omy," or, as *Newsweek* misleadingly implied, gain landed immigrant status simply by asking at the border. Canadian embassy and consular sources that have no ax to grind will, if asked, estimate about 10,000 American draft evaders in Canada (about the same number of Canadians have volunteered for the U.S. Army), but nobody asks them.

As for me, I trust the press no more than before, nor do I have any more information than before. I don't know how many draft evaders there are in Canada or elsewhere, but in the light of the growing debate over amnesty, I'd like to know as accurately and honestly as possible.

SENATE—*Wednesday, August 9, 1972*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

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

Almighty God, giver of every good and every perfect gift, we beseech Thee to look with favor upon this land and its people. Though undeserving, Thou hast made us great and strong among the nations and we must ever remember that all we are and have is given as a trust to use in Thy service. Make us faithful stewards of Thy bountiful goodness. Spare us from pride and arrogance, from the misuse and abuse of power. May our national purpose be to advance Thy kingdom. We commend to Thy care and guidance all who serve in public office praying that Thou wilt guide them by Thy spirit. For Thine is the kingdom and the power and the glory forever. Amen.

MESSAGES FROM THE PRESIDENT

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

REPORT OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Banking, Housing and Urban Affairs:

To the Congress of the United States:

The 1971 Annual Report of the Department of Housing and Urban Development is herewith transmitted to you.

RICHARD NIXON.

THE WHITE HOUSE, *August 9, 1972.*

REPORT ON A FEDERAL-INTERSTATE COMPACT FOR THE HUDSON RIVER—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Interior and Insular Affairs:

To the Congress of the United States:

In accordance with Section 3, of Public Law 89–605 as amended by Public Law 91–242, I am pleased to transmit a report by the Secretary of the Interior on the progress made in negotiations on a Federal-Interstate Compact for the Hudson River.

RICHARD NIXON.

THE WHITE HOUSE, *August 9, 1972.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, and withdrawing the nomination of William T. Hines, of the District of Columbia, for appointment as a Foreign Service information officer of Class 5, a consular officer, and a secretary in the Diplomatic Service of the United States of America, which nominating messages were referred to the appropriate committees.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, August 8, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of measures on the calendar beginning with Calendar No. 963 through 973, with the exception of Calendar No. 971.

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

VEE VACCINATIONS

The Senate proceeded to consider the bill (S. 2516) to authorize the Secretary of Agriculture to reimburse owners of equines and accredited veterinarians for certain expenses of vaccinations incurred for protection against Venezuelan equine encephalomyelitis.

VENEZUELAN EQUINE ENCEPHALOMYELITIS

Mr. TOWER. Mr. President, during the summer of 1971, Texas stockmen were confronted with a serious outbreak of Venezuelan equine encephalomyelitis—VEE. To prevent this disease from spreading into other parts of the United States, mass inoculation of all horses, mules, and donkeys was needed. Each horse owner took it upon himself to provide this vaccine against VEE when it was approved for use until July 16, 1971, when the Department of Agriculture began providing the vaccine free of charge. The Government was to pay $4 for each inoculation following the national emergency designation by the Secretary of Agriculture.

Due to the tremendous cooperation of veterinarians, Department of Agriculture officials, Public Health officials, and others, the epidemic was contained in Texas. Many of those responsible for this fast action were not recipients of the free vaccine, having acted prior to July 16, and I think it only fair that they be reimbursed for the expenses they incurred at the determined rate of $4 per inoculation. This payment would go to those horse owners and veterinarians who provided the vaccination.

To a large degree, these responsible citizens prevented the disease from spreading into neighboring States and possibly the entire southern part of the United States.

The fight continues again this year. Every horse owner has been urged to vaccinate against VEE, and the Government has launched an intensive oversight program to watch for signs of another outbreak. Fortunately, there have been no reported cases of VEE in Texas this year.

Mr. President, I urge Senators to join me in supporting this measure.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is authorized and directed to reimburse owners of equines and accredited veterinarians for certain expenses incurred by them in connection with the vaccination of equines against Venezuelan equine encephalomyelitis. Such expenses must have been incurred within the State of Texas during the period beginning June 25, 1971, through July 15, 1971, after which period the expenses of equine vaccinations against Venezuelan equine encephalomyelitis were paid by the Federal Government upon a determination by the Secretary of Agriculture of an emergency animal disease outbreak threatening the livestock industry of the United States.

SEC. 2. The amount of reimbursement shall be $4 for each equine vaccinated against Venezuelan equine encephalomyelitis which was the amount paid by the Federal Government for such services beginning on July 16,

1971. Payment will be made to each owner upon submission of a record satisfactory to the Secretary of Agriculture of each equine vaccinated and a certification by the owner that payment was made to an accredited veterinarian. Payment will be made to each accredited veterinarian upon submission of a record satisfactory to the Secretary of Agriculture of services performed in administering Venezuelan equine encephalomyelitis vaccine and a certification that no payment was received for such services. Payments made to owners of equines and accredited veterinarians shall relieve the Federal Government of any and all claims in connection with the equine vaccinations covered under this Act.

SEC. 3. There are hereby authorized to be appropriated such sums as may be necessary to reimburse owners of equines and accredited veterinarians pursuant to this Act.

SEC. 4. All claims for reimbursement under this Act shall be submitted to the Secretary of Agriculture not later than six months after the date of enactment of this Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1013), explaining the purposes of the measure.

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

EXPLANATION

This bill would authorize and direct the Department of Agriculture to reimburse owners of equines and accredited veterinarians for certain expenses incurred for the vaccination of equines against Venezuelan equine encephalomyelitis.

Those animals that were vaccinated at private expense during the period June 25, 1971, through July 15, 1971, would definitely have been among the first to be vaccinated at public expense beginning on July 16, 1971. Thus, there can be no doubt that this voluntary vaccination effort contributed beneficially to the subsequent efforts undertaken by this Department on July 16, 1971, at Federal expense to protect the horse industry and the public health. In retrospect, the voluntary vaccination program was, in fact, an integral part of the total effort to bring the VEE epidemic under control.

Because of this, many horse owners do not understand why they cannot be reimbursed for an expense which their neighbors did not incur because they did not have their horses vaccinated before July 16, 1971, after which date it was accomplished at Federal expense.

ESTIMATED COST

In accordance with section 252 of the Legislative Reorganization Act of 1970, cost estimates submitted by the Department of Agriculture total $300,000. However, based upon other information presented it, the committee feels that this estimate may be high and could total less than half the Department estimate.

MRS. WANDA MARTENS

The bill (S. 82) for the relief of Mrs. Wanda Martens was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of the Federal Employees' Compensation Act, as amended, Mrs. Wanda Martens, of Havre, Montana, widow of Jesse Otha Martens, shall be deemed to be entitled to receive payments of benefits and compensation under such Act, from and after the date of the death of the said Jesse Otha Martens, in like manner as if the Secretary of Labor had found that the death of the said Jesse Otha Martens on July 9, 1960, resulted from an injury sustained by him while in the performance of his duties as an Immigrant Inspector, Immigration and Naturalization Service, Department of Justice.

SEC. 2. Any amounts payable by reason of the enactment of this Act with respect to any period prior to the date of such enactment (including funeral and burial expenses) shall be paid in a lump sum within sixty days after the date of enactment of this Act.

SEC. 3. The provisions of section 23 of the Federal Employees' Compensation Act, as amended, shall be applicable with respect to any claim for legal services or for any other services rendered in respect to any claim for benefits or compensation by the said Mrs. Wanda Martens covered by the preceding sections of this Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1016), explaining the purposes of the measure.

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

PURPOSE

The purpose of this bill is to provide that in the administration of the Federal Employees' Compensation Act, as amended, Mrs. Wanda Martens, of Havre, Mont., widow of Jesse Otha Martens, shall be deemed to be entitled to receive payments of benefits and compensation under such act, from and after the death of the said Jesse Otha Martens, in like manner as if the Secretary of Labor had found that the death of the said Jesse Otha Martens on July 9, 1960, resulted from an injury sustained by him while in the performance of his duties as an immigrant inspector, Immigration and Naturalization Service, Department of Justice.

STATEMENT

A similar bill for this claimant in the 91st Congress was approved by the committee and passed by the Senate, but no action was taken on it in the House of Representatives.

The facts in the case are set forth by the Department of Justice as follows:

"The decedent, Jesse Otha Martens, suffered a fatal heart attack, after returning home from the performance of his duties as officer in charge of the Immigration and Naturalization Service office at St. Thomas, Virgin Islands. As indicated by the personnel records of the Service, Mrs. Martens filed a formal claim with the Bureau of Employees' Compensation, Department of Labor, which was considered and initially denied January 7, 1964. On appeal to the Employees' Compensation Appeals Board, this decision was affirmed October 8, 1964, on the ground that the fatal heart attack was not casually related to the employment. The purpose of the bill, therefore, is to overrule the administrative decision."

The Department of Labor opposes the bill, saying:

"One of the objectives of the Federal Employees' Compensation Act is to provide uniform and equal treatment of civil employees of the United States injured in the performance of their duty. There appears to be no justification for the preferential treatment afforded by S. 783 for the consequences of heart disease not casually related to employment. Accordingly, we oppose its enactment."

REFERENCE OF S. 2884 TO THE U.S. COURT OF CLAIMS

The resolution (S. Res. 344) relating to reference of S. 2884 to the U.S. Court of Claims was considered and agreed to, as follows:

Resolved, That the bill (S. 2884) entitled "A bill for the relief of certain corporations, associations, and individuals", now pending in the Senate, together with all the accompanying papers, is hereby referred to the Chief Commissioner of the United States Court of Claims; and the Chief Commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due from the United States to the claimant. Such report shall also indicate, insofar as is possible, (a) the extent to which the claims in question are for the cost of labor and materials actually furnished to complete Army Contract Numbered DA–36–109–ENG–7520, dated September 23, 1963, and (b) whether the claims in question could be brought against the debtor in the bankruptcy proceedings now pending in relation to the debtor.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1017), explaining the purposes of the measure.

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

PURPOSE

The purpose of the resolution is to refer the bill (S. 2884) entitled "A bill for the relief of certain corporations, associations, and individuals," now pending in the Senate, together with all the accompanying papers, to the Chief Commissioner of the U.S. Court of Claims; and the Chief Commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due from the United States to the claimant. Such report shall also indicate, insofar as is possible (a) the extent to which the claims in question are for the cost of labor and materials actually furnished to complete Army Contract numbered DA–36–109–ENG–7520, dated September 23, 1963, and (b) whether the claims in question could be brought against the debtor in the bankruptcy proceedings now pending in relation to the debtor.

STATEMENT

The bill being referred to the Court of Claims is identical to a bill for these claimants in the 91st Congress which was approved by this committee and reported favorably to the Senate on September 16, 1970.

In the 90th Congress, a number of bills for these claimants were before the committee. The Department of the Army opposed the bills in a report to the committee dated August 31, 1967. A subcommittee of the committee, with Senator Sam J. Ervin presiding, heard representatives of the claimants and of the Department of the Army in a hearing on May 24, 1968.

The Department of the Army renewed its opposition to the proposed legislation in the 91st Congress in a report to the committee dated January 13, 1970.

In the 91st Congress, the proponents of

the legislation set forth the basis for equitable relief by the Congress as follows:

I. SUMMARY

S. 2229 is designed to provide equitable relief for certain individuals who, as subcontractors and materialmen, furnished labor and material under contract No. DA–36–109–ENG–7520, dated September 23, 1963, of the Department of the Army. The bill provides in pertinent part:

"That each corporation, association, and person named in section 2 of this Act is entitled to be paid the amounts set forth beside its or his name in such section. Such amounts represent payments due for the furnishing of labor and materials in the construction of a public work consisting of the construction of four hundred and eighty-eight prefabricated family housing units for national defense use, under contract numbered DA–36–109–ENG–7520, dated 23 September 1963, but which payments have not been made by the United States, its contractors, Home Building Contractors, Incorporated and Construction Components, Incorporated, and none of which payments were protected by the bond required by the Miller Act, section 270(a) of title 40, United States Code Annotated."

The Department of the Army stated concerning the Miller Act:

"As laborers and materialmen can acquire no lien on a public building or a public work, substitutes have been provided. The present general statute of this nature is the act of August 24, 1935, *supra*. This act, the so-called Miller Act, gives mechanics and materialmen who furnish labor and material to public work contractors protection comparable to that enjoyed by mechanics and materialmen furnishing labor and material for private construction (*United States* v. *Munsey Trust Co.*, 332 U.S. 234, 67 Sup. Ct. 1599, 91 L. ed. 2022; *Title Guarantee & Trust Co.* v. *Crane Co.*, 219 U.S. 24 Sup. Ct. 140, 55 L. ed. 72; *Arthur N. Olive Co.* v. *United States*, 297 F. 2d 70; S. Rept. No. 165, 77th Cong., first sess. (1941); H. Rept. No. 388, 77th Cong., first sess. (1941); S. Rept. No. 366, 84th, Cong., first sess. (1955); H. Rept. No. 208, 84th Cong., first sess. (1955)) by providing:

" '(a) Before any contract, exceeding $2,000 in amount, for the construction, alteration, or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor": * * * (2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person * * * ' (40 U.S.C. 270a)."

The Department of the Army awarded the contract on September 23, 1963, to Home Building Contractors, Inc., for the construction of 488 family housing units. The contract provided for the houses to be constructed, manufactured, packaged for overseas shipment, and delivered to Port Royal, S.C., by March 1, 1964, and for these houses to be erected on various sites throughout the world for the use of Army personnel.

On February 7, 1964, because the prime contractor was unable to successfully construct, fabricate, and assemble a prototype model, the Department of the Army permitted the contract to be subcontracted or assigned to the Lusk Corp. The construction, however, was to be performed by Construction Components, Inc., a wholly owned subsidiary of the Lusk Corp. The Department of the Army extended the entire contract from March 1, 1964, to August 31, 1964, but the final houses were not delivered until May 21, 1965.

On June 4, 1964, the Department of the Army amended the contract to add 22 additional units, making a total of 510 units to be constructed and manufactured instead of 488, and increased the contract price from $3,873,504, to $4,048,803.

Payments have been made by the Army to its price contractors of the entire contract price, including a net increase in the contract price of $93,000.

In 1966 the contractor of the Army—and before the payment of increased contract price of $93,000 was made—became the subject of a chapter X reorganization in a bankruptcy proceeding in the U.S. District Court for the District of Arizona, Tucson division, bankruptcy No. B–5720. All payments by the Army since the filing of the bankruptcy proceedings have been made to the Trustee in Bankruptcy. The bill provides that should any payments under the bankruptcy proceedings be made by the Trustee in Bankruptcy to the claimants and beneficiaries named in the bill. they have agreed and will execute assignments in a form satisfactory to the United States assigning any such payments to the United States.

The Department of the Army has taken the position that the contract for the construction of the 510 houses for the use of personnel of the Army is a supply contract and is not a construction contract and, therefore, the Miller Act is not applicable. Investigation into the matter and a review of the testimony concerning the underlying facts discloses that the Army in all contracts of this character prior to the execution of the contract described in the bill has required bonds under the Miller Act for protection of subcontractors and material-men furnishing labor and material in connection with the construction of such houses which are public works. This investigation and testimony further reveals that in all similar contracts for the construction of such houses after the date of the contract described in the bill, the Army has required bonds under the Miller Act for the protection of such contractors and materialmen who furnished labor and material in the construction of such houses or public works.

Paragraph 10–104–2 adopted by the Department of the Army as amended August 15, 1962, provides for Miller Act bonds in all construction contracts exceeding $2,000. This regulation was in force and in effect when the contract described in the bill was executed, on the dates when that contract was amended and during the dates of the construction and payment periods provided for in that contract, as amended. The subcontractors and materialmen named in the bill assumed under practices of the Army that this construction contract would be and was bonded by a Miller Act bond for their protection. When the subcontractors and materialmen during the course of the construction of the houses discovered that the contract was not bonded as provided for in the Miller Act, appeals were made to the Department of the Army in order to see to it that payments owed to them by the contractor of the Army were paid.

Notwithstanding these appeals and notwithstanding the subcontractors and materialmen named as beneficiaries in the bill furnished labor and materials in order that the houses being constructed could be completed for the Army, the Army did not require the contractor to pay these subcontractors and materialmen for such labor and materials in the regular course of business. The contract (pp. 30–34) authorizes progress payments and the contractor of the Army requested progress payments. The contract provides, as the work progresses, progress payments among other things may include the amount of progress payments paid and payable to subcontractors. It further provides that unpaid progress payments of subcontractors, when approved, may be the basis for progress payments, but that the subcontractor must be paid, therefore, by the contractor in the ordinary course of business. Ordinary course of business is defined in the contract as not later than a reasonable time after payment of the equivalent amounts by the Government to the contractor.

The contract provided (p. 31) that the Army may reduce or suspend progress payments whenever it is found that the contractors of the Army are delinquent in payment of the cost of the performance of the contract in the ordinary course of business. Notwithstanding the requirements that progress payments made up of payments made to or due subcontractors had to be paid by the contractor in the regular course of business, as such progress payments were made to the Government's contractor, the Army took no action to see that the terms of the contract were complied with by its contractor and that the subcontractors and materialmen were paid. In fact, the Army paid the mentioned sum of $665,592.61 in progress payments (list of payments under contract No. 36–109–ENG–7520, furnished by the Department of the Army, dated June 12, 1968), which if properly applied was a sufficient sum to pay the beneficiaries named in the bill for the work, labor, and materials furnished by them.

The houses described in the contract were not in existence at the time the contract was executed. To come into existence they had to be constructed under the plans and specifications which are a part of the contract. As the houses had to be constructed and as houses are public works under the Army's regulation (par. 10–104–2), this contract should have been covered by a Miller Act bond because it exceeded the sum of $2,000. In addition, the Army had the power under the contract and the obligation to see that the progress payments totaling $665,592.61 were paid to the subcontractors and materialmen furnishing labor and materials in connection with the construction of the houses, as pointed out earlier. These progress payments amounted to more than enough money to insure payment to the subcontractors and materialmen named as beneficiaries in the bill, as their claims total $509,645.38.

The beneficiaries to the bill in good faith furnished labor and materials which were used in the construction of the 510 houses, as provided for in the construction contract with the Army. These beneficiaries had the right to rely upon the practices of the Department of the Army in the past requiring Miller Act bonds in the construction of such houses. They further had the right to rely upon the Army, in the absence of a Miller Act bond under the contract, seeing to it—as progress payments were being made by the Army—that these progress payments were used by the Army's contractor, as required by the contract, to pay subcontractors and materialmen (beneficiaries named in the bill) in the regular course of business.

Decisions in the Federal courts, including the court of claims, bar the beneficiaries named in the bill from a legal remedy against the United States.[1] Relief for the beneficiaries

[1] In *United States* v. *Smith*, 324 F. 2d 622 (C.C.A. 5, 1963), the court of appeals reversed the district court which held that the failure of contracting officers for the Government to obtain payment bond under the Miller Act gave a cause of action for damages in tort against the United States under the Federal Tort Claims Act and the court of appeals held such failure was based upon a breach of contract, and because the subcontractor had no contract with the United States, judgment should be entered for the United States.

In *Armiger et al. Estates* v. *United States*,

named in the bill rests solely with the Congress.[2]

The amounts of the claims of the beneficiaries named in the bill are no longer in dispute. The full contract price, including a $93,000 addition thereto, has been paid by the Army. No back charges or claims of any kind have been asserted against the claims of the bill's beneficiaries. The amounts of the claims have not been disputed in the bankruptcy proceedings. These claims have been established by sworn affidavits and testimony.

The facts in the case as reported to the committee by the Department of the Army, and, in brief, the Department's opposition to the bill, are set forth in the letter of January 13, 1970, from the Department to the committee as follows:

"Reference is made to your request to the Secretary of Defense for the views of the Department of Defense on S. 2229, 91st Congress, a bill "For the relief of certain corporations, associations, and individuals." The names of the 76 claimants and the amounts claimed are enumerated in the bill. The claims total $512,314.84. The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

"The bill provides in pertinent part: 'That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to each corporation, association, and individual named in section 2 of this Act, the amount set forth opposite its or his name. The payment of such sums shall be in full settlement of all their claims against the United States for payments due for the furnishing of labor and materials in the construction of 488 prefabricated family housing units for national defense use under contract numbered DA–36–109–ENG–7520, dated September 23, 1963, such payments having not been made by the United States or its contractors, Home Building Contractors, Inc. and Construction Components Inc., and none of such payments having been covered by the payment bonds required of contractors by the first section of the Act of August 24, 1935, as amended (49 Stat. 793; 40 U.S.C. 270a).'

Department of the Army records disclose that contract No. DA–36–109–ENG–7520 was a supply contract awarded on September 23, 1963, to Home Building Contractors, Inc. (hereafter referred to as the prime contractor), for 488 prefabricated family housing units. The contract provided for all component parts of the houses to be maanufactured, packaged for overseas shipment, and delivered to Port Royal, S.C. by March 1, 1964. The total contract price, as amended, was $4,048,803. The completion date for the entire contract was extended to August 31, 1964, but the final units were not delivered until May 21, 1965.

On February 7, 1964, the prime contractor, being unable successfully to fabricate and assemble a prototype model within the period specified in the contract, subcontracted the entire contract to the Lusk Corp. (hereafter referred to as the subcontractor). The work was to be performed by Construction Components, Inc., a wholly owned subsidiary of the subcontractor.

Payments made by the United States to the prime contractor from May 29, 1964, until December 14, 1965, totaled $3,964,223.19. Seven claims totaling $245,454.09 were submitted by the prime contractor, but the Government made a setoff against him for $179,446 for deficiencies in the units discovered after they reached their overseas destinations. The amounts due under the contract and other disputes were made the basis of a number of appeals by the prime contractor to the Armed Services Board of Contract Appeals. On October 9, 1968, an agreement was reached between the prime contractor and the United States. The appeals were dismissed on May 21, 1969. The settlement agreement provides for payment of a net increase of $93,000 to the contract price. As of September 15, 1969, only $8,300 remained to be paid to complete the settlement. When the foregoing payments are made, the Department will have fully discharged its obligations under the contract.

In 1966, the subcontractor became the subject of a chapter X reorganization, which was brought in the bankruptcy courts for the benefit of the creditors of the subcontractor. As the time of the writing of this report a plan for reorganization is still pending (In the matter of the Lusk Corp., No. B5720 (U.S.D.C., Ariz. Tucson Div., filed 1966). This Department was informed that some, if not all, of the present claimants are parties to the proceeding and will probably qualify for a distribution if a plan is approved.

The Department of the Army on behalf of the Department of Defense, is opposed to the enactment of the bill.

A more detailed analysis of the facts and a discussion of legal issues involved are contained in the earlier report attached hereto. Summarizing the position taken therein, the Department of the Army reasserts that the claimants are not entitled to relief for the following reasons:

First, by its very terms the act of August 24, 1935, the so-called Miller Act (49 Stat. 793; 40 U.S.C. 270(a) et seq.), only requires surety bonds for the protection of laborers and materialmen (*Arthur N. Olive Co., Inc.* v. *U.S.*, 297 F. 2d 70 (1st Cir. 1962)); also the statute is limited to cases of "construction, alteration, or repair of public buildings or public works." The contract in question is clearly a supply contract, and the bonding requirement imposed upon a contractor under the Miller Act is not applicable.

Second, even assuming that this contract was for a public work, the act of April 29, 1941 (55 Stat. 147), as amended by the act of June 3, 1955 (69 Stat. 83; 40 U.S.C. 270e) modified the Miller Act by providing for waiver of required bonds by the Secretaries of the military departments. This waiver action was taken on the present contract.

Claimants were aware of, or with the exercise of reasonable care could have easily determined, the nature of the contract, that is, supply and not public works. Even if they mistakenly assumed it to be a construction contract, they should have, in view of the rather broad waiver provisions, made inquiry as to the existence of a bond.

In addition to the lack of any legal basis for this claim, it is apparent that there is equally absent any basis in equity. The Department of the Army records disclose that many of these claimants are nothing more than general creditors of the bankrupt firms and that their claims did not accrue as a direct result of labor or materials furnished under this particular contract. Further, as late as September 15, 1969, the Department of the Army was informed that the bankruptcy proceedings involving the subcontractor were still pending. This being so, and assuming some legal or equitable liability on the part of the United States, the remedy here requested is premature and indeed inaccurate as the damages suffered, if any, are not certain.

The Department of the Army, on behalf of the Department of Defense, previously submitted a report, dated August 31, 1967, to your committee on bills introduced in the 90th Congress. A copy of that report is enclosed. Seventy-five of the claimants and the amounts claimed in the present bill are the same as those presented in the six bills introduced in the 90th Congress. One claimant was added. The Department of the Army is of the opinion that the claims are without merit, and on behalf of the Department of Defense opposes the bill.

The cost of the bill, if enacted, would be $512,314.84.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

The committee believes that it is proper to refer this bill to the Chief Commissioner of the Court of Claims for his findings and recommendations.

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339 F. 2d 625 (Ct. Cl. 1964), the Court of Claims held the failure to supply insurance by the United States did not give rise to a legal claim against the United States.

[2] In *Armiger* the Court of Claims held the negligent failure to provide insurance, even though not required by law or by a regulation of the military, did give rise to an equitable claim against the United States and that court on a congressional reference that the widows of the bandsmen were each entitled to $25,000 because a chief petty officer of the Navy failed to circulate applications for flight insurance which could have been purchased for $1 for $25,000 coverage per person.

LESTER L. STITELER

The Senate proceeded to consider the bill (H.R. 10676) for the relief of Lester L. Stiteler, which had been reported from the Committee on the Judiciary with an amendment in line 4, after the word "to", strike out "comprise" and insert "compromise".

The amendment was agreed to.

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

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1018), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the proposed legislation is to authorize the U.S. Postal Service, on such terms as it deems just, to compromise, release, or discharge in whole or in part the liability of Lester L. Stiteler, assistant superintendent of the Alcott Station Post Office, Denver, Colo., to the United States for the loss resulting from the burglary at the Alcott Station Post Office, Denver, on November 23, 1967.

STATEMENT

In its favorable report on the bill, the Committee on the Judiciary of the House of Representatives said:

In its report to the committee on the bill the Postal Service stated that it favored enactment of the measure.

On the night of November 23, 1967, burglars forcibly entered the Alcott Postal Station and pried open the outer doors of two safes. One of the safes was equipped with an inner security chamber, known as a burglar-resistant chest. This chest was opened by the burglars without the use of force. Evidence disclosed that the chest was not filled to capacity or locked on full combination, as required by postal regulations.

In an affidavit dated November 28, 1967, Mr.

Stiteler stated: "* * * To the best of my recollection, the burglary resistant chest was left on day lock. It is normal practice to fully secure the combination on the aforesaid chest before leaving the office. However, when I go to lunch it has been the practice to leave it on day lock. Since there was no occasion to get into it during the afternoon preceding the burglary, it was inadvertently left on day lock at the end of the day."

Because of his negligence in failing to fill the burglar-resistant chest to capacity, and in not locking the chest on full combination, Mr. Stiteler was held liable for the sum of $6,911.10, representing an amount equal to the cash and the value of postage stamps in his custody that was stolen from the Alcott Postal Station.

In its report to the committee the Postal Service noted that the newly enacted Postal Reorganization Act provides that an employee may be relieved of a claim such as that involved here on substantially the terms stated in this bill, 39 U.S.C. 2601, the Comptroller General has ruled (B–171785, April 15, 1971) that the new authority may not be used to reopen cases decided by the General Accounting Office prior to the commencement of operations of the new Postal Service, July 1, 1971. The rationale of the Comptroller General's decision also applies to cases that were finally determined by the Post Office Department prior to the commencement of operations of the Postal Service. The present case was finally determined adversely to the claimant by the Claims Division, Law Department, prior to such date. Accordingly, the Postal Service stated that it believes that relief for Mr. Stiteler must initiate with the Congress.

The committee agrees that this bill provides a practical means of according this employee the same sort of consideration, which would be available currently to similarly situated employees under applicable law. Accordingly it is recommended that the bill be considered favorably.

The committee believes the bill is meritorious and recommends it favorably.

JAMES E. FRY, JR. AND MARGARET E. FRY

The bill (S. 633) for the relief of James E. Fry, Jr., and Margaret E. Fry was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of clause (1) of section 2733(b) of title 10, United States Code, or any regulation promulgated thereunder, the Secretary of the Army is authorized to receive, consider, settle, and pay any claim filed under such section by James E. Fry, Junior, and Margaret E. Fry of Brighton, Colorado, within one year after the date of enactment of this Act, the said James E. Fry, Junior, and Margaret E. Fry having allegedly suffered damage to their property in 1966 as the result of the contamination of a stream, running under the land of the said James E. Fry, Junior, and Margaret E. Fry, by chemical waste disposed of by personnel at the Rocky Mountain Arsenal in Colorado. Nothing in this Act shall be construed as an inference of liability on the part of the United States.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report—No. 92–1019—explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the Secretary of the Army to receive, consider, settle, and pay any claim filed under section 2733(b) of title 10, United States Code, or any regulation promulgated thereunder, by James E. Fry, Junior, and Margaret E. Fry of Brighton, Colorado, having allegedly suffered damage to their property in 1966 as the result of the contamination of a stream, running under the land of the said James E. Fry, Junior, and Margaret E. Fry, by chemical waste disposed of by personnel at the Rocky Mountain Arsenal in Colorado.

STATEMENT

The facts of the case as contained in the report of the Department of the Army are as follows:

The effect of the bill would be to lift the statute of limitations so that the Department of the Army can consider the claim on the merits.

The Department of the Army is not opposed to the bill.

Department of the Army records reveal that:

(a) The Frys are the sole owners of a tract of land consisting of 391.56 acres situated in the northwest quarter of section 14, Township 2 South, Range 67 west, and the western half of the southwestern quarter of section 11, Township of 2 South, Range 67 West, Adams County, Colorado.

(b) There is evidence to support the Frys' allegation of some casual relation between the property damage to their land and crops due to water pollution and the activities of the Rocky Mountain Arsenal in Denver, Colorado.

(c) In 1954 the Frys first heard complaints from surrounding neighbors about water pollution caused by the Rocky Mountain Arsenal and at that time they were aware that claims against the United States were being filed.

(d) On January 8, 1960, tests were conducted by local state health officials, on land surrounding the Frys' tract. Letters were sent by the Tri-County District Health Department, Aurora, Colorado, during the months of January and February 1960, which informed land owners in the area that the chloride content of their wells exceeded 200 parts per million. Two hundred fifty parts per million was the acceptable limit.

(e) In 1964 and 1965, Mr. Fry planted corn crops and noticed early signs of retardation, but later these crops developed satisfactorily and showed no further signs of damage. During that time, he stated that he "suspected the water".

(f) Sometime prior to 1965 Mr. Fry was informed by a member of the United States Geological Survey that the water contamination in the area might disappear in 20 to 30 years.

(g) On January 20, 1967, the Frys filed a claim for property damage against the United States under the provisions of section 2733, title 10 United States Code, as follows:

1. Contaminated wells with a total flow of 885 gallons per minute	$75,640.00
2. Abandonment of tile line	1,247.00
3. Abandonment of holding pond	967.80
4. Damage to 1966 crops and land	1,274.00
5. Claim for digging well to replace those contaminated	3,961.81
Total claim	74,090.61

(h) By letter dated October 6, 1967, the U.S. Army Claims Service notified the Frys that their claim had been disapproved because, under the applicable Colorado law, they were deemed to have known that their water was contaminated, and that the Rocky Mountain Arsenal was the source of the contamination, in 1964. Thus, on January 20, 1967, the two-year limitation period for the filing of administrative claims under section 2733 of title 10, United States Code, had elapsed.

The Frys appealed the decision denying their claim (on the grounds discussed later). Their appeal was denied by the Deputy Assistant Secretary of the Army (Financial Management) on January 23, 1968.

As noted earlier, there is evidence that property belonging to the Frys was damaged by the Department of the Army. The only controversy is whether the Frys filed their claim in a timely manner. In denying the Frys' claim, the Department of the Army asserted that:

(a) Under clause (1) of subsection (b) of section 2733 of title 10, United States Code, all claims for property damage must be presented within two years "after it [the claim] accrues." Determination of when a claim accrues under this provision of Federal law depends on the applicable law of Colorado which was the situs of the tort.

(b) Under Colorado law, a claim of the type asserted by the Frys accrues: (1) when the land is known (or should be known) by the claimant to be damaged, and (2) the source of the damage is known (or should be known) by the claimant. *Zimmerman* v. *Hinderlander*, 97 P. 2d 443 (Colo. 1939); *Middlecamp Bessimer Irrigating Co.*, 103 P. 280 (Colo. 1909); *Rose* v. *Agricultural Ditch and Reservoir Co.*, 202 P. 112 (Colo. 1921).

(c) The record discloses that, prior to January 20, 1965, the Frys knew (or should have known) that their land had been damaged by chemical contamination, and that the probable source of that contamination was the U.S. Army Rocky Mountain Arsenal.

The Frys have consistently maintained the following position:

(a) The claim first accrued on June 20, 1966, because the Tri-County District Health Department then received the results of a sample which had a content of 510 parts per million of chloride. This content was well above the acceptable limit of 250 parts per million. At about the same time, the damage to crops was also shown, for the claimants then had side by side comparisons made of crops watered by contaminated and uncontaminated wells.

(b) The Frys did not have any clear notice of the contamination of wells before 1966. They substantiated this contention by a letter dated March 20, 1968, from Mr. Thomas E. Vigil of the Tri-County District Health Department to the effect that the records were reviewed and showed that the Health Department had not notified the Frys of any earlier reports that the well water pollution exceeded the standards set forth by the U.S. Public Health Service. Mr. Fry further states that he asked the Army to notify him of any contamination in the wells which he gave the Army permission to drill.

(c) In the spring of 1964 the Frys only suspected the water, but since they used herbicides they could not be sure of the source of any contamination. Also, in irrigating the land after the original retardation there was no noticeable ill effects, which could conclusively be attributed to the water or herbicides, in three out of four tests. The Frys further state that this claim is supported by a statement from one Norval Daniels who was employed as a ditch rider for the Burlington Ditch Company and in his job passed claimants' field of corn daily. Mr. Daniels noted that one end of the corn-

field was irrigated from the wells in question and the other was not, but at harvest time the corn appeared equally good at both ends of the tract.

After reviewing these contentions, it is the opinion of this Department that the claimants have not exhausted their judicial remedies because they can seek a judicial determination, within six years of the date of the alleged injury, as to whether the administrative statute of limitations had run. The pursuit of this remedy, however, would be burdensome upon the claimants and upon the Department of the Army and would probably result in an affirmance of this Department's determination that the two-year administrative statute had run. No matter what the court's decision, the claim would still be unresolved. If a favorable decision to the claimant were made, the Department would still be required to hear the claim on its merits. If, on the other hand, the decision were adverse to the claimants, they could seek a private relief bill to remove the time bar.

In view of these considerations, the Department of the Army on behalf of the Department of Defense has no objection to the enactment of the bill. This conclusion is based upon the fact that the claimants have presented persuasive reasons for their failure to take timely action. Although these reasons do not provide a legal basis for tolling the statute they do raise compelling, equitable considerations and indicate that the claimants' assigned reasons for this forbearance in filing a claim represented an honest desire to avoid filing until they were convinced that an injury had resulted and also that the United States was responsible. The good faith of the claimants is also demonstrated by the fact that the claimants continued to plant the crops in 1964 and 1965 and did not seek to recover for any damages to crops during that period.

In agreement with the views of the Department, the Committee recommends that the bill be favorably considered.

COMDR. HOWARD A. WELTNER, U.S. NAVAL RESERVE

The bill (S. 884) for the relief of Comdr. Howard A. Weltner, U.S. Naval Reserve, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Commander Howard A. Weltner, United States Naval Reserve, is hereby relieved of all liability for repayment to the United States of the amount of $8,567.53 representing overpayments of active duty pay as a member of the United States Naval Reserve in the years 1951 through March 1970 which he received as the result of an erroneous computation of creditable service for longevity purposes in establishing an incorrect pay entry base date.

SEC. 2. The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated to the said Commander Howard A. Weltner the sum of any amount received or withheld from him on account of the payments referred to in the first section of this bill.

No part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1020), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill is to relieve Commander Weltner of liability to repay to the United States the amount of $8,567.53, the sum he received in overpayment of active-duty as a member of the naval service from September 16, 1955, to March 18, 1970.

STATEMENT

The Department of the Navy interposes no objection to this legislation.

The facts of the case as contained in the report of the Department of the Navy to the chairman of the committee on an identical bill (S. 4084) of the 91st Congress are as follows:

The records of this Department show that Commander Weltner served as an enlisted man in the U.S. Navy from January 31, 1951, until September 6, 1951. On September 7, 1951, he began service as a midshipman, U.S. Naval Reserve, with the Naval Reserve Officer Training Corps program. He continued in that status until August 3, 1954, and was commissioned as a regular officer in the U.S. Navy on August 4, 1954. Commander Weltner served as a regular officer until May 31, 1957, and on June 1, 1957, his status was changed to that of a Reserve officer. He has continually served on active duty as a Reserve officer since June 1, 1957.

The records of the Department further show that on September 16, 1955, Commander Weltner's pay entry base date was established as January 31, 1951, the day his original enlisted service in the Navy began. This pay entry base date erroneously included the period from September 7, 1951, to August 3, 1954, while Comander Weltner was serving as a midshipman. On March 18, 1970, Commander Weltner's pay entry base date was reestablished as December 28, 1953; the computation of this date excludes the period of his midshipman service, although it properly excludes his enlisted service. The records of the Department do not specifically reveal why Commander Weltner's pay entry base date was recomputed in the early part of 1970. However, it appears that the recomputation was the result of a routine verification of certain information contained in the data bank of the automatic data processing records maintained in the Bureau of Naval Personnel.

Although the total overpayment in this case is a substantial sum, it is one which was built up over a period of almost 15 years. The overpayment was the result of an administrative error. There is nothing in the records of this Department to indicate that the error was caused by any fault on the part of Commander weltner or that he was not acting in good faith.

In agreement with the views of the Department, the committee recommends favorable consideration of the bill (S. 884).

VILLAGE OF RIVER FOREST, ILL.

The bill (H.R. 631) for the relief of the village of River Forest, Ill., was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1021), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to pay the village of River Forest, the sum of $5,096.50, in full settlement of its claims for reimbursement for one-half of the cost of certain civil defense communications equipment purchased by the village in November of 1962 at the urging of civil defense officials and in the belief that such reimbursement would be made.

STATEMENT

The Department of the Army in its report to the House Judiciary Committee stated that it is not opposed to the legislation. The Department further stated that River Forest Ill., is a small village with a population of approximately 12,695 ("1970 Commercial Atlas and Marketing Guide," Rand McNally & Co.). The civil defense establishment of the village relied heavily on volunteer personnel who were not conversant with the complexities of Government procurement. In 1962, the Federal Government was encouraging municipalities to participate in a nationwide civil defense program. Communities were urged to develop civil defense facilities on a "50–50" matching fund basis. This was a period of national danger and concern because of the Berlin and Cuban missile crises.

The Department further stated that in 1962, the Regional Director, Office of Civil Defense, then under the Office of Secretary of Defense (now under Office, Secretary of the Army) approved the River Forest grant for installation of a siren and generator for an approved public warning system. Newspaper advertisement was accomplished, sealed bids were received, and public bid openings were conducted. In November 1962 contracts were duly awarded, and the siren and equipment were procured and installed. On January 25, 1965, the village submitted its request for contribution under the Federal civil defense program (50 U.S.C., app. 2281), and submitted a billing under approved project application OCD No. I 11,600–27(65) to the State civil defense office in the amount of $5,096.50 for the Federal share. The State civil defense office refused to process the billing for payment submitted by the village under the approved application because the equipment had been installed prior to the application. The (Federal) Office of Civil Defense required the submission and approval of a project application prior to the procurement of the equipment, and prohibited retroactive Federal payments to local governments for obligations incurred prior to the beginning date of the Federal appropriation available for obligation (32 C.F.R. 1801.8(a); 31 Comptroller General 308; 32 C.F.R. 180128 (b)).

In order to further explain the background and the circumstances surrounding the difficulties encountered by the village, the Department of the Army quoted from a letter of the sponsor of the bills. This letter referred to the difficulties encountered by the village in filing the project application forms, including the fact that apparently a set of application forms had become lost and a new set had to be prepared. Unfortunately the village was unable to complete and file the application form when it was received because by that time the equipment had been installed.

The Department of the Army further noted that on October 7, 1969, a review of the same claims was conducted, by the (Federal) Office of Civil Defense, in connection with H.R. 389 and 390, 91st Congress. That office noted the unauthorized procurement prior to approval, and the fact that the wage scale paid to electricians was equal to the local wage ($4.75 per hour) but was less than $5 per hour determined by the Department of Labor to be the prevailing rate.

The agency concluded that the procurement was proper in all other respects. On June 21, 1971, (Federal) Office of Civil Defense reported that insofar as claims of this nature are concerned, they have steadily decreased in number. None was enacted in the last Congress, and the present claims are the only ones introduced in the present Congress.

In indicating that it had no objection to relief in this situation, the Department of the Army stated:

"In view of the apparent reliance of the village officials on the 1962 approval of the River Forest grant by the regional director, Office of Civil Defense, the Department of the Army is not opposed to the enactment of the bill. No prejudice or detriment was suffered by the Federal Government. In fact, the civil defense program received the full value of the property and the additional benefit of a timely installation of equipment in a period of national crisis. The Department of the Army is of the opinion that it would be inequitable to deny relief to a small community which acted in good faith not only due to reliance on the statements of responsible Federal officials but also because of the inexperience of its volunteer staff and the then existing emergency conditions, proceeded with a premature procurement. Although River Forest later lost or misplaced the project application forms, it clearly appears that the State director knew of the project and the delay in submission as early as July 1963. There is no indication that the grant of relief would result in an influx of similar bills."

In view of the circumstances of the case and the statement of the Department indicating that it has no objection to relief, it is recommended that the bill be considered favorably.

ESTATE OF CHARLES ZONARS, DECEASED

The bill (H.R. 2127) for the relief of the estate of Charles Zonars, deceased was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1022), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to pay to the estate of Charles Zonars, deceased, $6,400 from the war claims fund in settlement of the claims of the decedent arising in connection with loss, damage or destruction by military operations during World War II of property located in Greece.

STATEMENT

The facts of the case as contained in the House Report 92–86 are as follows:

"The Foreign Claims Settlement Commission in its report to the committee on an earlier bill stated that it would have no objection to a bill providing for payment out of the war claims fund.

"The bill H.R. 2127 would authorize a payment out of the war claims fund to the estate of an individual in an amount equal to the amount the person would have been awarded under title II of the War Claims Act of 1948 (Public Law 87–846 approved October 22, 1962), based on his interests in certain property. As is noted in the Foreign Claims Settlement Commission report on a similar bil in the 91st Congress, the Supreme Court decision in the case of *Afroyim* v. *Rusk*, 387 U.S. 253 (1967) ruled unconstitutional the section of the Nationality Act of 1940 which provided that an individual could lose his U.S. citizenship by voting in a political election in a foreign state. A claim filed by Mr. Charles Zonars with the Foreign Claims Settlement Commission for compensation for the losses referred to in the bill was denied on the basis that his voting in an election in Greece on March 31, 1946, had caused his expatriation. He made a timely objection to this ruling on the same basis ultimately upheld in the *Afroyim* decision. The Commission rejected his contentions and affirmed its proposed decision. The claims program was completed just 12 days prior to the decision in the *Afroyim* v. *Rusk* case. The Commission has reported to the committee that if that decision had been decided before May 17, 1967, the Commission would have recognized Mr. Zonars' claim. The report of the Commission stated:

" 'It is to be noted that the *Afroyim* case was decided on May 29, 1967, which was 12 days after the completion date of the war claims program. If the *Afroyim* case had been decided before the May 17, 1967, completion date, the Commission would have, of course, acted on Mr. Zonars' claim. Undoubtedly, an award in the amount of $6,400 would have been granted to Charles Zonars for his 40-percent interest in the damaged corporation. The Commission is unaware of any other war damage claim which would be affected by the *Afroyim* decision.'

"The claim which is the subject of this bill is one included under title II of the War Claims Act which provided, among other things, for claims of nationals of the United States for loss or destruction of, or physical damage to, real and tangible personal property located in certain European countries, including Greece, which loss, destruction, or physical damage occurred during the period beginning September 1, 1939, and ending May 8, 1945, as a direct consequence of military operations of war or special measures directed against property because of its enemy ownership.

"Section 204 of title II of the act expressly precluded the Commission from granting awards in these claims unless the property involved (or the portion thereof involved) was owned by a national of the United States on the date of the loss, damage, or destruction and unless the claim arising therefrom had been continuously owned thereafter by a national of the United States until the date of filing with the Commission.

"Charles Zonars and his brother, Constantine Zonars, filed a claim (No. W–2743) based upon the destruction during World War II of property owned by the Zonars Corp. in Athens, Greece, in which they had ownership interests. By its decision dated October 13, 1966, the Commission found that Constantine Zonars owned 315 shares in the corporation (the equivalent of a 28-percent ownership interest) during the period between January 1943 and January 1945 when certain of its property was damaged or destroyed due to military operations. It was also found that the value of the property so lost was $16,000.

"Constantine Zonars was a national of the United States on the date of the loss and had maintained this status continously to the date that the claim was filed with the Commission on March 11, 1964. On the other hand, Charles Zonars, who became a national of the United States by naturalization on March 31, 1905, was held to have been expatriated under section 401(e) of the Nationality Act of 1940 (54 Stat. 1137, as amended, 38 Stat. 746, 8 U.S.C. 901) as the result of voting in a political election held in Greece on March 31, 1946.

"Based on the foregoing, Constantine Zonars was granted an award in the amount of $4,480 based upon his 28-percent ownership interest in Zonars Corp. The claim of Charles Zonars, based upon his 40-percent ownership interest in such corporation, was denied because of the ruling on expatriation. The claim therefore was denied on the single ground that it had not been continuously owned by a national of the United States from the date of loss to the date of filing with the Commission, a statutory requirement for granting an award. The remaining 28-percent interest in the corporation was owned by non-U.S. nationals for which no claim was filed under the statute.

"Objections were filed by both claimants with respect to the value of the property as found by the Commission and with respect to the denial of the claim by Charles Zonars. It was contended in behalf of Charles Zonars that the statute providing for the loss of his U.S. citizenship by virtue of his having voted in a political election held in Greece was unconstitutional.

"By final decision dated January 4, 1967, the Commission affirmed its proposed decision in all respects. The contention regarding the constitutionality of the statute under which Charles Zonars expatriated himself was specifically rejected based upon the decision of the Supreme Court of the United States in *Perez v. Brownell* (356 U.S. 44, 78 S. Ct. 568 (1958)), which upheld the constitutionality of the statute in question. As had been observed in this report, on May 29, 1967, the Supreme Court reversed the *Perez* v. *Brownell* decision in its decision in the case of *Afroyim* v. *Rusk*, and specifically ruled unconstitutional the section of the Nationality Act of 1940, as amended, which provided for the loss of U.S. citizenship by voting on a political election in a foreign state.

"In seeking to assert his rights as clarified in the *Afroyim* decision, Charles Zonars continued his efforts to have his claim recognized. Mr. Zonars attempted to assert his rights under the Supreme Court decision, first by petitioning the Commission for a reconsideration and secondly by action in the U.S. District Court for the District of Columbia. The Commission advised him that they could not reconsider their previous action because the war claims program had been terminated in accordance with the enabling law. His attempt to gain relief by court proceedings ending when the court held that it lacked jurisdiction. He therefore appears to have exhausted all remedies which might have been open to him and his only recourse was to have appealed to Congress for relief.

"Thus, notwithstanding the fact that Mr. Zonars was considered to have maintained his U.S. nationality continuously from the date of his naturalization, there was no way in which the prior adverse determination based on the findings of expatriation could be changed in order to grant an award in the same manner as was done in the case of his brother concerning the same property. The Foreign Claims Settlement Commission in its report to the committee states that the claim is deemed to have met the nationality requirements under the statute in light of the finding concerning the citizenship of the claimant so that the claim is considered to have been continuous by a U.S. national from the date of the loss to the date of filing. The Commission further stated that the death of a qualified claimant after the filing of a claim would not preclude the issuance of an award to non-U.S. national heirs.

"In stating that it has no objection to enactment of the legislation, the Commission noted that payment should be made out of the war claims fund instead of the unappropriated funds in the Treasury. It was noted that the use of unappropriated funds as originally provided in the bill in the 91st Congress for the payment of war damage claims would be an undesirable precedent.

The committee agreed and in reporting the bill in the 91st Congress (H.R. 7955, 91st Cong., 1st Sess.) the committee recommended an amendment to provide for payment from the war claims fund. The bill now embodies the language providing for payment from the war claims fund. The Commission has stated that while there is presently no money left in the war claims fund to pay additional claims, it is anticipated that money will be made available by the Attorney General for transfer into the fund possibly within the near future. It is also noted that since the award would not exceed $10,000, the heirs of Mr. Zonars would be entitled to receive the full amount of the award.

"In view of the circumstances of the case and the position of the Foreign Claims Settlement Commission indicating it has no objection to relief, it is recommended that the bill be considered favorably.

"The committee is advised that an attorney has rendered services in connection with this matter and accordingly, the bill carries the customary provision limiting the amount of attorneys fees."

In agreement with the views of the Foreign Claims Settlement Commission and the action of the House of Representatives, the committee recommends that the bill be considered favorably.

VINCENT J. SINDONE

The bill (H.R. 11632) for the relief of Vincent J. Sindone was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1024), explaining the purposes of the measure.

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

PURPOSE

The proposed legislation would authorize the Postmaster General, on such terms as he deems just, to compromise, release, or discharge in whole or in part, the liability of Vincent J. Sindone, postmaster of the post office at River Edge, N.J., to the United States for the loss resulting from the burglary at the main office of the River Edge Post Office on May 20, 1967.

STATEMENT

The facts of this case, as contained in House Report 92–1092, are as follows:

"The Postal Service in its report to the committee on the bill stated that it favors enactment of the measure.

"On May 20, 1967, burglars forcibly entered the River Edge Post Office, and through prying and peeling opened the outer doors of three safes. An inventory disclosed that the loss to the Postal Service in stamps was $34,849.07. The Postal Service reports that two of the three safes burglarized were equipped with an inner security chamber, known as a burglar resistant chest. One chest was unlocked and was used for old time records, and the other was locked and contained blank money orders.

"In its report, the Postal Service made the point that prior to the issuance of Postal Bulletin No. 20646, dated May 30, 1968, instructing employees concerning the priority of protection to be given funds, stamps, and money orders, numerous postmasters considered blank money orders to have the greatest intrinsic value requiring maximum available protection. The loss at the River Edge Post Office occurred well before Postal Bulletin No. 20646 was issued, defining for employees the proper protection to be accorded stock and funds. On this basis, the General Accounting Office held on April 29, 1971, that the Postmaster was not negligent in using one of the burglar-resistant chests for blank money orders, and relief was granted in the amount of $20,879.07. However, GAO held that the Postmaster was negligent in using the second burglar resistant chest for storing old timecards, and he was held liable for the loss of $14,000 in stamp stock, the amount the chest could have contained had it been properly utilized for stamps. (This bill concerns that portion of the loss—$14,000.)

"The appeal for private relief is made in this instance because while the Postal Reorganization Act provides that the Postal Service may, on such terms as it deems just and expedient, relieve an employee of a claim such as that involved here, 39 U.S.C., section 2601, the Comptroller General has ruled (B–171785, Apr. 15, 1971) that the new authority may not be used to reopen cases decided by GAO prior to the commencement of operations of the new Postal Service, July 1, 1971. The Postal Service states that since this case was determined adversely to the claimant prior to that date, relief for Postmaster Sindone must initiate with Congress.

"The Postal Service in its report in summarizing the basis for its favorable position on the bill stated: 'In view of his negligence in failing to properly utilize the burglar resistant chest, we believe that under rules of strict legal accountability Postmaster Sindone was properly held liable for the loss of $14,000 in stamp stock. However, we believe that equitable relief should be considered in this case. Accordingly, inasmuch as H.R. 11632 would authorize the Postmaster General to grant relief in whole or in part, on such terms as he deems just, the Postal Service favors enactment of the measure."

"It is recommended that the bill be considered favorably."

In agreement with the views of the House of Representatives, the committee recommends that this legislation be considered favorably.

RELIEF FOR CERTAIN POSTAL EMPLOYEES AT THE ELMHURST, ILL., POST OFFICE

The Senate proceeded to consider the bill (S. 655) for the relief of certain postal employees at the Elmhurst, Ill., Post Office, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That, on such terms as he deems just, the Postmaster General is hereby authorized to compromise, release, or discharge in whole or in part, the individual liabilities of Louis H. Linneweh, Howard D. Slavik, Edith J. Fainter, William W. Higgins, Thomas Newett, Roger Olson, and the estate of Joseph J. Holloway, employees at the Elmhurst, Illinois, Post Office, to the United States for the loss resulting from the burglary at the post office on February 21, 1965.

The amendment was agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–1025), explaining the purposes of the measure.

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

PURPOSE OF AMENDMENT

The purpose of the amendment is to incorporate the recommendations of the Post Office Department as committee policy.

PURPOSE

The purpose of the proposed legislation as amended is to authorize the Postmaster General, on such terms as he deems just, to compromise, release, or discharge in whole or in part, the individual liabilities of certain employees of the Post Office at Elmhurst, Ill., for losses resulting from a burglary at that post office on February 21, 1965.

STATEMENT

The facts of the case contained in the report from the Post Office Department on a similar bill (S. 1035) of the 91st Congress are as follows:

"The main post office at Elmhurst was burglarized sometime between 8 p.m. Saturday, February 20, and 4:40 a.m. Sunday, February 21, 1965. Investigation disclosed that the entire amount of the Government loss was obtained by the burglars from one four-drawer steel letter-size file cabinet and from wood screenline drawers containing the fixed credits (funds and stamp stock) of the clerks. The post office has two vaults which are adequate for the needs of the office. However, the vaults were not utilized by the employees for overnight storage of their fixed credits. Of the total loss amounting to $10,874.87, the sum of $9,338.75 was disallowed because of negligence in protecting stamp stock and funds.

"In a letter dated November 6, 1967, the General Accounting Office held deceased former Postmaster Joseph J. Hollowoy and retired Assistant Postmaster Roger Olson jointly and severally liable for the loss of $9,338.75 in funds and stamp stock because they failed to ascertain that the regulations for safeguarding stamps and funds were not being followed. The GAO further held that the clerks were each liable for the amounts stolen from their individual fixed credits because they had failed to place their stamps and funds in vaults or safes after their tour of duty ended, as required by section 321.2, Postal Manual. Losses experienced by the individual clerks for which they have been determined to be liable are:

"Mr. Louis H. Linneweh	$3,525.00
Mr. Howard D. Slavik	2,085.00
Mrs. Edith J. Fainter	2,147.00
Mr. William W. Higgins	1,351.75
Mr. Thomas Newett	230.00
Total	9,338.75

"Under existing law the Department has no alternative but to charge losses of this character to the postmaster and other employees whose negligence contributed to the loss. This practice is not in accord with current viewpoints of enlightened personnel management. Although liability is expressed in terms of compensating the Government for its loss, it must be looked upon realistically as a punishment and its enforcement as a deterrent against future negligence. The assessment of liability as punishment is capricious. This is illustrated by this case in which the liability of the clerks varies from $3,525 to $230 although their fault was the same. Other equitable consideration likewise cannot be evaluated under current law.

"We believe some relief should be granted to these employees. However, consideration should also be given to the fact that the employees were negligent. For the foregoing reason, we believe the bill should be amended to provide that the Postmaster General, upon a determination that it is appropriate to do so, is authorized to relieve the employees named on such terms as the Postmaster General deems just and expedient of liability in whole or in part with respect to the transaction involved."

The committee is in agreement with the facts and opinions expressed by the Department. Accordingly, it is recommended that the bill be passed as amended.

AMENDMENT OF PUBLIC HEALTH SERVICE ACT RELATING TO COOLEY'S ANEMIA

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 15474.

The PRESIDENT pro tempore laid before the Senate H.R. 15474, to amend the Public Health Service Act to provide assistance for programs for the diagnosis, prevention, and treatment of, and research in, Cooley's anemia, which was read twice by its title.

Mr. MANSFIELD. Mr. President, I ask unanimous consent for the immediate consideration of the bill.

The PRESIDENT pro tempore. Is there objection?

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, it is with great pleasure to me that the Senate has the opportunity to take up the National Cooley's Anemia Control Act. This bill, H.R. 15474, was overwhelmingly passed by the House earlier this month, and I am hopeful that today the Senate will reaffirm that action, such that the President can rapidly sign this important piece of health legislation into law. In the Senate, an identical bill to the House bill has been introduced by my close friend and colleague, the senior Senator from Connecticut, Mr. RIBICOFF. I certainly applaud his effective leadership in relentlessly pursuing the efforts to assure congressional passage of this vital legislation.

Mr. President, the distinguished majority leader, on behalf of myself and other Senators, will offer two amendments to the House-passed bill. These amendments are cosponsored by Senator RIBICOFF; the distinguished ranking minority member of the Senate Labor Committee, the Senator from New York, Mr. JAVITS; and by my colleague and close personal friend, a member of the Senate Health Subcommittee, the Senator from Rhode Island, Mr. PELL.

Mr. President, I do not believe these amendments will be controversial, though they are both important. The first amendment increases the authorization of appropriations for education and public information programs in respect to Cooley's anemia to $1 million a year. It is crucial that HEW be authorized to conduct a vigorous program of public information such that those Americans who may be affected by this terrible disease can have at their hands all of the relevant information with respect to combating its effects. In my judgment, the House bill, with its authorization of $25,000 a year, does not deal adequately with this important aspect of the program. And our amendment is designed to give more adequate recognition to this aspect of the national program.

Our second amendment, Mr. President, is simply designed to correct a technical error in the House-passed bill. As I read the House-passed bill, it has the effect of deleting from existing law a provision of title XI of the Public Health Service Act with respect to sickle cell anemia which requires the Secretary of Health, Education, and Welfare to give priority to programs operating in areas which he determines to have the greatest number of persons in need of services provided under the program. I doubt that the House intended to delete this important provision, which by the way is included in H.R. 15474 with respect to Cooley's anemia. The amendment we offer simply makes a technical and conforming change to the provision of the House bill which restores the effect of this provision regarding sickle cell anemia.

Mr. President, I am delighted to have this opportunity to bring the National Cooley's Anemia Control Act before the Senate. This legislation would establish for the first time a national program to combat Cooley's anemia, an invariably fatal genetic blood disease which may affect as many as 200,000 Americans. H.R. 15474 would authorize a total of $8,175,000 over a 3-year period to establish needed programs in research, prevention, and education to combat this lethal affliction. The bill closely parallels legislation passed by the Congress in May to combat sickle cell anemia, and equally devastating genetic blood disorder. Passage of H.R. 15474 with the amendments I propose to offer would provide the resources to mount an effective attack against Cooley's anemia and would elevate a program for its prevention and control to its rightful priority among the Nation's health concerns.

Cooley's anemia, known also as Mediterranean anemia or Thalassemia Major, is an inherited blood disease which occurs primarily among individuals who have migrated to this country from the Mediterranean Basin. First classified by Dr. Thomas Cooley in 1925, the disease is caused by a genetically determined deficiency in the production of hemoglobin, the substance in red blood cells which enables them to carry oxygen to the tissues of the body. The resulting structural abnormalities in hemoglobin and in the red blood cells produce severe anemia and shorten the victim's average life expectancy to 20 to 25 years. Only through the administration of frequent and often harmful blood transfusions can the patient lead a relatively normal life for even this period of time.

Although victims of Cooley's anemia may be found in almost any country in the world, the disease appears to have originated in the area surrounding the Mediterranean Sea. There, it is postulated, the inheritance of a single gene for the disorder may have had the benefit of conferring immunity against malaria. Today, the incidence of the disease is still high in that region—especially among individuals of Italian and Greek descent—although centuries of intermarriage have introduced the gene into other populations. In the United States, the true incidence of Cooley's anemia is unknown; but it is estimated that as many of 5,000 individuals of Mediterranean origin may have the disease and as many as 200,000 may carry the trait. Thus, the disorder may affect a substantial segment of the American population.

As with sickle cell anemia, Cooley's anemia may be inherited in both major and minor forms. Those who receive two genes for the disorder—one from each parent—suffer the severe consequences of the disease and generally do not live beyond the age of 20. Those who receive only one gene for the disorder bear the "trait" and are not likely to suffer from any of the symptoms of the disease. If two such carriers produce children, however, they run a 25-percent chance of bearing a child with the severe form of the disease and a 50-percent chance of producing a child with the trait. This is a probability based upon mendelian inheritance; in actual outcome all of the children of carriers may have the disease.

Because Cooley's anemia is caused by a genetic impairment in the synthesis of adult hemoglobin, the disease generally becomes manifest during the first year of life. A child unfortunate enough to have inherited the disorder may show early signs of listlessness, loss of appetite, and irritability—in addition to the anemia which will continue to progress relentlessly throughout his life. Organs connected with the metabolism of these defective red blood cells are also affected so that a child with Cooley's anemia often has an enlarged spleen and liver. In addition, stunted bone growth leads to various structural deformities; and victims of Cooley's anemia are often marked by retarded physical development and an altered facial appearance. These children are unable to engage in strenuous physical activity but with the aid of transfusions are often able to pursue otherwise normal school careers.

Although significant advances have been made in prolonging the life of the Cooley's anemia victim, there is no real cure for the disease. Treatment is purely supportive and consists of frequent blood transfusions to alleviate the constantly recurring anemia. The frequency with which a patient must undergo these periodic transfusions depends upon the severity of his disease process. Some children must undergo such treatment as often as two to three times a month. In addition, as the illness progresses, the iron from these transfusions accumulates in various tissues producing the potentially lethal side effect of iron overload. This iron accumulation may affect the endocrine glands, the heart and other vital organs and, in itself, may contribute to the death of the patient. The development of an effective chelating agent to remove the accumulated iron is desperately needed.

As devastating as the clinical picture of this disease may be, it does not take into account the tremendous financial and psychological burden suffered by the victim and his family. Dr. James A. Wolff, director of pediatric hematology at the babies hospital in New York City has estimated, for example, that the cost for clinical and hospital admissions for a child who requires transfusions at 3-week intervals throughout his life is approximately $72,000 from birth to possible death at the age of 20. In addition to this financial burden, the family of a Cooley's anemia victim must endure the severe emotional strain involved in comforting and supporting a child with

a debilitating, deforming, and eventually fatal disease.

Although recent medical advances have made it possible to lengthen the average life expectancy of the Cooley's anemia victim—from 1 year in 1925 to over two decades today—a tremendous amount of research remains to be undertaken. Three broad categories of research require attention. The first and perhaps most important of these involves research into the basic genetic mechanism underlying the disease. Research leading to an understanding of this genetic disorder will provide the groundwork for devising effective means of treatment and prevention and will have implications for the understanding of other human genetic defects. Second, there is a widely recognized need for the development of an effective form of therapy to alleviate the constant suffering of those who are plagued with the disease. Blood transfusions are not only costly, but are ineffective in treating the cause of the problem. They may cause serious side effects of their own, and in doing so pose an additional threat to the life of the patient. Without the availability of a safe and effective agent to prevent iron accumulation, they provide only a palliative form of therapy. Third, there is a need for the development of a reliable and inexpensive test for the detection of the Cooley's anemia trait. With the development of such a test, it will be possible to provide assistance to those with the trait who seek assistance in preventing further inheritance of the disease.

Mr. President, I am convinced that this country has both the ability and the concern to provide the necessary research resources to mount an effective attack against this crippling killer. Accordingly, the National Cooley's Anemia Control Act would provide a total of $5,100,000 over the next 3 years for research programs designed to accomplish these important objectives. Although progress has been made through research programs sponsored by the National Institutes of Health and by private research organizations such as the Cooley's Anemia Blood and Research Foundation for Children, Inc., the legislation now before you would for the first time provide substantial Federal assistance to initiate a coordinated national program. Research in the diagnosis, treatment, and prevention of Cooley's anemia would be supported at a level commensurate with the seriousness of the problem, and the bill would specifically encourage research to develop efficient and inexpensive detection tests for those who carry the trait. There is no question in my mind that a major Federal investment would soon reap visible research results and would provide hope for present victims of the disease as well as for those yet unborn who could be afflicted with its unfortunate consequences.

In addition to marshalling the funds needed for the expansion and intensification of the Nation's research effort, H.R. 15474 would authorize expenditures of $3,000,000 over a 3-year period for the initiation and operation of Cooley's anemia screening, treatment, and counseling programs. We are all aware that the most important factor in the control of any disease is prevention. As there is at present no known cure for the disease once it is inherited, the best means by which to prevent its occurrence is through the establishment of voluntary screening and counseling programs for those who carry the trait. The National Cooley's Anemia Control Act would not only provide for the inauguration of these services but would also authorize use of the Public Health Service facilities for similar purposes. Participation in any of these programs would be wholly voluntary and the results of all tests would be held in strict confidentiality. Accordingly, individuals who had reason to be concerned about the possibility of bearing a child with Cooley's anemia could seek the testing, guidance, and counseling necessary to aid in prevention of the disease.

Finally, the National Cooley's Anemia Control Act would authorize $3,000,000 over a 3-year period for the purpose of initiating a Federal program to develop and disseminate educational materials on Cooley's anemia to the medical profession and to the public generally. The importance of education cannot be overemphasized. As we saw with sickle cell anemia—and as we now see with Cooley's anemia—lack of public education regarding these diseases has resulted in low visibility for an inadequate attention to their research programs and in unnecessary suffering for parents and children at potential and actual risk. In recent statements before the House Subcommittee on Public Health and Environment, numerous experts have testified to the need for the development of sound information and education programs. They have indicated that these programs should be specifically targeted to reach those groups of Americans at greatest risk in order to inform them of the availability of screening tests and of the genetic implications of possessing the disease or trait. In addition, they have called for the development of intensive informational campaigns which would include the use of mass media, symposia, films, and pamphlets for both laymen and health professionals. Only through sound education programs such as these will it be possible to offer meaningful choices to those affected by the trait or disease.

Mr. President, the National Cooley's Anemia Control Act deserves our urgent consideration. I believe it entirely fitting that the Congress, after taking the initiative in promoting cancer, heart disease, and sickle cell research, should lead the way in mounting a campaign to eliminate a disease which seriously affects yet another segment of our population. H.R. 15474 would provide for a comprehensive attack on this serious problem—by providing for prevention of the disease through voluntary screening and counseling programs and by encouraging research into potential cures for those who are its unfortunate victims. Taken together with the sickle cell legislation, it would mount a coordinated attack on two of the Nation's most prevalent genetic blood disorders.

Mr. President, I urge passage of this important legislation.

Mr. MANSFIELD. Mr. President, I call up two amendments on behalf of the Senator from Massachusetts (Mr. KENNEDY) for himself and the Senator from New York (Mr. JAVITS), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Rhode Island (Mr. PELL).

The PRESIDENT pro tempore. The first amendment will be read.

The legislative clerk read the amendment, as follows:

On page 4, line 4, strike "$25,000" and insert in lieu thereof "$1,000,000".

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDENT pro tempore. The next amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 5, line 15, strike the word "part" and insert in lieu thereof "title".

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I support the passage of H.R. 15474, the National Cooley's Anemia Control Act. Through this measure, Congress can wage war on this disease. The bill establishes a national commitment to provide research support in Cooley's anemia—a genetic blood disorder, whose tragic disease incidence is estimated at 5,000 individuals of Mediterranean origin and affects 200,000 others as carriers of the trait—and support for screening, counseling and education to minimize the possibility of more children being affected by the disease, which results in pain, suffering and early death.

The legislation under consideration is similar to what Congress has accomplished under Public Law 92-294 for sickle cell anemia. Cooley's anemia is also a hereditary blood disease. If two parents have the gene—both father and mother carry the trait—one child, according to the Mendelian law, will more than likely have the disease; two will carry the gene or the trait; one will be free of the trait. In other words, one-fourth of the youngsters born to families in which both mother and father carry this particular gene will have Cooley's anemia.

The Senate amendments I have cosponsored would place greater emphasis on the initiation of Federal programs to develop and disseminate educational materials by increasing the authorization for these purposes from $25,000 annually to $1 million annually. Educational programs specifically targeted to reach those groups of Americans at risk—similar to what was done for sickle cell anemia—so they can be informed of screening tests and the genetic implication of the disease need increased funding if they are to be appropriately stimulated. The most effective means by which to control a disease—particularly Cooley's anemia—is prevention of its occurrence.

Also, the Senate amendment's "technical" provision will assure the continuation of appropriate community representation in the development and opera-

tion of programs funded under this act.

The PRESIDENT pro tempore. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

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. RIBICOFF. Mr. President, I am pleased that the Senate has passed legislation almost identical to S. 3856, the legislation I introduced on July 28 to establish a program to combat Cooley's anemia, an inherited blood ailment that afflicts about 200,000 Americans of Italian and Greek descent. Similar legislation, introduced by Connecticut Congressman ROBERT GIAIMO and Congresswoman ELLA GRASSO, passed the House on August 1.

The disease, first described and classified by Dr. Thomas Cooley in 1925, is caused by a genetic defect in the make-up of hemoglobin—the substance in red blood cells which enables them to carry oxygen to the body's tissues.

Onset of the disease occurs early in childhood and is relentlessly progressive. Bones grow unevenly and become brittle, resulting in structural deformities and altered facial appearance. Organs such as the spleen and liver become enlarged. And the child with Cooley's anemia is listless—unable to engage in normal physical activity. Individuals who have the disease generally do not live beyond the first or second decade of life and must undergo frequent blood transfusions in order to maintain an adequate supply of red blood cells.

Cooley's anemia, also known as Mediterranean anemia or Thalassemia major, was originally limited to the Mediterranean area. As many as one in 100 children in some parts of Italy are thought to have the disorder.

Due to intermarriage and emigration of large numbers of people of Italian and Greek descent, the disease is now fairly widespread. There are presently no reliable statistics regarding the incidence of Cooley's anemia in the United States, but it has been estimated that the disease affects as many as 200,000 individuals in this country.

At present, there is no known cure for Cooley's anemia and no breakthroughs in prevention and treatment have been made in the 40 years since the disease was classified. However, diagnosis of the disease can be made during the first year of life and palliative measures to prolong life can be undertaken. In 1925 the life expectancy of a Cooley's victim was 1 year. Today, with the aid of blood transfusions, the average lifespan is approximately 20 years.

While research efforts at the National Institute of Arthritis and Metabolic Disease and the National Heart and Lung Institute have begun to reveal the genetic mechanism responsible for the malady, more basic research is necessary. Present blood therapy treatment programs of transfusion are costly, debilitating, painful and dangerous to life. Progress, then, is needed in both research and treatment.

Ultimately, the solution lies in prevention—whether through an effective program of screening and counseling or through the future development of some form of genetic therapy.

At present, voluntary screening and counseling programs offer the best means by which to prevent occurrence of the disease. Coupled with sound education programs, they can provide reliable information to those affected.

The legislation adopted by the Senate, the National Cooley's Anemia Control Act, authorizes a 3-year program to combat this disease—$1 million would be authorized for each of 3 years for the establishment and operation of Cooley's anemia screening, treatment, and counseling activities.

A second program would authorize expenditures of $1.7 million for each of 3 years to set up research projects on the diagnosis, treatment, and prevention of this disease—$3 million is authorized over a 3-year period for the Secretary of Health, Education, and Welfare to develop information and educational materials relating to Cooley's anemia and to distribute such information and materials to medical personnel and the public generally.

I urge the President to sign this bill into law at the earliest possible time so that the vital research and education programs needed to defeat this disease can get underway.

TAX REFORM BILL MAY CUT BACK BEQUESTS TO ISRAEL

Mr. SCOTT. Mr. President, while I suppose no Member of this body expects serious congressional consideration of a tax reform bill this year, I think it would be educational, at the least, to point out what one of the pending bills will do. As reported in the press, it would cut back "bequests made by Americans to institutions abroad, including those in Israel."

Among the principal cosponsors of this bill, which would cut back "bequests made by Americans to institutions abroad, including those in Israel," is the Senator from South Dakota (Mr. MCGOVERN).

I ask unanimous consent to place this news article, which is from the Jewish Exponent of August 4, 1972, in the RECORD.

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

TAX REFORM BILL MAY CUT BACK BEQUESTS TO ISRAEL

WASHINGTON.—The Nelson tax reform bill, now in the hands of the Senate Finance Committee, contains a provision that may affect bequests made by Americans to institutions abroad, including those in Israel, it was learned last week.

Senate committee staff members observed that England, France and Israel are among the countries ranking high among those whose institutions receive such bequests.

The Nelson bill, introduced by Sen. Gaylord Nelson (D., Wisc.), has among its 50 provisions one that says a bequest by an American "shall be deductible (for income tax purposes) only if it is to be used predominantly within the United States or any of its possessions." The word "predominantly" in the bill's context has not been defined precisely.

No hearings have been scheduled for any section of the measure, and it is considered unlikely that it will be discussed on the Senate floor at this session.

The Nelson bill is co-sponsored by 11 Democrats. They are Sens. Hart, Kennedy, Eagleton, Tunney, McGovern, Mondale, Church, Harris, Hughes, Humphrey and Metcalf.

ORDER FOR RECOGNITION OF SENATORS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the orders for the recognition of Senators today be reversed.

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

The Senator from New York is recognized for 15 minutes.

CRISES AND OPPORTUNITIES IN UNITED STATES-JAPANESE RELATIONS

Mr. JAVITS. Mr. President, today we are in a new and critical stage of United States-Japanese relations. As a major world surplus Nation, the situation calls for Japan to make forward moves in the international economic area now and in this sense the fate of United States-Japan relations is in Japan's hands. I know it will take bold and skillful statesmanship in Japan, but the stakes are no less than the future direction of that nation. Japan today is at the crossroads—one road could lead to ever greater participation and leadership in the world, the other to old and tragic nationalism.

The political leadership of Japan has just undergone a significant change. Longstanding political, military, and economic policies are under review. The first high-level contact between this new leadership and U.S. officials took place in late July when Prime Minister Tanaka, Trade and Investment Minister Nakasone, and other ranking Japanese officials met with a high powered U.S. trade negotiating team led by Ambassador William D. Eberle, the President's special representative for trade.

This will be succeeded at the end of this month by an exceedingly important summit meeting in Honolulu between President Richard M. Nixon and the new Japanese Prime Minister Kakuel Tanaka. This meeting is likely to have important ramifications for the future of Asia and the free world, and for the negotiations now underway between free world nations and the U.S.S.R. and the People's Republic of China.

Prime Minister Tanaka is the first of a new, postwar generation of political leaders to assume power in Japan. There are certain parallels between Prime Minister Tanaka and Chancellor Willy Brandt in that both men are of a postwar generation and both men's political future partially is tied to their policies of "ostpolitik." Prime Minister Tana-

ka's "ostpolitik" concerns itself with the future shape of relations which will be hammered out between Japan and the People's Republic of China in the months and years ahead. The nature and development of these relations will have a crucial effect on the future peace, stability, and economic growth of the countries of the Pacific basin, and in turn will have a profound impact on the policies of the United States and U.S.S.R. toward this area and toward each other.

I consider the recent history of relations between the United States and Japan as being troubled and not in the optimum interest of either nation. The long festering textile dispute of 1970–71 had major political repercussions and adversely affected United States-Japan relations. We will have to leave it to history to judge as to whether there was a political commitment linking textiles and the Okinawa reversion and in turn whether the textile dispute played a role in the breakdown of prior consultations on U.S. relations with the People's Republic of China.

In turn, Japan was slow to recognize its rapidly changing and greatly strengthened international economic position in the late 1960's and early 1970's. The moment of truth came when West Germany and other European countries allowed their currencies to increase in value in May 1971 while Japan insisted on maintaining the longstanding dollar-yen parity despite the fact that it was obvious that the yen was enormously undervalued. This sequence of events contributed to the President's new economic policy of August 15 which, I understand, goes under the heading of the second Nixon shock in Japan.

I make these historical points since they are germane to the upcoming summit between President Nixon and Prime Minister Tanaka. The first issue at the summit will be the type of personal relationship which will be forged between the political leadership of the two most economically powerful countries in the free world. The personal relationship that develops, of course, cannot be divorced from the issues. President Nixon is in the heat of his reelection campaign and Prime Minister Tanaka is likely to face the Japanese electorate in the near future. Both leaders have problems with their legislatures. Both leaders know that the health of their domestic economies loom large as political issues; however, both countries seem to be emerging from an economic recession; with the U.S. recovery phased slightly ahead of the Japanese recovery. Both countries are in the process of redefining their future role in the Pacific basin as the United States continues its withdrawal from Vietnam. Both countries also are redefining their relationships with the People's Republic of China and the Soviet Union. And, finally, because of these factors, United States-Japan relations are in a state of unusual flux.

It is my hope that the summit conference between President Nixon and Prime Minister Tanaka will lead to a strengthened and renewed partnership between Japan and the United States and that the deterioration in relations of the recent past will be reversed. Achieving this goal in which both countries have a mutual interest will depend heavily on Japanese statesmanship and clear-sightedness over both the short and long term.

Press reports indicate that one of the key issues of the summit will be the pace of normalization of Japan's relations with the Peoples' Republic of China. Perhaps this could be phrased in terms of whether Japan is to establish diplomatic relations with the Peoples' Republic before the United States does so. It seems clear to me that on the economic side, the United States has under high level review trade relations with all nonmarket economies, including MFN, lists of permitted items of trade and investment guarantees. Japan, no doubt, has similar matters under review. These, not diplomatic relations, will dominate future discussions, particularly when the Indochina conflict is over.

Also, in my view, another priority issue which must be on the agenda of the two nations is the continued economic development of the Pacific basin in the context of a post-Vietnam war. Future Japanese-United States cooperation in this area is essential. Indeed, joint cooperative planning should begin now as to the future integration of a reconstructed Indochina into the Pacific basin complex. Japan and perhaps only Japan has the know-how, capital, and most importantly the political will to undertake a leadership role in developing the Marshall plan-like program that will be needed to reconstruct Indochina as well as to lift the peoples of all of Southeast Asia out of their centuries of economic bondage. Clearly the hour is at hand for the formulation of a grand design for the development of Asia. In implementing such a grand design, the United States would continue playing a positive, forthcoming role since lingering World War II sensitivities regarding Japan dictate a multilateral approach to the serious problems of the area.

The economic reconstruction and development of this region would establish a stronger demand for the kinds of Japanese products and technology which Japan is so well able to produce and export. Many of these products are encountering increased market resistance in the developed country markets of the world, such as the United States and Western Europe. Clearly also, Japanese capital will be needed if the petroleum and other resources of South Asia and the South China Sea are to be developed just as American and Japanese capital will be needed to develop the oil and natural gas resources of the Soviet Union.

In addition to increased Japanese foreign investment, would it be unreasonable to expect a significant expansion in the official Japanese aid program in the years ahead—the bulk of which would flow to Asia? Over the past few years Japan has significantly increased its overall resource transfers to the developing world and is approaching the one percent of GNP target established by the United Nations. However, since approximately half of Japan's "aid" is trade credits, Japan remains far short of the 0.7 percent target for official development assistance. As Japan's GNP approaches $300 billion by 1975, Japan as a strong surplus nation with minimal defense expenditures should be expected to move towards an official AID program in the $750 million to $1 billion yearly range. Numbers in this range do begin to approach Marshall plan magnitude particularly if they are additional to significant U.S. efforts as the Vietnam war ends.

Viewing matters in this broader context, I must point to a possible potentially virulent fly in the ointment. It would be my hope that this irritant could be removed so that both countries could get on with the broader tasks facing them.

I am concerned over the recent press reports which indicate that the recent discussions between U.S. Ambassador William Eberle and Japanese Government officials have not been very successful. It is distressing that at a time when the Japanese trade surplus with the United States has reached $3.2 billion in 1971 and is estimated to increase to some $4 billion in 1972, Japan reportedly is willing to make immediate trade concessions only in the minor $50 million range in addition to the commitment to buy at least $160 million worth of U.S.-enriched uranium through advance payments.

This action raises serious doubts whether Japan will really shoulder the new obligations which go along with being a mature industrial democracy. It raises the question of whether Japan under Prime Minister Tanaka will be willing to carry its fair share of its responsibilities of world economic and political leadership. Carrying this fair share as a major surplus nation would help insure the maintenance of stability of the international economic system of the free world—a system which has made such a signal contribution to promoting Japan's sensational economic growth and stability.

Present policies which do not emphasize trade liberalization also give short shrift to the Japanese consumer. Liberalized trade would contribute to betterment of the Japanese diet, increase consumer choice, and bring downward pressure on prices. Also, it is my feeling that if this negative Japanese position on trade is not altered, it is likely to backfire and lead to renewed speculative pressures for a further revaluation of the Japanese yen over the near future. Prime Minister Tanaka has indicated that such a revaluation is not acceptable to his government yet we know that exigencies of the market can overtake even the most earnest political pledges.

A factor contributing to this pressure is the fact that following the December 1971 currency realinement, many Japanese exporters have only partially passed on the effect of the currency realinement by accepting reduced yen proceeds from export sales rather than raising export prices. This has reduced the effectiveness of the currency realinement and raises the question whether many Japanese industries are engaging in exporting at less than fair value.

In turn, the present Japanese policies will delay the expected improvement in the U.S. balance-of-trade position which is necessary if the U.S. Congress is to pass liberal and forward looking legisla-

tion to maintain open trade in the world during the next Congress.

Let me caution that trade legislation can no longer be put off indefinitely. The President has reaffirmed old commitments such as generalized preferences for the developing world and is in the process of making new commitments such as MFN for the Soviet Union. His authority to negotiate trade concessions has long ago expired.

It is my view that there will be a major trade battle in the Congress within 2 years and the balance of trade position of the United States at that time with specific reference to our bilateral trade relations with Japan could emerge as a major factor in the debate and vitally affect the nature of the legislation eventually passed.

Clearly the maintenance of a liberal, relatively open trading policy in the United States assumes particular importance when the continuing difficulties Japan is having in expanding their trading relations with the European Common Market countries is considered. In turn, as Western Europe moves toward a free trade zone for Western European industrial products in the years ahead, the impact of trade discriminatory policies could become more severe for major trading nations outside Europe such as Japan and the United States.

It is my hope that the expanded European Common Market—EEC—and the countries which will become associated with the EEC will opt for an outward looking, liberal trading order. However, the United States and Japan, based on the past record of the EEC, must begin now to develop contingency plans in case the EEC chooses the inward-looking protectionist rule. I would regret this and fear for the Atlantic Alliance and for the future economic and political growth of the free world as the consequence of a crystallization of protectionism. But I cannot rule out the possibility that Western Europe may turn inward and go protectionist just as I cannot rule out that the U.S. Congress may also opt for this self-defeating protectionist course, too. I continue to hope that West German and British influences will moderate the worst of France's intransigence on trade and monetary matters and in turn that the Smithsonian agreement over time indeed will strengthen the U.S. balance-of-trade position.

Finally, as regards Japan, the events of 1970 and 1971 have proven that Japanese responses in the international economic areas—which in the past could be characterized as "too little, too late"—have had enough serious political consequences to provoke much thoughtfulness in Japan. It would be my hope that the Tanaka government will take this into consideration as new trade, aid, and monetary policies are formulated.

Future relationships between our two countries should not be crucified on the cross of a mercantilism which demands an ever larger national trade surplus. The trade surplus position of Japan has grown explosively in recent years and respected Japanese economists indicate that this surplus could increase in the years ahead. Let me bluntly state that a $4 billion deficit on the trade account with Japan is unacceptable in the United States; it is unacceptable because of the immediate and concentrated impact this surplus has on American jobs and American employment. Since this problem is so clearly evident and since the failure to resolve this problem would have such grave consequences, it would be my expectation that responsible political leadership in Japan can take the necessary steps to deal with it before events get out of hand.

It is my fervent hope that the upcoming summit meeting will be successful and that the basis for a new, cooperative relationship between the United States and Japan will be laid. Since the nature of the United States-Japanese relationship in the years ahead will directly influence evolving relations with the Peoples' Republic of China and the Soviet Union of both countries, the renewal of close United States-Japanese relations is of the highest priority on the foreign policy agenda of both nations.

Some may think me forehanded in calling rather dramatic attention to these opportunities as well as dangers. But so critical are the future relations between the United States and Japan to world peace and world prosperity that I believe it is imperative that the authorities in both countries and the people of both countries be aware of the perils of continuing on the present course with particular regard to trade relations and the urgent need for major decisions which will reverse the present trend which could lead toward deterioration, rather than a strengthening of our vital relations.

PROTEST OF FINANCE COMMITTEE ACTION ON REVENUE SHARING

Mr. JAVITS. Mr. President, yesterday's Finance Committee action in adopting a substantially different formula from the House version of the revenue-sharing bill, marks a setback for States and cities which sorely need revenue sharing now.

Industrial States where the urban crisis is the worst, like New York, California, Illinois, and Ohio, are singled out by the Finance Committee proposal. For example, compared with the House bill, New York loses $142 million through the Finance Committee bill. This is more than any other State.

The chief difference between the Finance Committee bill and the House bill appears to be the absence of the factors of urbanized population and income tax effort—as opposed to general tax effort—in the distribution formula. Considering that urban areas are where the fiscal problems are the worst, and considering the need to encourage State and local income taxes, the Finance Committee formula is a big step backward for States which need revenue sharing the most.

Together with other Senators I must do my best to get the whole Senate to reverse this discriminatory action.

I ask unanimous consent to have printed in the RECORD a list of States that will suffer most under the Senate Finance Committee proposals. This list also indicates the difference in revenue flows to the States between the Senate and House bill under the first year of operation of the program.

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

STATES WHICH GET PENALIZED BY FINANCE COMMITTEE PROPOSAL

	Million
Alaska	$1.1
California	100.4
Connecticut	15.1
Delaware	4.4
District of Columbia	11.9
Hawaii	3.2
Illinois	50.8
Maryland	22.7
Massachusetts	35.5
Michigan	32.8
Minnesota	5.9
New Jersey	37.1
New York	142.5
Ohio	42.0
Pennsylvania	10.7
Rhode Island	2.8
Virginia	5.9

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senator from Indiana (Mr. BAYH) is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged against the time of Mr. BAYH.

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

ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY

Mr. BAYH. Mr. President, there have been widely published reports that certain key chapters of the annual report of the Council on Environmental Quality, presented to Congress on Monday, were deleted because they dealt with "politically sensitive issues."

According to these report, the missing chapters dealt with energy, recycling, and the Delaware River Basin. Since these first two subjects are of crucial importance in the battle to save our environment, and since they are not discussed at all adequately in the published report, there is reason to believe the accuracy of the news accounts which said the report had been censored.

If this is the case, Mr. President, I regard this as an extremely alarming action—one which violates the spirit and perhaps the letter of the National Environmental Policy Act. That act stipulated that the President provide the Congress with an annual report on the environment. In requiring that the annual report be filed the law says that the report—

Shall set forth . . . current and foreseeable trends in the quality, management, and

utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation. (42 U.S.C. 4341.)

Under this provision of the law the lack of adequate attention in Monday's report to energy and recycling raises serious questions about whether or not the law is being complied with by this report. I would respectfully suggest to the four standing committees of the Senate to which this report was referred that it might be in order to determine, by hearings or through appropriate study, whether or not the report is adequate as presented or whether it should be returned to the White House as being inadequate with a request that a complete report be filed immediately.

Let us look at the three areas reportedly deleted from the report.

ENERGY

It may well be, Mr. President, that there is no single environmental issue of greater importance that the problems posed by the competing demands for more and more energy and, on the other hand, the drive for greater and greater protection of the environment.

The Senate has recognized the urgency of what has been properly called an "energy crisis" by passing Senate Resolution 45, offered by the distinguished chairman of the Public Works Committee, Mr. RANDOLPH, which has led to a study—now underway—by the Interior Committee to help develop a coordinated national energy policy.

Certainly, the issues involved in resolving the choices between energy demands and environmental protection pose sensitive political issues. This is why, we read, that this chapter was deleted from the report on the environment. But it is precisely because of the political sensitivity of these issues that they should have been included in the report. It is important, in this election year, that these issues receive a full, public airing, instead of being brushed under the rug. We do not need censorship of such crucial national issues; we need candor, public debate and education of the people.

One might wonder why such material might have been deleted from the report. Imagine that the professional staff of the Council on Environmental Quality had serious reservations about the oil import quota system. Certainly major oil companies, despite their known political inclinations, would have been sensitive to any challenge to the quota system.

Or imagine that the professional staff was urging a "go slow" policy on Atlantic coast offshore oil drilling at a time when the oil companies wanted to charge ahead in this area.

Perhaps there was a discussion in that reportedly deleted chapter dealing with the pricing of natural gas.

Or maybe there were some questions about the fast breeder nuclear reactor program and a suggestion that fusion research was more relevant to meeting long-range energy needs.

Yes, Mr. President, these and other fundamental questions about energy and the environment are politically sensitive. It also happens a discussion of such questions should be, and are not, in the report.

I am not here to take positions on these issues, Mr. President. If I had the wisdom to resolve them all today, I would share that with the Senate. But I do know that these issues and their resolution are of legitimate and great concern to the American people and that if the reports of censorship are true then a terrible disservice has been done to the public.

The irony, of course, comes when one asks: Suppose the reports of censorship are untrue? Well, if that is the case then the report falls far short of the standard of thoroughness which it should meet.

RECYCLING

While my greatest concern about the material said to have been deleted from the report is with the chapter on energy, we must not ignore the fact that the subject of recycling wastes is also of growing importance. Solid waste management is going to be one of the key tests of the success with which we handle our environmental crisis. And effective solid waste management will obviously require significantly stepped-up recycling.

Since the matter of recycling receives so little attention in the report, and since that little attention is not addressed to the economics of this issue, once again the glaring absence of important material from the report lends strength to the allegations that certain material was deleted from the report. In this instance, as in the case of energy, the absence of important questions and discussions from the report runs contrary to the specific criteria for the report quoted above. Can there be any question that discussion of energy and recycling are essential to the "social, economic, and other requirements of the Nation?"

The third chapter reportedly deleted from the report was said to have dealt with the management of the Delaware River Basin. Frankly, I am puzzled as to why this type of material, far less controversial than recycling and energy, may have been deleted. If the reports are true, however, then it is a logical assumption that there was something within that chapter which offended someone's political sensitivity. There is no statutory authority for deleting portions of the report on this ground.

Mr. President, the question of whether material was censored from this report raises issues that go beyond the chapters and issues reportedly deleted. It goes to the question of whether we are—in this extremely important election year—being spoon fed only that material which the White House wants us to receive. How can the electorate be expected to make responsible, thoughtful decisions at the polls if they do not have all relevant information about the issues before them?

If censorship did take place in this instance, how many times has it taken place without coming to the attention of the public?

How can we ask millions of Americans, young and old, who are skeptical about the political process to have faith in a system in which such political censorship may well take place?

There is a limit, Mr. President, to the extent of mistrust and cynicism which the political system can withstand before irreparable damage is done. And we are periously close to that point. Let us hope that we can restore trust and eradicate corrosive cynicism before it is too late.

I am not willing, Mr. President, to let this issue of the environmental report rest here. I am today sending a letter to Chairman Russell Train, of the Council on Environmental Quality, asking him to respond to the charges which have been leveled and asking him to forward to the Congress immediately any relevant material which may have been left out of the report. If the news accounts are inaccurate, this must be proven. If they are accurate, the censored material must be made public immediately.

Under no circumstances can the matter be allowed to go unchallenged; we need no more straws on the camel's back of loss of confidence in Government. We cannot afford the risk of letting any straw break that camel's back.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of my letter to Mr. Train and articles from the Washington Post and the New York Times about the alleged deletions from the environmental report.

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

U.S. SENATE,
Washington, D.C., August 9, 1972.

Hon. RUSSELL E. TRAIN,
Chairman, Council on Environmental Quality, Washington, D.C.

DEAR CHAIRMAN TRAIN: It has been widely reported that the Annual Report of the Council on Environmental Quality made public Monday lacked three chapters which were deleted at the request of the White House. According to reports the chapters in question dealt with energy, recycling, and the Delaware River Basin.

As you well know, the Congressional mandate for the Annual Report requires that it "shall set forth . . . current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation." (42 USC 4341) Certainly the issues of energy and the environment, recycling and the Delaware River should have been included under this provision of the law.

I am particularly concerned about the matter of energy, since the question of meeting the nation's growing energy needs with minimum environmental impact is an important and growing national issue. It has been reported that this chapter of the Report was deleted because it would "raise sensitive political issues."

Certainly, the issues involved in resolving the competing demands of energy needs and environmental protection do raise crucial political issues. But instead of being taken from the public arena these issues should be fully and openly debated in this election year. Instead of brushing these issues under the rug, as some apparently would like to do by denying the public the benefit of the Council's expertise in this area, everyone should welcome the fullest possible circulation of the Council's views. Thus I am deeply disappointed that a subject as important as energy and the environment was not dealt with in full in our Report. Because you and your professional staff fully understand the crucial nature of these questions, the lack of

discussion of them in the Report gives credence to the charges of censorship. I cannot help believing that the spirit of the National Environmental Policy Act is being violated in this instance.

While my greatest concern about the material said to have been deleted from your Report is with the chapter on energy, we must not ignore the fact that the subject of recycling wastes is also of growing importance. Solid waste management is going to be one of the key tests of the success with which we handle our environmental crisis. And effective solid waste management will obviously require significantly stepped-up recycling. Yet the matter of recycling receives surprisingly little attention in the Report, and the economics of recycling are not touched on at all. The glaring absence of this important material from the Report lends strength to the allegations that certain material was deleted.

It seems to me that the Report's failure to discuss and analyze the crucial issues of energy and recycling is inconsistent with the Congressional mandate for the Annual Report. Can there be any question that discussions of energy and recycling are essential to the "social, economic and other requirements of the Nation?"

The third chapter reportedly deleted from the Report was said to have dealt with the management of the Delaware River Basin. Frankly, I am puzzled as to why this type of material, far less controversial than recycling and energy, may have been deleted. If the reports are true, however, then the only logical conclusion is that there was something within that chapter which offended someone's political sensitivity. There is no statutory certainly for deleting portions of the Report on this ground.

Moreover, I think that in your capacity as Chairman of the Council on Environmental Quality you must direct yourself to the implications of such alleged information management and censorship by officials within the Executive Office of the President. If important information of national concern is withheld from the public because of an unwillingness to deal openly with "politically sensitive issues," where is the line to be drawn without subverting the national interest?

Because of the urgency with which I regard the issues posed by the reported withholding of these chapters of your Report, and because of the overriding importance of the national question of balancing the demands of energy and the environment, I would appreciate you letting me know promptly whether this highly relevant material was left out of the final Report and why. If such material of importance was left out I believe it is your responsibility to forward this material to Congress immediately in compliance with the statute stipulating that Congress have a complete, annual report on the environment.

Thank you.

Sincerely yours,

BIRCH BAYH,
U.S. Senator.

[From the Washington Post, Aug. 8, 1972]

U.S. UNIT FINDS AIR CLEANER—BUT WATERWAYS ARE DIRTIER, HILL IS TOLD

(By Elsie Carper)

The Council on Environmental Quality reported yesterday that the nation's air is getting cleaner, that rivers and waterways are dirtier than ever, and that the costs of pollution control are going up.

The report was delivered to the White House by the three presidentially appointed members of the council and then sent to Congress.

In a message forwarding the report to Capitol Hill, Mr. Nixon said "there should be a sober realization that we have not done as well as we must, that changes in laws and values come slowly, and that reordering our priorities is difficult and complicated."

But the President also found much to praise. He said he was "pleased . . . that the quality of the air in many of our cities is improving. Across the nation, emissions from automobiles—a significant portion of local emissions—are declining. We can expect these welcome trends to accelerate as the new standards and compliance schedules called for by the Clean Air Act of 1970 become fully effective."

And the President said he also was encouraged "by the growing capacity of a people able to assess their problems, take stock of their situation and get on with the unfinished business of shaping . . . a satisfying and healthful environment."

Discussing the good news in the report, Council Chairman Russell E. Train told a White House news conference that "with some variation the overall air quality is improving on a national basis."

Water quality was a different story. The report found concentrations of phosphates and nitrogen compounds—which cause eutrophication, or dying, or lakes—had increased "in a large proportion of both urban and rural river basins. This, the report said, was apparently due to increased use of fertilizers. Oxygen-demanding wastes also were found to be increasing, mostly in high-population, high-industry basins.

Train said there is every indication that water quality will not improve materially in many river basins until pollution is controlled from water run-off from farms, feed lots and urban streets.

"While we carry on our major efforts to clean up pollution from municipal and industrial sources, we must increasingly turn our attention to land runoff—of nutrients, fertilizers, pesticides, organic materials, and the soil particles that often transport the others," the report said.

On costs, the report estimated that current standards will require an outlay of $287.1 billion in the decade of the 1970's. This was nearly three times last year's estimate of $105.2 billion but that figure covered six years while the new figure is for ten.

Annual costs are estimated to rise from $10.4 billion in 1970 to $33.3 billion in 1980.

The figures include expenditures by businesses and industries as well as by government at all levels.

The report said that while pollution abatement costs seem large they are in the aggregate relatively small compared with such measures of total economic activity as the Gross National Product—the cost of goods and services.

During the 1971 to 1980 period, the GNP is expected to total over $213.2 trillion. Consequently, total environmental costs would represent 2.2 percent.

The report estimated that $106.5 billion will be spent for air pollution abatement, $87.3 billion on water pollution, $86.1 billion for disposing of solid wastes, $5.1 billion to reclaim land ravaged by strip and surface mining, $2.1 billion for radiation control, and $900 million to $2.7 billion for noise control.

The report, the third to be produced by the council, was expected to include sections on energy and recycling, but both were eliminated after the report was reviewed by the Office of Management and Budget and by the White House.

The energy chapter, which discussed pricing of electricity and conservation of fuels, was said to raise sensitive political issues, while the chapter on recycling was deleted because the administration has not yet determined whether it will propose tax incentives and subsidies to encourage reuse of materials.

Mr. Nixon spent 45 minutes with Train and the other two members of the council, Robert Cahn and Gordon F. J. MacDonald. Both Cahn and MacDonald are leaving the council. Sucessors have not been named.

[From the New York Times, Aug. 8, 1972]

REPORT FINDS NATION'S AIR CLEANER BUT WATER DIRTIER

(By Robert B. Semple, Jr.)

WASHINGTON, August 7.—The Council on Environmental Quality, in an expurgated edition of its third annual report on the state of the environment, said today that the nation's air was getting cleaner but that its water was growing dirtier.

The report was delivered to President Nixon this morning with three chapters missing. According to council sources, the White House and the budget bureau asked that publication of chapters on energy, recycling and pollution in the Delaware River Valley be delayed until after the election.

The sources said that the White House feared that the chapters might cause controversy in a political year and that all three subjects were sensitive and complex and required further study.

AIR QUALITY IMPROVED

The council reported that by most available measurements "air quality on a nationwide basis improved between 1969 and 1970."

According to widespread samplings, the council said, emission of carbon monoxide dropped 4.5 per cent during the year and particulates 7.4 per cent, primarily through controls applied to smokestacks.

However, the council said, water pollution from such sources such as municipal sewer systems and industry has not diminished.

The council also warned that the nation's waterways were likely to deteriorate further as a result of runoffs from farms and construction projects, a source of pollution that the council said it had underestimated until this year.

POLLUTION INCREASING

"Land runoff from farms and even urban land, as opposed to discharges from cities and factories, has a much greater impact than we realized," the three-member council wrote in part. "In all types of river basins, the concentration of nutrients is increasing."

The three members of the Council—its chairman, Russel E. Train, Dr. Gordon McDonald and Robert Cahn—met with Mr. Nixon for 45 minutes this morning. They reported afterward that the President discussed environmental issues with interest and urged the council to educate ordinary Americans on environmental issues.

Mr. Nixon said at one point that the environment was in danger of becoming an "élitist" issue and that the council should "reach down and include the fellow who never went to college."

In a preface to the report, Mr. Nixon chided Congress for not acting on some 20 legislative proposals aimed at curbing pollution. Some Democrats have offered alternative and in some cases more costly remedies of their own.

"The time for deliberation has passed" Mr. Nixon said. "It is now time for action."

ABOUT $287 BILLION ESTIMATED

The council estimated that it would cost at least $287.1-billion to solve the country's major pollution problems over the next decade, with annual spending from private and public sources rising from $10.4-billion in 1970 to $33.3-billion in 1980.

MISSING CHAPTERS

The most expensive items are air pollution, $106.8-billion, and water pollution, $87.3-billion. The council also urged broader attacks on the problems of solid waste disposal, noise pollution, radiation and land reclamation.

Details of the three missing chapters, which were to have been sent to the President in a seperate volume, were not disclosed.

Officials at the council, however, said the

chapter on recycling urged the adoption of tax incentives to encourage recycling among consumers and in industry, a technique the Treasury Department vigorously opposes on economic grounds. The sources also said the chapter might have exposed the fact, if only in indirection, that the Administration has yet to develop a comprehensive solid wastes program.

The chapter on the Delaware River basin was said to have contained some implicit criticisms of the management of the basin by a joint Federal-state authority.

The chapter on energy treated such politically sensitive questions as oil imports, the Alaska pipeline, gas pricing policies and offshore drilling. It also contained pointed criticisms of industry.

Mr. BAYH. Mr. President, one closing thought—every Member of this body is a conscientious and sensitive individual, all of us being only human. We do not like criticism. At least, I have never reached the place where I enjoyed criticism, although I must say that some of it has been constructive in shaping my views, thoughts, and directing my attention to certain issues. But it is important in this election year that the Senate, the House, indeed the Government, not run for cover whenever a politically sensitive issues is raised. If a politically sensitive issue comes up involving the conflict between energy and the environment, it is better to throw it out on the table, bring the best minds to bear on it, vote the courage of our convictions, stand up and be counted, and find the best solution that we can. There will be no easy, simple solution to some of the complicated problems in today's society.

I remind the Senate of the admonition that Harry Truman offered, which I think is most appropriate, when he said:

If you cannot stand the heat, you had better get out of the kitchen.

All of us in the Senate are in the kitchen and most of us want to stay here. Also, we had better do all we can to see that those in the executive branch, and others responsible for denying Congress and the public all the information available and necessary, be advised that they, too, be prepared to stand the heat or get out of the kitchen.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, prior to laying before the Senate the gun control bill, I ask unanimous consent that there be a brief period for the transaction of routine morning business for not to exceed 9 minutes, with statements therein limited to 3 minutes.

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

FEDERAL SPENDING UNDER THE LABOR-HEW APPROPRIATIONS BILL

Mr. ROTH. Mr. President, when the Senate passed the Labor-HEW appropriations bill on June 27, it contained a ceiling of $2.5 billion on social services spending under title IV of the Social Security Act.

In conference, this ceiling—which was not a part of the House-passed bill—was dropped. It is now estimated that without this ceiling, Federal spending for social services will be at least $4.8 billion during this fiscal year. This is, of course, four times the original budget request of $1.2 billion and almost twice as much as the Senate approved ceiling of $2.5 billion. Some estimate that during the next fiscal year expenditures for this program could increase to as much as $8 billion.

I was greatly concerned over this problem when this bill first passed the Senate, and voted against an amendment that would have removed the ceiling. And, I now intend to work to see that this ceiling is returned to the bill. When the conference report is presented to this body, I will make certain motions, the purpose of which is to return the legislation to conference with instructions that Senate conferees insist upon the ceiling.

When the bill comes before the body, I will speak to it further. But in the meantime, I ask unanimous consent to have printed in the RECORD for the consideration of my colleagues, three articles which have appeared recently in newspapers concerning this program: two are from the Washington Post and one is from the New York Times, as well as an article on this program which appeared in the latest issue of U.S. News & World Report.

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

[From the New York Times, Aug. 8, 1972]

THE 1967 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 first to learn how to take advantage of changes in the Federal law enacted in 1967. Illinois was apparently 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 very 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.

[From the Washington Post]

A $5 BILLION ERROR IN SOCIAL POLICY

Impossible though it sounds, the federal government has apparently backed itself blindly into a multi-billion dollar promise to subsidize states' social services. The fiscal drain is not only unexpected but, under the

present law, uncontrollable. Worse, this fluke of federal legislation is encouraging the states in a massive turn in precisely the wrong direction for our national social policy. It is a classic example of a great decision that was made without forethought, without public debate, and without any deliberation on the other and better choices.

In her article on this page Monday, Jodie Allen of the Urban Institute examined, in detail, the growth and implications of this legislation. It now constitutes an open-ended commitment to match three or more federal dollars for each dollar that a state spends on social services to the poor. The definition of social services covers almost anything imaginable except, unfortunately, education.

It was some years before the states began to realize the full possibilities of this legislation. But the word has been spreading rapidly. In fiscal 1971, the total disbursed was a bit less than $700 million. In fiscal 1972, it doubled to more than $1.3 billion. This year, the applications indicate that it may quadruple into the range of $5 billion. A bung of considerable dimensions has been driven into the U.S. Treasury and, having learned where to find it, the states are now turning the tap on full.

If this money were all being spent wisely on programs that actually lifted families out of poverty, the states could justify all this great outpouring and more. But there are no federal controls or standards on the quality of the state programs that it finances. It even appears that the federal authorities do not know with any precision what it is being spent on. Undoubtedly many of the state services are essential and justify expansion. But no one in Washington knows which, or how much.

Social services have never been demonstrated to reduce poverty efficiently. The sudden increases in funding are doubly dubious because these services require skills that are in short supply.

As Mrs. Allen observed, states like Maryland and Mississippi propose social service programs this year that, if limited to welfare recipients, would cost more than $1,600 per person. That approaches $6,500 for a family of four. The country has rejected the idea of cash grants at anything approaching that scale. We are apparently prepared to provide the poor with the services of social workers, psychiatrists, homemakers, therapists and counselors up to any cost. But, in contrast, we decline to provide the one essential support that they need; cash.

Welfare reform, in any orderly and intentional sense of the term, is dead this year. President Nixon and the congressional leadership have given up on the bill. But at the same time, Austin Scott reports elsewhere in this morning's paper, the President has silently decided to do nothing about this hemorrhage of social services funds until after the election. The country now finds itself saddled with a massive and inadvertent expansion of ineffective social programs, while getting none of the reforms that Mr. Nixon promised three full years ago.

[From the Washington Post, Aug. 7, 1972]

HOW THE FEDS BOUGHT MISSISSIPPI: BACK DOOR REVENUE SHARING—AND ON A BIG SCALE

(By Jodie Allen)

While debate rages in the halls of the Congress and the administration over revenue sharing and welfare relief for hard-pressed states and localities, a multi-billion dollar program of fiscal relief for states is quietly being implemented under a little noticed provision of the Federal welfare law which provides federal matching for state expenditures on "social services" for needy persons. A recent action by the Senate-House Conferees on the 1973 HEW appropriation bill on August 2 seems to assure that almost $4 billion for "social services" will be added to the President's budget with little debate and with virtually no public attention.

Program increases of this magnitude are usually front page news, particularly in an administration highly concerned over the prospect of a record-breaking budget deficit. The reason for this strange turn of events lies in the peculiar history and characteristics of the social service program.

There are three features of the social service authority which explain its unique potential for breaking the federal bank. The first is that the language of the social service provisions, as modified by a series of liberalizing amendments during the 1960s, is remarkably broad. The services covered include any "services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence." Furthermore such services may be provided not only to current welfare recipients but, since 1965 to former or potential recipients as well.

Without even stretching the imagination it would seem that practically the entire gamut of services provided by state and localities for their citizens—including vocational rehabilitation, job training and counselling, child care, foster care, family planning, family counselling and referral, protective services for dependent persons, mental health and mental retardation services, community health services, homemaker services, non-formal or compensatory education, and information and referral services of all sorts—might easily be justified at least in part as deserving of federal support under the amendments. In fact the only services specifically excluded from support are public school education and institutional care and the only additional limitation appears to be a vaguely worded caveat in a HEW memorandum to the states that they must "significantly expand" not merely re-fund existing services. And to make it all easier, since 1967 the law has allowed the states not only to provide such services themselves but to purchase such services from other public and private agencies with federal support.

The second striking feature is that the terms of the federal support are extremely attractive. For every $25 the states or localities proffer for these services the Feds will supply another $75. The Talmadge amendments of 1971 went this one better and allowed 90 federal dollars for every 10 state or local dollars if the services provided were such as to enhance the employability of current, former or potential welfare recipients. (This largesse should be compared the relatively miserly 50 per cent matching which is all most large states can receive on actual cash grants to recipients.)

Last and best there is the "open-end" financing provision—which means exactly what it sounds like. Unlike most federal authorizations for which a fixed amount is appropriated by Congress each year, the social service fund is essentially a bottomless pit. As is the case for public assistance cash payments, whatever amount of money states and localities express willingness and ability to spend for social services in a given year, the federal government must stand ready to match at $3 or more for 1.

Given these generous provisions, the only thing that is hard to understand about the social service program is why it is not already the largest domestic program in the federal budget. In fact most states were slow to recognize the potential of the social service program. In 1964 only $75 million in federal dollars went to social services. By 1968 the federal cost had risen to the still modest level of $230 million and by 1969, even after a one year increase of 59 per cent the federal share was still only $366 million. A few sharp state officials however were beginning to catch on. One state, California, had by 1970 managed to corner almost 40 per cent of the total social service budget of $500 million for that year largely through the cleverness of a consultant to the California State Assembly, Tom Joe. In a fascinating article in the June 17, 1972, issue of the "National Journal," John Iglehart has traced the subsequent involvement of the ingenious Mr. Joe who, as part of the entourage accompanying former HEW Secretary Finch to Washington from California, has subsequently stayed on at HEW. There, in an informal capacity, he has spread the glad tidings of largesse to other less favored states—to the ultimate discomfort of the administration.

For discomforted indeed are HEW budget managers. From a sleepy little sub-billion dollar program, social services has in the last several months skyrocketed with a multi-billion dollar flare likely to eclipse in importance both the much heralded revenue sharing proposals now being debated in the Senate Finance Committee and the now beleagured welfare reform package with its promise of some $2 billion in state welfare savings.

Picking up the thread of our chronology we find that by fiscal year 1971 the federal share of social service expenditures had climbed to almost $700 million with the Congress ignoring a request by the administration in its budget for that year to impose a 10 per cent ceiling on expenditure increases over the previous year (a request repeated and again denied in the administration FY 72 budget). In FY 72 social services again surprised everyone by outstripping the original administration estimate of $838 million by at least another $450 million and, by some estimates by perhaps, as much as $750 million. In either case the federal government is thus already spending at the rate of over $1.3 billion a year on social services—an amount almost twice that expended in the previous year and already larger than the administration's $1.2 billion request for the upcoming fiscal year, 1973.

But that discrepancy must be counted as minor. For while the Congress has been considering the HEW request, the states have quietly been revising drastically their estimates of federal dollars required in FY 73. In May to the consternation of HEW officials a new estimate of $2.2 billion, almost twice the administration's 1973 budget request of $1.2 billion, was computed. The Senate Appropriations Committee, alerted to the danger added to the HEW appropriation bill a ceiling of $2.5 billion on social service expenditures. But pressure from governors and state officials anxious to cash in on the bounty proved too strong and, with virtually no public attention, the limitation was dropped in the Conference Committee despite assertions in the conference report issued on August 2 that the conferees "agreed with the basic premises of the Senate amendment: (1) to insure fiscal control over a program which is presently increasing at an alarming rate and (2) to insure that funds are disbursed prudently and effectively."

But the conferees literally didn't know the half of the matter. For by the end of June the states had set their sights far higher than a mere $2.2 billion—in fact having doubled the estimate once, they decided to do it again this time submitting a total FY 73 request of almost $5 billion, a quadrupling in expenditures over the previous year to an amount equal to the much publicized revenue sharing program. And there is unanimous agreement on the Hill and in HEW that that estimate is probably too low.

Fortunately it is not necessary to question the efficacy or relative utility of social services in order to question the desirability of this turn of events. It is fortunate in that no

one seems to have any clear idea of what the money is being spent on.

But apart from the merits of social services per se three things are abundantly clear:

1. A huge sum of taxpayer money is being distributed among states in a quixotic fashion unrelated either to relative need or to the ability and willingness of states to use the money constructively.

2. It is not possible for states and local governments to achieve a four-fold expansion in services of any kind in one year (on top of a doubling the previous year) and particularly not in services of a type for which no clearly successful record of performance has yet been demonstrated, even on a modest scale.

3. Even if the money is in fact expended for the purposes intended, serious imbalances are occurring within state expenditures patterns between social service activities for low income populations and other forms of assistance and service both to this population and to other groups in the population.

To illustrate these points one need only look at a few states. In 1971 Mississippi spent about $950,000 on social services. Its estimated expenditures for 1972 increased by 88 per cent to $1.8 million. In 1973 Mississippi now estimates it will spend some $460 million on social services, over 250 times the amount it spent the previous year.

Two other comparisons are equally interesting. If Mississippi's social service benefits were spent entirely on welfare recipients, it would turn out that Mississippi would be spending some $1,625 per welfare recipient on social services, or about $6,500 per year on a family of four (a number familiar to the National Welfare Rights Organization). Apart from the striking generosity of this allotment it is interesting to compare this expenditure with the maximum welfare cash grant which such a family if it had no other income could receive in Mississippi. That amount is $720. And lastly it is interesting to observe that if, as is likely, most of the $460 million in federal dollars is used simply to support existing state and local services in Mississippi, this amount alone will account for over half of the current total Mississippi state budget.

Other examples abound. Maryland's estimated expenditures will grow from a 1971 level of $15 million to an estimated level of almost $420 million in 1973. At this point Maryland will be spending some *$1,650* per welfare recipient or about *$6,600* for a family of four. Georgia plans to expand its program from a 1971 level of $12 million to a 1973 level of over $220 million. New York will expand from $67 million 1971 to $850 million, Illinois from $24 million to over $180 million. Faced with an unplanned increase in the President's budget of at least $3.6 billion and the frightening potential of even more staggering increases to come (the estimates are from $6 to 8 billion in the next fiscal year) there appears to be little that the administration can or, perhaps, wants to do to stem the flowing tide. To "close the end" on social services would require legislative action and, as has already been demonstrated by the recent action of the appropriation conferees, such action is unlikely to be forthcoming, particularly in an election year, given the opposition to such a change that would be generated by enthusiastic state and local officials who have suddenly discovered that there is indeed a pot of gold at the end of the federal rainbow.

There is also the difficult problem of devising a formula which, at once, distributes the fund among the states in at least some vague relationship to need and current fiscal effort; maintains each of the states at least at their current level of expenditures and probably allows some increase (a practical necessity to ensure acceptance of any formula); and, at the same time sets a reasonable dollar limit on the total budget.

Despite the practical and political difficulties involved, however, it is clear that something constructive must be done, not simply to control a runaway program, but to insure that the monies are distributed equitably among states and that real and needed public services are produced in the process. Surely some more rational basis must exist for distributing several billion dollars of taxpayer money than one depending upon the relative ambition and ingenuity of a few states and federal officials.

[From the U.S. News & World Report, Aug. 14, 1972]

SERVICES TO THE POOR AND THEIR RUNAWAY COSTS

Boiling up now is a new crisis in federal spending to help the poor.

U.S. budget analysts are worried by explosive growth of the social-service program funded by the Department of Health, Education and Welfare.

With State after State rushing to cash in on what one Government official calls "a questionable form of revenue sharing," costs of the program have spiraled—as shown by the accompanying chart.

What is involved is a law, passed in 1962 and liberalized in 1967, under which the Federal Government pays 75 per cent of the costs of social services rendered by States and localities to people on relief and to past and "potential" welfare recipients.

The idea is to help some people get off relief rolls and to keep others from swelling the ranks of welfare cases, now numbering more than 15 million.

WIDE RANGE

Services provided range from child care to centers for the needy aged, from literacy education and job counseling to treatment for alcoholism or drug addiction.

The program is virtually open-ended. With no ceiling set, costs in federal funds have skyrocketed from 387 million dollars to more than 2 billion in the last three years. Officials estimate that the outlay could reach 6 billion in another two years unless a lid is applied.

The Nixon Administration has urged Congress to set a limit. The Senate approved a 2.5-billion-dollar ceiling, but the House of Representatives rejected a definite lid. Senate-House conferees agreed August 1 on legislation urging federal officials and the States to tighten the program without setting a definite figure. Somewhat stricter rules now are to be implemented.

John D. Twiname, administrator of the Social and Rehabilitation Service of HEW, which runs the social-services program, compares the situation to the early days of medicaid. Costs of that health-care program for the needy soared so spectacularly that Congress was forced to legislate a cutback.

The cost potential is even greater in social services, according to Mr. Twiname, because what can be provided is not spelled out as clearly as in medicaid. Another point that is made by the HEW official:

Some States are just now realizing that the 1967 liberalization provided that welfare agencies could purchase services from other public or private agencies, with the Federal Government committed to payment of $3 for every dollar spent by the State.

WAITING LINE

Applications currently are pending with HEW from 27 States, either for new social-service programs or expansion of existing programs.

Some States have been able to cut their own welfare spending by converting services previously paid for with State funds into those that can be financed under the matching arrangement, with the Federal Government paying 75 per cent and the State or locality only 25 per cent.

Social services are defined under the program as those that serve the purpose of "preserving, rehabilitating, reuniting or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence."

Thus the range is wide. Some examples of the kinds of services offered, besides those already listed:

Adoption services, foster homes for children, help for unmarried mothers, child-protection services, money management, help in finding housing, job training, homemaker instruction, help for the mentally retarded, rehabilitation of the handicapped, meals-on-wheels for elderly shut-ins.

A single family may qualify for a number of the services offered. In the last year, HEW officials report, one or more services provided under the program went to about 6 million persons in welfare families, plus an estimated 400,000 families and 100,000 individuals qualifying as former or "potential" welfare recipients.

THE PINCH

Because welfare costs have risen so fast, 19 States and the District of Columbia have cut relief payments in the last two years. Officials say that the money crunch in many States is a main reason for the rush to have the Federal Government take over much of the burden for social services.

A comment from Mr. Twiname:

"It is unrealistic to expect States to do much about increasing their share at a time when most States are cutting back welfare, or at least holding their own."

The program administrator added:

"We are making certain that these grants do result in expanded services, even though States are shifting much of the cost to the Federal Government."

The contention that expansion of social services is a way to cut down welfare rolls brought this observation from a top official of HEW:

"Nobody really knows whether this is so. There is no information now about the correlation between the intensive application of services and any absolute reduction of rolls.

"It is premature to say that services will decrease dependency. But these services are mostly those that are clearly needed."

Of major concern to this official is the lack of information on how effectively federal funds are being used. He called for a two-step approach:

"First, a dollar limit on spending. That is vital.

"Next, there has to be a hard look at how the program is being run. There has been too much emphasis on getting the dollars.

"It has been too much of a fiscal shell game, a money rush by the States. Even States with good programs have been more concerned about getting the money than improving the services."

TIGHTER RULES

New regulations drafted by HEW are designed to make the States more accountable. Reports in greater detail on how federal money is spent are to be required. A federal official explained:

"What this means is that a State must try to set up the program so that the dollars will be applied more systematically toward solution of a problem—not simply to expand services helter-skelter. The State planners must prove the need for a service before it will be financed.

"We ought to know where the money is going. We don't want to dictate what they must or must not do, but it must fit into some rational pattern."

Strong pressure has come from Governors and other State officials against imposition of a dollar limit on the program. One

reason, HEW sources say, is that a ceiling would exclude from the program States that have been slow to expand social services and would virtually rule out further expansion by States already participating.

As federal officials seek to cope with rapid growth of the program, these questions are being raised in Congress and elsewhere in the Government:

Is the money flowing from Washington helping to keep people off welfare or to get them off? Or is it giving the States a chance to reduce expenses by substituting federal funds for their own?

What do State welfare officials say about expansion of social services? What services are producing the best results? Just how is the money being spent? Is the whole thing, as some experts contend, a "boondoggle"?

To get answers, staff members of "U.S. News & World Report" examined the program closely in States which have been among the leaders in making use of federal dollars for social services.

The survey turns up some sharply conflicting views. Findings follow:

California

As the first State to make broad use of the liberalized approach to social-service spending, California at one point was receiving about 25 per cent of the federal money available.

Experts disagree on results.

Says Charles Hobbs, the State's deputy director of social welfare:

"The goal was reduced dependency by providing social services. That concept has not paid off."

But Betty Pressley, director of social welfare for Marin County, contends that if expanded social services had not been provided, welfare rolls would "probably be a lot bigger."

And Dr. William Gee, head of the On Lok day-care center for old people in San Francisco's Chinatown—*On Lok* is Chinese for "safe and happy residence"—says this:

"It does reduce the welfare burden. That's one of our big selling points."

On Lok is being funded at $110,000 a year, for three years.

In Santa Cruz County, Mrs. Mary Wallace of the social-welfare department says that "the federal money has been a huge help for us." She points out, as an example, that a day-care program for children enabled mothers to take advantage of educational-training services, and notes that in just one month—last April—mothers of 80 children went off welfare.

WORKER CUTBACK

In Los Angeles County, federal funds are being used in a new system which has led to a drastic reduction of the number of trained social workers on the county payroll.

Under the system, "eligibility workers," rather than trained social workers, take on the job of counseling welfare recipients. A spokesman explained:

"We once assumed that if someone was on welfare, he or she had a social problem that required the services of a highly trained social worker.

"But the more we looked at the problem, the more we realized that the recipient only needed help in learning how to live on a budget or in getting specialized help from some other agency, private or public."

With less training required, "eligibility workers" draw pay considerably below the scale for professional social workers, the county official said.

The system is designed to give the welfare recipient greater responsibility for his own betterment. According to Mr. Hobbs, the State's deputy director of welfare, it is a "first step toward a solution" of the problem of "the breakdown in responsibility" among those on relief rolls.

New York

Federal financing is enabling the State of New York to more than double spending on social services this year, compared with last year, without increasing the State's own outlays.

Total spending is 787 million dollars, of which 590 million is in federal funds. The State's share is 197 million.

Federal aid, State officials said, means a massive expansion in family service, mental health, narcotics treatment and other programs aimed at keeping people off welfare.

Barry L. Van Lare, executive deputy commissioner of the State's Department of Social Services, had this comment on the infusion of Government funds:

"In New York, the federal dollars will lead to a continued expansion of services available to the poor."

Some State legislators have been critical because New York appeared to lag in taking advantage of 75 per cent federal reimbursement for social-service spending.

Now that New York is getting the federal funds, Mr. Van Lare remarked that "it appears that federal dollars are merely replacing State dollars which were designed to provide services for the poor." But, he added:

"In effect, what we have is that the State has been prefinancing programs since 1967 which were eligible for Federal funding. What we are dealing with now is the availability of federal funds and procedures for securing funds to allow the Government to provide the level of support it intended in 1967."

TOWARD INDEPENDENCE

This additional comment from Mr. Van Lare:

"There is no doubt that this array of services is vital to our ability to move people off welfare. Each of the programs has a very specific objective aimed at moving people along from total dependency to total independency."

Preliminary estimates are that from two-thirds to three-fourths of the 590 million dollars in federal reimbursement money will benefit New York City, which has more than a million people on welfare.

Jule M. Sugarman, the city's human resources administrator, said the financial transfusion is "absolutely essential." Citing examples of services to be expanded, Mr. Sugarman added:

"In day care for children, we are now providing only 10 to 15 per cent of what we should provide. In treatment for drug addiction, we're providing for about 25 per cent of the number of people who should be included."

Texas

A federal windfall of nearly 180 million dollars in social-service payments is allowing Texas to avoid new taxes without cutting back on any of its existing programs.

State welfare officials estimate that about 100 million dollars of the federal money will be used to support services for which the State previously was footing the entire bill. The rest will be used to expand existing programs and start new ones.

The Texas Department of Welfare will spread the money across 11 State agencies. New programs include a 4.1-million-dollar plan to provide day care for 12,432 children of welfare mothers. The mothers are enrolled in job-training programs in 16 cities.

Because the Texas program is just getting started, welfare officials say that it is impossible to judge its effectiveness in reducing relief rolls.

But Jerry Chapman, assistant commissioner of welfare, said that strict federal regulations have forced State agencies to tighten screening procedures "to make sure that they are delivering services to the right people."

Georgia

Welfare programs in Georgia have been carefully restructured to take advantage of more federal dollars.

Spending on social services in the year that began July 1 has a "potential total" of 222 million dollars, compared with 42 million in the previous year, officials say.

Herschel Saucier, who directs family-aid programs, explained:

"We don't expect to spend the 222 million this year, but during the last quarter of the fiscal year—next April, May and June—we ought to approach that rate of spending."

Funds going into contract services provided by private agencies have spiraled from about 2 million dollars on June 30, 1971, to approximately 38 million contracted for as of June 30, 1972.

Of this, about 15 million dollars is allotted to day-care centers serving 11,000 children. A year ago, there were only about 1,000 children in such centers.

A "homemakers" project in Atlanta for 100 persons, to cost $58,416.

A $144,000 "tutoring and counseling" contract with the Boys' Club of Macon.

"Test-taking training" for 850 persons, under a $109,533 contract with the Atlanta Urban League.

"Family-life education" provided by a branch of the Young Men's Christian Association in Atlanta. Cost: $475,152.

"Group and vocational counseling" by the Salvation Army in Atlanta for 2,000 persons, $73,134.

The State prison system has a contract for $1,635,360 for its new program of counseling provided to inmates and their families.

The State narcotics-treatment program is to get $71,908 for a computer and $148,490 for a drug-information center.

The Sickle-Cell Foundation of Georgia has a $32,000 contract for "planning and research" directed toward efforts to combat sickle-cell anemia.

Mr. Saucier said that the State does not now have an evaluation of the effectiveness of the various service projects, but is working with the Department of Health, Education and Welfare in Washington to establish a monitoring program.

Illinois

Officials in Illinois say they are unable to gauge the effect of the flow of federal funds for social services.

This year, the State expects to get 205 million dollars from Washington to help finance services to the poor. This equals the total of grants received from HEW in the two prior years.

None of the money is going for new services. Instead, it is paying for existing ones

Services range from day care in Chicago public-housing projects to counseling of convicts, help for the mentally ill and advice to people who have trouble managing their budgets.

Are the services reducing the relief load?

Says Bruce Thomas, director of the Illinois Institute for Social Policy, a State agency set up to examine social-service programs:

"No one knows the effectiveness of these programs. It's probably our primary concern right now.

"There's an extraordinary gap in our knowledge."

From Bruce Ferguson, of the Illinois Department of Public Aid:

"If information on which we can make sound judgments isn't forthcoming within six months or so, I'm afraid people will become so fed up that the whole program of federal grants will face cutbacks."

Michigan

The State spent 28 million dollars on expansion of social services last year and ex-

pects to receive 21 million in federal reimbursement.

Chief effect of the federal funds, said Joseph La Rosa, assistant deputy director of the Michigan Department of Social Services, was "to expand our base to people not reached before."

Asked if the programs are getting people off welfare, Mr. La Rosa said the question was unanswerable, adding:

"Frankly, one of the weaknesses has been the inability to demonstrate effectiveness of the various programs."

Ohio

This State spent 45 million dollars to expand social services last year, of which the Government provided 36 million.

An official commented: "We are so busy just writing up contracts to get the federal money that we haven't had the opportunity to evaluate results of these services."

Washington

This State, which spent about 15 million dollars for social services last year, will spend 70 million this year.

Federal funds are being used "for program enrichment, not to raid the U.S. Treasury," said Dean Morgan, deputy director of the Department of Social and Health Services.

But some States are raiding the treasury, Mr. Morgan declared, adding: "So there is a real danger that they may kill the goose that lays the golden egg."

NEW EFFORT: FOOD FOR ELDERLY

At a time when the Government is worrying about the increasing cost of services for poor people, the White House is launching a special effort to get more of this group to accept food at federal expense.

President Nixon's announcement of this program, dubbed "Project FIND," came on August 2.

It is aimed specifically at elderly men and women who are eligible to get food subsidized by the Federal Government but who have not yet signed up to do so.

The Social Security Administration has sent out pamphlets, prepared by the Department of Agriculture, to all people getting old-age benefits or related social-security payments.

Each of the pamphlets explains the food programs that are available and the regulations for making use of them. A postage-free postcard was included, so that people who are interested in the program can request help in applying for foods or food stamps.

At the same time, thousands of volunteers, trained by the American Red Cross, will seek old people throughout the nation who can qualify and who may not be on the Social Security mailing list.

STAMPS OR FREE FOOD

Two types of assistance will be called to their attention by the volunteers:

There is free food distributed through 36 States, the Navajo Nation, Puerto Rico and the Virgin Islands. Included are such things as canned meat, canned vegetables, canned juices, butter, cheese, beans, shortening, dried prunes, peanut butter and some cereals.

Food stamps are the other possibility. These are in use in 47 States and the District of Columbia.

Eligible people can get the stamps free, if their incomes are low enough, or they can buy them at a sliding scale of rates that still enables them to save money in their grocery shopping.

One or both plans operate in all but seven counties in the U.S.

INCOME LIMITS

To be eligible for either food plan, an elderly person must have an income of $178 a month or less and own no more than $1,500 in assets, not counting the value of a home, life insurance policies and personal property. The asset limit for a couple 60 years of age or older is $3,000 on the same basis, and the income limit is $233 a month.

A person living alone pays nothing for food stamps, if his income is less than $200 a month. He get stamps that will entitle him to buy $36 worth of groceries. A couple with an income of $233 would pay $44 for food stamps with a retail buying power of $64.

President Nixon said special steps to reach old people with the food-distribution schemes are necessary because "tens of thousands, or perhaps hundreds of thousands" are "unaware of these and other resources, private and public, which could do so much to improve the quality of their lives."

Food stamps alone are now costing the Federal Government about 1.9 billion dollars a year, eight times as much as they did three years ago.

There was no estimate of how much these costs might increase as a result of the latest effort to reach more of the elderly poor.

COMMITTEE MEETINGS DURING THE SENATE SESSION TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on the District of Columbia may be authorized to hold hearings today.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Public Works may be authorized to meet during the Senate session today in executive session to continue the consideration of the Foreign Aid Highway Act of 1972.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet in executive session today on routine committee business.

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

COMMITTEE MEETING DURING THE SENATE SESSION TODAY, TOMORROW, AND FRIDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce be authorized to meet during the session of the Senate today, tomorrow, and, if necessary, on Friday, to consider only those matters of pending business which are either House-passed measures or otherwise crucial.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Public Welfare, with amendments:

S. 32. A bill to authorize the National Science Foundation to conduct research, education, and assistance programs to prepare the country for conversion from defense to civilian, socially oriented research and development activities, and for other purposes (Rept. No. 92–1028) (together with supplemental views).

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

S. 2166. A bill to authorize the establishment of the Grant-Kohrs Ranch National Historic Site in the State of Montana, and for other purposes (Rept. No. 92–1029).

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. MAGNUSON, from the Committee on Commerce:

John E. Hirten, of California, to be an Assistant Secretary of Transportation; and

Kelly E. Taggart, and sundry other persons, for permanent appointment in the National Oceanic and Atmospheric Administration.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

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

S. 3896. A bill to provide for the settlement of claims resulting from participation in a Public Health Service study to determine the consequences of untreated syphilis. Referred to the Committee on the Judiciary.

By Mr. SPARKMAN:

S. 3897. A bill for the relief of Bhuminder Singh. Referred to the Committee on the Judiciary.

By Mr. HATFIELD:

S. 3898. A bill to recognize the fifty years of extraordinary and selfless public service of Herbert Hoover, including his many great humanitarian endeavors, his chairmanship of two Commissions on the Organization of the Executive Branch, and his service as 31st President of the United States, and in commemoration of the one hundredth anniversary of his birth on August 10, 1972, by providing grants to the Hoover Institution on War, Revolution and Peace. Referred to the Committee on Labor and Public Welfare.

By Mr. PELL (for himself, Mr. BROCK, and Mr. ROTH):

S. 3899. A bill to amend chapter 25, title 44, United States Code, to provide for two additional members of the National Historical Publications Commission, and for other purposes. Referred to the Committee on Government Operations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 3896. A bill to provide for the settlement of claims resulting from participation in a Public Health Service study to determine the consequences of untreated syphilis. Referred to the Committee on the Judiciary.

Mr. ALLEN. Mr. President, I introduce on behalf of my distinguished senior colleague (Mr. SPARKMAN) and myself, a bill for appropriate reference to compensate individuals for losses sustained as a result of participation in a continuing experiment conducted by the Public Health Service in Macon County, Ala., beginning in 1932, the purpose of the experiment being to determine the mental and physical consequences of untreated syphilis

on certain individuals. I request unanimous consent that the bill be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ALLEN. Mr. President, I was shocked and dismayed to learn that the U.S. Public Health Service had conducted such an experiment over a period of 40 years, reportedly involving some 400 men infected with syphilis and a control group of 200 uninfected subjects, for the sole purpose of observing and recording the ravages of this crippling and deadly disease in the absence of treatment for it.

It has been reported that at least seven deaths resulted from nontreatment of syphilis in the human subjects of this experiment. At this point, no one can know with certainty the extent of disabilities or deaths causatively connected with a failure to provide available medication and treatment which in the early forties was available and recognized as a specific cure for this potentially deadly disease. In any event, few will question an ethical responsibility on the part of the U.S. Government to compensate individuals or their dependents for deaths, disabilities, loss of earnings, or other costs reasonably attributable to the purposeful withholding of treatment by the Public Health Service. This bill recognizes that responsibility, establishes a legal right to compensation, and provides the administrative machinery for recovery.

Briefly, the bill authorizes the Secretary of Health, Education, and Welfare or his designee to receive, investigate, settle, and pay all claims against the United States based on the death or permanent mental or physical injury resulting from a failure by the Public Health Service to treat the disease of syphilis during the period an individual participated in the experiment. The Secretary or his designee will determine the eligibility of claimants and the amount of compensation to which each may be entitled with maximum recovery for any one claim limited to $25,000.

Mr. President, it is not our purpose or desire to fix blame or responsibility for the tragic consequences of this experiment. Nor do we question the motive of those responsible for this experiment. Yet, I am profoundly disturbed by an assumed power and right in the scientific community to subject human beings to experiments of this nature without full knowledge of the individual subjects involved in such experiments. Human judgments of right and wrong are determined not alone by the motive which may have prompted a particular course of action, but also by the consequences of such an action. Our sole purpose is to do justice by the innocent victims who have suffered adverse consequences from the experiment.

On Tuesday, August 1, 1972, the Evening Star and the Washington Daily News editorially commented on this subject and persuasively speaks on certain aspects of the problem which are not reached by this legislation. However, the editorial accurately reflects my opinion concerning congressional responsibility in this matter and I request unanimous consent that it be printed in the CONGRESSIONAL RECORD.

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

[From the Evening Star and the Washington Daily News, Aug. 1, 1972]

THE CRUEL EXPERIMENT

Let's hope, and insist by all available political means, that there are no more medical experiments like the one that left hundreds of black Alabamans untreated for syphilis. The United States Public Health Service can produce nothing from its 40-year-old Tuskegee Study that could possibly be worth the human cost, or the erosion of faith in the methods of science.

The PHS set out in 1932 to record the ravages of syphilis in some 400 men, with about 200 uninfected subjects to compare with. What might have seemed a valuable medical investigation at the time became academic in the 1940s, when penicillin became available as the cure for the grim disease. Yet, the surviving syphilitics in the study group went untreated and some remain so.

Seven deaths are attributed directly to syphilis, but some others probably should be blamed on the disease and on the failure of the PHS to provide the obvious remedy.

The catastrophe can be traced to a certain arrogance in the scientific community, which likes to employ guinea pigs among us ignorant laymen, and found its willing subjects among Tuskegee's Depression-era blacks. The secrecy of the project is indicated by the recollections of doctors who had been employed to examine some of the syphilis-study objects but were not told why. The continuance of the study until today can be attributed in part to the inertia of a bureaucracy where faces change but lazy ways go on. It is a mystery, however, that no one blew the whistle on this particular outrage until now.

Little can be salvaged from this PHS misdeed, but the government should compensate the survivors and their families. Beyond that, there should be assurance, in the form of legislation, that governmentally and privately sponsored research stay within more humane limits in the future.

EXHIBIT 1

S. 3896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress recognizes and assumes the compassionate responsibility of the United States to pay for losses sustained by individuals who participated in a continuing study conducted by the Public Health Service in Macon County, Alabama, beginning in 1932, to determine the medical consequences of untreated syphilis. It is the purpose of this Act to compensate such individuals for losses sustained by them as a result of participating in such study.

SEC. 2. As used in this Act, the term—

(1) "Secretary" means the Secretary of Health, Education, and Welfare; and

(2) "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by all or partial allowance or by disallowance.

SEC. 3. The Secretary or his designee is authorized to receive, investigate, settle, and pay all claims against the United States for death or permanent mental or physical injury resulting from participation in the study referred to in the first section of this Act.

SEC. 4. (a) The Secretary is authorized to issue such rules of procedure for the consideration and disposition of claims filed under this Act as he deems appropriate.

(b) Claimants, or their authorized representatives, shall submit their claims in writing to the Secretary, under such rules as he may prescribe pursuant to subsection (a), within six months after the date of the enactment of this Act.

(c) The Secretary shall determine and pay the amount of awards, if any, in the case of each claim within twelve months from the date on which the claim was submitted.

SEC. 5. (a) With respect to claims filed and awards paid pursuant to the provisions of this Act, the Secretary shall determine—

(1) whether losses sustained resulted from a failure by the Public Health Service to treat the disease of syphilis during the period the claimant participated in the study referred to in the first section of this Act;

(2) the amounts to be awarded as compensation for such losses; and

(3) the persons entitled to receive such awards.

(b) Claims for awards based on death shall be submitted only by authorized legal representatives.

(c) No claim for death or permanent mental or physical injuries may be approved by the Secretary in an amount in excess of $25,000.

SEC. 6. (a) The payment to any person of an award pursuant to a claim filed under the provisions of this Act shall be in full settlement and discharge of all claims of such person against the United States resulting from participation in the study referred to in the first section of this Act.

(b) No claim cognizable under the provisions of this Act shall be assigned or transferred, except to the United States.

SEC. 7. The Secretary shall, within two years after the date of the enactment of this Act, transmit to the Congress a report setting forth—

(1) each claim settled by him and paid pursuant to the provisions of this Act, with a brief statement concerning the character and equity of each such claim, the amount claimed, and the amount approved and paid; and

(2) each claim submitted to him in accordance with the provisions of this Act which has not been settled by him, with supporting papers and a statement of his findings of facts and recommendations with respect to each such claim.

SEC. 8. There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this Act.

By Mr. PELL (for himself, Mr. BROCK, and Mr. ROTH):

S. 3899. A bill to amend chapter 25, title 44, United States Code, to provide for two additional members of the National Historical Publications Commission, and for other purposes. Referred to the Committee on Government Operations.

Mr. PELL. Mr. President, I am introducing today, for myself, Senator BROCK and Senator ROTH, legislation to expand the membership and the funding authorization for the National Historical Publications Commission.

I have had the privilege of serving since 1967 as the Senate member of the Commission. During that time, I have been consistently impressed with the invaluable work done by the Commission, with a very modest budget.

The Commission is charged with responsibility for recommending grants to nonprofit educational institutions for collecting, editing, and publishing documentary source material important to American history.

During the first 7 years of its existence,

actual appropriations for the Commission grant program have averaged $350,000 a year. And during the same period, recipients of grants have made available an average of nearly twice as much—$656,000 a year. The willingness of the private institutions to come forward with substantial matching funds indicates, I believe, the importance with which those institutions view the program, and the wisdom of the Congress in investing in the collection and editing of the irreplaceable documents of our national history.

The Commission now faces, however, two major challenges. First, the costs of collecting, editing, microfilming, and publishing have increased greatly during the past several years while the Commission's budget authorization has remained constant at $500,000.

Second, the Commission is expected to make a major contribution to the observance of the bicentennial by expanding the availability of source documents on the American Revolution and the founding of the Federal Government.

The legislation which I am introducing would enable the Commission to meet these challenges by eliminating the $500,000 authorization limit for the next 5 fiscal years.

The legislation would also expand the Commission membership to include two members of the Organization of American Historians, the largest national organization of historians concerned specifically with the history of the United States.

Mr. President, this legislation is recommended by the Commission, and I understand has the endorsement of the administration. I believe it is an important step in preserving and making more widely available the documentary history of our Nation, especially during the bicentennial era, and I hope that it will be given early and favorable consideration.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 325

Mr. BEALL. Mr. President, yesterday I placed in the RECORD the 40 Senators who have joined me in the cosponsorship of S. 325, a bill to provide for a survivor benefits program for our military personnel. I am pleased to ask unanimous consent that the distinguished senior Senator from Alabama (Mr. SPARKMAN) be added as a cosponsor of this legislation.

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

Mr. BEALL. Mr. President, now that the Armed Services' Special Subcommittee on Survivors Benefits has completed its hearings I certainly urge the subcommittee to begin its executive deliberations so that the bill may be recommended to the full committee and ultimately the Senate in the near future.

S. 2516

At the request of Mr. TOWER, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 2516, a bill to authorize the Secretary of Agriculture to reimburse owners of equines and accredited veterinarians for certain expenses of vaccinations incurred for protection against Venezuelan equine encephalomyelitis.

S. 3759

At the request of Mr. JAVITS, the Senator from Michigan (Mr. GRIFFIN) was added as a cosponsor of S. 3759, to provide for the humane care, treatment, rehabilitation, and protection of the mentally retarded in residential facilities through the establishment of strict quality operation and control standards and the support of the implementation of such standards by Federal assistance, to establish State plans which require a survey of need for assistance to residential facilities to enable them to be in compliance with such standards, seek to minimize inappropriate admissions to residential facilities and develop strategies which stimulate the development of regional and community programs for the mentally retarded which include the integration of such residential facilities, and for other purposes.

S. 3841

At the request of Mr. HANSEN, the Senator from Maryland (Mr. BEALL) was added as a cosponsor of S. 3841, to amend the Internal Revenue Code of 1954 to provide for an estate tax charitable deduction in the case of certain charitable remainder trusts.

S. 3852

At the request of Mr. CRANSTON, the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 3852, a bill to amend the Railroad Retirement Act to provide a 20-percent increase in annuities.

SENATE JOINT RESOLUTION 226

At the request of Mr. PERCY, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of Senate Joint Resolution 226, to authorize the President to designate the period from September 17, 1972, through September 23, 1972, as "National Bank-Women's Week."

ENROLLED BILLS SIGNED

The President pro tempore today, August 9, 1972, signed the following enrolled bills, which had previousy been signed by the Speaker of the House of Representatives:

S. 2499. An act to provide for the striking of medals commemorating the 175th anniversary of the launching of the U.S. frigate *Constellation*; and

S. 3645. An act to further amend the U.S. Information and Educational Exchange Act of 1948.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, August 9, 1972, he presented to the President of the United States the following enrolled bills:

S. 2499. An act to provide for the striking of medals commemorating the 175th anniversary of the launching of the U.S. frigate *Constellation*; and

S. 3645. An act to further amend the U.S. Information and Educational Exchange Act of 1948.

AMENDMENT OF JOINT RESOLUTION ESTABLISHING THE AMERICAN REVOLUTION BICENTENNIAL COMMISSION—AMENDMENTS

AMENDMENTS NOS. 1422 THROUGH 1424 AND 1427

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

Mr. KENNEDY submitted four amendments, intended to be proposed by him, to the bill (S. 3307) to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended.

ESTABLISHMENT OF A SELECT COMMITTEE TO STUDY QUESTIONS RELATED TO SECRET AND CONFIDENTIAL GOVERNMENT DOCUMENTS—AMENDMENT

AMENDMENT NO. 1425

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

Mr. JAVITS (for himself, Mr. ERVIN, and Mr. PERCY) submitted an amendment, intended to be proposed by them, jointly, to Senate Resolution 299, to establish a select committee to study questions related to secret and confidential Government documents.

RAISING OF NEEDED REVENUES BY REFORMING CERTAIN TAXES—AMENDMENT

AMENDMENT NO. 1426

(Ordered to be printed and referred to the Committee on Finance.)

Mr. NELSON. Mr. President, one of the sections of S. 3378, which I introduced on March 21 along with Senators HART, KENNEDY, MONDALE, CHURCH, EAGLETON, HARRIS, HUGHES, HUMPHREY, MCGOVERN, METCALF, and TUNNEY, provides that a charitable bequest will be deductible for estate tax purposes only if it is to be used predominately within the United States or its possessions. This provision was put into the bill as a result of a drafting error. It was not the intention of the sponsors of this bill to discourage contributions to philanthropic organizations abroad.

We all recognize that there are hundreds of charitable operations in countries all over the world—both religious and nonreligious—which have been widely supported by American contributors for many years. These involve a wide range of causes, such as helping homeless children, providing relief to victims of natural disasters and many other meritorious activities.

S. 3378 is an extremely complicated bill, running to 85 pages and containing 55 sections and over a hundred major changes in the tax laws. Along with the other cosponsors, I was not aware of the drafting error in question when S. 3378 was introduced.

Therefore, on behalf of Senators MCGOVERN, HUGHES, and myself, I am submitting an amendment to S. 3378 which would delete this section from the bill.

ADDITIONAL STATEMENTS

THE HATCH ACT—TOO AMBIGUOUS

Mr. MOSS. Mr. President, it is an accepted fact today that many Federal employees avoid even the most basic participation in the democratic process for fear of sanction. Some go so far as to conceal their political preferences even in private circumstances.

Their apprehension is understandable. For more than 30 years Government workers had had to lean over backwards to avoid violating an ambiguous piece of legislation known as the Hatch Act. Drawn up in the later days of the New Deal as a means of protecting Federal officials from political coercion, this statute has had the net effect of restricting their freedom altogether. Today, many are afraid to do anything more than vote for fear of prosecution under the act.

Last Sunday, the New York Times contained an interesting article which pointed out some of the many ambiguities which continue to surround enforcement of the Hatch Act. As the Senate reviews various proposals for reforming this statute, I believe a thorough public discussion of the issues involved here is essential.

We must define those activities which a Federal employee might safely pursue without prejudicing his official position and move to guard his right to pursue these activities.

I ask unanimous consent that the Times article, written by Robert M. Smith, be printed in the RECORD.

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

[From the New York Times, Aug. 6, 1972]

HATCH ACT: JUST WHAT DOES IT PROHIBIT?

(By Robert M. Smith)

WASHINGTON.—Can an employe of the Federal Government make a speech at a rally held by a political party? Can he participate in voter registration drives? Can he put a political sticker on his car? Can he become actively involved in such local issues as civil rights and taxes?

The answer under the Hatch Act, the Federal statute governing civil servants' behavior in political matters, is no to the first two questions and yes to the second pair. But there is widespread confusion on the matter, and when 1,000 Federal employes were surveyed in 1967 about the permissibility of 10 activities—including the ones above—only about one person in three understood what he could or could not do in six or more of the situations stipulated.

It is partly for this reason—vagueness—that a three-judge panel of the Federal district court for the District of Columbia last week declared the Hatch Act unconstitutional. "The defect," Judge Gerhard A. Gesell declared for the court, "lies not in the basic underlying purpose to limit certain partisan political activities by Federal employees but rather in its drafting. . . . No one can read the act and ascertain what it prohibits."

The court also held that the act was too broad. Judge Gesell wrote: "Restrictions may not be achieved by means which sweep unnecessarily broadly into First Amendment areas" of free speech and association. "Ours is not a form of government," he remarked, "that will prosper if citizens, particularly Federal Government servants, must live by the mottoes, 'Better be safe than sorry' and 'Don't stick your neck out.'"

The immediate practical effect of the court's decision was left in doubt. On the one hand, the court enjoined the Civil Commission from enforcing the Hatch Act; on the other hand, it stayed the injunction until the United States Supreme Court could rule on an expected government appeal.

At week's end, the Civil Service Commission had made it known that—until the Supreme Court speaks—it will enforce the act. There appeared to be little doubt that the Government would appeal: The act is 33 years old, it was upheld by the Supreme Court in 1947, it affects millions of people, one of the three Washington judges dissented, and some Congressmen might be very unhappy if there were no appeal.

The act—its official name is "An Act to Prevent Pernicious Political Activities"—had a dual purpose: to give the country an efficient and neutral civil service based on the merit system rather than political patronage and to protect civil servants from being bludgeoned into unwanted or improper activity.

The means the act chose, in the words of Thomas C. Matthews Jr., the lawyer who argued the case against it, was "to set up a broad prophylactic screen against potential abuse." It tells an estimated three million employes that "no officer or employe in the executive branch of the Federal Government . . . shall take any active part in political management or political campaigns." (By an extension based on the use of federal funds, it tells about three million state employes the same thing.)

Mr. Matthews, a volunteer lawyer for the American Civil Liberties Union, likened the prohibition to a gate at a national park. "Rather than letting people in and telling them what they could not do," he explained, "the act just tells them they can't go in at all."

What Mr. Matthews and a good many others would like to see is a narrower statute allowing voluntary partisan activity, but outlawing such practices as intimidation and coercion. Above all it would explain clearly to Government workers what they may and may not do.

Two measures have been introduced on Capitol Hill to change the law. One sponsored by Senator Gale W. McGee, Democrat of Wyoming and chairman of the Post Office and Civil Sevice Committee, would allow most activities except running for political office. The other, sponsored by Senator Frank Moss, Democrat of Utah, would allow a civil servant to run for local political office but would not allow him to serve as campaign manager for a candidate seeking state or national office. Neither has been acted on by the committee.

In the end, the effect of a narrower Hatch Act, or of no act, on partisan politics is foggy. The 1967 survey asked Government employes: "If federal workers were allowed to do more things in politics, what differences would this make in your own political activities away from work?" Only eight per cent of the civil servants interviewed said they would be considerably more active. Sixty per cent said their political activities would stay about the same.

BOMBING OF RED RIVER DIKES IN NORTH VIETNAM

Mr. GOLDWATER. Mr. President, I take strong issue with the contention of Senators KENNEDY and TUNNEY and other Senators who insist that the United States is embarking on a policy of deliberate bombing of the Red River dike system in North Vietnam. I should like right at the beginning to label this whole attempt to smear the Nixon administration and the U.S. Government as a deliberate propaganda drive designed by Hanoi and carried out by her friends including Jane Fonda, Ramsey Clark, and other pro-North Vietnam dupes in this country.

Mr. President, I believe this whole attempt to convince the American people that their Government is deliberately embarked upon a "scorched earth" attempt to murder civilian noncombatants in Indochina is one of the most insidious efforts ever devised by the Communists in Southeast Asia.

Mr. President, when the whole truth is known about the dike damage in North Vietnam and how it came about and what is being done to correct it, it takes on an aspect as sinister as the tales which were once woven about that epitome of oriental evil—Dr. Fu Manchu.

Mr. President, there is even reason to believe that the Communists have deliberately risked the lives of millions of their own people in an effort to discredit the U.S. conduct of the war which Mr. Nixon inherited from President Kennedy and Johnson. Let me explain:

For many centuries, the people of North Vietnam have lived in a posture of constant defense against the raging Red River which winds through their country. Since time immemorial, any damage to the elaborate, 3,000-mile dike system in North Vietnam brought immediate repair efforts. At times as many as 300,000 men, women, and children were pressed into service to repair primary and secondary dikes which protect the civilian population of North Vietnam.

But this year something different has been happening, and this can be proved by aerial reconnaissance photographs taken of North Vietnam since the devastating flood season of 1971.

To understand the propaganda campaign now being waged by Hanoi with the help of anti-Nixon figures in this country, it should be known that every year August and September bring a flood season to North Vietnam which is always damaging and often ruinous. The flood season last year was one of the worst in the long history of the Red River Valley. Torrential rains last year damaged hundreds of dikes and weakened many others. Although the flooding in 1971 was more severe than usual, it was not impossible to remedy. But this time the Hanoi government spent its time and its manpower mounting an offensive against the South Vietnamese below the DMZ rather than looking to their defenses against the raging Red River.

Indeed, until only several weeks ago, Hanoi had made no move to mount its annual effort to mobilize the population for a general dike repair operation. Photographs taken of the dikes and the damage done to the dike system as a result of the 1971 floods and as a result of some American bombs but more Communist bombs, show that the repair effort is the latest ever recorded by U.S. photographic planes, beginning at least 2 months later than the usual time for repairs aimed at protecting the dike system against the rainy season just ahead.

All of which, Mr. President, brings me to the point of my remarks, and that is that North Vietnam expects another devastating flood season in August and September of this year, and they are

making every effort to place the blame for any loss of life that occurs squarely on the shoulders of the U.S. Air Force.

That is what all the fuss is about, and believe me it is an especially filthy chapter in the waging of propaganda warfare. You actually have a government which is making feeble and belated attempts to protect its civilian population from a known danger in the hope that their military enemy can be blamed for a callous slaughter of defenseless civilians.

Mr. President I reject completely the contentions of Hanoi, Jane Fonda, Ramsey Clark, and Senator KENNEDY that the United States is deliberately attempting to destroy the dike system of North Vietnam.

In his remarks of August 4, Senator KENNEDY remarked:

> We see today only a pale shadow of the truth.

I have to agree with my colleague from Massachusetts on this point and credit him with playing a major role in the deception. In his remarks, Senator Kennedy said:

> Observers speak in terms of tens of millions of bomb craters in Indo-China and liken parts of North Vietnam to the lunar landscape in describing the devastation we have caused.

Senator KENNEDY does not identify the observers he quotes, but I believe it is a fair assumption that they have a deep sympathy for Communist causes and a direct interest in smearing the U.S. Military Establishment.

There are more responsible reports on bomb craters in North Vietnam. One of them was released by the State Department in an unusual move and showed aerial reconnaissance photos to support its assertion that only a dozen bomb craters on the dikes have been caused by U.S. action. It said even the largest of these could be repaired in a day by a crew of less than 50 men with wheelbarrows and hand tools.

American officials have explained that dikes are as integral a part of North Vietnam as highways are in other countries. They point out that placing an absolute quarantine on hitting dikes from American airmen would be like telling kids to stay off the sand while they are at the beach. And because of the prevalence of dikes in all parts of North Vietnam, ranging from primary 50-foot high dikes to channel the Red River into the Gulf of Tonkin to tertiary dike channels which distribute water from the larger dams to North Vietnamese farmers, the tops of some have necessarily had to be used by the Communists for antiaircraft guns, missile implacements, pumping stations for oil pipelines, and storage areas for surface-to-air missiles. Many dikes also are topped by roads along which trucks move with military equipment. Thus it is that some of the dikes, by reason of the use they are being put to to facilitate the killing of American men, are legitimate targets in the aerial bombardment.

Mr. President, I believe we all know that journalists, movie actresses, and left wing spokesmen from this country are given guided tours of the damaged dikes in the Hanoi area whenever they visit the enemy capital. They are told, of course, that all the bomb craters are a result of deliberate U.S. bombing of the water protection system. In fact, any damaged dike is described as a casualty of American inhumanity, whether that damage resulted from a misdirected aerial bomb or from the devastating flood waters which swept over that country in 1971.

There is another factor, however, especially where crater damage is involved in the Hanoi and Haiphong areas. And that factor involves crater damage from Communist, rather than American bombs. The highly authoritative and respected magazine Aviation Week raises a very important point in this regard. Editor-in-Chief Robert Hotz points out that surface-to-air missiles supplied to North Vietnam by the Soviet Union carry 420-pound high explosive warheads. He further points out that when these missiles are fired at American planes and fail to hit their targets, they fall back on the dam system and explode there. The magazine estimated that since April, more than 2,000 surface-to-air missiles have been fired in North Vietnam and only a handful of those exploded near U.S. planes. Crater damage around Hanoi and Haiphong from the SAM missiles "must be enormous" Aviation Week observes.

So, Mr. President, the question presents itself of how American observers can tell SAM craters caused by the Communists from bomb craters caused by American raids. The answer is that there is no way. And this fact alone "gives the lie" to the statements by people like Jane Fonda and Ramsey Clark, and it is important for the American people to understand this.

In conclusion, Mr. President, let me reiterate that the whole furor over American bombing of the Red River dikes is nothing but an effort by Hanoi to let this year's floods come and do their worst while they and their friends blame the United States—in advance—for any disaster that might occur involving the wholesale death of North Vietnamese civilians.

AFRICAN LIBERATION MOVEMENTS

Mr. McGEE. Mr. President, this morning's Washington Post contains a book review by journalist Bruce Oudes. The book is entitled "African Liberation Movements: Contemporary Struggles Against White Minority Rule." It was written by black journalist Richard Gibson.

I have had the occasion to discuss issues with Mr. Oudes as they relate to Africa. I find his perceptions very extraordinary as they relate to Africa and, therefore, I feel there is no better qualified individual to accurately assess writings of this nature than Mr. Oudes.

I would urge Senators to peruse Mr. Oudes' review of this book and suggest that it would be worthwhile for all of us to obtain copies of Mr. Gibson's journalistic efforts. Our relations with sub-Sahara Africa have been marked by neglect, apathy, and a lack of knowledge of, and concern for, the aspirations of these nations.

I ask unanimous consent that the book review be printed in the RECORD.

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

AFRICA: A JUST REBELLION

(Reviewed by Bruce Oudes)

It doesn't take long to get an idea of where, in the current idiom, Richard Gibson has his head. Before the introduction he quotes Thucydides: "I began my history at the very outbreak of the war in the belief that it was going to be a great war. . . ."

Gibson is a partisan; he's also a black American, a journalist, and an expatriate of the Paris-in-the-1950s generation. Each of these factors has had a bearing on what he has produced: the first volume ever written by a black American that is wholly dedicated to all the southern Africa race conflicts.

It is an important and controversial book, one that should be widely read and discussed in black studies courses around the country. However, it is doubtful that the movers and shakers of American foreign policy at this stage will give it anything like the attention it unquestionably is getting in the governing circles in Portugal, South Africa, and Southern Rhodesia.

The Nixon administration will see it as merely confirming "The Myth of the Guerrilla," J. Bowyer Bell's button-down and seersucker post-mortem on liberation movements. To understand its implications for the future of U.S. foreign policy and the not-unrelated question of the climate of domestic opinion would require a good deal more sensitivity to black nationalism's foreign policy than the White House seems willing to offer.

In brief, Gibson does an unprecedented hatchet job on the black African exile organizations, which generally have done more fighting among themselves than against the white minority regimes. He does it, however, with the object of cleaning house, puting an end to the petty bickering in order to organize for the long-term struggle.

He believes that white repression leaves the blacks no choice but violence in southern Africa. He qualifies this only by adding that black Africans who are espousing nonviolence are doing so out of "tactical necessity rather than a deeply held commitment."

To the extent that journalism and scholarship must be uncommitted, Gibson's effort has serious, unquestionable faults. To the extent that a partisan is not supposed to tell tales, Gibson is not a good revolutionary. He is somewhere in between, trying to define for himself that anomaly known as the "black American journalist."

If it is possible to be both hard-nosed and leaning toward the Maoist view of the Sino-Soviet conflict, Gibson turns out to be just that. He is particularly disenchanted with the Soviets for what he sees as their half-hearted help for the liberation cause. Rather than in helping to hasten the day of African victory, he believes they wish to see the conflict prolonged as an embarrassment to the West.

It would be much easier for critics to dismiss "African Liberation Movements" as just another bit of prattle from the Afro-kooks if Gibson didn't have such impeccable backing as London's prestigious Institute of Race Relations. He draws on a wide variety of written sources to back his description and analysis of the intra-African warfare. It is, of course, difficult to comment on the accuracy of some of the dirty linen he exposes. However, his airing of it will force those who feel themselves unfairly maligned to attempt to set the record straight. Then at least there will be a record rather more complete than the fragments now available to the general reader.

Gibson's interest in the subject of African revolution apparently dates from the late

'50s and early '60s when, among other things, he worked for CBS News in New York, attended Columbia University on a CBS fellowship, and serve a stint in Algiers as editor of "Revolution Africaine." Now he lives in London and writes for Tuesday Magazine and Negro Press International.

Such credentials would seem evidence that, while pro-revolution, he is by no means entirely anti-West. He is not writing only for black people or Communists; he appears to be sending the white West a message: In his conclusion he cites a British church organization that concluded an analysis of southern Africa a couple of years ago by saying, "There can be a just rebellion as well as a just war and we cannot sincerely withheld support from those who have decided to face the certain suffering involved in such rebellion."

The Democratic Party's platform committee recently rejected a proposal by Rep. Charles Diggs along virtually identical lines, one that would have the United States recognize the right of blacks in Africa to gain liberation "by whatever means necessary." Diggs, Gibson, and others are slowly forcing on a reluctant white community a discussion of their responsibility for continuing white rule over black majorities in Africa.

Gibson isn't bothering with a parlor debate on these questions. His priorities are clear.

PUBLIC DISCLOSURE BILL

Mr. CASE. Mr. President, I am delighted to learn that the Subcommittee on Privileges and Elections chaired by Senator CANNON of Nevada has reported to the full Rules Committee a slightly modified version of S. 343, a bill to require public disclosure of income and financial activities of top officials in all three branches of Government.

It was in 1958 that I first introduced this bill. Each Congress since then I have reintroduced it with a growing number of cosponsors including the majority and minority leaders of the Senate.

In the last session a hearing on this bill was held by the subcommittee at which I was glad to testify along with Senator SPONG, who has taken a lively interest in the whole matter.

It is my hope that the full committee will act to report the bill to the Senate before our recess begins.

At a time when the executive branch is vigorously seeking to root out corruption in public office, I can think of no more salutory action than passage of our bill. It would do more, as the short title states, "to promote public confidence in the legislative, executive, and judicial branches of the Government of the United States" than any other single action we could take.

Specifically, the bill would apply to all persons earning $15,000 or more in the legislative, executive, and judicial branches of Government. Each employee would have to report, on behalf of him and his spouse, the amount and source of each item of income—including gifts exceeding $100 in value—the value of each asset and the amount of each liability in excess of $1,000, any transactions in securities and commodities if the amount exceeds $1,000 and any real estate transactions other than the purchase or sale of his personal residence which exceed $1,000.

Reports would be filed annually with the General Accounting Office and, most important of all, be open to public inspection.

NEED TO COMBAT GYPSY MOTH THREAT

Mr. ALLEN. Mr. President, the Committee on Agricutlure and Forestry on June 7 reported H.R. 10729, a bill designed to protect man and the environment. One provision of the bill was designed to encourage research into new and safer methods of controlling pests by insuring the researcher of the exclusive rights to the fruits of his research. It would not give him a monopoly. Anyone else could perform the same experiments or upon payment of an agreed price, could use his test data.

The whole purpose of the provision is to encourage the work that has to be done to protect our environment. The Committee on Commerce has reported an amendment to strike this provision from the bill. The adoption of the amendment of the Committee on Commerce would be a great mistake.

The Wall Street Journal yesterday published a graphic description of the terrible depredation the gypsy moth is inflicting on this country. I think we all ought to agree that if anyone could come up with a solution to this problem, he ought to be not only well paid for his work, but also ought to receive the gratitude of everyone who faces the danger of an environmental infested with the gypsy moth.

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:

[From the Wall Street Journal, Aug. 8, 1972]

INSECT EXPANDS ITS AREA IN UNITED STATES, DEFIES ATTEMPTS AT BIOLOGICAL CURBS, MAY EAT INTO STATE ECONOMIES

(By Burt Schorr)

BLUE MOUNTAIN, PA.—The calendar and the thermometer read August, but December appears to rule this finger of the Appalachians.

The red, black and scarlet oaks, the chestnut and white oaks, the aspen and black birch, even the ground-hugging huckelberry are only winter skeletons. Except for a dragonfly or two, no insect is in evidence. Missing, too, are the flash of forest birds and the scuttle of chipmunks and squirrels.

Everywhere, though, is the August sun, burning what ordinarily would be the dark, cool interior of thick woods—52,000 defoliated acres in all, stretching away on all sides from the Port Clinton fire tower here. Looking out over the desolation, State Forester Nevin Slusher observes, "Everything on the forest floor—the leaves and dead limbs—is fuel. A day or two in the sun, and it's ready to burn."

This is ecological havoc on an awesome scale, and its cause isn't a mystery. The stripper of Blue Mountain's greenery is the blue-and-red-dotted caterpillar of the gypsy moth, which has been chewing on foliage in Northeastern states for over a century. Yet the presence of the swarming larvae here on the northern edge of Pennsylvania Dutch Country is a troublesome portent to foresters and etomologists.

In 1869 a few adult moths escaped from an amateur French naturalist who had imported them from Europe in the hope of establishing a new strain of silkworm in North America. Since then, the caterpillar mostly has been confined to New England and eastern New York. Its repeated defoliation of trees—chiefly oaks whose leaves are preferred—altered forest composition in those states over the decades but had little economic impact.

EXPANSION OF TERRITORY

But now heavy moth infestations in New Jersey and Pennsylvania indicate that the insect rapidly is expanding its territory in a southwesterly direction (though wet conditions this year apparently slowed the advance). Directly in the path of the breakout: more than 100 million acres of predominantly oak forests growing along Appalachian ridges like this one. Many foresters believe that trees in the threatened region, which stretches from western Pennsylvania to Georgia, are especially vulnerable to death from defoliation because they are growing in poor, relatively dry soils. Barring unexpectedly quick success in finding ways to control the gypsy moth biologically—efforts to do so chemically on a wide scale have been abandoned as fruitless—tree losses in the affected areas could run as high as 80%, foresters estimate.

"That whole region from Pennsylvania to Georgia looks like one big gypsy-moth garden to me," says Robert Campbell, an ecologist at Hamden, Conn. Mr. Campbell heads a federal team seeking to develop the first computer model able to pinpoint where the caterpillars are most likely to turn up next.

Lack of solid intelligence on the moth's movements is only one of numerous knowledge gaps that students of the insect are attempting to span. Current research also is directed at finding additional gypsy-moth parasites able to establish themselves in vulnerable areas; it is also aimed at increasing the efficiency of a bacterial spray that is fatal to the caterpillars.

PROBLEMS OF FUNDING

At present levels of state and federal funding, though, progress in biological control promises to be slow. New Jersey, the most advanced state in seeking gypsy-moth parasites, currently counts only seven species of wasps and flies and one predacious beetle on the job within its borders—and in numbers too few to check exploding caterpillar populations.

One of New Jersey's marauders is the pinhead-size wasp Ooencyrtus kuwanae, which injects its eggs into the eggs of the gypsy moth, killing the unborn larvae. Unfortunately, Ooencyrtus doesn't have an egg depositor long enough to reach beyond the outer layers of the moth-egg cluster.

If Ooencyrtus was only a partial success, Exorista segregata seems to have been an outright failure. Exorista is a fly native to Spain that slays caterpillars by depositing its eggs inside them. For five years New Jersey has propagated Exorista by the tens of thousands; now it has stopped, because the parasite has apparently failed to take hold.

Meanwhile, the gypsy moth is clearly on the march. In the Northeast, this year's affected area will at least equal the record 1.9 million acres totally or partly stripped in 1971, Forest Service experts estimate. As recently as 1968, only 80,000 acres were being chewed by the gypsy larvae. Here in Pennsylvania, where the caterpillars have been knifing steadily westward from the New Jersey border, state officials believe that some 500,000 acres suffered heavy defoliation this year compared with a mere 60 acres four years ago.

In 1958, after 3.5 million acres were sprayed with DDT from the air in a federal-state push to "eradicate" the moth, defoliation shriveled to a scant 125 acres. But the spraying set off

an environmental furor, and the chemical was abandoned as a weapon against caterpillars. During the 1960s, with DDT phased out of control programs, the area ravaged by the caterpillars doubled and doubled and doubled again; simultaneously, the moth began moving south and west at the fastest rate since 1920.

Carbaryl (sold under the trade name of Sevin by Union Carbide Corp., the sole U.S. maker) has been used to protect trees in populated and recreation areas. But wider-scale use of any insecticide would be futile, experts now agree. The Pennsylvania Department of Environmental Resources, for example, cities the high cost involved, the "erratic control" yielded by some replacements for DDT and the harm done to natural enemies of the moth in any indiscriminate spraying.

RIDING THE RAILS

One particularly hard-hit locality this year was Jackson Township, N.J., where large numbers of yard trees and some 10,000 acres of woodlands were stripped. Local lawns, terraces and swimming pools swarmed with caterpillars—which bristle with hair and can reach 2½ inches in length—and there came a steady rain of caterpillar wastes from the trees. One resident found thousands of caterpillars crawling in his attic, and rails slick with migrating caterpillars even immobilized a freight train temporarily.

"This is like living in a horror movie. My sons are even having nightmares about the worms (caterpillars)," Mrs. Raymond H. Marine, a Jackson Township housewife, wrote the local newspaper. Mr. Marine, blinded in World War II, couldn't touch the grass or a bush "without coming up with a handful of worms," she continued. Moreover, nearly every leaf on the 2¼-acre Marine lot—including those on holly trees, ornamentals and rosebushes—was consumed.

It is true that vigorous trees and shrubs do leaf out again once the caterpillars stop eating and transform themselves into the dark-brown pupal stage. Nearly always, too, population buildup during the second successive year of heavy defoliation causes the caterpillars to die in massive numbers from starvation and disease. Here on Blue Mountain, nearly all the stripped trees have put out a second canopy of new—if somewhat smaller—leaves. Heavy rainfall has helped the regrowth and also fostered spread of the wilt disease, a caterpillar virus that left piles of dead larvae heaped on the ground.

The flush of new greenery can conceal a tree's weakened condition, however. "After two years of defoliation, food reserves in the tree may become critical," says James O. Nichols, forest pest-control supervisor for the Pennsylvania Environmental Agency. At that stage, oaks are an easy prey for the chestnut borer. By constructing tunnels beneath the bark, the borer stops the flow of nutrients and water, which can kill a tree in one summer.

One ridge-top tract under study in Passiac County, N.J., was heavily defoliated in 1968 and 1969. By 1971, about 80% of the white oaks (which make up about 9% of the tract's total trees) were dead and another 17% in poor shape. Of the chestnut oaks (40% of the stand), three-fifths were dead and more than a fourth in poor condition. Although they fared a bit better, 57% of 77% of the red, scarlet and black oaks and eastern hemlocks also had died or declined seriously. Many of the affected trees were among the oldest and largest on the tract.

EATING INTO THE ECONOMY

All this is especially bad news for states like Virginia, West Virginia and North Carolina, where forests play big roles in the economy. Hardwood cutters there are faced with loss of income, while pulp and paper mills, furniture makers and other forest-supplied enterprises expect higher raw-material costs. Revenue from tourists and sportsmen also are likely to decline; a mountainside of dead oaks would entice few scenery buffs and produce few acorns for deer.

The moths are taking far bigger cross-country leaps on campers, trailers, mobile homes and other vehicles that they usually board as caterpillars.

Brown-winged adult males have turned up during the past three summers as far west as Alabama and Wisconsin in traps baited with disparlure, a synthetic version of the sex attractant generated by the nonflying, white-winged females. This spring, newly hatched caterpillars and buff-colored egg masses turned up in a Missouri mobile-home park; state and federal investigators traced them to a mobile home from Connecticut.

The Agriculture Department has established a quarantine of sorts against the pest. It covers the movement of nursery stock, timber, lumber, quarry products and mobile homes from infested to noninfested areas. Trailers and campers are exempted, though, and 30 agriculture inspectors assigned to spot-checking such vehicles at major highway rest stops in the Northeast this summer have been turning up the insect about 5% of the time.

The department reckons that the odds are only one in 20 that a hitchhiking female will lure a male to fertilize her eggs and that hatched larvae will find favored trees to feed on, rather than resistant species like the ash, butternut, tulip-poplar and most maples.

But Thomas McIntyre, coordinator of Agriculture's moth-control efforts, says that the few females that do mate will then produce 800 to 1,000 eggs each. He isn't too optimistic either about natural barriers to the moth's progress. Based on the gypsy moth's range from Northern Europe to North Africa, he says that "there is no reason this insect can't survive in every state of the U.S."

HOW MANY TUSKEGEES? HUMAN EXPERIMENTATION ABUSE MUST BE STOPPED

Mr. HUMPHREY. Mr. President, Tuskegee, Alabama., has been put on the map because of an opproborious, 40-year syphilis experiment involving several hundred black patients.

For decades after the establishment of penicillin as a recognized medical treatment for venereal disease, such treatment was denied these patients by the Public Health Service and the prestigious foundations conducting the study.

How many Tuskegees are there?

And how ironic that Tuskegee should achieve notoriety as the site of this inhuman study, rather than gain its proper recognition as an important seat of learning for blacks.

The eminent Dr. George Washington Carver conducted some of his most important scientific research at Tuskegee University. How ironic that elsewhere in Tuskegee and in Macon County the Public Health Service was conducting "human experimentation."

Since the recent disclosure of the experiment, other abuses in the area of human experimentation have been brought to the attention of Congress. I have just become aware of a tragic death due to experiments with carbon dioxide treatments for drug and alcohol addicts. Though the death occurred last February, a medical evaluation is just now getting underway.

We must put a stop to abuses in human experimentation.

We must devise a mechanism for the regulation of such experimentation. The taxpayers of our Nation should not be required to pay the bills for such deplorable studies.

We can no longer rely upon press disclosure or well-publicized deaths as a result of experimentation, to bring the abuses to light.

Today, the Washington Star, in an article written by Jean Heller, has disclosed that questions had been raised regarding the Tuskegee study in 1966, but that the decision to continue the study, without treating the participants for syphilis, was apparently not forthcoming until 1969.

Six hundred men were involved in this experiment. None of the participants knew the nature of the study or had given his consent to participate.

Now we learn that the Tuskegee participants might have received treatment, but may have been coerced into avoiding treatment by the lure of the $50 cash payment and burial expenses.

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:

SYPHILIS STUDY REORDERED AFTER INQUIRY ON MORTALITY

(By Jean Heller)

Six years ago an employe of the U.S. Public Health Service questioned the morality of a federal syphilis study in Alabama. The result was an internal inquiry and an official decision to take no action.

Peter Buxtum, who worked in the veneral disease branch at San Francisco, said he raised the issue in 1966. In 1969 he was told nothing could be done for the participants in the Tuskegee Study, a 40-year experiment conducted in Macon County, Ala., to determine the effects of untreated syphilis.

Four hundred black men with the disease in 1932 were enrolled in the experiment and never received any treatment for the disease itself. At least seven died as a direct result of untreated syphilis and the figure could be higher.

DOCTOR FOILED

A government doctor said yesterday he was instructed not to treat the men involved, and when he insisted on treating them, the men disappeared.

Dr. Reginald G. James said he believes the men were being told not to take the syphilis treatment.

OPPOSITE STORY

"At that time certain benefits were proffered the patients such as treatment for other ailments, payment of burial expenses and a $50 cash benefit," he said. "To receive these benefits, the patient had to remain in the study." They were told that if they took treatment they would be dropped, he said.

James directly contradicted a former Public Health Service doctor who played a key role in administering the Tuskegee Study. Dr. John R. Heller said in an interview 10 days ago that the PHS did not intend that men involved in the experiment be deliberately denied treatment.

And, he added, it was his impression that all of the study's participants had received treatment from private doctors and Tuskegee-area clinics.

"Naturally, you'd rather have the study population untreated," Heller said, "but there was no covert attempt to keep these people untreated."

Even after World War II, when penicillin was known to cure syphilis and the drug was readily available, it was denied to participants in the experiment.

And that fact first started Peter asking questions. Buxtun has since left the PHS and recently graduated from law school. He

gave copies of letters he wrote to PHS Center for Disease Control in Atlanta and its responses to The Associated Press.

KEPT IGNORANT

"It seemed to me that the ———formed about what they had volunteered for and what exactly was going to be happening to them," Buxtun said of the participants in the study. "Nobody was apparently concerned with moral or legal issues involved."

In 1967, Buxtun said, CDC flew him to Atlanta where he met with four PHS people, including Dr. William Brown, then in charge of the venereal-disease branch at CDC.

Buxtun said: "They began thinking in terms of a review of the study. In 1969, the decision was made not to treat any of the participants" because of their age.

Because massive penicillin therapy, the treatment for syphilis, can cause serious side-effects and because it was believed the syphilitic condition of the survivors of the Tuskegee Study was dormant, there would be no treatment, Brown said in a letter to Buxtun.

Buxtun said that after he received Brown's report on the review, he wrote again.

"I asked if any thought had been given to compensating families of people who died in the experiment," he said. "I received no answer to that letter."

THE MALAISE THAT HAS DAMPED THE AMERICAN SPIRIT

Mr. MATHIAS. Mr. President, a number of quotations have been engraved on the walls of the Capitol and other Government buildings in Washington. Some of them are worthy to be remembered.

But nowhere have I seen Wordsworth's well known reminder that—

The world is too much with us, late and soon.

I do not have the authority to inscribe them on any wall, but I can and do quote them in the RECORD at this point. I think we should reflect on them and undoubtedly, but improbably, should react to them. In Congress as in the other branches of Government and in much of our professional and commercial life we are so occupied in swabbing the decks, chipping paint, and polishing bright work that no one has the time to plot the course. Our preoccupation with the daily grubbing of our lives at the expense of fresh visions of the horizons ahead is a self-perpetuating condition. The busier we get, the less time we have to think about what we are doing.

Fortunately, our society has not totally overlooked the need for some contemplative view of human affairs. One of the men in America who helps to fulfill that need is James Reston. In the New York Times of August 6, 1972, Mr. Reston has probed for the nature of the malaise that has damped the American spirit. It is a speculation that requires much more wisdom and perception than the mere identification of symptoms.

It is a speculation not beneath the dignity of the Senate or of any officer or institution of government. It may, in fact, be the most pressing business of the Senate and the Nation.

I ask unanimous consent that Mr. Reston's article be printed in the RECORD.

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

A NATION OF STRANGERS

(By James Reston)

FIERY RUN, VA., August 5.—In this lovely hilly corner of Virginia most of the old eighteenth- and nineteenth-century houses have changed hands since the last war, some of them several times, and there has been a steady migration, which illustrates a much larger national problem.

Many of the young blacks from the Little Africa community on Rattlesnake Mountain have drifted away to Washington or Baltimore. Affluent businessmen and middle-class civil servants and professional people, weary of the urban turmoil, have retired into the old mansions and tenant houses, seeking the beauty and privacy the blacks have left behind.

Then there are the part-timers, or weekenders, like Eric Sevareid, Frank McGee, Tom Wicker and James Kilpatrick, who have found modest hideaways in these coves and valleys, thinking they will escape the tyranny of the deadline, and never quite managing to get the grass cut back by Sunday night, when they have to go back to their typewriters.

My colleague and neighbor in another place, Vance Packard, has made a detailed study of the causes and consequences of this nomadic American life in a remarkable and important book soon to be published, "A Nation of Strangers."

"The exploration," he says, "has led me to believe that at least forty million Americans now lead feebly rooted lives. We are seeing so deep an upheaval of life patterns that we are becoming a nation of strangers." He notes the following:

• About 42 million Americans change their home addresses at least once a year.

• By 1975, the Census Bureau estimates 65 per cent of all Americans will be living in metropolitan areas. In the twenty years between 1940 and 1960, 17.5 million people left the farms—more than half the total living on the land in 1940.

• Meanwhile, there is a countermovement of young people away from the cities, not into the settled life of the countryside but into a life of almost chronic movement, separated from traditional male-female relationships, from traditional religious beliefs and from steady work because of rapid technological and social change.

Packard sees some hopeful signs of revolt against this gypsy existence but is generally pessimistic about the deeper trends toward a widespread feeling of loneliness and frustration.

"While the footlooseness of Americans as pioneers was a source of vitality and charm," he says, "several of the new forms that the accelerating rootlessness of Americans is takings should be a cause for alarm. Great numbers of inhabitants fell unconnected to either people or places and throughout much of the nation, there is a breakdown of community living. In fact, there is a shattering of small-group life. A number of forces are promoting social fragmentation. We are confronted with a society that is coming apart at the seams."

Well, it is not a new lament, but it would be a bold man who could face Packard's well-documented indictment without a sense of anxiety, and one of the odd things about it is that we are having a Presidential election to determine the leadership of the nation for the next four years and there has been very little talk about the fundamental issues.

Both President Nixon and Senator McGovern have recognized the problem, both favor a wider distribution of industry and jobs, a more equal standard of welfare payments and tax reform which would produce a fairer redistribution of wealth.

But they differ wildly about the means of achieving these common goals. The President is saying, in effect, that it is possible to have $80-billion defense budgets and enough billions left over to win the domestic battle for social order and to maintain a vigorous expansion of private rewards. Senator McGovern is questioning this fundamental assumption and insisting that the Government is faced with truly radical problems and must choose radical reforms to meet them.

But far more time and space have been devoted to Tom Eagleton's health than to the health of the nation. Far more to the question of the Vice-Presidency than to the question of vice. Far more to Ed Muskie's migrations between Washington and Maine and his final withdrawal from the Vice-Presidential race than to the vast migrations of the American people.

It is widely assumed, for example, that the question of the security of the United States is primarily a question of the size of the defense budget and the negotiations with the Russians about the control of old and new weapons systems. But we may very well be coming into a new phase of world history where the major question of security lies not in a confrontation of armies but in a confrontation of societies.

Mr. Lincoln emphasized the point over a hundred years ago when the American people were divided over what kind of society this was to be. Foreign armies and problems were not the major threat, he insisted, but internal dissension and confusion could weaken and threaten the Republic. This is still a great issue for debate, and the vast, restless migrations of the American people are only part of it.

But in essence this problem comes down to simpler things. "To be deeply rooted in a place that has meaning is perhaps the best gift a child can have," Christopher Morley wrote long ago. "If that place has beauty and a feeling of permanence, it may suggest to him unawares that sense of identity with this physical earth which is the humblest and happiest of life's intuitions."

DID JOHN BIRCH SEEK DEATH?

Mr. McGEE. Mr. President, last Sunday's Washington Post, contains an article entitled "John Birch: Did He Seek Death?" written by Wesley McCune.

Mr. McCune utilized military records surrounding the death of Capt. John Birch in China shortly after the surrender of Japan. These records were released only this year. The article points to the inherent weakness of extremist organizations—the distortion of truth and reality in promulgating their causes while utilizing the basest of human instincts.

I believe the article to be an important comment on the John Birch Society, which used the incident to promote its doctrine of fear and hatred in our country. It is well that Senators read what Mr. McCune has written.

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:

JOHN BIRCH: DID HE SEEK DEATH?

(By Wesley McCune)

(NOTE.—The author, a former correspondent for Time and Newsweek, is director of Group Research, Inc., a Washington organization that monitors right-wing activities.)

In 1954, a candy manufacturer named Robert Welch wrote a book, "The Life of John Birch," which told how an American Baptist missionary who had turned intelligence officer in China during World War II became the first casualty of World War III—the war against communism. Birch was killed

by Chinese Communist soldiers 10 days after Japan's surrender on Aug. 14, 1945.

In 1958, Welch organized the John Birch Society, and he remains its leader. Several governors have proclaimed John Birch Day on the late captain's birthday, and Birch's parents participate in the society's activities. When the organization's existence became public, in 1961, most of the publicity centered on Welch's charge that President Eisenhower was a "dedicated, conscious agent of the Communist conspiracy," but there was also a little speculation about who Capt. John Birch really was.

A few authorities suggested that he had provoked his own death, but the government refused to make public an official version. Welch injected the charge that Washington suppressed the news of Birch's death because of Communist influence. This was part of his "grand conspiracy" theme, and his basic speech during the early months of 1962 included this passage:

"With his death and in his death the battle lines were drawn, in a struggle from which either communism or Christian-style civilization must emerge with one completely triumphant and the other completely destroyed. Partly for these reasons, but even more because John Birch—in all of his short but outstanding career—so typified the best of America, we have named our organization in his memory."

A 16-page tabloid distributed by the Society in 1965 through millions of Sunday newspapers used a color photograph of Birch in uniform on the cover and opened with two pages depicting him as a martyr to the causes of the United States and Christianity. Included in the publication was a picture of his flag-draped casket.

SECRET DOCUMENTS

Requests for Army records on the circumstances of Capt. Birch's death were refused at the time on the grounds that they were classified "secret." However, persistent efforts by Samuel J. Archibald, director of the Washington office of the Freedom of Information Center at the University of Missouri, have resulted in declassification of the documents after nearly 27 years.

About 50 pages of official reports make it clear that Capt. Birch, whose record had been very good, provoked a group of Chinese Communist soldiers into killing him and almost killing his Chinese adjutant, a Lt. Tung, by being demanding, threating and arrogant.

Nine days after Japan's surrender, Capt. Birch was assigned to lead a small group of U.S., Chinese and Korean personnel to Suchow in the interior of China to collect Japanese files and check the airport for the Office of Strategic Services. Although the war was supposedly over, this territory was occupied by Japanese and their puppets and there was still hostility.

Nationalist forces under Generalissimo Chiang Kai-shek had been fighting the Japanese, as had Communist Chinese forces under Mao Tse-tung and Chou En-Lai.

Gen. Albert C. Wedemeyer, Commander of U.S. forces in China, was also chief of staff to Chiang, and the United States had an observer group at Communist headquarters in Yenan. The two Chinese forces were not cooperating, but nevertheless, both were supposed to know the location of American missions. In this case they didn't, however because the area was occupied by the Japanese.

DON'T MIND IF THEY KILL ME

The Birch Group found the Japanese cooperative the first day of the mission, but was warned of danger if it proceeded into the Communist area. Despite the warning, Birch led his group forward, and they encountered some Communist troops. Birch, who was fluent in Chinese, was allowed to pass, but according to the records, Lt. Tung noticed that Birch's attitude was "a little severe." He told Birch he thought his conduct was "dangerous," but the captain replied: "Never mind, I want to see how the Communists treat Americans. I don't mind if they kill me, for America will then stop the Communist movement with atomic bombs."

Nevertheless, Birch let Tung do the talking to the next two groups, and there were no incidents. At Hwang Kao railroad station that afternoon, the Chinese were more belligerent. Tung reported that fact to Birch who reacted by taking a hands-on-hip stance and telling one of the Chinese: "Well! So you want to disarm us. At present the Americans have liberated the whole world, and you want to stop us and disarm us. Are you bandits?"

By this time, the Birch party was surrounded by 60 or 70 armed Chinese. After some delay, they told the party it could proceed, but Birch refused to be satisfied until taken to the commanding officer. When a Communist soldier started to lead them back to where they had just been, Birch grabbed him at the back of the collar and said: "After all, what are you people? If I say bandits, you don't have the appearance of bandits. You are worse than bandits."

LEFT FOR DEAD

A short distance farther, the leader of about 20 armed Communists ordered his men to load their guns and disarm Birch. Tung tried to intervene again, but was shot. He lost consciousness after hearing another shot and hearing Birch say he was hit in the leg and could not walk. A third shot apparently killed Birch, and he was bayoneted as well. Both men were left for dead, but Tung was rescued and returned to an American base, where he was interrogated at length. He lost an eye and a leg.

The others in the Birch group were detained nearly two months, and reported later that they were treated fairly well. Three of the Americans made out a joint report which substantiated Tung's, especially as to Birch's attitude and the warnings he had been given.

Birch's body was recovered from a shallow grave, and after a Catholic service was buried with military honors on a hillside near Suchow.

A 10-page report on the incident, submitted to Gen. Wedemeyer by the judge advocate for the theater and dated Nov. 13, 1945, relied substantially on the eyewitness accounts by Lt. Tung. It concluded that "although Capt. Birch's conduct immediately prior to his death indicated a lack of good judgment and failure to take proper precautions in a dangerous situation, nevertheless the actions taken by the Chinese Communist Army personnel fell short of according the rights and privileges due even to enemy prisoners of war and constituted murder." It added: "The shooting was done maliciously . . . the killing was completely without justification."

With that conclusion, however, was the following statement: "Since the presence of the Birch party in the area had not been announced to the Communists, Nationalists or the Yenan Observer Group . . . and because the Communists were still in battle action, it was entirely proper for them to hold Birch and Tung until satisfied that they were friendly groups. Further, in view of Birch's attitude and actions, the Communists were to a degree properly resentful at being termed 'bandits' and were not inclined to be immediately helpful."

BELLIGERENT, CONTEMPTUOUS

The report also concluded: "From T. Tung's testimony, it seems clear that Birch was in no mood to treat with the Communists and that his actions toward them were belligerent and contemptuous."

Gen. Wedemeyer wrote Aug. 31 to Mao Tse-tung about the incident, expressing gratitude for past cooperation and asking for a prompt investigation report. A reply from Yenan asserted that Birch and Tung had approached from the enemy's direction, had cursed the Communists who challenged them, and were shot in self-defense.

Wedemeyer also wrote Chiang Kai-shek asking for help in bringing the perpetrators to justice. Several months later, having received no reply, Wedemeyer reminded the generalissimo of the request and received a message that the Nationalists had repeatedly asked the Communists for help in court-martialing those responsible but had received no response. However, the message went on, the matter was being taken up with Chou En-lai.

That was March 15, three years before Chou and Mao drove Chiang (and the United States) out of China.

About 10 years later, Wedemeyer wrote an article for Robert Welch's new journal, One Man's Opinion, and soon was listed on its editorial advisory committee. In 1958, Welch secretly organized the John Birch Society and changed the name of his magazine to American Opinion. Wedemeyer remained an adviser through the October issue of 1961, several months after the right-wing organization became public, but a few weeks later he told Newsweek magazine that he had left Welch.

"I knew John Birch was a captain in China," he said. "He provoked the attack on himself; he was arrogant. I warned Welch not to make a hero of Birch. That's why I quit . . . I think Welch is a dedicated, fine American, but he lacks good judgment."

Ironically, the military records which were finally released were held up a few additional days so that their disclosure could not cause embarrassment during President Nixon's trip to China earlier this year.

THE GENOCIDE CONVENTION AND THE BILL OF RIGHTS

Mr. PROXMIRE. Mr. President, one of the most persistent arguments against the Genocide Convention has been the contention that the treaty would override portions of the Bill of Rights. The greatest concern is that the freedoms guaranteed by the first amendment would be put in jeopardy.

The Honorable Arthur Goldberg has addressed the Subcommittee of the Committee on Foreign Relations of the U.S. Senate on this matter. As a former member of the Supreme Court of the United States as well as our former Ambassador to the United Nations, he is eminently qualified to comment on the relationship between our Constitution and this treaty.

Mr. Goldberg's opinion is very clear and is very well-founded. He states:

> The Constitution, of course, is supreme. It would be unthinkable that even a treaty could override, for example, the clear commands of the first amendment to the Constitution of the United States . . . The Supreme Court has so decided and on this point I do not detect any lack of unanimity. This is our supreme document and *Reid v. Covert* is a controlling precedent which I do not think is in jeopardy by any further proceedings.

The Reid against Covert decision affirms that all treaties made are the supreme law of the land, but that does not imply that treaties may be contrary to the Constitution. Rather, any law or treaty must comply with the Constitu-

tion. The reasoning behind this argument is impeccable. If any court declared that treaties may supersede sections of the Constitution, it would be advocating an amendment procedure which is not sanctioned by article V of the Constitution.

The supremacy of the Constitution over treaties has been repeatedly reaffirmed in court decisions. There is no reason to fear that the Genocide Treaty will take away rights guaranteed to us by the first amendment. I urge Senators to vote in favor of the Genocide Treaty.

EXTENSION OF COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOL PREVENTION, TREATMENT, AND REHABILITATION ACT OF 1970

Mr. TOWER. Mr. President, 2 years ago, I cosponsored the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616). I have noted with satisfaction the significant progress we have made toward the development and implementation of a comprehensive program to address the problems of alcohol abuse and alcoholism. Today, I am cosponsoring S. 3644, a bill to extend the authority of the act for an additional 3 years.

The true extent of the problem of alcohol abuse and alcoholism is just being realized. Dr. Merlin K. DuVal, the Assistant Secretary for Health, and Scientific Affairs, has stated that alcohol is the most abused drug in the United States today.

There are over 9 million alcoholics or problem drinkers in America. The most visible victims of alcoholism are the inhabitants of skid rows across the Nation. Yet, they represent only 3 to 5 percent of the alcoholic population of the United States. Most alcoholics are in the Nation's working and homemaking population and it is apparent that alcoholism represents a significant drain on our Nation's productivity.

The Texas Commission on Alcoholism estimates that there are 425,000 alcoholic persons in Texas. They represent approximately 4 percent of the State's population.

The consequences of alcoholism and alcohol abuse are tragic. Alcohol is responsible for 28,000 traffic deaths each year. Alcoholics die 10 to 20 years earlier than the average American. In addition to intoxication, the illnesses associated with alcohol abuse and alcoholism include emotional disorders and chronic and progressive diseases of the central nervous system and of the liver, heart, muscles, gastrointestinal tract, and other bodily organs and tissues. It is difficult to estimate the social price the Nation is paying in terms of broken homes, unemployment, and poverty. We have been able to determine that alcoholism drains the economy of some $15 billion annually.

Public intoxication and alcohol-related offenses account for more than 40 percent of the arrests in the United States annually. Our judicial system is already overburdened, but more importantly, judicial action provides no lasting solution to the alcoholism problem because it does not provide for rehabilitation.

I am encouraged that we are finally recognizing that alcoholism is not a criminal act. It is an illness which requires rehabilitation through a broad range of health and social services tailored to persons at different stages of alcohol abuse and alcoholism. The criminal law is not an appropriate device within itself for preventing or controlling health problems. Alcoholism and alcohol abuse are masive public health problems.

It was to address this problem that we worked so diligently to enact the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970. The act created the National Institute of Alcohol Abuse and Alcoholism which has two principal overall goals—to assist in making the best alcoholism treatment and rehabilitation services available at the community level and to develop effective methods of preventing alcoholism and problem drinking. To achieve these objectives, the NIAAA fosters, develops, conducts, and supports broad programs of research, training, development of community services, and public education.

One of the vital parts of the act was the authorization of State formula grants to enable the States to develop comprehensive and integrated treatment and rehabilitation programs on the community level. I am most pleased that Texas was the first State to have its State plan approved by NIAAA and was the first State to receive its block grant—which amounted to $1,637,247. Texas has received a total of more than $4,800,000 in Federal funds during the past 2 years from NIAAA.

I have been most pleased with the programs that have developed in the short span of 2 years. All 50 States have already developed their State plans. Congress now needs to extend and expand the program of alcohol rehabilitation begun by the 1970 act by passing S. 3644.

I ask unanimous consent to have printed in the RECORD a table showing grants and contracts awarded in the State of Texas.

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

NIAAA GRANTS AND CONTRACTS AWARDED IN STATE OF TEXAS, FISCAL YEARS 1971 AND 1972

	City	Type	Amount
Fiscal year 1971:			
St. Joseph Hospital	El Paso	H-16	$520,735
Bexar MH/MR	San Antonio	H-16	384,851
McIsaac	Houston	Research	40,519
Davis	do	do	43.473
Geller	San Antonio	do	20,537
Baer	Houston	do	[1] 83,310
Haber	Galveston	do	29,730
Subtotal			1,123,155
Fiscal year 1972:			
St. Joseph Hospital	El Paso	H-16 (V)	755,290
		H-16 (III)	130,730
		H-16 (III)	65,093
Bexar MH/MR	San Antonio	H-16 (V)	501,850
		H-16 (III)	$44,099
Project Bravo	El Paso	R-18-CA	96,521
Indian alcoholism program (Williams).	Dallas	R-18-SSA	93,750
Bell County MH/MR	Belton	R-18-SSD	204,945
Shanbour	Houston	Research	36,100
Geller	San Antonio	do	21,131
Baer	Houston	do	62,295
Haber	Galveston	do	29,741
Davis	Houston	do	46,131
State occupational			49,896
State formula			1,631,247
Subtotal			3,768,819
Total			4,891,974

[1] Continuation of fiscal year 1970 funds.

RELEASE OF COMMITTEE REPORT ON PROBLEMS OF ELECTRICAL POWER PRODUCTION IN THE SOUTHWEST

Mr. JACKSON. Mr. President, on August 4 the Committee on Interior and Insular Affairs submitted to the Senate its first interim report under the authority of Senate Resolution No. 45 which authorized a national fuels and energy policy study. The interim report has been printed and copies are now available for distribution.

The interim report is entitled "Problems of Electrical Power Production in the Southwest," and the situation covered by the report is quite specific. It is a situation, however, which involves and exemplifies many broad energy problems and public policy issues which are of growing importance to all parts of the Nation.

The geographical region of concern in this report includes parts of Colorado, New Mexico, Arizona, Utah, and Nevada commonly referred to as the "Four Corners" area. In recent years, large scale coal-fired powerplants have been planned and are being constructed in this area which may ultimately result in an energy complex of tremendous capacity.

The major plants usually associated with this development are: the Four Corners and San Juan plants in New Mexico; the Navajo plant in Arizona; the Kaiparowits and Huntington Canyon plants in Utah, and the Mohave plant in Nevada.

At present, only two of these plants are in operation. They account for about

3,700 megawatts of capacity. Ultimately, all of the plants will provide over 12,000 megawatts—enough to serve about 9 million people.

As the analysis in this report displays, the major part, at least, of the energy planned to be produced by these plants will be urgently needed. Furthermore, development of the plants would bring employment and economic activity to the desert region which will provide new opportunities for the residents, particularly the Indian people. This has been a national social objective for some time.

It is evidenced by the existence of a joint Federal-State Commission established especially to assist in the economic development of the Four Corners area.

At the same time, it appears equally certain that development of the energy resources of the Four Corners region, regardless of the very best measures which technology can provide, will have significant adverse environmental impacts. The desert area, until recently, has remained sparsely populated and undeveloped. Its unparalleled scenery and unique ecological systems have been largely undisturbed by the works of man. Development will surely result in significant changes.

The tradeoffs between the preservation of environmental values and economic development which supports other major social goals, such as equal opportunity, are among the most difficult questions of energy policy. The study has significance far beyond the immediate questions of Federal responsibility for the situation which exists in the Southwest and Federal involvement in future decisions concerning the Southwest energy complex. Reference to the case will be useful in the committee's further consideration of major energy policy issues. Among the issues to which it has relevance are:

The long-term implications of continuing present growth rates of energy demand, especially for electrical power;

The increasing trend toward the employment of environmental regulation for local zoning or control of local development with the attendant impact on regional and national development;

The institutional structure of the electrical utility industry and the industry's responsiveness to public planning needs;

Increasing public concern over massive strip mining of the coal resources of the West, and the implications of the use of this extensive coal resource in meeting future energy requirements;

The organizational structure of Federal energy agencies and its effect upon their capabilities to make and implement public decisions;

The state of technology of electrical power generation and transmission and the adequacy of research and development in the field; and

Evolving environmental protection law and regulations and their relationships to other social objectives and needs.

Perhaps the most significant realization to come out of the study is that despite the important statewide, regional, and national interests in the resources of the Southwest desert region, many critical commitments of those resources have been made based upon very narrow and short-term considerations.

The situation which presently exists in the Four Corners area is the cumulative result of numerous resource management decisions, each of which was made without adequate consideration of alternatives and without adequate knowledge of the long-rang impacts. The commitments which have already been made greatly constrain the options which remain open to the region for the future. The energy being produced by the existing plants and mines and those which are presently being developed will be essential to the region's power system. In the near term, there are no viable alternatives to those developments. The water and the coal which are committed to their operation are foreclosed to other potential uses. The environmental impacts of the siting choices may be mitigated, but the decisions can no longer be retrieved. We still do not have the essential information to judge the ultimate consequences of these commitments.

The report is realistic in its appraisal of the shortcomings of past Federal actions, and it is blunt in recognizing the complexity of the problems. But it does offer constructive recommendations both of a general nature and in the specific issue areas of energy demand, air quality, strip mining, the interests of the Indian people of the region, and water resources.

Our principal objective now should be to confront the problems honestly, openly, and in a cooperative spirit. To take as an example only one aspect of the situation, the strip mines at Black Mesa and Four Corners are among the largest in the world. Reclamation efforts have thus far proceeded at a very slow pace. They should be accelerated. We should find out exactly what can be accomplished and what the shortcomings are and apply all of the abilities of government and industry to seeking better methods.

In the light of that experience—rather than in speculation and controversy—we can realistically appraise new proposals for such mining developments for powerplants and coal gasification in the Southwest, in the much larger prospective developments in Wyoming and Montana, and elsewhere. In each area of concern covered by the report there are similar needs and opportunities to improve the existing situation and to lay groundwork for better future decisions.

The findings and recommendations which are set forth in this report do not exhaust the committee's interests in the case. Some of the broad national policy issues will be treated further in the final report of the national fuels and energy policy study. The findings and recommendations in this interim report are, however, of great significance both to the Southwest region and to the Nation. I am hopeful that those in the Congress, in the executive agencies, and outside of the Federal Government who have interests and responsibilities regarding the Nation's energy resources will consult the report in its entirety. The recommendations call for actions on the part of Federal officials and other participants in the development of the Southwest energy complex. Some of them refer directly to congressional action. I intend to strive for expeditious action wherever congressional actions are indicated which are within the jurisdiction of the Interior Committee. I am hopeful that recommendations involving the jurisdiction of other committees will be considered by those committees as constructive suggestions which are made in the cooperative spirit of Senate Resolution No. 45.

Mr. President, I ask unanimous consent that the findings and recommendations of the report be printed in the RECORD. However, I urge Senators to consider them not standing alone but along with the introductory and background chapters of the report itself.

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

FINDINGS AND RECOMMENDATIONS

A. GENERAL

1. Findings

1. There is a national commitment, which has been given expression by the Congress in legislation such as the National Environmental Policy Act, the Clean Air Act, and the Federal Water Pollution Control Act, that the quality of the nation's environment must be prescribed to protect and enhance the quality of life for this and future generations of Americans. This commitment must provide the basis for decisions regarding Federal responsibilities and actions concerning the development of the southwestern desert regions.

2. The national interests in and the attendant Federal responsibilities for the energy complex now being developed in the Four Corners area are particularly significant because of the Federal trustee relationship with the Indian people of the region, the extensive Federal ownership of public lands and the important national park system units which will be affected by the development, and the significant Federal investment in resource development for the region.

3. The Department of the Interior, along with other Federal agencies, has long had responsibilities and authority to consider the conservation and preservation of areas of unique natural beauty and of historical and scientific interest. This objective is set forth explicity in the Presidential approval of policies for water and related land resource planning, printed in 1962 as Senate Document No. 97, 87th Congress.

4. The Federal interests and involvement in coal-fired powerplant development in the Four Corners area are unique because of the direct Federal financial participation in the Navajo powerplant, the special responsibilities of the Secretary of the Interior regarding the waters of the Colorado River System, and the extensive commitments of Indian and nationally owned natural resources to the development.

5. The cooperative planning efforts of utilities participating in the Western Energy and Supply Transmission Associates planning group and the Federal involvement in resource and siting decisions in the Southwest provide some measure of unified planning for regional energy resource management. There is evidence, however, that public information about utility plans until recently has been inadequate, and that public participation in planning would be greatly improved by the procedures contemplated in powerplant siting legislation presently pending in the Congress. More important, the problems now being experienced in the Four Corners area will be more severe in other regions of the country where the Federal in-

volvement is limited or nonexistent unless institutional arrangements and procedures to improve planning and build public confidence in utility, State and Federal planning for meeting electrical power requirements are strengthened.

6. Despite the extent of the Federal involvement in and responsibility for the development of the region's energy resources, there has been and still is insufficient available information upon which to base sound resource management decisions. This inadequacy of information relates to baseline environmental data, to the day-by-day activities associated with the planning, construction, and operation of the Southwest thermal powerplant complex, and to basic knowledge of the physical and physiological environment impacts of such developments.

7. The present Four Corners situation reflects the cumulative effect of numerous resource management decisions, each of which was limited in the scope of its objectives and of its geographic concern. Private and public utilities, local, State, and Federal agencies, Indian tribes, corporations, and individuals collectively and severally have participated in decisions which were made to achieve limited and relatively short-term goals and which often were made without full knowledge or adequate consideration of the full range of alternatives, the potential regional impacts, or the long-range desirability of the actions involved.

In 1968, for example, the Congress in accordance with a recommendation of the Executive Branch authorized the Secretary of the Interior to become a financial participant in the Navajo thermal powerplant. This participation was viewed as an attractive alternative to the construction of major hydroelectric dams on the Colorado River primarily because of environmental opposition to the dams. The long-term environmental impact of the thermal-electric alternative, however, was not subjected to study in detail equivalent to that of the dams.

This and other single objective decisions have resulted in investments of natural resources and commitments to courses of action which will seriously constrain the remaining opportunities to achieve optimum resource and environmental management throughout the region.

8. The prospects for achieving sound regional economic and environmental management conditions in the Four Corners region have been seriously hampered by inadequate planning and coordination among the several parties, governmental and private, involved in the present development. Piecemeal decison-making on powerplant proposals may have the long-range impact of, in effect, "zoning" the region for a single purpose—power generation—by allocating scarce natural resources and preempting for that purpose the capacity of the region to absorb pollutants.

9. The special set of circumstances in the Southwest, particularly the extensive Federal involvement and the broad range of environmental problems encountered, must be viewed as an opportunity and responsibility to explore new mechanisms for cooperative environmental research and planning involving all legitimate values and all levels of government and private industry. The "laboratory" provided by the existing activities must be utilized to define problems and discover solutions applicable both in the Southwest and elsewhere. There is abundant evidence that as large coal-fired powerplants are proposed and come under development in the States of the Upper Colorado Basin; in Wyoming, Montana, North Dakota, South Dakota; and in other regions of the country, many of the issues found in the Four Corners area will be duplicated throughout a vast portion of the nation.

10. The Four Corners Regional Commission, a joint Federal-State planning body, provides an existing organization with a potential for coordination of Federal and State interests for the purpose of improving the economic and environmental well-being of the Region's residents. The Commission would appear particularly suitable as a coordinating body because of its Congressional charter. The Commission was established after initial Federal involvement in the region's power development had begun. To date, moreover, the capability of the Commission to undertake comprehensive economic and environmental management planning has been limited by inadequate funding and restrictions on statutory authority. How many, if any, of the current issues could have been avoided had the Commission been in existence at the inception of the power development can not be known.

2. Recommendations

1. The Secretary of the Interior, in conjunction with the Four Corners Regional Commission and other Federal agencies, should develop a general, region-wide study of the long-range economic and environmental impact of current Federal decisions and activities concerning the Southwest energy complex. Despite the inadequacies of information and the uncertainties inherent in such a complex analysis, the best possible projections of future conditions should be developed and updated periodically as better information becomes available. This study should provide a framework for public consideration of future decisions about individual resource development proposals.

The Secretary of the Interior should be authorized and directed to report annually to the President and to the Congress on the status of activities associated with thermal powerplant development in the Southwest and other Western States, on the Federal interest and responsibilities therein, and on the actual and anticipated environmental effects of those activities along with his recommendations concerning Federal action to prevent or mitigate environmental impacts of regional and national concern.

The Secretary should also be directed to cooperate with other appropriate Federal and State agencies in establishing and maintaining an appropriate data gathering and research program to support these reports.

2. Pending legislation to establish a Federally assisted land use planning program should be enacted to (1) provide financial assistance and encouragement to the States to develop the information and institutional mechanisms necessary to make long-term resource management and development decisions; (2) insure cooperative Federal-State consideration of state-wide, regional, and national needs and interests in major land-use decisions; and (3) to encourage multi-objective planning on the basis of appropriate geographic areas so that environmental management can accommodate needed natural resource developments with minimum environmental degradation.

3. Legislation designed to improve power plant siting decisions should be enacted to establish procedures for open long-range planning; timely siting decisions; and smooth, predictable construction schedules. The legislation should include provision for: (1) long range (at least 10 years) advance planning through a public forum on at least a regional basis; (2) effective public participation at all stages of the planning and approval process to improve responsiveness to a broad range of issues, improve the quality of the decision-making process, and insure agency credibility; (3) early identification of alternative sites suitable for power plants; (4) establishment of a certification program that achieves so far as possible one-stop approval at the state or regional level of proposed power facilities with Federal certification of Federal facilities or where the state or region has failed to establish qualified certification bodies; (5) periodic review of power plants to determine the feasibility and practicability of retrofitting operating plants with the latest technological developments to improve safety or reduce environmental impacts; (6) an efficient, expeditious form of judicial review on contested issues which will result in early decisions and which will avoid economic waste and the risk of low power reserves.

4. The Secretary of the Interior and other Federal officials who have responsibilities for Federal decisions involving the development of the powerplant complex in the Southwest should view the procedures established under the provisions of the National Environmental Policy Act both as an opportunity and an obligation to provide a basis for well-informed advance public participation in major resource decisions. Federal officials should strive to make the maximum use of environmental impact statements to provide the national, regional, and local publics with full information on the need for, the alternatives, and the long-range implications of specific proposals for development.

5. In view of the deficiencies in information concerning the long-range regional impacts of the development of coal-fired powerplants; the uncertainties concerning the timing and nature of emerging competitive uses for land, minerals, water, and other natural resources; the limited capacity of the regional environment to absorb pollution; the transitional state of pollution control technology and regulation; and the lack of comprehensive regional planning; and in the face of incontrovertible need for electric energy in the Southwest, additional powerplant development decisions will have to be made under conditions of insufficient knowledge of the long-term impacts and with inadequate time for optimum planning in order to meet future energy requirements. The immediate implementation of appropriate research and investigations which will provide sound information for planning is imperative. In the interim, until adequate information is available, irretrievable commitments of resources should be limited to the minimum necessary to meet the regional power requirements. Premature commitments should be avoided both in regard to additional development in the Southwest or to major new energy developments involving Federal resources in other regions.

6. Legislation to develop new institutions and procedures for planning the use of the public lands, for setting new standards and requirements which reflect changed conditions, and to update the land laws to reflect such changed conditions should be adopted. At a minimum, this legislation should provide for: (1) coordinated Federal-State planning in areas of mutual concern and interest; (2) a resource inventory and a survey of projected demands which will be placed on the public lands for recreation, transportation, mineral development, the generation and transmission of energy resources and other demands; (3) a system of Federal planning and management authority which takes into consideration and accommodates the diverse and legitimate requirements of the immediately affected public, operators of essential utilities, local and State governments, and the Federal government; and (4) public participation at early and appropriate stages in the planning process.

7. The Four Corners Regional Commission should undertake the necessary studies to incorporate development plans and projects in the 92 county region to insure that the natural qualities of the Region are preserved in the course of proposed economic growth. The Congress should give consideration to whether the authority of the Commission should be expanded as necessary to facilitate the optimum use of the joint Federal-State partnership available in the Commission toward an integrated and coordinated approach to eco-

nomic planning and development for the Four Corners Region.

B. ENERGY DEMAND IN THE SOUTHWEST

1. Findings

1. Based upon the assumption of the minimum probable growth energy demands in the Southwest, and assuming the maximum probable development of nuclear, hydroelectric, and other fossil fuel power generation, there will be a remaining requirement for a substantial amount of coal-fired generating capacity to be developed in the region before 1980 and probably between 1980 and 1990.

2. There are a number of potential sites in the Southwest which could support coal-fired powerplants of 1000 megawatt capacity or greater. Important planning decisions remain to be made concerning the selections among these potential sites, the sizes of individual developments, and the timing and sequence of construction of future powerplants. These planning decisions should benefit from the past experience in the region. They should incorporate the best available information on environmental impact and the best available technology for the production of clean electrical energy. Selection of particular sites and commitments to particular developments should be based upon a careful evaluation and examination of the regional environmental, social and economic consequences of each potential site.

3. The demand for energy in the Southwest is not substantially created by "frivolous" or "unnecessary" uses. However, the continued promotional advertising by utilities in the region, in the face of growing public opposision and in view of the problems posed by the projected growth in demand, contributes to public frustration and lack of credibility in the projections.

4. Existing public policy expressed in the Federal Power Act and elsewhere which requires utilities to provide abundant, reliable power to all customers and which primarily stresses the maintenance of low rates as the primary public concern in regulation has fostered a tradition in the electrical industry which clashes with emerging public attitudes and values. These new attitudes and values stress costly environmental protection and conservation of resources and question the advisability of encouraging unlimited growth.

5. The siting of major powerplants involves public interests of regional scope. With load centers hundreds of miles from the power plant sites, benefits and impacts are distributed beyond State jurisdictions. National assets and resources are involved and the economic tradeoffs affect interests far beyond those of the utilities or even of their customers or the local and state governments with jurisdiction over the locations of power source and demand.

6. The level of support for research and development in the conventional technologies of electrical generation and transmission is not adequate to accommodate the increasingly stringent public demands for reliability, environmental protection, and flexibility in siting of facilities.

7. The timing of powerplant construction in the foreseeable future will be a critical factor in the preemption of water, land and mineral resources by powerplants in preference to emerging potential competitive uses such as coal gasification and oil shale development. The urgency of the need for powerplants is also a critical factor in decisions as to whether or not to accept environmental impacts. Many of these decisions are rightfully public decisions because they necessitate commitments of publicly owned resources and involve the responsibilities of Federal agencies. There are, however, no independent Federal determinations of projected power demands and supplies except those based upon projections by the utilities which propose the developments.

8. Historically, electric utilities in the United States have evolved an institutional responsibility to meet the demands of all customers without deliberate limitation. Most power systems have little physical ability to selectively reduce service even in emergencies. The present inflexible situation poses the threat of general shortages or total blackouts of systems whenever peak loads might exceed system capacity. The social and economic consequences of such uncontrolled shortages and the inability to selectively manage critical peak conditions are serious constraints upon trade-off decisions where power needs and environmental concerns are in conflict.

9. Although the current controversy over the power development in the Southwest has not greatly highlighted transmission lines, it is probable that the ultimate transmission grid contemplated will pose the most severe problems of aesthetic insults to the region. There is no evidence that the environmental impacts of transmission lines have been adequately considered in powerplant site selection.

2. Recommendations

1. In a broad sense, the National Fuels and Energy Study authorized by S. Res. 45 will address a detailed consideration of the possible significant changes in public attitudes regarding increased use of power and regarding continued growth generally.

2. In the course of the Committee's study of national fuels and energy policy, consideration will be given to empowering an appropriate Federal agency to prepare and maintain independent projections of regional power supplies and demands as a basis for public decisions, and authorizing and directing an appropriate Federal agency to undertake an in-depth study of the extent of the opportunity for, and the alternatives available to reduce the growth in demand for electric power such as revising the electric rate structure, internalizing social and environmental costs associated with power production, recommending conservation practices that would permit more efficient use of existing capacity and available fuels, and studying whether a system of contingency planning utilizing end-use controls as a means to ration electrical energy is a practical policy option.

3. The design of future power plants should incorporate the greatest possible flexibility for the modification or supplementation of air pollution control equipment during or after construction as new technologies become available.

4. The Secretary of the Interior, in cooperation with other appropriate Federal agencies, should initiate a study of the potential for the development of coal gasification plants in the Southwest. The study should develop preliminary information of the probable requirements for sites, water, coal, and other resources for such installations and on the probable environmental effects. In future decisions regarding powerplants, consideration should be given to such developments as an alternative source of energy.

5. Legislation should be enacted to establish a balanced and sustained Federal program of research and development to reduce environmental impacts of power facilities, improve generation and transmission efficiencies, and develop new sources of clean, reliable energy. Such a program is needed to develop options for meeting projected electrical demands within the constraints imposed by environmental protection requirements and other public planning needs. This program should be funded by an assessment on electricity consumption and directed by an independent commission with provisions to insure high visibility and public accountability.

C. AIR QUALITY

1. Findings

1. The existing and proposed powerplants are and will be major sources of manmade air pollution in the Southwest.

2. Emissions of existing powerplants have measurably degraded air quality in the region. Even with employment of the best pollution control technology, development of proposed additional plants probably will result in further degradation.

3. The relatively recent establishment and rapid evolution of air quality law and regulations at all governmental levels when coupled with the long lead times necessary for planning and construction of powerplants and the developmental, or even experimental, nature of many of the advanced pollution control technologies available have introduced serious uncertainties into utility planning for power supplies in the Southwest.

4. The monitoring of air quality which presently is underway in the region is extremely limited even in the immediate vicinity of operating powerplants. Monitoring of regional effects is confined to a few special, short-term studies. There do not seem to be plans for the establishment of comprehensive, reliable monitoring programs by any governmental entity. It will continue to be impossible to determine reliably the impact which powerplants are having until adequate measurement of air quality indicators are made. Furthermore, if baseline measurements are not made before any more plants are put in service it will be difficult or impossible to determine the impact they are having at a later time.

5. The development of coal-fired, thermal power generating capacity in the West is still at an early stage. The sound selection of future plant locations will depend upon extensive data which only can be obtained from research and monitoring at existing plants. This essential information is not being obtained because of the limitations of existing monitoring and research.

6. Available data on meteorology and air quality in the region are not adequate to determine reliably the extent of the impacts of existing powerplants on regional ambient air quality or on biota or to develop reliable analytical models to predict regional ambient air quality under assumed future conditions. Uncertainties as to the capabilities of future pollution control technology, lack of basic meteorological data, and the inability of existing models to predict reliably the dispersal of pollutants make the prediction of ambient air quality uncertain as new powerplants are brought on line.

7. It seems unlikely that without Federal assistance the States can fund the installation and maintenance of air quality and meteorological data monitoring systems adequate to provide a data base for accurate measurement of the effects of existing plants and reliable prediction of the effects of proposed plants.

8. The present level of knowledge concerning pollutants such as small particles; radionuclides; heavy metals; and other trace elements from coal-fired powerplants in the Southwest is inadequate to dismiss conclusively the potential dangers alleged to result from such pollutants.

9. The present research effort is inadequate to predict the long-range impacts of sulfur oxides, nitrogen oxides, and other pollutants upon humans, animals, and vegetation in the region.

10. Operating powerplants have not been able to comply with the increasing stringent air quality standards being imposed by Federal, state, and local regulations. The capability of available pollution control equipment to meet these standards utilizing the coal of the region has not been demonstrated in sustained operation.

11. The improvement in pollution control achieved by the installation of venturi scrubbers on units 1, 2, and 3 of the Four Corners powerplant exemplifies the kinds of results which are attainable when efforts are made to improve the technology of environmental management. The fact that these efforts were not made at the time the plant was constructed is symptomatic of the general lack of concern for avoidable pollution which has been a national attitude until recently. The costly problems which have been experienced in the installation and operation of the equipment are typical of the practical difficulties which result from hurried applications which do not provide for deliberate development and testing of equipment.

12. The inability of the existing powerplants to meet applicable air quality standards is due in part to the recent establishment of such standards and the rapid evolution of air quality legislation, in part to the inadequacy of antipollution technology, and in part to the reluctance of the utilities to anticipate and plan for the changing legislation in their original decisions.

2. Recommendations

1. The Environmental Protection Agency (EPA) in cooperation with the National Oceanographic and Atmospheric Administration (NOAA) should be authorized and directed to design a network of air quality monitoring and meteorological stations in the desert region of the Southwestern states. The network should be adequate to:

(*a*) measure the impacts of existing powerplants and other point sources upon the air quality of the region;

(*b*) provide basic data for the construction of models capable of predicting the impacts of the proposed new sources of air pollution on the ambient air quality of the region.

2. EPA in cooperation with NOAA should participate with the states and with industry in the financing, installation, and operation of a regional air monitoring network, the collection and analysis of the data, and the development of predictive models. The results of this effort should be made available to industries and to state and Federal agencies to assist in evaluation and planning of future powerplants and other industrial developments.

3. The Secretaries of Interior and Agriculture in cooperation with the Administrator of EPA should be authorized and directed to initiate a program of research on the long-term effects of air pollutants on water quality, fish and wildlife, and vegetation on the public and Indian lands in the region.

4. Any required Federal approval of the selection of sites for additional coal-fired thermal powerplants in the West should be made only after more extensive monitoring and research data collection are done on the existing plants in the Southwest. There should be a substantial upgrading of the monitoring and research efforts both of the government agencies and the companies involved, so that future site selections may be based upon broader information and experience.

5. Premature commitments to specific proposals and designs for future coal-fired powerplants in the Southwest should be avoided so that Federal requirements placed upon such plants may be based upon the latest advances in technology and the greatest experience from existing installations.

6. The EPA should expand and expedite its existing research and development efforts in cooperation with the utilities to utilize the Four Corners powerplants as practical field experiments to develop air pollution control techniques. The agency should establish a regular program of reporting upon the progress made in this work and upon its evaluation of the actual operating capabilities of the most advanced pollution control installations in actual operation in the region and elsewhere.

7. The Administrator of EPA should be authorized and directed to undertake a detailed study of the long-term energy policy, regional planning, power plant siting and land use management implications of the present provisions of Federal air quality law which establish minimum standards which State and local government must meet, but which do not establish maximum standards. Under existing arrangements Federal, State and local jurisdictions exercise varying degrees of authority over air quality regulation. The exercise of this authority has created a situation where within a given geographical region or air shed there are inconsistent and often overlapping standards promulgated by different units of government. As a consequence, all regional planning involving power plant siting and other decisions concerning major development activities are subject to considerable uncertainty and specific planning and siting decisions for the region are, to some extent, the product of "forum shopping" for the most favorable standards. This creates important problems of uniformity as between different governmental units located in the same region.

8. The Administrator of EPA should be authorized and directed to conduct research to identify and evaluate the environmental advantages and disadvantages associated with the gasification of coal, both for the production of gas as a fuel and for combined cycle generation of electric power. The Administrator in cooperation with the Secretary of the Interior should initiate research into methods of mitigating any apparent adverse environmental impacts of coal gasification plants.

9. The Secretary of Interior should be directed to accelerate research and development efforts on the gasification of coal as a fuel for combined cycle operation in view of the potential for both reducing pollution and extending the resource base through the higher efficiencies attainable in combined cycle operations.

D. STRIP MINING

1. Findings

1. Two coal strip mines—Navajo and Black Mesa—are currently operating as parts of the thermal power generating complex in the Southwest. The size of these operations is expected to increase greatly in the near future and these mines may become prototypes for similar operations elsewhere in the West.

Insufficient effort is being made at these sites to obtain environmental information and experience related to strip mining, and to demonstrate the success of available technology.

At the Navajo mine, 1400 acres have been mined since 1963, but only 100 acres have been reclaimed. A portion of the mined area is to be used as a disposal site for ash from the Four Corners powerplant, however, making liberal allowances for this purpose, more reclamation work should have been accomplished.

It is essential that full advantage be taken of these opportunities to obtain information and experience in minimizing the environmental impact of surface mining, and in reclaiming the land after mining.

2. The attempts at revegetation at the Navajo mine have not been successful. There has been insufficient effort to improve upon this record and to provide a convincing demonstration that effective reseeding is possible.

3. There is a lack of data and there has been practically no research on the actual and potential effects of wind or water dispersal of various trace elements from open pits, spoil areas, fly ash disposal areas, or coal processing facilities.

4. The role of the Interior Department as trustee for the Indian tribles demands that, notwithstanding the role of any other agency or party to the contracts, it is the responsibility of the Department of the Interior to inspect these mines and insure compliance with all provisions contained in leases, contracts, and mining plans.

2. Recommendations

1. Reclamation operations at the Navajo and Black Mesa mines should be accelerated. The demonstrated feasibility of reclamation should be a prerequisite to any further exercising of the Secretary's discretion under the mineral leasing laws to lease coal resources on public lands. The Secretary should promptly develop and submit to the Congress a timetable for reclamation of the approximately 1000 acres at the Navajo mine which have been mined and are not needed for ash disposal.

The timetable for reclamation should be accompanied by a statement of the authority of the United States to compel reclamation work at the Navajo and Black Mesa mines under the Secretary's present legal authority and under the terms of the leases.

2. The Secretary of Agriculture should be authorized and directed to undertake a research and demonstration program for the revegetation of strip mined areas in the Southwest, both to develop information on the environmental impact of proposed operations and to assist in the reclamation of those areas already being mined.

3. A research program should be initiated, under the direction and existing authority of the Secretary of the Interior, to determine the chemical characteristics of the coal, spoil piles, and fly ash and to evaluate the actual and potential water pollution effects caused by drainage and dispersed airborne contaminants originating in the strip mining, coal processing, and fly ash disposal operations.

4. The Department of Interior should reinforce the program of inspection and enforcement to ensure compliance with all provisions of Indian and Federal contracts and leases and approved mining plans for the Southwest mines, and with other applicable Federal laws and regulation. The Secretary of the Interior should submit to the Congress his recommendations concerning any additional funding and personnel necessary to provide for an inspection and reporting system concerned with environmental considerations of strip mine operations.

5. Appropriate legislation establishing criteria for the operation and reclamation of surface mines should be expeditiously enacted to provide adequate controls over future surface mines on non-Federal lands which will be required to serve energy requirements in the Southwest and in other regions, and which would not be susceptible to regulation under existing Federal laws or through the provisions of contracts with the Federal Government.

E. INDIAN INTERESTS

1. Findings

1. The development of the power generating complex on the Indian reservations of the Southwest represents a most significant departure from the traditional cultural and economic patterns of Indian life. It is not unexpected that a change of such magnitude should be accompanied by considerable controversy. The conflict between the desires for economic and material benefits as opposed to concerns for nonmaterial values is similar to conflicts currently reflected in American society as a whole.

2. The incentives to commit the land, water, and mineral resources of the Navajo and Hopi reservations to the development of thermal electric powerplants have principally rested upon the need of the region for an alternative source of electricity. The decisions of the Indian tribes were apparently predicated on their desire to capitalize upon

an opportunity to enhance economic development on the reservations.

No long-range evaluation of the comprehensive resource management options for the reservations were available, and the long-range impacts of powerplant development apparently were not thoroughly evaluated by either the Indian tribes or the Department of the Interior.

3. The Tribal governing bodies of the Navajo and Hopi Tribes are the only democratic mechanisms available to determine and represent the collective interests of the tribes in business dealings involving contractual arrangements. The Secretary of the Interior and the Federal Government in general must look to the Tribal governing bodies, which have the benefit of independent legal counsel, for the principal expression of the desires of the Indian people they represent.

4. As any democratic institution, the Tribal governing bodies can function best when they enjoy the full participation of the people they represent and when the people are adequately informed on the issues so that they can responsibly participate. There is evidence that substantial improvements could be made both in communication and participation in the operation of the Navajo and Hopi Tribal governing bodies. Some Navajo and Hopi Tribal members, for deep-seated cultural reasons, do not accept the role of their Tribal governments, and therefore do not believe their views are being adequately considered. Other Tribal members deny that they have been fully advised of the decisions by the governing bodies.

5. The equity of payments being made under contracts for the land, water, and minerals by the Indians has been questioned by Tribal members and others.

2. Recommendations

1. The Secretary of the Interior should be authorized and directed to undertake a comprehensive assessment of the potential for natural resource development on Indian lands. A comprehensive resource development plan, considering the broadest range of alternatives and the long-range social, economic, and environmental implications of each alternative, should be prepared and maintained for each reservation. The plan should be developed with full participation of the representative tribal leaders and should serve as a guide for future decisions regarding the commitment of resources.

2. The Secretary of the Interior, acting in accord with his responsibilities for public information under the Administrative Procedure Act, the National Environmental Policy Act, and other provisions of general law and in his trustee relationship to the Indian people, should take every possible opportunity to develop and disseminate information on the implications of Federal decisions which have impacts on Indian Reservations. The Secretary shares with the representative Tribal leaders a responsibility to fully inform the Indian people of decisions regarding Indian reservations and to facilitate their informed participation in their Tribal government.

3. The Comptroller General should be requested to review the provisions of contracts entered into by the Navajo and Hopi Tribes with utilities and coal companies regarding development of coal mines and powerplants and to report to the Congress on his analysis of the comparison of royalties and other payments to the Indians with payments received on the public lands and elsewhere for similar types of contracts.

F. WATER RESOURCES

1. Findings

1. The existing and proposed thermal powerplants are and will be significant consumers of the scarce remaining uncommitted water supplies of the Southwest. The decisions to preempt this water for powerplant development to the exclusion of alternative potential uses are important public decisions and should be viewed as such by Federal, State, and local governments involved.

2. The consumption of relatively high-quality surface water by the powerplants will contribute to the concentration of salinity of downstream flows. The impacts of the powerplants are not significantly different in this regard from any alternative consumptive use of equivalent amounts of water under the existing legal entitlements of the several basin States. The overall salinity problem on the Colorado River, however, is becoming critical and may ultimately curtail further beneficial consumption of water. It must be considered a factor in any decision regarding new commitments of water.

3. Point source pollution of surface waters by effluents from mining and powerplant operations have occurred. The existing body of water quality law and existing enforcement mechanisms, however, appear adequate to correct these problems.

4. Insufficient research and monitoring are being done to evaluate effectively the occurrence and impact on the quality of surface and ground waters as a result of diffused drainage and secondary effects of airborne contaminants originating in mining and powerplant operations.

5. The evidence concerning the long-range effect of groundwater depletions at Black Mesa to provide slurry water for the pipeline to the Mohave plant is inconclusive.

2. Recommendations

1. Where Indian and Federal resources are involved, the Secretary of the Interior should consider the full range of alternative uses of water prior to making further commitments to powerplants. To the extent possible, contracts for water supplies should incorporate options for their termination after economically feasible terms of service to permit flexibility in long-range resource management.

2. The Secretary of the Interior should expedite work on the salinity control studies currently being carried on by the Bureau of Reclamation and should recommend to the Congress any additional legislation necessary to provide for an optimum program of salinity control for the Colorado River Basin.

3. Notwithstanding the responsibilities of State and local jurisdiction and other Federal agencies to enforce laws and regulations regarding water quality control, the Secretary of the Interior should carry out continuing and independent monitoring of the powerplant and mining operations to insure compliance with the provisions of contracts, permits, and leases to which the Secretary and the Indian tribes are parties. Wherever infringements are found to exist, the Secretary should take whatever action is indicated to insure compliance, through existing water quality enforcement procedures or if necessary through legal action under the contract provision.

4. The Congress should authorize and direct the Secretary of the Interior, in cooperation with the Administrator of the EPA, to initiate a program of research and monitoring to determine the impacts of mining and powerplant operations on water quality as a result of dispersed drainage and seepage, and as the result of the secondary effects of airborne contaminants from the operations and the operating areas. The program should provide for measurements and evaluation of actual effects of existing operations, projections of potential effects of operations under construction and proposed, and extension of the information and analyses to similar mining or industrial applications elsewhere in the United States. As information is gained, the program should be extended to encourage and assist industry in developing methods of mitigating adverse impacts of such operations upon water quality.

5. As a part of his regular inspection and monitoring of the mining operation at Black Mesa, the Secretary of the Interior should monitor and evaluate the impact of groundwater depletions upon the wells used by the Navajo and Hopi Indians. In the event that any indications of impairment of the groundwater supply are found, the Secretary should take immediate steps under the provisions of the contract with the Peabody Coal Company to remedy the situation.

INTERNMENT IN ULSTER—A TRAGIC FIRST ANNIVERSARY

Mr. KENNEDY. Mr. President, today, the people of Northern Ireland, caught amid the new bloodshed and destruction that have shocked the world in recent weeks, mark the unhappy first anniversary of Great Britain's cruel and repressive policy of internment.

Perhaps there is no step that can be taken now in Northern Ireland that is capable of stemming the ferocious tide of violence threatening to consume the people of Ulster, Protestant and Catholic alike. But I believe that an end of the unconscionable policy of internment must rank at the top of the list of available steps that can and should be taken if there is to be any hope at all of bringing an early and peaceful end to the killing and violence.

No nation that calls itself a democracy can justify a policy of internment for its citizens. In the case of Northern Ireland, the shame of internment has been twice compounded—first by the evidence of torture in the internment camps, the facts of which were established beyond dispute in the recent Compton report; and second, by the incredibly unfair manner in which internment has been applied—"For Catholics Only" has been Britain's internment policy, and it has been overwhelmingly applied in practice.

What about the UDA? What about the Protestant gunmen? What about the Protestant assassination squads who have been so active in recent weeks? I hold no brief for the IRA, or for the violence and destruction so wantonly inflicted by members of the Catholic minority in Ulster. But surely, British justice is a farce in Northern Ireland today, when only Catholics are interned and Protestant gunmen roam free.

Today, when passions in all the Catholic communities in Ulster are rising high against Great Britain, because of the British invasion of the "no-go" areas and the British occupation of Catholic districts, and when the obvious absence of comparable steps against Protestant violence is making a mockery of Britain's claim to even-handed justice, it is long past time to confront the issue of internment.

And so on this tragic first anniversary, I renew the appeal I have made so often in the past. I urge Prime Minister Heath and Secretary Whitelaw to act now to end internment, and to restore the reputation of justice and decency and fairness for which Britain has always been renowned.

NONPAYMENT OF INCOME TAXES BY CERTAIN INDIVIDUALS

Mr. SCOTT. Mr. President, allegations have been raised in certain quarters that because 100 individuals with adjusted

gross incomes over $200,000 paid no tax during 1970, the tax deductions which benefit several million other taxpayers should be summarily thrown out.

I believe that those who advocate such a move should take note of the actual income situation of these 100 individuals, which was recently discussed by Edwin S. Cohen, Assistant Secretary of the Treasury.

I ask unanimous consent that excerpts from Mr. Cohen's remarks, which were made before the Federal Tax Institute of New England, be printed in the RECORD.

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

PERSONS WITH HIGH ADJUSTED GROSS INCOME

Much has been said recently about the fact that about 100 individuals in the United States in 1970 had "adjusted gross incomes" above $200,000 without paying any tax. Some have argued that this handful of cases shows that the system is unfair and that the rich do not pay taxes. I shall talk further about those few cases in a moment.

But I do not think we should let that small group of individuals obscure the fact that, according to our preliminary data, there were in 1970 a total of some 15,300 persons in the country with adjusted gross incomes above $200,000, and that some 15,200 of them paid an average federal individual income tax of $177,000 each—a total of some $2.7 billion. This is an effective rate of 44.1 percent of their adjusted gross income and 59.5 percent of their taxable income.

From this it is perfectly clear that in general the rich are paying federal income taxes in large amounts. And they are paying more than they were in 1968 while other taxpayers are paying less.

Let me now refer to the cases of the few nontaxable persons with adjusted gross income above $200,000. The statistical data now show that there were 106 such persons. The number of these nontaxable persons was down from 300 in 1969. The adjusted gross income on these 106 returns was less than 17 percent of that on the 300 returns in 1969.

We have now done some further analysis on these returns and have classified them according to the five principal causes of nontaxability: foreign tax credit, deductions for taxes paid, deductions for charitable contributions, deductions for interest payments, and miscellaneous deductions.

As to the seven cases in which nontaxability was due primarily to the foreign tax credit, it is interesting to note that these seven taxpayers paid income tax to foreign countries of about $1.5 million, an average of more than $200,000 tax per taxpayer. This represented an effective foreign income tax rate of 62 percent of their adjusted gross income and 70 percent of their taxable income. It is clear that while these individuals were not required to pay U.S. income tax, they were subjected to heavy income taxes abroad.

Another group of 12 individuals whose adjusted gross income aggregated $4.1 million, paid no 1970 federal income tax because their deductions for state and local taxes exceeded $4.1 million. Substantially all these deductions were for state income taxes. A review of these returns suggested that these individuals had large amounts of nonrecurring income in 1969 on which they paid substantial state income taxes in the spring of 1970, which were deductible on their 1970 federal income tax returns. To check out this hypothesis, we have now obtained data as to the 1969 federal income tax returns of 11 of these 12 individuals and have found that the 11 persons paid 1969 federal income tax totalling about $18 million, an average of more than $1.6 million of tax per individual. The fact that they paid no federal tax for 1970 after paying huge taxes for 1969 is simply a result of the cash basis of accounting which is used by most individuals, and the fact that the state taxes on their large 1969 income were paid in the spring of 1970. To change the tax laws to overcome this result for these dozen individuals would produce undue complexities and require additional expense for many thousands or millions of other taxpayers. This would not be worth the effort. No tax system can achieve perfection, certainly not without incredible complexities and expense.

Another 12 cases involved individuals with adjusted gross income of $8.5 million whose principal deductions consisted of charitable contributions aggregating $4.2 million. The 1969 Act terminated the "unlimited charitable contributions deduction" provision of prior law and set the contribution deduction limit at 50 percent of adjusted gross income. It was recognized that if charitably inclined individuals can deduct their contributions up to one-half of their adjusted gross income, there will necessarily be a few cases in which other deductions for interest, taxes, medical expense, etc., will exceed the other half of adjusted gross income and result in nontaxability.

In 55 of the cases interest paid was the principal deduction, aggregating $17.3 million. But in these returns dividends and interest received aggregated $16.5 million. In general, when interest is paid to borrow money needed to make investments on which dividends and interest income is received, the interest paid should be charged against the interest and dividends received and only the net profit goes into adjusted gross income. But for simplicity sake, the tax law for many years has said that where this occurs in an investment situation, the gross dividend and interest income is reflected in his adjusted gross income—and makes him appear on the surface to be in a high income category—while the offsetting interest expense that he incurs is classed as a personal deduction along with taxes, charitable contributions, casualty losses, alimony, etc. Possibly we should change the definition of "adjusted gross income" so that net investment income is treated like net business income.

There are, however, some cases in this group in which the interest paid exceeds the investment income by substantial amounts. In these cases, as well as some others, there are indications that the minimum tax may be due for 1970 and may be assessed on audit. For 1972 and subsequent years, investment interest paid that exceeds by more than $25,000 the taxpayer's investment income may be disallowed as a deduction under the 1969 Tax Reform Act.

The final category consists of 20 cases in which the principal deduction was miscellaneous deductions, aggregating $10.5 million. Of this total, more than $5.5 million represents items described in the returns generally as loss of securities pledged to secure loans, losses on guarantees of loans, and payments in settlements of litigation. Another $2.2 million of miscellaneous deductions represents an aggregate of accounting, bookkeeping and professional fees, and investment counsel and management fees. If these items are properly deductible—and this can only be determined after audit—it is because they represent expenses of earning business or investment income and may indicate that we should change the definition of "adjusted gross income" to drop these people out of the high income category.

To illustrate, consider one of the returns that reported as the only income more than $400,000 of gambling gains and reported an equal amount as gambling losses under miscellaneous deductions, for a net income of zero. This return, too, will be audited; but if the return stands up under audit, we might consider levying an amusement tax, but the income tax is supposed to apply only to the successful gamblers.

Now, I do not mean to imply from this review of the 106 cases that there is not a constant need for vigilance and improvement in the tax laws. Most assuredly there is a definite need. I mean only to indicate that there is relatively little guidance to be gained from these particular returns in relation to major issues of tax policy, and the attention that has been devoted to them is unwarranted and unwise.

PROPOSED COUNCIL ON ENERGY POLICY

Mr. McGEE. Mr. President, there is a growing awareness in this country that we are facing an energy crisis.

As our energy needs are growing at an alarming rate, our sources of energy are decreasing at an equally alarming rate. To further complicate the picture, the production of energy has, in many cases, had very serious environmental consequences. In spite of this set of circumstances, we have yet to draw upon the best minds in our country to formulate an energy policy for the United States.

As a result, I have joined in sponsoring legislation introduced by the distinguished Senate from South Carolina (Mr. HOLLINGS) which would establish a Council on Energy Policy in the Executive Office of the President.

The Washington Sunday Star and Daily News of August 6 contains an article written by Mr. S. Fred Singer. Mr. Singer presents some thought-provoking ideas regarding the need for a national energy policy and what should be taken into consideration in formulating that policy.

I ask unanimous consent that Mr. Singer's article be printed in the RECORD.

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

THE NEED FOR AN ENERGY POLICY

(By S. Fred Singer)

To most of us energy represents a double-faced coin. On the one hand it has produced the highest level of material well-being for about one-fifth of the world's population. On the other hand, it produces most of the world's pollution and is in the final analysis responsible for the world's population explosion.

Paradoxically, our very progress may destroy our ecosystem, or cause cataclysmic international upheavals, or both.

Yet, if we manage our social institutions wisely, and if we apply technology in the right, way, we can avoid these dual catastrophes and achieve a generally high level of welfare for the human race as a whole. The key to this Utopia is a continuing supply of abundant and low-cost energy.

Abundance and cost are, of course, related by the laws of economics, but through technology they are in some sense independent. If fuels become scarce, then their cost will certainly rise rapidly. On the other hand, if fossil fuels are largely replaced, e.g. by nuclear energy in the form of breeder reactors or fusion reactors, then we will have abundant energy; but its cost may be high enough to become a substantial factor in the cost of finished products, or when measured as a fraction of the Gross National Product.

Right now we spend about 3 percent of the

GNP on various energy fuels; if this fraction were to rise appreciably, the cost of all goods would go up in turn. Such a development would make it more difficult to advance the living standards of the poor and could trigger social upheavals.

An increase in fuel costs reflects itself very directly as an increase in the cost of living, in the costs of food and other necessities, transportation, heating and electricity.

But the worst crisis of all would be created if alternate energy sources were not to become available and energy itself became scarce.

ENERGY FACTS

It is useful to review a few basic facts about energy. First of all, energy is transformed; starting with primary sources like a chemical source or solar or nuclear sources, energy must end up ultimately in the form of heat.

In the intermediate stage the energy may do useful things: as mechanical energy in the running of machines or as electrical energy in producing light.

The second fact is that the value of energy depends on its temperature; the higher the temperature the larger the fraction of energy available for transformation. For example, there is a great deal of heat energy in the ocean, or in the cooling water from power plants; but its temperature is too low, and it is not available for producing useful work. According to its availability, we speak of high-grade and degraded forms of energy.

In every energy conversion process we should aim to lose as little as possible of the energy as waste heat; i.e., we should strive for efficiency and we should not degrade it unnecessarily.

In electrical systems we have devices, such as electric motors and transformers, which have efficiencies that are of the order of 80 or 90 percent. But, on the other hand, one of our largest energy users, the internal combustion engine, converts the chemical energy of gasoline into mechanical energy with an efficiency of about 20 percent.

Keep in mind that doubling efficiency means reducing by two the amount of fuel required. Efficiency also means conservation. If houses were better insulated so that the amount of energy escaping was reduced by a factor of two, then the amount of fuel would be reduced correspondingly.

When I state that our aim must be to provide and ensure a continuing supply of abundant low-cost energy, there are two major constraints: one is environmental, and the other has to do with national security.

Before turning to these, and to the many so-called practical political constraints, let me discuss the situation of an ideal free market and speak about efficiency in an economic sense. Economic efficiency is obtained by what the economist calls efficient pricing. The cost of energy should be that arrived at in a free and competitive marketplace.

If energy is too cheap it is wasted. If energy is artificially overpriced, then other inefficiencies are produced. In general, every institutional restraint, every artificial regulation, will distort the market and will result in a lower economic efficiency.

There is, of course, another point to watch for. Whenever restraints or regulations or subsidies are introduced in order to achieve a desired effect, we have to ask ourselves periodically, say every few years, whether they are still serving that purpose. Unfortunately, the tendency is towards persistence of laws, unless an automatic review feature is introduced in the enabling legislation.

THE INFORMED CONSUMER

How do we achieve this ideal situation of highest economic efficiency? Our aim should be to do this with a minimum of regulation, using market forces as much as possible.

But to get a truly free market we need, first of all, what I call the "perfectly informed consumer," that is a consumer who understands what is best for him.

This consumer will always purchase the lowest-cost package. This consumer not only looks at the initial cost of a house, but also asks about the cost of upkeep and thereby forces the builder to provide better insulation. This consumer looks not only at the price tag of an air-conditioner unit, but also asks about its efficiency and electricity consumption.

In practice, we may have difficulty developing such a consumer. The average consumer does not even look at the price tag; he only looks at the down-payment.

The environmental constraints are well understood, and are in any case economic rather than absolute and fundamental. By this I mean that if we are willing to pay the costs of pollution control and add them to the other costs which make up the cost of energy, then we have arrived at a rational way for the efficient pricing of energy which includes all of the social costs.

There seems to be little dispute among all the parties concerned that this is the way to proceed. I have estimated that the additional costs of electricity production will be on the order of 0.2 percent of the GNP—not an exorbitant increase.

National security considerations distort the energy picture in a different way. The emphasis here must be on reasonable self-sufficiency, and the question is: how can we achieve this at the lowest over-all cost, not only in the short term but also in the long term.

I believe that we need a credible scheme of conservation. Perhaps we even need a credible rationing scheme; otherwise we will surely be "held up" by foreign suppliers of fuels, or at least we will be restricted and restrained in the way we apply foreign policies to benefit the security of the United States.

Incidentally, I would charge all of the costs that are incurred on behalf of national security to the Defense Department. It is very important to have a proper form of bookkeeping. If, as is generally claimed, depletion allowances are supposed to develop domestic supplies for the sake of national security, then I submit that the cost of the depletion allowances should be billed to the defense budget.

It is often argued that we must restrict oil imports for the sake of national security, because foreign supplies are not as dependable as domestic supplies. This is such an important question for the national welfare, both now and in the future, that it must be carefully re-examined.

We should be able to find a way which does several things at the same time: (1) allows us to import lower cost fuels, (2) provides an incentive for exploration of domestic supplies to increase the size of domestic reserves; but (3) conserves domestic supplies by not limiting imports; yet (4) is fair to domestic producers who have invested a great deal in exploration and production facilities.

I believe that once it is accepted that price appreciation of fuels is a fact of life, then this price appreciation will protect domestic supplies from early over-exploitation. Since the bulk of the reserves are likely to be in public lands offshore, the government has a vested interest and incentive to develop an optimum policy.

There are many other public-policy issues which have to be examined and re-examined in the development of a national production, the depletion allowance with respect to oil and gas, price regulation of natural gas, the proper assignment of environmental costs of fuel extraction (particularly for strip mining) and of energy production.

PROPER ROLE

I see a proper role for government investments in research and development to develop better ways of producing, transforming and conserving energy: from nuclear fusion power and nuclear breeder reactors to MHD—magnetohydrodynamics to produce electricity more efficiently; high efficiency transmission lines; coal desulfurization, gasification and liquefication; and also all the ways of capturing solar power.

There is little incentive for private industry or for public utilities to undertake any of these very expensive and risky developments.

But if the job is to be done by government, then where and by whom? Unfortunately, the institutional picture is a patchy one.

There is no single agency in the government which can deal with energy research in an overall balanced manner, not to mention the problems of energy supply, use, regulation, or the environmental and security aspects.

As a result, no agency "pushes" such things as research in solar power or geothermal power, in the same way in which the AEC "pushes" nuclear power, or the Department of Interior coal.

And frequently, agencies pursuing their major missions will be at cross purposes with each other. One of the important priorities of any national energy policy is to create immediately a focal point, preferably in the White House, to coordinate the scattered efforts of the many government agencies now involved in various aspects of the energy business.

THOUGHTS ON THE YOUNG

Mr. BUCKLEY. Mr. President, I commend to the Senate a thoughtful article entitled "Thoughts on the Young," written by William V. Shannon, and published in last Sunday's New York Times.

It is one of the best defenses I have read of the need, in his words, for "holding students to rigorous standards of exact knowledge, of inculcating in them a respect for the past and a knowledge of its wisdom, and requiring of them civility and discipline."

I ask unanimous consent that Mr. Shannon's article be printed in the RECORD.

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

THOUGHTS ON THE YOUNG

(By William V. Shannon)

WASHINGTON, August 5.—Throughout history, the old and the middle-aged have tried to reach across the generations and share the benefits of their hard-won experience with the young. It is an effort which can never entirely succeed. Not all of yesterday's wisdom exactly fits today's problems. Each of us has to make some mistakes on his own. Yet not all of the mistakes of the past have to be repeated. Indeed, human progress, if it is possible at all, is possible only because we benefit from the incremental wisdom of the past.

In that belief, I recently attacked the unhealthy trend toward the intellectual devitalization of higher education. I argued that if the trend is not reversed, colleges may be producing not educated men and women but a swelling tribe of new barbarians.

The column evoked emphatic agreement from many professors across the country who feel themselves beleaguered by colleagues, administrators and students, all clamoring for what is seemingly new, innovative and relevant. But some younger readers took particular exception to any statement that college students "rarely know what is in their own intellectual best interest for the whole of their lives."

Determining what should be taught in

college requires perspective and a measure of wisdom. The opinions and desires of undergraduates should be taken into account, but they cannot be decisive. As philosopher Ralph Barton Perry used to say when he was arguing against the unrestricted elective system at Harvard, "Students do not know what it is that they do not know."

My defense of required courses in a range of different fields is based in part on my own experience. When I was an undergraduate, my dominant interests were literature and history. If I had been asked to vote on abolishing two years of laboratory sciences as a requirement, I would have been first in line to vote "yes." How was I to know at 17 that nuclear scientists were then harnessing atomic energy? Insofar as I understand nuclear power, radar, television and other technical forces which shape our world, I owe much today to that year spent studying physics.

How was I to know that as I grew older I would develop an interest in conservation? Much of what I know about the physical environment I learned in a year studying geology, another course I thought tedious at the time. Now, in my 25th reunion year, my regret is not that I was required to take two years of science by a faculty which knew more about what was good for me intellectually than I did. Instead, I regret that I did not also study biology to gain a better understanding of the biosphere.

Yet one academic writes that "forcing students to learn things has been shown to have a stultifying effect on their individual growth and development." When professors make intellectually irresponsible statements of this kind, no one can blame young students for wanting to do what is fun and avoiding courses which are difficult or not immediately appealing.

One could as well argue that it is "stultifying" to earn one's living or to fulfill one's family responsibilities or to care for the sick and the aged. Each of these human necessities involves doing much that is not "relevant" to what a person might really like to be doing.

This destructive educational trend is part of a more widespread and corrosive hedonism. Through most of history, only the idle rich could devote themselves to seeking pleasure. Now in this richest of nations with its private swimming pools, its two-car and three-car families and its rising standard of living, millions of people can envisage lives given over wholly or in large part to pleasure.

Moral philosophers have always observed the emptiness and ultimate frustration of lives which are lived according to the hedonistic principle. Work which taxes one's highest intellectual or physical powers, sacrifice for one's ideals and sharing with others, these are much more likely routes to personal fulfillment than the direct pursuit of pleasure.

The young with their instinctive and admirable idealism know that best of all. In their best moments, they can do prodigious amounts of work, sacrifice themselves and share unreservedly. But they also have the freedom to be hedonists.

Thus, it is all the more tragic when colleges are afraid of holding students to rigorous standards of exact knowledge, of inculcating in them a respect for the past and a knowledge of its wisdom and requiring of them civility and discipline. If colleges become a fun-filled fantasy world where students only study what interests them, where grades disappear and standards go slack, then colleges are conforming to the worst of the larger society rather than preserving and encouraging the best. The young who should be challenged and tempered are the losers.

COURT TEST OF PRESIDENT'S POCKET VETO POWER

Mr. KENNEDY. Mr. President, I have today filed a complaint in the Federal district court in Washington, D.C., in an effort to seek a judicial determination of the important legal and constitutional issues surrounding the President's pocket veto power.

As Members of the Senate and House are aware, the issue was clearly raised by President Nixon's use of the pocket veto during a brief Christmas recess in 1970 to disapprove an important health bill passed by Congress—the Family Practice of Medicine Act. The bill had been approved overwhelmingly by both Houses of Congress, and the pocket veto was used in an effort to prevent a vote in Congress to override the veto. I believe that the President's use of the pocket veto in these circumstances was unconstitutional, and I am hopeful that the case I have initiated in court today will settle the issue.

Mr. President, I ask unanimous consent, that a statement describing the issue in more detail and the text of the complaint I have filed in the case be printed in the RECORD.

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

STATEMENT OF SENATOR KENNEDY ANNOUNCING COURT ACTION CHALLENGING PRESIDENT'S USE OF POCKET VETO POWER

Senator Edward M. Kennedy today filed a court action against two officials of the Nixon Administration, challenging the constitutionality of the President's attempt to pocket veto a Federal health bill in December 1970.

The complaint in the case, called an action in the nature of mandamus, was filed by Kennedy in the Federal District Court in Washington, D.C. The defendants are Arthur F. Sampson, head of the General Services Administration, and Thomas M. Jones, Chief of Records in the White House. Kennedy's complaint asks the Court to declare the President's pocket veto invalid, and to order the defendants to carry out their responsibility to publish the bill as part of the official laws of the United States.

The bill in question, the Family Practice of Medicine Act, was passed by Congress to deal with certain aspects of the nation-wide shortage of physicians. It authorized a three-year, $225 million program of Federal grants to hospitals and medical schools for the purpose of training family doctors. The bill was approved in the Senate by a vote of 64–1, and in the House of Representatives by a vote of 346–2, and was sent to the President in mid-December that year.

Under Article I, Section 7, Clause 2 of the Constitution, the President must either sign or veto a bill within ten days after he receives it from Congress:

If the President signs the bill, it becomes law.

If he vetoes the bill, it is returned to Congress, where votes may be taken to override the veto.

If he fails to sign the bill, but does not veto it, the bill becomes law without his signature. However, if the ten-day period expires while Congress is adjourned, and the President has not signed the bill, the bill does not become law—in this case, the President can veto a bill simply by "putting it in his pocket," hence the term "pocket veto."

In the case of the Family Practice of Medicine Act involved in Senator Kennedy's lawsuit, the ten-day period expired on December 25, 1970, at a time when Congress was on a brief four-day recess for the Christmas holidays. The Senate returned to session on December 28, and the House of Representatives returned on December 29, so that Congress would have had the opportunity to consider the President's action if he had used the regular veto procedure to disapprove the bill. Instead, President Nixon used a pocket veto to reject the bill, thereby preventing Congress from acting against the veto. Kennedy's complaint asks the Court to declare that the use of the pocket veto was improper in these circumstances, and to hold that the bill became law on December 25, 1970, without the President's signature.

In filing the complaint, Kennedy cited the need for the Family Practice of Medicine legislation in order to help meet the nation's health care crisis, especially the shortage of health manpower.

Kennedy also emphasized that the President's use of the pocket veto "raised a separate and extremely serious question, a question that goes to the very heart of the constitutional relationship between Congress and the President with respect to the enactment of Federal legislation." Kennedy called the President's action a "promiscuous use of the pocket veto power, a transparent but unconstitutional attempt to prevent an embarrassing vote by Congress to override a regular veto, and another example in the long line of actions by the Administration in derogation of the powers of Congress under the Constitution."

In defending the use of the pocket veto power in the present case, the Department of Justice relies on broad language in a 1929 Supreme Court decision. The Department also cites a historical practice of previous Administrations in using the pocket veto during relatively brief adjournments of Congress, but recognizes that the issue has been a bone of contention between Congress and the President over the years.

Kennedy noted that the 1929 decision, as well as a 1938 decision by the Supreme Court, had not ruled on the specific issue involved in the present case. Kennedy said those precedents could easily be read as supporting his view that the pocket veto provision of the Constitution was intended to apply only in circumstances involving a final adjournment at the end of a Congress or at the end of a session of Congress, and was not intended to apply to brief recesses of Congress within a session, such as the Christmas holiday recess involved in the pocket veto of the Family Practice of Medicine Act. Otherwise, said Kennedy, Congress could not even recess for a weekend without risking a pocket veto of important legislation awaiting the President's signature.

Kennedy also said that the sporadic historical practice of pocket vetos by prior Administrations was more a tribute to the difficulty of challenging the validity of a pocket veto in the courts, rather than a legitimate justification for the Administration's position. Kennedy said that other avenues to challenge the validity of the pocket veto of the Family Practice of Medicine Act had been pursued by Congress and other interested groups without success, and that he was filing the present court action in order to obtain a definitive judicial determination of the issue.

After the pocket veto in 1970, Congress appropriated $100,000 to fund the Family Practice of Medicine program, but the Department of Health, Education and Welfare declined to make the funds available. Also, in a case involving a private claim bill which was pocket vetoed on the same day as the Family Practice of Medicine Act, the Foreign Claims Settlement Commission avoided the issue of the pocket veto by deciding on an-

other ground to accept the claim of the beneficiary under the private bill. Therefore, Kennedy said, the court action he was filing was the best remaining approach to resolve the important constitutional issue at stake.

A copy of the complaint filed by Senator Kennedy is attached.

[In the U.S. District Court for the District of Columbia]

EDWARD M. KENNEDY, PLAINTIFF, AGAINST ARTHUR F. SAMPSON, ACTING ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, WASHINGTON, D.C., AND THOMAS M. JONES, CHIEF, WHITE HOUSE RECORDS, THE WHITE HOUSE, WASHINGTON, D.C., DEFENDANTS

COMPLAINT FOR MANDAMUS, INJUNCTIVE AND DECLARATORY RELIEF

I

Statement as to jurisdiction

1. This is an action in the nature of mandamus, or in the alternative for a permanent injunction, to require the defendants, who are the Acting Administrator of the General Services Administration of the United States and the Chief of White House Records, to publish S. 3418 (91st Congress, 2d Session), the Family Practice of Medicine Act, as a validly enacted law of the United States, in accord with their ministerial, non-discretionary duty under 1 U.S.C. 106a, 1 U.S.C. 112, and 1 U.S.C. 113. This action also seeks a declaratory judgment that the action of the President of the United States in disapproving the bill under the Pocket Veto provision of Article I, Section 7, Clause 2 of the Constitution was not in accord with the requirements of that provision, and that therefore the bill became a law of the United States without the signature of the President, in accord with other provisions of that Clause.

2. This action arises under the Constitution and the Laws of the United States. The matter in controversy exceeds $10,000.00, exclusive of interest and costs. The jurisdiction of this Court rests upon 28 U.S.C. 1331, 28 U.S.C. 1361, and 28 U.S.C. 2201.

II

Parties

3. Plaintiff Edward M. Kennedy is a citizen of the United States and a taxpayer of the United States. Plaintiff is also the senior United States Senator from the Commonwealth of Massachusetts and is the Chairman of the Subcommittee on Health of the Committee on Labor and Public Welfare of the United States Senate.

4. Defendant Arthur F. Sampson is an officer or employee of the United States. He is sued in his official capacity as Acting Administrator of the General Services Administration of the United States. It is his duty, pursuant to 1 U.S.C. 106a, 1 U.S.C. 112, and 1 U.S.C. 113, to receive bills that have become laws of the United States and to publish them in slip form and in the United States Statutes at Large.

5. Defendant Thomas M. Jones is an officer or employee of the United States. He is sued in his official capacity as Chief of White House Records. It is his duty to receive enrolled bills from the Congress and, pursuant to 1 U.S.C. 106a, to deliver bills that have become laws of the United States to the Administrator of General Services for publication in slip form and in the United States Statutes at Large.

III

Statement of the claim

6. On Thursday, December 10, 1970, the Congress of the United States cleared for the President of the United States S. 3418 (91st Congress, 2d Session), the Family Practice of Medicine Act. The bill had been approved by the Senate by a vote of 64 to 1 and by the House of Representatives by a vote of 346 to 2. It authorized the Congress to appropriate $225 million for the fiscal years 1971, 1972, and 1973 for grants to public and private non-profit hospitals and medical schools, in order to assist them in establishing special departments and programs in the field of family practice of medicine, and otherwise to encourage and promote the training of medical and paramedical personnel in the field of family medicine. A copy of Report No. 91–1668 (91st Congress, 2d Session) of the House of Representatives, containing the text of the bill as approved by the Congress, is attached as Appendix A.

7. On Monday, December 14, 1970, the Clerk of Enrolled Bills in the Office of the Secretary of the Senate delivered the enrolled bill S. 3418 to the defendant at the White House, and the Secretary of the Senate reported to the Senate that he had presented S. 3418 to the President of the United States.

8. On Tuesday, December 22, 1970, the Congress recessed for the Christmas holidays. The Senate, in which S. 3418 originated, was in recess until Monday, December 28, 1970, and the House of Representatives was in recess until Tuesday, December 29, 1970. During the recess of the Senate, the Secretary of the Senate was specifically authorized to receive messages from the President of the United States. The Second Session of the 91st Congress adjourned sine die on Saturday, January 2, 1971.

9. On Thursday, December 24, 1970, the President of the United States issued a Memorandum of Disapproval announcing that he was withholding his signature from S. 3418. The bill was not returned by the President to the Senate with his objections. In effect, the President sought to disapprove the bill by reliance on the Pocket Veto provision of Article I, Section 7, Clause 2 of the Constitution. A copy of the President's Memorandum of Disapproval is attached as Appendix B.

10. On Friday, December 25, 1970, S. 3418 not having been returned to the Senate by the President with his objections within ten days (Sundays excepted) after it had been presented to him, and the Congress not having prevented its return by their adjournment, the bill became a Law of the United States, in like manner as if the President had signed the bill, in accord with Article I, Section 7, Clause 2 of the Constitution and notwithstanding the Memorandum of Disapproval issued by the President on December 24 1970.

11. By letter of June 5 1972 the plaintiff requested the defendant Thomas M. Jones to deliver S. 3418 to the Administrator of General Services for publication as a law in slip form and in the United States Statutes at Large. By letter of June 12 1972, Mr. John W. Dean III, acting as Counsel to the President, refused to honor the plaintiff's request, stating that S. 3418 was never enacted into law, since it had been disapproved by the President through the exercise of the President's pocket veto power under Article I, Section 7, Clause 2 of the Constitution. Copies of the request and refusal are attached as Appendices C and D.

12. By letter of June 5, 1972, the plaintiff requested the defendant Arthur F. Sampson to receive S. 3418, and to publish it as a law in slip form and in the United States Statutes at Large. By letter of July 17, 1972, the defendant Arthur F. Sampson refused the request on the basis of his understanding that S. 3418 had been vetoed by the President in accordance with the President's interpretation of the Constitution, and that he was unable to honor the request until such time as the bill becomes a validly enacted law of the United States. Copies of the request and refusal are attached as Appendices E and F.

13. The acts of the defendants have injured the plaintiff as a United States citizen in that they have deprived him of his rights as a citizen to have the Executive Branch of the Federal Government treat as law the valid enactments of his elected representatives in the Congress.

14. The acts of the defendants have injured the plaintiff as a United States taxpayer in that they have deprived him of his right as a taxpayer to have tax monies received by the Federal Government allocated and expended as the Congress authorizes by validly enacted laws.

15. The acts of the defendants have injured the plaintiff as a United States Senator by denying him the effectiveness of his vote as a member of the United States Senate. The plaintiff, who was among the 64 Senators voting in favor of S. 3418, has a plain, direct, and adequate interest in maintaining the effectiveness of his vote and in the acceptance of S. 3418 as a validly enacted law of the United States.

16. The acts of the defendants have injured the plaintiff as Chairman of the Subcommittee on Health of the Committee on Labor and Public Welfare of the United States Senate, in that the plaintiff has the responsibility to initiate and preside over the passage through the Congress of legislation in the area of health care, including legislation in the area of the family practice of medicine which is new before the Congress and whose development is specifically impeded by the refusal of defendants to treat S. 3418 as a validly enacted law.

Wherefore plaintiff prays:

A. That this Court declare and adjudge that S. 3418 (91st Congress, 2d Session) became a validly enacted law of the United States on December 25, 1970, without the signature of the President, in accord with Article I, Section 7, Clause 2 of the Constitution.

B. That this Court issue an order in the nature of mandamus, or in the alternative a permanent injunction, requiring defendants to publish S. 3418 as a validly enacted law of the United States, in accord with their ministerial, nondiscretionary duty under 1 U.S.C. 106a, 1 U.S.C. 112, and 1 U.S.C. 113.

C. That the reasonable costs incurred by the plaintiff in this action be ascertained and the defendants ordered to pay the same to the plaintiff forthwith.

D. That this Court award the plaintiff such other and further relief as may be just and equitable under the circumstances.

Respectfully submitted,

EDWARD M. KENNEDY,
Pro Se.

Date: August 9, 1972.

APPENDIX A

TRAINING OF FAMILY PHYSICIANS

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3418) to amend the Public Health Service Act to provide for the making of grants to medical schools and hospitals to assist them in establishing special departments and programs in the field of family practice, and otherwise to encourage and promote the training of medical and paramedical personnel in the field of family medicine, and to alleviate the effects of malnutrition, and to provide for the establishment of a National Information and Resource Center for the Handicapped, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—FAMILY MEDICINE

SEC. 101. Part D of title VII of the Public Health Service Act is amended to read as follows:

"PART D—GRANTS TO PROVIDE PROFESSIONAL AND TECHNICAL TRAINING IN THE FIELD OF FAMILY MEDICINE

"DECLARATION OF PURPOSE

"SEC. 761. It is the purpose of this part to provide for the making of grants to assist—

"(1) public and private nonprofit medical schools—

"(A) to operate, as an integral part of their medical education program, separate and distinct departments devoted to providing teaching and instruction (including continuing education) in all phases of family practice;

"(B) to construct such facilities as may be appropriate to carry out a program of training in the field of family medicine whether as a part of a medical school or as separate outpatient or similar facility;

"(C) to operate, or participate in, special training programs for paramedical personnel in the field of family medicine; and

"(D) to operate, or participate in, special training programs to teach and train medical personnel to head departments of family practice or otherwise teach family practice in medical schools; and

"(2) public and private nonprofit hospitals which provide training programs for medical students, interns, or residents—

"(A) to operate, as an integral part of their medical training programs, special professional training programs (including continuing education) in the field of family medicine for medical students, interns, residents, or practicing physicians;

"(B) to construct such facilities as may be appropriate to carry out a program of training in the field of family medicine whether as a part of a hospital or as a separate outpatient or similar facility;

"(C) to provide financial assistance (in the form of scholarships, fellowships, or stipends) to interns, residents or other medical personnel who are in need thereof, who are participants in a program of such hospital which provides special training (accredited by a recognized body or bodies approved for such purpose by the Commissioner of Education) in the field of family medicine, and who plan to specialize or work in the practice of family medicine; and

"(D) to operate, or participate in, special training programs for paramedical personnel in the field of family medicine.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 762. (a) For the purpose of making grants to carry out the purposes of this part, there are authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1971, $75,000,000 for the fiscal year ending June 30, 1972, and $100,000,000 for the fiscal year ending June 30, 1973.

"(b) Sums appropriated pursuant to subsection (a) for any fiscal year shall remain available for the purpose for which appropriated until the close of the fiscal year which immediately follows such year.

"GRANTS BY SECRETARY

"SEC. 763. (a) From the sums appropriated pursuant to section 762, the Secretary is authorized to make grants, in accordance with the provisions of this part, to carry out the purposes of section 761.

"(b) No grant shall be made under this part unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall have prescribed by regulations which have been promulgated by him and published in the Federal Register not later than six months after the date of enactment of this part.

"(c) Grants under this part shall be in such amounts and subject to such limitations and conditions as the Secretary may determine to be proper to carry out the purposes of this part.

"(d) In the case of any application for a grant any part of which is to be used for major construction or remodeling of any facility, the Secretary shall not approve the part of the grant which is to be so used unless the recipient of such grant enters into appropriate arrangements with the Secretary which will equitably protect the financial interests of the United States in the event such facility ceases to be used for the purpose for which such grant or part thereof was made prior to the expiration of the twenty-year period which commences on the date such construction or remodeling is completed.

"(e) Grants made under this part shall be used only for the purpose for which made and may be paid in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

"ELIGIBILITY FOR GRANTS

"SEC. 764. (a) In order for any medical school to be eligible for a grant under this part, such school—

"(1) must be a public or other nonprofit school of medicine; and

"(2) must be accredited as a school of medicine by a recognized body or bodies approved for such purpose by the Commissioner of Education, except that the requirements of this clause shall be deemed to be satisfied, if (A) in the case of a school of medicine which by reason of no, or an insufficient, period of operation is not, at the time of application for a grant under this part, eligible for such accreditation, the Commissioner finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students who are in their first year of instruction at such school during the fiscal year in which the Secretary makes a final determination as to approval of the application.

"(b) In order for any hospital to be eligible for a grant under this part, such hospital—

"(1) must be a public or private nonprofit hospital; and

"(2) must conduct or be prepared to conduct in connection with its other activities (whether or not as an affiliate of a school of medicine) one or more programs of medical training for medical students, interns, or residents, which is accredited by a recognized body or bodies, approved for such purpose by the Commissioner of Education.

"APPROVAL OF GRANTS

"SEC. 765. (a) The Secretary, upon the recommendation of the Advisory Council on Family Medicine, is authorized to make grants under this part upon the determination that—

"(1) the applicant meets the eligibility requirements set forth in section 764;

"(2) the applicant has complied with the requirements of section 763;

"(3) the grant is to be used for one or more of the purposes set forth in section 761;

"(4) it contains such information as the Secretary may require to make the determinations required of him under this section and such assurances as he may find necessary to carry out the purposes of this part;

"(5) it provides for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require (pursuant to regulations which shall have been promulgated by him and published in the Federal Register) to assure proper disbursement of and accounting for all Federal funds paid to the applicant under this part; and

"(6) the application contains or is supported by adequate assurance that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on the construction of the facility will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a5). The Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 65 Stat. 1267), and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"(b) The Secretary shall not approve any grant to—

"(1) a school of medicine to establish or operate a separate department devoted to the teaching of family medicine unless the Secretary is satisfied that—

"(A) such department is (or will be, when established) of equal standing with the other departments within such school which are devoted to the teaching of other medical specialty disciplines; and

"(B) such department will, in terms of the subjects offered and the type and quality of instruction provided, be designed to prepare students thereof to meet the standards established for specialists in the specialty of family practice by a recognized body approved by the Commissioner of Education; or

"(2) a hospital to establish or operate a special program for medical students, interns, or residents in the field of family medicines unless the Secretary is satisfied that such program will, in terms of the type of training provided, be designed to prepare participants therein to meet the standards established for specialists in the field of family medicine by a recognized body approved by the Commissioner of Education.

"(c) The Secretary shall not approve any grant under this part unless the applicant therefor provides assurances satisfactory to the Secretary that funds made available through such grant will be so used as to supplement and, to the extent practical, increase the level of non-Federal funds which would, in the absence of such grant, be made available for the purpose for which such grant is requested.

"PLANNING AND DEVELOPMENTAL GRANTS

"SEC. 766. (a) For the purpose of assisting medical schools and hospitals (referred to in section 761) to plan or develop programs or projects for the purpose of carrying out one or more of the purposes set forth in such section, the Secretary is authorized for any fiscal year (prior to the fiscal year which ends June 30, 1973) to make planning and developmental grants in such amounts and subject to such conditions as the Secretary may determine to be proper to carry out the purposes of this section.

"(b) From the amounts appropriated in any fiscal year (prior to the fiscal year ending June 30, 1973) pursuant to section 762 (a), the Secretary may utilize such amounts as he deems necessary (but not in excess of $8,000,000 for any fiscal year) to make the planning and developmental grants authorized by subsection (a).

"ADVISORY COUNCIL ON FAMILY MEDICINE

"SEC. 767. (a) The Secretary shall appoint an Advisory Council on Family Medicine (hereinafter in this section referred to as the 'Council'). The Council shall consist of twelve members, four of whom shall be physicians engaged in the practice of family medicine,

four of whom shall be physicians engaged in the teaching of family medicine, three of whom shall be representatives of the general public, and one of whom shall, at the time of his appointment, be an intern in family medicine. Members of the Council shall be individuals who are not otherwise in the regular full-time employ of the United States.

"(b)(1) Except as provided in paragraph (2), each member of the Council shall hold office for a term of four years, except that any member appointed to fill a vacancy prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that the terms of office of the members first taking office shall expire, as designated by the Secretary at the time of appointment, three at the end of the first year, three at the end of the second year, three at the end of the third year, and three at the end of the fourth year, after the date of appointment.

"(2) The member of the Council appointed as an intern in family medicine shall serve for one year.

"(3) A member of the Council shall not be eligible to serve continuously for more than two terms.

"(c) Members of the Council shall be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members of the Council, while attending meetings or conferences thereof or otherwise serving on business of the Council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service, employed intermittently.

"(d) The Council shall advise and assist the Secretary in the preparation of regulations for, and as to policy matters arising with respect to, the administration of this part. The Council shall consider all applications for grants under this part and shall make recommendations to the Secretary with respect to approval of applications for, and of the amount of, grants under this part.

"DEFINITIONS

"SEC. 768. For purposes of this part—

"(1) the term 'nonprofit' as applied to any hospital or school of medicine means a school of medicine or hospital which is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

"(2) the term 'family medicine' means those certain principles and techniques and that certain body of medical, scientific, administrative, and other knowledge and training, which especially equip and prepare a physician to engage in the practice of family medicine;

"(3) the term 'practice of family medicine' and the term 'practice', when used in connection with the term 'family medicine', mean the practice of medicine by a physician (licensed to practice medicine and surgery by the State in which he practices his profession) who specializes in providing to families (and members thereof) comprehensive, continuing, professional care and treatment of the type necessary or appropriate for their general health maintenance; and

"(4) the term 'construction' includes construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings and initial equipment of any such buildings, including architects' fees, but excluding the cost of acquisition of lands or offsite improvements."

TITLE II—MALNUTRITION

SEC. 201. (a) The Secretary of Health, Education, and Welfare shall conduct a study, in cooperation with schools training health professional manpower, of the feasibility and desirability of establishing at such schools courses dealing with nutrition and problems related to malnutrition, and of establishing research programs and pilot projects in the field of nutrition and problems of malnutrition.

(b) The Secretary is authorized to make grants to health professional schools, in connection with the study provided for by subsection (a), for the planning of programs at such schools, and for the conduct of pilot projects at such schools, to assist such schools in the establishment of courses dealing with nutrition and problems related to malnutrition.

(c) The Secretary shall report to the President and to Congress by July 1, 1972, the results of such study, together with such recommendations as he deems advisable.

(d) There is authorized to be appropriated $5,000,000 to carry out the purposes of this section.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same with an amendment as follows: Amend the title so as to read: An Act to amend the Public Health Service Act to provide for the making of grants to medical schools and hospitals to assist them in establishing special departments and programs in the field of family practice, and otherwise to encourage and promote the training of medical and paramedical personnel in the field of family medicine and to provide for a study relating to causes and treatment of malnutrition. And the House agree to the same.

HARLEY O. STAGGERS,
JOHN JARMAN.
PAUL G. ROGERS,
TIM LEE CARTER,
JAMES F. HASTINGS,
Managers on the Part of the House.

RALPH W. YARBOROUGH,
HARRISON A. WILLIAMS,
EDWARD M. KENNEDY,
GAYLORD NELSON,
THOMAS F. EAGLETON,
ALAN CRANSTON,
HAROLD E. HUGHES,
PETER H. DOMINICK,
JACOB K. JAVITS,
GEORGE MURPHY,
WINSTON PROUTY,
WILLIAM SAXBE,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3418) to amend the Public Health Service Act to provide for the making of grants to medical schools and hospitals to assist them in establishing special departments and programs in the field of family practice, and otherwise to encourage and promote the training of medical and paramedical personnel in the field of family medicine, and to alleviate the effects of malnutrition, and to provide for the establishment of a National Information and Resource Center for the Handicapped, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment struck out all after the enacting clause of the Senate bill and substituted a new text. The conference agreement is a substitute for both the text of the Senate bill and the House amendment.

Except for technical, clerical, clarifying, and conforming changes, the differences between the House amendment and the conference substitute are as follows:

The Senate bill provided specific authority for programs of continuing education in the field of family medicine, and the conference substitute is the same in this regard as the text of the Senate bill.

The Senate bill authorized a five-year program, at total authorizations of $425,000,000, and the House amendment was limited to three years, at a total authorization of $225,000,000. The conference substitute is the same in this regard as the House amendment.

The Senate bill authorized not to exceed $10,000,000 for any fiscal year for planning and developmental grants for the purpose of assisting medical schools and hospitals to plan or develop programs or projects for the purposes of carrying out training in the field of family medicine. The House amendment limited the sums to $5,000,000 a year, and did not specifically cover developmental grants.

The conference substitute authorizes $8,000,000 for planning and developmental grants. The purpose of these grants is to assist medical schools and hospitals in actually getting programs and projects underway, and is intended to expedite the development of programs at schools and hospitals for the training of family physicians.

The Senate bill contained a provision authorizing grants and contracts to universities, medical schools, graduate schools, hospitals, laboratories, and other public or private institutions, and individuals for research into malnutrition. This provision also authorized the establishment of courses at medical schools, graduate schools, and nursing schools in malnutrition, and would have authorized fellowships and other financial assistance to students in this area.

The House amendment contained no comparable provision. The conference substitute authorizes the Secretary of Health, Education, and Welfare to conduct a study, in cooperation with health professional manpower schools of the feasibility and desirability of establishing courses at such schools in the fields of nutrition and problems relating to malnutrition. $5,000,000 is authorized for such grants, and for planning of programs and pilot projects, with a report being required to the President and to the Congress before July 1, 1972, together with such recommendations as the Secretary deems advisable.

HARLEY O. STAGGERS,
JOHN JARMAN,
PAUL G. ROGERS,
TIM LEE CARTER,
JAMES F. HASTINGS,
Managers on the Part of the House.

APPENDIX B

MEMORANDUM OF DISAPPROVAL OF A BILL TO PROMOTE TRAINING IN FAMILY MEDICINE, DECEMBER 26, 1970

I am withholding my signature from S. 3418, a bill designed to promote training in family medicine. The authority provided in this bill is unnecessary and represents the wrong approach to the solution of the nation's health problems.

In my press conference on December 10, I stated that a health program will be one of the highest priority proposals I will submit to the Congress next year. We will propose a broad pattern of reforms to deal with the nation's health problems and needs on a systematic and comprehensive basis. In contrast, the piecemeal bill I am rejecting today simply continues the traditional approach of adding more programs to the almost unmanageable current structure of Federal Government health efforts.

The Federal Government already has at

least four programs on the books that provide funds which can be used to promote the training of family medicine practitioners. Moreover, the entire concept of American medicine is in an evolutionary stage. There are differing opinions on how best to organize and train personnel to provide comprehensive and continuing care to individuals and families.

Under these circumstances, I do not believe it wise to place heavy emphasis on the establishment of separate departments of family medicine in medical schools, as S. 3418 would do. This is only one—and not necessarily the most efficient—method of achieving our national health care objectives, and should not be fixed in law.

RICHARD NIXON.

THE WHITE HOUSE, *December 24, 1970.*

(NOTE: The memorandum was dated December 24, 1970, and released December 26, 1970.)

APPENDIX C

U.S. SENATE,
Washington, D.C., June 7, 1972.

Hon. THOMAS M. JONES,
Chief, White House Records,
The White House,
Washington, D.C.

DEAR MR. JONES: It is the purpose of this letter to request you to deliver S. 3418 (91st Cong., 2d Sess.) to the Administrator of General Services, so that, in accord with his statutory duties under 1 U.S.C. 106a, 1 U.S.C. 112, and 1 U.S.C. 113, he may publish the bill in slip form as a law of the United States, and include it in the United States Statutes at Large as a validly enacted law of the United States. I am also sending a letter to the Administrator of General Services on this subject.

Final action in the Congress on S. 3418 was completed by the Senate and the House of Representatives in December 1970. The bill, the so-called "Family Practice of Medicine Act," authorized a three-year $225 million program of Federal financial assistance for the field of the family practice of medicine, as well as a one-year $5 million program for the study of certain aspects of nutrition.

On December 14, 1970, Congress presented the enrolled bill to the President for his signature. Subsequently, Presiednt Nixon sought to disapprove the bill through the exercise of the "pocket veto" power under Article I, Section 7, Clause 2 of the Constitution, which permits such a veto during certain types of "Adjournment" by Congress.

The "Adjournment" in question in this case was the four-day Christmas holiday recess taken by Congress in December 1970. It is my view, which is shared by a number of experts in constitutional law, the pocket veto power is not applicable to such a brief recess of Congress, that the power was not validly exercised in the case of S. 3418, and that, therefore, in accord with the Constitution, the bill has become law without the signature of the President. For your information, I am enclosing a copy of a hearing held on the pocket veto issue in January, 1971, by the Senate Subcommittee on Separation of Powers, which contains a number of useful legal materials on the subject.

As Chairman of the Senate Subcommittee on Health, I am directly involved in the initiation and development of legislation in the area of health, including the family practice of medicine. It is essential to me, therefore, in the course of my official duties in the Senate, to have a clear determination of the validity of S. 3418, in order that I may formulate appropriate plans for additional legislation that may be needed in the important area of the family practice of medicine. I look forward to your reply, and to your prompt favorable action on the delivery of S. 3418 to the Administrator of General Services.

Respectfully,

EDWARD M. KENNEDY.

APPENDIX D

THE WHITE HOUSE,
Washington, D.C., June 12, 1972.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This will acknowledge receipt and thank you for your letter of June 5, 1972 requesting that S. 3418 (91st Congress, 2nd Session) be delivered to the Administrator of General Services for publication as a law of the United States.

The subject bill was disapproved by the President through the exercise of his "pocket veto" power, and pursuant to Article 1, section 7, clause 2 of the Constitution it was never enacted into law. Since S. 3418 was vetoed by the President and never enacted into law, we must respectfully decline to honor your request.

Sincerely,

JOHN W. DEAN III,
Counsel to the President.

APPENDIX E

U.S. SENATE,
Washington, D.C. June 7, 1972.

Hon. ARTHUR F. SAMPSON,
Acting Administrator,
General Services Administration,
Washington, D.C.

DEAR MR. SAMPSON: It is the purpose of this letter to request you, in accord with your statutory duties under 1 U.S.C. 106a, 1 U.S.C. 112, and 1 U.S.C. 113, to receive Senate Bill 3418 (91st Cong., 2d Sess.), to publish the bill in slip form as a law of the United States, and to include and publish the bill in the United States Statutes at Large, as a validly enacted law of the United States. I am also sending a letter on this subject to the Chief of the White House Records Office.

Final action in the Congress on S. 3418 was completed by the Senate and House of Representatives in December 1970. The bill, the so-called "Family Practice of Medicine Act," authorized a three-year, $225 million program of Federal financial assistance for the field of the family practice of medicine, as well as a one-year $5 million program for the study of certain aspects of nutrition.

On December 14, 1970, Congress presented the enrolled bill to the President for his signature. Subsequently, President Nixon sought to disapprove the bill through the exercise of the "pocket veto" power under Article I, Section 7, Clause 2 of the Constitution, which permits such a veto during certain types of "Adjournment" by Congress.

The "Adjournment" in question in this case was the four-day Christmas holiday recess taken by Congress in December 1970. It is my view, which is shared by a number of experts in constitutional law, that the pocket veto power is not applicable to such a brief recess of Congress, that the power was not validly exercised in the case of S. 3418, and that, therefore, in accord with the Constitution, the bill has become law without the signature of the President. For your information, I am enclosing a copy of a hearing held on the pocket veto issue in January, 1971, by the Senate Subcommittee on Separation of Powers, which contains a number of useful legal materials on the subject.

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Respectfully,

EDWARD M. KENNEDY.

APPENDIX F

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., July 17, 1972.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: This is in response to your June 7, 1972, letter, requesting me to receive Senate Bill 3418 (91st Cong., 2d Sess.), and publish the bill in slip form as a law of the United States, and to include and publish the bill in the United States Statutes at Large as a validly enacted law of the United States.

Receiving and publishing bills which are validly enacted laws of the United States is a statutory function of the Administrator of General Services under 1 U.S.C. 106a, 1 U.S.C. 112, and 1 U.S.C. 113.

This function is merely a ministerial duty placed on the Administrator of General Services by Congress. As such, it is beyond my responsibility to decide constitutional issues of the type here present. It is my understanding that S. 3418 has been vetoed by the President in accordance with his interpretation of the Constitution and, therefore, is not a validly enacted law of the United States.

As soon as this or any other bill becomes a validly enacted law of the United States, I will carry out my aforementioned statutory responsibilities and cause the bill to be published.

Sincerely,

ARTHUR F. SAMPSON,
Acting Administrator.

CREDIT UNION INSURANCE PROGRESS REPORT

Mr. BENNETT. Mr. President, I have just received a letter from Gen. Herman Nickerson, Jr., the Administrator of the National Credit Union Administration, in which he reports on the status of the 2-year provisionally insured credit unions. In December of last year, we enacted legislation requiring the National Credit Union Administration to issue insurance certificates insuring member accounts for a period of 2 years in all Federal credit unions which could not qualify for permanent insurance. In January of this year, 1,078 Federal credit unions were issued temporary insurance certificates. General Nickerson reports that 228 of those have now met the standards necessary to obtain permanent insurance. Others have either merged with another credit union or have entered voluntary liquidation so that there are now 771 remaining Federal credit unions which have not qualified for permanent share insurance. He also reports that 284 of these have reserve deficits totaling $1,340,754 and shares of $35,253,360.

I commend General Nickerson and the staff of the National Credit Union Administration for their untiring efforts to assist Federal credit unions to meet insurance standards so that they will be able to obtain permanent insurance. I also commend those credit union organizations and individual credit unions

which have pledged and are using some of their resources to assist in the effort of upgrading credit unions which need assistance. This is a demonstration of the self-help approach which is basic to the credit union philosophy, General Nickerson states, that National Credit Union Administration personnel will continue to work with credit union organizations and encourage their participation in providing financial and technical assistance as well as management training and counseling.

Despite the commendable progress that has been made, the task ahead will require even greater efforts and to the greatest of cooperation and willingness on the part of strong credit unions and credit union organizations to assist the National Credit Union Administration to improve the operations of the remaining 771 Federal credit unions before the end of next year so that liquidations will be held to a minimum and credit union services continued for members of these credit unions.

Mr. President, I ask unanimous consent that General Nickerson's letter be printed in the RECORD.

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

NATIONAL CREDIT
UNION ADMINISTRATION,
Washington, D.C., August 4, 1972.

Hon. WALLACE F. BENNETT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BENNETT: This letter will be longer than my normal "monthly" report since I believe you will be interested in having a detailed analysis of the status of the two-year provisionally insured credit unions.

Public Law 92-221, December 23, 1971, directed me to grant temporary insurance certificates (which are valid for a period up to two years) to insure member accounts in all Federal credit unions that could not qualify for permanent insurance. The Act also provided that I offer technical assistance, management counseling and training to such groups so as to enable the maximum number of them to up-grade their financial condition to the point where they qualify for permanent insurance.

I am pleased to report that 228 of the 1,078 Federal credit unions which were issued temporary insurance certificates on January 3, 1972 have met insurance standards and now have permanent insurance. The boards of directors of 71 of these Federal credit unions voted on their own accord either to merge with another credit union or to enter voluntary liquidation. They decided not to continue operations primarily because of poor financial condition and inability to obtain officials. The additional decrease of 8 results from the following three factors: Federal credit unions recorded as eligible for two-year insurance entered into liquidation prior to the certificates being issued; Federal credit unions in liquidation as of January 3, 1972, subsequently were able to resume operations and receive two-year certificates; and Federal credit unions converted to state charters. Of the 771 remaining two-year insured Federal credit unions, 284 have share impairments (reserve deficits) totaling $1,340,754, and shares of $35,253,360.

During the six months' period ending June 30, 1972, National Credit Union Administration examiners made 928 examinations and 640 supervisory contacts with the credit unions holding temporary insurance certificates. It required more than 28,000 hours to complete the examinations and 5,100 hours to perform the supervision contacts. The supervision contacts were made at a cost to NCUA of approximately $82,000. In addition, many mandays of time have been spent in this program by regional and Washington office personnel.

Leaders of state leagues and trade associations pledged the use of their resources in testimony before Congressional committees which were considering PL 92-221. Therefore, Regional Directors of the National Credit Union Administration have met with representatives of the leagues, other trade associations, and individual credit union officials in an effort to gain their support and assistance. During these meetings, 46 leagues pledged technical, managerial, and/or training assistance. Twenty-two leagues have indicated a willingness to commit funds for financial assistance, and nine other leagues reported the possibility of providing such help.

Information subsequently received from leagues discloses that, thus far, the following assistance has been rendered to the two-year insured Federal credit unions: record-keeping problems—62 cases; supervisory committee audit work—52 cases; loan delinquency problems—72 cases, and general managerial type assistance—110 cases. Financial assistance was provided to five FCUs which received pledges or grants totaling $52,000. In addition, league dues were waived for two FCUs, and one received assistance in paying salaries, and one league and pledged to provide financial assistance to a liquidating FCU. Three leagues have held nine training sessions for officials of these FCUs.

The National Association of Federal Credit Unions (NAFCU) has also pledged assistance to help the two-year insured Federal credit unions. On June 13, 1972, I furnished a listing of 17 selected two-year insured Federal credit unions to NAFCU. I have reecived indications that assistance programs are underway.

The Alaska Credit Union Association has pledged its assistance to the five two-year insured Federal credit unions in Alaska.

Navy Federal Credit Union, the world's largest, has held training classes for officials of the two-year insured credit unions. I have been informed that these classes will be continued.

NCUA personnel will continue to work with credit union organizations and encourage their participation in providing financial and technical assistance as well as management training and counseling.

The assistance given by NCUA is costly. Our program is self-supporting from fees paid by Federal credit unions. Nevertheless, we plan to continue our efforts to assist the remaining two-year insured Federal credit unions.

On July 28, 1972, we insured our 1,141st State-chartered credit union.

Sincerely,

HERMAN NICKERSON, Jr.,
Administrator.

REVENUE SHARING

Mr. CRANSTON. Mr. President, I am pleased to announce my cosponsorship of S. 3651, the general revenue sharing bill. The State and Local Fiscal Assistance Act of 1972 passed the House on June 22. It is a badly needed and long-overdue effort to ease the financial burdens of local governments through revenue sharing with the Federal Government.

S. 3651, a bill identical to that passed by the House last month, provides $29.575 billion in aid to State, county, city, and township governments over a 5-year period. Under a carefully worked out distribution formula, $3.5 billion would be allocated each year directly to local governments. These funds are available for certain limited categories of expenditures; that is, maintenance and operating costs for public safety, environmental protection, and public transportation, and for capital expenditures for sewage collection and treatment, refuse disposal systems, and public transportation.

The distribution formula for the first 1½ years of the plan gives equal weight to three determinants: Population, extent of urbanization, and financial need based on income levels of residents of the area. During the latter part of the 5-year period, the State legislatures are given the opportunity and authority to modify somewhat the distribution formulas, thereby retaining the basic responsibility for meeting the problems of their localities.

The $1.8 billion allocated to the State governments in completely unrestricted aid, is distributed on an incentive basis. The distributions are based one-half on a comparison of State and local tax collections relative to personal income levels, and one-half on the collection of personal income taxes, in States where this measurement is applicable. Minimum and maximum percentages are set, however, so that Federal aid will not constitute more than 50 percent of a locality's total revenues from other sources.

A final feature of the bill provides for Federal collection of State-imposed individual income taxes, if the various States so desire. Eligible States would be those whose individual income taxes closely conform to Federal individual income taxes. The service, to be performed by the Secretary of the Treasury, would be available if at least five States, comprising at least 5 percent of the tax returns, wish to make such an arrangement. This would free the States involved from having to make annual collections.

The concept of revenue sharing is new. It represents a new approach to meeting the financial needs of local governments. It seeks to replace the old concept of separation of governmental functions—Federal and State-local—with a form of cooperative federalism. It seeks to achieve basic reform in the manner in which the Central Government provides aid to the States and localities.

On all the above points, the idea has been attacked by its critics. I would like, Mr. President, to review the objections along with the benefits.

On meeting the financial needs of local governments, some critics would prefer to see local units increase their taxes and raise additional funds through existing revenue sources. They say that funds needed to pay for serivces provided at the State and local level should be raised at those levels.

This approach to financing has brought us to our current plight. City, county, and municipal governments throughout the Nation are caught in a hopeless bind, between spiraling costs of essential services and tax rates already too high and often discriminatory.

Expenditures by State and local governments increased by 138.7 percent during the decade of the 1960's. This compares with an 84.9 percent increase in expenditures of the Federal Government during the same period. The main

contributing factors to this increase—growing population, urbanization, and inflationary costs—are not likely to show signs of slackening in the foreseeable future.

The local revenue sources which are supposed to meet these needs are primarily property and sales taxes. The property tax is, in my opinion, a highly discriminatory and regressive mode of revenue collecting. It places an equally heavy burden on the homeowner living on a fixed income and on the real estate investor. It fails to distinguish between the elderly homeowner whose life savings are invested in his property and the wealthy real estate investor who has numerous other sources of income. Seventy percent of our Nation's elderly own their own homes and are forced to pay increasing assessments on their property to help offset the high costs of schooling, youth and neighborhood centers, and other services for which they do not benefit.

Apart from these objections, property and sales taxes as a source of increased revenue have been exhausted. Nationwide, property taxes have increased 14.3 percent since January 1971. There are few, if any, localities where taxpayers would tolerate further increases. The taxpayers' revolt extends more and more to the voting booths, where bond issues and other means of raising funds for such essential services as education, highway construction, police and fire protection, are regularly voted down. Local tax structures have reached the saturation point.

A further weakness of relying on locally raised revenues is the resulting inequity. Some governmental bodies are more efficient than others in making use of available revenue sources. At best, the primary revenue sources of State and local governments—property and sales taxes—are less efficient and more difficult to collect than Federal income taxes. These taxes combined tend to provide less revenues per increase in gross national product than does the Federal individual income tax. The job of collecting revenues left to local units will be better performed by some than by others. As a result, either the amount or the quality of services provided by poor governments will suffer. The people served by such governments are the losers in the end.

The revenue sharing proposal, while easing the burden of revenue collection by the States and localities, provides incentives to local governments to improve their own tax collection. This is accomplished through the formula devised to determine the amounts distributed to the various States. Allocation of the $1.8 billion each year to State governments is made half on the basis of total State and local taxes and half on the basis of individual income tax collections. I would prefer, in fact, to see this formula revised so that localities are not encouraged to make maximum use of presently existing property taxes.

On the subject of revenue sharing representing a new form of cooperative federalism, some critics are reluctant to break down the tradition of separation of governmental functions. For decades we have assigned certain functions and services to the Central Government and others to State and local governments. Some of these lines of responsibility have become archaic, causing on the one hand local governments to be saddled with problems that have grown much too big to be handled by these jurisdictions—for example, welfare—and on the other hand causing the Federal Government to get involved in areas where it is too far removed from the people and their needs to be fully effective.

The structure of our federal system has become top heavy. The trend has been toward seeking solutions to difficult problems at the Federal level. More and more, Federal programs have proliferated on the theory that if we throw enough Federal dollars and Federal bureaucracy at a problem it will be resolved. The end result of this activity, in addition to its having created an unwieldly, inefficient bureaucracy, is that the people and agencies responsible for dealing with critical human problems have become increasingly removed from those people who are affected. The generation of new programs has too often not produced the hoped-for solutions. In fact, it may have caused them to worsen, along with our ability to solve them effectively at the local level.

Finally, the revenue-sharing plan before the Senate draws criticism from some sources for attempting to reform the method by which the Central Government aids State and local governments. An elaborate array of grants-in-aid has been the primary means of assistance by the Federal Government to the States and localities in recent years. In the 10-year period between 1960 and 1970, direct grants to State and local governments more than tripled, reaching a total annual value of $24 billion. This amount is expected to increase to $38.3 billion for the current year, 1972.

There are numerous shortcomings in these programs. As discussed before, they have contributed to the proliferation of Federal bureaucracy with its resulting high cost, inefficiency, and lack of responsiveness to the needs of the people the programs are intended to serve.

Revenue sharing will enable Federal funds to be distributed more equitably among States and localities. With the present grants-in-aid programs, it is difficult for some of the poorer States to take advantage of the available aid, due to stringent matching requirements. Often, if they are able to meet the requirements, it is at the expense of other vital services. Simply stated, poorer States cannot afford to provide levels of service equal to these of richer States.

The amount of assistance provided to each State and locality under the revenue-sharing plan is determined by a complex set of formulas. The end result is to emphasize assistance to poorer areas, particularly at the local level, where the $3.5 billion annual allocation is made one-third on the basis of population weighted inversely by per capita income.

Mr. President, in my opinion the proposed legislation is among the most important issues remaining before the 92d Congress. Federal sharing of revenues with States and local municipalities is an absolute necessity if we are to save these governmental institutions from financial chaos and, perhaps, complete breakdown. The increasing costs of local government, particularly in education, welfare, and law enforcement, have reached the breaking point in many cities and counties.

The answer does not lie in more and higher local taxes. The local taxpayer is already overburdened. The only realistic solution to the impasse of spiraling costs and saturated tax structures is for the Federal Government to assist in meeting expenses.

It is my urgent hope that revenue sharing will become a reality in this session of Congress.

ORDER OF AHEPA

Mr. PELL. Mr. President, the Order of Ahepa, the American Hellenic Educational Progressive Association, recently observed the golden anniversary of its founding.

During its 50 years, this civic and fraternal organization has made oustanding contributions—charitable, educational, and patriotic—to our society, and has in addition added substantially to a general appreciation of the great debt all of Western civilization owes to Hellenic culture.

As a member of AHEPA, I have a particular appreciation of the worthy goals and the broad range of its public-spirited activities. In my own State of Rhode Island, there are three chapters of AHEPA and its members rank among the most valued and respected of our citizens.

I am most happy to extend to the members of AHEPA my congratulations on the 50th anniversary of their organization and my best wishes for continuation of their fine work.

NEW YORK CITY BAR REPORT ON ANTIBUSING LEGISLATION

Mr. JAVITS. Mr. President, the Committee on Education and Labor of the House of Representatives yesterday reported H.R. 13915, a revised version of the so-called Equal Educational Opportunities Act, transmitted by the President to the Congress on March 18. Besides being unwise policy it will halt any significant further school desegregation required to correct unlawful segregation. Also, I believe this legislation is likely to prove to be unconstitutional.

The Association of the Bar of the City of New York represents as outstanding a collection of legal talent as can be found anywhere in the Nation. I have received from the association a report titled "The Administration's 'Antibusing' Legislation," compiled by its committees on Federal Legislation and civil rights. This report concludes, after careful and thorough analyses, that the proposed legislation is indeed unconstitutional. I ask unanimous consent that the report together with the names of the members

of the committees be printed in the RECORD.

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

THE ADMINISTRATION'S PROPOSED "ANTIBUSING" LEGISLATION BY THE COMMITTEE ON FEDERAL LEGISLATION, THE COMMITTEE ON CIVIL RIGHTS

The Administration has introduced two bills—the "Student Transportation Moratorium Act (STMA), and the "Equal Educational Opportunities Act" (EEOA)—which would severely restrict and in a number of cases eliminate entirely the use of busing by Federal courts as a means of alleviating racial separation in the schools. They would be applicable whether that separation constitutes *"de jure"* segregation deliberately imposed by governmental authority or *"de facto"* segregation arising out of other factors, such as segregated housing patterns. We believe that the proposals are unconstitutional as well as most unwise.*

I. PRELIMINARY ANALYSIS

Set forth below is a summary of the principal provisions of the proposed legislation together with a preliminary discussion of the Constitutional and policy problems raised thereby.

The Administration's two bills purport to rest on certain legislative findings as to students' rights to desegreation, the current status of school desegregation, and the asserted excesses of pupil transportation ("busing") for the purpose of desegregation. The STMA seeks to halt implementation of all new orders for desegregatory pupil busing until the enactment of the EEOA or until July 1, 1973.

Both bills purport to find that educational agencies have been required to implement excessive pupil busing, thereby diverting funds from use in improving educational quality (STMA § 2, EEOA § 3). The EEOA contains legislative findings to the effect that the elimination of dual school systems has been "virtually completed", they assert that great progress has been made toward elimination of the vestiges of those systems, and that excessive busing causes disruption and substantial hardship to school systems and creates serious risks to students health and safety. (§ 3(a)). Neither bill directly defines excessive pupil transportation but both suggest that Fourteenth Amendment requirements have been exceeded.

EEOA § 403(a) prohibits an order for the busing of pupils in the sixth grade or below which exceeds the average daily distance or the average daily time of travel or the average daily number of such students transported in the preceding school year. In computing these averages, however, the Court is directed to disregard busing resulting from the student's change in residence, his or her advancement to a higher level of education, or his or her attendance in a new school. To the extent that this section serves to define excessive busing to mean only busing directed pursuant to an order requiring racial desegregation, it is plainly discriminatory and in violation of Constitutional guarantees.

It should be noted that the prohibitions of § 403(a) apply regardless of how short the distance or time involved, or how small the number transported, so long as any one of these is greater than in the preceding year. Moreover, this section would operate to prohibit or restrict most other desegregation remedies, such as pairing, rezoning or education parks, since these usually indirectly involve some increased busing.

EEOA § 403(b) has similar provisions for students in the seventh grade or higher but provides that such transportation cannot be ordered in the absence of clear and convincing evidence that no other method set out in § 402 will provide adequate remedies. Moreover, busing orders for students in the seventh grade or higher are explicitly made subject to § 407 which provides that all such orders expire after five years. In addition, such orders must be part of a long-term plan involving the other remedies provided in § 402, and all transportation orders are to be stayed upon timely application to a court of appeals. EEOA § 403(c) contains additional language that pupil transportation shall not be ordered if it poses a risk to the health of students or constitutes a significant impingement on the educational process. This merely repeats current judicial doctrine.[1]

The assertion in the bills that transportation funds are diverted from other educational uses (STMA § 2(a)(6); EEOA § 3(a)(5)), neglects the consideration that desegregation is itself a goal of education. Moreover, it is far from clear that funds used for transportation would be used for other purposes. In varying degrees, the states reimburse local school districts for providing school transportation and, given the relatively small number of students transported because of desegregation, it is unlikely that the amount of funds "diverted" is significant.

In any event, the claim of excessiveness in desegregation of transportation does not withstand scrutiny. The Department of Transportation recently reported that the annual increase in desegregation of transportation accounts for less than 1% of the total number of students comprising the annual increase.[2] The Department of Health, Education and Welfare has estimated for the eleven southern states during 1967–1970 a 3% increase in busing for all purposes, including desegregation.[3] By any comparison, therefore, desegregation accounts for a statistically insignificant amount of transportation for the 43.5% of the total public school enrollment, or 18,975,939 pupils, transported daily.[4] Part of the reason for this minimal increase has been the reluctance of Federal courts to order busing except where it has been constitutionally required. Furthermore, desegregation often rationalizes a transportation system by eliminating segregated busing.

By asserting that transportation "impinges" on the educational process (STMA § 2(a)(2); EEOA § 3(a)(5)), the bills ignore the fact that bus transportation may enhance education by making available larger facilities for use by a greater number of students and by reducing the danger that walking may pose to younger children. A recent report of the National Safety Council indicates that the accident rate for boys transported by school bus is .03 per 100,000 student days compared with .09 for walking. For girl students, the accident rate is .03 when riding a bus and .07 when walking.[5]

EEOA §§ 101–102 permit the Department of Health, Education and Welfare to provide funds for compensatory education for disadvantaged students. These provisions clearly seek to make attractive the segregated schools perpetuated by the bill's impediments to busing. Implicit in this is a rejection of the holding of *Brown* v. *Board of Education*[6] that a segregated education is inherently unequal as a constitutional matter. Moreover, there are no reliable data which demonstrate that compensatory education is sufficient to overcome defects in educational background or to compensate for the denial of constitutional rights to desegregation.

EEOA § 202, which provides that the failure to achieve racial balance in the schools is not a denial of equal protection or equal educational opportunity, exceeds the provisions of the 1964 Civil Rights Act which merely defined "desegregation" as not meaning pupil assignment to overcome racial imbalance.[7] The bill fails to explain the distinction between a denial of "equal educational opportunity" and a denial of "equal protection". The term "balance" is also not defined.

EEOA § 203 supplements § 202 by providing that the assignment of students to neighborhood schools is not a denial of equal opportunity unless such assignment is "for the purpose of segregating students on the basis of race, color, or national origin . . ." or the school to which children are assigned was located "for the purpose of segregating students." This language appears to be at odds with constitutional requirements as outlined by the 4th Circuit Court of Appeals in *Brewer* v. *School Board of the City of Norfolk, Va.*[8]

"If residential racial discrimination exists, it is immaterial that it results from private action. The school board cannot build its exclusionary attendance areas upon private racial discrimination. Assignment of pupils to neighborhood schools is a sound concept, but it cannot be approved if residence in a neighbrhood is denied to Negro pupils solely on the ground of color." (footnotes omitted)

EEOA § 404 purports to validate lines drawn by a state, dividing its territory into separate school districts except where it is established that the lines were drawn for the purpose and have the effect of segregating children.

Only when a test requiring both wrongful purpose and effect is met can remedies under § 401 or § 402 be permitted. This would appear to mark a backward step in applying the Fourteenth Amendment. Courts have held that a consistent course of conduct resulting in segregation supports an inference of discriminary intention; in short, from the effect of segregation the Fourteenth Amendment supports an inference of wrongful purpose.[9]

It is a cornerstone of our constitutional system that Congress may not impose its interpretation of the Constitution upon the courts.[10] But just as "Congress may not authorize the States to violate the Equal Protection Clause." [11] Congress may not impose its view of a constitutional violation upon the court where that view restricts the full measure of a constitutional guarantee.

EEOA § 402 directs that in formulating a remedy "for denial of equal educational opportunity or denial of equal protection of the law", a federal court or agency may no longer simply adopt the necessary remedy but must weigh and "make specific findings on the efficacy in correcting such denial" pursuant to a descending order of preferability of various remedies, the last and least of which is pupil transportation. The vice here is that needed flexibility of the courts' traditional equity powers would be severely hampered where most or all of the specified remedies in a given case would be necessary to achieve maximum school desegregation. Plainly the severe restriction on the use of busing, without its outright prohibition, is an attempt to deal with the unanimous decision upholding busing in *North Carolina State Board of Education* v. *Swann*.[12]

In lieu of a direct ban on busing, EEOA seeks to make its utilization difficult by requiring the exhaustion of all other remedies prior to any busing. This, too, does not accord with constitutional doctrine. A unanimous court held in *Swann* v. *Charlotte-Mecklenberg Board of Education:* [13]

"Desegregation plans cannot be limited to the walk-in school. . . .

"District courts must weigh the soundness of any transportation plan in light of what is said in [this opinion] above. It hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures

Footnotes at end of article.

courts of equity have traditionally employed."

Equity's traditional powers to fashion an appropriate remedy are constitutionally compelled where the questions in issue relate to fundamental rights. A unanimous court so held in *Davis* v. *Board of School Commissioners of Mobile County:* [14]

"Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and noncontiguous attendance zones . . . The measure of any desegregation plan is its effectiveness . . .

The scheme proposed by EEOA § 402 would impose virtually insuperable barriers before complete school desegregation could be achieved. To achieve an appropriate remedy, plaintiffs would be obliged to prove the efficacy of a host of other remedies with all attendant expenses and without necessarily yielding any definitive answer. This negative feature of the EEOA is reinforced by § 305 which provides that attorneys' fees may be collected by the prevailing party other than the United States and that the United States shall be liable for costs to the same extent as a private person. Section 305 is clearly aimed at civil rights plaintiffs because § 406 provides that educational agencies may reopen a court order or desegregation plan to achieve compliance with the EEOA.

To permit the recovery of attorneys' fees against civil rights plaintiffs is to reject the rationale of Title II of the 1964 Civil Rights Act as interpreted by *Newman* v. *Piggie Park Enterprises, Inc.*[15] where the court stated that a plaintiff under Title II of that act obtains an injunction not for himself alone but also as a "private attorney general." In fact the 1964 Civil Rights Act and the 1968 Fair Housing Act provides that attorneys' fees are recoverable by plaintiffs under certain circumstances in accord with the public-interest nature of such litigation.[16]

The prospect that a plaintiff may lose a civil rights action and therefore be required to pay substantial attorneys' fees would have an "in terrorem" effect on attempts to vindicate civil rights. The problem is highlighted by other provisions of EEOA which make it likely that decrees heretofore obtained by civil rights plaintiffs will be reopened.

Moreover, to allow a court to charge attorneys' fees to an unsuccessful plaintiff is quite contrary to the spirit of American justice which has not allowed the taxation of costs so high as to discourage plaintiffs from commencing litigation to obtain what they deem to be their rights.[17]

EEOA §405 permits voluntary adoption of remedies going beyond those provided in the Act, a permission not likely to be availed of in the absence of vigorous enforcement, which this bill makes virtually impossible.

EEOA § 406 permits the reopening of court-ordered desegregation plans to conform them with the provisions of the bill. While this is arguably permissible under the usual doctrine that equity decrees are always subject to review because of change of circumstances, this is in fact an invitation to reverse the school desegregation of the past eighteen years, particularly in school districts where desegregation has long been achieved. Presumably in such districts, the alleged disadvantages of pupil transportation have long since been overcome. It is cynical in the extreme, therefore, to permit new rounds of litigation where successful adjustment to constitutional order exists.

Footnotes at end of article.

II. CONSTITUTIONALITY OF LEGISLATION IN LIGHT OF ITS EXPLICITLY RACIAL BASIS

Recent Supreme Court decisions have made it clear beyond doubt that "compensatory" discrimination in a variety of respects (pupil assignment, faculty assignment, site-selection, etc.) is not only permitted but *required* where necessary to correct the effects of past unlawful segregation.[18] Among the remedies specifically so sanctioned by the Supreme Court in its most recent opinion, in the *Swann* case, is the use of a pupil-transportation plan to achieve integration where this is not otherwise attainable.[19] As the preceding analysis of the bills indicates, there are very serious Constitutional objections to legislation of the type proposed, in the following specific respects:

A. Denial of any increased busing in certain cases

It is clear from decisions of the Supreme Court that operation by any state (or its local subdivisions) of dual educational systems for the races is a violation of the Fourteenth Amendment and that the Federal Courts are obliged to grant plaintiffs who succeed in establishing such violations remedies which effectively remove the burden of such practices from the plaintiffs and those similarly situated.[20]

It is also clear that in some cases it may be impossible to effectuate such relief without the issuance of an order which among other things calls for some modifications of and/or additions to the presently obtaining patterns of pupil transportation within the school district(s) affected.[21] Although Section 5 of the Fourteenth Amendment invests Congress with the power to implement its guarantees with appropriate legislation,[22] it cannot be seriously contended that the prohibition of busing by the proposed legislation is authorized by Section 5: the Supreme Court has stated that that Section does not include the power to *contract* the scope of the Amendment.[23] If a school system is in violation of the Fourteenth Amendment with respect to its students in the sixth grade and under, and if a judicial decree ordering a certain amount of busing (within the limits set by Chief Justice Burger for the Court in *Swann*) [24] is the appropriate remedy for such violation, it is difficult to see how any Act of Congress can validly destroy the plaintiffs' right to such a remedy. The Supreme Court has in one of the *Swann* cases held that a state may not by act of its legislature forbid the assignment of pupils on a racial basis or the transportation of pupils so assigned.[25] Chief Justice Burger, speaking for a unanimous Court, made the following statement about the need for busing as a remedy in such cases:

". . . [A]n absolute prohibition against transportation of students assigned on the basis of race, "or for the purpose of creating a balance or ratio," will . . . hamper the ability of local authorities to effectively remedy constitutional violations . . . [B]us transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance on it." [26]

The Supreme Court also has recently affirmed without opinion a three judge Federal District Court opinion to the same effect where the racial imbalance complained of was considered by the lower court to be *de facto* rather than *de jure.*[27] The Supreme Court declared in one of the original *School Desegregation Cases* [28] that the Federal government is by virtue of the due process clause of the Fifth Amendment bound equally with the states to refrain from segregation in public education. Accordingly, it seems clear that any Act of Congress with purports to deprive the Federal courts of the power to remedy Constitutional violations of the type complained of in *Swann* must be a violation of that Amendment, and therefore invalid.

B. Definition of the Scope of Equal Protection

The reasons discussed above which prevent Congress from denying to the Federal courts power to remedy particular violations of the equal protection clause appear sufficient also to render ineffective any attempt by Congress to narrow the definition of what constitutes such a violation. There are some Federal court decisions to the effect that racial imbalance within schools does constitute a violation of equal protection, whether produced by or merely passively acquiesced in by the local school authorities;[29] there are also numerous decisions holding that the assignment of students on a "neighborhood" basis does not necessarily insulate school authorities from successful attack on the ground of improper discrimination.[30] If Congress cannot limit the scope and effect of the Fourteenth Amendment in general, it certainly cannot do so by a mere declaration that certain acts do not constitute violations of that Amendment's guarantees, if the acts in question would—in the absence of such legislation—be held improper as violations of equal protection.

C. Limitations Upon, and Delay of, Court Orders of Pupil Transportation to Implement Racial Desegregation

As noted above, the Supreme Court has held that a state may not constitutionally prohibit any attempt to implement racial integration by means of pupil transportation.[31] As the Federal government is subject equally with the states to the requirement that it refrain from invidious racial distinctions in the field of education,[32] the principle of such decisions should apply equally to Acts of Congress. It might be argued that those provisions of the proposed legislation which merely stay the effectiveness of integration orders and require the courts to utilize busing only as a remedy of last resort are not the functional equivalent of such "anti-busing" statutes, because they merely impose certain procedural burdens upon the employment of such a remedy without actually prohibiting it. However, this argument is answered by another recent series of Supreme Court opinions involving racial discrimination.

In *Reitman* v. *Mulkey,*[33] the California Supreme Court had invalidated a newly-adopted provision of that state's constitution prohibiting any interference with the individual's right to dispose of his property to whomever he should in his discretion see fit, on the ground that in the context of an existing State Fair Housing Law such an amendment was designed to permit and even foster the practice of racial discrimination in the sale of property within the state. The Supreme Court upheld the California court's judgment, on the ground that it could not say that the California court had erred in finding that the state had by adopting this constitutional provision involved itself to a significant degree in private discrimination.

By itself, *Reitman* could perhaps be explained away as judicial deference to the fact-finding of a lower court. In *Hunter* v. *Erickson,*[34] however, the Court in order to reach a similar result had to reverse the Supreme Court of Ohio. The city of Akron, Ohio, had previously adopted a fair housing ordinance, generally forbidding discrimination on the ground of race or color in the scale of private housing. Later, by a majority of the voters in a general election, the city adopted a charter provision requiring that any ordinance (including the one already on the books) regulating the sale or lease of property on the basis of race or color be

approved by a majority of the voters at a general election before taking effect.

Striking down this charter provision, the Court stated plainly that the "explicitly racial classification" was the defect. The Court conceded that Akron could simply have repealed its fair housing ordinance, and that it could also validly have chosen to subject city ordinances in general to such a requirement of voter approval. What the city (which unquestionably wielded "state power," the Court noted) could *not* do was to place "special burdens" on racial minorities in securing the benefits of law under the political process. The majoritarian character of the provision did not render it immune, since as the Court pointed out "the majority needs no protection against discrimination." [35]

Although both *Reitman* and *Hunter* involved discriminatory burdens on the minority's resort to the legislature, not the courts, it appears that the time principle should apply to the proposed busing legislation. To the extent that this legislation would impose an arbitrary stay on the implementation of court orders, or require plaintiffs to bear a burden of proof not borne by plaintiffs in analogous suits not involving racial discrimination, it would appear to put members of the affected minority at a distinct disadvantage in securing their rights by the litigation process. Such a racial classification bears a "far heavier burden of justification" than is normally borne by legislation;[36] whether this burden could be met is extremely doubtful. Particularly in light of the provision which would permit the reopening of past integration orders and require their modification to comply with the proposed legislation (Section 406), the apparent intent of the proposed Equal Educational Opportunities Act—and its likely effect, whatever the intent—would appear to be the undoing of much of the remedial action taken during the last 18 years [37] and a definite impairment of future plaintiffs' ability to secure the remedies to which, under the original *School Desegregation Cases* and succeeding opinions, they may be entitled. As this would constitute a substantial intervention by the Federal government against the interests of members of racial minorities, we believe it would amount to a denial of due process of law, under the Fifth Amendment to the Constitution.

III. CONGRESSIONAL CONTROL OVER JURISDICTION OF FEDERAL COURTS

Proponents of the proposed legislation have argued that it merely restricts the jurisdiction of Federal courts, denying or limiting the use in these courts of a particular remedy, and that Congress has clear power to do this under Article III of the Constitution as well as existing case law.

Article III of the Constitution vests the judicial power of the United States in the Supreme Court "and in such inferior Courts as the Congress may from time to time ordain and establish." It provides among other things that the judicial power shall extend to "all Cases . . . arising under this Constitution." It gives the Supreme Court original jurisdiction in certain specified cases and provides that that Court shall have appellate jurisdiction "with such Exceptions and under such Regulations as the Congress shall make." The few cases arising under this Article have made it clear that the Congess has substantial power to restrict the jurisdiction of the Federal Courts, including the appellate jurisdiction of the Supreme Court. *Ex Parte McCardle*.[38] In *McCardle*, Congress had enacted a statute withdrawing jurisdiction from the Supreme Court to hear appeals in habeas corpus cases. The statute was passed during the pendency of a particular appeal, with the deliberate intent to prevent Supreme Court review of the case. The Supreme Court upheld the power of Congress to do so, and dismissed the case, citing the provisions of Article III of the Constitution, giving Congress the power to make exceptions to the Appellate jurisdiction.

But the *McCardle* case, assuming *arguendo* that it is still good law,[39] does not stand for the proposition that Congress has unlimited power to prevent the Supreme Court from considering Constitutional claims. The Supreme Court retained the power to issue writs of habeas corpus in the exercise of its original jurisdiction. The withdrawal of appellate jurisdiction therefore merely closed one avenue and did not prevent access to the Court. Indeed, within months after the *McCardle* decision the Court held that it had the power in the exercise of its original jurisdiction to resolve the substantive issues raised by the *McCardle* case. *Ex Parte Yerger*.[40]

Aside from the *McCardle* case, there appears to be little authority to support Congressional interference with the courts in enforcing the Constitution.

While the Emergency Price Control Act of 1942 prohibited the Federal District Courts from reviewing the validity of regulations made pursuant to the Act, the legislation also established a special court, the Emergency Court of Appeals, to adjudicate these controversies. Its decisions were made reviewable by the Supreme Court. That legislation was upheld because it preserved a full remedy in the Federal Courts. See *Yakus* v. *United States* [41] and *Lockerty* v. *Phillips*.[42]

The line of cases under the Norris-LaGuardia Act,[43] which declares that the Federal Courts have no "jurisdiction" to issue injunctions in certain labor disputes, do not involve Constitutional matters. That Act therefore does not purport to deny the right to an injunction to vindicate Constitutional rights.

In the present situation it is apparent that in many cases, as a practical matter, no effective alternative to busing exists in carrying out the mandate of *Brown v. Bd. of Education* [44] to desegregate schools where segregated residential patterns exist. In many such situations, the denial of busing as a remedy will constitute the denial of any effective remedy in redressing the unconstitutional condition of segregated schools. Thus, while purporting only to prohibit or restrict a particular remedy, Congress would in fact be requiring the courts to reach a particular result at odds with previous court decisions as to what is constitutionally required.

Article III has to be read with the rest of the Constitution, and, as shown above, we believe that the proposed legislation clearly violates the Fifth Amendment. Leaving aside the question of whether or not Congress may take away from an individual the opportunity to obtain a judicial determination in a Federal court of constitutional rights, it can scarcely be seriously contended that, under the guise of limiting the jurisdiction of the Federal courts, Congress may do indirectly what it may not do directly, that is, restrict the scope of the Fourteenth Amendment.

In short, as stated by Professor Bickel, the proposed legislation is "plainly aimed not at regulating jurisdiction, but at mandating a desired result. The power of Congress to regulate judicial jurisdiction has never been held to enable Congress to change specific Constitutional results. It should not be, and cannot be—not consistently with *Marbury v. Madison*." [45] It seems abundantly clear that Article III is not to be interpreted to allow such a result.

IV. POLICY CONSIDERATIONS

As is evident from the preceding analysis, the effect of the proposed bills would be not merely to "chill" the impetus towards desegregation generated by court decisions since *Brown*, but, by reopening past decrees, actually to roll back much of the progress already made. Regardless of constitutional considerations, we think that this is indefensible as a matter of public policy. The net result of such legislation could only be further to divide our nation, to encourage racial strife, and to interfere with the realization of what are generally recognized to be desirable educational goals.

While it is recognized that such is not the intention of all of the proponents of the proposed legislation, we think that this would be its essential effect. Moreover, as pointed out above, statistics show that the evil sought to be remedied—allegedly excessive busing—is more apparent than real. We think the problems which concededly may exist in particular instances with long distance or massive busing are better dealt with in individual cases than by any attempt to establish general legislative restrictions on the use thereof.

Moreover, even assuming that Congress had the constitutional power thus to constrict the jurisdiction of the Federal courts, we think such interference with the role of the judiciary is both unwarranted and unwise. It would tend to place the legislative and judicial branches in conflict, and to impair the Supreme Court's historical role as the final arbiter of constitutional matters.

CONCLUSION

We strongly oppose this legislation. Regardless of intent, it would have the effect of condoning and indeed fostering continued segregation in schools. There is no doubt that it would, in many instances, remove the only effective remedy for the violation of an individual student's constitutional rights. We think that the proposals are in violation of the Fifth Amendment to the Constitution. Moreover, we think that, even if free of constitutional infirmities, such legislation should have no place on the national agenda. Accordingly, for all of the foregoing reasons, we urge that the proposed legislation be rejected.

Dated: New York, N.Y., June 30, 1972.

Respectfully submitted,

Association of the Bar of the City of New York

Committee on Federal Legislation, Sheldon H. Elsen, *Chairman*, Mark H. Alcott, Michael F. Armstrong, Stephen E. Banner, Donald J. Cohn, Peter M. Fishbein, Peter E. Fleming, Jr., Robert L. Friedman, Richard A. Givens, George J. Grumach, Jr., Arthur M. Handler, Conrad K. Harper, Thomas V. Heyman, Charles L. Knapp, Arthur H. Kroll, David M. Levitan, Standish F. Medina, Jr., Eugene H. Nickerson, William B. Pennell Bruce Rabb, Martin F. Richman, Benno C. Schmidt, Jr., Thomas J. Schwarz, Beatrice Shainswit (Hon.), Brenda Soloff.

Committee on Civil Rights, Robert M. Kaufman, Chairman, Charles R. Bergoffen, Michael Cardozo, Jack David Raymond S. Calamoro, Simeon Golar, William S. Greenwait, Eastman Birkett, Porter R. Chandler, John R. Fernback.

Stephen J. Friedman, Murray A. Gordon, Alan U. Schwartz, Paul L. Trachtenberg, Eric L. Hirschhorn, Maria L. Marcus, Donald S. Shack, Donald J. Sullivan, Alfred J. Law, John J. Kirby, Jr., Susan F. Teich, Milton L. Williams.

FOOTNOTES

* On June 8, 1972, Congress completed action upon, and sent to the President for approval, and on June , 1972 the President approved an education bill into which there has been interpolated, in the final stages of Congressional action on the bill, certain provisions relating to busing. Among other things, these provisions would delay, until all appeals were exhausted or until July 1, 1974, the effectiveness of district court orders requiring the "transportation or transfer" of students for the "purpose of achieving a balance among students with respect to

race, sex, religion or socioeconomic status." While these provisions appear to be less restrictive than the totality of the Administration's antibusing proposals, we believe that similar Constitutional and policy objectives apply to both.

[1] Swann v. Charlotte—Mecklenburg Bd. of Educ., 402 U.S. 1, 30–31 (1971).

[2] U.S. Dept. of Transportation, Report on School Busing 1 (March 24, 1972).

[3] HEW Memorandum from Constantine Menges to Christopher Cross 3 (March 30, 1972).

[4] Id. at 1.

[5] National Safety Council, Accident Facts 90–91 (1971 ed.).

[6] 347 U.S. 483 (1954).

[7] 42 U.S.C. § 2000c(b) (1964).

[8] 397 F. 2d 37, 41–42 (4th Cir. 1968) (en banc).

[9] Brewer v. School Board of City of Norfolk note 8, *supra;* Spangler v. Pasadena City Board of Education, 311 F. Supp. 501, 522 (C.D. Calif. 1970); Davis v. School District of City of Pontiac, 443 F. 2d 573 (6th Cir.), cert. denied, 404 U.S. 913 (1971).

[10] Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

[11] Shapiro v. Thompson, 394 U.S. 618, 641 (1969).

[12] 402 U.S. 43, 46 (1971).

[13] Note 1, supra.

[14] 402 U.S. 33, 37 (1971).

[15] 390 U.S. 400, 402 (1968).

[16] 42 U.S.C. §§ 2000a–3(b) and 2000e–5(k) (1964): 41 U.S.C. § 3612(c) (Supp. 1970).

[17] Farmer v. Arabian American Oil Co., 379 U.S. 227, 235 (1964).

[18] United States v. Montgomery County Bd. of Educ., 395 U.S. 225 (1969); Swann v. Charlotte-Mecklenburg Bd. of Educ., Note 1, supra; Davis v. Board of School Comm'rs of Mobile County, Note 13, supra (1971); McDaniel v. Barresi, 402 U.S. 39 (1971).

[19] Swann v. Charlotte-Mecklenburg Bd. of Educ., Note 1, supra.

[20] Note 8, supra.

[21] Note 9, supra.

[22] This section was applied in Katzenbach v. Morgan, 384 U.S. 641 (1966), to uphold The Voting Rights Act of 1965.

[23] Id. at 651, n. 10 (Brennan, J., for the Court); Oregon v. Mitchell, 400 U.S. 112, 128–29 (1970) (Black, J., for the Court).

[24] Swann v. Charlotte-Mecklenburg Bd. of Educ., Note 1, supra at 29–31 (1971).

[25] North Carolina State Bd. of Educ. v. Swann, Note 12, supra (1971).

[26] Id at 46.

[27] Lee v. Nyquist, 318 F. Supp. 710 (W.D. N.Y. 1970), was affirmed by the Court without opinion, 402 U.S. 935 (1971); three Justices (Burger, C. J., Black and Harlan) voted to note probable jurisdiction and set the case for argument.

[28] Bolling v. Sharpe, 347 U.S. 497, 500 (1953):

"In view of our decision that the Constitution prohibited the states from maintaining racially segregated public schools, it would impose a lesser duty on the Federal Government." (Warren, C.J., for the Court.)

[29] Holland v. Board of Pub. Instruction of Palm Beach County, 258 F. 2d 730 (5th Cir. 1958); Barksdale v. Springfield School Comm., 237 F. Supp. 543 (D. Mass. 1965), vacated and remanded for dismissal, 348 F. 2d 261 (1st Cir. 1965); Blocker v. Board of Educ. of Manhasset, 226 F. Supp. 208 (E.D.N.Y. 1964); Branche v. Board of Educ. of the Town of Hempstead, School Dist. No. 1, 204 F. Supp. 150 (E.D.N.Y. 1962). The Supreme Court has not yet passed on this question of the Constitutionality of racial imbalance not resulting from *de jure* segregation.

[30] Davis v. School Comm'rs of Mobile County, 402 U.S. 33 (1971) (previous *de jure* segregation); an example from the lower Federal courts is Dowell v. School Bd. of Okla. City, Pub. Schools, 244 F. Supp. 971 (W.D. Okla. 1965).

[31] Notes 25, 26 and 27, supra.

[32] Note 28, supra.

[33] 387 U.S. 369 (1967).

[34] 393 U.S. 385 (1969).

[35] Id. at 391. The importance of the racial factor in Reitman and Hunter is emphasized by the Court's decision in James v. Valtierra, 402 U.S. 137 (1971), where no violation of equal protection was found in a referendum provision designed to discourage low-income public housing; the Court in its opinion in James stressed the absence of the racial factor, and declined to extend Hunter to nonracial discrimination. Id. at 141. Justices Marshall, Brennan and Blackmun dissented.

[36] McLaughlin v. Florida, 379 U.S. 184, 194 (1964).

[37] Acting Attorney General Kleindienst testified before the Senate Judiciary Committee on April 12, 1971, that the proposed legislation would "permit the reopening of every school desegregation case in the country," according to The New York Times New York Times, April 13, 1972, at 1, col. 1.

[38] 74 U.S. (7 Wall.) 506 (1869).

[39] The *McCardle* case has been criticized in recent years. See *Glidden Company* v. *Zdanok*, 370 U.S. 530, 605 n. 11 (1962) (Douglas, J. dissenting).

[40] 8 Wall. 85 (1869).

[41] 321 U.S. 414 (1944).

[42] 319 U.S. 182 (1943).

[43] 29 U.S.C. §§ 101–115.

[44] 347 U.S. 483 (1954).

[45] Bickel, What's Wrong with Nixon's Busing Bills?, The New Republic, April 22, 1972, at 21.

COMMENTS ON LABOR-HEALTH, EDUCATION, AND WELFARE APPROPRIATIONS BILL

Mr. PROXMIRE. Mr. President, so that my colleagues may see exactly how the Labor-Health, Education, and Welfare appropriation bill would help libraries in their States I ask unanimous consent to insert in the RECORD at this point a summary of what each State would receive under the various library programs if this bill is enacted into law:

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

OFFICE OF EDUCATION, LIBRARY RESOURCES

TITLE I.—LIBRARY SERVICES AND CONSTRUCTION ACT GRANTS FOR LIBRARY SERVICES

	1972 appropriation [1]	1973 estimate [1]	Conference report [1]
Total	$46,568,500	$30,000,000	$62,000,000
Alabama	810,520	524,744	1,059,361
Alaska	252,774	228,491	275,396
Arizona	509,562	367,124	642,256
Arkansas	535,902	381,344	679,885
California	3,684,797	2,081,346	5,178,548
Colorado	585,796	408,119	750,738
Connecticut	729,574	485,902	956,575
Delaware	295,726	251,680	336,759
Florida	1,385,770	840,165	1,894,048
Georgia	1,001,565	632,743	1,345,154
Hawaii	334,465	272,594	392,103
Idaho	324,526	267,228	377,904
Illinois	2,141,046	1,247,917	2,973,071
Indiana	1,107,070	689,702	1,495,883
Iowa	693,391	466,368	904,882
Kansas	592,798	412,061	761,170
Kentucky	762,250	503,543	1,003,257
Louisiana	836,278	543,509	1,109,017
Maine	373,542	293,691	447,931
Maryland	885,043	569,836	1,178,686
Massachusetts	1,193,608	736,422	1,619,517
Michigan	1,750,025	1,036,816	2,414,440
Minnesota	864,552	558,773	1,149,411
Mississippi	587,182	409,029	753,146
Missouri	1,016,903	641,024	1,367,068
Montana	321,278	265,475	373,263
Nebraska	459,143	339,904	570,224
Nevada	$285,358	$246,082	$321,946
New Hampshire	328,835	269,555	384,060
New Jersey	1,451,913	875,874	1,988,543
New Mexico	377,443	295,797	453,504
New York	3,376,997	1,915,172	4,738,809
North Carolina	1,087,577	679,178	1,468,035
North Dakota	307,891	258,248	354,139
Ohio	2,060,365	1,204,360	2,857,807
Oklahoma	646,971	441,307	838,565
Oregon	565,258	397,193	721,826
Pennsylvania	2,259,795	1,312,027	3,142,723
Rhode Island	365,868	289,548	436,967
South Carolina	652,431	444,255	846,365
South Dakota	316,361	262,820	366,239
Tennessee	885,352	570,003	1,179,126
Texas	2,155,499	1,255,720	2,993,719
Utah	385,001	299,877	464,301
Vermont	277,672	241,933	310,966
Virginia	1,011,855	638,298	1,359,855
Washington	795,408	521,445	1,050,629
West Virginia	504,629	364,461	635,208
Wisconsin	971,588	616,559	1,302,328
Wyoming	258,056	231,343	282,942
District of Columbia	332,124	271,330	388,758
American Samoa	44,850	42,618	46,776
Guam	55,182	48,196	61,208
Puerto Rico	673,654	455,713	876,685
Trust Territory	57,743	49,579	62,691
Virgin Islands	51,038	45,959	55,587

[1] Estimated distribution of funds with a minimum allotment of $200,000 to the 50 States, District of Columbia, and Puerto Rico, and $40,000 to the other outlying areas; the remainder distributed on the basis of total resident population, April 1, 1970. Required matching expenditures computed on the basis of fiscal year 1972–73 "Federal Share" percentages.

OFFICE OF EDUCATION, LIBRARY RESOURCES

TITLE II.—LIBRARY SERVICES AND CONSTRUCTION ACT CONSTRUCTION OF PUBLIC LIBRARIES

	1972 appropriation [1]	1973 estimate	Conference report [2]
Total	$9,500,000		$15,000,000
Alabama	170,495		262,383
Alaska	106,185		114,247
Arizona	136,279		183,568
Arkansas	139,366		190,678
California	508,399		1,040,735
Colorado	145,178		204,066
Connecticut	162,063		242,961
Delaware	111,219		125,842
Florida	238,966		420,104
Georgia	193,939		316,386
Hawaii	115,759		136,299
Idaho	114,594		133,616
Illinois	327,480		623,994
Indiana	206,304		344,867
Iowa	157,823		233,193
Kansas	146,034		206,038
Kentucky	165,893		251,782
Louisiana	174,568		271,766
Maine	120,338		146,849
Maryland	180,283		284,931
Massachusetts	216,445		368,229
Michigan	281,654		518,436
Minnesota	177,882		279,399
Mississippi	145,376		204,521
Missouri	195,737		320,527
Montana	114,213		132,740
Nebraska	130,370		169,957
Nevada	$110,003		$123,043
New Hampshire	115,099		134,780
New Jersey	246,717		437,960
New Mexico	120,795		147,902
New York	472,327		957,643
North Carolina	204,019		339,605
North Dakota	112,644		129,126
Ohio	318,025		602,214
Oklahoma	152,383		220,662
Oregon	142,806		198,603
Pennsylvania	341,396		656,051
Rhode Island	119,439		144,777
South Carolina	153,022		222,136
South Dakota	113,637		131,412
Tennessee	180,319		285,014
Texas	329,174		627,896
Utah	121,681		149,942
Vermont	109,103		120,968
Virginia	195,145		319,164
Washington	169,779		260,733
West Virginia	135,701		182,236
Wisconsin	190,426		308,294
Wyoming	106,804		115,673
District of Columbia	115,484		135,667
American Somoa	20,568		21,280
Guam	21,779		24,007
Puerto Rico	155,510		227,865
Trust Territory	21,294		24,288
Virgin Islands	22,079		22,945

[1] Distribution of $9,500,000 with a minimum allotment of $100,000 to the 50 States, District of Columbia, and Puerto Rico, and $20,000 to the outlying areas; the remainder distributed on the basis of the total population, Apr. 1, 1970 (preliminary).

[2] Distribution of $15,000,000 with a minimum allotment of $100,000 to the 50 States, District of Columbia, and Puerto Rico, and $20,000 to the outlying areas; the remainder distributed on the basis of the total population, Apr. 1, 1970 (revised).

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE—OFFICE OF EDUCATION, LIBRARY RESOURCES

TITLE III.—LIBRARY SERVICES AND CONSTRUCTION ACT—INTERLIBRARY COOPERATION

State and outlying areas	1972 appropriation [1]	1973 estimate [1]	Conference report [1]	State and outlying areas	1972 appropriation [1]	1973 estimate [1]	Conference report [1]
Total	$2,640,500	$2,730,000	$7,500,000	Nevada	$41,234	$41,446	$52,754
Alabama	48,695	50,190	129,879	New Hampshire	41,862	42,183	59,250
Alaska	40,763	40,894	47,885	New Jersey	58,096	61,208	227,060
Arizona	44,475	45,244	86,255	New Mexico	42,565	43,006	66,513
Arkansas	44,855	45,690	90,190	New York	85,923	93,820	514,704
California	90,372	99,034	560,695	North Carolina	52,830	55,036	172,621
Colorado	45,572	46,530	97,600	North Dakota	41,560	41,828	56,121
Connecticut	47,655	48,971	119,129	Ohio	66,891	71,515	317,974
Delaware	41,384	41,622	54,303	Oklahoma	46,461	47,572	106,786
Florida	57,140	60,087	217,177	Oregon	45,280	46,188	94,577
Georgia	51,587	53,579	159,769	Pennsylvania	69,774	74,894	347,773
Hawaii	41,944	42,278	60,092	Rhode Island	42,398	42,180	64,784
Idaho	41,800	42,110	58,607	South Carolina	46,540	47,664	107,602
Illinois	68,058	72,882	330,030	South Dakota	41,682	41,971	57,387
Indiana	53,112	55,366	175,534	Tennessee	49,907	51,610	142,405
Iowa	47,132	48,358	113,722	Texas	68,266	73,127	332,189
Kansas	45,678	46,654	98,692	Utah	42,674	43,134	67,643
Kentucky	48,127	49,525	124,011	Vermont	41,123	41,316	51,606
Louisiana	49,197	50,779	135,072	Virginia	51,735	53,753	161,307
Maine	42,509	42,940	65,931	Washington	48,607	50,086	128,965
Maryland	49,902	51,605	142,359	West Virginia	44,403	45,161	85,517
Massachusetts	54,363	56,832	188,464	Wisconsin	51,153	53,071	155,290
Michigan	62,405	66,258	271,604	Wyoming	40,839	40,983	48,675
Minnesota	49,606	51,258	193,297	District of Columbia	41,910	42,238	59,742
Mississippi	45,597	46,559	97,852	American Samoa	10,070	10,082	10,709
Missouri	51,808	53,839	162,061	Guam	10,219	10,257	12,218
Montana	41,753	42,055	58,121	Puerto Rico	46,847	48,024	110,773
Nebraska	43,746	44,390	78,721	Trust Territory	10,256	10,301	12,373
				Virgin Islands	10,160	10,187	11,630

[1] Estimated distribution of funds with a minimum allottment of $40,000 to the 50 States, District of Columbia, and Puerto Rico, and the $10,000 to the other outlying areas; the remainder distributed on the basis of total resident population, Apr. 1, 1970. The Federal shares is 100 percent.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE—OFFICE OF EDUCATION, LIBRARY RESOURCES

TITLE II.—ELEMENTARY AND SECONDARY EDUCATION ACT SCHOOL LIBRARY RESOURCES

State and outlying areas	1972 appropriation [1]	1973 estimate [2]	Conference report [2]	State and outlying areas	1972 appropriation [1]	1973 estimate [2]	Conference report [2]
Total	$90,000,000	$90,000,000	$100,000,000	Kentucky	$1,348,968	$1,352,354	$1,502,616
Alabama	1,460,724	1,418,801	1,576,446	Louisiana	1,681,489	1,655,142	1,839,047
Alaska	135,215	139,291	154,768	Maine	460,371	460,638	511,820
Arizona	768,689	792,454	880,504	Maryland	1,740,544	1,778,776	1,976,418
Arkansas	807,949	809,699	899,666	Massachusetts	2,364,332	2,388,192	2,653,547
California	8,564,292	8,600,381	9,555,979	Michigan	4,252,744	4,146,542	4,607,269
Colorado	990,955	1,003,301	1,114,779	Minnesota	1,814,858	1,790,212	1,989,124
Connecticut	1,300,672	1,327,073	1,474,526	Mississippi	1,017,833	946,480	1,051,644
Delaware	255,228	256,300	284,778	Missouri	2,115,431	2,049,233	2,276,926
Florida	2,554,308	2,622,351	2,913,723	Montana	328,651	325,253	361,392
Georgia	1,949,172	1,924,921	2,138,801	Nebraska	658,196	638,354	709,282
Hawaii	352,543	355,708	395,231	Nevada	218,942	226,416	251,573
Idaho	321,960	323,922	359,913	New Hampshire	316,168	326,695	362,994
Illinois	4,830,114	4,834,821	5,372,023	New Jersey	2,993,829	3,057,083	3,396,759
Indiana	2,311,952	2,310,548	2,567,276	New Mexico	510,703	511,032	567,813
Iowa	1,285,267	1,268,482	1,409,424	New York	7,408,582	7,343,552	8,159,503
Kansas	966,108	947,185	1,052,428	North Carolina	2,063,424	2,069,406	2,299,340
				North Dakota	282,965	275,377	305,974

State and outlying areas	1972 appropriation [1]	1973 estimate [2]	Conference report [2]
Ohio	$4,737,404	$4,754,550	$5,282,833
Oklahoma	1,076,331	1,091,264	1,212,516
Oregon	874,006	875,475	972,750
Pennsylvania	4,896,472	4,975,170	5,527,967
Rhode Island	386,997	396,958	441,064
South Carolina	1,134,518	1,125,332	1,250,369
South Dakota	313,952	305,768	339,742
Tennessee	1,580,795	1,594,892	1,772,102
Texas	4,960,462	5,037,176	5,596,863
Utah	527,142	526,457	584,952
Vermont	197,886	202,468	224,964
Virginia	1,940,673	1,939,360	2,154,844
Washington	$1,495,705	$1,485,090	$1,650,100
West Virginia	709,655	705,179	783,532
Wisconsin	2,094,174	2,074,956	2,305,507
Wyoming	154,056	153,539	170,599
District of Columbia	291,472	285,269	316,966
American Samoa	30,000	30,000	30,000
Guam	67,596	73,459	81,342
Puerto Rico	1,841,850	1,847,346	2,045,600
Trust Territories	83,812	86,754	96,064
Virgin Islands	38,850	30,000	43,693
Bureau of Indian Affairs	133,014	127,563	142,325

[1] Estimated distribution of funds to the 50 States and District of Columbia on the basis of total estimated public and nonpublic elementary and secondary school enrollment, fall 1969; 2.5 percent of the 50 States and District of Columbia amount distributed to the outlying areas on the basis of total public and nonpublic elementary and secondary school enrollment, fall 1969, with a minimum of $30,000.

[2] Estimated distribution of funds to the 50 States and District of Columbia on the basis of total estimated public and nonpublic elementary and secondary school enrollment, fall 1970, 2.5 percent of the 50 States and District of Columbia amount distributed to the outlying areas on the basis of total estimated public and nonpublic elementary and secondary school enrollment, fall 1970 except American Samoa, public school, fall 1969; B.I.A., fiscal year 1970; Trust Territory, nonpublic school enrollment, fiscal year 1969. Outlying areas each receive a minimum of $30,000.

SUPPORT FOR NATIONAL PARK SERVICE DIRECTOR HARTZOG

Mr. HANSEN. Mr. President, the Director of the National Park Service has been accused of degrading the Park Service. I would like to express my support for George Hartzog and the work he has done as Park Service Director. The position of Park Service Director is primarily that of a manager, and I believe George Hartzog has emphatically shown his managerial expertise.

A park service director must tread the delicate balance between increasing the use of the parks for the pleasure of the public, and at the same time be flexible enough to have a viable response to environmental problems. George Hartzog has demonstrated that he is equal to the challenges a park director must face.

George Alderson, who is legislative director of the "Friends of the Earth," recently released to the press a letter that he had written to Secretary Rogers C. B. Morton taking issue with the handling of the National Park Service by Director Hartzog.

Mr. President, so that Senators can be apprised of the response to the points that Mr. Alderson made in his letter, I ask unanimous consent that both Mr. Alderson's original letter and Secretary Morton's response be printed in the RECORD at this point.

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

FRIENDS OF THE EARTH,
Washington, D.C., June 6, 1972.

Hon. ROGERS C. B. MORTON,
Secretary of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: The National Park Service is going downhill fast, and taking the national parks with it. Ever since George Hartzog was appointed Director, there has been a trend away from protection of the parks. Instead of working with us, Mr. Hartzog is constantly working against us, and against the public interest in the national parks. We will cite some examples:

1. Instead of actively seeking protection of the national parks under the Wilderness Act, Mr. Hartzog has tried every trick to sabotage the Wilderness Act and keep the parks out of the Wilderness System. Even now, after being overruled by the Nixon Administration on his ill-advised "wilderness enclaves" policy, Mr. Hartzog has let his top assistants agitate against the new policy. The Hartzog policy would leave areas of 3 acres to 400 acres unprotected in the middle of the wilderness.

2. In one of the newest national parks, the North Cascades (Washington State), Mr. Hartzog seeks to intrude upon the wilderness with two tramways—of which there are none in existing national parks—and with mountain hotels to be operated by private concessioners.

3. In Mammoth Cave National Park (Kentucky), Mr. Hartzog favors no wilderness protection at all, and he has allowed the concessioner there to stir up local opposition to the wilderness proposals of citizen conservation groups and to agitate for more developments inside this small national park.

4. In many national parks, Mr. Hartzog wants to open "motor nature trails," which would only establish auto traffic in wild areas where there are no cars now, despoiling the wilderness that the National Park Service should be protecting.

5. Mr. Hartzog has allowed the concessioners—private businesses operating tourist facilities in the parks—to keep their business affairs a secret from the public. Requests by us to see the financial reports filed with the National Park Service have been turned down, despite the fact that these are businesses operating under contract with the U.S. government.

6. Mr. Hartzog has made political deals involving the giveaway of lands in the National Park System for totally incompatible purposes—such as the Alexandria waterfront high-rise development, the use of national memorial grounds in Washington, D.C., for freeways, and the deletion of Dry Mesa from Arches National Monument (Utah).

7. Mr. Hartzog is seeking to abolish park rangers, and turn the management of the parks over to mere administrators. Mr. Hartzog, himself never a ranger, is prime evidence that this will hurt the parks. The National Park Service should be staffed and run by professionals who understand ecology, and who will put their love for the land above political wheeling and dealing.

8. The Hartzog personnel policy has resulted in such rapid transfer of rangers and park superintendents that most parks are being run by people who have no more than a passing acquaintance with their areas. Superintendents often are being transferred after only one to three years at a park. The rapid-transfer policy prevents rangers and superintendents from learning about the lands in their charge, and discourages them from caring about those lands.

9. The use of transfers as a reprisal technique also discourages park employees from trying to save the parks. If a park naturalist, like one at Glacier National Park earlier this spring, warns against practices and developments that will hurt the park, he can be transferred to Omaha the next day. The reprisal technique is hurting the parks, and it is also breaking down the esprit de corps that has always made the National Park Service a great agency.

Mr. Secretary, it is time for a change of leadership in the National Park Service. Mr. Hartzog is intentionally letting the national parks be destroyed through piecemeal development. In contrast, the employees down the line care about the parks and want to save them for public use. Please give them, and the public, a new Director drawn from the ranks of the National Park Service, who will defend the parks, and not let them be frittered away for political expediency.

Sincerely,

GEORGE ALDERSON,
Legislative Director.

DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 27, 1972.

Mr. GEORGE ALDERSON,
Legislative Director, Friends of the Earth,
Washington, D.C.

DEAR MR. ALDERSON: I reject your belief that the Director of the National Park Service has been working "against the public interest." The National Park System has experienced a great period of expansion under Director Hartzog's determined leadership. Throughout this period the goals of the National Park Service have been met.

I would like to address your complaints in the order that you present them in your recent letter.

1. Recent changes in our guidelines for preparing wilderness proposals will result in changes in our maps and the deletion of most management zones but the basic management practice for which the management zones were originally established will not be changed. Those areas not designated wilderness will not be unprotected as you stated but will continue to be protected by the National Park Service as they have in the past.

2. The National Park Service is charged with interpreting the natural areas in our parks as well as protecting them. Tramways are one method of enabling large numbers of our citizens to enter this unique area and experience its natural wonders without seriously degrading the area. This certainly fits in with the recommendation from conservation groups asking that we restrict the use of cars in the National Parks and utilize other transit systems.

I assume you do not want to prevent all who do not backpack from seeing the North Cascades National Park. The location of any tramway would necessitate a careful site plan, the preparation of a 102 statement and Congressional approval.

3. There is no area in Mammoth Cave National Park that does not show evidences of human habitation. Perhaps, if it continues to receive the protection the National Park Service has given it in the past, it will regain its primitive nature, as Shenandoah has, and

could qualify as wilderness. Until this occurs we will recommend against wilderness designation for Mammoth Cave National Park.

4. Motor Nature Trails can be an effective way of enabling park visitors to see our national parks. There is reason to reject their use in many areas but they have their place and will not be rejected categorically.

5. Regarding paragraph 5, upon the advice of the Solicitor's Office, the National Park Service has consistently refused to divulge annual financial reports submitted by concessioners who provide visitor services and facilities in National Park Service areas pursuant to contractual arrangements. The Solicitor's Office has informed us that, in its opinion, the disclosure of such financial data is forbidden by the provisions of 18 U.S.C., Section 1905, and the reports containing the data come within the third and fourth exemptions of Subsection (b) of Section 552, United States Code (commonly referred to as the Freedom of Information Act). As you may be aware, this matter is presently being litigated in the United States District Court for the District of Columbia in the case *National Park and Conservator Association* v. *Morton, et al.*, and we will, of course, be guided in the future by the Court's determination on this question.

6. The Congress requested the National Park Service to study the Alexandria Waterfront. I have personally been involved with every state of the Alexandria Waterfront dispute and vehemently object to the inference that a "political deal" on Alexandria Waterfront has been made. The Congress will clearly spell out its intent and I will follow that intent to the letter of the law.

7. Mr. Hartzog is not abolishing the Ranger Force. The Park System requires more than ecological knowledge; it demands managerial expertise. Obviously, what is needed is a balanced mixture of employees throughout the Park System.

8. The transfers of rangers and park superintendents were necessitated by expansion and normal retirement. Director Hartzog assures me that this situation is stabilizing and that I can anticipate less rapid shifts of personnel. I favor shifts to avoid the "home park syndrome" but look forward to a period of longer service at the various sites of the System.

9. The Glacier situation has been blown totally out of perspective by highly inaccurate and inflammatory articles.

A superintendent deserves and must count on the support of his fellow Park Service employees. This is the backbone for all effective organizations. Appeals of decisions can be made through legal and well understood channels. Loyalty to the System does not mean accepting abuses, but there is no excuse for willfully disregarding accepted standards of conduct.

Your unsupported allegation that Mr. Hartzog is intentionally destroying the National Parks is totally and absolutely rejected by this office. We recognize that National Park management must undergo change in response to the environmentally degrading forces of our growing population. I believe the present National Park Service administration has the expertise and desire to solve the problems caused by these forces and accomplish the goals as set forth by Congress.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask that morning business be concluded.

The PRESIDING OFFICER. If there is no further business, morning business is concluded.

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.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The pending question is on amendment No. 1418, offered by the Senator from Arizona, on which there shall be 2 hours of debate, to be equally divided and controlled between the Senator from Arizona (Mr. FANNIN) and the manager of the bill.

Mr. ROBERT C. BYRD. Mr. President, if the Senator from Arizona will yield, I ask unanimous consent that the time on amendment No. 1418, offered by the Senator from Arizona, be reduced from 2 hours to 1 hour, to be equally divided and controlled as previously ordered.

I might state that this request has been cleared.

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

Mr. FANNIN. Mr. President, my amendment would strike paragraph 3 of section 4 of S. 2507. This paragraph gives the Secretary of the Treasury the authority to promulgate new regulations in addition to the ones that are provided in this bill. Paragraph 3 reads as follows:

(3) the handgun model also meets such additional standards as the Secretary may by regulation promulgate, after consultation with the Chief of Army Ordnance and the Secretary of Commerce, if the Secretary has determined that changes in the technology or manufacture of handguns, or actions tending to circumvent the intent of this subsection (which is to allow the approval of only those handgun models which are generally recognized as particularly suitable for sporting purposes), have rendered inadequate the standards set forth in paragraphs (1) and (2) of this subsection: *Provided*, That under no circumstances may any such regulation be promulgated which would permit the approval for sale or delivery of any handgun model which could not have been approved in the absence of such regulation.

Let me state emphatically that I share the concern of most Members of this Congress who want to stop the manufacture and sale of guns known as Saturday night specials. These guns have been very appropriately described as "small, lightweight, easily concealable, dangerous, and cheap handguns which have no legitimate sporting purpose."

Five pages of this bill are devoted to setting elaborate standards which would make it illegal to manufacture or sell "small, lightweight, easily concealable, dangerous, and cheap handguns." These standards are not only adequate to eliminate the Saturday night specials, but they go much further and most likely eliminate some legitimate, safe guns which have a legitimate sporting purpose.

The standards set forth in this bill are more than adequate without giving the Secretary of the Treasury carte blanche to promulgate additional regulations.

Section 4(n) of the proposed bill would establish the standards a handgun must meet before the Secretary of Treasury could approve its sale. Section 4(n)1 sets forth an elaborate point system for pistols, the purpose of which is to weed out cheap and readily concealable handguns that are loosely referred to as "Saturday night specials." Section 4(n)2 is a similar type point system for revolvers and includes the so-called drop test.

Despite these complex and elaborate statutory standards to determine the suitability of handguns, section 4(n)3 would grant to the Secretary of the Treasury the power to promulgate by regulation any additional standards he may deem necessary or desirable "if the Secretary has determined that changes in the technology or manufacture of handguns, or actions tending to circumvent the intent of this subsection * * * have rendered inadequate the standards set forth in paragraphs (1) and (2)."

The only check on this discretionary, carte blanche power is that the Secretary must consult with the Chief of Army Ordnance and the Secretary of Commerce.

This carte blanche provision should be deleted from the bill because:

First. The legitimate manufacturers of quality handguns, who have large investments in plant and equipment and who employ thousands of skilled employees, would not know from day to day whether already complex standards will be changed arbitrarily in a fashion that technically disqualifies a legitimate product. Section 4(n)3 would create an intolerable uncertainty that would discourage investment and production. There is no provision for legitimate manufacturers to have any voice in the promulgation of these unknown additional standards and review of such standards even if that possibility existed, would be expensive and time consuming during which time their product would be banned from commerce.

Second. Congress would in effect surrender its control if, having established technical standards in the law, these could be changed or eliminated by discretionary promulgation of new and different standards by the Secretary of the Treasury.

Thus section 4(n)3 which appears at page 8, lines 16–25 and page 9, lines 1–4 of the committee print of S. 2507—June 27, 1972, versions—should be deleted.

Paragraph 3 is not only unnecessary but inconsistent with the purposes of this legislation.

We hear a lot of talk about loopholes these days.

This bill was proposed to close an unexpected loophole in the 1968 Gun Control Law. It is intended, we are told, to stop the practice whereby parts for cheap guns are imported and then assembled in the United States to circumvent the intent of the 1968 law.

As I have said, I am in sympathy with this intent.

But I believe subparagraph 3n takes us much, much further down the road.

We are, in effect, giving the Secretary of the Treasury virtual power to outlaw the manufacture of all handguns. He could conceivably change the regulations we have set forth in the bill so that it would be impossible to manufacture a legal handgun within the United States.

Even if we assume that no Secretary of the Treasury would ever go that far, we still have problems created by this paragraph of the bill.

What about the uncertainty that is inevitable as a result of this paragraph?

No legitimate manufacturer could be certain that the guns he plans to put on the market in coming years would meet any additional standards set by the Secretary.

It also seems to me that we owe our citizens who are buying handguns for legitimate purposes some assurance that what they buy today would not be illegal tomorrow.

Passage of my amendment would remove uncertainty, it would give some consistency to the legislation, and it would ease the mind of law-abiding sportsmen who fear that there is a "hooker" in this bill—a provision that will go much, much further than sponsors of this bill have advertised.

Mr. President, the argument has been put forward that the Secretary of the Treasury should have the authority to change the regulations because of possible advances in technology. I reject this argument. There have not been any major changes in technology in several decades which would have any impact on the legislation before us. If there are changes in technology, I would have to say they are much more likely to be of a nature that would call for a reduction of some of the standards that we have set rather than a stiffening of the regulations. So paragraph 3n, of course, gives the Secretary the power to promulgate more stringent regulations—not reduce the specifications.

Furthermore, what if there should be some great new strides in handgun technology? There is nothing that precludes the Congress from updating the regulations next month, next year, or at any other time. I am certain that we do not intend to pass this law, then turn our backs and walk away from the issue of firearms use once and for all. It is my experience that each year there are new proposals for gun control legislation, so I do not believe this will be our final consideration of the matter.

Mr. President, I believe we should agree to this amendment to remove an inconsistent paragraph from the bill. I feel the adoption of the amendment would be very beneficial.

Mr. President, I reserve the remainder of my time.

Mr. BAYH. Mr. President, I will use some of my time to enter into a colloquy with the distinguished Senator, my friend and colleague from Arizona.

Mr. FANNIN. If the Senator so desires I would be very pleased to do so.

Mr. BAYH. I know the Senator from Arizona is very sincere in expressing the concern that he has expressed. These concerns are not new to the Senator from Indiana and I think it is important that they be discussed.

But I suggest to my friend from Arizona that if one would read the language in the light of the intent of the authors of the bill, and the committee that reported the bill, perhaps the concerns of the Senator at this moment might be somewhat relieved.

The specific language is as the Senator read, with only slight additions which I think indicate what the standards to be applied by the Secretary are going to be. The words are:

> If the Secretary has determined that changes in the technology or manufacture of handguns, or actions tending to circumvent the intent of this subsection (which is to allow the approval of only those handgun models which are generally recognized as particularly suitable for sporting purposes), have rendered inadequate the standards set forth in paragraphs (1) and (2) of this subsection.

It would seem to me that that language, first of all, specifically states that the Secretary can only consult with the Chief of Army Ordnance and the Secretary of Commerce if he has determined that there is either a change in technology or actions tending to circumvent the intent of the subsection, the sporting purposes test.

In order to relieve the concern of legitimate firearm manufacturers and citizens that we are slipping something over on them, we go back to paragraphs (1) and (2) which enumerate in detail the criteria of the sporting purpose test.

Mr. FANNIN. I say to the Senator from Indiana that I know of his sincerity and I agree with him in part but let us go to the point the Senator from Indiana makes. It still gives the Secretary the power to promulgate regulations. This is a tremendus power that is unchecked.

Congress is asked to abdicate its responsibility. The Secretary would obtain legislative prerogatives.

Mr. BAYH. The Secretary "may" revise the criteria if those criteria are not useful as a result of advanced changes in technology. I do not know what that means because I cannot envision what would happen—perhaps, if there is some action taken which is specifically designed to contravene the clear intent of the bill. The best example I can find is one which is not specifically on the point, I admit, but it is something that is going on that has been of clear concern to me and to my friend from Nebraska, and he is on the opposite side of this measure by the Senator from Indiana. But we are both deeply concerned about one particular foreign manufacturer. That foreign manufacturer today is shipping into this country a weapon which under the 1968 act was clearly prohibited as a Saturday night special under the criteria laid down by the Secretary. This ingenious foreign exporter ships the same doggone weapon, but he has changed it by a couple of inches on the barrel. He shipped it into Florida where they have a hacksaw operation. When the gun comes in, the barrel is zipped off, and when it goes on the market it is the same type weapon that was prohibited under the 1968 act. That is a clear violation of the intent of Congress.

We dealt with that, thanks to the cooperation and assistance of the Senator from Nebraska. We made it a violation of Federal law to saw off the barrel of a pistol, just as we had earlier made it a violation to saw off the barrels of shotguns.

But it is that kind of ingenious attempt to get around the obvious intent of the law that we are concerned with.

Mr. FANNIN. I would say to the Senator that he has just given the reasons why this is unnecessary. We have made the changes necessary to correct that situation. Congress can certainly do that in the future. There is no reason why we should delegate our responsibility to the Secretary of the Treasury. We certainly have the power to change the law. I do not see that there is any argument because the Senator agrees we have already made that change that was necessary in the law.

Mr. BAYH. But let me point out that in using that as an example, it is not an example specifically on point, and we are trying to suggest that if something like that happens we should not have to come back here and change the law, but we give the Secretary an opportunity to change those criteria himself. That is our effort. It is tied clearly to the fact that any change which the Secretary makes must be authorized by the specific wording of the amendment that the Senator seeks to delete, directed to those changes which go to the characteristics of the firearm in a gun which may be particularly suitable for sporting purposes. That is the whole sporting purpose test.

Also, we strictly limit the Secretary's authority to changes which meet the criteria in sections 1 and 2. That is precisely why we put that in there, so the Secretary cannot go out on a toot of his own and consider anything he wants. No changes can be made unless technology has rendered inadequate the specific language in sections 1 and 2.

Mr. FANNIN. The Secretary may be very sincere in interpreting what is included in this particular paragraph. He may be sincere, but his interpretation may be entirely different from what many of the citizens of our country feel should be done.

I know that in the West we have an entirely different situation than in the East. So if the Secretary were basing his interpretation on what was proper to take care of some situation in New York, it would not necessarily apply in Arizona.

Mr. BAYH. I would suggest that point is not really relevant to what the Secretary has authority to do under this section. The Secretary's authority is limited very specifically.

Mr. FANNIN. It is the Secretary's interpretation of the law that would control.

Mr. BAYH. But the interpretation of the Secretary is limited to the intention of the bill we are discussing right now on the floor.

Mr. FANNIN. Nonetheless, I would say

the Secretary would have great latitude in his interpretation of this section.

Mr. HRUSKA. Mr. President, will the Senator yield me 3 or 4 minutes?

Mr. FANNIN. I am pleased to yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I am in support of the amendment of the Senator from Arizona. I hope it will be adopted. It should be approved. Briefly stated, here is the reason: The bill spends four printed pages saying what will be prohibited by way of Saturday night specials for importation or manufacture with respect to handguns. Then it says, "Just in case we leave anything out, just in case somebody will invent a way to circumvent those four pages of specifications, we will let the Secretary of the Treasury legislate on our behalf."

It is an utter abdication of legislative responsibility on our part, and it vests the Secretary of the Treasury with that legislative power.

It is said that he has to stay within the intentions of the bill, he has to stay within "sporting purposes," and if he strays from that, he cannot do it. The fact is, the gate is wide open. The Secretary can say, "We object to the manufacture or importation of Model 2–X because it is not designed for a sporting purpose," and having said that, there it is.

Mr. BAYH. The Senator is wrong, if I may interrupt.

Mr. HRUSKA. No; let me finish my argument.

There is nothing in that section that limits him except if he determines that there are actions tending to circumvent the intention of this subsection, which is to allow the approval of only those handguns particularly suitable for sporting purposes. All he has to do is to say, "A particular gun is not designed for sporting purposes; therefore I will not allow its importation or manufacture." That is all he has to say.

Mr. BAYH. If the Senator will permit me to read the rest of that sentence——

Mr. HRUSKA. Go ahead and read it.

Mr. BAYH. "Have rendered inadequate the standards set forth in paragraphs (1) and (2)."

Mr. HRUSKA. That is right. All he has to say is model 2–X is not for a sporting purpose, and the four printed pages of legislation have been rendered inadequate.

Mr. BAYH. He has to be specific as to why they are inadequate.

Mr. HRUSKA. It simply says the purpose is to limit it to guns for sporting purpose.

Mr. BAYH. If I may say to my dear friend from Nebraska, if it were not for the language which he accidentally omitted, I would say he would have a good point, but the Secretary cannot sit down and say "Model 55–X no longer meets the sporting purpose."

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. I yield myself time, and I apologize to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. He and I have discussed this matter rather extensively.

The PRESIDING OFFICER. How much time does the Senator from Indiana desire to yield to himself?

Mr. BAYH. Five minutes. In fact, I must say—and I am sure the Senator from Nebraska does not want to claim credit for this—that he suggested there might be a new change in technology that might render the specifics inadequate. Now we find objection to putting them in. I do not want to open Pandora's box.

If the Senator will read the language, it is not enough for the Secretary to say that model X no longer meets the sporting purpose, but he has to show why. The Administrative Procedure Act's protections would be available to any aggrieved manufacturer. So the Secretary would have to show, under the provisions of the Administrative Procedure Act, that some change in technology had rendered some of the specific criteria inadequate and caused him to issue new regulations banning a gun.

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

Mr. BAYH. I yield.

Mr. HRUSKA. The Senator from Nebraska contended that "sporting purpose" is such a vague and subjective term that we could spend another four printed pages trying to qualify a gun for that purpose, and we would still be right back where we were to begin with, if subsection (3) is retained.

The basis of the objection was—and it was turned down by the committee; they thought they had greater wisdom than I have—that "Your idea of basing this turns on reliability and safety, which is no good. We are going to go back to sporting purpose." I say, on the basis of findings by H. P. White Laboratories, if it were put on the basis of safety and reliability, they could fasten down the specifics and we would not have to let the Secretary of the Treasury legislate on our behalf. I do not think any Cabinet officer or any other executive official of the Government should go into the legislative business. I think it is for the Senate and the House to do that and for the President to sign bills into law. We are the ones who ought to legislate. If he is going to say, "This is being circumvented and I am going to invent a new rule, and I am going to change this," he would be legislating. I do not think he should.

Mr. BAYH. I do not want him to legislate, if I may say so to my friends from Nebraska and Arizona. The Senator and I have decided differences as to whether we should make the gun safe for the user or whether somebody on the other end of the weapon should be safe. But we are both trying to stop the sale of Saturday night specials. The Senator from Nebraska wants to make them safe. But we do not have a real difference of opinion as far as concerns the desire to give the Secretary omnipotent power to go out and impose factors that are not involved. That has been resolved. I accept the Senator's desire to enumerate as specifically as possible in the bill the criteria which he can apply.

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

Mr. BAYH. I am glad to yield.

Mr. HRUSKA. It is suggested that the desires and suggestions of the Senator from Nebraska were complied with. I respectfully submit that they were not complied with, because the specifications contained in these four pages of print are based upon sporting tests. The suggestions I had, which were turned down by the committee, were that the specifications should be based upon safety and reliability. Such specifications can be spelled out precisely and in adequate fashion. That has been discarded, and we are back to the conditions we have in the statute now; namely, sporting purposes.

And what are they? Even a 3-inch barrel can have sporting purposes, because, as the Senator knows, many deer hunters go out and wound a deer with a .30–.30, and they follow him and use that little target gun to dispatch him.

That is a different criterion than safety and reliability. Safety and reliability are readily defineable and determineable, and they can be set up, insofar as a sporting purpose is concerned, in the mind of the Secretary of the Treasury, to permit or prohibit almost anything.

Mr. BAYH. Mr. President, if I may suggest, to go back over a lot of these arguments——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAYH. I yield myself 5 more minutes.

The Senator talks about safety versus sporting purposes. The H. P. White Laboratory test, which is the only test the Federal Government has run on these weapons, indicated that they were unable to reach a determination as to what is and what is not safe. That is point 1.

Point 2 is, I think Congress has to decide whether to make a legitimate effort to get these belly guns, these mankillers, these Saturday night specials, whatever you want to call them, out of the marketplace. If not, let us admit it. If we want to make it safer for a guy to stick up a corner grocery store, all right, but I think that has no proper place in public policy.

Let me go back, if I may, to the concern my two friends have expressed about what authority the Secretary is given, because I concur with them as far as our goals are concerned. I want to mention some specifics that might, indeed, occur to the ingenuity of a few unscrupulous gun manufacturers. Most gun manufacturers make a good, sound weapon. They are honest, legitimate manufacturers. Unfortunately, there are always a few characters who resort to making a fast buck, and we have to come along and legislate to get them instead of being able to rely on all the members in a community to meet the high standards set by the reputable majority of its members.

Before the Secretary can make a change, he has to find that—

> Changes in the technology or manufacture of handguns, or actions tending to circumvent the intent of this subsection . . . .

have rendered inadequate the standards set forth in paragraphs (1) and (2) of this subsection.

Now, what are those standards? He cannot make a change unless something comes along, a new change in technology, that renders inadequate the standards set forth in paragraphs (1) and (2). That is the only thing he can do. He cannot go out here and take into consideration just anything that is new. It has to be something that changes and renders inadequate the standards which we have specifically enumerated in the four pages, as my friend from Nebraska points out.

One of those matters that the Secretary may take into consideration is weight. That is specified. It is one of the criteria.

Let us suppose that unscrupulous manufacturer Y finds a way to ingeniously increase the weight of the butt or the handgrip of a rifle by a removable 4-ounce weight, that can be screwed out very readily. Then you could have a weapon which, with that weight screwed in there, is all right, but all you have to do is take a screwdriver and screw it out, and automatically it is disqualified.

The Secretary could take that into consideration and say, "Wait a minute, mister, you can not do that."

Suppose, through some ingenious manner, unscrupulous manufacturer Z is able to develop some new plastic or alloy that puts a different type of safety mechanism or trigger guard on to this weapon. Safety mechanisms, handgrips, and different types of trigger guards get extra points under the criteria. That is specifically enumerated. If you have a certain type of handgrip or trigger guard, you get the extra points.

All right, a fellow may come along who is really not concerned about a safe weapon; all he wants to do is circumvent the act.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAYH. I yield myself another 5 minutes.

We might have these particular safety mechanisms made of some kind of easily meltable plastic, so that when the Secretary tests it, the safety guard is there, and he gets the extra point.

Then the gun is sold to a fellow who wants to use the weapon in an illegal manner. He puts it in a pot of boiling water, the plastic melts off, and the safety guard disappears. Perhaps this is a ridiculous example, but this is the kind of thing the Senator from Indiana is concerned about. Of course, the Secretary could take this into account even without the provision we are debating, but that provision would make it clearer.

Another type of specific criterion that might be circumvented is this: We have allowed extra points for various kinds of sights, click sights and drift adjustable sights, because such sights have a relationship to sporting purpose.

Suppose manufacturer XY comes up with a kind of click sight that can be easily removed; all you have to do is screw it out of there. Thus, with the sight on there, it meets the test, but you want to take the sight off because it might catch on your pocket when you go into the grocery store to hold it up.

This is a kind of thing that the Secretary would be able to take into consideration in making the change, and none other.

I am sure, from the look on the face of my friend from Nebraska, that he is even more pained now that he was when I sought to ease his pain and discomfort over the provision of the bill, but I say with all my heart that is what this section is designed to do, no more and no less, and I think the legislative history is rather clear.

Mr. FANNIN. Has the Senator's time expired?

The PRESIDING OFFICER. The Senator's time has not expired.

Mr. BAYH. I am sorry; I meant my friend from Arizona, not Nebraska, because he does not have a pained look on his face.

Mr. FANNIN. Does the Senator from Indiana yield the floor?

Mr. BAYH. I yield the floor.

The PRESIDING OFFICER. Does he yield back the remainder of his time?

Mr. BAYH. I do not want to prevent my friend——

Mr. FANNIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Arizona has 17 minutes remaining.

Mr. FANNIN. Mr. President, I would just say to the Senator from Indiana that what he has said illustrates the capacity of the formula he is utilizing in this bill to further complicate the problem of the Secretary of the Treasury in making any decision in this regard.

It would seem there is less of an inherent danger in having an unscrupulous manufacturer than an arbitrary decision by the Secretary of the Treasury. The manufacturer to circumvent the law with new technology must incur capital outlays, tooling up expenses, and so on. Furthermore, he must have customers for this new handgun that circumvents the law. The things the Senator from Indiana is talking about would not give a manufacturer any great market. If he were required to have those special little devices on the pistols that would circumvent the intent of the law, it seems to me that the number of guns that could be sold under that interpretation would be very small. Who wants to buy such a gun and pay for it, when he can go out and get a gun—speaking of a criminal getting at, they are readily available to the criminal, along with any other type of gun.

Mr. BAYH. Mr. President, if the Senator will permit me to respond briefly, I think the same argument can apply to the manufacturer producing guns with extra long barrels and shipping them into Florida, who eventually chose to saw them off. To suggest that there is not a ready market for those weapons that are readily concealable is foolish.

If you go down to the District jail or the police department and talk to the police officers, you find that these are the kinds of weapons criminals want to use. Right now they can buy them for $8.98.

Mr. FANNIN. I am in agreement, if the Senator is talking about Saturday night specials, but he is not just talking about Saturday night specials. Under what would be provided, the Secretary could be given the power to outlaw even sporting pistols, so far as that is concerned, if he is of that opinion. Of course, I understand that the standards are set forth but it is his interpretation of those standards that count.

Mr. BAYH. If the Senator runs out of time, I will use mine. Does the Senator from Arizona agree with the Senator from Indiana, as he reads the language, that the Secretary cannot get involved unless he finds something to happen which has rendered inadequate the standards set forth in paragraphs (1) and (2)?

Mr. FANNIN. His interpretation is controlling.

Mr. BAYH. Does it say that or does it not?

Mr. FANNIN. What I am trying to say is this: We have elaborate standards enumerated in section 4 of this bill—why do we need to formulate these standards and in the same bill allow the Secretary to change them at his discretion? After all how long has it been since there has been any real changes in technology with respect to pistols and revolvers?

Mr. BAYH. It all depends on what kind of technology the Senator is talking about.

Mr. FANNIN. The same kind the Senator from Indiana is attempting to have the Secretary make new standards for.

Mr. BAYH. Let me give a pertinent example of that. Yesterday the distinguished Senator from Iowa was telling me about a new rifle he purchased which is smaller than a .22 and has a muzzle velocity of more than 4,000 feet per second. That is a very new development. So technology is coming along. And this would be relevant on testing the guns under this bill's standards.

Mr. FANNIN. We are talking about pistols, are we not—handguns?

Mr. BAYH. That is a change in technology. It could have just as well been a pistol.

Mr. FANNIN. I just asked a simple question as to how long it has been since there has been a change in technology as to handguns, and that is a very simple question to answer.

Mr. BAYH. I do not know with exact precision. Changes occur all the time.

Mr. FANNIN. Ten years, 25 years?

Mr. BAYH. If we are talking about the development of new safety devices, I would say that probably in the last couple of years there have been new types developed to make weapons safer.

Mr. FANNIN. As to major technology, 50 years or 100 years. We can look at a pistol 100 years old and see there has not been much change. The technology argument as an argument to allow the Secretary unbridled authority to change the standards without any review by higher authority is not persuasive.

Mr. BAYH. As I stated earlier, as a legislator, I have to be placed in the position of trying to anticipate what some character out here is going to do contrary to what the general practice of the industry will be.

The Senator from Arizona agreed that the change considered by the Secretary would have to deal with rendering inadequate the standards set forth in paragraphs (1) and (2).

Mr. FANNIN. I said his interpretation of what would be required, and that is certain giving him great latitude.

Mr. BAYH. How can he have any less latitude than the words in this bill give him?

Mr. FANNIN. I say that does give him the great latitude. In fact, he could practically outlaw any type of handgun if he so desired.

Mr. BAYH. How?

Mr. FANNIN. Just by his interpretation of what sections (1) and (2) mean.

Mr. BAYH. Let me suggest that in the 1968 act we have given the Secretary the authority to outlaw the importation of any hand weapons that do not have a sporting purpose, which is a much broader definition than this.

Mr. FANNIN. That is exactly what I am talking about that is wrong with it. That is the effect it would have.

Mr. BAYH. It is not at all the same thing, I say to the Senator; because instead of giving him broad leeway to apply only the sporting purpose test, we say that the only time he can use this authority in subsection 3 is if the change in technology has rendered inadequate the standards set forth in paragraphs 1 and 2. We have taken the very criteria established by the Secretary of the Treasury with a blue ribbon committee comprised of a number of distinguished citizens: Donald Flohr, of H.P. White Laboratories; Harold Johnson, U.S. Army Foreign Science and Technology Center; Daniel Musgrave, Washington representative of the Mauser Works of Germany; John Richards, Potomac Arms Corp.; Jeptha Rogers, International Association of Chiefs of Police; and Lt. Col. Joseph S. Smith, Deputy Director of Civilian Marksmanship. Those are the people with whom the Secretary consulted in establishing these criteria.

Mr. FANNIN. How many sportsmen are involved in that list?

Mr. BAYH. I do not know whether the man who represents the Mauser Works is representing sportsmen or not. He certainly represents gun sellers.

Mr. FANNIN. I do not believe he represents the sportsmen.

Mr. BAYH. The Potomac Arms Corp. represents someone selling weapons. The Senator cannot say that the Deputy Director of Civilian Marksmanship is contrary to hunters and sportsmen, can he? I think sportsmen's interests were therefore taken into account.

Mr. FANNIN. I think the Senator is correct in that one instance. But that committee of advisers is not representative of a cross section of sportsmen.

I am not saying that just because some groups feel differently, we should write the legislation as they desire. From the best available information, it appears that this measure might eliminate from manufacture and sale at least 11 handguns designed and intended purely for sporting use.

Mr. BAYH. It would do what?

Mr. FANNIN. It would outlaw them—in other words, eliminate them from manufacture.

Mr. BAYH. Can the Senator give me the source of the information?

Mr. FANNIN. It is a cross-section that was compiled by the Publications Division of the National Rifle Association.

Mr. BAYH. With all respect is that exactly what one would call an objective publication?

Mr. FANNIN. Is this a correct statement?

Mr. BAYH. If we are concerned about the objectivity of this committee, let me suggest——

Mr. FANNIN. I should like to finish my comments.

It seems to me that this list is available to the Senator. If he wants to dispute it, that certainly is his privilege. It continues:

> This is because the bill prescribes a point system of approval or disapproval based not only on barrel length but also on overall dimensions, weight, and several mechanical features.

It lists the sporting handguns that are definitely banned under S. 2507 and goes on:

> Handguns, often carried as kit guns or sidearms by sportsmen, which also would be banned under S. 2507:

I just say that I am using this illustration because the Senator used another illustration. He said this would be biased. Why should it not be considered from a sportsman's standpoint? I realize that the people whose names the Senator read are respected individuals, but they are not looking at this situation from the standpoint of the sportsmen. I am not here to represent the National Rifle Association—if their statistics are incorrect, then the public is entitled to know the truth.

Mr. BAYH. Let me suggest to the Senator, who was talking about weapons that are going to be outlawed by this proposal, that the list I read includes two manufacturers' representatives.

Mr. FANNIN. I realize that.

Mr. BAYH. That lends objectivity. I do not want to vouch for this list. I do not know these people personally. All I suggest is that I do not see how it is possible for any Secretary of the Treasury—whether it is the Senator from Arizona or the Senator from Indiana or the Senator from Nebraska—to go out on his own and make this determination.

I do not want to beat this subject to death, but let me suggest to the Senator the kinds of concern that may sound ridiculous. If you have a barrel length, for example, where you add a couple of inches to it by some plastic tube and cut it off by a knife later, or the sights can be removed by shearing them off, which is put on there obviously just as a subterfuge, or using a cheap piece of plastic instead of the legitimate sights on a sporting weapon, or increasing the weight that could be put in and is detachable from the barrel, that is what we are talking about. Again, let me make it clear that the Secretary would be expected to refuse to accept such obvious shams under this bill without the provision in question. I am just trying to illustrate my point.

Mr. FANNIN. If anything like that takes place, we are in session and we have the power to go ahead and change the legislation. I cannot see that that is a valid argument now. I do not claim to be a technician in this field but I would ask the Senator if he feels that we are excluding sporting handguns under the standards of this act?

Mr. BAYH. No, I do not.

Mr. FANNIN. The Senator feels that we are not?

Mr. BAYH. No; we may have a different result between us so far as how the words are used. We may define the intent differently, but we may reach the same goal by this means; but I confess I am not trying to take off the market legitimate sporting type weapons. These tests have been used since 1968. There has not been any effort on the part of the firearms industry to use the provisions of this act to get the standards changed. They are available, if they are unreasonable tests or criteria. They have been applied to foreign imports since 1968, and I am suggesting that we apply them to domestic production.

I do not think there is anything further to say but I want the record to show that insofar as the manager of the bill is concerned, I am not after legitimate producers of sporting weapons or trying to give the Secretary carte blanche authority to get involved in legislating. I am suggesting to the Senator from Arizona that it is really naive—well, "naive" is not a good word because the Senator from Arizona is not naive—but I think the word "unrealistic" would be a better assessment. Some say slight modifications can be made easily in Congress. "All we have to do is to come back here and deal with this little old amendment." But, my God, whatever we do, do not touch the firearms bill or the walls will hit the streets. I do not know whether the Senator has read the letter sent out by one of the organizations which imputes motives to me which never entered my mind. Whenever we want to make a change in firearms legislation, right away the membership is told, "The next step is they will confiscate your shotgun or take away your sporting pistol." That is what will happen, if we come back here and make even a minor adjustment. That is the history of the legislation in this area, and I do not believe it will change overnight.

Mr. FANNIN. I do not question the Senator's motives. He is sincere in wanting to accomplish what he feels is for the best interests of the country. But I do not feel that he has taken into consideration the problems existing for the sportsman in this legislation he promulgated, or which he helped to write or to sponsor. So I cannot feel that the answers that have been given will take care of the very serious problem of the question of the Secretary of the Treasury entering this picture. It goes much farther than the Senator intends, or than Congress intends in making a decision in this regard.

I am in favor of controlling those Saturday night specials. But our standards ought to reflect our intent and not outlaw legitimate sporting handguns.

The PRESIDING OFFICER (Mr. STEVENSON). All time of the Senator from Arizona has expired.

Mr. BAYH. Mr. President, let me read from an article from the Gun World——

The PRESIDING OFFICER. The Senator from Indiana has 8 minutes remaining.

Mr. BAYH. I shall not use the 8 minutes unless someone wants to take advantage of it, but I would like to show a specific example by reading from an article in the Gun World of April, 1970, entitled "Gun Test: Walther's—New PPK/S .380 Auto"

It reads in part:

Then came the Gun Control Act of 1968! Based upon the "point system" set up for the importation of such sidearms—the original PPK did not fall within the measurements-specifications guidelines, as spelled out by the Alcohol, Tax & Firearms branch of the Treasury Department. Strange as it seems, however, this inadvertently has turned out to be a blessing, at least for U.S. shooters, who soon will be able to check-out for themselves a revamped model of this famous auto-loading pistol. Our Eastern editor, Bob Zwirz, feels that revamp is an improvement, in several ways, over the original model. It also is acceptable, measurement-wise, under the rulings governing imported handguns.

Mr. President, I read the excerpt to show the Senate my intentions. I am sure the Senator from Arizona believes them, although there may be some listening here, or in the gallery, who do not.

Mr. HRUSKA. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 2 minutes.

Mr. HRUSKA. By way of summary, I think this is the situation: We have legislated certain standards for these guns by the sections prior to that which the Senator from Arizona wants to delete. Now in this section we say that if the Secretary considers those standards to be inadequate, he may contrive and put into force additional standards.

When that is done, it means we engaged in the legislative process which we engaged in here by putting in four printed pages of regulations into the form of law for no purpose. If I understand correctly the provision of the Senator from Arizona (Mr. FANNIN), he objects to that legislative assignment to the Secretary of the Treasury.

I do, too. I support the amendment. I hope that it will be agreed to.

Mr. FANNIN. I thank the distinguished Senator from Nebraska. I believe my amendment will materially assist in preventing an abuse of discretion and overall achieve our goal of closing the loophole in the 1968 law as far as Saturday night specials go.

Mr. BAYH. Mr. President, I yield myself 1 minute and that will be all. I have said all this before. The Secretary can get involved in legislating, according to the specific words of this bill, as well as the adequately expressed intention of the principal sponsor, is whether when changes in technology or manufacture tend to circumvent the intent of paragraphs (1) and (2).

He is limited to safety device, length and weight, frame construction, caliber, safety features. These are the things that are specifically covered. These are the things specifically enumerated in the bill.

Mr. HRUSKA. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BAYH. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time has been used or yielded back. The question is on agreeing to the amendment of the Senator from Arizona. 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), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Rhode Island (Mr. PELL), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from New Jersey (Mr. CASE), the Senator from Colorado (Mr. DOMINICK), and the Senator from Arizona (Mr. GOLDWATER) are detained on official business.

On this vote, the Senator from Colorado (Mr. DOMINICK) is paired with the Senator from New Jersey (Mr. CASE). If present and voting, the Senator from Colorado would vote "yea" and the Senator from New Jersey would vote "nay."

The result was announced—yeas 58, nays 33, as follows:

[No. 359 Leg.]

YEAS—58

Aiken	Curtis	Montoya
Allen	Dole	Moss
Allott	Eagleton	Packwood
Anderson	Eastland	Pearson
Baker	Ervin	Proxmire
Beall	Fannin	Saxbe
Bellmon	Gravel	Schweiker
Bennett	Gurney	Smith
Bentsen	Hansen	Spong
Bible	Hatfield	Stafford
Brock	Hruska	Stennis
Buckley	Jackson	Stevens
Burdick	Jordan, N.C.	Symington
Byrd, Harry F., Jr.	Jordan, Idaho	Taft
	Magnuson	Talmadge
Cannon	Mansfield	Thurmond
Chiles	McClellan	Tower
Church	McGee	Welcker
Cook	McIntyre	Young
Cotton	Metcalf	

NAYS—33

Bayh	Hartke	Muskie
Boggs	Hollings	Nelson
Brooke	Hughes	Pastore
Byrd, Robert C.	Humphrey	Percy
Cooper	Inouye	Randolph
Cranston	Javits	Ribicoff
Edwards	Kennedy	Roth
Fong	Long	Scott
Fulbright	Mathias	Stevenson
Griffin	Miller	Tunney
Hart	Mondale	Williams

NOT VOTING—9

Case	Goldwater	Mundt
Dominick	Harris	Pell
Gambrell	McGovern	Sparkman

So Mr. FANNIN's amendment (No. 1418) was agreed to.

Mr. HRUSKA. Mr. President I move to reconsider the vote by which the amendment was agreed to.

Mr. FANNIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I have an unprinted amendment at the desk that I call up at this time.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 5, line 21, and page 8, lines 8 and 24, insert the words "or for personal protection" after the phrase "sporting purposes."

Mr. ROBERT C. BYRD. Mr. President, may we have order? We cannot hear the clerk.

The PRESIDING OFFICER. The Senate will be in order.

Mr. STEVENS. Mr. President, the amendment I proposed would insert the words "or for personal protection" after the words "sporting purposes" where those words appear in three sections of the proposed committee substitute.

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?

Mr. STEVENS. I yield.

Mr. KENNEDY. Mr. President, I ask unanimous consent that Robert Bates may be granted the privilege of the floor.

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

Mr. STEVENS. Mr. President, the purpose of this amendment is to clarify the intention of the proposed act, to make it clear that the act does not prohibit handguns for personal protection.

I have previously discussed with the Senator from Indiana why I feel handguns are a necessity for self-defense in many parts of the Nation, particularly in my State and the more rural areas of the United States, and I pointed out that in the State of Alaska when a person is hunting or fishing, a handgun is a necessity for self-protection.

Furthermore, I think that the RECORD is clear that the legislative intent of the Gun Control Act of 1968 was to include personal protection.

I would like to read the declaration of that section of Public Law 90–618, which specifically states:

The Congress declares that . . . it is not the purpose of this title 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 . . .

As I read the bill—and I pointed this out to the Senator from Indiana in the opening debate on the bill—in three places the bill before us refers to the suitability for sporting purposes of handguns. At one point it states specifically:

If the Secretary has determined that changes in the technology or manufacture of handguns, or actions tending to circumvent the intent of this subsection (which is to allow the approval of only those handgun

models which are generally recognized as particularly suitable for sporting purposes) . . .

Mr. ROBERT C. BYRD. Mr. President, may we have order? There are too many staff aides at the desk. The Senator should have the courtesy of being heard while he explains his amendment.

The PRESIDING OFFICER. The Senate will be in order.

Mr. STEVENS. I thank the Senator from West Virginia.

I take it that the language which is in the bill at the present time would in fact be a change in direction from the original Gun Control Act of 1968, in which the Congress specifically stated it was not trying to put unnecessary restrictions or burdens on law-abiding citizens, and particularly with regard to their right to have handguns for self-defense, for personal protection.

We have used in this amendment the specific language of the 1968 declaration. It would permit the Secretary to approve handgun models which are generally suitable for sporting purposes or for personal protection. I think it is absolutely essential to state that in the bill so that there can be no misunderstanding by anyone, particularly in terms of the burdens placed by the bill on the Secretary of the Treasury.

I would hope the Senator from Indiana would join me in this concept, because I do not think we should put people in the position of having to violate the law in order to get a gun for their own self-protection. Under the bill, a person could buy a gun if it was for a sporting purpose, and if the Secretary found it was suitable for sporting purpose, but there is no reason why we should place restrictions on a person who has no intention of hunting, or no intention of using a gun for trapshooting or target practice, or of using the gun for a sporting purpose, when the gun is for self-protection.

We ought not to change the Gun Control Act of 1968 and state, as it does in this bill—and again I want to emphasize that the bill states—that the intention of this subsection is "to allow the approval of only those handgun models which are generally recognized as particularly suitable for sporting purposes." There are handgun models which are not suitable for sporting purposes which are usable for self-protection, and if they meet the tests set out in the bill they ought to be models that would be approved by the Secretary of the Treasury.

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

Mr. STEVENS. I yield.

Mr. HRUSKA. Mr. President, I rise in support of the amendment. After all, self-protection is a lawful activity. There is no logic to limiting guns only for sporting purposes; we need to consider other lawful and legitimate purposes. The Senator from Alaska is correct in saying that this amendment will meet the spirit and the context of the law and make it more thorough and more complete, in view of the language contained in section 101 of the 1968 Gun Control Act, the pertinent part of which reads as follows:

It is not the purpose of this title 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—

And that—

This title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes—

Certainly, personal protection being expressly mentioned, and being doubly assured for consideration because it is a lawful purpose, it would be well to include the language of the amendment expressly in the bill.

Mr. PASTORE. Mr. President, will the Senator from Alaska yield so I may ask him a question?

Mr. STEVENS. I yield.

Mr. PASTORE. The suggestion of the Senator from Alaska, that the purpose of the amendment is for personal protection, is very appealing to the Senator from Rhode Island, but who makes the decision—who determines the definition?

Mr. STEVENS. Under this bill, the Secretary of the Treasury can review all handgun models and determine whether they meet the criteria of the bill, and it provides for those that are suitable only for sporting purposes. The amendment would require the Secretary of the Treasury to make a decision as to whether these models met the tests set forth in the bill for either sporting purposes or personal protection.

Mr. PASTORE. Before a person bought a gun for personal protection, would he have to register the gun in any way?

Mr. STEVENS. Yes. We are not changing the 1968 Gun Control Act. If a person wanted to buy a gun for self protection, he would have to give his name, address, and identification. We are not changing those provisions of the law.

Mr. PASTORE. In order to clarify this discussion, in other words, if the gun is bought and permitted for personal protection, society is protected, because the gun has to be registered?

Mr. STEVENS. The purchaser has to be registered under the Gun Control Act of 1968.

Mr. PASTORE. That is what I mean.

Mr. STEVENS. We are talking about new guns. In order to get a new gun, a person would have to give his name, address, and proper identification; but the bill says the Secretary can approve only those handgun models which are particularly suitable for sporting purposes. We believe he should have to approve them if they are for sporting purposes or for personal protection of an individual.

Mr. PASTORE. But if a person proceeds to acquire a gun for personal protection, is he required by some State, local, or Federal authority to hold a license to have that gun?

Mr. STEVENS. At the present time that is determined by State law. In the State of New York, for example, a person would have to have a license. In the State of Alaska, he would not. But in either jurisdiction, under the 1968 gun control law, before he could buy a gun, he would have to give his name, address, and identification and qualify under the 1968 Gun Control Act.

Mr. PASTORE. I would like to get this cleared up. What we are doing here is eliminating certain classifications of guns, that are called Saturday night specials.

Mr. STEVENS. That is right.

Mr. PASTORE. I do not know precisely what a Saturday night special is. As a matter of fact, I am not a gun fancier. I have never possessed a gun and I have never fired a gun. I think I would be a little afraid to do it. But the fact is that certain individuals who are not avowed criminals have acquired guns, and, after they possessed the guns, they have committed criminal acts. What I want to know is, Is there any control over that individual by any State, local, or Federal authority which makes him responsible for the acquisition and the possession of the gun?

Mr. STEVENS. The existing Federal law.

Mr. PASTORE. There is existing Federal law?

Mr. STEVENS. The 1968 Gun Control Act.

Mr. PASTORE. I wish that the Senator from Indiana would explain that, too, in due time.

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

Mr. STEVENS. I yield.

Mr. JACKSON. It seems to me that the heart of the problem here is as follows: How do you distinguish between a handgun that is used for one's defense, the defense of his home and family, and at the same time distinguish it from the handgun that is used by the individual to perpetrate a stickup or an assassination?

Mr. STEVENS. The answer to the question of the Senator from Washington is this: The bill already provides standards in terms of concealability, in terms of length of the gun, in terms of the overall size and the barrel. We are not changing that. We are only saying that if the Secretary finds these guns meet the criteria, then guns for personal protection shall be approved. There are specific criteria in the bill. I have another amendment dealing with that, but there are specific criteria in the bill which the Senator from Indiana brought from the committee setting forth what is an acceptable size of gun, but it also says that the Secretary of the Treasury can only approve that gun if it is suitable for sporting purposes.

There are guns suitable for personal protection that are not necessarily suitable for sporting purposes, but if they meet the tests the Senator from Indiana has already set out for eliminating Saturday night specials, and are intended for personal protection instead of sporting purposes, we believe that the Secretary should be able to approve such a handgun model if it is for personal protection, even though it is not suitable for sporting purposes. That is the purpose of the amendment.

Mr. JACKSON. Mr. President, I am

heartily in accord with the Senator's objective, but I cannot, in my own mind, visualize how one is classified in one case as for personal protection and the other classified as one that could easily be used for a stickup or for a personal assault on another person.

Mr. STEVENS. We have, by virtue of this bill, as I understand the proposal of the Senator from Indiana, proposed that certain handguns are more suitable for the Saturday night special classification by virtue of the size of the barrel—the overall length of the gun——

Mr. JACKSON. Concealment is what we are talking about.

Mr. STEVENS. Concealment is the important thing. We are not changing that. We are saying that guns that meet and go beyond the specifications the Senator from Indiana has laid down, but are not necessarily suitable for sporting purposes, ought not to be eliminated for that reason.

Mr. PASTORE. Mr. President, can the Senator name one gun suitable for personal protection that is not a Saturday night special? What is a Saturday night special; can someone answer me that?

Mr. STEVENS. Let me answer the Senator from Rhode Island this way: All the guns eliminated by the measure of the Senator from Indiana are still eliminated. My amendment deals with the question of guns that could otherwise be approved. We are not changing that. We are saying that if the gun meets all the requirements of the bill that are designed to eliminate Saturday night specials, and that gun is suitable for personal protection though not necessarily for sporting purposes, it should be approved.

Mr. PASTORE. All the Senator from Rhode Island is concerned about is that guns get only into the hands of legitimate people, and that they are responsible to some authority for the possession of that gun.

The PRESIDING OFFICER. All time of the Senator from Alaska has expired.

Mr. BAYH. Mr. President, I think I am prepared to accept the amendment of my friend from Alaska. I have some misgivings, not because of what it says or does, but because of possible misinterpretations of its effect on other parts of the bill. For that reason, let me just ask him a couple of questions.

The amendment of the Senator from Nebraska——

Mr. STEVENS. Alaska.

Mr. BAYH. That is what I said, the Senator from Alaska. It just bounced off the Senator from Nebraska on the way. I apologize to both my colleagues.

Mr. STEVENS. I am honored.

Mr. BAYH. The amendment of my friend from Alaska in no way affects the criteria established on pages 4 and 5 of the bill as far as safety devices are concerned?

Mr. STEVENS. That is correct.

Mr. BAYH. As far as overall length is concerned?

Mr. STEVENS. That is correct.

Mr. BAYH. As far as frame construction is concerned?

Mr. STEVENS. That is also correct.

Mr. BAYH. And as far as pistol weight is concerned?

Mr. STEVENS. Yes. We do not change any of the criteria for determining what is not a Saturday night special.

Mr. BAYH. Fine.

Mr. STEVENS. But we change the concept in that the Secretary need not find that that handgun is useful only for sporting purposes, which we think would be a limitation upon the Senator's criteria.

Mr. BAYH. I am tempted to ask the same question that either the Senator from Rhode Island or the Senator from Washington asked, can the Senator name one weapon that meets these criteria but which would not be in the sporting purpose category?

We are not trying to deny the opportunity for people to defend themselves. We are simply trying to classify Saturday night specials—small weapons, easily concealed, and thus the most acceptable weapons for the criminal—and say to the Secretary "You cannot allow those."

If you want to have a weapon above a particular size, not for hunting rabbits, but for protecting yourself, I have no objection. I am deeply concerned about the other side of the coin, that a small weapon might be excluded from the ban simply because the purchaser wants it for protection. But I gather from the colloquy with the Senator from Alaska that his amendment would not do that.

Mr. STEVENS. That is correct.

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

Mr. BAYH. I yield.

Mr. PASTORE. Just so the RECORD will be clear, I am going to ask again for the RECORD, the regulations under which guns are acquired. This is because this is a very complicated bill as it is a complex problem, all of us know what we are trying to avoid: We are trying to avoid the indiscriminate possession of weapons which might lead to crime. As I said yesterday, guns sometimes get into the hands of very young people. Under the influence of drugs, perhaps, and without any provocation or justification at all, they have killed innocent, unoffending citizens. That has happened several times here in the District of Columbia, I have cited instances and I do not want to get into that again.

The point I am making here now is this: Will someone please clarify for the RECORD just what are the requirements, what is demanded of an individual when he buys this gun, owns this gun, and keeps this gun for self-protection? What is it he has to do? I do not care who states it for the RECORD whether it is the Senator from Alaska, the Senator from Nebraska, or the Senator from Indiana, but will someone please explain to me what are the requirements for anyone to possess any kind of a gun? What does he have to do in order to buy it? What are the restrictions upon him, and what are the restrictions for him to either own it, carry it, or keep it in his home, for whatever purpose?

Mr. HRUSKA. Mr. President, if the Senator will yield, insofar as national legislation is concerned, when one buys a gun from a licensed dealer, he fills out a form in which he gives his name and address, he says that he has not been convicted of a crime within a given number of years, and that he is not a fugitive from justice. I do not know whether the requirement is found there that he is not under indictment. I believe that was stricken because obviously an indictment is an accusation; it is not proof of guilt of crime, or conviction. That he has not been adjudicated mentally incompetent, and that he is over 18, in the case of a rifle or shotgun, and over 21 if it is a handgun.

He must attest to his residency within the State, and that is about all. But that record must be kept by the licensed dealer.

Now, beyond that, if there is a State law, he must comply with that State law. In New York City, the regulations are very stringent for handguns. Only 20,000 permits have been given, to law enforcement officers, guards, and others of that kind, security people who are licensed and recognized. So in a city of 8 million people there are 20,000. The Senator can see how strict the law is.

In other States, there are no restrictions whatever. In my State, in the city of Omaha, we have a registration requirement and have had it for 30 or 35 years. There it is also a matter of residence and age.

Mr. PASTORE. I thank the Senator from Nebraska. I thought that at this juncture the RECORD ought to be clear as to what is required.

Mr. BAYH. Mr. President, one last observation. I am prepared to accept the Senator's amendment. I would like to pose one question.

Is it accurate to say that before the language which is offered by the Senator from Alaska can have any effect, all the other criteria already provided in the bill must have been met by the weapon in question?

Mr. STEVENS. That is not correct. We have not changed the criteria. I have another amendment to do that. Let us be honest about this. I have an amendment with which I seek to follow up on the conversation we had at the opening of this bill, dealing with safety reliability as opposed to these purposes. Assuming that the bill is enacted in its present form, we want to make certain of personal protection.

Mr. BAYH. I am perfectly happy to accept the amendment of the Senator from Alaska.

Mr. STEVENS. Would the Senator permit me to make a statement?

Mr. BAYH. Will the Senator withdraw the request for the yeas and nays?

Mr. STEVENS. I will do so.

The Parliamentarian just pointed out to me that Senator FANNIN'S amendment amended the portion on page 8, line 24, that my amendment seeks to modify or amend. Therefore, I ask unanimous consent to delete from my amendment the last reference to sporting purposes on page 8, line 24, because that language is no longer there, in view of the adoption of the Fannin amendment just prior to this amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. STEVENS. With the understand-

ing that the Senator from Indiana will accept the amendment, I ask unanimous consent that the order for the yeas and nays be rescinded.

Mr. BAYH. The Senator from Indiana makes no objection, but in order to be able to make one further explanation and not lose my time, I would wait one moment before accepting the amendment.

I think it is important in building legislative history that the RECORD show clearly that the blanket sporting purpose test—the general authority as it exists in the 1968 act—has been taken out of this bill. It has been replaced by specific criteria originally designed to help the Secretary define sporting purpose. For that reason, it is the judgment of the Senator from Indiana that once the Secretary determines that a gun meets the specific criteria written into the bill, which identify a weapon designed to be used for sporting purposes, he has no alternative but to approve it, regardless of the purpose to which the owner of the weapon desires to put that handgun.

Mr. STEVENS. I might state the converse—that is, if the Secretary of Commerce finds that a handgun meets all the criteria that have been set down and he finds that that gun has no sporting purpose but does have a utility for self-protection, he might approve it.

Mr. BAYH. I think we are playing with words. The Senator from Alaska is free to phrase it in his own inimitable fashion. The Senator from Indiana would prefer his own phrasing. We are really talking about the Secretary of Treasury now, not the Secretary of Commerce.

Mr. STEVENS. That is my error.

Let me state to the Senator, so that we are sure that the intent of what I am saying is clear, that the purpose of this bill is not to change the intent of the 1968 gun control law; and the adoption of this amendment will assure those people throughout the country who have looked at it and have interpreted this as being a narrowing of the intent of Congress in the 1968 gun control law that that is not the case.

Mr. BAYH. I agree that the 1968 Gun Control Act is still in force and effect. We are just applying the same criteria that were originally promulgated by the Secretary under that act. He has applied them to imported models, we are applying the same test to those that are manufactured domestically. If someone wants to use one of these models to defend himself, I have no objection.

Mr. STEVENS. That is the total intent of this amendment, to assure people throughout the country that lawful activity of people who possess handguns includes self-protection as well as the use of handguns for sporting purposes. I think that the way the bill is stated, it could have been interpreted as limiting the original intent of the 1968 Gun Control Act.

I am pleased that the Senator from Indiana is prepared to accept the amendment.

Mr. BAYH. I accept the amendment.

Mr. STEVENS. Mr. President, has the order for the yeas and nays been rescinded?

The PRESIDING OFFICER. Without objection, the order for the yeas and nays is rescinded.

The question is on agreeing to the amendments en bloc, as modified, of the Senator from Alaska.

The amendments were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 1414

Mr. HRUSKA. Mr. President, I call up my amendment, No. 1414.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. HRUSKA. 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:

Strike out all of line 17 on page 2, through line 13 on page 4, inclusive, and insert in lieu thereof the following:

"SEC. 3. Section 922 of title 18 of the United States Code is amended by adding at the end thereof the following new subsections:

"'(n) It shall be unlawful for any licensed manufacturer or licensed importer to sell or deliver a handgun manufactured or imported into the United States after the effective date of this Act, if such handgun is of a model which has been disapproved by the Secretary pursuant to section 922(o) of this title.'

"'(o) The Secretary may disapprove for sale or delivery by a licensed manufacturer or licensed importer any handgun model manufactured or imported into the United States after the effective date of this Act, if he has caused to be evaluated and tested representative samples of such handgun model, and has found that such model fails to meet the following criteria:'."

On page 9 letter sections (o), (p), and (q) as sections (p), (q), and (r).

Mr. HRUSKA. Mr. President, referring to section 922(b) of the bill, we find the language as follows which is pertinent to an understanding of my amendment:

It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer or licensed collector to sell or deliver . . .

Then there are several subsections which are not pertinent to my amendment, until we come to subsection (6), which reads as follows:

Any handgun model unless such handgun model has been approved by the Secretary pursuant to section 922(n) of this Title.

The bill as thus drawn including the above quotation, would summarily and instantaneously put an end to all sales and delivery of any and all handguns of whatever model until such a time as the Secretary of Treasury acted to approve gun models in accordance with section 922(a) of the title.

I point out that no time element is specified for the Secretary of the Treasury to issue any such order. If there were any reason why he did not want to do it promptly, he would not have to. In the meantime, all citizens of America would be prohibited from buying and all organizations selling would be prohibited from selling or delivering any and all types of handguns.

Throughout the United States, with its 160,000 dealers and collectors and 150 manufacturers and importers, all sales and deliveries of handguns would come to an abrupt and a complete standstill upon enactment.

Thereupon all would stand by to await the pleasure and convenience of the Secretary of Treasury to make his decisions as to which handguns he would approve and which he would withhold from an accepted list.

The above-numbered amendment, No. 1414, would reverse this process.

It would allow the present arrangement of sales and delivery to continue, subject to such orders as the Secretary would subsequently issue disapproving and disqualifying certain specified gun models. In that way we would have a continuance of the lawful business of sale and delivery of handguns as it is now, subject to those orders issued by the Secretary of the Treasury who would say, pursuant to the provisions of the bill, that models he would specify would no longer qualify and they would be illegal in the stream of commerce.

It should not be the intention or effect of this bill to go as far beyond the field of Saturday night specials as to completely close to all law-abiding citizens the opportunity to buy or sell through licensed dealers the handguns they want for lawful purposes.

Any power granted to the Secretary should be within the scope of the declared objectives of the bill; namely, to deal effectively with Saturday night specials, not against all handguns. The Senate has spoken clearly and emphatically on the issue of abolishing private ownership of handguns, or even of federally registering them or licensing them.

The bill as written brings on a host of difficulties.

One difficulty is enforcement. By including licensed dealers, we encounter the necessity of considering 160,000 licensed dealers and collectors throughout the 50 States. The manpower on the Federal payroll necessary to monitor and check out this volume for the purposes provided in the bill would be formidable, indeed. I do not know how many it would take. I do not know of any computation which has been made on what the number would be, but we would be faced with the alternative of putting the bill in the form of a statute and just having it there, or making some attempt to administer and enforce its provisions.

Another difficulty lies in placing upon those dealers the burden of correctly interpreting and applying the highly technical and complex standards to each transaction in the selling of a handgun.

The chief difficulty would be in determining which handguns are in conformity and which are not.

It is impossible to test them all. The number of models and their variations are legion, almost unlimited.

It is one thing to test and approve current models and prospective ones, as to import or manufacture. But it is virtually impossible to test and even identify those

made in the past and widely distributed in a fashion to determine qualification under the proposed law.

Most dealers are not gun identification experts. Fewer still are engineers or metallurgists.

The point system of the bill requires highly refined and sophisticated determination of identity, measurement, and testing. Models often differ in minor, sometimes internal details, not readily discernible but frequently critical to proper determination.

Individuals who made even honest, good-faith mistakes would be subject to Federal felony criminal prosecution if they guessed wrong. Even if they made a conscientious and honest effort to form a good, sound judgment and say, "Yes, this gun is not prohibited by such and such an order," they would still be subject to Federal prosecution.

It is a truism that rounding up the Saturday night specials at their distribution point in large numbers will be far more effective than trying to obtain them in groups of ones and twos at the thousands of dealerships across the Nation. It would be relatively simple to ban from sale by the manufacturer a projected production run of 100,000 noncomplying handguns of the same model; it is an incredible undertaking to try to enforce a ban from commerce of the same 100,000 after they have been dispersed among the citizenry over 50 States and mixed in with thousands of other models and variations.

This method proposed in the amendment No. 1414 will also be more just and fair in that the penalties will fall on the importer and the manufacturer rather than the one-man dealers who number in the thousands who may have a couple of these guns in a display case and who do not have the resources to absorb such a loss.

In effect, the way the bill is now written, if it were enacted into law, it would mean the confiscation of all stocks in the hands of importers or factories or dealerships in the Nation. It is fair to assess the penalty on the importer and the manufacturer, but insofar as the risk to the dealer is concerned, it is my judgment it would be unfair and is not necessary, in addition to being highly impractical and unenforceable.

Additionally, the proposed amendment would insure that the trading in used firearms would be carried on lawfully and with due regard to the Federal recordkeeping and recording requirements that are an important part of present law. It would be regrettable, but yet it is realistic to expect that the option of S. 2507 without such a safeguard as this pending amendment, will result in the creation of a black market in presently existing guns.

Let me explain why that would happen.

Under the terms of this bill as reported, the owner of a gun prohibited by the terms of the bill will not be able to use the services of a dealer to transfer it. The dealer would be barred by the present language of the bill. He would not be willing to accept a used gun as a trade-in for a new and approved weapon. This is because the dealer will have no way of knowing whether the used gun meets the Secretary's standards; if it does not meet those standards, he will not be able to sell it. He cannot afford to take a chance on jeopardizing his license.

Therefore, it would make no sense for him to accept trade-ins. Thus, for the private citizen with a gun, the only way to dispose of it will be to enter into a private sale with another citizen. Such a sale will be outside the present Federal laws which require adequate recordkeeping and recording on the part of licensed dealers. Thus, the provisions of the 1968 gun control law will be effectively nullified in this regard.

S. 2507 has strayed much too far afield in this particular from its declared objectives of dealing effectively with Saturday night specials. It would only complicate and confuse the effort.

The proposed amendment No. 1414 would clarify and correct in suitable fashion.

It should be approved.

Mr. President, let me point out that if this bill is enacted into law, we are not going to dispose of or cause to vanish from the scene the millions of guns that will not be qualified for further manufacture or further importation. Those guns are here in this country. Passage of this bill will not cause them to be obliterated from existence. They will be here. The question is, how are we going to deal with them in the regular stream of commerce where we can have a record made, where any sales by licensed dealers will be recorded, or where we will have them recorded in that way, or by a black market that will spring up where there will not even be that bit of practical handling of a very difficult situation?

My hope is that the amendment will be approved. It will greatly improve the bill. It will make it acceptable to many who otherwise would not find it possible to vote in its favor.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, what is the time limitation on the amendment?

The PRESIDING OFFICER. There is a 2-hour time limitation on the amendment.

Mr. BAYH. Mr. President, I find myself rising in opposition to the amendment of the Senator from Nebraska with only two other Senators in the Chamber. And whether I do this at this moment or do it after the lunch hour remains to be seen. However, I am very much inclined to ask for a live quorum because, from a very practical standpoint, this amendment would gut the whole bill. And it would be very difficult for any of us to defend what remains.

I have in my 18 years of legislative life been forced on many occasions to accept a half a loaf instead of a full one. However, rather than being a half a loaf in this instance, it is a handful of crumbs that remain. I must say that I am not prepared to make a final judgment on whether a handful of crumbs is better than a half a loaf at this moment. However, I am compelled to rise to suggest that anyone who believes he can hold his chest out proudly and say to the innocent victims of Saturday night specials and to the patrolman who protects his community: "I stood up and was counted as wanting to take the handguns out of the hands of the criminals who killed your buddy last night" is either intentionally or unintentionally perpetrating a hoax upon the individual in question.

My friend, the Senator from Nebraska, says that this measure would make it more acceptable to a number of people who would otherwise be inclined to oppose the Saturday night special bill. It ought to. It not only opens the barn door, but it also takes off the roof and one side. I think we ought to face it for what it is.

Mr. President, I do not want to force anyone to listen to my interpretation of the amendment of the Senator from Nebraska. However, I want my friends to be advised that I am about to tear into it with unlimited tenacity, because I think this bill goes to the heart of this matter. And it is going to destroy the efforts we have made to try to get those criminal weapons off the streets.

Mr. President, I have approached this matter as patiently and as reasonably as I know how. But I felt that I had a responsibility in advance to alert all Senators and all interested parties as to what we were trying to do. Being chairman of the Juvenile Delinquency Subcommittee and seeing the ricocheting on the gun control issue throughout the country, I know how easy it is to misrepresent and misinterpret the legislative effort in this regard. So, I sat down with the parties involved and I said: "Mr. Washington Lobbyist and my colleagues in the Senate, this is specifically what we are trying to do. We do not want to take away your rifle; we do not want to take away your shotgun; we do not want to take away your sporting hand weapon; we do not want to take away your target weapons. All we want to try to get off the streets are those belly guns, those mankillers that are killing policemen and innocent citizens. That is all we are trying to do."

When I read the publications and when I read letters to my colleagues and even hear speeches on the Senate floor to the effect that we are opening the door to make it possible to confiscate and take away weapons, I must point out that that has never been in the mind of the Senator from Indiana.

Now, with that background, let me address myself to the amendment of the Senator from Nebraska. I have great respect for him. I consider him a friend. I also know that he is an astute enough lawyer that he knows exactly what this would do. It would gut the bill. This issue was fought out in the Judiciary Committee, and I am proud to say that after a thorough analysis of the position of the Senator from Nebraska and that of the Senator from Indiana, the distinguished senior Senator from North Carolina came down on the side of the Senator from Indiana.

If we are going to have effective firearms control as far as Saturday night specials are concerned, we are going to

have to have something with teeth in it instead of a handful of legislative Pablum.

And if we are to accept the well intentioned amendment of my friend, the Senator from Nebraska, it will not even be 100-percent Pablum. This amendment would indeed shift the presumption. I certainly concur with that assessment. The Senator from Nebraska has not tried to conceal that. He has been very forthright in describing the fact that his amendment shifts the presumption from disapproval to approval.

The Senator is concerned about this. He talks about the time limit required for testing. Let me just ask the Senator from Nebraska if there is any acceptable time limit that the Senator would find agreeable. Sixty days is provided for in the bill. Would the Senator rest easier with 90 or 100 days?

Mr. HRUSKA. Mr. President, I do not understand just how the Senator would bring the case before the Secretary. Would it be his thought that there would have to be an application on the part of each licensed dealer with reference to the models in his stock?

Mr. BAYH. Mr. President, the committee bill requires the Secretary to publish every year a list of weapons acceptable for sale under the criteria. And he would promulgate regulations covering procedures for receiving approval.

Thus the question of whether the weapon could be sold or not and the doubt resting in some minds on that matter could be easily resolved by looking at the list published by the Secretary.

The Senator expresses a legitimate concern on whether weapons will have to be tested in order to be put on the Secretary's list. The bill as passed by the committee provides for a 60-day period before the act becomes effective. Thus the Secretary has 60 days in which to compile a list of weapons that would meet the standards.

My question is directed specifically to this matter of timing. Does the Senator believe that 90 days would be more equitable? I am not trying to impose any hardship or to be unjust.

Mr. HRUSKA. Mr. President, what happens if the Secretary does not act? Is there any provision in the bill in the event he does not act? Suppose that he does not act. That is one point.

Another point is that the designation of a certain period of time will not meet the basic defects here. It is the Secretary that should take action to say that this kind of model is not approved or will not be manufactured or imported.

Mr. BAYH. Mr. President, let me say to my friend, the Senator from Nebraska, that in the committee bill the Secretary does have the responsibility of acting.

Mr. HRUSKA. He does indeed.

Mr. BAYH. Only, instead of saying that this model is prohibited, he would say that this model is permitted.

What we are doing, and let us put it on the RECORD, is opening the doors and destroying the provisions of the 1968 Gun Control Act covering importation of hand weapons. As soon as this becomes the law of the land, if it is enacted, any firm that wants to import into the United States any hand weapons that do not have sporting purposes—weapons such as the 900,000 annually which have been prohibited since 1968—can start shipping them here. And these weapons could not be refused entry until the Secretary says "Wait." Manufacturer X in Wiesbaden, Germany, can ship in a couple of boatloads to be distributed all over the country before the Secretary finds out and says, "You cannot do that." Then the importer would change the model slightly and begin again. He could import again until the Secretary again says "No." We are opening the door to all sorts of foreign imports.

I thought we had agreed in 1968 to stop this The Senator from Nebraska would be opening the doors to foreign imports

Mr. HRUSKA. That is not the idea or the understanding of the Senator from Nebraska. For any imports or any domestically manufactured guns the application would have to come from the importer or manufacturer to the Secretary, and if the Secretary said yes, they may manufacture and sell it if it qualifies under the law then they can go forward, but if he said no they will either not manufacture or import or they will appeal the case and get a ruling in the courts to which they have access.

But that is a different situation than dealing with guns that are now in existence. What would the Senator do with those guns? What disposition would be made of them? Passage of this will not cause them to vanish. They will be here and the alternative is to either have them engage in the black market which automatically will be created, or allow the dealers to sell them and deal with them and have recording of the sale as required by present law.

Passage of this bill is not going to cause those guns to vanish.

Mr. BAYH. Is the Senator talking about guns now in the hands of dealers or guns in the hands of individual owners?

Mr. HRUSKA. Both. Those in the hands of licensed dealers and those in the hands of individual people. Those in the hands of individual owners are going to be there and the bill does not touch that.

Mr. BAYH. Neither has the Senator from Nebraska touched that in his amendment. What the Senator from Nebraska does is change significantly the way we deal with weapons in the hands of dealers.

I suggest if you remove dealers from the reach of the prohibition, as the Senator from Nebraska does, you make no effort to stop the sale of those weapons, which Congress, by passing this act, says it is bad public policy to sell.

To suggest there is going to be a black market is almost humorous, because in the act we make it possible for any dealer to turn these weapons over to the Secretary or whatever law enforcement agency he designates and to be reimbursed for those weapons. We say the same thing to the manufacturer, and to an individual.

The millions of weapons already in the hands of individuals are not touched by this act, but we say that any citizen who wants to turn one of them in voluntarily may be reimbursed. That any mayor or chief of police who wants to mount a community-wide effort to get these guns out of the homes—guns that can go off in the middle of the night in vain defense of the home, or when a youngster climbing on the bureau gets a gun—that any community that wants to do so can do so voluntarily by reimbursing any person who turns them in

If we are going to eliminate dealers from the coverage of S. 2507, as the Senator from Nebraska does, we are seriously limiting our effort to get the Saturday night special off the street. The large stocks of Saturday night specials are now in the hands of dealers. We are not punishing a dealer or taking away his property without just compensation. In fact, we have written into the bill our intent to reduce the availability of Saturday night specials. We say, "It is bad for you to sell these guns, Mr. Dealer, but we are not going to confiscate them." We are saying, "Mr. Dealer, if Congress changes the present policy, we are going to pay you for turning in your Saturday night specials. You do not have to do so."

There are still a large number of police forces that do not provide their policemen with firearms. They have to go out and buy them individually. The amendment of the Senator from Nebraska states they would have to go to a manufacturer to buy them, if these police departments want the patrolman to have them. What the Senator from Indiana is saying is give the dealer the option of keeping a few of these highly specialized models which might be purchased by the policeman in his locality, or give him the option of turning them all in and being reimbursed by the Government.

We make every effort in the world to be fair to dealers. I must say the Senator from Indiana has been subject to some criticism by those who fear, first of all, we do not go far enough, and those who feel we should reimburse the dealers. I think a very good constitutional case can be made that the U.S. police power gives us the authority to go in and tax these weapons as contraband and not to reimburse anybody. But we are not taking that approach. Most of the dealers I have talked to, and a number of gun manufacturers have said, "We will be glad to have an excuse to stop selling these things. We do not make much money selling the Saturday night special. We make money selling legitimate weapons." Thus, we are being infinitely fair to the dealer by reimbursing him and giving him advance notice with respect to what weapons can and cannot be sold.

I want to suggest that if we adopt the amendment of the Senator from Nebraska we are placing in great jeopardy our efforts to prohibit Saturday night specials. The Senator's bill would require the Secretary to ferret out every garage operation and every small business that gets into manufacturing Saturday night specials, and he has to say, "Do not sell." If he says, "Do not sell that one model," they can change it a little bit and start selling it again. It may take 5 or 10 years before anybody finds out about it.

If these weapons that J. Edgar Hoover said should be taken off the streets should be taken off the streets, for God's sake let us give the Secretary the power to do it. Let us not leave the gaping loophole in here that would be provided by my friend from Nebraska.

I think we need to recognize that it is reasonable to assume that if anybody is making these prohibited weapons and is really trying to peddle them to a sinister section of our society, he is going to contest this prohibition in court. Under the Senator's amendment, all the while this legal contest is going on, the weapons might continue to be sold even if they have absolutely no sporting purpose whatever.

The Senator from Nebraska said, in response to the question, "What if the Secretary does not act?" "Well, I must say that is a very good question." The bill as it passed out of committee, after a laborious effort to deal with all the facts, provides that if the Secretary does not act, no Saturday night specials can be sold. Under the amendment of the Senator from Nebraska, if the Secretary does not act, any kind of Saturday night special can be sold. That is the distinction. One cannot argue with it. Either argument has to be based on the premise that there is a Secretary downtown who does not want to enforce the law.

If the Secretary does not act, under the bill, these police murder weapons, the Saturday night specials, cannot be sold. Given the Senator from Nebraska's amendment, if the Secretary does not act, they can be sold, and that can go on forever.

We sat on the committee and asked the appropriate officials at IRS and at the Treasury Department, "When are you going to come up here with a bill? When are you going to deal with the problem of the loophole in the 1968 act?" Mr. Rossides and Mr. Santarelli observed 2½ years ago that the 1968 act left a great big loophole through which a million guns were coming into the country.

We were told, "Senator, we recognize that. We are busy working on an amendment to close up the loophole." Here we are 2 years later. Still no bill. Now I wonder, if we change the presumption, and say that Saturday night specials can be sold until the officials down at the Department say they cannot be sold, when 2½ years have gone by and they have not yet come up here with legislation to correct a loophole which they say existed, what is going to happen if they have the whole decision to determine whether certain weapons shall be sold or manufactured. They will not do anything, and as a result, the bill will not be worth any more than the paper it is written on.

There is another matter that I think it is important for us to recognize. We have accepted the amendment of the Senator from Alaska dealing with personal protection. I think defending one's own person and home is certainly a part of the American way of life, despite the fact that all the police officials who testified before our committee testified that there are four times as many persons killed in self-defense as criminals. Nevertheless, if one wants to defend himself or his home, I would not deny him that opportunity. All we say is, at least defend yourself with a weapon that is more difficult to conceal and less adaptable to the trade of the criminal.

A hard fact of life is that there are millions of weapons in circulation today, in the hands of private owners, that are not going to be touched by the bill. As I mentioned, we give to each local community the option of structuring a program in which citizens are asked to turn in their weapons voluntarily and to be reimbursed for them. I must say that criticism can be directed at the Senator from Indiana on the ground that the bill does not go far enough, because it does not touch the weapons in the hands of so many people. I think that is justifiable criticism. The question is, Where do you draw the line? How far can you go?

The Senator from Indiana has felt that if we can at least draw the line now and say, we now have 20 million Saturday night specials, or 10 million Saturday night specials—I do not know what the number is; say x Saturday night specials—and if we put our hand in the dike now and say, next year we are going to stop selling them, so that next year there will not be x plus 1 million, and the year after that there will not be x plus 2 million, and the year after that there will not be x plus 3 million, we will at least have made some progress.

The Senator from Nebraska suggests that we should make no effort whatsoever to prohibit the sale of stockpiles that are now in the hands of every single dealer in the country. He says this is going to be a hardship on the dealer. I do not know how it could possibly be a hardship on the dealer, because he can sell those guns to Uncle Sam at the fair market value as of the time the bill passes. He can get his money back. But what we are saying is that we are going to do something about the hundreds of thousands of weapons now on the counter, ready to be sold. If they are bad, why wait for tomorrow? If they are bad, why wait for next year. This is going to give every manufacturer and dealer an opportunity to gear up. During the timelag between the passage of the bill and its effective date, regarding the provision having to do with sales from the wholesalers and retailers, the guns prohibited by Congress are going to multiply many times in an effort to hoard them and have them ready so that they can be sold after Congress says it is no longer in the public interest to sell them.

Let us stop the sale of these weapons now. Let us not say, on the one hand, the weapon which meets these criteria is bad, but we are going to go ahead and let dealers sell them. Let us be honest with ourselves. Let us say either that we do not want any criteria at all or that we want to apply only some of these criteria, as the Senator from Nebraska has honestly said. But let us not kid ourselves. If one kind of weapon, according to Acting Director Gray and according to the late FBI Director Hoover, is bad business as far as the public is concerned, let us stop selling it now.

Another weakness that must be recognized if the amendment of the Senator from Nebraska is adopted is that, in addition to those weapons——

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

Mr. BAYH. I yield.

Mr. KENNEDY. I know the Senator was going to make some additional remarks, and I do not want to interrupt the continuity of his thoughts. But I wanted to join him in some of the points he is making, and to support those views. I am glad to do so.

Mr. BAYH. I would certainly like to have the Senator's opinion, if I could just have 2 minutes to finish the continuity of this thought.

Mr. President, I think it is obvious, from reading and studying the amendment of the Senator from Nebraska, that he would permit the sale of new weapons that are now in the hands of dealers. But what is not obvious is that even after the effective date of this act, he would be permitted to continue the traffic in secondhand weapons.

What does this mean? The studies that I have seen indicate that fully 54 percent of all hand weapons are bought secondhand, bought used. And if we are not to say to the dealer, "Thou shalt not sell," if we are to exclude the dealer and confine our efforts to eliminating the manufacturer, we are absolutely decimating any and every effort which gives us a chance of getting those secondhand guns out of possession.

What will happen under the amendment of the Senator from Nebraska, since dealers are not covered, is that there will continue to be a traffic in secondhand weapons, which Congress by law will have said are bad public policy only if they are new.

What kind of sense does that make, for Congress to stand here and pass a bill which says, "Gun x is bad, we are not going to permit you to sell it if it is new, but every dealer in America can sell it if it is used?"

I think if we are concerned, as the Senator from Indiana is, not with trying to limit the wholesome sporting use of firearms, but about getting these criminal weapons out of production, then let us have a system that creates an incentive to get as many of them out of possession as we can, and if a gun owner out in Indiana, Nebraska, Massachusetts, or wherever it may be wants to come in and sell a used gun to a dealer, let us permit him to do it, but then let us prohibit that dealer from selling it out again to the public, but require him to turn it in and be reimbursed for the cost that he has involved.

I yield to the Senator from Massachusetts.

Mr. KENNEDY. Will the Senator yield me 6 minutes?

Mr. BAYH. I am glad to yield the Senator 6 minutes.

Mr. KENNEDY. Mr. President, while listening to the debate today as well as the debate for the last couple of days, we have seen a series of amendments that have been proposed to weaken the bill approved by the Judiciary Committee which is a very modest proposal to attempt to reduce the problem of the

Saturday night special. In the early part of the debate, we attempted to recognize what the overwhelming majority of Americans have recognized as reflected in the polls conducted in this country and, perhaps what is most important, what has been recognized by the chief law enforcement personnel in this Nation, who have spent a lifetime in study, commitment, and dedication to meeting the problems of crime and violence in this country, as well as by the four presidential commissions, made up with bipartisan representation, to study the problems of crime and violence in this Nation. They have all recommended that the best way to do something to curb crime and violence is by doing something about the control of guns, particularly handguns, in this Nation.

But now at this point, in the final hours of the debate, we see another amendment proposed which would cut at the very heart and guts of this proposal. Listening to the debate here today, I hear crocodile tears shed about the problems of the dealers, and what we are going to do about all of these dealers who have these Saturday night specials. What we do not hear is any crocodile tears about the American people who are the ones that really deserve protection. When is the Senate going to start putting their interests first? Obviously, we have a responsibility, if we are going to seize property and confiscate it, but I think the Senator from Indiana has pointed out that there could be a very strong argument made, in this matter, that we ought not offer any compensation at all to the gun manufacturers.

This is a very complex issue, which has been written into this act, and I am not sure that all of us want to agree, as a matter of public policy, that Congress is going to make it a matter of public policy in connection with such seizures to provide full compensation. This is similar to the question of the drug companies that manufacture DES, a cancer-causing drug, or the cyclamates, which have been found to be cancer producing, and of who is going to assume the risk in those cases. Should it be the taxpayer, or those who would otherwise make extraordinary profits on such items?

When we start shedding "crocodile tears" for those dealers of junk handguns, we ought to recognize that there are anywhere from 300 to 500 percent markup on these weapons, that some of the most profitable business in this country has been from the sale of Saturday night specials handguns, the only purpose of which is to kill people. We do not hear any argument made here on the Senate floor this afternoon that Saturday night specials are used for hunting in this country. That argument cannot be made and will not be made.

Yet Senators are trying to find some means, by weakening this legislation, to frustrate what has been the expression of so many of those who have appeared before the Committee on the Judiciary in the areas of law enforcement and public policy, who say there is no role for such weapons in our society other than to harm individuals. Now it is sought to stir up sympathy for those who have, as I say, paid anywhere from $2 to $3 for these weapons, and are selling them at anywhere from a $10 to $15 sale price. It is sought to have the Senate say to them, "You can go ahead, even though we make a clear definition and declaration as a public policy matter that Saturday night specials have no role in our society," and Senators are trying to find some way to circumvent that very basic, fundamental, and well-supported principle.

It is also rather interesting to me that the prosposer of this amendment, in his comments about the amendment of the Senator from Arizona (Mr. FANNIN), in talking about certain provisions of this bill which gave authority to the Secretary to consider other criteria, made the argument, "Well, we are giving extraordinary discretion to the Secretary, extraordinary discretion, and we have responsibilities here in this legislative body to legislate and not to grant discretion to the Secretary."

Yet here, by this amendment, we would give even greater discretion to the Secretary. He can go out and make a recommendation as to what weapons will be tested, and even if he finds that the weapon fails all the various tests that have been put out, he still does not have to ban it; it is completely up to him.

Mr. President, the American people ought to understand that one of the most significant and powerful lobbies in this country will be leaning over that Secretary, just as they have leaned over this administration, just as they have leaned over the Attorney General of the United States who appeared before the Judiciary Committee and refused to take a stand on this issue.

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

Mr. KENNEDY. Just as the President of the United States has only made a cursory, passing remark about the dangers of Saturday night specials to the American people, indicating that we are working with appropriate Members of Congress and their staffs and are hoping to do something about it. Why will he not speak out on this issue—an administration that says it is committed to the problems of law and order in this country? When it comes to wiretapping, they are ready to go ahead and wiretap and increase wiretapping in this Nation to do something about crime and organized crime.

They are ready to call the grand juries when there is any kind of talk about Dan Ellsberg and the Pentagon Papers, ready to call the grand juries and give immunity on those matters.

The PRESIDING OFFICER (Mr. BURDICK). The time of the Senator has expired.

Mr. KENNEDY. Mr. President, will the Senator yield me 3 additional minutes?

Mr. BAYH. I yield.

Mr. KENNEDY. They are ready to repeal the rights of individuals to come down here and even protest and get parade rights in Washington, D.C. They are prepared to exercise law and order in those areas, but they will not do it on Saturday night specials.

I say that every American ought to understand the sham of that position, and it is a sham.

Here we have an amendment to further weaken those provisions that breathe some life into this legislation. I understand that we are going to have further amendments to cut back on it.

I hope that the Senate will reject this amendment. I wish I could say that I was optimistic about the Senate doing so. I certainly hope that the Senate, in its good judgment, would recognize what this amendment places first, this amendment puts the interests of dealers in this country over the interests of public safety. I feel that the approach that has been included in this provision is fully adequate and provides the kinds of protection for those dealers and the compensation which meet our responsibilities to them. I hope the amendment will be defeated.

Mr. President, I yield the floor.

Mr. HRUSKA. I yield myself 10 minutes.

Mr. President, this matter ought to be put into perspective. After all, the bill takes the position that a perfectly legitimate and lawful business activity must cease in its tracks. That will be the situation when and if the bill is enacted; that is exactly what would happen. There could be no sales or deliveries of handguns until the Secretary acted. I presume that he would act in good conscience and good faith and get busy; and he would issue his order saying that some models are allowed and others are not allowable. In fact, he would not have to say that others are not allowable. All he would do is say that certain models are allowable, and those he does not mention would be illegal, the way the bill is drawn. The burden is put in the wrong place when that happens. The public is denied its opportunity to buy guns which are lawful and proper. That involves a considerable number of people. Two and a half million handguns a year are produced and sold in this country. It is a lawful, legal business, and we ought to face it.

The point of controversy between the Senator from Indiana and the Senator from Nebraska is this: After the guns that will be surrendered voluntarily have been determined in number, a certain residue will be left. How will we deal with those numbers of guns that are not turned in and destroyed by the Government? I presume that we would destroy them. I would hope so. How are we going to deal with them? There is one way suggested by the Senator from Nebraska. He suggested that they be put through the regular course of commerce, have them sold by the dealers.

The dealers, pursuant to the Gun Control Act of 1968, would record the name of the purchaser, his address, his residence, and his qualificaions to buy that gun. The alternative suggested by the Senator from Indiana is that that would not happen. We cannot engage in that way of dealing with those guns. It is a certainty that many of them will trade ownership. How will it be done? In informal sales and black market sales and in a fashion in which there will be no

record? I would hope not. That is the difference between the two viewpoints.

Let me review the course of this legislation. I have been working at it now for some 12 or 14 years.

In 1968, we passed a law which forbade the importation of the so-called Saturday night specials. We have heard many impassioned speeches here about the atrocities committed with the Saturday night specials; and if some of the energy devoted to that type of rhetoric and that type of dramatic presentation were centered on the point of controversy and focused on means to solve that problem rather than denouncing the problem, it would be helpful.

The importation of Saturday night specials in their assembled form was prohibited by the 1968 act. At that time, as the Senator from Indiana knows and as the records show, this Senator said that is the wrong approach. If they are bad, they are bad not because of their point of origin, not because they are made in Europe or some place else, but because they are intrinsically bad, and they should be prohibited from importation and prohibited from manufacture in this country. What happened? Instead of shipping the whole gun here, those who brought them in ordered the component parts and assembled them in factories in America. So the flow of these guns from abroad continued and is continuing today.

It is said that we are going to take action to close that loophole. What loophole? The production and sale of Saturday night specials that will not qualify under the criteria contained in the bill before the Senate. How much does that amount to?

We have evidence before the committee that the production of this type of Saturday night special was approximately 700,000 in 1969, and it is estimated to be presently approximately a million a year. Are we making progress with this bill? Yes; we are. We are making progress to the extent of forbidding the importation or the manufacture of a million prohibited handguns a year. That is a great deal of progress.

But we will still have the residue in this country. What are we going to do with them? Are we going to handle it properly, or will it be done on the black market? I say that the proper way to do that is to encourage voluntary surrender as much as possible, and it is being done. But some still will remain. Are we going to handle it on the black market, under the counter, under the table, in secretive meetings, and so forth, or are we going to do it as a legitimate article of trade where we will have a record and have some idea of what is happening?

That is really what is involved here.

We get to the practical situation of how we are going to enforce it as to these dealers—160,000 of them. How many men would the U.S. forces have to have in order to police and monitor that many dealers? The effective way to do it, the proper way to do it, is to require the manufacturer, whenever he wants to manufacture a gun, to go to the Secretary and say, "Here is the type of gun I am going to make. Will it pass the test? I think it will." The Secretary will say yes or no and the same thing will occur with the importer. He will say, "I want to bring this gun in. Will I get a certificate of approval for it?" It is either granted or it is not. They will have control of the situation from the standpoint of adding to the supply of guns in this country.

Mr. BAYH. Is the Senator suggesting to the Senate that that is the way his measure would work, that that is required under his measure. Because if he is, he is reading it differently than I am. As this amendment is written, I would not have to go to the Secretary. I could make a weapon anywhere and still sell it. I do not have to go to the Secretary and say, "I think this gun will pass," and have the Secretary say beforehand whether I could or could not sell it.

Mr. HRUSKA. As to existing guns, that is true, but I do not see anything in the bill before us that will say the private ownership of this gun is prohibited and made illegal. So far as new models are concerned, that is the way it would work.

Mr. BAYH. There is nothing in the Senator's proposal that would prohibit me from going down to southern Indiana, going into the basement of a country store, and starting to manufacture and sell Saturday night specials. Even if Congress specifically says that a gun of that kind should not be sold, there is nothing in the Senator's amendment that would require me to go to the Secretary to get permission. That is the distinction between the position of the bill as passed by the Judiciary Committee and the position of the Senator from Nebraska.

The committee bill says, before you sell a gun, go to the Secretary and say, "Mr. Secretary, here is what I want to sell," and he says, "OK, sell it." But the Senator from Nebraska's measure would not provide that at all. It would impose on the Secretary the burden of finding every gun being manufactured, then making the determination of whether the gun conforms to the standards that Congress says is good or bad.

Mr. HRUSKA. If that is the effect of the amendment, I would be willing to entertain a change in it so as to require, as to any import or any manufacture of new models, that they get clearance from the Secretary. It is a simple operation. The way it works is that, for their own protection, the manufacturer or the importer would want to get advance approval because if they come in here and make a run of 100,000 imports or 100,000 manufactured items, and the Secretary disapproves of that particular model, they will be stuck, and rightly so. We would do this for their own protection. I would be happy to make a change in the amendment requiring importers and manufacturers to cooperate with the Secretary in this fashion. No difficulty there at all. That is where we have to deal with it, to make this an effective law. We have to take care of this at its source not after the guns are distributed.

Mr. BAYH. Is the Senator also aware that in section (o) of his amendment, page 2 thereof, the Secretary is not even required to disapprove a model that he has already determined does not meet the standards established by Congress. It says, "The Secretary may disapprove." It does not say, "shall." Even if the Secretary has found the source of supply and determined that these weapons do not meet the criteria established by the bill we are dealing with right now, he still does not have to disapprove it.

He can still yield to political pressure and not prohibit the sale of these Saturday night specials.

The PRESIDING OFFICER (Mr. BURDICK). The 10 minutes of the Senator from Nebraska have expired.

Mr. HRUSKA. Mr. President, all my time?

The PRESIDING OFFICER. The 10 minutes allotted to the Senator.

Mr. HRUSKA. I yield the floor then, so that I can continue the colloquy with my colleague.

Mr. BAYH. I appreciate the chance to continue the colloquy with my colleague but, as I recall, the RECORD will show that the ball is in the Senator's court, that the Senator from Indiana has exposed a rather serious imperfection in the enforcement mechanism of the amendment before us. I wonder whether the Senator from Nebraska was aware of its existence.

Mr. HRUSKA. The basic objection which this Senator has to the present form of the law is twofold. One is the burden placed on licensed dealers in trying to find out what they can and what they cannot sell. There should be a deferment at the source of supply, either of the importer or the manufacturer.

The second point would be the instantaneous cessation of the business. I think that would be unfair. I do not believe that the public should be denied the right and privilege they have of buying any gun they want to that is lawful.

Mr. BAYH. I appreciate the two concerns expressed by the Senator from Nebraska, but he has not been responsive to the shortcomings I have just pointed out. There can be no denying the fact that when it says the Secretary "may" disapprove for sale or delivery——

Mr. HRUSKA. That is right.

Mr. BAYH. That this means the Secretary can go through all the assessments required by the criteria that the committee, because of the concern shown by the Senator from Nebraska, has specifically enumerated in the bill—the Secretary can make a judgment that that gun is unable to meet the criteria established by Congress, and yet we do not even say that he "shall," then disapprove of the sale. In addition to the other shortcoming that, really seems surprising to me, I am always willing to accept the Senator's assessments of what he intended to do. However, this is like being shot by an empty gun.

Although he does not intend for the Secretary to have to go out and search for all these manufacturers, the amendment he proposes has no requirement that a manufacturer bring in his firearms for approval or disapproval. On the contrary, it shifts the whole of the burden onto the Secretary.

Let me suggest that those two faults or shortcomings are there. The Senator may not intend them, but they are there.

Let me address myself to the concerns that he has and that I have held are legitimate concerns inasmuch as they deal with differences he and I have regarding the bill.

Mr. President, I ask unanimous consent that there be a quorum call for the time to be taken out of both sides equally.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

The 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 (Mr. WILLIAMS). Without objection, it is so ordered.

Mr. BAYH. Mr. President, I yield 1 minute to the distinguished majority leader.

COMMITTEE SERVICE

Mr. MANSFIELD. Mr. President, I send to the desk a resolution which I should have presented last Monday. I ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution.

The legislative clerk read as follows:

Resolved, That the Senator from Indiana, Mr. Bayh, is hereby excused from further service on the Committee on Public Works as of August 2, 1972.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the resolution (S. Res. 348) was considered and agreed to.

Mr. MANSFIELD. Mr. President, by way of explanation, the Senator from Indiana (Mr. BAYH) has been placed on the Appropriations Committee. In order for him to serve on that committee, he had to be excused from duty on the Committee on Public Works.

QUORUM CALL

Mr. BAYH. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be taken equally from both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CHANGE IN CONFEREES

Mr. TOWER. Mr. President, I ask unanimous consent that with respect to the conference between the House and Senate on H.R. 15692, the disaster assistance bill, the previous order appointing conferees be amended to designate Senator TAFT to take Senator PACKWOOD's position on the conference.

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

AMENDMENT OF TITLE 28, UNITED STATES CODE

Mr. BURDICK. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2854.

The PRESIDING OFFICER (Mr. WILLIAMS) laid before the Senate the amendment of the House of Representatives to the bill (S. 2854) to amend title 28, United States Code, relating to annuities of widows of Supreme Court Justices, which was to strike out all after the enacting clause and insert:

That section of title 28, United States Code is amended to read as follows:

"(a) The Director of the Administrative Office of the United States Courts shall pay to the surviving widow of a justice of the United States who died on or before the date of enactment of this section, while in regular active service or after having retired or resigned under the provisions of this chapter, an annuity of $10,000.

"(b) The surviving widow of a justice of the United States who is in regular active service or is retired or resigned under the provisions of this chapter on the date of enactment of this section, shall, if the justice gives written notice to the Director of the Administrative Office of the United States Courts within six months of the date of enactment of this section of his election to become subject to the provisions of section 376 of this chapter, be paid an annuity of $5,000 or an annuity in accordance with the provisions of section 376, whichever is the greater.

"(c) The surviving widow of a justice of the United States who is in regular active service or is retired or resigned under the provisions of this chapter on the date of enactment of this section, shall, if the justice fails to give timely written notice of his election to become subject to the provisions of section 376 of this chapter, be paid an annuity of $5,000.

"(d) The widow of a justice of the United States who is appointed after the date of enactment of this section shall be ineligible for an annuity under this section.

"(e) An annuity payable under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month for which the annuity shall have accrued. Such annuity shall commence on the first day of the month in which a justice dies, and shall terminate upon the death or remarriage of the annuitant."

SEC. 2. Section 376 of title 28, United States Code, is amended by inserting "justice or" or "justice's or" prior to the word "judge" or "judge's", as appropriate, wherever those words appear therein, except in subsections (q), (r), and (s).

SEC. 3. (a) The heading of chapter 17, title 28, United States Code, is amended to read as follows:

"Chapter 17. RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES".

(b) The analysis of chapter 17 of title 28, United States Code, is amended by striking out the item relating to section 376 and inserting in lieu thereof the following:

"376. Annuities to widows and surviving dependent children of justices and judges of the United States.".

(c) The catchline of section 376 of title 28, United States Code, is amended to read as follows:

"§ 376. Annuities to widows and surviving dependent children of justices and judges of the United States".

SEC. 4. Section 604(a)(7) of title 28, United States Code, is amended by striking "Regulate and pay annuities to widows and surviving dependent children of judges," and inserting in lieu thereof "Regulate and pay annuities to widows and surviving dependent children of justices and judges of the United States,".

Mr. BURDICK. Mr. President, I move that the Senate concur in the House amendment.

The motion was agreed to.

QUORUM CALL

Mr. BURDICK. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be taken equally from both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. McGEE. Mr. President, will the Senator from Nebraska yield us 2 minutes on the bill so that we might proceed to the conference report on the agricultural appropriation bill?

Mr. HRUSKA. I am happy to yield 2 minutes to the Senator from Wyoming for that purpose.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 2 minutes.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, informed the Senate that Mr. MOORHEAD of Pennsylvania had been appointed as a conferee at the conference on the bill (H.R. 15692) to amend the Small Business Act to reduce the interest rate on Small Business Administration disaster loans, vice Mr. ASHLEY, resigned.

The message announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 15580) to amend the District of Columbia Police and Firemen's Salary Act of 1958 to increase salaries, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MCMILLAN, Mr. CABELL, Mr. STUCKEY, Mr. NELSEN, and Mr. BROYHILL of Virginia were appointed managers on the part of the House at the conference.

The message also announced that the House had agreed 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. 15690) making appropriations for agriculture-environmental and consumer protection programs for the fiscal year ending June 30, 1973, and for other purposes; that the House receded from its

disagreement to the amendment of the Senate numbered 31 to the bill and concurred therein; and that the House receded from its disagreement to the amendments of the Senate Nos. 30, 35, 36, and 48 to the bill and concurred therein, severally with an amendment, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (S. 484) to designate the Scapegoat Wilderness, Helena, Lolo, and Lewis and Clark National Forests, in the State of Montana.

The ACTING PRESIDENT pro tempore (Mr. METCALF) subsequently signed the enrolled bill.

AGRICULTURE ENVIRONMENTAL AND CONSUMER PROTECTION APPROPRIATIONS, 1973—CONFERENCE REPORT

Mr. McGEE. Mr. President, I submit a report of the committee of conference on H.R. 15690, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. BUCKLEY). The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15690) making appropriations for the Agriculture-Environmental and Consumer Protection programs for the fiscal year ending June 30, 1973, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD, volume 118, part 20, page 26528.

Mr. McGEE. Mr. President, the pending measure contains new obligational authority of $13,434,032,700. This is $481,842,300 above the budget estimate, $537,021,800 above the amount recommended by the House, and $127,023,100 below the sum contained in the Senate bill.

For title I of the bill—Agricultural Programs—a total of $6,200,669,200 has been provided. This amount is $21,040,800 above the budget estimate, $238,983,800 more than the House bill, and $35,245,600 less than the Senate bill. It is $521,141,350 less than was appropriated for in title I in fiscal year 1972.

For title II—Rural Development—the bill contains $1,026,436,000, which is $276,150,000 over the budget estimate, $127,133,000 more than the House bill, and $58,350,000 less than the Senate bill. It is $80,044,000 more than was provided for in fiscal year 1972.

For title III—Environmental Programs—the bill contains $2,951,648,000. This amount is $17,475,000 over the budget estimate, $6,963,500 more than the House bill, and $33,337,000 less than contained in the Senate bill. This is $538,265,877 less than was appropriated for these programs in fiscal year 1972.

For the various consumer programs—title IV—there is appropriated $3,255,279,500, which is $167,176,500 over the budget estimate, $163,941,500 more than the House bill, and $90,500 less than the Senate bill. This amount is $447,897,500 more than appropriated for these programs in fiscal year 1972.

Mr. President, the major items for which we provided increases over the budget estimates were, in approximate figures:

	Millions
Rural electrification loans	$157
Rural telephone loans	20
Department of Agriculture science and education programs	20
Rural water and waste disposal grants	92
Conservation programs, including Soil Conservation Service and Rural Environmental Assistance	100
Food and nutrition programs	164

The conference committee met and resolved the differences in this bill at a lengthy session on August 2. I believe, and the record will show, that the Senate conferees did an excellent job in sustaining the position of the Senate on the various items which were at issue. I would like to express my appreciation to my colleagues on the conference committee, and who were of such great assistance in resolving these matters as they developed during the conference.

Also, I would like at this time to pay tribute to the chairman of the House Appropriations Subcommittee on Agriculture, Environmental, and Consumer Programs, the Honorable JAMIE L. WHITTEN. I know of no subcommittee chairman who is more knowledgeable of his subject or who handles that subject with more thoroughness, with greater precision, and in more detail than does the gentleman from Mississippi. As a result, when we get the bill from the House it is a good bill, and one that has been carefully and thoroughly considered. This makes it imperative that any changes or modifications suggested by the Senate must also be meritorious and sound. I think the amendments we provided this year—some 48 numbered amendments—met that test.

I shall not go into detail on the conference since the report of the committee of the conference has been filed and is available to all of the Members of the Senate. I would like to say a few words, however, about the Environmental Protection Agency. For fiscal year 1972, this agency's operating budget was provided on a single item—operations, research and facilities. The administration budget proposed the same procedure for fiscal year 1973. The House, however, separated this single account into five separate appropriations and five separate titles:

Agency and Regional Management.
Research and Development.
Abatement and Control.
Enforcement.
Facilities.

In taking this action, the House thought that such a separation of this major account would provide Congress with a better opportunity to review the budget estimates and the financial requirements of the agency.

The agency appealed this action to the Senate, and we honored that appeal and suggested that we return to the single appropriation concept for the current fiscal year and develop a procedure which would be satisfactory to all concerned for subsequent fiscal years. This was one matter, however, on which the Senate had to recede in conference.

It soon developed during the conference that there was very little disagreement over the concept of the multi-title appropriation as provided in the House bill. With this appropration item approaching a half billion dollars, it was both logical and sound that it should be broken into the smaller, more identifiable accounts, but the timing of the proposed change was the subject of long and detailed analysis by the conference.

The Senate would have preferred to postpone this change until next year, but the House conferees were both unified and adamant that the change should take place as soon as possible and that view prevailed only after it was obvious that the House would not agree to the proposal of the Senate.

In order to be of all possible assistance to the agency, however, we did reach a compromise that will allow the agency some degree of flexibility in managing their overall program under the multiple-account concept. We agreed to give the agency authority to transfer funds between the several accounts up to 7 percent. This should give them the flexibility they need in their operations.

The Senate also receded on the amounts we added to this bill in the category of research and development. When the House considered this item, there was added $18 million over the 1973 budget estimate for a total of $185,223,700. This amount is more than $17 million greater than the appropriation for this item in 1972. With this substantial increase already contained in the bill, the House conferees were most reluctant to approve any additional increases, particularly in view of the fact that the agency has substantial funds carried over from 1972 for the solid waste program which is of such great interest to many Members of this body.

Mr. President, I believe that gives the Senate a summary of the major action and decisions of the conference committee. As I indicated, there are many more detailed matters I have not taken the time to discuss, but these are contained in the conference report and the joint explanation statement which has been filed. I shall be happy, however, to entertain any questions any Members might have to propound in connection with the conference on this bill generally.

Mr. President, I move the adoption of the conference report.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will state the amendments in disagreement.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 1 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: $11,112,000, of which $3,464,000 shall be available for the Office of Information and

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 30 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert $150,000,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 35 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

RESEARCH AND DEVELOPMENT

For research and development activities, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate of GS–18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; $182,723,700, to remain available until expended: *Provided*, That not later than the date set forth in section 102(c) of the joint resolution approved July 1, 1972 (Public Law 92–334), as amended, this appropriation shall be available only within the limits of amounts authorized by law for fiscal year 1973.

For an amount to provide for independent grant and contract review advisory committees for the review of the Agency's priorities to assure that such contracts and grants are awarded only to qualified research agencies or individuals, $2,500,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 36 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

ABATEMENT AND CONTROL

For abatement and control activities, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; $208,935,700, to remain available until expended: *Provided*, That not later than the date set forth in section 102(c) of the joint resolution approved July 1, 1972 (Public Law 92–334), as amended, this appropriation shall be available only within the limits of amounts authorized by law for fiscal year 1973.

For an amount to provide for independent grant and contract review advisory committees for the review of the Agency's priorities to assure that such contracts and grants are awarded only to qualified agencies or individuals, $2,000,000.

Not to exceed 7 per centum of any appropriation made available to the Environmental Protection Agency by this Act (except appropriations for "Construction Grants" and "Scientific Activities Overseas") may be transferred to any other such appropriation."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 48 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert the following:

$2,500,000,000, of which $158,854,000 shall be placed in contingency reserve by the Office of Management and Budget to be released upon determination of need.

Mr. McGEE. Mr. President, I move that the Senate concur in the amendments of the House to Senate amendments Nos. 1, 30, 35, 36, and 48.

The motion was agreed to.

Mr. McGEE. Mr. President, I ask unanimous consent that the table prepared by the conference which was included by the House when it acted on the pending report on August 9, 1972, be incorporated in the RECORD at this point by reference. This table gives the complete results of the conference in tabular form, and shows a comparison of the conference action with new budget authority made available in fiscal year 1972, the budget estimates for fiscal year 1973, the House bill, and the Senate bill.

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

HANDGUN CONTROL ACT OF 1972

The Senate continued with the consideration of the bill (S. 2507) to amend the Gun Control Act of 1968.

The PRESIDING OFFICER (Mr. BUCKLEY). All time on the amendment of the Senator from Nebraska (Mr. HRUSKA) has expired.

The question is on agreeing to the amendment of the Senator from Nebraska.

QUORUM CALL

Mr. HRUSKA. 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.

AUTHORIZATION FOR COMMITTEE ON FINANCE TO MEET DURING THE REMAINDER OF THE WEEK AND NEXT WEEK WHILE THE SENATE IS IN SESSION

Mr. MANSFIELD. Mr. President, after consultation with the distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT), and with his approval, I ask unanimous consent that the Committee on Finance be allowed to meet for the rest of this week while the Senate is in session and all of next week while the Senate is in session.

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

QUORUM CALL

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

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

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. HRUSKA. Mr. President, at this time I withdraw amendment numbered 1414, and I send to the desk an amendment which I should like to call up at this time.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

The clerk will state the amendment offered by the Senator from Nebraska.

The assistant legislative clerk proceeded to read the amendment.

Mr. HRUSKA. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. HRUSKA's amendment is as follows:

Strike out all of line 17 on page 2, through line 13 on page 4, inclusive, and insert in lieu thereof the following:

"SEC. 3. Section 922 of title 18 of the United States Code is amended by adding at the end thereof the following new subsections:

" '(n) It shall be unlawful for any licensed manufacturer or licensed importer to sell or deliver a handgun manufactured or imported into the United States after the effective date of this Act, if such handgun is of a model which has been disapproved by the Secretary pursuant to section 922(o) of this title.'

" '(o) All licensed manufacturers and licensed importers shall submit an application for approval of models of handguns thereafter manufactured or imported along with representative samples of such handgun models for determination of approval by the Secretary. Such determination shall be made within nintey days after the date of the filing of the application unless the Secretary determines in writing that for good cause shown an additional ninety days is required for the determination under this subsection to be made. After evaluating each submitted handgun model and application, the Secretary shall determine whether the handgun model meets the following criteria:'."

On page 9 letter subsections (o), (p), and (q) as subsections (p), (q), and (r).

Mr. HRUSKA. Mr. President, I allow myself 5 minutes.

This amendment will remain the same as amendment numbered 1414 as to page 1.

Mr. MAGNUSON. Mr. President, I wonder if the Senator will yield to me, without any time being charged to him, which I ask unanimous consent to do, in order that I may call up a conference report.

Mr. HRUSKA. I yield.

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

NATURAL GAS PIPELINE SAFETY ACT OF 1968—CONFERENCE REPORT

Mr. MAGNUSON. Mr. President, I submit a report of the committee of con-

ference on H.R. 5065, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5065) to amend the Natural Gas Pipeline Safety Act of 1968, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report which reads as follows:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5065) to amend the Natural Gas Pipeline Safety Act of 1968, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the House bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That the first sentence of section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1674(a)) is amended by striking out "two years" and inserting in lieu thereof "five years".

SEC. 2. Section 5(c)(1) of such Act (49 U.S.C. 1674) (c)(1)) is amended by striking out the first sentence thereof and inserting in lieu thereof the following: "Except as otherwise provided in this section, if an application is submitted not later than September 30 in any calendar year, the Secretary shall pay out of funds appropriated or otherwise made available up to 50 per centum of the cost of the personnel, equipment, and activities of a State agency reasonably required, during the following calendar year to carry out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section; or to act as agent of the Secretary with respect to interstate transmission facilities. The Secretary may, after notice and consultation with a State agency, withhold all or any part of the funds for a particular State agency if he determines that such State agency (A) is not satisfactorily carrying ou a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section, or (B) is not satisfactorily acting as agent of the Secretary with respect to interstate transmission facilities.".

SEC. 3. Section 13 of such Act (49 U.S.C. 1682) is amended by adding at the end thereof the following new subsection:

"(d) The Secretary is authorized to consult with, and make recommendations to, other Federal departments and agencies, State and local governments, and other public and private agencies or persons, for the purpose of developing and encouraging activities, including the enactment of legislation, to assist in the implementation of this Act and to improve State and local pipeline safety programs.".

SEC. 4. Section 15 of such Act (49 U.S.C. 1684) is amended to read as follows:

"APPROPRIATIONS AUTHORIZED

"SEC. 15. For the purpose of carrying out the provisions of this Act over a period of three fiscal years, beginning with the fiscal year ending June 30, 1972, there is authorized to be appropriated not to exceed $3,000,000 for the fiscal year ending June 30, 1972; not to exceed $3,800,000 for the fiscal year ending June 30, 1973; and not to exceed $5,000,000 for the fiscal year ending June 30, 1974.".

SEC. 5. The Secretary of Transportation shall prepare and submit to the President for transmittal to the Congress on March 17, 1973, a report, which shall contain—

(1) a description of the pipeline safety program being conducted in each State;

(2) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out such State's program during each calendar year from 1973 through 1978 and estimates of the annual costs thereof;

(3) the source or sources of State funds to finance such programs;

(4) the amount of Federal assistance needed annually;

(5) an evaluation of alternative methods of allotting Federal funds among the States that desire Federal assistance, including recommendations, if needed for a statutory formula for apportioning Federal funds; and

(6) a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the national pipeline safety program.

The report shall be prepared by the Secretary after consultation with the cooperating State agencies and the national organization of State commissions.

SEC. 6. Section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655 (f)(3)(A)) is amended by striking out "and pipeline".

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the House bill and agree to the same.

WARREN G. MAGNUSON,
VANCE HARTKE,
HOWARD W. CANNON,
TED STEVENS,
L. P. WEICKER, JR.,
Managers on the Part of the Senate.

HARLEY O. STAGGERS,
TORBERT H. MACDONALD,
LIONEL VAN DEERLIN,
WILLIAM L. SPRINGER,
HASTINGS KEITH,
Managers on the Part of the House.

Mr. MAGNUSON. Mr. President, this is the conference report on the National Pipeline Safety Act. There was not much disagreement between the House and the Senate. The bill is now ready for action.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report 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.

Mr. HRUSKA. Mr. President, the second page of the new amendment, however, will have new text from that which appeared in the printed amendment which we have heretofore been considering. The substance of the new text is that all licensed manufacturers and licensed importers shall submit an application for approval of models of handguns which they would want to manufacture or import. The Secretary will be given 90 days in which to act upon that application, and an additional 90 days would be permissible if, in the Secretary's discretion, good cause is shown for such extension of time.

After evaluating each submitted handgun model and application, the Secretary will then be called upon to determine whether or not the criteria set out in the bill are met. After he shall approve the application, thereupon the importer or manufacturer may proceed to import or make the model that was thereby approved. If there is disapproval, of course the Secretary shall so indicate.

The bill as drawn provides, in another section, that such a denial may be appealed to the District Court, pursuant to procedures already outlined in the bill. If it is disapproved, under the amendment, of course, it shall be unlawful for any manufacturer to make or importer to sell or deliver a handgun manufactured or imported the application for which has been disapproved by the Secretary.

It is a clarification of what the Senator from Nebraska had discussed with the manager of the bill by way of an improvement of the bill.

If I have any time left on the time allotted to me, I reserve it for future use.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, sooner or later the Senate is going to have to determine whether it is willing to stand up and be counted on effective Saturday night special legislation, or not. There is only one way of making that assessment, and that is to put the question to a vote.

There have been a number of amendments, some of which I have accepted and voted for. A couple that I opposed have nevertheless been adopted. Although I would prefer that they not be in the bill, in trying to look at what we are trying to do, I do not think the bill is significantly altered. I was just discussing this matter with the Senator from North Carolina, who, along with the Senator from Kentucky, worked on the drafting of the bill. I think they agree with me we still have a bill now which sets out to accomplish the purpose we intended.

I intend to oppose the amendment of my distinguished friend from Nebraska, and any other amendment that strikes out what I feel is a vital part of this bill. If I fail to persuade the Senate to go along with that, I intend to do everything I can to defeat final passage of the bill.

I sat as chairman of the Juvenile Delinquency Subcommittee for a year and a half and listened to witnesses testify about poor people being shot down and about policemen being shot in the belly by cheap hoods with Saturday night specials.

I have heard the great political law and order cry. But the time has come to see whether the people who have made all these protestations and expressed all this concern are willing to stand up and pass effective legislation to deal with the problem.

I hope my friend from Nebraska in no way considers this a personal affront to him, because I have the greatest respect

for him. But he is dead wrong on the merits, in the judgment of the Senator from Indiana.

We have been detained in this body, now, for the past hour and a half. The Senator from Nebraska first offered an amendment which was so full of loopholes that it has taken about an hour and a half, sitting back there with some Justice Department attorneys, trying to decide whether he better withdraw it. We are now considering another amendment, which has been considered for at least 45 minutes, to determine whether this measure is going to be substituted in place of the considered judgment of a committee of the Senate and a subcommittee of the Senate, documented with rather voluminous hearings to sustain the position of the committee.

The key question right now, and the difference between the position of the Senator from Nebraska and the Senator from Indiana on this amendment, is twofold:

First of all, the question is whether we are going to deal with some effort to control Saturday night specials that are in the hands of dealers.

The Senator from Nebraska has consistently suggested that we should not address ourselves to the problem of Saturday night specials in the hands of dealers. The Senator from Indiana has said that we should. The committee went so far as to say to the dealers, "We will compensate you for the weapons you have now. We are not going to use the police power to come in and say they are contraband, and confiscate them. We are going to pay you for them; but if the Senate of the United States goes on record as saying a Saturday night special as defined in this bill is bad, we are going to do everything we can to stop its sale at all levels."

The Senator from Nebraska would say, "We are going to use this mechanism, after another 90 days delay, ultimately, we hope, to stop their manufacture, but we are not going to do anything about the hundreds of thousands of weapons which we admit by passing this law are bad; we are going to let you go ahead and sell them."

That is just like making a policy judgment that heroin is bad, but that if a retailer has it on hand, he may go ahead and sell it through retail channels. That would make just about as much sense.

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

Mr. BAYH. I yield to the Senator from Idaho.

Mr. CHURCH. If the amendment offered by the Senator from Nebraska is adopted, how would it be possible to enforce the provisions of this bill? In other words, if I understand the amendment correctly, the Saturday night specials that are presently in the inventory of licensed dealers could be sold, but the dealer could not acquire new guns for sale of the category prohibited by the bill.

How, under those circumstances, could it ever be determined whether a given gun sold by a dealer was in fact a part of his inventory at the time of the passage of the bill, or whether it was not? Does this not create impossible enforcement problems for those charged with carrying out the provisions of the bill?

Mr. BAYH. The only way that this could be enforced, if the Senator from Idaho is referring to the dealers, would be to go to the serial number on the weapon in question.

We are about to test the judgment of the committee, supported by such distinguished members as the Senator from North Carolina, the Senator from Kentucky, and a pretty broad cross section of support, that the best way to deal with this problem is at the dealer level. The committee bill provides a dealer or a manufacturer cannot sell a Saturday night special and reimburses those who now possess them, because we are taking property. Any individual who wants to turn such a weapon in to any recognized, appropriate agency, may do so. We would require the Secretary of the Treasury to promulgate annually a list of weapons which do or do not meet the test, so that the dealer can see.

This is not a matter of hieroglyphics, and it is not a matter requiring a great deal of testing, because we have gotten away from the safety and responsibility testing. For such a test, you have to hire someone like the H. P. White Co., spend $200,000 or $300,000, and come up with a test which is inconclusive, according to White's own definitions.

The criteria which has been applied by law to foreign imports since 1968 are very simple: You weigh the weapon, measure the size of it, check the caliber of the ammunition, and see whether it has certain safety features that either meet the criteria or do not. It is very simple. You do not have to have a Ph. D. to make the determination, and you do not have to have 180 days.

Mr. President, I hate to oppose my own creature, but if the Senate goes on record as so demeaning the work of our committee and so distorting the thrust of our legislation as to make it look like a charade to the public, I am going to vote against it. I think too many people today are sick and tired of public officials saying, "I am against Saturday night specials: I want to take away the criminal's weapons, but . . . " and I do not want that to happen here.

Mr. CHURCH. Mr. President, if the Senator will yield again——

Mr. BAYH. I apologize to the Senator from Idaho and the Senator from Nebraska for yielding to emotion, but I have been battered from the left and from the right. There are those who say, "You are not going far enough, Bayh; you ought to take away shotguns and rifles, license them, or register them, too." Others say we ought to do away with all control of weapons.

After reading about 20,000 of those communications, I have come to the conclusion that if we can take 900,000 criminal weapons off the street without in any way impinging on the weapons used by hunters and sharpshooters, that would be a contribution. It may not be enough, but let us not kid ourselves. If we cannot do that, let us admit we have failed, instead of attempting to pawn off some charade on the public.

I yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, I understand the position of the Senator from Indiana. I am just trying to get some information.

Under the provisions of the bill, do I understand correctly that Saturday night specials presently in the inventory of licensed dealers would be acquired by the Government, and the dealers would be paid adequate compensation?

Mr. BAYH. That option is open to the dealers.

Mr. CHURCH. The option is open to the dealers?

Mr. BAYH. The option is open to the dealers, for two reasons. The dealer cannot sell to the public; however, since there are a number of large metropolitan police departments that still require the individual patrolman to buy his weapons, and since some of these sophisticated and expensive weapons that are so easy to conceal have a useful purpose in the hands of a law enforcement officer, we felt that the dealer, where he has a market as far as policemen are concerned, should be able, if he wishes, to keep a dozen or two in stock to sell to local policemen. He can do that.

Mr. CHURCH. But, in any event, it is the dealer's option; he is going to be paid for the weapons he cannot sell under the provisions of the bill?

Mr. BAYH. That is accurate.

Mr. CHURCH. Mr. President, may I just take a moment, with the Senator's consent——

Mr. BAYH. I am glad to yield.

Mr. CHURCH. As the Senator knows, I oppose the bill—I have stated my reasons and need not repeat them now—because I do not believe the passage of this bill will constitute a meaningful deterrent to the criminal. I think that any allotted to me, I reserve it for future use. criminal determined to possess a weapon will easily enough be able to acquire one. At the very most, once these cheap pistols are removed from the market, the criminal would be obliged to buy a better one. At the very least, he could steal a weapon. Therefore, I think that this bill, like the other so-called gun control bills, will not actually constitute a deterrent to the criminal. I realize that the Senator from Indiana and the Senator from Idaho are in disagreement on that score. But I have yet to be persuaded, on the basis of any objective evidence, that these measures are in fact effective in dealing with the criminal problem.

So I will vote against this bill on final passage. If the Senate votes it down, so be it. But I have no desire to render the bill farcical. The adoption of this amendment would make a farce of the measure.

I am persuaded by what the Senator from Indiana says that, regardless of our disagreement on the merits of the bill, we ought not emasculate it in a way that renders it farcical. It would seem to me to be rather hypocritical to adopt this kind of amendment and then, for those who are going to vote for the bill to say that they voted to put an end to the Saturday night specials and to take them off the market.

We should decide this question one

way or the other, but the adoption of this amendment would represent an attempt to have it both ways. Therefore, I shall vote against the amendment, even as I shall vote against the bill.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Mr. BAYH. I yield myself 1 minute on the bill.

Mr. President, I appreciate the analysis of the Senator from Idaho. He and I have privately discussed this issue on the merits, and I feel sincerely that he looks at all the facts and comes to a different conclusion on the merits of the bill than does the Senator from Indiana. That is a matter of judgment.

Mr. HRUSKA. I yield myself 5 minutes.

Mr. President, by way of quick recapitulation, the suggestion has been made that there is objection to 180 days' delay by this amendment. Let us get straight in our thinking as to the 180 days. It is the application to the Secretary of the Treasury for permission to import or to make a gun to which this refers. Until that application is granted, they cannot make nor can they import that handgun. So if a delay is involved, it is not in the meantime being exploited by the production of a gun that is not approved.

What is really involved is this: Here is a proposal to set down criteria for the approval of handguns—those that will be considered Saturday night specials, and therefore barred, and those that will not. There is provision that those that are not qualified and will be barred from future import or making can be surrendered by the present owners, who would be paid market value or $25, whichever is greater. But there will be a residue of that type of gun which will not be surrendered, and the question is what to do with those.

This Senator believes that it would be better to put them in the legitimate stream of commerce, where a record will be kept of those to whom such guns are sold, rather than to make the guns the subject material for a black market that will arise in that field. You are going to have them. The passage of this bill is not going to cause these present guns to vanish. We are going to have them; there is no question about it. There is a different way, however, of trying to dispose of them.

As to the procedure for any gun that will be made or imported from now on, what more commonsense way is there than for the manufacturer or importer to have determined in advance whether or not that model is going to comply with the law? If it does not comply, he does not manufacture it. The Secretary will deny the application.

That is the purport, that is the thrust, of the amendment.

I do not know that there is anything sacrosanct about offering amendments to amendments. We do it here every day. We worked for a year and a half on this bill. It is my effort to improve this bill to the point where some people can vote for it who will not vote for it without some improvements it needs. My amended suggestion was introduced in a good-faith attempt on my part to meet what I understand to be the Senator's objections. It was an attempt to reach an agreement.

To inveigh against the Saturday night specials and say, "We don't like the belly guns; they're being used to hold up people," is fine. It is fine to engage in that rhetoric. But we have to do something about it. There are two ways of doing it. One is to allow the guns to be disposed of on the black market. If they are not going to be surrendered, there is going to be a trade-in. The other is to put them through the regular channels of commerce.

It is said that if these guns are bad, why do we allow the guns to be continued in sale? Let me suggest that if these guns are bad, why does not the bill provide that their existence shall be made illegal and that we shall confiscate them or call them in and that people may not own them any more? The reason is that that is impracticable, and it would be an unenforceable proposition to try to forfeit those guns.

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

Mr. HRUSKA. I yield.

Mr. BAYH. And it could not pass.

Mr. HRUSKA. And it could not pass. Exactly. It could not pass because it is unenforceable and unacceptable.

Mr. BAYH. The Senator from Indiana is not willing to go that far, but I think the Senator from Nebraska gets to the crux of it.

Mr. HRUSKA. The reason for it is that that form of law would be unacceptable and unworkable and unenforceable. That is the reason for it.

I say it is better to put it on the basis of an above board dealing as to those guns until they eventually disappear, and they will. In the meantime, we will have a bill what will prevent the injection into the gun sales of this country of approximately 1 million of these objectionable handguns per year. That is a great deal of progress, and I say it is worthwhile.

That is the sum and substance of the amendment, and I think the amendment should be adopted.

Mr. BAYH. Mr. President, do I have further time?

The PRESIDING OFFICER. Not on the amendment.

Mr. BAYH. I yield myself 5 minutes on the bill.

Mr. President, I invite the attention of Senators to the language of the Senator from Nebraska. He may not realize exactly what it does, just as there was some question about the effect of the previous amendment, which he subsequently withdrew, because he found out it did the very thing that the Senator from Indiana suggested.

I read from page 1, subsection (n):

> It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer or licensed collector to sell or deliver a handgun manufactured or imported into the United States after the effective date of this Act if such handgun is a model which has been disapproved by the Secretary.

There is the crux of one of the differences between the Senator from Nebraska and the Senator from Indiana. He says that you cannot sell until you get approval. By the wording of his amendment, you can sell until it has been disproved. It says, "which has been disapproved by the Secretary." That means for 90 days, for 180 days, or for whatever length of time, you can go ahead and sell this weapon until the Secretary makes a determination of disapproval.

The second part of the amendment reads as follows:

> After evaluating such submitted handgun model and application, the Secretary shall determine whether the handgun model meets the following criteria.

It does not say that if the handgun model does not meet the criteria, we cannot sell it. It does not say that if the handgun fails to live up to the standards of the bill, it shall be disapproved according to the previous section. It says only that the Secretary shall determine whether the handgun model meets the criteria. We are still not mandating someone in the Government to make the assessment of whether the gun is good or bad and, after saying that it is bad, that no one will be able to sell it.

One last word about the gun stocks in commerce today. There was an assessment by the committee that if we are going to say that a Saturday night special is bad, we should make a reasonable effort to stop its sale. We made the assessment for a number of reasons, that we could not, should not, and would not try to deal with the weapons now possessed by individuals. If anyone wants to turn in his gun, fine, we will pay him for it. But, we thought, if we are really going to make a determination that a gun is bad—it is too small, too dangerous, or has been used to kill 10 policemen—the criteria that would make it a Saturday night special, we should say to the dealer as well as the manufacturer, "Stop selling, fellows. Stop selling."

The suggestion that this will create a black market is rather ridiculous, I may say to my friend from Nebraska I do not know why a dealer would want to risk violating Federal law to sell a weapon and be legal about it, or turn in that illegal weapon and get paid for it by the Federal Government in order to get it out of commerce.

If the Senate goes on record and adopts this amendment, it would make about as much sense as if we were to pass a bill saying that heroin and opium are bad but if you have got them at the retail level we will let you go ahead and sell your stock anyhow, for fear you will sell it on the black market if we do not.

The Senate has to stand up and be counted on this. We must either make a good faith effort to deal with the problem of Saturday night specials or say that we just do not have the courage to stand up and be counted on it.

This is a key amendment. As I said earlier, if we accept it, we might as well close up shop and go home. I am not going to be part of legislation like this, when we beat our breasts and say that we have got to deal with the zip guns, the zap guns, the belly guns, and the guns that J. Edgar Hoover and his successor, Mr. Gray, and others have said are bad, weapons that the Fraternal Order of Police have said are bad.

I do not know whether anyone is lis-

tening to me or not. But I have sat in committee and listened to policemen come and testify and for the first time in history the Fraternal Order of Policemen have gone on record as being opposed to firearms.

And what do they say? I am not a law enforcement official. I do not have to ride in a prowl car. I do not have to walk a beat. But those who do, say that this kind of legislation will help to save their lives. I am willing to accept their judgment.

The PRESIDING OFFICER (Mr. BUCKLEY). The time of the Senator from Indiana has expired.

Mr. BAYH. I think it is probably appropriate.

Mr. HRUSKA. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. HRUSKA. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Nebraska has 7 minutes remaining on the amendment.

Mr. HRUSKA. Mr. President, I am willing to yield back my time now.

Mr. BAYH. Mr. President, I am glad to yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Nebraska (Mr. HRUSKA).

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) and the Senator from Wyoming (Mr. McGEE) are necessarily absent.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 27, nays 70, as follows:

[No. 360 Leg.]

YEAS—27

Allen	Eagleton	Moss
Baker	Edwards	Packwood
Beall	Fannin	Saxbe
Bellmon	Goldwater	Schweiker
Bennett	Gravel	Stafford
Bible	Hansen	Stevens
Brock	Hruska	Thurmond
Cotton	Metcalf	Tower
Curtis	Miller	Weicker

NAYS—70

Aiken	Fulbright	Montoya
Allott	Griffin	Muskie
Anderson	Gurney	Nelson
Bayh	Harris	Pastore
Bentsen	Hart	Pearson
Boggs	Hartke	Pell
Brooke	Hatfield	Percy
Buckley	Hollings	Proxmire
Burdick	Hughes	Randolph
Byrd, Harry F., Jr.	Humphrey	Ribicoff
Byrd, Robert C.	Inouye	Roth
Cannon	Jackson	Scott
Case	Javits	Smith
Chiles	Jordan, N.C.	Sparkman
Church	Jordan, Idaho	Spong
Cook	Kennedy	Stennis
Cooper	Long	Stevenson
Cranston	Magnuson	Symington
Dole	Mansfield	Taft
Dominick	Mathias	Talmadge
Eastland	McClellan	Tunney
Ervin	McGovern	Williams
Fong	McIntyre	Young
	Mondale	

NOT VOTING—3

Gambrell	McGee	Mundt

So Mr. HRUSKA's amendment was rejected.

Mr. BAYH. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT OF DISTRICT OF COLUMBIA POLICE AND FIREMEN'S SALARY ACT OF 1958

Mr. EAGLETON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 15580.

The PRESIDING OFFICER (Mr. BUCKLEY) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 15580) to amend the District of Columbia Police and Firemen's Salary Act of 1958 to increase salaries, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. EAGLETON. I move that the Senate insist upon its amendment and agree to the request of the House for a conference 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 (Mr. BUCKLEY) appointed Senators EAGLETON, INOUYE, and MATHIAS conferees on the part of the Senate.

Mr. ROBERT C. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

HANDGUN CONTROL ACT OF 1972

The Senate resumed the consideration of the bill (S. 2507) to amend the Gun Control Act of 1968.

AMENDMENT NO. 1407

Mr. BROOKE. Mr. President, I call up my amendment, No. 1407, on behalf of myself and Senator ALLOTT, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 11, immediately after line 24, insert the following:

SEC. 7. Section 924 of title 18 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) A trial of any crime involving use of a firearm shall have priority on the calendar of any court of the United States. Upon receipt of the copy of such complaint, it shall be the duty of the presiding judge to assign the case for hearing at the earliest practicable date, and to cause the case to be in every way expedited."

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".

Mr. ROBERT C. BYRD. Mr. President, we cannot hear a word. Would the Chair please get order in the Senate?

The PRESIDING OFFICER. Senators will please be seated or retire to the cloakrooms. The Senate will be in order.

Mr. BROOKE. Mr. President, I ask unanimous consent that the name of the junior Senator from New York (Mr. BUCKLEY) be added as a cosponsor of the amendment.

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

Mr. BROOKE. Mr. President, I ask unanimous consent that the name of the distinguished senior Senator from New York (Mr. JAVITS) be added as a cosponsor.

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

Mr. BROOKE. Mr. President, I ask unanimous consent that the name of the Senator from New Hampshire (Mr. COTTON) be added as a cosponsor.

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

Mr. BROOKE. Mr. President, I ask unanimous consent that the name of the Senator from Florida (Mr. GURNEY) be added as a cosponsor.

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

Mr. BROOKE. Mr. President, I ask unanimous consent that the name of the Senator from Alaska (Mr. STEVENS) be added as a cosponsor.

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

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

Mr. BROOKE. I yield.

Mr. COOK. Has the Senator modified his amendment so that it does take absolute precedence with respect to what would be considered, in the nature of accelerated docket?

Mr. BROOKE. No. I have not modified the amendment because I believe it states——

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

Mr. BROOKE. I yield.

Mr. BAYH. I call to the attention of the Senate that we have a 5 o'clock deadline by unanimous consent. I think we need to be aware of that. This is an important amendment. I have discussed it at some length with the Senator from Massachusetts.

I had the same immediate concern that the Senator from Kentucky has and if we can let the Senator from Massachusetts explain the way in which he uses the word "priority" on the docket, so that this would not mandate a firearm case taking precedent over an airline hijacker or a case of someone cutting up his family with a butcher knife, I think we can move along more rapidly.

Mr. COOK. Mr. President, that is my point. Under those circumstances I would like to be a cosponsor of the amendment.

Mr. BROOKE. I can assure the Senator from Kentucky and the distinguished manager of the bill that it is the intent of the Senator from Colorado (Mr. ALLOTT) who is a cosponsor of the amendment and me that the presiding judge would have flexibility "to assign the case for hearing at the earliest practicable date." If a presiding judge

has a case, such as the Senator from Indiana suggested, a hijacking case, he could give that case precedence and, of course, that would be within his right to do so. By this amendment we are trying to assure that where firearms are used in the commission of a crime in felony cases, that these cases not take 4 and 5 months to be disposed of, and that there be swift and sure justice.

I think under the language of the amendment that the problem the distinguished Senator from Kentucky referred to and that the distinguished Senator from Indiana referred to, would be dealt with.

Mr. COOK. Under those circumstances I would like to ask that my name be added as a cosponsor.

Mr. BROOKE. Mr. President, I ask unanimous consent that the name of the distinguished Senator from Kentucky (Mr. COOK) and the name of the distinguished Senator from Tennessee (Mr. BROCK) be added as cosponsors.

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

Mr. BROOKE. Mr. President, I believe we in the Senate are agreed that crimes committed with firearms are particularly menacing to society. That is the basic premise and intent of S. 2507. To reinforce this intent, the Senator from Colorado (Mr. ALLOTT) and I have introduced an amendment to provide priority treatment in the Federal courts for all cases involving the use of firearms.

Our amendment will make it clear to offenders and would-be offenders that justice in the case of crimes committed with firearms will be particularly swift and sure.

While this amendment affects only Federal courts, it should serve as an example to other courts in our Nation's judicial system. I believe a clear expression of this priority by Congress would echo through the courthouses of our Nation.

To mandate such a priority is not to reflect adversely on the present handling of cases involving the use of firearms. Rather we seek merely to assist the Federal courts in establishing their priorities. Ample precedent exists in this regard. The public accommodations section of the 1964 Civil Rights Act mandates "expedited treatment of civil rights cases." In addition, the notes of the advisory committee on rule 40 of the Federal Rules of Civil Procedure list numerous examples of statutes, which establish the precedence of certain cases.

Facts as well as precedence compel the extension of priority treatment to cases involving firearms In 1971, 46,674 individuals were prosecuted in the Federal courts for criminal acts. No record exists as to how many of these cases involved the use of firearms However, it is known that carrying a firearm was the principle charge in 1,983 of these cases, which represented a sixfold increase in such charges from 1967.

In 1971, on the average 4.3 months elapsed from the filing of the complaint to the final disposition of an illegal firearms case. Even in cases where a guilty plea was entered this interval was an extraordinary 3.5 months. Let me repeat, 3.5 months were required to adjudicate the typical Federal firearms case involving a guilty plea Considering that 52 percent of all firearms cases are disposed of by a guilty plea, this fact compels a prompt remedy.

Early in 1969, the Justice Department made known its intention to accelerate the processing of criminal cases. The results have been successful, most notably in the dramatic reduction in the backlog of criminal cases in the District of Columbia. However, neither the courts nor the U.S. attorneys have had the requisite authority to expedite the litigation of firearms cases.

Senator ALLOTT and I believe that this authority should be granted to Federal court officials and should apply to all cases involving the use of firearms. Congress must take strong steps to stem the alarming increase in the number of deaths and injuries caused by gun-related incidents. The pending bill to prohibit the sale and distribution of all handguns, except those used for law enforcement purposes and for legitimate sporting activities, is an important step in establishing meaningful limitations on the trafficking in firearms.

But the effort to limit and regulate the distribution of firearms must be accompanied by a clear and effective policy of prosecuting those who violate firearms statutes. If the potential criminal realizes that the penalty for his action will be promptly imposed, then we can begin to reverse the frightening 100 percent increase in violent crimes since 1965. By reducing the incidence of crimes of violence, we can lessen the fear that pervades so many American homes. Absent this fear, millions of well-intentioned Americans may no longer believe that they need firearms in their homes for self-protection.

It has been said many times that the increase in the number of firearms in our nation is a cyclical phenomenon. Enactment of this amendment will mark an important step in extricating ourselves from the dizzying pace of our domestic "arms race"

I urge my colleagues to accept this amendment as a clear expression of congressional intent that individuals charged with any crime involving the use of a firearm should be prosecuted with all deliberate speed.

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

Mr. BROOKE. I yield.

Mr. GOLDWATER. The Senator's amendment reads in part, "a trial of any crime involving use of a firearm—."

Does it require that the firearm be used?

Mr. BROOKE. No.

Mr. GOLDWATER. Does it require that it be loaded?

Mr. BROOKE. No.

Mr. GOLDWATER. In other words, if a man uses a firearm to jimmy a window open, or is caught in the act of a crime with a gun on his person, this would apply.

Mr. BROOKE. If I understand the question correctly——

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator may proceed.

Mr. BROOKE. One, it does not require that the firear be used. Two, it does not require that the firearm be loaded.

As the Senator from Arizona knows, many of these crimes are committed with unloaded guns. In the case of a robbery, it was not our intent that the firearm be loaded.

Mr. GOLDWATER. I thank the Senator. I think this is a step in the right direction. I hope that some day in every State it would be illegal and that it would require an immediate 10-year automatic sentence for carrying a weapon.

If the Senator would not mind, I would like to ask to have my name added as a cosponsor of the amendment.

Mr. BROOKE. I am pleased to have the Senator as a cosponsor.

Mr. President, I ask unanimous consent that the name of the distinguished Senator from Arizona be added as a cosponsor of the amendment.

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

Mr. COTTON. Mr. President, will the Senator yield for a question?

Mr. BROOKE. I yield.

Mr. COTTON. Will the Senator from Massachusetts think about this suggestion in order that it would be perfectly clear with respect to the intent, and so that there would be no question about it:

A trial of any crime involving use or possession of a firearm.

That means if someone goes into a grocery store or bank, or somewhere else, with a gun in his possession it makes it perfectly clear it does not have to be actually fired or displayed. Would that violate the intent of the Senator's amendment?

Mr. BROOKE. I do not know if the Senator from Colorado (Mr. ALLOTT) would disagree, but I strongly support the proposed amendment of the Senator from New Hampshire. I certainly would be willing to accept that change in the language because it is my intention, and I assume the intention of the Senator from Colorado, that if there is a gun in the possession of the offender at the time he commits the crime, then that case should be given priority on the calendar, even though the offender may not, as the Senator said, show the firearm or use it.

Yes, I would agree to that.

Mr. President, I ask unanimous consent to modify my amendment by adding, on line 6, page 1, after the word "use" the words "or possession", so as to read, in subparagraph (e):

A trial of any crime involving use or possession of a firearm shall have priority—

And so forth.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. BROOKE. I thank the distinguished Senator from New Hampshire for his contribution.

I yield to the distinguished Senator from Colorado (Mr. ALLOTT).

Mr. ALLOTT. Mr. President, I thank my distinguished colleague, because I think this may well be, and very well could be, a historic amendment because it is a way, a new method, of getting at a problem which has perplexed the country.

I do not like to speak of my own past experience, but I do speak from 5 years of experience as a district attorney and a prosecuting attorney, some 25 years of practice involving also the defense of criminals, and 4 years as chairman of the board of parole of the State of Colorado, which have given me a little background.

It seems to me it is becoming clearer all the time that one of the great impetuses to crime is the fact that people are almost certain that they have a good chance of never being brought to trial and that, as the time for the trial goes on for 3 or 4 or 5 years, witnesses are either unavailable or else their memories have become so faulty and blurry that they cannot support the prosecution.

This proposal is a means of attacking the problem in a new way, in which people who attempt to commit crimes with firearms are going to be tried as quickly as possible and brought to justice. That is the real purpose of this amendment.

It could be that during the years ahead this will be seen as the most significant amendment that was offered to the bill.

I congratulate my colleague for his fine work on this amendment and, of course, as the cosponsor, I support it wholeheartedly.

Mr. BROOKE. I thank my distinguished colleague from Colorado, the cosponsor of this amendment, for his contribution and for what he has said relative to the significance of this amendment.

Mr. President, I ask unanimous consent that the name of the distinguished Senator from Hawaii (Mr. FONG) be added as a cosponsor.

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

Mr. BROOKE. Mr. President, as has been stated, this is a very simple amendment. I think the colloquy on the floor has been very helpful in describing the intent of the amendment and in broadening the amendment to include possession as well as use of a firearm in the commission of a crime.

I hope that my distinguished colleague from Indiana, the floor leader, will see fit to accept the amendment.

Mr. BAYH. Mr. President, I am glad to accept the amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BAYH. I yield back my time.

Mr. BROOKE. Mr. President, I yield back my remaining time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendments (No. 1407) as modified, of the Senator from Massachusetts.

The amendments, as modified, were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. STEVENS. Mr. President, I have an unprinted amendment which I have sent to the desk, and which I now ask to have called up.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk proceeded to read the amendment.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 4, beginning with line 9 strike out through page 8 line 15 and insert the following:

"(n) "The Secretary shall prohibit the importation or manufacture of any handgun which has not been submitted for testing in accordance with this section, or which, having been tested, fails to comply with the standards established for that particular model in accordance with this section.

"The Secretary shall administer, or cause to be administered under such contractual or other arrangements as he shall deem suitable, all testing under this section. In prescribing regulations under section 927 of this title which contains both the standards to be applied to handgun models as well as the tests under which compliance with the standards will be determined, the Secretary will be guided by considerations of safety and reliability. Prior to promulgating such standards and tests he will consult with the Chief of Army Ordnance and the Secretary of Commerce. The Secretary will insure that regulations prescribed in implementation of this section provide that:

'(1) each test shall be reasonable, practicable, and appropriate for the particular model of handgun for which it is prescribed and for the standards which relate to such model, and shall as far as possible be stated in objective terms;

"(2) each standard and relevant test shall be formulated and applied solely to determine whether a handgun model (A) reveals, after repeated firing, a substantial defect evidenced by material failure, structural deformation, or malfunction caused by excessive wear which would preclude safe and reliable performance in normal usage, and (B) reveals a design or structural characteristic which permits discharge by shock equivalent to that which could be expected if the handgun were jarred or dropped in normal usage; and

"(3) only a handgun model, a sample or samples of which have been tested in accordance with this section, may be found by the Secretary to be not in compliance with the revelant standards, except that under no circumstances shall the Secretary approve any handgun model which, in the case of a pistol model, is less than six inches in overall length or which, in the case of a revolver model, has a barrel length of less than three inches.

Mr. STEVENS. Mr. President, this amendment goes to the matter of the discussion that I had with the Senator from Indiana at the beginning of the debate on the bill. The amendment would change the standards or the criteria that are set forth on page 4 of the bill, the point system concept, to a concept of safety, reliability, and concealability.

I think the Senator from Indiana pointed out in the original debate that there are guns which are larger than the standard set by his provisions which would not be barred by that test because of the point system.

As I pointed out, I believe that the objective should be to assure the American public which purchases guns under the Gun Control Act of 1968 that the guns they are purchasing are safe, reliable pistols or revolvers. The amendment would specifically exclude any of the handguns which have a barrel of less than 3 inches or an overall length of less than 6 inches. It is the same standard the committee used for concealability.

Having read the report that has come from the committee, I know the committee's viewpoint and the viewpoint of the Senator from Indiana about the concept of safety and reliability as opposed to the criteria which apply a certain number of points for frame construction, et cetera. I think he has a subjective test, and that this is an objective test.

I know his point of view is that the safety, reliability, and concealability tests are subjective, and that is set forth on page 18 of the committee's report, but I would say this amendment will actually remove more guns from the American scene than tests or criteria which would remove handguns as set forth in the bill. We say that tests for safety and reliability characteristics and for concealability be specific and be mandatory, and that no handguns will be approved of less than 6 inches in overall length and less than 3 inches as far as the barrel is concerned.

This is a better approach. It is an approach based on standards for each handgun. It will eliminate many unfortunate accidents that result from the use of handguns today, which handguns do not have the safety characteristics that most good sportsmen insist upon when they buy those handguns. Those who buy handguns, and have a legitimate purpose in keeping them and are eligible under the Gun Control Act of 1968 will know that when they buy guns in this country they are buying guns that have specific safety and reliability standards. We would prohibit the sale or importation of any gun which would not meet the concealability test.

As I said, I am aware of the viewpoint of the Senator from Indiana as set forth in the committee report. To me, there is a difference in approach. I do not know of any sportsman, I do not know of anyone who is involved in the controversy around the concept of increased gun control, who would disagree with the safety and reliability test. I do believe that the criteria laid down for the first time conditions on domestic commerce which we have never used before and which have nothing to do with safety and which have nothing to do with reliability, and which are primarily arbitrary tests. Again I would point out that the concept of the bill is that there are criteria that would be used to determine the sporting uses of handguns.

I believe that instead of using that type of criterion, we should use the concept of safety, reliability, and concealability, and that is what this amendment would do.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, I yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I rise in support of the amendment offered by the

Senator from Alaska. The basis of the criteria which he puts in his amendment is safety and reliability of a weapon, not whether it is suitable for sporting purposes, and not whether it is suitable for personal protection—vague and very undefiniable terms that are not specific and definite even in their description. It is his purpose, rather than a more concrete judgment that can be rendered as to the value of the gun, to consider the safety and reliability of that gun to the user threof.

The tests provided for and the method of testing the guns spelled out in the amendment would be objective rather than subjective. Those points which are contained in the bill as reported by the committee are primarily the factoring criteria which were inserted there. They were taken from the regulations of the Secretary of the Treasury. However, those regulations never were applied or used to a great degree, for this reason: It was known that they would be disqualified under the law if the guns were imported in their assembled form. So the component parts were shipped in, and the assembly occurred within the United States, and therefore escaped any necessity for having these criteria apply.

Rather than being subjective, rather than having as untried and undemonstrated a set of criteria as those, we have in this amendment of the Senator from Alaska a greatly superior set of instructions to the Secretary of the Treasury, for the purpose of determining whether a gun is safe and reliable. It will, in my judgment—and I am pleased to hear the Senator from Alaska say so—result in a more strict application of standards than the ones now contained in the bill. It expressly retains the length of the barrel and also the overall length, in the case of pistols. In that regard, it is the same as the criteria set out in the pending bill. But it is considered feasible—H. P. White said so—to develop a testing procedure that will provide an objective evaluation of the safety of a handgun, and once the test criteria are established, objective handgun evaluation can be implemented economically, efficiently, and effectively. That is the type of testing that is provided for in this amendment, and I urge its adoption.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, will the Senator from Indiana yield me 4 or 5 minutes?

Mr. BAYH. Yes.

Mr. KENNEDY. Mr. President, this is another of the amendments put forward by those who want to gut this Saturday night special bill. Only a little while ago we were listening to how we had to protect the rights of the dealers, and permit them to continue to sell Saturday night specials even though, in the legislation and from every law enforcement point of view, obviously they add to the problems of crime and violence in this country. Now we have an amendment on the question of safety and reliability.

It is most interesting that we hear amendments concerned about safety and reliability for those who are pulling the trigger or sighting the gun, when we ought to be talking about safety and reliability for the millions of people in this country who are going to be on the other end of that weapon, the people who will receive that bullet or be harassed and intimidated by someone holding the gun.

I do not have to review for the Members of the Senate the statistics about the weapons involved in murder and crimes of violence in this country. They have been documented in the hearing record. They have been mentioned here on the floor of the Senate. Unfortunately, they have apparently not been convincing to the majority of Senators. But I think what we ought to be thinking about is safety and reliability for the American people, rather than safety and reliability for those who are going to be using the weapons. That is the question that should be uppermost in our minds.

But in spite of that fact, we are seeing a series of amendments proposed by those who want to gut this whole bill, weaken it, damage it, and take out the heart and soul of it. I was encouraged by the last vote, rejecting an amendment which also would have had an enormously disastrous effect on the bill, and I would hope that Senators, in meeting our responsibilities, would be more interested in safety and reliability to the average citizen who may be a victim of a gun crime, rather than the question of the safety and reliability to the people who are using and shipping handguns, whose only purpose is to kill and maim their fellow human beings.

I thank the Senator from Indiana.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Alaska has 6 minutes.

Mr. STEVENS. I yield myself 3 minutes.

Mr. President, from the statement of the Senator from Massachusetts, I would say I understand full well his point of view with respect to this bill.

The bill, as presently written, tries to control Saturday night specials on the basis of price only. If you can make a Saturday night special that meets these criteria—and it can be done—I am looking for the comment the Senator from Indiana made before on the laboratory test.

Mr. BAYH. Will the Senator yield?

Mr. STEVENS. On the basis of the bill before us, it is just a question of price, in terms of controlling Saturday night specials. My amendment prohibits any gun with a 3-inch barrel or less, and any gun 6 inches or less in overall length. That is what I originally thought we were talking about here when we spoke of Saturday night specials.

We find there are guns that would meet the criteria of the bill and would still be dangerous, but they could be approved by the Secretary of the Treasury. They would not have to have double action devices, they would not have to stop the firing pin between chambers, or employ devices designed to protect those who legitimately use the guns.

I think we are properly concerned with the control of the Saturday night specials. I think the very fact that we have eliminated the small concealable handguns indicates that. But should not the person who legitimately has the handgun also be assured that the Treasury Department is looking at the handgun and saying, "We shall prohibit the manufacture or sale of any gun that is dangerous, per se, whether to the person on the firing end or on the other end of the gun?"

I happen to believe that the safety and reliability test would eliminate many more guns than would be eliminated by the criteria now in the bill.

Mr. KENNEDY. Mr. President, I wish the Senator from Alaska had made such an eloquent address when we had before the Senate the Hart amendment, which really would have done the job.

Mr. STEVENS. I do not agree with the Hart amendment.

Mr. KENNEDY. We were not arguing, then, about 6 inches or 8 inches, or safety and reliability; we would really have taken the step of eliminating the handgun with the Hart amendment. The Senate had the opportunity to vote on that issue, and unfortunately we ended up with 6 or 7 votes.

There we were really attacking the problem, and the Senate was trying to do something about those concealable weapons used in crimes of violence in this country. I wish we had been able to obtain such enthusiastic support for the Hart amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, I salute my friend from Alaska for what I feel is a very genuine and sincere interest in keeping the law-abiding user of hand weapons from being injured. I suggest not that this is his intention but that, in fact, this is the major battle and the major difference that has existed since the inception of our effort to do something about Saturday night specials. To suggest that the criteria of this bill just deal with price is just not true because some of the most critical invective directed at the Senator from Indiana is that there are a few very expensive weapons that you can still hide in your fist.

What we have tried to do is to apply an objective criterion that does not need further, subjective evaluation as the very well intentioned but almost meaningless test of the Senator from Alaska would have to be evaluated and structured. His amendment would lead we know not where.

I suggest that the test which is presently in the committee bill has been applied since 1968 very effectively to foreign weapons. We know what it means. It is very specific. We know how to apply it, and we are not opening new ground and applying a new test that really has never been tried and about which we know almost none of the specifics.

I invite the attention of Senators to what Mr. Harold A. Serr, Director of the Alcohol, Tobacco, and Firearms Division of IRS for 6 years—until he retired in July of 1970—said about this subject. He is one of the acknowledged experts on firearms. He was directly responsible for administering the factoring criteria with which we have been operating since 1968.

When he testified before our committee, he had this to say about the safety test:

There are certain prescribed safety tests.

He was referring to the safety tests which are now in the factoring criteria. We already consider certain aspects of firearms with respect to safety and points in the present tests. In referring to those, he said:

There are certain prescribed safety tests. These safety tests could be greatly expanded, although from the standpoint of the user of the weapon or even society, there is little statistical basis for doing so. In all my experience at the Alcohol, Tobacco, and Firearms Division, I do not recall a single complaint of a handgun user being injured from a faulty weapon.

Mr. President, I just have to repeat what I said earlier. I know that the Senator from Alaska has not been a part of this debate——

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

Mr. BAYH. I yield.

Mr. STEVENS. I happen to know a young man who serves in the State legislature in Alaska who was out target practicing with a .357 Magnum. He put it down and picked it up to move it aside to get something else. He picked it up by the barrel, and that gun did not have a safety device on it, and the projectile went right through his neck. He happens to be alive today, by a miracle. That gun should have had a double-action trigger and a grip safety on it. If it had, he would not have been injured.

Some of us understand guns well enough to check them when we buy them, to see what they are like. Many people do not understand that.

We are saying that these standards ought to be involved in the consideration and should not be a point test based upon pistol weight, upon caliber, upon frame construction. The concept of the Senator from Indiana is that you have to have a total of 75 points, under these criteria—so many points for a .22 caliber, so many more points for 7.65 millimeters. That has nothing to do with the safety of the weapon.

The Senator from Indiana challenged me. I challenge the Senator from Indiana to tell me one gun that would be prohibited by this amendment that would be cleared by mine. All I say is that beyond the standards of 6 inches and 3 inches on concealability, we would put specific safety standards in the law so that these guns, whenever they are sold, to whomever they are sold, would meet the specific standards.

Again I say that I do not know of one weapon that the Senator's bill would prohibit that mine would authorize.

Mr. BAYH. The Senator from Alaska talks about the standards of the Senator from Indiana. This criteria established in the bill are not my creation. These standards have been established and used since 1968 for foreign weapons. And they include safety factors. They have been very effective in keeping out approximately 900,000 weapons, we are told—at least, that is the importation. We do not know what the test of the Senator from Alaska is going to mean. It has never been used.

Our bill will result in safe weapons, but I do not care how safe a weapon is. If it is small enough, you can stick it in your vest pocket and go into somebody's home or somebody's store or assault them on the street. That kind of weapon has no sporting purpose. J. Edgar Hoover said that those are criminal weapons, that we ought to abolish them. His successor, Mr. Gray, says they ought to be abolished.

Let us not kid ourselves. Let us get on with this bill. Let us not just say that we are passing a consumer protection bill; because if that is all we have, I say, with all respect to my friend from Alaska, I am going to vote against it. I am going to do everything I can to defeat it, because I do not want to perpetrate another subterfuge on the people of this country. I do not intimate that motive to the Senator. But, in final analysis, that is the wrong approach. We fought that out in committee.

This is an effort to detract from our efforts, from the real purpose, and that is to keep these small, easily concealed weapons out of circulation.

This bill is not a panacea. But if we can stop the sale of these weapons I think we will have made a contribution. We know what test is being applied under my bill. We do not know what test is going to be applied by the Senator from Alaska. Let us put this aside, pass this bill, and recognize that we have not come up with a panacea but that we have made some progress and at least know the direction in which we are headed.

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

Mr. BAYH. I yield.

Mr. KENNEDY. On the question of safety and reliability, as I understand—I wish the Senator would correct me if I am wrong—under the criteria established in the 1968 Gun Control Act for sporting weapons, the concept of safety was built into the test that was used in the 1968 act. I wish the Senator would correct me if I am wrong. As I understand, a point system was developed which gives a credit for various safety factors. Included in the criteria are such safety factors as: the lock; the breech mechanism, which is an indication of whether the chamber is loaded; a firing pin lock; different kinds of safety on grips and magazines, and other devices to insure that the weapons do not fire accidentally.

It seems to me that those have been built into the tests of the 1968 law; and I am sure that if there were additional suggestions, other than those which have been included, the Secretary would include in the report or would certainly make the additional suggestions or recommendations that are needed.

Am I not correct in my observation about the matter of inclusion of safety as well as the matter of reliability in the 1968 act as it applies to sporting weapons?

Mr. BAYH. The Senator is accurate. I do not know when the weapon referred to by our friend from Alaska was purchased, but I should like to refer him to the criteria in the bill which specifically rules out that particular kind of weapon if it has that kind of mechanism. I refer to the following criteria that deal specifically with safety:

A pistol or a handgun model must have a positive manually operated safety device. Then, on the safety features: Five points if the pistol has a locked breech mechanism; five points if the pistol has a loaded chamber indicator; three points if the pistol has a grip safety; five points if the pistol has a magazine safety; and 10 points if the pistol has a firing pin block or lock.

Further down, where we are talking about revolvers—and this is mandatory as a safety device—either automatically in the case of a double action firing mechanism, or by manual operation in the case of a single action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge.

That criteria is written right into the bill. That is what is being applied now to foreign weapons. We are suggesting, let us apply the same safety criteria to domestically produced weapons as well as size criteria.

Mr. STEVENS. If the Senator will yield, as I understand the Senator's bill in terms of point criteria, it will be possible to have 75 points or 45 points under either provision of the bill without having safety features in subsection (b) or small section 5 on page 5; that is, five points for a locked breech mechanism, five points for a loaded chamber indicator, three points if the pistol has a grip safety, five points if the pistol has a magazine safety, and 10 points if the pistol has a firing block or lock. Those are extra things. Those are extra things if you have extra safety. Our concept is you have to have those, period. You cannot have a gun clear the requirement without having any of them. You are not eliminating unsafe Saturday night specials. You are not eliminating unsafe small guns.

Mr. BAYH. With all respect to my good friend from Alaska, that is not an accurate description of present law. Certain extras are in the safety area on page 5 and page 4 that give extra points. There are also some mandatory safety features.

Mr. STEVENS. I concede that.

Mr. BAYH. There is the positive manually operated safety device. As I just pointed out, that deals specifically with firing upon the dropping of a gun. The specific test that would have been applied to the weapon that shot your State legislator friend in the neck is applied now to foreign imported weapons and would prohibit that kind of weapon from being imported because it would not pass the mandatory test. It does not have anything to do with additional points.

Mr. STEVENS. I would say again that there is not one gun that would be barred by the criteria test that would be legalized by my amendment, but as the Senator stated at the very beginning of this debate in terms of the bill before us, he stated that the test of the White Laboratories found that some of the most expensive guns did not—repeat, did not—meet the criteria of the bill. The criteria that has been used by the Treasury Department was limited to importing for

sports purposes. They were sports guns. That was the only criteria involved. There were no safety criteria involved and no concept of reliability.

Those criteria were developed and determined as to whether the guns were supposed to be for sports purposes. That provision of the existing law that has been the one under which the criteria were drawn. I am sure the Senator from Indiana would agree.

Mr. BAYH. Mr. President, I ask for 2 minutes on the bill because I do not want the record to show that silence on my part would indicate agreement to what the Senator has just stated.

We have applied since 1968 a whole series of safety requirements. Here again I do not in any way impugn the motives or insinuate anything other than the kindest of intentions on the part of my good friend from Alaska, but the effort here is to strike out the test that has been used since 1968, specifically designed to say that we will get small weapons—I repeat, small weapons—out of production and to substitute some test that has never been tried.

I do not know what kind of test the Secretary will apply. We do not know what kind of test will be applied. I, for one, if this amendment is adopted, feel that it will so go to the guts of the bill that we cannot, in good faith, go to the public and say that we have done anything constructive for them, and I will find myself in the same position I was on the last one, of having to vote against my own bill.

The Senator from Alaska has no obligation to change his position because I feel that strongly, but this is one of those areas that those who do not want any effective gun control have resorted to because we are substituting a proven, and well used test which has worked effectively and which has been applied to foreign weapons. It is substituting that for something that has never been applied, that is not specific, and that we do not know what we will wind up with.

Mr. STEVENS. Mr. President, I would close by saying in regard to one thing the Senator from Indiana said, that the tests have to be applied to all weapons. My amendment would apply to the test of reliability and safety, yours applies to the point system whereby if you come in on a total minimum amount you would have a gun that would clear. It is not a prohibition. It is a point system clearance concept.

Mr. BAYH. Does the Senator deny the assertion of his friend from Indiana that the specific safety provisions that concerned him about his friend in Alaska, the drop test, that that is mandated and would be required for all weapons in our criteria?

Mr. STEVENS. I may have misled the Senator from Indiana. My friend did not drop the gun. He pulled it toward him. The gun trigger went off. It did not have a double safety concept in it. If it had had that concept in it, where you had to have your palm on the handle of the revolver before it could go off, as would be one of the secondary tests under your criteria, it would not have gone off. It went off because it had a hair trigger on a double action concept. We want a second safety feature; I would say to my friend, as I have said it twice now, that there is no gun that would be legalized by my amendment that would not be by yours. I can tell you categorically that many guns would be prohibited by my amendment that would not be touched by your criteria.

Mr. BAYH. Inasmuch as I have had a chance to read the Senator's amendment only once, I cannot answer that specific allegation, but I have read it that one time and I do know that it does not specifically enumerate specific safety requirements. There is no specific requirement that the very thing the Senator is concerned about is required in this bill. We do specifically require two or three important fundamental safety features that have been required since 1968.

In addition, we give points to the manufacturer who wants to go beyond a specific requirement. The drop test is one. That has caused a number of fatalities because, when you drop the weapon, it is sitting on that cartridge and it goes off, bang, and you are dead.

Mr. HANSEN. Mr. President, I rise in support of the amendment proposed by the Senator from Alaska to change the basic control scheme of S. 2507 from sporting purposes to safety and reliability.

Since 1968 we have been controlling handguns through a device known as the factoring criteria. These criteria consist of a point system, established by the Secretary of the Treasury with the concept of sporting purposes in mind, under which an imported handgun must meet a minimum score before it can be admitted to this country for distribution. As all Senators who have been following the progress of the pending measure are aware, this point system has been incorporated into S. 2507 as the central means of control over all handguns, domestic and foreign.

Mr. President, the fatal flaw in S. 2507 is the manner in which it perpetuates the sporting purposes test through the incorporation of the factoring criteria—and through the addition of proposed section 922(n)(3), under which the Secretary of Treasury can put out additional criteria in furtherance of this sporting purposes test.

What is a sporting purpose? The 1968 Gun Control Act does not say. S. 2507 does not say. And yet this is the standard under which we are to control all handguns in this country if the bill before us becomes law. Is self-protection a sporting purpose? Probably not. And yet the 1968 act reaffirms the right of all Americans to own firearms for lawful self-protection.

Mr. President, under S. 2507 it is the Secretary of the Treasury who has decided, and who will decide, what is a sporting purpose—without any legislative guidance whatsoever. It is a bootstrap operation to take the present factoring criteria in Treasury regulations, incorporate them virtually verbatim into law, and then to say Congress has worked its will in deciding what sporting purposes means. S. 2507 represents an abrogation of congressional responsibility of the same type that occurred in 1968 when we allowed the Secretary of the Treasury to have absolute discretion over the importation of handguns.

Those who favor the continued use of the sporting purposes test claim it has worked since 1968 to exclude the Saturday night special. But has it really? Where have many of these deadly handguns come from which S. 2507 now seeks to eliminate? From the same good folks who gave us the original imported Saturday night special, of course. They have been importing parts instead of whole handguns. In short, they have not even bothered trying to comply with the Treasury Department's factoring criteria point system—they have simply circumvented it.

The Senator from Alaska is to be commended for having advanced an alternative to the sporting purposes test. Under the safety and reliability standards proposed in his amendment, handguns could be controlled on the basis of their actual performance, rather than on some subjective and undefined standard.

Safety and reliability are capable of reduction to objective standards. In order to pass tests under these standards, manufacturers will have to make a quality firearm. This will accomplish the stated purpose of S. 2507 in a more efficient and equitable way. The so-called Saturday night specials are not quality handguns. No matter what you do to the sights, grips, barrel length, and other external features which relate to the sporting purposes concept, you will not improve the safety of such guns. To put out a good firearm requires time, skill, and quality controls. No proliferation of Saturday night specials would result under these conditions.

Mr. President, this is a key amendment. I have been most impressed with the discussion of the principles involved in the individual views of the Senator from Nebraska contained in the committee report on S. 2507. I urge all Senators to consult these views prior to voting on this amendment.

Mr. STEVENS. 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 amendment of the Senator from Alaska (Mr. STEVENS).

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 Florida (Mr. CHILES), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mrs. EDWARDS), the Senator from Georgia (Mr. GAMBRELL), the Senator from Wyoming (Mr. McGEE), 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 "nay."

Mr. SCOTT. I announce that the Senator from South Dakota (Mr. MUNDT), is absent because of illness.

The Senator from Michigan (Mr. GRIFFIN) is detained on official business.

The result was announced—yeas 35, nays 57, as follows:

[No. 361 Leg.]

YEAS—35

Aiken	Dominick	Packwood
Allen	Eagleton	Pearson
Allott	Fannin	Proxmire
Baker	Goldwater	Saxbe
Beall	Gravel	Schweiker
Bellmon	Gurney	Stafford
Bennett	Hansen	Stevens
Brock	Hruska	Thurmond
Buckley	Jordan, Idaho	Tower
Cotton	Mansfield	Weicker
Curtis	Metcalf	Young
Dole	Miller	

NAYS—57

Anderson	Hart	Nelson
Bayh	Hartke	Pastore
Bentsen	Hatfield	Pell
Bible	Hollings	Percy
Boggs	Hughes	Randolph
Brooke	Humphrey	Ribicoff
Burdick	Inouye	Roth
Byrd, Harry F., Jr.	Jackson	Scott
Byrd, Robert C.	Javits	Smith
Cannon	Jordan, N.C.	Sparkman
Case	Kennedy	Spong
Church	Long	Stennis
Cook	Magnuson	Stevenson
Cooper	Mathias	Symington
Cranston	McClellan	Taft
Ervin	McIntyre	Talmadge
Fong	Mondale	Tunney
Fulbright	Montoya	Williams
Harris	Moss	
	Muskie	

NOT VOTING—8

Chiles	Gambrell	McGovern
Eastland	Griffin	Mundt
Edwards	McGee	

So Mr. STEVENS' amendment was rejected.

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 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. 15417) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1973, and for other purposes; that the House receded from its disagreement to the amendments of the Senate numbered 3, 21, 64, 68, and 70 to the bill and concurred therein; and that the House receded from its disagreement to the amendments of the Senate numbered 19, 24, 51, 52, 54, 66, and 76 to the bill and concurred therein, severally with an amendment, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 9545. An act to amend section 6(b) of the Revised Organic Act of the Virgin Islands relating to qualifications necessary for election as a member of the legislature; and

H.R. 14106. An act to amend the Water Resources Planning Act to authorize increased appropriations.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. METCALF).

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. MANSFIELD. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. ROBERT C. BYRD. Mr. President, would the Chair please clear the well?

The PRESIDING OFFICER. Senators will please clear the well and return to their seats or go to the cloakrooms.

Mr. MANSFIELD. 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:

At the end of the bill add a new section as follows: That section 925(a) of title 18, United States Code, is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting immediately after paragraph (4) the following new paragraph:

"(5) The provisions of this chapter shall not apply with respect to the transportation, shipment, receipt, or importation of any lawfully acquired firearm or ammunition intended to be used, solely for testing of any such firearm or ammunition for a professional journal or sporting magazine, pursuant to regulations issued by the Secretary of the Treasury." It shall be unlawful to use any such firearms for any purpose other than testing and evaluation.

Mr. MANSFIELD. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, I have discussed this matter with the distinguished Senator from Indiana (Mr. BAYH), the manager of the bill and chairman of the subcommittee, and also with the distinguished ranking Republican Member, the Senator from Nebraska (Mr. HRUSKA).

The amendment would, in my opinion, correct a serious inequity that has arisen in the gun law of 1968. It is really of a technical nature and would simply provide for bona fide writers for sporting journals and magazines who evaluate weapons as part of their business.

The Secretary of the Treasury would be authorized to issue regulations that would carefully limit this exception. This group of professionals seek firearms and could obtain firearms provided gratuitously to test them and then to reduce to writing their impressions, among others, of the weapon's technical performance for publication in sporting magazines or journals. That is all. The Secretary of the Treasury is empowered to issue regulations requiring that the individual establish beyond question that he is bona fide, that he is legitimately employed in this specific occupation or profession, that his interest in obtaining a weapon is based solely upon a two-fold professional objective: The testing of the firearm and the writing of the results for publication. The Secretary would make certain as well that the disposition of any such firearm is carefully controlled.

I should point out that just as a particular hardship exists for legitimate collectors, certain Army personnel and others under the gun law for which special consideration was provided, so, too, has an unjust burden been placed upon the special category of professionals known as the "outdoor writer" for which consideration should be given. In large part, his livelihood is dependent greatly upon his ready access to weapons and it is for this reason that I seek here to modify the law. I understand that only about 500 to 1,000 such persons exist in this category all across the land.

In this regard, the plight of the outdoor writer was brought to my attention by Mr. Norman Strung, a member of the Outdoor Writers Association. I think his case, and the case of all those who share his particular professional endeavor was stated clearly and convincingly in his letter to me of some time ago. I quote that letter:

I don't want to compete with local gun dealers who have to make a living through sales, and who have a great deal of overhead tied up in their places of business. In other words, I think I have a perfectly legitimate reason to have a firearms permit, yet that permit was denied me. As a result, my job as an outdoor writer is just a little tougher, and will prove a lot more expensive. That, sir, seems to be unfair and inequitable "gun control" . . . hardly in the interest of public safety, and detrimental to my legitimate business and the gun-owning public.

Mr. President, I urge the adoption of the amendment.

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

Mr. MANSFIELD. I yield.

Mr. BAYH. Mr. President, I have examined the amendment carefully and I have discussed it with the staff of the committee. This problem was studied during the hearings. We are talking about the very few highly specialized individuals who are really professionals in the field and who are going to be using these weapons for tests only. Any other use would be unlawful.

I have no objection to the amendment. I think this is a legitimate amendment. I am glad to add my support to it.

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

Mr. MANSFIELD. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from Montana.

The amendment was agreed to.

Mr. LONG. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

At the end of the bill add a new section:
That section 1202(a) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking out the words "in commerce or affecting commerce".
(b) Section 1202(b) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking out the words "in commerce or affecting commerce".

Mr. LONG. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. LONG. Mr. President, this amendment seeks to achieve what we thought we did with the bill that passed a year ago when the Senate with the House concurring made it against the law for a convicted felon to possess or carry a firearm. Unfortunately by a divided decision of the Supreme Court it was ruled the act was not sufficiently clear as to whether a felon could be found guilty for possessing a firearm, regardless of whether he had been transporting the firearm in commerce or not.

The purpose of this amendment is to make clear what Congress had in mind, that is, that the possession of a firearm by a convicted felon is a crime.

That is what we thought we did. All the editorial comments that I saw in the newspapers and magazines at that time were to the effect that it was very unfortunate that the decision went in that fashion, or, assuming the court was right, it was unfortunate that it was not sufficiently clear that Congress meant to make it unlawful for a convicted felon to possess a firearm.

This amendment would seek to make clear what I thought we did, and what I certainly thought I was doing when I offered the amendment. The Senate agreed to it and the House agreed to it in conference with the Senate.

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

Mr. LONG. I yield.

Mr. DOMINICK. When we talk about possession, what happens to a person who serves a 1-year term, for example, and then is released?

Mr. LONG. If he had been convicted of a felony, he could not possess a firearm.

Mr. DOMINICK. Under any circumstances? The Senator is not talking about a concealed weapon; he is talking about a gun?

Mr. LONG. A person who is convicted of a felony loses the right to carry a firearm.

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

Mr. LONG. I yield.

Mr. STEVENS. Do I understand that this amendment would apply to regular sporting rifles and shotguns as well as handguns? The bill before us does not apply to anything other than handguns. The Senator's amendment would mean that if one of my native people from northern Alaska was convicted of a felony and then returned to his home, he could not own a shotgun or a rifle.

Mr. LONG. It is all right with me if a Governor wants to restore that right to him when he pardons him. It is very well if a Governor of a State wants to pardon a man and restore his right to do that, but it would be a bad predicament for someone who had been convicted of murder or a felony to be permitted to carry firearms. The right to do that is one of the things a convicted felon loses.

This is what the Senate voted on when it voted on the matter before.

If in any respect this amendment goes too far, I would suggest that it could be left to the conference between the Senate and the House to settle it. I think it is ridiculous to permit anyone who was convicted of armed robbery to carry a firearm—I do not care whether it is a shotgun or a rifle or any kind of firearm. That is what the Senate and the House thought before.

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

Mr. LONG. I yield.

Mr. MILLER. Suppose the felon has been convicted of a nonviolent crime such as income tax evasion or embezzlement.

Mr. LONG. Embezzlement comes under the theft statutes in our State. I assume that if he had been convicted of theft, he should be limited.

As I have said, if the amendment goes too far, the matter could be worked out in conference between the Senate and the House.

I think if we were going to err, I would rather err in favor of limiting the freedom of convicted felons to carry weapons than to permit a murderer—or even a multiple murderer—to go around carrying a high-powered rifle. If I were going to make an error, I would rather make it in favor of stopping a convicted murderer, especially one who had taken more than one life, from carrying a high-powered weapon, rather than permitting someone who had committed a felony of a nonviolent nature to carry one. If it goes too far, it is something that can be worked out in conference.

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

Mr. LONG. I yield.

Mr. SPARKMAN. The Senator has used the terms "carry" and "possess." If a person has been convicted and has served his time, and all the time he was serving a shotgun was hanging over his mantle or over his door, does the Senator mean he is going to have to get rid of the shotgun when he comes back home?

Mr. LONG. If he is a convicted felon, yes. It is not intended to apply to constructive possession in his house, but, if he has it in his hands, that is possession of a firearm.

The case that makes this amendment necessary is the case of a convicted felon who was arrested on the street for carrying a weapon. He had been convicted of a felony, but due to the fact that he had not been convicted of transporting a weapon in interstate commerce, the court felt there was sufficient vagueness in the law, and a majority of the court held that because the prosecution had failed to prove that it was in interstate commerce, conviction was not sustained.

As I have said, if this amendment goes too far in any respect, then I would suggest to the manager that the conferees might want to limit this amendment to violent felons; but I would rather go too far, when I am dealing with convicted felons, as make the mistake of not going far enough.

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

Mr. LONG. I yield.

Mr. BAYH. I think I raised this question with the Senator from Louisiana when it was first brought to my attention. I want to suggest to my colleagues that it is against the law now. We are talking about whether this penalty be limited to a violent crime, or a crime associated with a firearm. That determination has already been made.

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

Mr. BAYH. If I may continue, then I shall be glad to yield to the Senator from Massachusetts. Frankly, I would feel more comfortable if it were more limited, but his amendment deals with what I feel is really a circumvention of the intent of the Senate when we passed it. It does not make any difference whether a person received his weapon in interstate commerce or not if he shot someone or robbed someone with it. We intended that this statute would apply.

I wonder if this question could be handled in dialog as legislative intent, and I would be glad to have any opinion here, and certainly the opinion of the Senator from Louisiana.

Public Law 90–618—the Gun Control Act of 1968 is what we are talking about—section 921, subsection (20) reads as follows with respect to the exemptions:

The term "crime punishable by imprisonment for a term exceeding one year" shall not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (b) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less.

So when we passed the bill originally, we did not intend to apply it to white collar crime. I wonder if, by making it the subject of dialog here today, we would not be enforcing the letter and the spirit of the law. I wonder if that is what the Senator intends.

Mr. LONG. I thank the Senator. All I have in mind with this amendment is simply to make it clear that we do not have to prove that the man carried the weapon in commerce, or even that the weapon had moved in commerce, in order to convict a person convicted of a felony of carrying a firearm.

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

Mr. LONG. I yield.

Mr. BROOKE. The whole issue raises a serious constitutional question. I am not going to address myself to that, but I do see a constitutional question involved. However, for clarification purposes, Does the Senator from Louisiana mean the felon would have had to use a firearm in the commission of a felony for him to be denied the right to carry a rifle, say, at any time in his life after he had been convicted of that felony?

Is that the state of the law as the distinguished Senator from Louisiana sees it?

Mr. LONG. The Senator from Louisiana points out that the language of the statute as it presently exists does not refer to so-called white collar crimes like antitrust violations.

In other words, this amends the Firearms Control Act, which defines the term as follows:

The term "crime punishable by imprisonment for a term exceeding one year" shall not include (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

Mr. BROOKE. I have voted for all gun control legislation, and shall continue to do so, but as I interpret what the Senator says, just for hitting a man with a rock, a man could then be denied the right to go hunting for the rest of his life.

Mr. LONG. You would have to do a man a pretty grievous injury with that rock to go to jail for 2 years.

Mr. BROOKE. Well, you can do a pretty grievous injury with a rock.

Mr. LONG. If the court thought enough of it to make it a felony and put you in the penitentiary for 2 years, yes.

Mr. BROOKE. So the man does not have to use a firearm in the commission of the felony in order to be denied his constitutional right to carry or go hunting with a rifle.

Mr. LONG. No, he does not. For example, it could be armed robbery with a knife.

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

Mr. LONG. I yield.

Mr. BAYH. I would like to bring something else to the attention of the Senate which was brought to my attention by the Senator from Illinois. I thought I knew all about the Gun Control Act of 1968, but my attention has just been called to one section of which I was unaware. It says:

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 this chapter 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.

So one who does have such a disability, if he will apply to the Secretary, can have that disability removed.

Mr. LONG. Mr. President, to supplement what the Senator has said, this was not an ill-considered act when the Senate passed it. It was not an ill-considered act of the Senate nor of the House of Representatives when we legislated against convicted felons, having in mind serious crimes of violence, not antitrust violations, and also had in mind that the right could be restored where the crime was not the type of felony that ordinarily you would want to preclude the criminal from using a firearm again. This matter was carefully considered by the Senate and the House of Representatives when we legislated, but the problem was that this was an amendment to a Commerce Committee bill, and the language was drafted to give us a clear right to do under the commerce clause, by using the phrase "in interstate commerce" or "affecting interstate commerce."

Unfortunately, when the Supreme Court had this matter before them, involving a felon who was arrested with a firearm, the Supreme Court, by majority vote, said that from the language of the bill it would appear that the transportation of the gun in interstate commerce was an essential element of that crime. The minority, including the Chief Justice, said at that point it was sufficiently clear to them that Congress did not intend the movement of the weapon, including the movement in interstate commerce, to be an essential part of the offense, but that the use of the weapon by that convicted felon was sufficient, that it was clear from the language of the act that the Court should hold that the mere possession of a weapon by a convicted felon is sufficient to constitute the offense. That is what my amendment would spell out.

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

Mr. LONG. I yield.

Mr. ERVIN. Since the amendment has no relationship whatever to the bill we are considering, and as the Senator from Massachusetts says, it does involve a serious constitutional question, does not the Senator think he had better introduce it as a separate bill and send it to the Committee on the Judiciary?

Mr. LONG. Mr. President, I have introduced it as a separate bill. It is up at the desk now, printed as a bill. I sent it to the Judiciary Committee, and I have been waiting quite awhile for the Judiciary Committee to report it. Quite frankly——

Mr. ERVIN. If the Senator will let his bill come to the Judiciary Committee, I will certainly promise him that we will bring it up or at least I will ask the committee to act on it as the next meeting.

I have serious doubts about the constitutional power of Congress to make it a crime for a man merely to possess a pistol or a rifle within the borders of a State. I think it is necessary, to make it constitutional, that the possession have some relation to interstate commerce. Congress has no power to make crimes out of things which merely occur within the borders of a State, unless they are related to some power given it by the Constitution.

I hope the Senator will withdraw his amendment and let his bill be acted on by the Judiciary Committee. I cannot conscientiously support the amendment, and I would be inclined to vote against the bill if it is incorporated in the bill.

Mr. LONG. Mr. President, may I ask the Chair to have the clerk read the date on the bill?

The PRESIDING OFFICER. The cerk will state the date.

The assistant legislative clerk read as follows:

January 28, 1972.

Mr. LONG. So it has been in the Judiciary Committee since January of this year.

Mr. ERVIN. If the Senator asks the Judiciary Committee to take action on it, we would certainly do so. Fifty-four percent of all the bills that come to the Senate come to the Committee on the Judiciary. If we took up all the bills on our own motion and without any request for action, we would get little work done.

Mr. LONG. That is why I sent it there. I am satisfied, from a review of the Supreme Court decisions, that the Court will uphold it.

Mr. ERVIN. The Supreme Court turned this man loose because there was no evidence that the gun had been transported in interstate commerce.

Mr. LONG. And the fact that the statute referred to the movement in interstate commerce, or affecting interstate commerce. That is what the Court said it took out.

Mr. ERVIN. Yes. The Court said that the statute, which was constitutional because it required movement in interstate commerce, required that, and there was no evidence that it had been moved in interstate commerce, and that therefore he was not guilty.

That is not a decision to the effect that Congress could make it a crime merely for a man to possess a gun within the borders of a State.

Mr. LONG. Well, if this is enacted we will certainly find out whether we can make it unlawful for a felon, a murderer, or a burglar to possess a gun. There is one good way to find out whether it is against the law to prevent that felon from doing what the Supreme Court turned him loose for doing, and that is to pass this amendment, because I am satisfied that we have the power to make it against the law for a convicted felon to carry a firearm again. That is why I offered the amendment. I am satisfied we have the power. Maybe we ought to have a constitutional amendment for that purpose. The decisions of the Supreme Court have gone so far in saying what we can do in matters affecting commerce that there is not the slightest doubt in my mind that they will uphold it. If they will not uphold it, I would like to find that out, and that is the reason I offered the amendment.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, will someone give me about 5 minutes?

Several Senators addressed the Chair.

Mr. DOMINICK. Mr. President, who yields time for the opponents?

Mr. BAYH. Mr. President, I do not know what position the Senator from North Carolina is going to take, but he has been such a constructive force—one of the most able and helpful members of the committee—in the considera-

tion of this measure that I yield him 5 minutes, regardless of what position he may take.

Mr. ERVIN. In the first place, this amendment is not germane to the purpose of this bill. The reason the bill has progressed this far is that it exclusively deals with Saturday night specials.

The Senator from Louisiana talks about assassins and murderers. I do not know whether the Senator from Louisiana has represented such people, but I have represented people who operated blockade stills, and that act is a felony. After a man who has run a blockade still has served his sentence and paid his debt to society, he could be punished under this amendment if he was out rabbit hunting or bird hunting with a shotgun. Certainly, there ought to be some place for repentance after a man has paid his debt to society. Not only is this amendment not germane; it would say that even though a man had paid his debt to society and, like Esau, he sought repentance with tears, he could not obtain it. He would be denied the right to go rabbit hunting or bird hunting just because he had been convicted of running a blockade still.

I think this amendment has no place in this bill. The amendment probably would be unconstitutional, because it strikes out the reference in the Omnibus Crime Act to interstate commerce. I do not know of anything in the Constitution that says that Congress has the power to pass a law making the mere possession of a gun within the borders of a State, in the absence of any evidence that it had any connection with interstate commerce, a Federal crime.

I sincerely hope the Senate will reject this amendment. I hate to be in opposition to my good friend from Louisiana. I usually follow him, but I think he has gone off on the wrong trail at this time.

Mr. LONG. Mr. President, if the Supreme Court of the United States construed the powers of Congress under the Constitution as closely and as limited as does the Senator from North Carolina, then those of us from the South would not have wasted all the time we spent filibustering against the Civil Rights Act of 1964. We wasted a great deal of time arguing about the right to regulate a barbershop or to regulate a hotel or a great number of other acts which were regulated that had the slightest connection with commerce.

I do not have the slightest doubt that the decisions of the Supreme Court since Franklin D. Roosevelt became President of the United States, right or wrong, have gone beyond anything necessary to define the power of Congress to regulate the possession of a firearm by a convicted felon. We did it, and the majority of the Court did not hold the man subject to punishment, for the reason that we did not make it clear that we meant to outlaw the criminal possession of a firearm by the convicted felon and failed to make clear that we were not trying to regulate commerce but to regulate the right of the convicted felon to possess the firearm, and the conviction was overturned.

I have no doubt in my mind that if we made clear to the Supreme Court that we do not want a convicted felon carrying a firearm or using a rifle or any other firearm, regardless of whether or not it moved across a State boundary, the Supreme Court would uphold it.

Frankly, Mr. President, I have seen enough of these convicted felons being turned loose on technicalities when they commit further crimes. This amendment would make it clear that when a man has committed a crime of violence, and if he has not been pardoned for it and the right to carry a firearm has been restored, it is a crime to carry a firearm.

I am satisfied that it is much easier for me to explain to my constituents why I wanted to go so far to protect the rights of citizens.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. I yield the Senator 1 minute on the bill.

Mr. LONG. I would rather go home and explain to my constituents that I wanted to go the extra mile to protect the rights of the citizens, rather than see convicted felons turned loose on technicalities when they proceed to take these firearms and commit further crimes.

Mr. BAYH. Mr. President, I yield 2 minutes to the Senator from Iowa.

Mr. MILLER. Mr. President, I do not like to oppose the Senator from Louisiana on this, but I believe that the Senator from North Carolina has pointed up the constitutional question very well. It may be that the Supreme Court would decide that such an amendment would be constitutional, but that is not certain. The precedents would seem to support the Senator from North Carolina.

I suggest this to the Senator from Louisiana: Assuming that this amendment is of doubtful validity, why not let the State legislatures legislate with respect to the possession of a firearm by a felon convicted of a violent crime when its possession does not involve interstate commerce but merely involves what is happening within the borders of the State? The legislatures of this country are not powerless. If it is thought to be necessary for the protection of the public interest, let the State of Iowa, the State of Louisiana, or the State of North Carolina legislate, instead of our doing it in Congress. I think Congress has been meddling too much in the affairs of States in many cases. This would be an example of where I think we might exercise some restraint.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. I would be glad to yield time. Five or six Senators have not asked for any time.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. All time on the amendment has expired.

The Senator will state the parliamentary inquiry.

Mr. BAYH. Mr. President, I understand that there is a unanimous consent agreement to vote on passage of the bill at 5 p.m. Is that correct?

The PRESIDING OFFICER. Not later than 5 p.m.

Mr. BAYH. If the amendment of the Senator from Louisiana is voted on at this time, do we immediately go from there to a vote on passage of the bill?

The PRESIDING OFFICER. No further debate would be in order on any amendment, although amendments could be offered.

The question is on agreeing to the amendment of the Senator from Louisiana. 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 Florida (Mr. CHILES), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Wyoming (Mr. McGEE), the Senator from South Dakota (Mr. McGOVERN), the Senator from Minnesota (Mr. MONDALE), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that if present and voting; the Senator from Georgia (Mr. GAMBRILL) would vote "nay".

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 20, nays 72, as follows:

[No. 362 Leg.]

YEAS—20

Anderson	Hartke	Pastore
Bayh	Hollings	Ribicoff
Case	Humphrey	Saxbe
Edwards	Inouye	Stafford
Fannin	Kennedy	Stennis
Fulbright	Long	Stevenson
Hart	McClellan	

NAYS—72

Aiken	Dominick	Muskie
Allen	Eagleton	Nelson
Allott	Ervin	Packwood
Baker	Fong	Pearson
Beall	Goldwater	Percy
Bellmon	Gravel	Proxmire
Bennett	Griffin	Randolph
Bentsen	Gurney	Roth
Bible	Hansen	Schweiker
Boggs	Harris	Scott
Brock	Hatfield	Smith
Brooke	Hruska	Sparkman
Buckley	Hughes	Spong
Burdick	Jackson	Stevens
Byrd, Harry F., Jr.	Javits	Symington
Byrd, Robert C.	Jordan, N.C.	Taft
Cannon	Jordan, Idaho	Talmadge
Church	Magnuson	Thurmond
Cook	Mansfield	Tower
Cooper	Mathias	Tunney
Cotton	McIntyre	Weicker
Cranston	Metcalf	Williams
Curtis	Miller	Young
Dole	Montoya	
	Moss	

NOT VOTING—8

Chiles	McGee	Mundt
Eastland	McGovern	Pell
Gambrell	Mondale	

So Mr. LONG's amendment was rejected.

The PRESIDING OFFICER (Mr. KENNEDY). The bill is open to further amendment.

Mr. HUMPHREY. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. HUMPHREY. 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.

Mr. HUMPHREY. Mr. President, the balance of the amendment not read is a definition of terminology.

The amendment is as follows:

At the end of the bill add a new section:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1116. Murder, manslaughter, or attempt to commit murder or manslaughter of State law enforcement officers, firemen, or prison guards

"(a) Whoever commits murder or manslaughter, or attempt to commit murder or manslaughter, or aids or abets another in the commission of such murder or manslaughter, or attempt to commit such murder or manslaughter, of any State law enforcement officer, fireman, or prison guard while such officer, fireman, or guard is performing official duties, or because of the official position of such officer, fireman, or guard, shall be punished as provided under section 1111, section 1112, or section 1113 of this title.

"(b) As used in this section, the term—

"(1) 'law enforcement officer' means any officer or employee of any State who is charged with the enforcement of any criminal laws of such State;

"(2) 'fireman' means any person serving as a member of a fire protective service organized and administered by a State or a volunteer fire protective service organized and administered under the laws of a State;

"(3) 'prison guard' means any officer or employee of any State who is charged with the custody or control in a penal or correctional institution of persons convicted of criminal violations; and

"(4) 'State' means any State of the United States, the Commonwealth of Puerto Rico, any political subdivision of any such State or Commonwealth, the District of Columbia, and any territory or possession of the United States.".

(b) The chapter analysis of such chapter is amended by adding immediately after item 1115 the following new item:

"1116. Murder, manslaughter, or attempt to commit murder or manslaughter of State law enforcement officers, firemen, or prison guards.".

Mr. BAYH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAYH. Mr. President, is the parliamentary situation such that the Senator from Indiana, as manager of the bill, is prohibited from speaking out in support of the amendment of the Senator from Minnesota at this time.

The PRESIDING OFFICER. No debate is in order.

Mr. BAYH. Then the Senator for that reason will not speak out in support of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Minnesota (putting the question).

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

Mr. CHILES. Mr. President, I strongly support passage of S. 2507, the bill to amend the Gun Control Act of 1968. Congress has been wrestling with this problem for a number of years now and still no final solution to the problem of firearms has been found. Clearly, the gun control law of 1968 has failed in keeping firearms from the criminal element, even though this legislation was passed when assassinations were heavy on the minds of everyone. Improvements in this area are badly needed if we are to have any degree of control over crime, and yet every effort must be made not to infringe upon the rights of individual citizens to purchase firearms for lawful purposes.

I support this measure to control the sale and delivery of domestically produced Saturday night special handguns, which because of their cheapness, low quality, ease of concealment, and availability present a special problem for law enforcement and general public safety. I am a hunter and a sportsman myself and own several guns. But the weapons we are talking about in this bill have no legitimate sporting purpose and have been shown to be the predominant firearm used in crime.

The implementation of the 1968 import prohibition has been effective in prohibiting the importation of assembled Saturday night specials. But the problem is still very much with us since the domestic manufacture and assembly of these weapons is not controlled and great increases in domestic assembly and manufacture have occurred since the 1968 act. Another aspect to consider is the fact that at least seven foreign nations have claimed that our action to forbid the importation of foreign Saturday night specials while not controlling sales of the domestic variety has constituted a clear violation of our obligations under the General Agreement on Trade and Tariffs. The GATT requires uniform treatment for "like products." This is interpreted to mean that we should permit any firearm to be imported that we permit to be produced domestically. And today, though we have virtually no restriction on domestic production of firearms, we do restrict their importation.

I concur with Commissioner Nichols of the Detroit Police Department when he stated before the Judiciary Committee that statistics alone are inadequate as a measure of this problem. But they do give us an indication of the seriousness of the situation and they do tell us clearly that we have more homicides than ever before and almost all of the additional homicides are being committed with handguns. In fact, the number of handguns in the country is increasing by approximately 2.5 million annually.

There are several measures concerning firearms legislation pending before the Judiciary Committee, several of which would ban all handguns entirely with certain very limited exceptions. I feel those measures demand further study and careful research to determine whether their enactment would constitute an infringement upon the rights of individual citizens. But the measure we have before us has already been given thorough study. It involves, really, the implementation of existing importation criteria to domestic sale and delivery. These criteria have been used for more than 3 years in the determination of eligibility for handgun importation and ought to be applied domestically as soon as possible.

Harold Bergan, a staff aide to Congressman YATES, of Illinois, put it well, I believe, when he stated before the subcommittee:

> Each day that passes without this legislation will mean that an additional 2 thousand cheap handguns will find their way into the American market. The time to stop is now.

Mr. WILLIAMS. Mr. President, I rise in support of the bill presently before the Senate, S. 2507, designed to amend the Gun Control Act of 1968. This bill would close the loophole that now exists in the 1968 act, by applying the same ban on the sale and delivery of domestically made cheap and inaccurate handguns, referred to as "Saturday night specials," that now applies to these foreign-made firearms.

This legislation is absolutely necessary. The bill, when enacted, would serve to greatly slow down the horrifying weapons traffic within our society.

The weapons referred to in this legislation are small, inexpensive revolvers, usually of .22 caliber or .25 caliber design. They are weapons that are unsuitable for sporting purposes—with the only possible use being the killing and crippling of other human beings. This bill would not, as described by the National Rifle Association, "mistakenly deprive millions of law-abiding citizens of a type of firearm particularly suited for the defense of their families and businesses."

In fact, by the adoption of an amendment on the Senate floor today, the bill exempts all handguns that are privately owned and intended for personal protection and which are approved by the Secretary of the Treasury pursuant to the criteria of the bill. In this way, those handgun models which are not suitable for sporting purposes but are usable for self-protection, and meet the standards established by this act, can still be legally sold and delivered. I believe that if handguns are to be permitted in some form other than exclusively for law enforcement officers, the personal safety of all citizens must be an important concern of the Members of this body of Congress.

The handguns to which S. 2507 applies are easily accessible to anyone who wishes to purchase one. These deadly instruments are also extremely plentiful. It has been estimated that 700,000 of these Saturday night specials were manufactured in this country in 1969, and approximately 1 million produced in 1970. It is now believed that these unsafe and unsuitable weapons account for approximately 40 percent of the annual proliferation of the 2.5 million hand-held guns manufactured for private sale in the United States each year.

Because of their accessibility and the ease with which these particular guns may be concealed, the Saturday night specials are becoming increasingly mis-

used by criminals in this country. In 1970, handguns accounted for some 8,000 homicides in the United States, or 60 percent of all homicides in that 1 year. Of these handgun homicides, 42 percent were caused by the Saturday night special.

Pistols and revolvers have become increasingly dangerous to this country's police officers. In 1970, 100 policemen were fatally struck down, 73 of which were murdered by handguns. In 1971, the total number of policemen killed in the United States increased to 121, with 94 murdered by handguns.

Saturday night specials must be controlled. The majority of our citizens and law enforcement officers realize the danger of these guns and are willing to accept strict controls. L. Patrick Gray, Acting Director of the FBI recently reiterated this belief when he stated, as quoted in a Washington Post editorial:

> These firearms have been utilized in so many of our homicides that we ought to control them.

He also stated, in referring to the Saturday night specials:

> They ought to be banned totally, completely, and thoroughly.

I strongly support the bill before us, S. 2507. However, as a U.S. Senator, I have continually and actively supported more stringent controls on all firearms. I believe that the controls on these weapons must go further than just banning the domestic sale and delivery of the Saturday night special. With deep personal conviction, I believe that several of the amendments introduced to this bill, such as those of Senators HART, KENNEDY, and STEVENSON, would have adequately and effectively strengthened our existing laws in order to curb this immoral attack on our citizens.

As a cosponsor of the amendment offered by Senator KENNEDY, I truly believe that the registration of all firearms and the licensing of every gun owner would greatly reduce criminal possession of firearms and, in turn, help to curb the violent crimes that are destroying the lives of innumerable Americans.

My own State of New Jersey has had a licensing and registration program in effect since 1966. It is one of the few States which has adopted such stringent controls. New Jersey's program is most similar to the provision offered by Senator KENNEDY in calling for national licensing and registration, and the aims and principles of our program comport with those of Senator KENNEDY's amendment.

In addition, New Jersey's program has been very successful. It has not proven to be an enormous burden on the citizens of that State, but has, rather, been very effective in keeping firearms out of the hands of those ineligible and unfit to own these weapons. Within the first 2 years of operation, 1,795 people were denied application for permits. Approximately 65 percent of these denials were because of criminal records—including first-degree murder, rape, burglary, and breaking and entering. Other reasons for denials included public health, safety, and welfare reasons, medical and mental reasons, and narcotics and alcoholism problems.

In 1969, the Duke University Law Journal published a study in which data analysis techniques were employed to examine the efficacy of State and municipal controls on handguns. The authors concluded that New Jersey's gun control legislation saves 21 to 32 lives per million population per year. And on a nationwide scale they estimated that such control would save 4,200 to 6,400 lives per year.

These statistics clearly indicate the need for more stringent legislation on gun control.

In addition, after serious consideration and complete and careful analysis of the consequences, I supported the amendment offered by Senator HART that called for a ban on the ownership of all handguns.

My action was a result of my personal belief that there is no substantial and responsible justification for private ownership of the handgun.

The 25 million handguns in this country have been proven to be a threat to public safety. They have caused severe and fatal injury and repeated heartache to innumerable citizens of this Nation. Although handguns are only 27 percent of all firearms in the United States, these weapons account for the majority of firearm injuries and assaults that occur.

The handgun has been involved with crimes that have repeatedly caused both personal and national tragedy in the United States. We have seen leaders of this Nation struck down by the easily concealed weapon. There is no doubt that if a handgun had not been available, Lee Harvey Oswald would have lived to stand trial, Robert Kennedy would be here to care for his children and provide inspiration to millions, and George Wallace would not be confined to a wheelchair.

But we are not just concerned with national leaders and politicians. We are deeply concerned with the lives of every citizen in this country. It is time to stop this national fratricide in our streets, our homes, and our businesses.

These weapons are purchased by law-abiding citizens with sincere intent of protecting their homes. But I believe we are only kidding ourselves in believing that a handgun in the home is truly in one's best interest.

It has been determined that a great percentage of handguns confiscated from criminals by law enforcement authorities are stolen weapons from homes.

More tragically, however, it is not just the criminal who is injuring and killing our citizens. As it was brought out in the debate on this amendment, 81 percent of the cases of killings here in Washington, D.C., were either of a member of the household, or a neighbor or friend.

This is a sad reality. We must face up to the facts and figures before us and begin to protect our families and friends. The citizens of this Nation must be made to realize that handguns can and do kill people, and that unless we face this issue soon, we will inevitably face a grimmer and more bloody future. This reality must be fully and completely understood.

Mr. President, it has been with deep personal conviction that I have supported the amendments to this bill that would have strengthened and improved our gun control laws.

I am confident that the banning of the domestic sale and delivery of the "unsafe and unsuitable" deadly weapons known as Saturday night specials will begin to curb a grave national problem whose dimensions are so tremendous as to lull us into a state of acquiescence, to be shaken only when the prominent among us become victims. The battle against the terrible misuse of firearms in our country must be fought to a successful conclusion. For upon that conclusion rests questions of life and death.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. BAYH. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the bill pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. METCALF (when his name was called). On this vote I have a live pair with the Senator from Minnesota (Mr. MONDALE). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

On this vote, the Senator from Georgia (Mr. GAMBRELL) is paired with the Senator from Wyoming (Mr. MCGEE).

If present and voting, the Senator from Georgia would vote "yea" and the Senator from Wyoming would vote "nay."

I further announce that, if present and voting, the Senator from Mississippi (Mr. EASTLAND) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 68, nays 25, as follows:

[No. 363 Leg.]

YEAS—68

Aiken	Edwards	McGovern
Allott	Ervin	McIntyre
Anderson	Fong	Miller
Bayh	Fulbright	Muskie
Beall	Griffin	Nelson
Bellmon	Gurney	Pastore
Boggs	Harris	Pearson
Brock	Hart	Percy
Brooke	Hartke	Proxmire
Buckley	Hatfield	Randolph
Burdick	Hollings	Ribicoff
Byrd, Harry F., Jr.	Hruska	Roth
Byrd, Robert C.	Hughes	Scott
Case	Humphrey	Smith
Chiles	Inouye	Sparkman
Cook	Jackson	Spong
Cooper	Javits	Stevenson
Cotton	Jordan, N.C.	Symington
Cranston	Jordan, Idaho	Talmadge
Curtis	Kennedy	Thurmond
Dole	Long	Tunney
Eagleton	Magnuson	Williams
	Mathias	Young

NAYS—25

Allen	Church	Mansfield
Baker	Dominick	McClellan
Bennett	Fannin	Montoya
Bentsen	Goldwater	Moss
Bible	Gravel	Packwood
Cannon	Hansen	Saxbe

Schweiker	Stevens	Weicker
Stafford	Taft	
Stennis	Tower	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Metcalf, against.

NOT VOTING—6

Eastland	McGee	Mundt
Gambrell	Mondale	Pell

So the bill (S. 2507) was passed, as follows:

S. 2507

An act to apply the same standards to prohibit the sale of domestically produced Saturday night special handguns as have been applied to foreign-made Saturday night special handguns since adoption of the Gun Control Act of 1968

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

SEC. 2. Section 921(a) of title 18 of the United States Code is amended by inserting after paragraph (20) the following:

"(21) The term 'handgun' means a firearm designed to be fired by the use of a single hand. The term also includes a combination of parts in the possession or under the control of a person from which a handgun can be assembled. The term does not include antique firearms.

"(22) The term 'handgun model' means a handgun of a particular design, specification, and designation."

SEC. 3. Section 922(b) of title 18 of the United States Code is amended by

(a) striking out at the end of paragraph (4) thereof the word "and";

(b) striking out at the end of paragraph (5) thereof the period and inserting in lieu thereof a semicolon;

(c) adding after paragraph (5) thereof the following:

"(6) any handgun model unless such handgun model has been approved by the Secretary pursuant to section 922(a) of this title."; and

(d) deleting the final sentence, which begins with the words "Paragraph (4) of this", and inserting in lieu thereof the following:

"Paragraphs (4) and (6) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary. Paragraph (6) of this subsection shall not apply to the sale or delivery of any firearm to the United States or any department or agency thereof, or to any State, department, agency, or political subdivision thereof, or to any duly commissioned law enforcement officer of the United States or any department or agency thereof or of any State, department, agency or political subdivisions thereof (including but not limited to members of the Armed Forces and police officers) properly authorized to carry such firearms in his official capacity. Paragraph (6) of this subsection shall not apply to the sale or delivery by a licensed importer, licensed manufacturer, or licensed dealer to a licensed dealer of any firearm intended to be sold or delivered to any government or agency thereof or person entitled pursuant to this paragraph to have such firearms sold or delivered to him. Paragraph (6) of this subsection shall not apply to the sale or delivery to a licensed collector or licensed dealer of any firearm which is a curio or relic, as the Secretary shall by regulation define. Paragraph (6) of this subsection shall not apply to occasional, sporadic sales of single handguns by a licensed collector who is not a dealer, as defined by section 921(a) of this title."

SEC. 4. Section 922 of title 18 of the United States Code is amended by adding at the end thereof the following new subsections:

"(n) The Secretary shall not approve for sale or delivery by a licensed dealer, licensed importer, licensed manufacturer, or licensed collector any handgun model unless he has caused to be evaluated and tested representative samples of such handgun model and has found that:

"(1) in the case of a pistol, the handgun model:

"(A) has a positive manually operated safety device; and

"(B) has a combined length and height in excess of 10 inches with the height (right angle measurement to the barrel without the magazine or extension) being at least 4 inches and the length being at least 6 inches; and

"(C) attains a total of at least 75 points under the following criteria:

"(i) Overall length: one point for each one-fourth inch over 6 inches;

"(ii) Frame construction: (a) 15 points if investment cast steel or forged steel, (b) 20 points if investment cast HTS alloy or forged HTS alloy;

"(iii) Pistol Weight: one point for each ounce, with the pistol unloaded and the magazine in place;

"(iv) Caliber: (a) zero points if the pistol accepts only .22 caliber short or .25 caliber automatic ammunition, (b) three points if the pistol accepts either .22 caliber long rifle ammunition or any ammunition within the range delimited by 7.65 millimeter and .380 caliber automatic, (c) 10 points if the pistol accepts 9 millimeter parabellum ammunition or over, (d) in the case of ammunition not falling within one of the classes listed above, such number of points not greater than ten (following the classification schedule above as nearly as is practicable) as the Secretary shall determine appropriate to the suitability for sporting purposes or for personal protection of handgun models designed for such ammunition;

"(v) Safety features: (a) five points if the pistol has a locked breech mechanism, (b) five points if the pistol has a loaded chamber indicator, (c) three points if the pistol has a grip safety, (d) five points if the pistol has a magazine safety, (e) 10 points if the pistol has a firing pin block or lock; and

"(vi) Miscellaneous equipment: (a) two points if the pistol has an external hammer, (b) 10 points if the pistol has a double action firing mechanism, (c) five points if the pistol has a drift adjustable target sight, (d) 10 points if the pistol has a click adjustable target sight, (e) five points if the pistol has target grips, (f) two points if the pistol has a target trigger; and

"(2) in the case of a revolver, the handgun model:

"(A) has an overall frame length of four and one-half inches measured on a line parallel to the barrel; and

"(B) has a barrel length of at least three inches; and

"(C) has a safety device which, either (i) automatically in the case of a double action firing mechanism or (ii) by manual operation in the case of a single action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. Once activated, such safety device must be capable of withstanding the impact of a weight, equal to the weight of the revolver, dropped a total of five times from a height of 36 inches above the rear of the hammer spur onto the rear of the hammer spur with the revolver resting in a position such that the line of the barrel is perpendicular to the plane of the horizon; and

"(D) attains a total of at least 45 points under the following criteria:

"(i) Barrel length: one-half point for each one-fourth inch that the barrel is longer than 4 inches;

"(ii) Frame construction: (a) 15 points if investment cast steel or forged steel, (b) 20 points if investment cast HTS alloy or forged HTS alloy;

"(iii) Revolver weight: one point for each ounce with the revolver unloaded;

"(iv) Caliber: (a) zero points if the revolver accepts only .22 caliber short or .25 caliber ACP, (b) three points if the revolver accepts .22 caliber long rifle or ammunition in the range between .30 caliber and .38 S&W, (c) four points if the revolver accepts .38 caliber special ammunition, (d) five points if the revolved accepts .357 magnum or over, (e) in the case of ammunition not falling within one of the classes listed above, such number of points not greater than five (following the classification schedule above as nearly as practicable) as the Secretary shall determine appropriate to the suitability for sporting purposes or for personnel protection of handgun models designed for such ammunition; and

"(v) Miscellaneous equipment: (a) five points if the revolver has either drift or click adjustable target sights, (b) five points if the revolver has target grips, (c) five points if the revolver has a target hammer and a target trigger.

"(o) It shall be unlawful for any person to reduce the length of the barrel or the overall length of a handgun previously approved by the Secretary for sale and delivery if as a result of such modification the handgun no longer meets the standards for approval set forth in subsection (n) of this section.

"(p) The Secretary shall give written notification of the results of evaluation and testing conducted pursuant to subsection (n) of this section to the licensee submitting samples of a handgun model for such evaluation and testing. If any handgun model fails to meet the standards for approval, the Secretary's notification shall state specifically the reasons for such finding. Any such notification of approval or failure shall be published in the Federal Register. At least once each year the Secretary shall compile a list of all handgun models which are then approved for sale or delivery under subsection (n) of this section, which list shall be published in the Federal Register and furnished annually to each licensee under this chapter.

"(q) Any licensee submitting to the Secretary for testing a handgun model which is subsequently found not in compliance with relevant standards shall have ten days from receipt of notification of noncompliance within which to submit in writing specific objections to such finding and a request for retesting such model, together wtih justification therefor. Upon receipt of such a request the Secretary shall promptly arrange for retesting and thereafter notify the aggrieved party of the results, if he determines sufficient justification for retesting exists. Should he determine that retesting is not warranted, the Secretary shall promptly notify the aggrieved party as to such determination. In the event that upon retesting the Secretary's finding remains adverse, or that the Secretary finds retesting is not warranted, the aggrieved party may within sixty days after the date of the Secretary's notice of such finding file a petition in the United States district court in the district in which the aggrieved party has his principal place of business in order to obtain judicial review of such finding. Such review will be in accordance with the provisions of section 706 of title 5, United States Code."

SEC. 5. Section 925(d)(3) of title 18 of the United States Code 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"

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.".

SEC. 7. (a) Sections 926, 927, and 928, of title 18 of the United States Code, and all references thereto, are redesignated as sections 927, 928, and 929, respectively.

(b) Title 18 of the United States Code is amended by inserting after section 925 the following new section:

"§ 926. Compensation for reasonable value of handguns voluntarily transferred to law enforcement agencies

"(a) A person may at any time transfer to any Federal, State, or local law enforcement agency designated by the Secretary any handguns owned or possessed by such person.

"(b) In the case of transfer pursuant to subsection (a) of a handgun model which the Secretary has evaluated and tested pursuant to section 922(n) of this title and not approved for sale or delivery by a licensee under this chapter, the person transferring such handgun shall, upon proof that such handgun was lawfully acquired and lawfully owned by such person prior to enactment of the Handgun Control Act of 1972, be entitled to receive from the United States a payment equal to the reasonable value of such handgun, such value to be determined as of the day before enactment of the Handgun Control Act of 1972."

SEC. 8. 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."

SEC. 9. Section 924(c) of the Gun Control Act of 1968 (Public Law 90-618; 18 U.S.C. 924(c)) 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 during the commission of any felony for which he may be prosecuted in a court of the United States, may, 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 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."

SEC. 10. Section 924 of title 18 of the United States Code is amended by adding at the end thereof the following new subsection:

"(e) A trial of any crime involving use or possession of a firearm shall have priority on the calendar of any court of the United States. Upon receipt of the copy of such complaint, it shall be the duty of the presiding judge to assign the case for hearing at the earliest practicable date, and to cause the case to be in every way expedited."

SEC. 11. Section 925(a) of title 18, United States Code, is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting immediately after paragraph (4) the following new paragraph:

"(5) The provisions of this chapter shall not apply with respect to the transportation, shipment, receipt, or importation of any lawfully acquired firearm or ammunition intended to be used solely for testing of any such firearm or ammunition for a professional journal or sporting magazine, pursuant to regulations issued by the Secretary of the Treasury. It shall be unlawful to use any such firearm for any purpose other than testing and evaluation."

SEC. 11. Section 925(a) of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1116. Murder, manslaughter, or attempt to commit murder or manslaughter of State law enforcement officers, firemen, or prison guards

"(a) Whoever commits murder or manslaughter, or attempts to commit murder or manslaughter, or aids or abets another in the commission of such murder or manslaughter, or attempt to commit such murder or manslaughter, of any State law enforcement officer, fireman, or prison guard, while such officer, fireman, or prison guard is performing official duties, or because of the official positon of such officer, fireman, or guard, shall be punished as provided under section 1111, section 1112, or section 1113 of this title.

"(b) As used in this section, the term—

"(1) 'law enforcement officer' means any officer or employee of any State who is charged with the enforcement of any criminal laws of such State;

"(2) 'fireman' means any person serving as a member of a fire protective service organized and administered by a State or a volunteer fire protective service organized and administered under the laws of a State;

"(3) 'prison guard' means any officer or employee of any State who is charged with the custody or control in a penal or correctional institution of persons convicted of criminal violations; and

"(4) 'State' means any State of the United States, the Commonwealth of Puerto Rico, any political subdivision of any such State or Commonwealth, the District of Columbia, and any territory or possession of the United States.".

(b) The chapter analysis of such chapter is amended by adding immediately after item 1115 the following new item:

"1116. Murder, manslaughter, or attempt to commit murder or manslaughter of State law enforcement officers, firemen, or prison guards.".

SEC. 13. There are hereby authorized to be appropriated such sums as may be necessary to effect the purposes of this Act.

SEC. 14. The provisions of this Act shall take effect immediately upon enactment, except that sections 3 and 5 of this Act shall take effect sixty days after the date of enactment.

Mr. BAYH. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAYH. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make such technical and clerical corrections in the engrossment of the bill as may be necessary.

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

The title was amended, so as to read: "A bill to apply the same standards to prohibit the sale of domestically produced Saturday night special handguns as have been applied to foreign-made Saturday night special handguns since adoption of the Gun Control Act of 1968."

MESSAGE FROM THE HOUSE—ENROLLED BILL 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 enrolled 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.

PROGRAM

Mr. SCOTT. Mr. President, I rise to ask the distinguished majority leader, first, whether we have worked enough today, or does he desire a night session, and, second, if he does not, what is the coming order of business so far as he can foretell it, without the help of Jean Dixon or Ruth Montgomery?

Mr. MANSFIELD. Mr. President, may I say I appreciate the humor of the distinguished Republican leader. He knows very well that there will be no further votes this evening and the Republicans will be able to attend their shindig en masse.

Mr. SCOTT. I appreciate that, because

we are going to pay our high compliments to the Senator from Kentucky, Senator COOPER, who is retiring, and we decided the best way to show our appreciation was to go to his home and accept his invitation.

Mr. MANSFIELD. Well, I do not think you could accept the invitation of a nicer or a better man or a man of greater integrity. Everything has fitted into place, thanks to the cooperation of the Senate as a whole, so that we are really, legitimately, concluding our business at this time as far as votes are concerned.

Mr. SCOTT. I certainly agree, and I have said to the distinguished Senator from Montana that I hope the Senate will be as kind to the majority leader and the minority leader when the time comes to have our farewell dinners.

Mr. MANSFIELD. I would not want to wait that long, but just have us do it on a day-to-day basis.

Mr. President, it is the intention to bring up three noncontroversial treaties and get to a final reading of them. Votes on those treaties will occur tomorrow, and there will be three separate votes.

I have been informed by the distinguished chairman of the Subcommittee on HEW that the conference report will be ready for the Senate tomorrow, and he has stated that there will be a rollcall vote on that conference report.

Then there is S. 3755, a bill to amend the Airport and Airway Development Act of 1970 to increase the U.S. share of allowable project costs, and so on. That could be called up. It may well be that there will be some discussion on that, and very likely some votes.

Then it is anticipated that Calendar No. 925, S. 3307, a bill to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended, will be brought up. There is no time limitation on that, though the leadership would be prepared to consider such a limitation at any time. Nor is there any time limitation on the airport and airway development bill.

It is the hope—and there seems to be a reasonably good possibility—that the Finance Committee may well report the revenue-sharing measure tonight, and if that is done, we will give serious consideration to laying it before the Senate tomorrow, and perhaps get started on it, if time permits, and then turn to it on Friday.

Mr. SCOTT. Mr. President, if the distinguished majority leader will permit, I would like the Senate to know that we have not lost track of the interim agreement, and we are trying to work out a schedule on that as well. We will do the best we can.

Mr. MANSFIELD. That is correct. At the present time it is in what we call an indeterminate state.

Mr. SCOTT. It is in nebulae; if not that, in limbo, but not a very long limbo; more of a short limbo.

Mr. MANSFIELD. You know, Mr. President, there will come a time when I will have the last word in this exchange.

Mr. COTTON. Mr. President, will the majority leader yield?

Mr. MANSFIELD. I yield.

Mr. COTTON. I think that perhaps I should report to the distinguished majority leader—this is after conference with the distinguished Senator from Washington, chairman of the Subcommittee on HEW—that there could be as many as three rollcalls, and there may be motions to recommit.

Mr. ROBERT C. BYRD. Mr. President, we cannot hear the Senator. Can we have order?

Mr. COTTON. There could be two such motions.

The PRESIDING OFFICER. The Senate will be in order.

Mr. MANSFIELD. Mr. President, I am indebted to the distinguished Senator from New Hampshire, ranking Republican member of the Appropriations Subcommittee on HEW.

I note that the distinguished assistant majority leader is in the Chamber. I assume he will get out a new notice in the next 12 or 18 hours. In that it may be well to note that the chairman of the committee has indicated there will be two votes, and the ranking Republican member of the committee has indicated there may be two or three.

Mr. COTTON. There may be two.

QUORUM CALL

Mr. MANSFIELD. 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. 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.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, as in executive session, I ask unanimous consent to call up Executive B (92d Congress, 2d sess.), a Convention on Ownership of Cultural Property; Executive D (92d Congress, 2d sess.), Tax Convention with Norway; and Executive I (92d Congress, 2d Session), a Convention Establishing an International Organization of Legal Metrology, and I ask that they be taken up singly in that order.

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

CONVENTION ON OWNERSHIP OF CULTURAL PROPERTY

The Senate, as in Committee of the Whole, proceeded to consider Executive B (92d Cong., 2d sess.), the Convention on Ownership of Cultural Property, which was read the second time, as follows:

CONVENTION ON OWNERSHIP OF CULTURAL PROPERTY

ARTICLE 1

For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(d) elements of artistic or historical monuments or archaeological sites which have been dismembered;

(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

(f) objects of ethnological interest;

(g) property of artistic interest, such as:

(i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) original works of statuary art and sculpture in any material;

(iii) original engravings, prints and lithographs;

(iv) original artistic assemblages and montages in any material;

(h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific literary, etc.) singly or in collections;

(i) postage, revenue and similar stamps, singly or in collections;

(j) archives, including sound, photographic and cinematographic archives;

(k) articles of furniture more than one hundred years old and old musical instruments.

ARTICLE 2

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international cooperation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

ARTICLE 3

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

ARTICLE 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

(a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;

(b) cultural property found within the national territory;

(c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;

(d) cultural property which has been the subject of a freely agreed exchange;

(e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

ARTICLE 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate

for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

(a) Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;

(b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;

(c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops . . .) required to ensure the preservation and presentation of cultural property;

(d) organizing the supervision of archaeological excavations, ensuring the preservation "in situ" of certain cultural property, and protecting certain areas reserved for future archaeological research;

(e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;

(f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;

(g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.

ARTICLE 6

The State Parties to this Convention undertake:

(a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;

(b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;

(c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

ARTICLE 7

The States Parties to this Convention undertake:

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b) (1) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

ARTICLE 8

The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6(b) and 7(b) above.

ARTICLE 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

ARTICLE 10

The States Parties to this Convention undertake:

(a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;

(b) to endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

ARTICLE 11

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.

ARTICLE 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

ARTICLE 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

(a) To prevent by all appropriate means transfer of ownership of cultural property likely to promote the illicit import or export of such property;

(b) to ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;

(c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;

(d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore *ipso facto* not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

ARTICLE 14

In order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary set up a fund for this purpose.

ARTICLE 15

Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.

ARTICLE 16

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, togeter with details of the experience acquired in this field.

ARTICLE 17

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards:

(a) Information and education;

(b) consultation and expert advice;

(c) co-ordination and good offices.

2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property.

3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.

4. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation.

5. At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, Unesco may extend its good offices to reach a settlement between them.

ARTICLE 18

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

ARTICLE 19

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

ARTICLE 20

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.

2. Accession shall be effected by the deposit of an instrument of accession with the Di-

rector-General of the United Nations Educational, Scientific and Cultural Organization.

ARTICLE 21

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

ARTICLE 22

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

ARTICLE 23

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

ARTICLE 24

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

ARTICLE 25

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

ARTICLE 26

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris this seventeenth day of November 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the State referred to in Articles 19 and 20 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its sixteenth session, which was held in Paris and declared closed the fourteenth day of November 1970.

In faith whereof we have appended our signatures this seventeenth day of November 1970.

Mr. MANSFIELD. Mr. President, on behalf of the distinguished chairman of the Committee on Foreign Relations, the Senator from Arkansas (Mr. FULBRIGHT), I will make the explanations for the treaties this evening. I do so because he is engaged at the present time as a member of the Finance Committee in seeking to bring about the reporting out of that committee of the Revenue Sharing Act.

Mr. President, the main purpose of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property is to combat the increasing illegal international trade in national art treasures, which has led to wholesale depredations in some countries. The United Nations Educational, Scientific, and Cultural Organizations became concerned with this problem as early as 1970 and its work has resulted in the present convention.

According to the President's letter of transmittal:

Under the Convention, each state undertakes to protect its own cultural heritage and agrees to cooperate in a number of important but limited respects to help protect the cultural heritage of other states. Perhaps the heart of the Convention from the standpoint of the United States is Article 9, which establishes an important new framework for international cooperation. Under this Article, the states parties undertake to participate in a concerted international effort to determine and to carry out the necessary corrective measures in cases in which a state's cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials.

The Convention also requires states parties to prohibit the import of cultural property stolen from museums, public monuments or similar institutions and to take appropriate steps, upon request, to recover and return such cultural property. In addition, they pledge to take what measures they can, consistent with existing national legislation, to prevent museums and similar institutions within their territory from acquiring cultural property orginating in another state party which has been illegally exported after entry into force of the Convention.

The committee held a public hearing on this Convention on August 3, 1972, and unanimously ordered it favorably reported to the Senate during an executive session held on August 8, 1972.

The PRESIDING OFFICER. If there be no objection, Executive B (82d Congress, 2d sess.), will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which will be read for the information of the Senate.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted on November 14, 1970 at the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization (Executive B, 92d Congress, 2d Session), subject to the following reservation and understandings:

The United States reserves the right to determine whether or not to impose export controls over cultural property.

The United States understands the provisions of the Convention to be neither self-executing nor retroactive.

The United States understands Article 3 not to modiffy property interests in cultural property under the laws of the states parties.

The United States understands Article 7(a) to apply to institutions whose acquisition policy is subject to national control under existing domestic legislation and not to require the enactment of new legislation to establish national control over other institutions.

The United States understands that Article 7(b) is without prejudice to other remedies, civil or penal, available under the laws of the states parties for the recovery of stolen cultural property to the rightful owner without payment of compensation. The United States is further prepared to take the additional steps contemplated by Article 7(b)(ii) for the return of covered stolen cultural property without payment of compensation, except to the extent required by the Constitution of the United States, for those states parties that agree to do the same for the United States institutions.

The United States understands the words "as appropriate for each country" in Artcle 10(a) as permitting each state party to determine the extent of regulation, if any, of antique dealers and declares that in the United States that determination would be made by the appropriate authorities of state and municipal governments.

The United States understands Article 13 (d) as applying to objects removed from the country of origin after the entry into force of this Convention for the states concerned, and, as stated by the Chairman of the Special Committee of Governmental Experts that prepared the text, and reported in paragraph 28 of the Report of that Committee, the means of recovery of cultural property under subparagraph (d) are the judicial actions referred to in subparagraph (c) of Article 13, and that such actions are controlled by the law of the requested State, the requesting State having to submit necessary proofs.

TAX CONVENTION WITH NORWAY

The Senate, as in Committee of the Whole, proceeded to consider Executive D (92d Congress, 2d sess.), the Tax Convention with Norway, signed at Oslo on December 3, 1971, which was read the second time, as follows:

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

The United States of America and the Kingdom of Norway, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital have agreed upon the following articles:

CHAPTER I

Scope of Convention

Article 1

Taxes covered

(1) The taxes which are the subject of this Convention are:

(a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code, hereinafter referred to as the "United States tax", and

(b) In the case of Norway:

(i) The national and municipal taxes on income (including contributions to the tax equalization fund) and capital;

(ii) The national dues on the salaries of nonresident artists;

(iii) The special tax in aid of developing countries;

(iv) The municipal tax on real property; and

(v) The seamen's tax;

hereinafter referred to as "Norwegian tax".

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of existing taxes after the date of signature of this Convention.

(3) For the purpose of Article 25 (Nondiscrimination), this Convention shall also apply to taxes of every kind imposed at the National, State, or local level. For the purpose of Article 28 (Exchange of Information) this Convention shall also apply to taxes of every kind imposed at the National level.

CHAPTER II

Definitions

Article 2

General definitions

(1) In this Convention, unless the context otherwise requires:

(a) (i) The term "United States" means the United States of America; and

(ii) When used in a geographical sense, the term "United States" means the States thereof and the District of Columbia. Such term also includes (A) the territorial sea thereof and (B) the seabed and subsoil of the submarine areas adjacent to the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

(b) (i) The term "Norway" means the Kingdom of Norway; and

(ii) When used in a geographical sense, the term "Norway" includes (A) the territorial sea thereof and (B) the seabed and subsoil of the submarine areas adjacent to the territorial sea, over which Norway exercises sovereign rights, in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

However, the term "Norway" does not include Spitzbergen (including Bear Island), Jan Mayen, and the Norwegian dependencies outside Europe.

(c) The term "one of the Contracting States" or "the other Contracting State" means the United States or Norway, as the context requires.

(d) The term "person" includes an individual, a partnership, a corporation, an estate, a trust, or any body of persons.

(e) (i) The term "United States corporation" or "corporation of the United States" means a corporation which is created or organized under the laws of the United States or any State thereof or the District of Columbia or any unincorporated entity treated as a United States corporation for United States tax purposes; and

(ii) The term "Norwegian corporation" or "corporation of Norway" means any corporation or any entity which is treated as a body corporate for tax purposes under Norwegian tax law and is created or organized under the laws of Norway.

(f) The term "competent authority" means:

(i) In the case of the United States, the Secretary of the Treasury or his delegate, and

(ii) In the case of Norway, the Ministry of Finance and Customs or its authorized representative.

(g) The term "State" means the United States, Norway, or any other National State.

(h) The term "international traffic" means any voyage of a ship or aircraft operated by a resident of one of the Contracting States except where such voyage is confined solely to places within a Contracting State.

(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires; have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting State may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purposes of this Convention.

Article 3

Fiscal residence

(1) In this Convention:

(a) The term "residence of Norway" means:

(i) A Norwegian corporation, and

(ii) Any person (except a corporation or any entity treated under Norwegian law as a corporation) resident in Norway for purposes of its tax, but in the case of a partnership, estate, or trust only to the extent that the income derived by such person is subject to Norwegian tax as the income of a resident.

(b) The term "resident of the United States" means:

(i) A United States corporation, and

(ii) Any person (except a corporation or any unincorporated entity treated as a corporation for United States tax purposes) resident in the United States for purposes of its tax, but in the case of a partnership, estate, or trust only to the extent that the income derived by such person is subject to United States tax as the income of a resident.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States:

(a) He shall be deemed to be a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests);

(b) If the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode;

(c) If he has a habitual abode in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) If he is a citizen of both Contracting States or of neither Contracting State the competent authorities of the Contracting State shall settle the question by mutual agreement.

For purposes of this paragraph, a permanent home is the place where an individual dwells with his family.

(3) An individual who is deemed to be a resident of one of the Contracting States and not a resident of the other Contracting State by reason of the provisions of paragraph (2) shall be deemed to be a resident only of the first-mentioned Contracting State for all purposes of this Convention, including Article 22 (General Rules of Taxation).

Article 4

Permanent establishment

(1) For the purpose of this Convention, the term "permanent establishment" means a fixed place of business through which a resident of one of the Contracting States engages in industrial or commercial activity.

(2) The term "fixed place of business" includes but is not limited to:

(a) A branch;

(b) An office;

(c) A factory;

(d) A workshop;

(e) A warehouse;

(f) A mine, quarry, or place of extraction of natural resources; and

(g) A building site or construction or installation project which exists for more than twelve months.

(3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not include a fixed place of business used only for one or more of the following:

(a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident;

(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;

(c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

(d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;

(e) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident; or

(f) The maintenance of a building site or construction or installation project which does not exist for more than twelve months.

(4) A person acting in one of the Contracting States on behalf of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, shall be deemed to be a permanent establishment in the first-mentioned Contracting State if such person—

(a) Has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of that resident, unless the exercise of such authority is limited to the purchase of goods or merchandise for that resident, or

(b) Maintains substantial equipment or machinery within the first-mentioned Contracting State for more than twelve months.

(5) A resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or commercial activity in that other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(6) The fact that a resident of one of the Contracting States is a related person (as defined under Article 7 (Related Persons)) with respect to a resident of the other Contracting State or with respect to a person who engages in industrial or commercial activity in that other Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether that resident of the first-mentioned Contracting State has a permanent establishment in that other Contracting State.

(7) The principles set forth in paragraphs (1) through (6) shall be applied in determining whether there is a permanent establishment in a State other than one of the Contracting States or whether a person other

than a resident of one of the Contracting States has a permanent establishment in one of the Contracting States.

CHAPTER III

Taxation of Income

Article 5

Business profits

(1) Industrial or commercial profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting States unless such resident is engaged in industrial or commercial activity in that other Contracting State through a permanent establishment situated therein. If such resident is so engaged, tax may be imposed by that other Contracting State on the industrial or commercial profits of such resident but only on so much of such profits as are attributable to the permanent establishment.

(2) Where a resident of one of the Contracting States is engaged in industrial or commercial activity in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the industrial or commercial profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected with such profits, including executive and general administrative expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment of a resident of one of the Contracting States in the other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) The term "industrial or commercial activity" includes the conduct of manufacturing, mercantile, insurance, agricultural, fishing or mining activities, the operation of ships or aircraft, the furnishing of services, the rental of tangible personal property, and the rental or licensing of motion picture films or films or tapes used for radio or television broadcasting. Such term does not include the performance of personal services by an individual either as an employee or in an independent capacity.

(6) (a) The term "industrial or commercial profits" includes income derived from industrial or commercial activity. Such term also includes income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (2) of Article 10 (Royalties), and capital gains but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains is effectively connected with a permanent establishment which the recipient, being a resident of one of the Contracting States, has in the other Contracting State, whether or not such income is derived from industrial or commercial activity.

(b) To determine whether property or rights are effectively connected with a permanent establishment, the factors taken into account shall include whether the rights or property are used in or held for use in carrying on industrial or commercial activity through such permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of the income derived from such property or rights. For this purpose, due regard shall be given to whether or not such property or rights or such income were accounted for through such permanent establishment.

(7) Where industrial or commercial profits include items of income which are dealt with separately in other articles of this Convention, the provisions of these articles shall, except as otherwise provided therein, supersede the provisions of this article.

Article 6

Shipping and air transport

(1) Notwithstanding Article 5 (Business Profits), income which a resident of the United States derives from the operation in international traffic of ships or aircraft registered in either Contracting State or in a State with which Norway has an income tax convention exempting such income shall be exempt from Norwegian tax.

(2) Notwithstanding Article 5 (Business Profits), income derived by a resident of Norway, or an international consortium of which a resident of Norway, or an international consortium of which a resident of Norway and residents of other States with which the United States has an income tax convention exempting such income are the sole members, from the operation in international traffic of ships or aircraft shall be exempt from United States tax.

Article 7

Related persons

(1) Where a resident of one of the Contracting States and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person.

(2) A person is related to another person if either person owns or controls directly or indirectly the other, or if any third person or persons own or control directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

Article 8

Dividends

(1) Dividends derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed—

(a) 15 percent of the gross amount actually distributed; or

(b) When the recipient is a corporation, 10 percent of the gross amount actually distributed if—

(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and

(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and other than dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received).

(3) Paragraph (2) shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment. In such a case, see paragraph (6) (a) of Article 5 (Business Profits).

(4) Dividends paid by a corporation of one of the Contracting States to a person other than a resident of the other Contracting State (and in the case of dividends paid by a Norwegian corporation, to a person other than a citizen of the United States) shall be exempt from tax by that other Contracting State. This paragraph shall not apply if the recipient of the dividends has a permanent establishment in that other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment.

Article 9

Interest

(1) Interest derived from sources within one of the Contracting States by a resident of the other Contracting State shall be exempt from tax by the first-mentioned Contracting State.

(2) The term "interest" as used in this Convention means income from bonds, debentures, Government securities, notes, or other evidences of indebtedness, whether or not secured and whether or not carrying a right to participate in profits, and debt-claims of every kind, as well as all other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent.

(3) Paragraph (1) shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such a case, see paragraph (6) (a) of Article 5 (Business Profits).

(4) Where any interest paid by a person to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this article shall apply only to so much of the interest as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(5) Interest paid by a resident of one of the Contracting States to a person other than a resident of the other Contracting State (and in the case of interest paid by a Norwegian corporation, to a person other than a citizen of the United States) shall be exempt from tax by the other Contracting State. This paragraph shall not apply if—

(a) Such an interest is treated as income from sources within the other Contracting State under paragraph (2) of Article 24 (Source of Income), or

(b) The recipient of the interest has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment.

Article 10

Royalties

(1) Royalties derived from sources within one of the Contracting States by a resident of the other Contracting State shall be exempt from tax by the first-mentioned Contracting State.

(2) The term "royalties" as used in this article means—

(a) Payment of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works (but not including copyrights of motion picture films or films or tapes used for

radio or television broadcasting), patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or knowledge, experience, or skill (know-how), and

(b) Gains derived from the sale, exchange, or other disposition of any such property or rights to the extent that the amounts realized on such sale, exchange, or other disposition for consideration are contingent on the productivity, use, or disposition of such property or rights.

(3) Paragraph (1) shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the property or rights giving rise to the royalty is effectively connected with such permanent establishment. In such a case, see paragraph (6)(a) of Article 5 (Business Profits).

(4) Where any royalty paid by a person to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this article shall apply only to so much of the royalty as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

Article 11

Income from real property

(1) Income from real property, including royalties in respect of the operation of mines, quarries or other natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such royalties, may be taxed by the Contracting State in which such real property, mines, quarries, or other natural resources are situated. For purposes of this Convention interest on indebtedness secured by real property or secured by a right giving rise to royalties in respect of the operation of mines, quarries, or other natural resources shall not be regarded as income from real property.

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use in any other form of real property.

Article 12

Capital gains

(1) A resident of one of the Contracting States shall be exempt from tax by the other Contracting State on gains from the sale, exchange, or other disposition of capital assets unless—

(a) The gain is derived by a resident of one of the Contracting States from the sale, exchange, or other disposition of property described in Article 11 (Income from Real Property) situated within the other Contracting States,

(b) The recipient of the gain, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the property giving rise to the gain is effectively connected with such permanent establishment, or

(c) The recipient of the gain, being an individual who is a resident of one of the Contracting States—

(i) Maintains a fixed base in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year and the property giving rise to such gains is effectively connected with such fixed base, or

(ii) Is present in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year.

(2) Notwithstanding Article 5 (Business Profits) and paragraph (1) of this article, gains which a resident of one of the Contracting States derives from the sale, exchange, or other disposition of ships or aircraft which are operated in international traffic shall be exempt from tax by the other Contracting State.

(3) The provisions of paragraph (1) of this article shall not affect the right of Norway to tax gains which an individual derives from the sale or exchange of stock consisting of at least a 25-percent interest in a Norwegian corporation if such individual was a national and a resident of Norway at any time during the five year period immediately preceding such sale or exchange.

(4) In the case of gains described in paragraph (1)(a), see Article 11 (Income from Real Property). In the case of gains described in paragraph (1)(b), see paragraph (6)(a) of Article 5 (Business Profits).

Article 13

Independent personal services

(1) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity, may be taxed by that Contracting State, Except as provided in paragraph (2), such income shall be exempt from tax by the other Contracting State.

(2) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity in the other Contracting State may be taxed by that other Contracting State, if:

(a) The individual is present in that other Contracting State for a period or periods aggregating 183 days or more in the taxable year, or

(b) The individual maintains a fixed base in that other Contracting State for a period or periods aggregating 183 days or more in the taxable year, but only so much of it as is attributable to such fixed base, or

(c) The individual is a public entertainer, such as a theater, motion picture, or television artist, a musician, or an athlete, and the income is derived from his personal services as a public entertainer provided that he is present in that other Contracting State for more than a total of 90 days during the taxable year or such income exceeds in the aggregate 3,000 United States dollars or its equivalent in Norweigian kroner during the taxable year.

Article 14

Dependent personal services

(1) Subject to the provisions of Articles 15 (Teachers), 16 (Students and Trainees), 17 (Governmental Functions), and 18 (Private Pensions and Annuities) wages, salaries, and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services performed as an employee may be taxed by that Contracting State. Except as provided by paragraph (2), such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration described in paragraph (1) derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State if—

(a) He is present in that other Contracting State for a period or periods aggregating less than 183 days in the taxable year;

(b) He is an employee or a resident of the first-mentioned Contracting State or of a permanent establishment maintained in that Contracting State by a resident of a State other than that Contracting State; and

(c) The remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State.

(3) Notwithstanding paragraph (2), remuneration derived by an individual who is a resident of one of the Contracting States from the performance of labor or personal services as an employee aboard ships or aircraft operated by a resident of the other Contracting State in international traffic or in fishing on the high seas may be taxed by that other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

Article 15

Teachers

(1) Where a resident of one of the Contracting States is invited by the Government of the other Contracting State or by a university or other recognized educational institution in that other Contracting State to come to that other Contracting State for a period not expected to exceed two years for the purpose of teaching or engaging in research, or both, at a university or other recognized educational institution, and such resident comes to that other Contracting State primarily for such purpose, his income from personal services for teaching or research at such university or educational institution shall be exempt from tax by that other Contracting State for a period not exceeding two years from the date of his arrival in that other Contracting State.

(2) This article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 16

Students and trainees

(1) (a) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of—

(i) Studying at a university or other recognized educational institution in that other Contracting State, or

(ii) Securing training required to qualify him to practice a profession or professional specialty, or

(iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization, shall be exempt from tax by that other Contracting State with respect to amounts described in subparagraph (b) for a period not exceeding five taxable years from the date of his arrival in that other Contracting State.

(b) The amounts referred to in subparagraph (a) are—

(i) Gifts from abroad for the purpose of his maintenance, education, study, research, or training;

(ii) The grant, allowance, or award; and

(iii) Income from personal services performed in that other Contracting State in an amount not in excess of 2,000 United States dollars or its equivalent in Norwegian kroner for any taxable year.

(2) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of—

(a) Acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person related to such resident, or

(b) Studying at a university or other recognized educational institution in that other Contracting State, shall be exempt from tax by that other Contracting State for a period of twelve consecutive months with respect to his income from personal services in an aggregate amount not in excess of 5,000 United States dollars or its equivalent in Norwegian kroner.

(3) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for a period not exceeding one year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research,

or study, shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars or its equivalent in Norwegian kroner.

(4) The benefits provided under Article 15 (Teachers) and paragraph (1) of this article shall extend only for such period time as may reasonably or customarily be required to effectuate the purpose of the visit, but in no case shall any individual have the benefits provided therein for more than a total of five taxable years from the date of his arrival.

Article 17

Governmental functions

Wages, salaries, and similar remuneration, including pensions or similar benefits, paid by or from public funds of one of the Contracting States, or a political subdivision or local authority thereof, to a citizen of that Contracting State for labor or personal services performed for that Contracting State, or for any of its political subdivisions or local authorities, in the discharge of governmental functions shall be exempt from tax by the other Contracting State.

Article 18

Private pensions and annuities

(1) Except as provided in Article 17 (Governmental Functions), pensions and other similar remuneration paid to an individual who is a resident of one of the Contracting States in consideration of past employment shall be taxable only in that Contracting State.

(2) Alimony and annuities paid to an individual who is a resident of one of the Contracting States shall be taxable only in that Contracting State.

(3) Child support payments made by an individual who is a resident of one of the Contracting States to an individual who is a resident of the other Contracting State shall be exempt from tax in that other Contracting State.

(4) As used in this article—

(a) The term "pensions and other similar remuneration" means periodic payments made after retirement or death in consideration for services rendered, or by way of compensation for injuries received, in connection with past employment;

(b) The term "annuities" means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered);

(c) The term "alimony" means periodic payments made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement, which is taxable to the recipient under the internal laws of the Contracting State of which he is a resident; and

(d) The term "child support payments" means periodic payments for the support of a minor child made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement.

Article 19

Social security payments

Social security payments and other public pensions paid by one of the Contracting States to an individual who is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State. This article shall not apply to payments described in Article 17 (Governmental Functions).

Article 20

Investment or holding companies

A corporation of one of the Contracting States deriving dividends, interest, royalties, or capital gains from sources within the other Contracting State shall not be entitled to the benefits of Articles 8 (Dividends), 9 (Inerest), 10 (Royalties), or 12 (Capitol Gains) if—

(a) By reason of special measures the tax imposed on such corporation by the first-mentioned Contracting State with respect to such dividends, interest, royalties, or capital gains is substantially less than the tax generally imposed by such Contracting State on corporate profits, and

(b) 25 percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities of the Contracting States, to be owned directly or indirectly, by one or more persons who are not individual residents of the first-mentioned Contracting State (or, in the case of a Norwegian corporation, who are citizens of the United States).

CHAPTER IV

Taxation of Capital

Article 21

Capital taxes

(1) Capital represented by property referred to in Article 11 (Income from Real Property) may be taxed in the Contracting State in which such property is situated.

(2) Subject to the provisions of paragraph (3) below, capital represented by assets, other than property referred to in paragraph (1), which are effectively connected with a permanent establishment of a resident of one of the Contracting States may be taxed in the Contracting State in which the permanent establishment is situated.

(3) Ships and aircraft of a resident of one of the Contracting States and assets, other than property referred to in paragraph (1), pertaining to the operation of such ships or aircraft shall be exempt from tax by the other Contracting State.

(4) All other elements of capital of a resident of a Contracting State not dealt with in this article shall be exempt from tax by the other Contracting State.

CHAPTER V

General Rules

Article 22

General rules of taxation

(1) A resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention. For this purpose, the rules set forth in Article 24 (Source of Income) shall be applied to determine the source of income.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—

(a) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) By any other agreement between the Contracting States.

(3) The United States may tax its citizens or residents as if this Convention had not come into effect .

(a) This provision shall not affect the rules laid down in Articles 19 (Social Security Payments), 23 (Relief from Double Taxation), 25 (Nondiscrimination), 26 (Diplomatic and Consular Officers), and 27 (Mutual Agreement Procedure).

(b) This provision shall not affect the rules laid down in Articles 15 (Teachers), 16 (Students and Trainees), and 17 (Governmental Functions), upon individuals who are not citizens of the United States and who do not have immigrant status in the United States.

(4) Norway may tax its diplomatic and consular officers as if this Convention had not come into effect.

(5) The United States may impose its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Convention. However, a Norwegian corporation shall be exempt from the United States personal holding company tax in any taxable year if all of its stock is owned, directly or indirectly, by one or more individuals who are residents of Norway (and not citizens of the United States) for that entire year. A Norwegian corporation shall be exempt from the United States accumulated earnings tax in any taxable year unless such corporation is engaged in trade or business in the United States through a permanent establishment at any time during such year.

(6) The competent authorities of the two Contracting States may prescribe regulations necessary to carry out the provisions of this Convention.

Article 23

Relief from double taxation

Double taxation of income shall be avoided in the following manner:

(1) In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the principles hereof) regarding the allowance of a credit against United States tax of tax payable in any country other than the United States, the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of Norwegian tax. Such appropriate amount shall be based upon the amount of tax paid to Norway, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources within Norway or on income from sources outside of the United States) provided by United States law for the taxable year. For the purpose of applying the United States credit in relation to taxes paid to Norway, the rules set forth in Article 24 (Source of Income) shall be applied to determine the source of income. For purposes of applying the United States credit in relation to the taxes paid to Norway the taxes referred to in paragraph (1)(b) of Article 1 (Taxes Covered) other than the national and municipal taxes on capital and the municipal tax on real property shall be considered to be income taxes.

(2) In the case of income derived from sources in the United States, relief from double taxation shall be granted in Norway in the following manner:

(a) Where a resident of Norway derives income or owns property which, in accordance with the provisions of this Convention, may be taxed in the United States or is exempt from United States tax under Article 15 (Teachers) or Article 16 (Students and Trainees), Norway shall, subject to the provisions of subparagraphs (b) or (c) of this paragraph, exempt such income or property from tax but may, in calculating tax on the remaining income or property of that resident, apply the rate of tax which would have been applicable if the exempted income or property had not been so exempted.

(b) Where a resident of Norway derives income which, in accordance with the provisions of this Convention may be taxed in both Contracting States, Norway shall allow as a credit against the tax on the income of that resident an amount equal to the tax paid in the United States. Such credit shall not, however, exceed that part of the tax, as computed before the credit is given, which is appropriate to the income derived from sources in the United States under the rules set forth in Article 24 (Source of Income).

(c) In determining its tax on a Norwegian corporation receiving dividends from a United States corporation in which it owns 10 percent or more of the stock, Norway shall allow a credit against the tax otherwise payable by the Norwegian corporation for the

appropriate amount of United States tax imposed on the United States corporation on the profits out of which the dividends were paid. However, the deduction allowed such a Norwegian corporation for dividends paid out by it shall be reduced by the net amount of dividends received from the United States corporation (after all United States taxes imposed on such dividends).

Article 24

Source of income

For purposes of this Convention:

(1) Dividends shall be treated as income from sources within a Contracting State only if paid by a corporation of that Contracting State.

(2) Interest shall be treated as income from sources within a Contracting State only if paid by such Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State. Notwithstanding the preceding sentence—

(a) If the person paying the interest (whether or not such person is a resident of one of the Contracting States) has a permanent establishment in one of the Contracting States in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment, or

(b) If the person paying the interest is a resident of one of the Contracting States and has a permanent establishment in a State other than a Contracting State in connection with which the indebtedness on which the interest is paid was incurred and such interest is paid to a resident of the other Contracting State, and such interest is borne by such permanent establishment,

such interest shall be deemed to be from sources within the State in which the permanent establishment is situated.

(3) Royalties described in paragraph (2) of Article 10 (Royalties) for the use of, or the right to use, property or rights described in such paragraph shall be treated as income from sources within a Contracting State only to the extent that such royalties are for the use of, or the right to use, such property or rights within that Contracting State.

(4) Income from real property, and royalties from the operation of mines, quarries, or other natural resources (including gains derived from the sale of such property or the right giving rise to such royalties) shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(5) Income from the rental of tangible personal (movable) property shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(6) Income received by an individual for his performance of labor or personal services, whether as an employee or in an independent capacity, shall be treated as income from sources within a Contracting State only to the extent that such services are performed in that Contracting State. Income from personal services performed aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic or in fishing on the high seas shall be treated as income from sources within that Contracting State if rendered by a member of the regular complement of the ship or aircraft. Notwithstanding the preceding provisions of this paragraph, remuneration described in Article 17 (Governmental Functions) and payments described in Article 19 (Social Security Payments) shall be treated as income from sources within a Contracting State only if paid by or from the public funds of that Contracting State or a political subdivision or local authority thereof.

(7) Income from the purchase and sale of intangible or tangible personal (including movable) property (other than gains defined as royalties by paragraph (2) (b) of Article 10 (Royalties)) shall be treated as income from sources within a Contracting State only if such property is sold in that Contracting State.

(8) Income from gains described in paragraph (3) of Article 12 (Capital Gains) shall be treated as income from sources within Norway.

(9) Notwithstanding paragraphs (1) through (7), industrial or commercial profits which are attributable to a permanent establishment which the recipient, a resident of one of the Contracting States, has in the other Contracting State, including income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (2) of Article 10 (Royalties)), and capital gains, but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with such permanent establishment, shall be treated as income from sources within that other Contracting State.

(10) The source of any item of income to which paragraphs (1) through (9) are not applicable shall be determined by each of the Contracting States in accordance with its own law. Notwithstanding the preceding sentence, if the source of any item of income under the laws of one Contracting State is different from the source of such item of income under the laws of the other Contracting State or if the source of such income is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or further any other purpose of this Convention, establish a common source of the item of income for purposes of this Convention.

CHAPTER VI

Special provisions

Article 25

Nondiscrimination

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof.

(2) A permanent establishment which a resident of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than a resident of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging a Contracting State to grant to individual residents of the other Contracting State any personal allowances, reliefs, or deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own individual residents.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which a corporation of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly owned or controlled by one or more residents of the first-mentioned Contracting State, is or may be subjected.

(4) The provisions of this article shall not be construed as obliging Norway to grant to citizens of the United States who are not born in Norway of parents having Norwegian nationality, the exceptional tax relief which is accorded pursuant to section 22 of the Norwegian Taxation Act for the Rural Districts and section 17 of the Norwegian Taxation Act for the Urban Districts, to citizens of Norway and individuals born in Norway.

(5) A citizen or resident of the United States shall, for purposes of Norwegian income tax, be allowed to deduct interest expenses which are incurred with respect to a mortgage or other evidence of indebtedness on real property which is situated in Norway to the same extent that such expenditures would be deductible for purposes of Norwegian income tax if incurred by a resident of Norway.

(6) In accordance with paragraph (3) of Article 1 (Taxes Covered) this article shall apply to taxes of every kind imposed at the National, State, or local level.

(7) The provisions of paragraph (2) shall not be construed as preventing Norway from taxing the total profits attributable to a permanent establishment which is maintained in Norway by a United States corporation at a rate at which the undistributed profits of a Norweigian corporation may be taxed. However, the amount of such tax shall not exceed the tax that would be imposed on a corporation and its shareholders if such profits were derived by a Norwegian corporation that distributed to its United States shareholders, owning at least 10 percent of its voting stock, the same percentage of its profits as such United States corporation maintaining such permanent establishment distributed to its shareholders from its total profits.

Article 26

Diplomatic and consular officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

Article 27

Mutual agreement procedure

(1) Where a resident of one of the Contracting States considers that the action of one or both of the Contracting States results or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competent authority of the Contracting States of which he is a resident. Should the resident's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to come to an agreement with the competent authority of the other Contracting State with a view of the avoidance of taxation contrary to the provisions of this Convention.

(2) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention. In particular, the competent authorities of the Contracting States may agree—

(a) To the same attribution of industrial or commercial profits to a resident of one of the Contracting States and its permanent establishment situated in the other Contracting State;

(b) To the same allocation of income, deductions, credits, or allowances between a resident of one of the Contracting States and any related person; or

(c) To the same determination of the source of particular items of income.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.

(4) In the event that the competent authorities reach such an agreement, taxes shall be imposed on such income, and refund or credit of taxes shall be allowed, by the Contracting States in accordance with such agreement.

Article 28

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is pertinent to carrying out the pro-

visions of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a court or administrative body) concerned with assessment, collection, enforcement, or prosecution in respect of the taxes which are the subject of this Convention.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on one of the Contracting States the obligation—

(a) To carry out administrative measures at variance with the laws or the administrative practice of that Contracting State or the other Contracting State;

(b) To supply particulars which are not obtainable under the laws, or in the normal course of the administration, of that Contracting State or of the other Contracting State; or

(c) To supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

(3) The exchange of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.

(4) The competent authorities of the Contracting States shall notify each other of any amendments of the tax laws referred to in paragraph (1) of Article 1 (Taxes Covered) and of the adoption of any taxes referred to in paragraph (2) of Article 1 (Taxes Covered) by transmitting the texts of any amendments or new statutes at least once a year.

(5) The competent authorities of the Contracting States shall notify each other of the publication by their respective Contracting States of any material concerning the application of this Convention, whether in the form of regulations, rulings, or judicial decisions by transmitting the texts of any such materials at least once a year.

Article 29

Assistance in collection

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may consult together for the purpose of giving effect to this article.

(2) In no case shall this article be construed so as to impose upon a Contracting State the obligation to carry out administrative measures at variance with the regulations and practices of either Contracting State or which would be contrary to the first-mentioned Contracting State's sovereignty, security, or public policy.

Article 30

Extension to territories

(1) Either one of the Contracting States may, at any time while this Convention continues in force, by a written notification given to the other Contracting State through diplomatic channels, declare its desire that the operation of this Convention, either in whole or in part or with such modifications as may be found necessary for special application in a particular case, shall—

(a) In the case of the United States, extend to all or any of the areas (to which this Convention is not otherwise applicable) for whose international relations it is responsible and which impose taxes substantially similar in character to those which are the subject of this Convention, and

(b) In the case of Norway, extend to all or any of the areas (to which this Convention is not otherwise applicable) for whose international relations it is responsible and in which taxes are imposed which are substantially similar in character to those that are the subject of this Convention.

When the other Contracting State has, by a written communication through diplomatic channels, signified to the first-mentioned Contracting State that such notification is accepted in respect of such area or areas, and the notification and commnication have been ratified and instruments of ratification exchanged, this Convention, in whole or in part, or with such modifications as may be found necessary for special application in a particular case, as specified in the notification, shall apply to the area or areas named in the notification and shall enter into force and effect on and after the date or dates specified therein. None of the provisions of this Convention shall apply to any such area in the absence of such acceptance and exchange of instruments of ratification in respect to that area.

(2) At any time after the date of entry into force of an extension under paragraph (1), either of the Contracting States may, by six month's prior notice of termination given to the other Contracting State through diplomatic channels, terminate the application of this Convention to any area to which it has been extended under paragraph (1), and in such event this Convention shall cease to apply and have force and effect, beginning on or after the first day of January next following the expiration of the six-month period, to the area or areas named therein, but without affecting its continued application to the United States, Norway, or to any other area to which it has been extended under paragraph (1).

(3) In the application of this Convention in relation to any area to which it is extended by notification by Norway or the United States, reference to "Norway" or the "United States", as the case may be, shall be construed as referring to that area.

(4) The termination in respect of the United States or Norway of this Convention under Article 32 (Termination) shall, unless otherwise expressly agreed by both Contracting States terminate the application of this Convention to any area to which the Convention has been extended under this article by the United States or Norway.

CHAPTER VII

Final provisions

Article 31

Entry into force

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Washington, D.C., as soon as possible. It shall enter into force two months after the exchange of the instruments of ratification. Its provisions shall for the first time have effect—

(a) in the case of the United States—

(i) As respects the rate of withholding tax, to amounts paid on or after the date on which this Convention enters into force;

(ii) As respects other income taxes, to taxable years beginning on or after January 1, 1971;

(b) in the case of Norway—

(i) As respects the rate of withholding tax to amounts paid on or after the date on which this Convention enters into force;

(ii) As respect other taxes, to income years beginning on or after January 1, 1971.

(2) The Convention between Norway and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Washington, D.C., on June 13, 1949, modified and supplemented by the Supplementary Convention signed at Oslo on July 10, 1958, shall terminate and cease to have effect in respect of income to which this Convention applies under paragraph (1) of this article.

Article 32

Termination

(1) This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after five years from the date on which this Convention enters into force provided that at least six months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have force and effect as respects income of taxable years or income years beginning (or, in the case of taxes payable at the source, payments made) on or after January 1 next following the expiration of the six-month period.

(2) Notwithstanding the provision of paragraph (1), and upon prior notice to be given through diplomatic channels, the provisions of Article 19 (Social Security Payments) may be terminated by either Contracting State at any time after this Convention enters into force.

DONE at Oslo duplicate, in the English and Norwegian languages, the two texts having equal authenticity, this Third day of December 1971.

For the United States of America:
[SEAL] PHILIP K. CROWE.
For the Kingdom of Norway:
[SEAL] ANDREAS CAPPELEN.

Mr. MANSFIELD. Mr. President, the Tax Convention with Norway was signed on December 3, 1971, and transmitted to the Senate on February 3, 1972. It is accompanied by an exchange of notes relating to understandings with respect to certain provisions of the Convention which are explained below. Upon entry into force, the Convention will terminate and replace the Convention of June 13, 1949, as modified and supplemented by the Convention of July 10, 1958.

According to the administration, the new Convention with Norway follows the general pattern of bilateral income tax Conventions now in force between the United States and a number of other countries. It takes into account changes in United States and Norwegian tax laws and developments reflected in recent tax treaties concluded by the two countries with other countries. In addition, so far as policy and technical considerations permit, the convention follows the model draft Convention of the Organization for Economic Cooperation and Development published in 1963, and its substance is similar to Conventions recently concluded by the United States with France, Belgium and Japan.

PROVISIONS OF CONVENTION

The Convention with Norway consists of seven chapters containing 32 articles which deal with such matters as taxation of business profits, shipping and air transport profits, dividends, interest, royalties, income from real property, capital gains, income from teaching or research, remittances of various kinds to students and trainees, remuneration for performance of governmental functions, private pensions and annuities, social security payments, and income of investment holding companies. It also contains general rules concerning taxation, relief from double taxation, and source of income, as well as special provisions regarding nondiscrimination, diplomatic and consular officers, mutual agreement procedure, exchange of information, as-

sistance in collection, and extension to territories.

Mr. President, this Convention was analyzed by the staff of the Joint Committee on Internal Revenue Taxation and Mr. Laurence N. Woodworth, the Chief of Staff of that Committee, informed the Committee that:

I see no problems with this treaty nor am I aware of any objections which have been raised to the treaty.

Accordingly, the Committee on Foreign Relations unanimously ordered it favorably reported to the Senate during an executive session which was held on August 8.

The PRESIDING OFFICER. Without objection, the Convention will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the 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. D, 92–2).

CONVENTION ESTABLISHING AN INTERNATIONAL ORGANIZATION OF LEGAL METROLOGY

The Senate, as in Committee of the Whole, proceeded to consider Executive I, (92d Cong., second sess.), The Convention Establishing an International Organization of Legal Metrology, signed at Paris on October 12, 1955, as amended, which was read the second time, as follows:

CONVENTION ESTABLISHING AN INTERNATIONAL ORGANIZATION OF LEGAL METROLOGY

The States Parties to the present Convention, wishing to resolve internationally the technical and administrative problems raised by the use of measuring instruments and aware of the importance of coordinating their efforts in order to achieve this end, have agreed to create an International Organization of Legal Metrology defined as follows:

CHAPTER I—PURPOSE OF THE ORGANIZATION

Article I

An International Organization of Legal Metrology is hereby established:

The purpose of this Organization is to:

1. Set up a center for documentation and information:

On the one hand, on the different national services concerned with the inspection and checking of measuring instruments subject or liable to be subject to legal regulation,

On the other hand, on the aforementioned measuring instruments considered from the standpoint of their conception, construction and use;

2. Translate and edit the texts of legal requirements for measuring instruments and their use in force in the different States, with all the interpretations stemming from the constitutional and administrative law of those States which are necessary for the complete understanding of such requirements;

3. Determine the general principles of legal metrology;

4. Study, with a view to the unification of methods and regulations, the problems of legal metrology, of a legislative and regulatory character, the solution of which is of international interest;

5. Establish model draft laws and regulations for measuring instruments and their use;

6. Draw up an organizational plan for a model service for the inspection and checking of measuring instruments;

7. Determine the necessary and adequate characteristics and standards to which measuring instruments must conform in order for them to be approved by Member States and for their use to be recommended internationally;

8. Promote closer relations between the Weights and Measures services or other services responsible for legal metrology in each of the Member States of the Organization.

CHAPTER II—CONSTITUTION OF THE ORGANIZATION

Article II

The State Parties to the present Convention shall be Members of the Organization.

Article III

The Organization shall comprise:

an International Conference on Legal Metrology,

an International Committee of Legal Metrology,

an International Bureau of Legal Metrology,

which are dealt with below.

International Conference on Legal Metrology

Article IV

The purpose of the Conference shall be to:

1. Study questions concerning the aims of the Organization and to take all decisions with respect thereto;

2. Ensure the establishment of the directing bodies called upon to carry out the work of the Organization;

3. Study and approve the reports submitted upon conclusion of their work by the various legal metrological bodies set up in conformity with the present Convention.

All questions which concern the legislation and administration of a particular State shall be excluded from the competence of the Conference, except at the express request of that State.

Article V

The States Parties to the present Convention shall belong to the Conference as Members, shall be represented therein as laid down in Article VII and shall be subject to the obligations defined by this Convention.

Aside from the Members, the following may take part in the Conference as Corresponding Members:

1. States or territories which cannot or do not yet wish to become parties to the Convention;

2. International Unions pursuing an activity connected with that of the Organization.

Corresponding Members may not be represented at the Conference but may appoint observers to it in a purely advisory capacity. They shall not pay subscriptions as Member States, but they shall bear the cost of providing such services as they may request and the cost of subscriptions to publications of the Organization.

Article VI

Member States undertake to provide the Conference with all documentation in their possession which, in their opinion, will enable the Organization to carry out the tasks entrusted to it.

Article VII

Member States will delegate a maximum of three official representatives to meetings of the Conference. In so far as possible one of them shall be an official employed in his country in the Weights and Measures or other service dealing with legal metrology.

Only one of them may vote.

These delegates need not be provided with "Full Powers" except at the request of the Committee in exceptional cases and for matters clearly defined.

Each State shall bear the costs arising out of its representation at the Conference.

Members of the Committee not appointed by their Governments shall have the right to take part in meetings in an advisory capacity.

Article VIII

The Conference shall decide on recommendations to be made for common action by Member States in the fields specified in Article I.

Decisions of the Conference may become effective only if the number of Member States present is at least two-thirds of the total number of Member States and if they have received a minimum of four-fifths of the votes cast. The number of votes cast shall be at least four-fifths of the number of Member States present.

Abstentions and blank or null votes shall not be considered as votes cast.

Decisions shall immediately be communicated, for information, consideration and recommendation, to the Member States.

The latter are morally obligated to implement such decisions in so far as possible.

However, for all votes concerning the organization, management, administration, and rules of procedure of the Conference, the Committee and the Bureau and all analogous matters, an absolute majority shall suffice to give immediate effect to the decision in question, the minimum number of Members present and of votes cast being the same as above. The vote of the Member State whose delegate is in the chair shall be decisive in the event of a tie.

Article IX

The Conference shall elect from among its members, for the duration of each of its sessions, a President and two Vice-Presidents, assisted by the Director of the Bureau, as secretary.

Article X

The Conference shall be convened at least every six years by the President of the Committee or, if he is unable to do so, by the Director of the Bureau if the latter receives a request therefor from at least half the members of the Committee.

The Conference shall fix, at the end of its work, the place and date of its next meeting or shall delegate this responsibility to the Committee.

Article XI

The official language of the Organization shall be French.

However, the Congference may provide for the use of one or several other languages for its work and proceedings.

International Committee of Legal Metrology

Article XII

The tasks specified in Article I shal be undertaken and carried out by an International Committee of Legal Metrology, the working body of the Conference.

Article XIII

The Committee shall consist of one representative of each of the Member States of the Organization.

Those representatives shall be appointed by the Governments of their countries.

They shall be officials employed in the Service concerned with measuring instruments or individuals having official duties in the field of legal metrology.

They shall cease to be members of the Committee as soon as they cease to comply with the above conditions, and it shall then rest with the Governments concerned to appoint their replacements.

They shall give the Committee the benefit of their experience, advice and work, but shall not commit their Government or their Administration.

Members of the Committee shall take part of right and as advisers in meetings of the Conference. They may be one of the delegates of their Government to the Conference.

The President may invite to meetings of the Committee, as an adviser, any person whose attendance appears to him of use.

Article XIV

Individuals who have played a role in metrological science or industry or former members of the Committee may, by decision of the Committee, receive the title of Honorary Member. They may take part in meetings in an advisory capacity.

Article XV

The Committee shall select from among its members a President, a first, and a second Vice-President who shall be elected for a period of six years and shall be eligible for re-election. However, should their mandate expire in the interval between two sessions, it shall automatically be extended until the second of those sessions.

The Director of the Bureau shall assist them as secretary.

The Committee may delegate certain of its duties to its President.

The President shall discharge the tasks delegated to him by the Committee and shall replace the Committee when decisions are urgent. He shall bring these decisions to the attention of the members of the Committee and shall report on them in detail.

When questions of common interest to the Committee and related organizations are liable to be raised, the President shall represent the Committee before such organizations.

In the event of the absence, inability to serve, removal from office, resignation or death of the President, his duties shall be temporarily assumed by the first Vice-President.

Article XVI

The Committee shall be convened at least every two years by the President or, if he is unable to do so, by the Director of the Bureau, if the latter receives a request therefor from at least half the members of the Committee.

Except for special reasons, the regular sessions shall take place in the country where the Bureau has its administrative headquarters.

However, meeting for information purposes may be held in the territory of any of the Member States.

Article XVII

Committee members unable to attend a meeting may delegate their vote to one of their colleagues who shall then be their representative. In such event, a single member may not have more than two votes in addition to his own.

Decisions shall be valid only if the number of those present and represented is at least three-quarters of the number of persons appointed as members of the Committee and if they are supported by a minimum of four-fifths of the votes cast. The number of votes cast shall be at least four-fifths of number of those present and represented at the session.

Abstentions, blank and null votes shall not be considered as votes cast.

Between sessions, and in certain special cases, the Committee may deliberate by correspondence.

Resolutions adopted in this way shall be valid only if all members of the Committee have been called upon to give their opinions and if the resolutions have been approved unanimously by all those voting, on condition that the number of votes cast be at least two-thirds of the number of appointed members.

Abstentions and blank votes or null votes shall not be considered as votes cast. Failure to reply within the time-limit specified by the President shall be considered as an abstention.

Article XVIII

The Committee shall entrust the special studies, experimental research and laboratory work to the competent services of the Member States, after having first obtained their formal agreement. If such tasks entail certain expenditure, the agreement shall specify what proportion of such expenditure shall be borne by the Organization.

The Director of the Bureau shall co-ordinate and assemble such work.

The Committee may entrust certain tasks, permanently or temporarily, to working groups or to technical or legal experts, acting in accordance with the terms and conditions it has laid down. Should such tasks entail payment of any remuneration or compensation, the amounts shall be determined by the Committee.

The Director of the Bureau shall provide the secretariat for such working groups or groups of experts.

International Bureau of Legal Metrology

Article XIX

The operation of the Conference and of the Committee shall be ensured by the International Bureau of Legal Metrology, under the direction and control of the Committee.

The Bureau shall be responsible for preparing Conference and Committee meetings, for establishing liaison between the various members of those bodies, and for maintaining relations with the Member States or with the Corresponding Members and their services concerned.

It shall also be responsible for carrying out the studies and work defined under Article I as well as for keeping official records and editing a bulletin, which shall be sent free of charge to Member States.

It shall constitute the documentation and information center provided for under Article I.

The Committee and the Bureau shall be responsible for the implementation of the decisions of the Conference.

The Bureau shall carry out no experimental research or laboratory work. It may, however, have the use of rooms suitably equipped for the study of the form of construction and working of certain apparatus.

Article XX

The Bureau shall have its administrative headquarters in France.

Article XXI

The personnel of the Bureau shall consist of a Director and assistants appointed by the Committee as well as employees or agents, either permanent or temporary, recruited by the Director.

The personnel of the Bureau and, should the occasion arise, the experts referred to in Article XVIII shall be salaried. They shall receive salaries or wages, or compensation the amount of which shall be determined by the Committee.

The rules and regulations covering the Director, the assistants and the employees or agents shall be determined by the Committee, particularly with respect to conditions of recruitment, work, discipline, and pension.

The appointment, dismissal or removal of the Bureau's agents and employees shall be ordered by the Director, except in so far as regards assistants appointed by the Committee, who may only be subject to such measures by decision of the Committee.

Article XXII

The Director shall be responsible for the working of the Bureau under the control and the direction of the Committee, to whom he shall be responsible and to whom he must present, at each ordinary session, a report on the conduct of business.

The Director shall collect the revenue, prepare the budget, be responsible for all disbursements in respect of personnel and equipment, and control the funds.

The Director shall, by right, be secretary of the Conference and of the Committee.

Article XXIII

The Governments of the Member States declare that the Bureau shall be recognized as being of public utility, that it shall have legal status and that, in general, it shall benefit from the privileges and facilities commonly granted to intergovernmental bodies under the laws in force in each of the Member States.

CHAPTER III—FINANCIAL PROVISIONS

Article XXIV

For a financial period equal to the interval between its sessions, the Conference shall decide:

The overall amount of credits necessary to cover the Organization's operating expenses;

The annual amount to be placed in reserve to meet emergency expenses, and to ensure the execution of the budget in case of insufficient income.

The credits shall be calculated in gold francs. The parity of the gold franc and the French franc shall be that quoted by the Banque de France.

During the financial period, the Committee may call on Member States if it considers that an increase in credits is necessary in order to meet the obligations of the Organization or because of a change in economic conditions.

If, upon the expiration of the financial period, the Conference has not met or has not been able to hold a valid debate, the financial period shall be extended until the next valid session. The original credits shall be increased in proportion to the duration of this extension.

During the financial period the Committee shall determine, within the credit limits granted, the amount of its operating expenses pertaining to budget periods equal in duration to the interval between its sessions. It shall also supervise the investment of available funds.

If, upon the expiration of the budget year, the Committee has not met of has not been able to hold a valid debate, the President and the Director of the Bureau shall decide upon renewal, until the next valid session, of all or part of the budget for the financial year just ended.

Article XXV

The Director of the Bureau shall be authorized to undertake and make payments on his own authority in respect of the organization's operating expenditures.

But he may not:

Pay extraordinary expenses, or

Draw money from the reserve established for the purpose of ensuring the implementation of the budget in the event of insufficient receipts,

without first obtaining the consent of the President of the Committee.

Budget surpluses shall remain available for use throughout the entire financial period.

The Director's management of the budget must be submitted to the Committee which shall examine it at each of its sessions.

Upon the expiration of the financial period, the Committee shall submit the balance sheet of its management to the Conference.

The Conference shall decide what is to be done with any budget surplus. The amount of such surplus may either permit a corresponding reduction in the dues of the Member States or may be added to the reserve funds.

Article XXVI

The Organization's expenses shall be covered:

(1) By annual contributions of the Member States.

The total contributions for a given financial period shall be determined according to the amount of credits granted by the Conference, taking into account an evaluation of the receipts referred to in paragraphs 2 to 5 below.

To determine the respective shares of the Member States, the latter are divided into

four categories, according to the total population of the home country and territories represented.

Class 1.—population of 10 million inhabitants or less;

Class 2.—population between 10 million exclusive and 40 million inclusive;

Class 3.—population between 40 million exclusive and 100 million inclusive;

Class 4.—population of over 100 million.

The population figures are rounded off to the lower million.

When the use of measuring instruments in any State is clearly below the average, the State may apply to be put in a lower category than that assigned to it according to its population.

Depending on the class, contributions are proportional to 1, 2, 4 and 8.

The share of a Member State shall be equally distributed over all the years of a financial period in order to determine its annual contribution.

With a view to establishing a margin of safety from the very beginning in order to compensate for any fluctuations in receipts, the Member States agree to make advances on their future annual dues. The exact amount and duration of such advances shall be determined by the Conference.

If, upon the expiration of the financial period, the Conference has not met or has been unable to hold a valid debate, the annual contributions shall be renewed at the same rates until a valid session can be held:

(2) By proceeds from the sale of publications and proceeds from the rendering of services to Corresponding Members;

(3) By income from the investment of funds;

(4) By contributions for the current financial period and admission fees of new Member States—by retroactive contributions and admission fees of reinstated Member States—by the back dues of Member States resuming their payments after having interrupted them;

(5) By subsidies, subscriptions, donations or legacies and miscellaneous receipts.

To finance special work, extraordinary subsidies may be allotted by certain Member States. They shall not be included in the general budget but shall be placed in special accounts.

Annual contributions shall be calculated in gold francs. They shall be paid in French francs or in any convertible currency. Parity between the gold franc and the French franc shall be that quoted by the Banque de France, the applicable rate being that of the day of payment.

Contributions shall be paid at the beginning of the year to the Director of the Bureau.

Article XXVII

The Committee shall prepare financial regulations based on the general provisions of Articles XXIV to XXVI above.

Articles XXVIII

A State which becomes a member of the Organization during one of the periods indicated in Article XXVI shall be bound until the expiration of this period and shall be subject, from the time of its accession, to the same obligations as existing Members.

A new Member State shall become joint owner of the property of the Organization and must, therefore, pay an admission fee determined by the Conference.

Its annual contribution shall be calculated as if it had joined on the 1st of January of the year following that of the deposit of its instruments of accession or ratification. Its payment for the current year shall be as many twelfths of its contribution as there are months remaining to the year. This payment shall not modify the contributions laid down for the current year for the other Members.

Article XXIX

Any Member State which has not paid its contribution for three consecutive years shall be automatically considered as having resigned and shall be struck off the list of Member States.

However, the situation of certain Member States who may find themselves in a period of financial difficulty and may not for the time being be able to meet their obligations shall be examined by the Conference which may, in certain cases, grant them extensions of time or remissions.

Insufficiency of receipts resulting from the removal of a Member State from the list of Member States shall be compensated for by drawing from the reserve funds, constituted as indicated in Article XXIV.

Member States voluntarily resigning and Member States automatically considered as having resigned shall lose all rights of joint ownership of the property of the Organization.

Article XXX

A Member State which has voluntarily resigned may be readmitted at its own request. It shall then be considered as a new Member State, but the entry fee shall be payable only if its resignation took place more than five years previously.

A Member State automatically regarded as having resigned may be readmitted at its own request, on condition that it settle its unpaid contributions due at the time it was removed from the list of Member States. Such retroactive contributions shall be calculated on the basis of the contributions for the years prior to its readmission. It shall thereafter be considered a new Member State, but the admission fee shall be calculated by taking its previous contributions into account, in proportions to be fixed by the Conference.

Article XXXI

In the event of the dissolution of the Organization, the assets shall be distributed among all Member States proportionally to the total amount of their previous dues, subject to any agreement which may be made between those Member States which have paid their dues up to the date of dissolution and to the rights contracted or acquired by personnel in active service or retired.

CHAPTER IV—GENERAL PROVISIONS

Article XXXII

The present Convention shall remain open for signature until December 31, 1955, at the Ministry of Foreign Affairs of the French Republic.

It shall be ratified.

Instruments of ratification shall be deposited with the Government of the French Republic, which will notify each of the signatory States of the date of their deposit.

Article XXXIII

States which have not signed the Convention may accede to it upon the expiration of the time limit provided for under Article XXXII.

Instruments of accession shall be deposited with the Government of the French Republic, which will notify all signatory and acceding Governments of the date of their deposit.

Article XXXIV

The present Convention shall enter into force thirty days after the deposit of the sixteenth instrument of ratification or accession.*

It shall enter into force for each State which ratifies it or accedes to it after that date, thirty days after the deposit of its instrument of ratification or accession.

The Government of the French Republic will notify each of the Contracting Parties of the date of entry into force of the Convention.

*Formality fulfilled on May 28, 1958.

Article XXXV

Any State may, at the time of signature, of ratification or at any other time, declare, by notification addressed to the Government of the French Republic, that the present Convention is applicable to all or a part of the territories it represents internationally.

The present Convention shall apply to the territory or territories designated in the notification from the thirtieth day following the date on which the Government of the French Republic has received the notification.

The Government of the French Republic will transmit such notification to the other Governments.

Article XXXVI

The present Convention is concluded for a period of twelve years to be counted from the date it enters into force.

Thereafter, it shall remain in force for successive periods of six years as between those Contracting Parties that have not denounced it at least six months before the expiration of the preceding period.

Notice of termination shall be sent in writing to the Government of the French Republic, which will then advise the Contracting Parties.

Article XXXVII

The Organization may be dissolved by decision of the Conference, in so far as the delegates are provided with "Full Powers" to that effect at the time of the voting.

Article XXXVIII

If the number of parties to the present Convention is reduced to less than sixteen, the Convention may consult the Member States to decide whether the Convention should be considered to have lapsed.

Article XXXIX

The Conference may recommend amendments to this Convention to the Contracting Parties.

Any Contracting Party accepting an amendment shall notify the French Government of its acceptance in writing, so that the latter may, in turn, notify the other Contracting Parties of the receipt of such notification of acceptance.

An amendment shall enter into force three months after the receipt of notifications of acceptance from all the Contracting Parties by the Government of the French Republic. When an amendment has been accepted by all the Contracting Parties, the Government of the French Republic will advise all the other Contracting Parties as well as the signatory Governments, informing them of the date of its entry into force.

After an amendment has entered into force, no Gover ment may ratify the present Convention or accede to it without also accepting such amendment.

Article XL

The present Convention shall be drawn up in the French language in a single original, which shall be deposited in the archives of the Government of the French Republic, which will send certified copies to all the signatory and acceding Governments.

PARIS, October 12, 1955.

(Amended in January 1968 by amendment of Article XIII.)

Mr. MANSFIELD. Mr. President, the Convention Establishing an International Organization of Legal Metrology is designed:

To serve as a center for documentation and information; to foster close working relations with national weights and measures services and other concerned organizations; and to furnish advisory assistance to interested countries.

To determine the general principles of legal metrology; to recommend uniform international requirements for measur-

ing instruments; and to work out model laws and regulations for consideration by member countries.

The science of metrology comprises measuring units and their standards, measuring instruments, and the methods of measurement and legal metrology relates to the compatibility of standards of measurement and the legislation or regulations which may affect them. The Convention on Legal Metrology entered into force in 1958 and is now in force for 36 countries, mostly European, including all of Eastern Europe. The President states that:

Accession . . . would now be of clear advantage to the United States. As the world's largest trading nation and as a world leader in the standards field, we would be better able to assume a positive role in the setting of international standards for measurements, and in so doing, to expand our international trade.

According to the administration, the benefits to the United States of participation in this organization are:

To improve opportunities for exporting measurement instruments and help our balance-of-payments position;

To obtain better information regarding measurement techniques in the field;

To influence internationally adopted measurement techniques so U.S. procedures will not be put at a disadvantage;

To ensure that the United States can influence the adoption by developing countries of model laws and uniform procedures in order to avoid having the United States put at a disadvantage vis-a-vis European and other countries;

To facilitate the development of an international standards program for the United States in this area.

The 1972 budget of the organization is approximately $108,000. If the United States joins, its estimated contribution will be a little over $14,000, plus a one-time payment of the same amount as an entry fee.

The committee held a public hearing on this convention on August 3, 1972, and unanimously ordered it favorably reported to the Senate during an executive session held on August 8, 1972.

The PRESIDING OFFICER. Without objection, the convention will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the accession of the United States of America to the Convention Establishing an International Organization of Legal Metrology, as amended. (Ex. I, 92-2.)

QUORUM CALL

Mr. MANSFIELD. 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. MANSFIELD. 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 UNTIL TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 o'clock tomorrow morning.

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

(Later, this order was modified to provide for the Senate to convene at 10:30 a.m. tomorrow.)

QUORUM CALL

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

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

THE AMERICAN REVOLUTION BICENTENNIAL COMMISSION

Mr. HRUSKA. Mr. President, several weeks ago the Subcommittee on Federal Holidays, Charters, and Celebrations held legislative oversight hearings concerning the American Revolution Bicentennial Commission. This was in connection with the consideration of S. 3307, a bill now pending on the Senate calendar, calling for reauthorization of the Commission. A total of about 30 witnesses were heard, and there was general discussion and a disclosure of the plans of the Commission, of their progress, of some of the things they had done, and of some of the experiences they had had in deveioping a system of advisory panels as well as implementing the bill passed last year to enlarge the Commission.

By and large, the hearings were very informative. It was the conclusion of this Senator that good progress is being made, and that the concept originally embodied within the statute has been substantially followed in spirit as well as in letter.

The testimony of David J. Mahoney, chairman of the commission, was especially useful, and gave an overall picture of what was transpiring and what was being planned. I ask unanimous consent that a summary statement of his testimony be printed in the RECORD at this point.

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

STATEMENT OF DAVID J. MAHONEY

Mr. Chairman, Members of the Judiciary Committee, my name is David J. Mahoney, Chairman of the American Revolution Bicentennial Commission. I have a prepared statement which is before you that I would like to submit for the record. That statement goes into detail on specific aspects of the Commission, its advisory panels and on the programs being developed in the three theme areas of Horizons '76, Heritage '76 and Festival USA.

With your approval, Mr. Chairman, I will summarize the highlights of my statement and discuss some of the problems of the Commission. In particular, I will touch upon those matters of concern to the Committee as indicated in its favorable report on S. 3307, to amend the basic legislation of the ARBC.

First, I want to thank the Subcommittee for this opportunity to talk about the American Revolution Bicentennial Commission. I accepted the honor of serving as Commission Chairman without any illusions that the job would be easy, and with a deep commitment to the commemoration as an important milestone in our national life.

The President appointed me as Chairman of the ARBC in September 1970. Prior to that time, the Commission had existed primarily on paper. For most of the first three years of its life, the Commission was without appointees, without staff and funding. When I assumed the chairmanship in September 1970, the Commission had just submitted its blueprint for a national commemoration to the President, who transmitted it to the Congress with his strong endorsement. The Bicentennial guidelines were now fixed. The course was set. The time for action was now.

Our job was to mount a grassroots nationwide program in all 50 States, the Territories, the District of Columbia and the Commonwealth of Puerto Rico, involving all segments of our pluralistic society. At that time the Commission budget was $373,000 with a staff of about a dozen people.

The first need was for some kind of organization at the State level to organize the State Bicentennial effort. Few States had Bicentennial Commissions, and most were as yet not aware of the impending commemoration. The President had called for each State to establish a Bicentennial Commission and, under the national Bicentennial plan, these Commissions were to be the network upon which the Bicentennial was to be developed.

So we initiated legislation to authorize grant funds for the establishment and development of State Bicentennial Commissions to plan and develop their own programs. Grant funds for the State Bicentennial Commissions were finally appropriated in May of this year—14 months later. I might add that all grants were awarded by ARBC within 60 days.

The Commission's report had invited Philadelphia to stage an international exposition as a major focal point for international participation in the Bicentennial. At the President's direction the Commission was required to review the substantive exposition planning and the budget prior to final approval. The Commission, in good conscience, bent every effort to make the exposition a reality. Thousands of man-hours were devoted to this effort only to see the exposition fail because of an inability of the sponsors to agree to a suitable site and to an acceptable budget. Not only did the Philadelphia exposition issue drain a major part of the Commission's time and energy, but its unresolved status for almost two years inhibited the commitment of private industry, foreign governments and others in alternate Bicentennial plans until the fate of the exposition was settled in May of this year.

In early 1971, draft legislation was submitted to the Congress for a Bicentennial commemorative medals program. The program was important to the ARBC planning because it would provide a means of reaching the general public with a physical manifestation of the Bicentennial and because it would be a source of revenue for ARBC. The medals authorization bill was passed by the Congress only in February of this year—12 months later.

I might add that our first commemorative medal was designed, produced, promoted and on sale in four months. As a businessman I must admit I don't think that private industry can beat that record. Incidentally, more than 700,000 medals have been purchased to date.

I would also like to note in passing, that this commemorative medals program authorized by the Congress is the only ARBC program that can be considered "commercial." It also results in revenue available to ARBC for Bicentennial programs; thus, reducing the need for appropriations and spares the taxpayers.

In early 1971, draft legislation was submitted by ARBC to the Congress to authorize 8 additional public members to the Commission to permit a wider representation of minority and ethnic groups, youth, women, etc.

Only on March 17 of this year, one year later, was the legislation approved and 2 blacks, an Indian, 4 youths under 25, and 2 women were added to the Commission.

The legislation passed on March 1 also authorized a number of substantive ARBC activities such as a computerized Bicentennial Calendar of national, international, State and local Bicentennial events; an information clearinghouse on Bicentennial events; awards, competitions and the commissioning of Bicentennial literally, dramatic, historical and other works; exhibits, films, and publications, etc. After a year delay in enactment of this legislation, we are now further delayed in initiating these important programs because our FY 1973 appropriations have not yet been approved.

I point out these matters because the Committee, in its report, urges the Commission to speed its planning and programs without delay. We are keenly aware of the impending 1976 date and the need for accelerating our efforts. However, blame for the many delays in Bicentennial planning—and I readily admit such delays—have not all been the Commission's fault. Congress must share the blame with the Commission. Both the Commission and the Congress must cooperate fully to assure the required speed up in Bicentennial planning and programming.

I would hope that a recently approved ARBC National Historic Records Program will be given prompt and favorable congressional consideration as an example of such cooperation.

This program under the Heritage '76 theme was designed by 5 major national historical associations of the United States, concerned with the care and preservation of historical sources. This program is an example of ARBC reliance on the nation's historical sources, as specified in the Committee report. A bill to authorize this important historical program will soon be introduced in the Congress. I commend this program to you and submit that it is worthy of congressional support.

One of the purposes of this hearing, as stated by the Committee, is to give all groups a chance to air their views as to whether the Commission is proceeding in the right direction. I believe we are moving in the right direction. But we are receptive to suggestions and criticisms. May I point out that since my appointment as Chairman of the ARBC, we have made every effort to involve the active support, participation and approval of the Congress in all of our plans and programs. ARBC has made 11 appearances before 7 Congressional Committees during my 22 months as Chairman, an average of one appearance every two months.

Our plans, programs and activities have been explained and defended before the various Committees and without exception enacted into law. We have assumed that since our plans and programs have been sanctioned by the Congress, that they represent the collective judgment of the Congress as well as the judgment of the Commission.

The mission of the Commission has been a subject of public debate and considerable misunderstanding. I want to point out that the legislation initially passed by the Congress establishing the Commission, authorized it to *plan, encourage, develop* and *coordinate* a nationwide Bicentennial program.

The Commission *is not* an action agency to carry out projects of ecological improvements. The Commission is not an agency to find a cure for cancer or heart ailments. The Commission *is not* an agency for social action, civil rights or public welfare.

The Commission's function as determined by the Congress, is to encourage and coordinate the individual efforts of States, communities, patriotic and service organizations, historians and others and to channel them along the guidelines set forth in the ARBC national report. A major guideline of the report is that the Bicentennial be a time for Americans to review and reaffirm the basic principles on which the nation was founded. We believe that the ARBC emphasis in all 3 major theme areas, Horizons '76, Heritage '76 and Festival USA, are consistent with the Committee guidance that the Bicentennial program should be an enunciation of the basic principles upon which our Republic was founded.

At this time the Commission has no funds to support specific programs or activities of the patriotic and service organizations, women's groups and others, no matter how needy or meritorious. Groups and organizations with splendid ideas for the Bicentennial must be turned away when they request even minimal financial support. So the Commission is criticized by these groups for not providing funding for programs it has encouraged and promoted.

The enactment of S. 3307 favorably reported by the Judiciary Committee would provide for matching project-grants (using non-appropriated funds) to the States, local communities and non-profit groups and organizations for worthy Bicentennial programs and activities. Such grants would be funded with revenues and other non-appropriated funds and would be important far beyond their intrinsic worth as a commitment of the ARBC to such projects at no cost to the taxpayers. I urge the enactment of S. 3307 as soon as possible.

As urged by the Judiciary Committee report, the ARBC has created Advisory Panels consisting of more than 100 individuals and organizations to tap the rich, historical, patriotic resources of this country and is working with women, youth, minority and ethnic groups to assist in developing programs under each of its three themes: Horizons '76, Heritage '76 and Festival USA. These panels include major national historical, educational, professional, performing arts and other groups, and eminent individuals in the arts and humanities. It should be noted that both the Daughters of the American Revolution and the Sons of the American Revolution are represented on the ARBC Advisory Panel for Commemoration and Convocations. However, while we have attempted to involve all these groups, we have no funds to bring these people together. We are once more being criticized for inaction. It is a valid criticism, but our answer is—we don't have the funds to pay even the travel expenses of dedicated and concerned people who are willing to donate their valuable time and energy in the service of the Bicentennial.

As you know, ARBC is operating under a Continuing Resolution with no FY 1973 appropriation since the authorization for the appropriation is not yet approved by the Congress. Our FY 1972 appropriations became available in March, with only 3 months remaining in the fiscal year. While the need to operate under a Continuing Resolution may not be very damaging to the operations of an agency with a steady budget level, it is crippling when an agency such as ARBC is attempting to accelerate its programs with a substantial increase in appropriation level.

An important element in the concept of a 50-State Bicentennial commemoration is an ARBC-conceived series of urban-oriented Bicentennial Parks which could be constructed on federally owned lands. These Parks would serve as the focal point for Bicentennial activities, exhibits, performing arts, historical and commemorative activities, etc. during 1976 and remain as a permanent legacy of the Bicentennial for enjoyment of future generations. This concept is now being studied and if found feasible, may be recommended as a major Bicentennial program.

Whether or not the Bicentennial Parks plan will materialize (and that would ultimately be determined by the Congress) the State Bicentennial Commissions remain the key to a grassroots, nationwide program involving all of our citizens. The State Bicentennial Commissions, most of which are just now being organized, have now received $2.4 million dollars in Federal grant support. They have already invested $2.5 million of their own funds. This is just about the total amount appropriated for ARBC to date.

These State Bicentennial Commissions, created at the urging of the President and ARBC and now being staffed and funded, involve more than 1,000 persons who are actively engaged in the Bicentennial. This is where the action is and they need our help!

In my judgment, at long last, the vision of Congress in establishing the American Revolution Bicentennial Commission is to be fulfilled. The nationwide mechanism now exists for a Bicentennial commemoration that will result in a renaissance of our national spirit.

We are on the threshold of the Bicentennial. Many programs are in progress. Many more are in varying stages of development. The totality of these programs will result in a nationwide grassroots commemoration worthy of this great occasion.

I hope the Committee will agree with this assessment. The fate of the Bicentennial is in your hands and those of the entire Congress.

THE $30 BILLION REVENUE SHARING PROPOSAL

Mr. HARRY F. BYRD, JR. Mr. President, I have given a great deal of thought during the past several months to the State and Local Fiscal Assistance Act, the so-called revenue sharing legislation. I have kept an open mind.

This proposal, H.R. 14370, was passed by the House of Representatives on June 22 and since then has been under consideration by the Senate Committee on Finance.

It has been endorsed by President Nixon and has the support of most, if not all, of the Governors of the 50 States and most of the mayors throughout the Nation.

Under its provisions, the Federal Government, over a 5-year period, would distribute $30 billion in additional Federal funds to the 50 States and to 39,000 units of local government. Distribution in the current fiscal year would total $8.1 billion.

This, of course, would be helpful to

State and local governments. The Governors and mayors have told the Congress that they need additional assistance over and above the vast sums which already are being returned to the States in a multitude of Federal programs. The legislation assumes all States and localities have a fiscal crisis common in nature and magnitude with which they are equally unable to cope. Of course, such an assumption is not an accurate assumption.

I realize that it would be more popular to support than to oppose the State and Local Fiscal Assistance Act.

But in considering this matter there are at least three issues of major concern. The first and foremost is this: Where is the revenue to share?

The Federal funds deficit for fiscal year 1971 was $30 billion; for fiscal year 1972, the deficit was $32 billion; the administration estimates that the deficit for the current fiscal year will be at least $38 billion.

So in 3 fiscal years the Federal funds deficit will equal or exceed $100 billion.

This means that more than 20 percent of the total national debt will have been incurred during this 3-year period.

Never before in any other 3-year period in the history of the American Government have there been such deficits, except during World War II, when we were fighting in both Europe and the Pacific and when we had 12 million Americans under arms.

When 12 of the Nation's Governors testified before the Senate Finance Committee, I made this assertion: No State in the Union is in as bad shape financially as is the Federal Government. No Governor disputed this statement.

The annual interest on the national debt is $22.7 billion.

Of every personal and corporate income tax dollar paid into the Federal Treasury, 17 cents goes to pay the interest charges.

As I view it, the dominant domestic problem facing our Nation is the desperately bad condition of our Federal finances. As a result of increased deficit spending, the purchasing power of the American dollar has declined. Deficit spending by the Federal Government is the major cause of inflation, which is a hidden tax on the earnings of the working people.

What Congress is considering in the revenue-sharing legislation, is an additional program—over and above the present programs—with an average cost of approximately $6 billlion per year for each of 5 years, beginning now.

The second issue of major concern is the division of public accountability. State and local governmental units would expend public funds which they have no responsibility for raising.

Under the House-passed legislation, 40 percent of the funds will be distributed to five States—New York, California, Illinois, Michigan, and Pennsylvania.

I might add, parenthetically, that under the Senate Finance Committee proposal, 35 percent of the total funds will go to those five States.

These States have gone into expensive programs which they find difficult to maintain. Now they are seeking assistance from the Federal Government.

Is it wise to separate the responsibility for collecting taxes from the authority to spend revenues? The 50 States and the 39,000 localities dispensing tax funds will be relieved of the obligation to weigh carefully the benefits of increased public expenditures against the burdens imposed on their community through increased taxation.

The third area of major concern is that the House-passed legislation seeks to dictate to the States the tax structure each State should have. It also requires each local government, as a condition of receiving funds under the bill, to obtain approval from the Secretary of the Treasury as to its wage rates on construction financed in whole or in part by revenue sharing funds.

Thus, from its inception, this new revenue sharing program incorporates dictation from Congress to the States and to the localities.

Through the years, Federal grants-in-aid and shared revenues to the various States have increased tremendously.

I had the Library of Congress prepare a table which shows the amounts of Federal grants-in-aid and shared revenues in Virginia over 5-year intervals beginning with 1950. The information derived from this compilation shows that the Federal Government has been sharing revenues on an increasingly large basis for a number of years.

Omitting the trust funds, namely, the Federal highway trust funds payments, the social security trust fund payments, and unemployment payments, Federal aid payments for Virginia were as follows:

Year	Amount
1950	$27,347,603
1955	60,720,683
1960	72,490,049
1965	112,780,354
1970	353,385,602
1971	421,742,387

One will note from the above table that Federal aid to Virginia is 17 times as great as it was in 1950. The other States, I feel sure, have had similar increases.

To give a dramatic example of just how far out of hand some of these Federal programs have gotten, I cite the following:

A few years ago, legislation was enacted providing 75 percent Federal financing of social services. The States have discovered that, by expanding or changing programs that they 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 and by HEW 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 $4.7 billion—more than 100 times the original estimate.

In the first year of this program, New York State received $57 million in matching grants for this program. This year, New York is asking for $854 million in Federal matching grants for this one program.

The State of Mississippi, which last year applied for $1 million of Federal funds to finance social services, this year is asking for $453 million—about the size of the State's entire budget last year. This is just one of many Federal spending programs.

If the revenue sharing proposal now under consideration were being recommended as a replacement for other, less flexible programs, I would greatly prefer the flexibility of the new program.

But the legislation now under consideration is in addition to all of the other programs.

The Federal Government obtains its funds from the same sources as do State and local governments, from working men and women. Costly Federal programs must be paid for by more taxes, or by more inflation, or both.

I feel I cannot vote for costly new programs at a time of unreasonably high deficit spending.

Last November, I felt compelled to take another unpopular stand; namely, in opposition to a tax reduction which lowered revenues at a time of large Federal deficits.

Similarly, this year, I must vote against the revenue sharing proposal, which calls for a large increase in Federal spending.

QUORUM CALL

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KENNEDY). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR CONSIDERATION OF S. 3307 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, at such time as S. 3307, a bill to amend the joint resolution establishing the American Revolution Bicentennial Commission, is called up and made the pending business before the Senate, I ask unanimous consent that time for debate thereon be limited to 30 minutes, with the time to be equally divided and controlled by the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Nebraska (Mr. HRUSKA); that time on any amendment be limited to 20 minutes, to be equally divided and controlled between the mover of such and the Senator from Nebraska (Mr. HRUSKA); that time on any amendment to an amendment be limited to 10 minutes, to be equally divided and controlled between the mover of such and the author of the amendment in the first degree, except in any instance in which the mover of the

amendment in the first degree favors such, in which case, time in opposition be under the control of the distinguished majority leader or his designee; that time on any debatable motion or appeal be limited to 10 minutes, to be divided between the mover of such and the manager of the bill.

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

ORDER FOR ADJOURNMENT TO 10.30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, this agreement has been cleared on both sides of the aisle and I have discussed it with the able Senator from Massachusetts (Mr. KENNEDY), and the time agreement meets with the approval of all parties.

Mr. President, I also ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10:30 a.m. tomorrow.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, following the remarks of the two leaders under the standing order tomorrow, that there be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 3 minutes; at the conclusion of which the Chair lay before the Senate S. 3307 and that the unfinished business, Senate Joint Resolution 214, be temporarily laid aside and remain in a temporarily laid aside status until disposition of S. 3307.

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

ORDER FOR ADJOURNMENT FROM TOMORROW UNTIL FRIDAY AT 9 A.M.; AND FROM FRIDAY TO 9 A.M. ON SATURDAY

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 Friday, August 11, 1972; and that when the Senate completes its business on Friday, it stand in adjournment until 9 a.m. on Saturday, August 12, 1972.

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 second assistant legislative clerk proceeded to call the roll.

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

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

AUTHORIZATION FOR COMMITTEE ON FINANCE TO HAVE UNTIL MIDNIGHT TO FILE A REPORT ON THE REVENUE SHARING BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance may have until midnight tonight to file a report on the revenue sharing bill.

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

ORDER FOR RECOGNITION OF SENATOR PROXMIRE ON FRIDAY, AUGUST 11

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Friday next, following the remarks of the two leaders under the standing order, the distinguished Senator from Wisconsin (Mr. PROXMIRE) be recognized for not to exceed 15 minutes.

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

ORDER TO LAY ASIDE TEMPORARILY THE UNFINISHED BUSINESS (S.J. RES. 241) TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the unfinished business, the Interim Agreement between the United States and the U.S.S.R. (S.J. Res. 241), remain in a temporarily laid-aside status until such time on tomorrow as the distinguished majority leader or his designee may deem it advisable to call up that measure or until the close of business tomorrow, whichever is the earlier.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10:30 a.m. After the two leaders have been recognized under the standing order, there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes; at the conclusion of which the Chair will lay before the Senate S. 3307, a bill to amend the joint resolution establishing the American Revolution Bicentennial Commission. There is a time limitation on that bill and on amendments thereto. It is possible and even likely that one or more yea and nay votes may occur on the bill and amendments thereto.

During the day, Mr. President, there will be a rollcall vote on the conference report on the HEW appropriation bill. I am not in a position to say at what time that vote will occur or what the order of business will be following the disposition of S. 3307, the bill to amend the joint resolution establishing the American Revolution Bicentennial Commission. However, it can also be stated Mr. President, that there will be three yea and nay votes on the following treaties:

Executive B, 92d Congress, second session, a Convention on Ownership of Cultural Property;

Executive D, 82d Congress, second session, the Tax Convention with Norway; and

Executive I, 92d Congress, second session, the Convention Establishing an International Organization of Legal Metrology.

In all likelihood, there will also be a vote or some votes on S. 3755, a bill to amend the Airport and Airway Development Act of 1970 to increase the U.S. share of allowable project costs under such act.

There is presently no time limitation on S. 3755, but at some time during the day the leadership will call up that bill and the Senate will proceed to work its will thereon.

In summation, Mr. President, there will be at least four yea-and-nay votes tomorrow and undoubtedly more, the four sure votes being the vote on the adoption of the HEW appropriations conference report and the three votes on treaties and conventions. And as I have already stated, a vote or votes are indicated on the Bicentennial Commission bill and on the Airport and Airway Development Act.

Tomorrow will be a busy day, a reasonably long day, and a day on which there will be several yea-and-nay votes.

ADJOURNMENT TO 10:30 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 10:30 a.m. tomorrow.

The motion was agreed to; and at 6:11 p.m., the Senate adjourned until tomorrow, Thursday, August 10, 1972, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate August 9, 1972:

TREASURY DEPARTMENT

James E. Smith, of Virginia, to be a Deputy Under Secretary of the Treasury. (new position.)

U.S. ATTORNEY

Frank D. McCown, of Texas, to be U.S. attorney for the Northern District of Texas for the term of 4 years vice Eldon B. Mahon, resigned.

WITHDRAWAL

Executive nomination withdrawn from the Senate August 9, 1972:

DIPLOMATIC SERVICE

William T. Hines, of the District of Columbia, for appointment as a Foreign Service Information Officer of Class five, a Consular Officer, and a Secretary in the Diplomatic Service of the United States of America, which was sent to the Senate on June 20, 1972.