstate commerce. The power to regulate includes also all connecting roads. A condition of participation in a system providing compensation for automobile accident injuries is clearly, from a constitutional standpoint, just like any other condition or requirement regulating commerce among the several States.

Mr. MOSS. Mr. President, we are prepared to yield back our time on this side.

Mr. HRUSKA. Mr. President, we are prepared to yield back the remainder of our time.

The PRESIDING OFFICER. All time on the motion has been yielded back.

Mr. HRUSKA. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. MOSS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nebraska to refer the bill to the Judiciary Committee. 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. SCOTT. Mr. President, on this vote I have a pair with the Senator from Michigan (Mr. GRIFFIN). If he were present and voting, he would vote "nay." If I were permitted to vote I would vote "yea." Therefore, I withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Georgia (Mr. GAMBRELL) is necessarily absent.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "yea."

Mr. SCOTT. I announce that the Senator from Tennessee (Mr. BROCK) and the Senator from Michigan (Mr. GRIFFIN) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The pair of the Senator from Michigan (Mr. GRIFFIN) has been previously announced.

The result was announced—yeas 49, nays 46, as follows:

[No. 358 Leg.]

YEAS—49

Aiken	Cotton	Jordan, N.C.
Allen	Curtis	Jordan, Idaho
Allott	Dole	Mathias
Anderson	Dominick	McClellan
Baker	Eagleton	Miller
Bellmon	Eastland	Montoya
Bennett	Edwards	Packwood
Bentsen	Ervin	Randolph
Bible	Fannin	Saxbe
Buckley	Fong	Sparkman
Byrd, Harry F., Jr.	Fulbright	Stafford
	Goldwater	Stennis
Cannon	Gurney	Talmadge
Chiles	Hansen	Thurmond
Church	Hatfield	Tower
Cook	Hollings	Young
Cooper	Hruska	

NAYS—46

Bayh	Javits	Percy
Beall	Kennedy	Proxmire
Boggs	Long	Ribicoff
Brooke	Magnuson	Roth
Burdick	Mansfield	Schweiker
Byrd, Robert C.	McGee	Smith
Case	McGovern	Spong
Cranston	McIntyre	Stevens
Gravel	Metcalf	Stevenson
Harris	Mondale	Symington
Hart	Moss	Taft
Hartke	Muskie	Tunney
Hughes	Nelson	Weicker
Humphrey	Pastore	Williams
Inouye	Pearson	
Jackson	Pell	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Scott, for

NOT VOTING—4

Brock	Griffin	Mundt
Gambrell		

So Mr. HRUSKA's motion to refer S. 945 to the Committee on the Judiciary was agreed to.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. ERVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MESSAGE FROM THE HOUSE— ENROLLED BILLS SIGNED

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 2499. An act to provide for the striking of medals commemorating the one hundred and seventy-fifth anniversary of the launching of the United States frigate Constellation; and

S. 3645. An act to further amend the United States Information and Educational Exchange Act of 1948.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, for the information of the Senate there will be no more yea-and-nay votes tonight.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

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

Mr. ERVIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1819.

The PRESIDING OFFICER (Mr. TUNNEY) laid before the Senate the amendments of the House of Representatives to the bill (S. 1819) to amend the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 to provide for minimum Federal payments after July 1, 1972, for relocation assistance made available under federally assisted programs and for an extension of the effective date of the Act, which were to strike out all after the enacting clause, and insert:

That (a) section 207 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1898) is amended by striking out "July 1, 1972," and by inserting in lieu thereof "July 1, 1974,".

(b) Section 211(a) of such Act is amended by striking out "July 1, 1972" and inserting in lieu thereof "July 1, 1974".

(c) Title II of such Act is amended by

adding at the end thereof the following new section:

"INTERIM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION EXPENSES

"SEC. 222. During the period from July 1, 1972, through June 30, 1973, the head of a Federal agency is authorized to advance to a State which is not in compliance with this Act such sums in excess of the first $25,000 of cost as may be necessary to make all payments and provide all assistance required by this Act. All sums advanced to a State under this section shall be repaid by such State as soon as practicable in accordance with regulations adopted by the head of such Federal agency.".

(d) Section 101(3) is amended by inserting immediately after "means" the following: "a State,".

(e) Section 101(6) is amended by inserting immediately after "personal property from real property," the following: "which he lawfully occupies,".

(f) Title II of such Act, as amended by subsection (c) of this section, is amended by adding at the end thereof the following new sections:

"ASSISTANCE TO CERTAIN PROGRAMS AND PROJECTS UNDERTAKEN DIRECTLY BY NONPROFIT ORGANIZATIONS AND PERSONS

"SEC. 223. (a) Notwithstanding any other provision of law, whenever a program or project to be undertaken (A) by a nonprofit organization furnished Federal financial assistance for such program or project under section 202 of the Housing Act of 1959, under title VI of the Public Health Service Act (42 U.S.C. 291), or under the Higher Education Facilities Act of 1963 (20 U.S.C. 701), or (B) by a State agency furnished Federal financial assistance for such program or project under the second proviso of section 10(a) of the United States Housing Act of 1937 for the rehabilitation of public housing, and the Federal financial assistance is furnished by a Federal agency pursuant to a grant, contract, or agreement and such program or project will result in the forced displacement of any person on or after the effective date of this section, the head of the Federal agency furnishing such financial assistance shall require the organization, or the State agency, as the case may be, to provide—

"(1) fair and reasonable relocation payments and assistance to or for such displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 to or for such displaced persons; and

"(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings to such displaced persons in accordance with section 205(c)(3).

"(b) Notwithstanding any provision of law, whenever a program or project to be undertaken by a person furnished Federal financial assistance for such program or project under section 236 of the National Housing Act, as amended (12 U.S.C. 1715Z–1), by a Federal agency pursuant to a grant, contract, or agreement will result in the forced displacement of any person on or after the effective date of this section, the head of the Federal agency furnishing such financial assistance shall require the person receiving such assistance to provide—

"(1) fair and reasonable relocation payments and assistance to or for such displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 to or for such displaced persons; and

"(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings to such displaced persons in accordance with section 205(c)(3).

"REMOVAL OF VACANT IMPROVEMENTS

"SEC. 224. No department, agency, or instrumentality of the Federal Government administering any program providing Federal financial assistance shall, for the purpose of assuring compliance with this Act, impose any limitation on the removal of vacant improvements located on real property acquired in connection with such a federally assisted project."

SEC. 2. Section 202(a)(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, is amended by inserting immediately before the semicolon a comma and the following: "except that in any case where it is impracticable to determine such relocation expenses the payment shall be for the actual direct loss".

SEC. 3. Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1898) is amended by adding at the end thereof the following:

"DONATIONS

"SEC. 307. Nothing in this title shall be construed to prevent a person, after he has been tendered the full amount of estimated just compensation as established by the approved appraisal of the fair market value of the subject property, from making a gift or donation of such property or any part thereof or of any of the compensation paid therefor, to a Federal agency, a State or a State agency, as such person shall determine.".

And amend the title so as to read: "An Act to amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to provide for minimum Federal payments for two additional years, and for other purposes."

Mr. ERVIN. Mr. President, I move that the Senate disagree to the amendments of the House on S. 1819 and ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. MUSKIE, Mr. METCALF, Mr. CHILES, Mr. BROCK, and Mr. GURNEY conferees on the part of the Senate.

STATES RECEIVE WINDFALL IN FEDERAL FUNDS

Mr. HARRY F. BYRD, JR. Mr. President, in 1967, legislation was enacted providing 75 percent Federal financing of "social services." The States have discovered that, by expanding or charging programs that were already paying for themselves, they can collect from Washington 75 cents out of every dollar spent.

When this proposal was enacted, it was estimated by its sponsor that it would cost the Federal Government $40 million annually. It has soared to such an extent that the cost for the current fiscal year is now estimated to be $4.8 billion—more than 100 times the original estimate.

In the first year of this program, New York State received $57 million in matching grants. This year, New York is asking for $854 million in Federal matching grants for this one program.

One medium size State, which last year applied for $14 million of Federal funds to finance "social services," this year is asking for $440 million.

This is dramatic evidence of just how far out of hand these Federal programs are getting.

Tomorrow I shall ask the Senate Finance Committee, which is considering revenue-sharing legislation, to put a reasonable ceiling on this social services program before it becomes the biggest Treasury raid of the century.

Mr. President, the Federal deficit for fiscal year 1971 was $30 billion. The deficit for fiscal year 1972 was $32 billion. For fiscal year 1973, the administration estimates that the deficit will be at least $38 billion. So in these 3 fiscal years—1971, 1972, and 1973—the total of the accumulated Federal funds deficit will equal or exceed $100 billion.

So I say it is time that Congress begins to give greater consideration and attention to these huge spending programs.

Mr. President, I ask unanimous consent to have printed in the RECORD an article which appeared on page 1 of today's New York Times, captioned "'67 Law is Giving States Windfall in Federal Funds."

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

'67 LAW IS GIVING STATES WINDFALL IN FEDERAL FUNDS: PLAN, OVERLOOKED UNTIL RECENTLY, MAY PROVIDE $4.8 BILLION THIS YEAR AND ENLARGE THE NATION'S BUDGET DEFICIT

(By Edwin L. Dale, Jr.)

WASHINGTON, August 7.—Most of the states have belatedly discovered an obscure provision of Federal law that will probably enable them to obtain, virtually "free," an estimated $4.8-billion from the Federal Treasury in the current fiscal year.

This is nearly as much as the states and local governments would receive from the much-debated revenue-sharing plan backed by the Nixon Administration and approved by the House.

The program involved provides 75 per cent Federal financing of "social services" for the poor and others, such as the aged and children. The states have discovered that by making small changes, sometimes a small expansion, in programs that they were already paying for themselves, they can collect from Washington 75 cents out of every dollar spent.

The money amounts to a fiscal windfall for the hard-pressed state governments. But it threatens to enlarge greatly the Federal budget total and the deficit this fiscal year and later.

President Nixon allowed $1.2-billion for this item in his budget. But as more and more states have qualified for the grants, this estimate has soared.

Congressional sources put the latest estimate at $4.8-billion in the fiscal year 1973, which just began, and this is not denied in the Department of Health, Education and Welfare, which administers the program.

The extra money would be provided in a supplemental appropriations bill next spring.

Before the states woke up to the potential bonanza, the program was not only obscure but relatively small. As recently as the fiscal year 1969, total spending under it was only about $370-million.

California was the first to learn how to take advantage of changes in the Federal law enacted in 1967. Illinois was apparently the second, acting in 1970. Now the states are applying for funds in droves.

The procedure is somewhat complicated.

but an example of how the states can take advantage of the program would be an alcohol or drug abuse prevention program that the state had previously financed itself. By purchasing the same service from a private agency, the state would qualify for 75 per cent Federal financing.

Starting in 1970, President Nixon in each year has asked Congress to place an over-all ceiling on allowable grants to the states under this program, which would lead to a sort of rationing of the allotted amount. But each year Congress has refused.

This year, the Senate Appropriations Committee and later the full Senate approved a ceiling of $2.5-billion, double the President's original budget estimate. But the provision was dropped in conference between the House and the Senate.

PRESSURE BY GOVERNORS

Governors have reportedly put strong pressure on the key members of Congress involved to head off any ceiling.

A major problem for the President and Elliot L. Richardson, Secretary of Health, Education and Welfare, is that a cutoff now would leave some states with large Federal grants and others with little.

The program may have led to some actual expansion in social services, but no one in the Federal Government seems to know how much. The suspicion is that the bulk of the Federal money is merely replacing state money that was being spent anyway.

The ultimate solution to the problem, officials believe, is a change in the underlying 1967 law, which was enacted as an amendment to a large and complex Social Security bill.

However, there is no evidence yet of Congressional eagerness or Administration pressure to change the law.

STATE ASKS $854 MILLION

New York State's Department of Social Services has asked for $854-million this year in Federal matching grants under the 1967 law, according to a high official of the department who asked not to be named.

Of that figure, he said, $205-million is for reimbursement of money spent during the 1972 fiscal year.

In the first year of the program, 1967, New York received only $57-million in matching grants, he said, because "the Federal Government was very slow in issuing regulatory material and guideline material."

"The state amended its state welfare plan as soon as the Federal guidelines were available," he said, "and started to make serious claims for this on selected programs during 1970 and 1971."

"Over the past years there has been a major expansion of these programs, in agriculture, mental hygiene, narcotics addiction, youth services and education. We are more fully utilizing the provisions under the Social Security Act towards programs which had been previously funded with state or local funds only."

"It was not just merely a matter of substituting state money with federal money," he said, adding that no state program operating solely on Federal funds and that there were no state programs that would not exist without the grants.

QUORUM CALL

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT TO 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 9:45 a.m. tomorrow.

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

ORDER FOR CONSIDERATION OF GUN CONTROL BILL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the remarks of the distinguished Senator from New York (Mr. JAVITS) tomorrow, there be no routine morning business but that the Senate proceed immediately to the consideration of S. 2507, to amend the Gun Control Act of 1968.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT TO 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 9:30 a.m. tomorrow.

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

ORDER FOR THE RECOGNITION OF SENATOR BAYH TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, following the remarks of the two leaders under the standing order tomorrow, that the distinguished Senator from Indiana (Mr. BAYH) be recognized for not to exceed 15 minutes; and that he be followed by the distinguished Senator from New York (Mr. JAVITS) for not to exceed 15 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, it is my understanding, following the remarks of the Senator from New York (Mr. JAVITS) tomorrow, that the Chair will lay before the Senate S. 2507, to amend the Gun Control Act of 1968.

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER FOR ADJOURNMENT TO 9 A.M. ON THURSDAY, AUGUST 10, 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 9 a.m. on Thursday.

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

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business be concluded.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, what is the business now before the Senate?

The PRESIDING OFFICER. The unfinished business was laid aside for the remainder of the day so there is not, really, technically, any business now before the Senate.

Mr. ROBERT C. BYRD. I thank the Chair.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomororw is as follows:

The Senate will convene at 9:30 a.m. After the two leaders have been recognized under the standing order, the distinguished Senator from Indiana (Mr. BAYH) will be recognized for not to exceed 15 minutes, after which the distinguished Senator from New York (Mr. JAVITS) will be recognized for not to exceed 15 minutes.

At the conclusion of the remarks of the distinguished Senator from New York (Mr. JAVITS), the chair will lay before the Senate S. 2507, to amend the Gun Control Act of 1968. The pending question at that time will be on adoption of the amendment No. 1418 by the distinguished Senator from Arizona (Mr. FANNIN), on which there is a 2-hour limitation. If all time is taken, and no additional time is yielded thereto from the time allotted on the bill, the vote on the amendment by Mr. FANNIN would come at about 12 o'clock noon. Undoubtedly that will be a yea-and-nay vote.

Of course, time on the amendments may not all be used. Yea-and-nay votes will occur on the various amendments to the Gun Control Act and the final roll call vote on the bill will occur at no later than 5 p.m. tomorrow.

The unfinished business continues to be Senate Joint Resolution 241, authorizing approval of an interim agreement between the United States and the U.S.S.R.

ADJOURNMENT TO 9:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order that the Senate stand in adjournment until 9:30 a.m. tomorrow.

The motion was agreed to; and at 7:05 p.m. the Senate adjourned until tomor-

row, Wednesday, August 9, 1972, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate August 8, 1972:

INTERNATIONAL ATOMIC ENERGY AGENCY CONFERENCE REPRESENTATIVES

James R. Schlesinger, of Virginia, to be the Representative of the United States of America to the 16th session of the General Conference of the International Atomic Energy Agency.

The following-named persons to be Alternate Representatives of the United States of America to the 16th session of the General Conference of the International Atomic Energy Agency:

William O. Doub, of Maryland.
T. Keith Glennan, of Virginia.
Robert H. McBride, of New Hampshire.
Herman Pollack, of Maryland.
Dwight J. Porter, of Nebraska.
James T. Ramey, of Illinois.

CONFIRMATION

Executive nominations confirmed by the Senate August 8, 1972:

DEPARTMENT OF JUSTICE

Roger C. Cramton, of Michigan, to be an Assistant Attorney General.

HOUSE OF REPRESENTATIVES—*Tuesday, August 8, 1972*

The House met at 12 o'clock noon.

Rev. Neal T. Jones, pastor of Columbia Baptist Church, Falls Church, Va., offered the following prayer:

Heavenly Father, thank You that divine wisdom is often found walking in the shoes of Congressmen and sounding through the voices of legislators. We thank You that divine gifts are dispersed so that each leader has his share of talent and purpose. Thank You that divine accomplishments come through lawmakers who compromise their opinions without forsaking their convictions. We thank You, God, for the subtle and startling way You work with our leaders. We celebrate in the knowledge that your temple is in each life and this place is sometimes as holy as a temple.

Heavenly Father, we confess that divine wisdom is often locked out by the locks and keys of our pompous opinions of ourselves, and our disregard of the startling insights our opponents present. Our prayer is that You will forgive our littleness and fill us with Your unlimited resources.

In the Master's name. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9092) entitled "An act to provide an equitable system for fixing and adjusting the rates of pay for prevailing rate employees of the Government, and for other purposes."

The message also announced that the Senate insists upon its amendments to the bill (H.R. 15692) entitled "An act to amend the Small Business Act to reduce the interest rate on Small Business Administration disaster loans," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. WILLIAMS, Mr. MCINTYRE, Mr. MONDALE, Mr. CRANSTON, Mr. TOWER, Mr. PACKWOOD, and Mr. ROTH to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 3507) entitled "An act to establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MAGNUSON, Mr. HOLLINGS, and Mr. STEVENS to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1729. An act to increase the supply of railroad rolling stock and to improve its utilization to meet the needs of commerce, users, shippers, national defense, and the consuming public.

THE REVEREND NEAL T. JONES

(Mr. SNYDER asked and was given permission to address the House for 1 minute, and to revise and extend his remarks.)

Mr. SNYDER. Mr. Speaker, today we have the pleasure and honor to welcome the Reverend Neal T. Jones to the House of Representatives.

Reverend Jones was born and raised in Jeffersontown, Ky. He is married to the former Betty Adams and has four children: Neal T., Jr., Elizabeth, Jeffrey, and Caroline. He is the son of Mr. and Mrs. Tom Jones. His father, who incidentally attended Sunday school as a child with my father, has been and is a pillar of our community. His mother has served as a religious inspiration to all who know her.

Neal is a graduate of Texas Christian University in Fort Worth, Tex., and the Southwestern Baptist Theological Seminary, also in Fort Worth.

In his distinguished career of service, he has pastored the following churches: Cockrell Hill Baptist Church, Dallas, 1950–55; First Baptist Church, Greenville, Tex., 1955–61; First Baptist Church, Vernon, Tex., 1961–64; Shiloh Terrace Baptist Church, Dallas, December 1964 to March 1969, and Columbia Baptist Church, Falls Church, Va., March 1969 to the present.

In addition to these pastorates, he has served in a number of places of responsibility in the denomination, including the State executive committee; trustee of Howard Payne College, Brownwood, Tex., and director of the Home Mission Board of the Southern Baptist Convention.

Reverend Jones, as pastor of the 2,500 member congregation of Columbia Baptist Church, as in all his previous assignments as a minister of the gospel, has been an exemplary figure as a clergyman and a citizen.

Again, I am happy that Reverend Jones could join us today, and I join all my colleagues here in the House in extending him a warm welcome.

THE NEED FOR FEDERAL RESERVE AUDIT

(Mr. PATMAN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. PATMAN. Mr. Speaker, more and more people across the land are asking why the Congress is allowing the Federal Reserve to remain unaudited by the General Accounting Office.

Many are asking why the Congress allows the Federal Reserve to continue to hold $70 billion of bonds which have been paid for once and which should be retired and subtracted from the national debt. Many are asking why the Congress does not require the Federal Reserve to come to Congress for appropriations in the same manner as other agencies.

Later in today's RECORD, I will discuss some of these issues about the footloose-and-fancy-free operations of the Federal Reserve System and the immense secrecy under which it hides the public's business.

SUSPENSION OF AID TO THAILAND

(Mr. WOLFF asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. WOLFF. Mr. Speaker, I rise to reassert my conviction that the House will perform a valuable service to the Nation by adopting the Foreign Assistance Act of 1972 which provides for a suspension of aid to Thailand until that nation takes adequate steps to control the traffic in heroin through its borders and ports.

The chronology of heroin arrests and seizures in the Far East clearly demonstrates the very crucial impact which the revelations of myself and the gentleman from Illinois (Mr. MURPHY) and the gentleman from Connecticut (Mr. STEELE) have had not only upon our own anti-narcotics programs but upon the governments involved.

Congressional pressure has unques-