By Mr. LIPSCOMB:

H.J. Res. 523. Joint resolution proposing an amendment to the Constitution of the United States permitting the right to read from the Holy Bible and to offer nonsectarian prayers in the public schools or other public places if participation therein is not compulsory; to the Committee on the Judiciary.

By Mr. PELLY:

H.J. Res. 524. Joint resolution to authorize the President to proclaim October 9 in each year as Leif Erikson Day; to the Committee on the Judiciary.

By Mr. SHRIVER:

H.J. Res. 525. Joint resolution expressing the determination of the United States with respect to the situation in Cuba and the Western Hemisphere; to the Committee on Foreign Affairs.

By Mr. WHARTON:

H.J. Res. 526. Joint resolution proposing an amendment to the Constitution of the United States permitting the offering of prayers and the reading of the Bible in public schools or other public bodies in the United States; to the Committee on the Judiciary.

By Mr. HALL:

H.J. Res. 527. Joint resolution expressing the determination of the United States with respect to the situation in Cuba and the Western Hemisphere; to the Committee on Foreign Affairs.

By Mr. KORNEGAY:

H.J. Res. 528. Joint resolution proposing an amendment to the Constitution of the United States permitting the offering of prayers and the reading of the Bible in public schools or other public bodies in the United States; to the Committee on the Judiciary.

By Mr. ANDERSON:

H.J. Res. 529. Joint resolution expressing the determination of the United States with respect to the situation in Cuba and the Western Hemisphere; to the Committee on Foreign Affairs.

By Mr. DEL CLAWSON:

H. Con. Res. 188. Concurrent resolution designating Presidents' Day; to the Committee on the Judiciary.

By Mr. STEED:

H. Con. Res. 189. Concurrent resolution expressing the sense of Congress that the Southwest regional water laboratory should be known as the "Robert S. Kerr Water Research Center"; to the Committee on Public Works.

By Mr. ST. ONGE:

H. Res. 420. Resolution congratulating the town of Pomfret, Conn., on its 250th anniversary; to the Committee on the Judiciary.

By Mr. GURNEY:

H. Res. 421. Resolution expressing the sense of the House of Representatives with respect to the retention in the District of Columbia of a master control record of the Department of the Air Force; to the Committee on Armed Services.

MEMORIALS

Under clause 4 of rulue XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the Legislature of the State of Florida, memorializing the President and the Congress of the United States relative to deploring and condemning the decision of the Supreme Court of the United States for banning Bible reading and recital of the Lord's prayer in public schools; to the Committee on the Judiciary.

Also, a memorial of the Legislature of the State of North Carolina, memorializing the President and the Congress of the United States to reaffirm the State workmen's compensation system as the basic program for providing work-connected injuries and disease benefits; to the Committee on Education and Labor.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. EDWARDS:

H.R. 7344. A bill for the relief of Manuel Lopez Pedroza; to the Committee on the Judiciary.

By Mr. FALLON:

H.R. 7345. A bill for the relief of H. Ali Iravani; to the Committee on the Judiciary.

By Mr. FORD:

H.R. 7346. A bill for the relief of Cornelis Van Nuis, M.D., U.S. Public Health Service; to the Committee on the Judiciary.

By Mr. HANNA:

H.R. 7347. A bill for the relief of Teresa Elliopoulos and Anastasia Elliopoulos; to the Committee on the Judiciary.

By Mr. JENNINGS:

H.R. 7348. A bill for the relief of Frank B. Rowlett; to the Committee on the Judiciary.

By Mr. MURPHY of Illinois:

H.R. 7349. A bill for the relief of Filemon C. Yao; to the Committee on the Judiciary.

By Mr. SHELLEY:

H.R. 7350. A bill for the relief of Mrs. Anna Sun (Kuo-fang Kai Sun); to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

172. By Mr. SHRIVER: Resolution of Democratic precinct committeemen and women of the fifth ward, Wichita, Kans., endorsing and commending President Kennedy's civil rights legislative program and urging passage of that program; to the Committee on the Judiciary.

173. By The SPEAKER: Petition of Richard F. Kuehnle, Silver Eagles Rescue, International, Walbridge, Ohio, relative to transmitting the charter and constitution of the Silver Eagles Rescue, International, to the Congress of the United States; to the Committee on the Judiciary.

SENATE

THURSDAY, JUNE 27, 1963

The Senate met at 12 o'clock meridian, and was called to order by Hon. LEE METCALF, a Senator from the State of Montana.

Rabbi Harold P. Smith, of the Congregation Agudath Achim, of South Shore, Chicago, Ill., offered the following prayer:

Almighty Father, we thank Thee, O God, for the gift of another day of life.

As the Members of this august body prepare to use this day for deliberations and actions which will affect the lives and destinies, not only of their own countrymen, but of all humans everywhere, we invoke Thy gracious blessings upon them.

Bless Thou, we pray Thee, our Chief Executive, the President of the United States, and our distinguished legislators, with the good health, the courage, and the wisdom so to act this day that the crises of our world will be lessened, the tensions alleviated, the frictions mitigated, and the hatreds dissolved into love and friendship and understanding.

May the qualities of mind and soul which we, their fellow citizens, saw in them in measure great enough to entrust them with our very destinies, be reflected in their sensitivities and responsiveness to the sufferings, the struggles, and the pains of many who, as we do, seek the fundamental blessings of life, liberty, and unhampered pursuit of happiness, wherever they may be.

May they honor the deep trust we have placed in them by finding, this day, new vistas of insight which Thou alone canst supply, that they may shed a new and alleviating light upon the crucial issues which oft divide us one from another in these critical days when unity and love are so vitally needed for survival.

Help us, O Lord, help us, that we, in these glorious and blessed United States of America, shall indeed be united States, and that all of us shall approach and solve our problems, with love and understanding, in a united state. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., June 27, 1963.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. LEE METCALF, a Senator from the State of Montana, to perform the duties of the Chair during my absence.

CARL HAYDEN,
President pro tempore.

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

THE JOURNAL

On request of Mr. MANSFIELD, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, June 26, 1963, was dispensed with.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 1359) to provide for an additional Assistant Secretary in the Treasury Department.

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. 6791) to continue for 2 years the existing reduction of the exemption from the duty enjoyed by returning residents, and for other purposes.

The message further announced that the House had passed a bill (H.R. 7179) making appropriations for the Department of Defense for the fiscal year ending June 30, 1964, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the Acting President pro tempore:

H.R. 1492. An act to provide for the sale of certain reserved mineral interests of the United States in certain real property owned by Jack D. Wishart and Juanita H. Wishart;

H.R. 1819. An act to amend the Federal Employees Health Benefits Act of 1959 to provide additional choice of health benefits plans, and for other purposes;

H.R. 1937. An act to amend the act known as the "Life Insurance Act" of the District of Columbia, approved June 19, 1934, and the act known as the Fire and Casualty Act of the District of Columbia, approved October 3, 1940;

H.R. 3537. An act to increase the jurisdiction of the Municipal Court for the District of Columbia in civil actions, to change the names of the court, and for other purposes;

H.R. 6791. An act to continue for 2 years the existing reduction of the exemption from duty enjoyed by returning residents, and for other purposes; and

H.J. Res. 467. Joint resolution amending section 221 of the National Housing Act to extend for 2 years the broadened eligibility presently provided for mortgage insurance thereunder.

HOUSE BILL REFERRED

The bill (H.R. 7179) making appropriations for the Department of Defense for the fiscal year ending June 30, 1964, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

LIMITATION OF STATEMENTS DURING MORNING HOUR

On request of Mr. MANSFIELD, and by unanimous consent, statements during the morning hour were ordered limited to 3 minutes.

ANNOUNCEMENT OF POSITION ON CERTAIN VOTES

Mr. LONG of Louisiana. Mr. President, on June 24, 1963, at the time of the yea-and-nay vote—No. 107—on the Cotton amendment to the bill H.R. 6755, to provide a 1-year extension of the existing corporate normal tax rate, and of certain excise tax rates; and, on the same date, on the vote—No. 108—on passage of House bill 3872, relating to the increase of lending authority of the Export-Import Bank, I was absent on official business. Had I been present and voting, on vote No. 107 I would have voted "nay"; and on vote 108, "yea."

CONCURRENT RESOLUTIONS OF TEXAS LEGISLATURE

Mr. TOWER. Mr. President, I would like to place in the RECORD three concurrent resolutions passed by the Texas Legislature and forwarded to me for consideration by this Congress.

All three resolutions beg of Congress that a constitutional convention be called for the following purposes:

First. To alter the method by which votes of the presidential electors are apportioned.

Second. To amend article V of the Constitution as regards the amendatory processes.

Third. To remove the process of apportioning State legislators from Federal judicial review.

I ask unanimous consent to place them in the RECORD, as an expression of the Texas Legislature on these matters, and referred to the appropriate committee.

There being no objection, the concurrent resolutions were received and referred to the Committee on the Judiciary, as follows:

HOUSE CONCURRENT RESOLUTION 22

Whereas the relationship that exists between the Federal Government and the governments of the States is a matter of vital concern; and

Whereas it is important to maintain this relationship in the manner that was intended by the framers of the Constitution of the United States; and

Whereas it is considered that recent Federal judicial decisions create an imbalance of power tending to increase concentration of authority in the Federal Government over matters of local concern to the several States and the citizens thereof; and

Whereas apportionment of a State legislature is considered to be a matter of concern to the States alone and to the people thereof acting and exercising their rights inherent as citizens of their State and as citizens of the United States: Now, therefore, be it

Resolved by the house of representatives (the senate concurring), That this legislature respectfully petitions the Congresss of the United States to call a convention for the purpose of proposing the following article as an amendment to the Constitution of the United States.

"ARTICLE —

"SECTION 1. No provision of this Constitution, or any amendment thereto, shall restrict or limit any State in the apportionment of representation in its legislature.

"SEC. 2. The judicial power of the United States shall not extend to any suit in law or equity, or to any controversy, relating to apportionment of representation in a State legislature.

"SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within 7 years from the date of its submission;" and be it further

Resolved, That if Congress shall have proposed an amendment to the Constitution identical with that contained in this resolution prior to January 1, 1965, this application for a convention shall no longer be of any force or effect; and be it further

Resolved, That a duly attested copy of this resolution be immediately transmitted to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, and to each Member of the Congress from this State.

PRESTON SMITH,
President of the Senate.
BYRON TUNNELL,
Speaker of the House.

Adopted by the house on March 12, 1963.

DOROTHY HALLMAN,
Chief Clerk of the House.

Adopted by the senate on April 4, 1963.

CHARLES SCHNABEL,
Secretary of the Senate.

HOUSE CONCURRENT RESOLUTION 21

Whereas article V of the U.S. Constitution deals with the procedures by which that Constitution may be amended; and

Whereas the fact that the convention method set out in the said article V has never been employed due to uncertainty as to how the convention is to be organized and who is to participate in it; and

Whereas it would appear that the said article V should be amended so as to simplify State initiation of proposed amendments; Now, therefore, be it

Resolved by the House of Representatives of the State of Texas (the Senate concurring), That this legislature respectfully petitions the Congress of the United States to call a convention for the purpose of proposing the following article as an amendment to the Constitution of the United States.

"ARTICLE—

"SECTION 1. Article V of the Constitution of the United States is hereby amended to read as follows:

" 'The Congress, whenever two-thirds of both Houses shall deem it necessary, or, on the application of the legislatures of two-thirds of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States. Whenever applications from the legislatures of two-thirds of the total number of States of the United States shall contain identical texts of an amendment to be proposed, the President of the Senate and the Speaker of the House of Representatives shall so certify, and the amendment as contained in the application shall be deemed to have been proposed, without further action by Congress. No State, without its consent, shall be deprived of its equal suffrage in the Senate.'

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within 7 years from the date of its submission."; and be it further

Resolved, That if Congress shall have proposed an amendment to the Constitution identical with that contained in this resolution prior to January 1, 1965, this application for a convention shall no longer be of any force or effect; and be it further

Resolved, That a duly attested copy of this resolution be immediately transmitted to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, and to each Member of the Congress from this State.

BYRON TUNNELL,
Speaker of the House.
PRESTON SMITH,
President of the Senate.

Adopted by the house on March 14, 1963.

DOROTHY HALLMAN,
Chief Clerk of the House.

Adopted by the senate on May 2, 1963.

CHARLES SCHNABEL,
Secretary of the Senate.

HOUSE CONCURRENT RESOLUTION 29

Whereas under the Constitution of the United States presidential and vice presidential electors in the several States are now elected on a statewide basis, each State being entitled to as many electors as it has Senators and Representatives in Congress; and

Whereas the presidential and vice-presidential electors who receive the plurality of the popular vote in a particular State become entitled to cast the total number of electoral votes allocated to that State irrespective of how many votes may have been cast for other elector candidates; and

Whereas this method of electing the President and Vice President is unfair and unjust in that it does not reflect the minority votes cast; and

Whereas the need for a change has been recognized by Members of Congress on numerous occasions through the introduction of various proposals for amending the Constitution: Now, therefore, be it

Resolved by the House of Representatives of the State of Texas (the Senate concurring), That application is hereby made to Congress under article V of the Constitution of the United States for the calling of a convention to propose an article of amendment to the Constitution providing for a fair and just division of the electoral votes within the States in the election of the President and Vice President; and be it further

Resolved, That if and when Congress shall have proposed such an article of amendment this application for a convention shall be deemed withdrawn and shall be no longer of any force and effect; and be it further

Resolved, That the Governor be and he is hereby directed to transmit copies of this application to the Senate and House of Representatives of the United States, and to the several Members of said bodies representing this State therein; also to transmit copies hereof to the legislatures of all other States of the United States.

BYRON TUNNELL,
Speaker of the House.
PRESTON SMITH,
President of the Senate.
Adopted by the house on May 17, 1963.
DOROTHY HALLMAN,
Chief Clerk of the House.
Adopted by the senate on May 22, 1963.
CHARLES SCHNABEL,
Secretary of the Senate.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ENGLE, from the Committee on Armed Services, with amendments:

S. 546. A bill to authorize the Secretary of the Navy to grant easements for the use of lands in the Camp Joseph H. Pendleton Naval Reservation, Calif., for a nuclear electric generating station (Rept. No. 315).

By Mr. GOLDWATER, from the Committee on Armed Services, without amendment:

S.J. Res. 51. Joint resolution to authorize the presentation of an Air Force Medal of Recognition to Maj. Gen. Benjamin D. Foulois, retired.

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. 280. A bill for the relief of Etsuko Matsuo McClellan (Rept. No. 316);

S. 568. A bill for the relief of Denis Ryan (Rept. No. 317);

S. 733. A bill for the relief of Yung Yuen Yau (Rept. No. 318);

S. 753. A bill for the relief of Mrs. Giuseppa Rafala Monarca (Rept. No. 319);

S. 901. A bill for the relief of William Herbert vom Rath (Rept. No. 320);

S. 1201. A bill for the relief of Dr. James T. Maddux (Rept. No. 321);

S. 1230. A bill for the relief of Carlton M. Richardson (Rept. No. 340);

S. 1489. A bill for the relief of J. Arthur Fields (Rept. No. 339);

H.R. 1267. An act for the relief of Lawrence E. Bird (Rept. No. 325).

H.R. 1275. An act for the relief of Miss Ann Super (Rept. No. 326);

H.R. 1292. An act for the relief of Carmela Calabrese DiVito (Rept. No. 327);

H.R. 1332. An act for the relief of Mario Rodrigues Fonseca (Rept. No. 328);

H.R. 1736. An act for the relief of Assunta DiLella Codella (Rept. No. 329);

H.R. 3356. An act for the relief of Josephine Maria (Bonaccorso) Bowtell (Rept. No. 330);

H.R. 4214. An act for the relief of the Stella Reorganized Schools R–I, Missouri (Rept. No. 331); and

H.R. 4773. A bill for the relief of Leroy Smallenberger, a referee in bankruptcy (Rept. No. 332).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment:

S. 296. A bill for the relief of Anne Marie Kee Tham (Rept. No. 322);

S. 538. A bill for the relief of Henry Bang Williams (Rept. No. 323); and

H.R. 1518. An act for the relief of Barbara Theresa Lazarus (Rept. No. 333).

By Mr. EASTLAND, from the Committee on the Judiciary, with amendments:

S. 496. A bill for the relief of Enrico Agostini and Celestino Agostini (Rept. No. 324).

By Mr. YARBOROUGH, from the Committee on Labor and Public Welfare, without amendment:

S. 330. A bill to amend chapter 35 of title 38, United States Code, to provide that after the expiration of the Korean conflict veterans' education and training program, approval of courses under the war orphan's educational assistance program shall be by State approving agencies (Rept. No. 334).

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

S. 1064. A bill to amend the act redefining the units and establishing the standards of electrical and photometric measurements to provide that the candela shall be the unit of luminous intensity (Rept. No. 336).

By Mr. MAGNUSON, from the Committee on Commerce, with amendments:

S. 1291. A bill to authorize the Secretary of Commerce to employ aliens in a scientific or technical capacity (Rept. No. 335).

AIR FORCE MEDAL OF RECOGNITION TO MAJ. GEN. BENJAMIN D. FOULOIS, RETIRED

Mr. GOLDWATER subsequently said: Mr. President, the distinguished majority leader was talking about proposed legislation and the cleanliness of the calendar.

Earlier today Senate Joint Resolution 51 was reported from the Committee on Armed Services. I ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER (Mr. BAYH in the chair). The joint resolution will be stated.

The legislative clerk read as follows:

Whereas Major General Benjamin D. Foulois (retired) enlisted in the Army Corps of Engineers on July 7, 1898, was subsequently commissioned as an officer in the Army, became associated with the aviation section of the Signal Corps of the Army in 1908, and qualified as a pilot in 1909; and

Whereas during the punitive expedition into Mexico in 1915 and 1916, he commanded the First Aero Squadron with that expedition; and

Whereas during World War I he served as Chief of the Air Services of the American Expeditionary Forces in France, was elevated to the post of Assistant Chief of the Air Corps in 1927, became Chief of the Army Air Corps in 1931, and continued in that assignment until his retirement as a major general on December 31, 1935; and

Whereas Major General Benjamin D. Foulois (retired), during his twenty-seven years of commissioned service, played a major role in the development of the role of military air power and of the military department now having primary cognizance over military air power, the United States Air Force; and

Whereas General Foulois, now nearly eighty-four years of age, has devoted twenty-seven years in a retired status to the furtherance of aviation, which matches the twenty-seven years of his active commissioned service in behalf of aviation, and totals fifty-four years of uninterrupted dedication and service to the development of aviation; and

Whereas military decorations and awards in specific recognition of aviation service were not authorized during the active military career of General Foulois and he has, therefore, never received a military decoration or award for such service: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Air Force is authorized to cause an appropriate medal to be struck, with suitable emblems, devices, and inscriptions, in recognition of more than fifty years of devoted service by Major General Benjamin D. Foulois (retired) to the advancement of aviation and to present said medal to Major General Benjamin D. Foulois (retired), together with a copy of this joint resolution engrossed on parchment.

SEC. 2. There is hereby authorized to be appropriated, out of any money in the Treasury of the United States not otherwise appropriated, such sum as may be necessary to carry out the provisions of this joint resolution.

Mr. GOLDWATER. Mr. President, General Foulois, now nearly 82 years old, began his career in the Army Corps of Engineers on July 7, 1898, as an enlisted man. He was later commissioned in the Army. In 1908 he became associated with the aviation section of the Signal Corps of the Army, and he has the distinction of being the officer placed in charge of the first airplane owned and used by the Army. This assignment had its problems for General Foulois, because he had not been trained as a pilot. He secured much of his training from the Wright brothers, by correspondence. They must have furnished him with very fine instructions, because he took that airplane, learned to fly it, and proceeded to fly airplanes for the rest of his career. During the punitive expedition into Mexico in 1915 and 1916, he commanded the first aero squadron with that expedition. During World War I, he serves as Chief of the Air Service of the American Expeditionary Forces in France. After that distinguished service, he served as military attaché and as military observer in various posts in Europe. When he returned to this country, he became the commanding officer of Mitchell Field, N.Y., in 1925. He was elevated to the post of Assistant Chief of the Air Corps in 1927; and in 1931 he became the Chief of the Air Corps, a post which he held until his retirement in December 1935.

During his long career in the beginning days of airpower, he played a major role in the development of the U.S. Air Force that we know today.

Despite his role, General Foulois has never been awarded a flying award by his Nation. I feel that the time has come for this omission to be corrected.

The PRESIDING OFFICER. Is there objection to the present consideration of the Senate joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. GOLDWATER. Mr. President, the joint resolution would authorize the Air Force to strike an appropriate medal to recognize the 50-odd years of dedicated service to airpower by Maj. Gen. Benjamin D. Foulois.

Senators will recall that last year the Senate adopted a similar resolution calling for the award of the Distinguished Flying Cross. The House Committee on Armed Services will not issue existing decorations by legislation. I believe that

is a very wise course to take. Therefore, a number of us in the Senate resubmitted the join resolution under the title of Senate Joint Resolution 51.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the third reading of the joint resolution.

The joint resolution (S.J. Res. 51) was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

IMPROVEMENT OF ACTIVE DUTY PROMOTION OPPORTUNITY OF CERTAIN AIR FORCE OFFICERS (S. REPT. NO. 337)

Mr. SYMINGTON. Mr. President, from the Committee on Armed Services, I report an original bill to improve the active duty promotion opportunity of Air Force officers from the grade of major to the grade of lieutenant colonel, and I submit a report thereon.

The PRESIDING OFFICER. The report will be received and the bill will be placed on the calendar.

The bill (S. 1809) to improve the active duty promotion opportunity of Air Force officers from the grade of major to the grade of lieutenant colonel was read twice by its title and placed on the calendar.

PROMOTION OF STATE COMMERCIAL FISHERY RESEARCH AND DEVELOPMENT PROJECTS—MINORITY VIEWS (S. REPT. NO. 338)

Mr. BARTLETT. Mr. President, from the Committee on Commerce I report favorably, with an amendment, the bill (S. 627) to promote State commercial fishery research and development projects, and for other purposes, and I submit a report thereon.

I ask unanimous consent that the report may be printed, together with minority views of Senators COTTON, LAUSCHE, PROUTY, and CANNON.

The PRESIDING OFFICER. The report will be received, and the bill will be placed on the calendar; and, without objection, the report will be printed, as requested by the Senator from Alaska.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. RUSSELL, from the Committee on Armed Services:

Adm. David Lamar McDonald, U.S. Navy, to be appointed as Chief of Naval Operations.

By Mrs. SMITH, from the Committee on Armed Services:

Eugene G. Fubini, of New York, to be an Assistant Secretary of Defense; and

Alexander Henry Flax, of New York, to be an Assistant Secretary of the Air Force.

By Mr. EASTLAND, from the Committee on the Judiciary:

Guy W. Hixon, of Florida, to be U.S. marshal for the southern district of Florida.

By Mr. KEATING, from the Committee on the Judiciary:

John M. Cannella, of New York, to be U.S. district judge for the southern district of New York.

By Mr. JOHNSTON, from the Committee on the Judiciary:

J. Lindsay Almond, Jr., of Virginia, to be associate judge of the Court of Customs and Patent Appeals; and

Harry Phillips, of Tennessee, to be U.S. circuit judge for the sixth circuit.

EXECUTIVE REPORTS OF COMMITTEE ON ARMED SERVICES

Mr. INOUYE. Mr. President, from the Committee on Armed Services, I report favorably the nomination of Maj. Gen. Winston P. Wilson, to be Chief of the National Guard Bureau, and the nominations of five flag officers of the Navy and four Air Force general officers, as well as one Military Academy cadet for appointment in the Regular Army as second lieutenant. I ask that these names be placed on the Executive Calendar.

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

The nominations, ordered to be placed on the Executive Calendar, are as follows:

Maj. Gen. Winston Peabody Wilson, a Reserve commissioned officer of the U.S. Air Force, member of the Air National Guard of the United States, to be Chief of the National Guard Bureau;

Col. William H. Clarke, Montana Air National Guard; Col. Homer G. Goebel, North Dakota Air National Guard; Col. Kenneth E. Keene, Indiana Air National Guard; and Col. Frederick P. Wenger, Ohio Air National Guard, for appointment as Reserve commissioned officers in the U.S. Air Force;

Vice Adm. Charles D. Griffin, U.S. Navy, for commands and other duties determined by the President, in the grade of admiral while so serving;

Rear Adm. Lawson P. Ramage, U.S. Navy, Rear Adm. Ray C. Needham, U.S. Navy; and Rear Adm. Paul H. Ramsey, U.S. Navy, for commands and other duties determined by the President, in the grade of vice admiral while so serving;

Vice Adm. Frank O'Beirne, U.S. Navy, to be placed on the retired list in the grade of vice admiral; and

Derwin B. Pope, U.S. Military Academy, for appointment in the Regular Army of the United States.

Mr. INOUYE. Mr. President, in addition, I report favorably a group of appointments and promotions in the Army in the grade of lieutenant colonel and below. Since these names have already been printed in the CONGRESSIONAL RECORD, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

The nominations, ordered to lie on the desk, are as follows:

James B. Scherer, and sundry other officers, for promotion in the Regular Army of the United States.

Mr. INOUYE subsequently said: Mr. President, as in executive session, I ask unanimous consent that the 1,466 nominations of officers for permanent appointment to the grade of major in the Regular Army, reported earlier today by me from the Committee on Armed Services, be confirmed en bloc.

These officers are being promoted under laws that require, for those selected, promotion by the 14th anniversary of their appointment. The 14th anniversary of the appointment of many of these officers occurs July 1. Through an administrative oversight these nominations were late in being processed and submitted to the Congress. Because of the special circumstances, and on behalf of the Committee on Armed Services, I ask unanimous consent that, as in executive session, these nominations be confirmed immediately.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc; and without objection, the President will be immediately notified of the confirmation of the nominations.

NOMINATION OF GEN. CURTIS LEMAY TO BE CHIEF OF STAFF, U.S. AIR FORCE

Mrs. SMITH. Mr. President, as in executive session, from the Committee on Armed Services, I report favorably the nomination of Gen. Curtis E. LeMay to be reappointed as Chief of Staff of the Air Force for a term of 1 year. Since General LeMay's current appointment expires at noon on June 30, I ask unanimous consent that this nomination be confirmed immediately. This request is made on behalf of the Committee on Armed Services.

Mr. President, it is with great pleasure that I report to the Senate the President's nomination of Gen. Curtis LeMay to a second term as Chief of Staff of the U.S. Air Force and the unanimous recommendation of the Committee on Armed Services that the nomination be confirmed.

General LeMay has served our Nation with great honor and courage and wisdom. Not only has he demonstrated outstanding physical courage in military combat, but he has also shown great moral courage of his convictions in the administration of his duties as Chief of Staff of the Air Force.

The President's selection of him for a second term is most gratifying. My only regret is that the term is not for longer duration.

The PRESIDING OFFICER. Is there objection?

Mr. SYMINGTON. Mr. President, reserving the right to object—and I shall not object—I support with pleasure and pride the request made by the distinguished senior Senator from Maine. General LeMay is one of the great military figures of our time. He has one of the most outstanding records of anyone in the history of our military services.

There has been some talk that his appointment for only 1 year was, in effect, not so much of a compliment and reward for his services as it would have been if it had been for 2 years. Knowing the facts, I assure the Senate that in no sense was this appointment for 1 year a criticism of his past activities or a reflection upon his magnificent career. Every American can be gratified at this further recognition of his dedicated service.

I join the distinguished senior Senator from Maine in asking unanimous consent that the appointment be approved at this time, and thank the Senator for her courtesy in yielding to me.

Mr. MANSFIELD. Mr. President, reserving the right to object—and I shall not object—I wish to join my distinguished colleague, the senior Senator from Maine, who is reporting to the Senate the nomination of Gen. Curtis LeMay, and also my distinguished colleague senior Senator from Missouri [Mr. SYMINGTON], who was the first Secretary of the Air Force, in saying I think this is an excellent extension of the appointment of a man who has proved himself under great stress and difficulty, a man whom we all admire, and a man who, I am sure, will have the unanimous approval of the Senate in the confirmation of the nomination now before it.

Mrs. SMITH. I thank the distinguished majority leader and also the distinguished Senator from Missouri.

The PRESIDING OFFICER. The nomination will be stated by the clerk.

The LEGISLATIVE CLERK. Gen. Curtis E. LeMay, U.S. Air Force, to be reappointed as Chief of Staff of the U.S. Air Force for a term of 1 year.

The PRESIDING OFFICER. Is there objection to the present consideration of the nomination?

Mr. PROXMIRE. Mr. President, reserving the right to object—and I shall, of course, not object—I wish to say I have great admiration and respect for General LeMay. He has a brilliant record. We rely on our Air Force as the prime deterrent to attack, and it has advanced with remarkable adaptability in this very complex and difficult day.

I should like to ask the distinguished Senator from Maine why the rules are being suspended and the nomination of General LeMay is being approved now, rather than being taken up in the regular order.

Mrs. SMITH. Mr. President, by way of explanation, it was feared that the Senate would not be considering nominations at its session tomorrow.

Mr. PROXMIRE. I thank the Senator. I understand that his term therefore might expire. Is that correct?

Mrs. SMITH. His term would expire on Sunday, June 30.

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

Mrs. SMITH. I am glad to yield to the Senator from California [Mr. KUCHEL].

Mr. KUCHEL. I am delighted that our very able colleague, the senior Senator from Maine [Mrs. SMITH] has asked and received unanimous consent to proceed immediately to the confirmation of the nomination of a very great and gallant American airman, who represents to the free world and to the world on the other side of the curtain the might and the vigor and the courage of the U.S. Air Force to the cause of America's freedom. I say to my colleague, as well as to the Chief of Staff of the Air Force, that now, with the enthusiastic approval of the Senate, under the leadership of the Senator from Maine, we demonstrate to the world that we intend to continue to rely on the same basic strength and dedication of purpose which General LeMay has always evidenced in his lifelong military career.

Mr. ENGLE. Mr. President, will the Senator yield to me?

Mrs. SMITH. I am glad to yield to the Senator from California [Mr. ENGLE].

Mr. ENGLE. Mr. President, I am especially delighted that the "Old Bomber" is being continued in his present post. I am proud of the fact that I am an Air Force Reserve officer. I have valued the friendship of General LeMay over a great many years. I have admired his impressive war record.

I think it does something, too, for our country, if those who may be our opponents know that the man we call the "Old Bomber" is Chief of Staff of the Air Force. I think it adds something to the prestige, power, and determination of this country to have the kind of leadership he would give to this country in a time of great crisis, if it should ever arise.

I am delighted indeed that the distinguished Senator from Maine has presented this nomination today. I heartily and thoroughly endorse the nomination, as did the Committee on Armed Services.

Mr. HOLLAND. Mr. President, reserving the right to object—and, of course, I shall not object—I approve everything that has been said by the Senator from Maine and the other Senators who have spoken in support of this nomination. I am so glad General LeMay is receiving a part of the credit he has so well earned.

I rise for a partly sentimental reason. I think I am the only Member of Congress whose service in the Air Force goes back to the days of the old, first Air Force under Billy Mitchell. Speaking as a member of that old, first Air Force, I want to say I am delighted to join in the request for the confirmation of the nomination of an air hero of the United States, Gen. Curtis LeMay.

The PRESIDING OFFICER. Is there objection to the consideration of the nomination? The Chair hears none.

The question is, Shall the Senate advise and consent to the nomination?

The nomination is confirmed.

Without objection, the President will be immediately notified of the confirmation of the nomination.

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. RIBICOFF (for himself, Mr. MANSFIELD, Mr. DIRKSEN, and Mr. MORTON):

S. 1803. A bill to provide assistance to States for experimental projects to provide constructive work experience and training related to securing and holding employment; to the Committee on Finance.

(See the remarks of Mr. RIBICOFF when he introduced the above bill, which appear under a separate heading.)

By Mr. BREWSTER:

S. 1804. A bill for the relief of Sotirios John Pappathasiou; to the Committee on the Judiciary.

By Mr. ENGLE (for himself and Mr. KUCHEL):

S. 1805. A bill relating to the use by the Secretary of the Interior of land at La Jolla, Calif., donated by the University of California for a marine biological research laboratory, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. PROXMIRE (for himself and Mr. COOPER):

S. 1806. A bill prohibiting the Architect of the Capitol from performing certain functions with respect to plans for buildings located, or to be located, on the Capitol Grounds; to the Committee on Public Works.

(See the remarks of Mr. PROXMIRE when he introduced the above bill, which appear under a separate heading.)

By Mr. GRUENING (for himself, Mr. BARTLETT, Mr. MCGOVERN, and Mr. SIMPSON):

S. 1807. A bill to amend the Internal Revenue Code of 1954 to remove limitations on deductions for exploration expenditures; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. GRUENING when he introduced the above bill, which appear under a separate heading.)

By Mr. RIBICOFF:

S. 1808. A bill for the relief of Martin Gerald Freeman; to the Committee on the Judiciary.

By Mr. SYMINGTON:

S. 1809. A bill to improve the active duty promotion opportunity of Air Force officers from the grade of major to the grade of lieutenant colonel; placed on the calendar.

(See the remarks of Mr. SYMINGTON when he reported the above bill, which appears under the heading "Reports of Committees.")

By Mr. HRUSKA (for himself, Mr. CURTIS, Mr. MUNDT, Mr. MCCLELLAN, and Mr. MILLER):

S. 1810. A bill to amend the act of October 4, 1961 (Public Law 87-383), so as to permit the use within Canada of certain funds appropriated pursuant to such act for the conservation of migratory waterfowl; to the Committee on Commerce.

(See the remarks of Mr. HRUSKA when he introduced the above bill, which appear under a separate heading.)

By Mr. JOHNSTON (for himself and Mr. HRUSKA):

S. 1811. A bill to amend the Expediting Act, and for other purposes; to the Committee on the Judiciary.

(See the remarks of Mr. JOHNSTON when he introduced the above bill, which appear under a separate heading.)

By Mr. HART:

S. 1812. A bill for the relief of William John Campbell McCaughey; and

S. 1813. A bill for the relief of Bela Szentivanyi; to the Committee on the Judiciary.

By Mr. MOSS:

S. 1814. A bill to amend section 2 of the act of July 4, 1955 (69 Stat. 244), to provide that distribution system loan repayment contracts may be executed contingent upon the availability of appropriated funds; to the Committee on Interior and Insular Affairs.

By Mr. HUMPHREY:

S. 1815. A bill to amend the Clayton Act to provide relief by governmental and private civil proceedings for violations of section 3 of the Robinson-Patman Act, and for other purposes; to the Committee on the Judiciary.

(See the remarks of Mr. HUMPHREY when he introduced the above bill, which appear under a separate heading.)

By Mr. RIBICOFF:

S.J. Res. 96. Joint resolution providing for the apportionment to the State of Connecticut of its share of funds authorized for the National System of Interstate and Defense Highways for the fiscal year ending June 30, 1965; to the Committee on Public Works.

ASSISTANCE TO STATES FOR EXPERIMENTAL WORK PROGRAMS

Mr. RIBICOFF. Mr. President, on behalf of the majority leader, the senior Senator from Montana [Mr. Mansfield],

the minority leader, the junior Senator from Illinois [Mr. DIRKSEN], the junior Senator from Kentucky [Mr. MORTON], and myself, I introduce, for appropriate reference, a bill to provide $50 million for experimental projects to encourage States to develop work and training programs for those on relief.

This bill carries out one of the less controversial but nonetheless important aspects of the President's message on civil rights. In that message President Kennedy urged changes in the public welfare laws to assist public assistance recipients or those likely to become recipients to be better prepared for employment.

As many of us who have been concerned with problems of public welfare have recognized, solving the problems of relief and dependency and providing the opportunity for greater economic security can play a crucial role in the continuing effort to end discrimination of minority groups.

One of the keys to the needed improvement of our welfare laws is greater emphasis on work and training opportunities for those on relief. Last year the public welfare amendments which I proposed to Congress as Secretary of Health, Education, and Welfare, and which Congress enacted, contained a major innovation in this field. For the first time States and communities that wanted to set up work and training programs for those on public assistance could receive Federal matching funds for the costs of these assistance payments. It was hoped that this change would encourage more States to develop these programs so that able-bodied men on relief would be required to learn a useful skill or perform useful work.

To date, however, few States have taken advantage of this change in Federal law. One of the major handicaps has been that while Federal participation is permitted in the cost of the assistance payment, all of the added costs of setting up and running these programs must be borne by the States.

The bill I offer today seeks to remedy this situation by giving the States a chance to show how successful these work and training programs can be. The bill authorizes $50 million from the sums appropriated under the public assistance titles of the Social Security Act to be used on a demonstration basis to pay the added costs of setting up these work and training projects.

For example, these funds could be used for tools and other implements needed in the performance of work, for equipment used in training, and for supervisory personnel. In the discretion of the Administrator, these demonstration funds could be used for a portion or all of these costs.

It is my hope that these funds will greatly encourage communities throughout the country to develop their own work and training programs for those on relief.

Too often in our welfare programs we have permitted an able-bodied man to remain on the dole, sitting on his back porch, waiting for his monthly handout. That kind of life creates a treadmill of dependency, and we must do everything we can to get these people off that treadmill. Just paying them money does not solve the problem. Learning a new skill and doing a day's work can restore these people to useful roles in their communities.

A relief check in the idle hands of an able-bodied man is a sign of failure—for the individual and for public welfare. If that same man receives assistance for learning a skill or doing a job, both he and the public welfare program are on the road to success.

I ask unanimous consent that the bill lie on the table for 1 week in order to give other Senators an opportunity to add their names as cosponsors, and I also ask for unanimous consent that the bill be printed at this point in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will remain at the desk as requested by the Senator from Connecticut, and will be printed at this point in the RECORD.

The bill (S. 1803) to provide assistance to States for experimental projects to provide constructive work experience and training related to securing and holding employment, introduced by Mr. RIBICOFF (for himself and other Senators), was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 1115 of the Social Security Act is amended by inserting "(1)" after "In addition," and by inserting before the period at the end thereof ", and (2) not to exceed an additional $50,000,000 of such aggregate amount for any such year shall be available, under terms and conditions so established, for such payments to States to cover such costs in the case of projects for the provision of constructive work experience or training related to securing and holding employment".

BILL TO KILL AUTHORITY OF CAPITOL ARCHITECT OVER CAPITOL BUILDINGS

Mr. PROXMIRE. Mr. President, yesterday we had quite a go-around about the Capitol Architect. I offered an amendment to the legislative appropriation bill that would have eliminated all funds for the Office of the Architect of the Capitol. The amendment had the virtue of providing for a prompt, decisive end of the Office of the Architect of the Capitol within 5 days. However, the amendment did not prevail.

On behalf of myself, and the Senator from Kentucky [Mr. COOPER], I introduce today a bill that would prevent the Architect of the Capitol after the enactment of the bill, from evaluating, reviewing, giving preliminary approval to, or otherwise passing judgment on any plan for the construction, alteration, or renovation of the Capitol Building or any other buildings located, or to be located, on the U.S. Capitol Grounds.

We have had a series of disastrous experiences with the Architect of the Capitol. I think the time is long past when we should have acted on this problem. I introduce the bill for appropriate reference.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 1806) prohibiting the Architect of the Capitol from performing certain functions with respect to plans for buildings located, or to be located, on the Capitol Grounds, introduced by Mr. PROXMIRE (for himself and Mr. COOPER), was received, read twice by its title, and referred to the Committee on Public Works.

MINERALS EXPLORATION AS RESEARCH

Mr. GRUENING. Mr. President, on behalf of myself and Senators BARTLETT, MCGOVERN, and SIMPSON, I introduce for appropriate reference, a bill which I am convinced will have a very far-reaching effect upon the discovery within our own country of new sources of basic minerals essential to our security and economic development.

In brief, this measure would accord expenditures for the exploration and discovery of new mineral deposits the same tax treatment that is accorded research expenditures in other industrial enterprises. Such research expenditures may be deducted in full from Federal income taxes as the business expenses they are. My bill would recognize minerals exploration as the research it is, permitting the full costs of such exploration to be deducted from taxes as research expenditures.

The present provisions of the Internal Revenue Code discriminate against research with respect to the discovery of the location and extent of mineral deposits in that, contrary to other research activities, there is a limitation, a ceiling, placed on the amount of expenditures that can be deducted as business expense. This amount is $400,000 per taxpayer at a rate of not more than $100,000 a year. With today's costs of men and machines, this amount is wholly inadequate. Such a limitation is a most serious deterrent to discovery of new sources of minerals, and unfairly penalizes investors in mining enterprise. Many mining men have already reached their $400,000 maximum, and now all further expenditures for minerals exploration must be capitalized for taxation purposes.

Mr. President, this measure brings up one of those relatively rare conflicts, or better instances of overlapping committee jurisdiction. Since it is a tax measure, amending the Internal Revenue Code, it clearly is within the jurisdiction of the Committee on Finance, and should be considered by that committee.

On the other hand the Committee on Interior and Insular Affairs has responsibility under the Legislative Reorganization Act for mining interests generally and for development of the mineral resources of the public domain. This responsibility is set forth specifically in paragraphs 2 and 10 of subsection (m) of section 102 of the act which provide,

with respect to the jurisdiction of the Committee on Interior and Insular Affairs:

2. MINERAL RESOURCES OF PUBLIC LANDS

* * * * *

(L) Mining interests generally.

Therefore, Mr. President, I ask unanimous consent that this measure I am introducing be referred first to the Committee on Interior and Insular Affairs for consideration, and then to the Committee on Finance for its further consideration.

Also, Mr. President, I ask unanimous consent that the bill be held at the desk until the close of business on July 8 to enable other Senators who are interested in furthering the discovery of new sources of minerals within the United States to join as cosponsors.

Introduction of this draft of proposed legislation is a direct outgrowth of the recent hearings held by the Subcommittee on Minerals, Materials, and Fuels, which I have the honor to head, on the state of the minerals industry. These hearings will be published shortly, and I commend them to the attention of each Member of the Congress.

It is my earnest hope that this measure can receive speedy consideration and approval. It is gravely needed to assure new and continued supplies of raw materials basic to our country.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will lie on the desk, as requested by the Senator from Alaska.

The bill (S. 1807) to amend the Internal Revenue Code of 1954 to remove limitations on deductions for exploration expenditures, introduced by Mr. GRUENING (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

PRESERVATION OF WETLANDS IN CANADA FOR MIGRATORY WATERFOWL

Mr. HRUSKA. Mr. President, 2 years ago, in an effort to deal with the recent serious decline in the duck population, Congress enacted Public Law 87–383, an authorization for $105 million for the purchase of wetlands for the use of migratory waterfowl. That law is, in a sense, emergency legislation. The acreage of land in swamps and other wetlands has been declining rapidly in recent years as a result of drainage and filling for agricultural and other purposes.

However, there is one major gap in the existing program. It is limited to lands in the United States, while most of the duck summer nesting areas, the producing areas, are in the Canadian prairie Provinces. It is urgent that these Canadian wetlands be brought within the program, so as to maintain the supply of ducks for the benefit of American sportsmen.

A more complete explanation of this problem appears on pages 9743 and 9744 in the May 28 issue of the RECORD, at the time of our consideration of the Interior Department appropriation bill. Probably 75 or 80 percent of the ducks are shot on this side of the border, so the matter is of even greater urgency to us than it is to Canadian duck hunters.

Therefore, on behalf of myself, my colleague from Nebraska [Mr. CURTIS], the Senator from Arkansas [Mr. MCCLELLAN], the Senator from South Dakota [Mr. MUNDT], and the Senator from Iowa [Mr. MILLER], I am introducing a bill which would permit the use in Canada, under appropriate agreements with the Canadians and subject to such limits as may be set by Congress in appropriation acts, of the funds already authorized by the provisions of Public Law 87–383. No additional expenditures would result from enactment of this bill, since it proposes the use only of funds heretofore authorized.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 1810) to amend the act of October 4, 1961 (Public Law 87–383) so as to permit the use within Canada of certain funds appropriated pursuant to such act for the conservation of migratory waterfowl; introduced by Mr. HRUSKA (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Commerce.

AMENDMENT OF CLAYTON ACT RELATING TO RELIEF FOR VIOLATIONS OF SECTION 3 OF ROBINSON-PATMAN ACT

Mr. HUMPHREY. Mr. President, I call to the attention of the Senate a bill to make section 3 of the Robinson-Patman Act subject to private enforcement and to provide for its enforcement by the Justice Department through civil proceedings as well as criminal proceedings. The subject matter of this bill is designed to improve our antitrust laws so that they will be better able to preserve our free enterprise system. In drafting this legislation I sought the assistance of experts in the antitrust division of the Department of Justice. Every precaution has been taken to remove doubts or uncertainties as to either major or minor points which could lead to unnecessary litigation. This legislation is, in part, necessitated by the Supreme Court case of *Nashville Milk Company* v. *Carnation Company*, decided on January 20, 1958, and found in volume 355, U.S. 373. There, it was decided by a 5-to-4 split of the Court that section 3 of the Robinson-Patman Act was not a part of the antitrust laws. In that case a private party, the Nashville Milk Co. sued the Carnation Co. for treble damages alleging that it was injured by virtue of respondent's sales at "unreasonably low prices." Sales at "unreasonably low prices" is one of the three categories of practices prohibited by section 3 of the Robinson-Patman Act. The Supreme Court said that a private party was not entitled to sue under section 3 because section 3 was not one of the antitrust statutes, in other words that section 4 of the Clayton Act, the section which provides for private relief under the antitrust statutes, did not apply to section 3 of the Robinson-Patman Act.

Mr. President, section 3 of the Robinson-Patman Act is a statute which had its origin in this honorable body. It deals with the subject of price discrimination but it goes beyond the better known anti-price-discrimination section 2 of the Clayton Act and covers the field of what might be aptly termed "unfair pricing."

Congress made its first attempt to outlaw price discrimination by enacting section 2 of the Clayton Act of 1914. The Sherman Act which was passed in 1890 was designed to halt combinations, conspiracies, and trusts to restrain trade. However, by 1914 individual companies had grown so large that without acting in concert they could destroy competition by certain forms of price discrimination. Although Congress, in 1887, had empowered the ICC to outlaw price discrimination as to railroad rates, the Clayton Act was the first attempt to prohibit discriminatory pricing practices generally.

In spite of the Clayton Act, price discrimination continued to plague locally owned and operated businesses in all fields of American industry and monopoly continued to grow. Big buyers continued to get better prices than small buyers. Chainstores, chain packing plants, concerns of all kinds doing business on a national basis, continued to grow. Local enterprise continued to shrink. In 1936 the FTC issued a report on the subject matter of the continuing trend toward monopoly and the growth of chainstores. This report showed that price discrimination in various forms played a leading part in the trend toward monopoly. Following this report, Congressman PATMAN, of Texas, introduced a bill in the House to amend section 2 of the Clayton Act for the purpose of making illegal certain discriminatory pricing practices specified in the FTC report such as advertising allowances, unearned brokerage commissions, the supplying of special services to some and not to others, and so forth. Senator Robinson, of Arkansas, introduced a companion bill in the Senate. These bills contained the provision already in section 2 of the Clayton Act which permitted a defense of good faith meeting of competition. There are those, who, even today, believe that without qualification this defense has and still does render section 2 ineffective. At this same time, Senator Borah, of Idaho, and Senator Van Nuys, of Indiana, had each introduced bills to deal with price discrimination as well as the problem of sales at unreasonable low prices. It was their feeling that sales at unreasonably low prices by a giant in the territory of the local independent obviously would destroy him just as effectually as would discriminatory prices. The injury to a local independent from a competitor's pricing flows from prices that are abnormal by reason of being discriminatory or unreasonably low. These two bills were consolidated and the consolidated bill became section 3 of the Robinson-Patman Act. Thus, section 3, as pointed out in the National Dairies case, prohibits three kinds of

trade practices: First, general price discrimination; second, geographical price discrimination; and third, selling at unreasonably low prices for the purpose of destroying competition or eliminating a competitor. One of the most significant aspects of section 3 is that there is no good faith defense proviso to any of the three prohibited activities. The test of illegality centers, as it should, upon whether or not injury to the competitive system results. The statute takes cognizance of the fact that the health of the competitive system, in which the public has an interest, is adversely affected when one competitor is injured by having to pay more than another in competition with him, and by area price discrimination and sales made by unreasonably low prices. When done with the intent or the effect of suppressing competition or creating a monopoly. This, then, is a recognition that it is not enough to prohibit such a destructive practice as price discrimination in its various forms only when it is done by a predatory competitor.

Destruction of locally owned and operated competitors is even more certain when two or more competitors engage in price discrimination under the excuse of meeting each other or another than when one alone practices it. Section 3 of the Robinson-Patman Act also recognizes the practical fact that sales at unreasonable prices are destructive of local competitors and therefore, of the competitive system and prohibits such sales for the purpose of destroying competition or eliminating a competitor. The question becomes, Mr. President, why, if section 3 of the Robinson-Patman Act is a firmer, tougher approach to unfair trade practices, it has not been used more often? I submit, Mr. President, that there are several reasons for the failure of this law to reach its full potential. The first reason stems from a general belief that the portion of section 3 making sales below a reasonable cost illegal was unconstitutional. The second reason for its disuse is to be found in the Nashville Milk Co. case, which I mentioned earlier. That case, as I stated, held that section 3 was not a part of the antitrust laws. This meant, of course, that private parties could not sue for injuries caused by violations of section 3. The third reason is that section 3 is a criminal statute, and thus, the Justice Department has not been able to proceed civilly for violations of that section. The fourth reason is that the Federal Trade Commission has failed to realize that it could have used section 3 as a guide to determine what constituted unfair competition under section 5 of the Federal Trade Commission Act. With regard to the first reason, Mr. President, a recent case seems to have removed this roadblock. Following a great deal of activity by the National Independent Dairies Association and the House and Senate Small Business Committees, the Justice Department took action against National Dairies. In that case the Justice Department held that National Dairies violated the provision of section 3 prohibiting sales below a reasonable price by selling milk below cost. National Dairies contended that section 3 was unconstitutional because of vagueness. The circuit court of appeals agreed with National Dairies and held that the provision was unconstitutional. The Supreme Court, however, in February of this year reversed the circuit court of appeals and sent the case back for trial on its facts. The second reason I hope to overcome by the passage of this bill which I am introducing today. The antitrust laws are not self-enforcing statutes and the enforcement agencies proceed all too slowly. It is a well recognized fact that private enforcement is what gives our antitrust laws vitality.

It has been repeatedly observed by students of our society that the genius of the common law is in the meeting of common problems through procedures of private, rather than public enforcement. The advisability of applying this practice to statutory law is self-evident. The need for private enforcement of the antitrust laws is even greater than as to other categories of the law because the antitrust laws confront squarely the profit motive. It is unrealistic to expect voluntary compliance with the antitrust laws because of the conflict with the profit motive and because antitrust laws of necessity are general in nature.

It is equally unrealistic to look solely to the Department of Justice and the FTC for enforcement of the antitrust laws. The United States is a tremendous country in area, in population and in volume of commerce. These enforcement agencies can be expected to bring enough actions to provide guidelines for business behavior and private litigants but effective enforcement throughout the country can be had only with the aid of private litigants. It was the will of Congress that the aid of private citizens be solicited and encouraged as to the Clayton and Sherman Acts, the laws presently named as antitrust statutes, and I submit that section 3 of the Robinson-Patman Act, which is the last major expression of the Congress in the antitrust field, should be included with these other great charters of economic freedom so that it too will receive effective enforcement. It is well-recognized that one of the most significant consequences of a Government antitrust suit for the defendant is that it may later serve as a foundation for private actions. Witness the rash of treble damage suits following the recent, now famous, General Electric price-fixing suit. The public should be provided with this added protection as to section 3 of the Robinson-Patman Act.

The third reason listed above, I also hope to overcome by the passage of this legislation. The mechanics and details for this bill are very simple. In prior years, bills to accomplish the same purpose have been introduced in both Houses. These bills simply included section 3 of the Robinson-Patman Act within the definition of antitrust laws as contained in section 1 of the Clayton Act. The present bill goes beyond this. The simple expedient of including section 3 within section 1 of the Clayton Act would fail to provide the Attorney General with jurisdiction to institute civil proceedings to restrain future violations. The present bill amends each of the relevant sections of the Clayton Act so that section 3 of the Robinson-Patman Act is placed on a par with the Clayton and Sherman Acts as to all of the provisions of the Clayton Act. This insures that each remedial provision of the Clayton Act will apply to section 3 of the Robinson-Patman Act. The bill also provides for civil enforcement of section 3 by the Department of Justice. There are those who believe that the lack of enforcement proceedings on the part of the Department of Justice was due to the fact that section 3 as written was a criminal statute and that securing convictions in criminal proceedings would be most difficult because of the hurdles that have to be overcome under criminal law. This bill would permit the Department of Justice to bring civil proceedings, to make civil investigations, to establish a violation by a mere preponderance of the evidence, and to secure remedial decrees upon a showing of violation. In extreme cases it might even permit preliminary injunctions.

Mr. President, I believe that by giving the Department of Justice these tools, effective enforcement of section 3 would begin immediately.

The fourth reason listed above with regard to lack of enforcement by FTC, I believe, Mr. President, will be cured as soon as a history under section 3 is established by private enforcement and actions upon the part of the Justice Department.

Mr. President, my experience on the Small Business Committee of the Senate has convinced me that this bill should be enacted in this session of Congress because delay means the elimination of more locally owned and operated enterprises and I am convinced that we have reached that point in the history of this country when passing this legislation is one action we must take to preserve our competitive system so that locally owned and operated enterprises can survive. They cannot longer endure unfair pricing practices.

Mr. President, I ask unanimous consent that this bill lie on the table for one additional week in order to afford an opportunity for those who wish to cosponsor the bill and add their names to it.

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

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD and held at the desk, as requested by the Senator from Minnesota.

The bill (S. 1815) to amend the Clayton Act to provide relief by governmental and private civil proceedings for violations of section 3 of the Robinson-Patman Act, and for other purposes, introduced by Mr. HUMPHREY, was received, read twice by its title, and referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730 et. seq.; 15 U.S.C. 12 et seq.), commonly known as the Clayton Act, is amended as follows:

(1) By striking out the words "and also this Act" in the first paragraph of the first section thereof, and inserting in lieu thereof the words "this Act; and section 3 of the Act entitled 'An Act to amend section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes', approved June 19, 1936 (49 Stat. 1526)".

(2) By inserting in the first paragraph of section 11, immediately after the words "this Act", a comma and the following: "and section 3 of the Act entitled 'An Act to amend section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes', approved June 19, 1936 (49 Stat. 1526),".

(3) By inserting in the first sentence of the second paragraph of section 11, immediately after the words "this Act", the following: "or section 3 of the Act entitled 'An Act to amend section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes', approved June 19, 1936 (49 Stat. 1526)".

(4) By striking out the words "this Act, and it" in the first sentence of section 15, and inserting in lieu thereof the following: "this Act and of section 3 of the Act entitled 'An Act to amend section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes', approved June 19, 1936 (49 Stat. 1526). It".

(5) By inserting therein, immediately after the words "this Act" in the first sentence of section 16, the following: "and section 3 of the Act entitled 'An Act to amend section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C. title 15, sec. 13), and for other purposes', approved June 19, 1936 (49 Stat. 1526)".

EXEMPTION OF DISASTER LOANS FROM AMENDMENT TO PROHIBIT DISCRIMINATORY PRACTICES OF FIRMS BORROWING FROM SBA

Mr. PROXMIRE. Mr. President, a few days ago I introduced a bill to require any firm that borrows from the Small Business Administration to certify that it would not discriminate either in its treatment of the public or in its employment practices. The bill has been referred to the Committee on Banking and Currency and to the subcommittee of which I am the chairman, the Small Business Subcommittee.

In accordance with what seems to be administration policy to exempt, under these circumstances, firms that borrow for disaster purposes, I submit an amendment to my bill. The amendment would take out of the provisions of my bill the disaster loan section of the Small Business Administration Act. I believe this is perhaps sensible, in view of the fact that loans under those circumstances have to be made under forced conditions and to firms that are undergoing serious hardship.

However, I still feel very strongly—and I think this amendment makes it even more logical—that the Federal Government should not finance bigotry, should not finance prejudice. My bill will make certain that it will not. It is a more moderate bill in view of the amendment I am submitting today.

I submit the amendment.

The PRESIDING OFFICER. The amendment will be received, printed, and referred to the Committee on Banking and Currency.

RETIREMENT OF CHARLES A. MURRAY AS PROFESSIONAL STAFF MEMBER OF COMMITTEE ON RULES AND ADMINISTRATION

Mr. JORDAN of North Carolina. Mr. President, I would like to take this opportunity to announce to the Senate the retirement of Mr. Charles A. Murray as a professional staff member of the Senate Committee on Rules and Administration.

Mr. Murray is retiring July 1 after nearly 26 years of service with the U.S. Senate.

I know that his host of friends made during his long service with the Senate join with me in wishing him every success and best wishes during his years of retirement that are so well deserved.

Mr. McGEE. Mr. President, on the occasion of the retirement of Charley Murray, as he is affectionately known to most of us, from the Senate, I want to pay tribute to the service he has performed. Charley served as administrative assistant to the late Senator James Murray for many years, and following the retirement of Senator Murray, served on the Rules Committee of the Senate. While we shall miss him, we wish him well in his retirement, and hope he will enjoy the years of leisure which he has earned.

AMENDMENT OF FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT—ADDITIONAL COSPONSOR OF BILL

Mr. RIBICOFF. Mr. President, I ask unanimous consent that at the next printing of S. 1605, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration number, to eliminate registration under protest, and for other purposes, the name of the Senator from New York [Mr. JAVITS] be added as a cosponsor.

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

AMENDMENT OF SECTION 131 OF TITLE 23, UNITED STATES CODE—ADDITIONAL COSPONSORS OF BILL

Mr. COOPER. Mr. President, I ask unanimous consent that the names of Senators COTTON, KEFAUVER, and RIBICOFF may be added as cosponsors of the bill (S. 1676) to amend section 131 of title 23 of the United States Code to extend for an additional 2 years the period within which the Federal Government may enter into agreements with the States for controlling the erection and maintenance of outdoor advertising on rights-of-way adjacent to the National System of Interstate and Defense Highways, introduced by me, for myself and other Senators, on June 6, 1963.

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

NOTICE OF HEARING ON NOMINATION OF PAT MEHAFFY TO BE U.S. CIRCUIT JUDGE, EIGHTH CIRCUIT

Mr. McCLELLAN. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Monday, July 8, 1963, at 10 a.m., in room 2228, New Senate Office Building, on the nomination of Pat Mehaffy, of Arkansas, to be U.S. circuit judge for the Eighth Circuit, vice Joseph W. Woodrough, retired.

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

The subcommittee consists of the Senator from South Carolina [Mr. JOHNSTON], the Senator from North Carolina [Mr. ERVIN], the Senator from Missouri [Mr. LONG], the Senator from Illinois [Mr. DIRKSEN], the Senator from Nebraska [Mr. HRUSKA], and myself, as chairman.

MONTANA

Mr. MANSFIELD. Mr. President, in line with what the Acting President pro tempore [Mr. METCALF] and I know from years of experience, I should like to call to the attention of Senators an excerpt from the book entitled "Travels With Charley," written by John Steinbeck, the Nobel Prize-winning American novelist, who, at 58, set out on a 3-month journey to rediscover America and himself. I hope my modesty will be appreciated when I read what Mr. Steinbeck has to say about a certain State:

> The next passage in my journey is a love affair. I am in love with Montana. For other States I have admiration, respect, recognition, even some affection, but with Montana it is love, and it's difficult to analyze love when you're in it.
>
> It seems to me that Montana is a great splash of grandeur. The scale is huge but not overpowering. The land is rich with grass and color, and the mountains are the kind I would create if mountains were ever put on my agenda.
>
> Here for the first time I heard a definite regional accent unaffected by TV's, a slow-paced warm speech. It seemed to me that the frantic bustle of America was not in Montana. Its people did not seem afraid of shadows in a John Birch Society sense.
>
> The calm of the mountains and the rolling grasslands had got into the inhabitants. It seemed to me that the towns were places to live in rather than nervous hives. People had time to pause in their occupations to undertake the passing art of neighborliness.

As usual, love is inarticulate. Montana has a spell on me. It is grandeur and warmth. If Montana had a seacoast, or if I could live away from the sea, I would instantly move there and petition for admission. Of all the States it is my favorite and my love.

Mr. LAUSCHE. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. LAUSCHE. In the book does he state that he began his travels on the east coast, and traveled through Maine, and finally reached Montana? I am sure I have read it.

Mr. MANSFIELD. He went through all the beautiful States of the Union.

Mr. LAUSCHE. And especially through Montana. The book is a most delightful one, and is tremendously inspiring. I am glad the Senator from Montana has reminded me of it.

Mr. MANSFIELD. And may I say it is a most delightful State.

ORDER FOR ADJOURNMENT TO NOON, TOMORROW

Mr. MANSFIELD. Mr. President, for the information of the Senate, I ask unanimous consent that when the Senate concludes its session today, it adjourn to meet at 12 o'clock noon, tomorrow.

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

Mr. MANSFIELD. No business will be conducted then.

ORDER FOR ADJOURNMENT FROM JUNE 28 TO TUESDAY, JULY 2

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the session tomorrow, the Senate adjourn until 12 o'clock noon on Tuesday, July 2.

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

Mr. MANSFIELD. No business will be transacted then, except if some Senators wish to make speeches.

ORDER FOR ADJOURNMENT FROM JULY 2 TO 9 A.M. ON FRIDAY, JULY 5

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the business of the Senate on Tuesday, July 2, the Senate adjourn until 9 a.m. on Friday, July 5, for a pro forma session.

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

ORDER FOR ADJOURNMENT FROM JULY 5 UNTIL NOON ON TUESDAY, JULY 9

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the session of the Senate on July 5, the Senate adjourn until 12 o'clock noon on Tuesday, July 9.

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

Mr. MANSFIELD subsequently said: Mr. President, in relation to the announcement of the schedule earlier today, in order to set the record straight, I ask unanimous consent that when the Senate convenes on Friday, July 5, it immediately adjourn until July 9.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, if any questions are raised about the business before the Senate, I should like to point out that the calendar is practically clear of every measure which we are in a position to take up at the present time. On behalf of the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN] and myself, I express the hope that during the 3-day layovers the appropriate committees, which would include all committees of the Senate, will do what they can to hold hearings, consider legislation, and report bills which they deem desirable.

Mr. DIRKSEN. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I yield.

Mr. DIRKSEN. In case there is any wonderment as to why the majority leader has asked that the session on July 5 commence at 9 a.m., I point out that the Senate must conform to the 3-day rule, and the convening of the Senate at that hour will give the Senate staff a chance to leave early, rather than to spend the entire day here.

Mr. MANSFIELD. That is correct.

COMMEMORATIVE MEDALS FOR 150TH ANNIVERSARY OF BUILDING OF PERRY'S FLEET AND THE BATTLE OF LAKE ERIE

Mr. MANSFIELD. Mr. President, while I have the floor—and this matter has been cleared with the minority leader—let me state that on the calendar there is one measure to which there is no objection, and I should like to call it up at this time. Therefore, Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar 288, Senate bill 879.

The ACTING PRESIDENT pro tempore. Is there objection?

There being no objection, the bill (S. 879) to provide for the striking of medals in commemoration of the 150th anniversary of the building of Perry's fleet and the battle of Lake Erie 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 commemoration of the one hundred and fiftieth anniversary of the building of Perry's fleet, at Erie, Pennsylvania, and the Battle of Lake Erie (which anniversary will be commemorated in 1963), the Secretary of the Treasury is authorized and directed to strike and furnish to the Perry Sesquicentennial Committee, Incorporated, not more than fifty thousand medals, one and five-sixteenths inches in diameter of bronze or silver, or both, with suitable emblems, devices and inscriptions to be determined by the Perry Sesquicentennial Committee, Incorporated, subject to the approval of the Secretary of the Treasury. The medals shall be made and delivered at such times as may be required by the corporation, in quantities of not less than two thousand, but no medals shall be made after December 31, 1963. The medals shall be considered to be national medals within the meaning of section 3551 of the Revised Statutes.

SEC. 2. (a) The Secretary of the Treasury shall cause such medals to be struck and furnished at not less than the estimated cost of manufacture; including labor, materials, dies, use of machinery and overhead expenses; and security satisfactory to the Director of the Mint shall be furnished to indemnify the United States the full payment of such cost.

(b) Upon authorization from the Perry Sesquicentennial Committee, Incorporated, the Secretary of the Treasury shall cause duplicates of such medals to be coined and sold, under such regulations as he may prescribe at a price sufficient to cover the cost thereof (including labor).

TAX CUT VIOLATES DEMOCRATIC PLATFORM PLEDGE

Mr. PROXMIRE. Mr. President, many good Wisconsin Democrats have vigorously protested my refusal to support the administration's drive to cut taxes this year. For example, the Milwaukee Democratic County Council unanimously passed a resolution calling upon me to join other Wisconsin Democratic Members of Congress in Washington in favoring a tax cut.

I have also been under fire for my amendments to reduce administration-proposed spending.

But, Mr. President, what does the 1960 Democratic platform pledge to the American people? The platform explicitly pledged, at Los Angeles, that "except in periods of recession or national emergency, our needs can be met with a balanced budget."

Mr. President, I repeat that the Democratic platform, adopted in July 1960, promised that "except in periods of recession or national emergency, our needs can be met with a balanced budget."

Mr. President, have we suffered a recession? Has there been a national emergency? Since the July day in 1960 when that platform pledge was adopted, the country has enjoyed one of the longest periods of business expansion in its history—and certainly the longest since World War II. I do not see why a Senator is less loyal to his party if he supports this platform pledge, rather than walking away from it.

Our party also pledged, as the first point of its platform program, to achieve fiscal responsibility, so that "we shall end the gross waste in Federal expenditures which needlessly raises the budgets of many Government agencies."

Mr. President, this is exactly what amendments which I have introduced—amendments to reduce proposed spending—have done.

Obviously, with an $8 billion deficit this year and with $4½ billion of increased spending proposed for next year we cannot have a balanced budget if we reduce taxes. This deliberate creation of bigger budget deficits by tax reduction in a period of economic expansion directly contradicts our platform promise.

What is un-Democratic about working to keep the promises we have made to the American people during our campaign?

I can understand why promises and platform pledges cannot be kept if con-

ditions change. I can understand why they should not be kept if a member of the party explicitly renounces the pledge. I can understand how an honest change of heart could bring about a change. At the same time I cannot understand why a Democrat should be condemned if he supports the pledges in the platform of his party.

Frankly, I am not opposed to a tax cut merely because I feel honorbound to keep a platform pledge. I am opposed to it because, after listening to every word of testimony by the Nation's outstanding economic experts before the Congressional Joint Economic Committee last winter, I became convinced that a tax cut now is unsound public policy.

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

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may have an additional 2 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. LAUSCHE. I commend the Senator from Wisconsin for the firmness of the position which he has taken on the subject.

I cannot help but remember that when the Secretary of the Treasury testified before the House Ways and Means Committee, he said that tax reforms and tax reductions were inextricably tied together. Either both should pass or neither should pass. He pointed out that the deficit produced by the tax cut would be $13.6 billion, to be reduced by $3.4 billion if the tax reform were adopted. Thus enthusiasm was proclaimed because the deficit would be only $10.2 billion if the reforms were accepted. The reforms are out the window. Thus, looking at it in a most optimistic light, we can expect a deficit of at least $13.6 billion. I say that our country cannot stand such a deficit at this time. The platform, rather than the attitude of today, is correct.

Mr. PROXMIRE. I thank the Senator from Ohio very much. When we already have a deficit and are increasing spending, if we reduce our revenues by cutting taxes, we obviously increase the deficit and unbalance the budget. There might be times when such action might be justified in a period of serious recession or depression. But the proposal directly contradicts the platform and our pledge made a very few months ago. I thank the Senator from Ohio.

Mr. LAUSCHE. Repeatedly, in the last 3 years, I have heard arguments about adhering to the platform. All the Senator from Wisconsin is doing is asking for consistency. I commend him for it.

Mr. PROXMIRE. I thank the Senator from Ohio.

FRANCE AND THE NATO ALLIANCE

Mr. SYMINGTON. Mr. President, one of the typically fine and thought-provoking articles of Walter Lippmann appeared in the Washington Post this morning.

The people of France have a full right to respect and admire the determination of President de Gaulle to maintain the power and glory of France in this modern world.

I hope that the relations of our own great country with our oldest ally, a country that also has done a very great deal to preserve freedom, will improve steadily in the months and years to come.

I ask unanimous consent that the article by Mr. Lippmann may be printed in the RECORD.

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

TODAY AND TOMORROW

(By Walter Lippmann)

The President's German speeches must have been prepared as a series which was to reach a logical and dramatic climax in West Berlin. At the airport near Cologne and in his press conference at Bonn, Mr. Kennedy talked to the old guard in Germany. He did his best to convince Dr. Adenauer and his followers that the United States in general, and he as President, are reliable—which for the old guard means that not only are we prepared to defend West Germany with nuclear arms but also that the United States will give West Germany the veto on any negotiations about Germany.

After this opening phase of reassurance to the old guard, the second phase took place in the address on Tuesday at the Paulskirche in Frankfurt. Here the President was calling upon the liberal opposition, which Dr. Erhard represents, to look abroad across the English Channel and across the Atlantic Ocean.

In the third and climactic phase, at the Free University in West Berlin, the President himself looked across the Iron Curtain. In words that derive from Pope John the President looked forward to reconciliation and, then, assuming to speak for the West, said that provided the Communist States do not interfere with the freedom of other states "we are not hostile to any people or system."

It was, of course, unavoidable that in none of the speeches was there a hint of how reassurance, liberalization, and the reconciliation are to be brought about. In his news conference the President seemed to imply that the solution of the practical problems was not near enough to talk about it. For the reunification of Germany he seemed to rely on time. For the reunification of Europe he relied on "the winds of change."

But the real difficulty in making a Western policy for the unification of Germany and of Europe is not that these problems are vague and distant and shrouded in the fog of Eastern Europe and Communist Russia. The real difficulty is that there is an unresolved conflict in the Western Alliance over whether the initiative shall lie in Paris, with the support of Bonn, or in Washington.

Because the President was acutely aware of the fact that his leadership of the West is challenged, he could not and did not go beyond ideals and his general assurances to any kind of definition of the policy which might achieve what he is talking about. The fact is that there can be no definition of a European policy without an understanding with General de Gaulle. For there is not the smallest evidence that the cheering German crowd means that there is in West Germany the will or the power or the political courage to challenge General de Gaulle's primacy on the Western Continent. And even if there were such an inclination on the part of the Germans, France's strategic position and economic power are such that she is an essential partner in any Western Alliance.

The President, who was walking a slippery path, was sure-footed in Bonn and Frankfurt and he was bold in Berlin. But there is less doubt than ever that a serious discussion of trans-Atlantic affairs will have to lie between Washington and Paris.

Before such a discussion can become profitable, the President will have to dispel the idea that our conception of Europe and of the Atlantic Community is bound in the end to prevail over the false ideas of General de Gaulle. It is intoxicating to believe that the tides of history are with you, that you are the wave of the future. But history is not often a sure thing, and men living amidst it rarely know which way it is going.

General de Gaulle, who has now acquired a very important following all over Western Europe, may not be, as the administration likes to think, a mere voice of the past. For while his haughtiness and elegance are by modern standards archaic, his judgment about the cold war and his estimtae of the role of alliances in the nuclear age may be prophetic.

For myself I have come to think more and more that the revival of the Western Alliance depends upon a very good understanding of the new ideas that are coming out of France.

MR. PIERRE-PAUL SCHWEITZER, NEW MANAGING DIRECTOR, INTERNATIONAL MONETARY FUND

Mr. LAUSCHE. Mr. President, Mr. Pierre-Paul Schweitzer has been chosen as the new Managing Director of the International Monetary Fund. He has been a Deputy Governor of the Bank of France and through the selection made by the Executive Directors of the International Monetary Fund will succeed the late Per Jacobsson.

This organization's principal responsibility is the maintenance of the stability and soundness of the 85 member countries belonging to it.

It is reported that he sees little reason for panic over the U.S. international payments troubles, although he agrees they are serious.

He made the statement:

> You Americans have finally discovered you have a payments problem much as a person discovers he has a liver ailment. When you have a liver ailment, you have to follow some kind of diet. It might very well be necessary for the United States to follow a diet to readjust its balance of payments.

He gave no explanation about what he means in his advice that we go "on some kind of diet."

Contrary to general declarations, our gold reserve problem is not getting better, but worse. The number of U.S. dollars going to foreign nations is constantly exceeding the dollars that come back to our country, leaving us with an adverse imbalance in payments.

Regarding the gold reserve status the records show that we reached the high mark of possession in August 1949, with $24.6 billion of gold. On January 1, 1961, the amount was $17.8 billion; on June 1, 1963, $15.8 billion. Approximately $12 billion of the June 1 balance is earmarked for support of the obligations of the Federal Reserve Banking System thus leaving $3.9 billion in free gold to meet the potential claims of the holders of $27.1 billion in short-term foreign credits.

Basically we are not doing anything of consequence to abate this danger confronting our economy.

First. Through collaboration between business and labor leaders in stopping the cost-price squeeze, we could keep American products in a better position to compete in world markets in the sale of our goods.

Second. By the exercise of prudence, the Congress of the United States with the collaboration of the administration could adopt a fiscal policy that would reduce the frightening annual deficits facing our Government.

Third. We could trim the foreign aid program by denying or at least reducing aid to nations pretending to be neutral but which in fact in critical situations have thrown their lot with the Communist bloc—denying aid to Communist governments which when the critical hour comes, will be on the side of the Communists and not of the free West, and to those countries which demand our help under the threat of auctioning their fidelity finally to the Communist bloc countries.

Fourth. The Congress and the administration could cease placing unwarranted handicaps on business, industry, and capital investors, thus creating an unhealthy economic environment, and, in many instances, driving capital into foreign-developed countries.

Pierre-Paul Schweitzer's background fits him well for this post. His responsibilities will be great. In my opinion, he will only succeed to the extent with which he exacts from the nations asking help of the International Monetary Fund compliance with the requirement that before aid is given the fiscal and monetary policies of the petitioning nation must be put in order. I wish him good luck.

GARLIC AROUND THE NECK AS EFFECTIVE TO CURE DIPHTHERIA AS CIVIL DEFENSE FALLOUT SHELTERS TO SAVE LIVES

Mr. YOUNG of Ohio. Mr. President, recently a group of leading doctors testified before a subcommittee of the House Armed Services Committee, under the capable leadership of Chairman F. EDWARD HÉBERT, on H.R. 3516, the civil defense fallout shelter bill.

The doctors, members of an organization called Physicians for Social Responsibility, said they had studied the possible effects of a large-scale nuclear attack on this country and concluded that the devastation would present a medical problem that has no solution. Mr. President, their testimony added one more block to a rapidly forming mountain of evidence indicating that plans for a fallout shelter program, so called, are useless and could possibly achieve the proportions of a boundless boondoggle.

They put it very aptly when they said that a national shelter program is like wearing a piece of garlic around the neck to prevent diphtheria. This was a medical practice in our colonial days. For more than 4 years it has been my strong belief—and I have voiced it many times in this chamber—that civil defense today is a myth. Many times in the past I stated that civil defense is based on theories as antiquated as mustache cups, tallow dips, Civil War cannonballs, and flintlock muskets.

The civil defense program is a grand illusion. In terms of money it is ludicrous. Through diligent and relentless application of poor planning and confused thinking, the men charged with the defense of civilians in event of war have managed to squander more than $1,300 million of taxpayers' money since 1951. The time has come to adopt a realistic approach to the entire program of civil defense in this nuclear age.

Of the money spent for civil defense, approximately 40 percent is wrung from the taxpayers of States and municipalities, where tax dollars grow increasingly scarce, and where vital programs for schools, hospitals, and housing die for lack of funds. In place of a desperately needed school, many communities may receive a screeching siren, a few stretchers, some two-way radio equipment for civil defense officials to play with, and an occasional alert to confuse the citizenry as to whether in event of a nuclear attack they should run, or hide—or do both.

The residents of Portland, Oreg., realized this fact when they abolished their local civil defense agency earlier this month. The leaders of that community are to be commended on their foresight and their careful use of taxpayers' money in adopting this realistic attitude toward civil defense.

The PRESIDING OFFICER. The time of the Senator has expired. Does the Senator seek additional time?

Mr. YOUNG of Ohio. I ask unanimous consent that I may proceed for an additional 3 minutes.

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

Mr. YOUNG of Ohio. Mr. President, the conditions of modern warfare make shelters of little or no use in saving American lives. Were we to be attacked with intercontinental ballistic missiles with hydrogen warheads, the total destruction and remaining radioactive elements would be such that underground shelters in basements and backyards would be covered with deadly contamination, and the lethal effects would last not for hours or weks, but for months or even for years.

Shelter enthusiasts have pictured their subterranean suburbia as the sure-fire antidote for nuclear destruction. The fact remains that the most optimistic estimate of the devastation of nuclear attack, despite a network of shelters, places probable death at 50 million Americans, with some 20 million others sustaining serious injuries.

Assuming for the sake of argument that shelters would save lives, there is no assurance that they would not be outmoded by more advanced weapons. Today it is reported that high Government officials are forecasting privately that defense spending, now at a rate of $56 billion per year, will reach $100 billion a year within a decade if the arms race keeps up. One of the scientists now working on new weapons is reported to have said: "You ain't seen nothing yet," compared with what is coming into sight in the way of new weapons.

Furthermore, shelters would not offer any protection against an attack even more deadly than a nuclear attack—biological warfare. Shelters in basements and backyards, even if there were sufficient warning to enable persons to enter them—and there will not be—might prove to be huge firetraps in urban centers in the colossal conflagration which experts say would certainly follow an atomic attack. Does any responsible Government official wish to embark on a $20 to $200 billion questionable gamble under these conditions?

Assuming further that some Americans did have shelters that saved their lives in a nuclear war, what sort of world would they come up to? What would have happened to the buildings and the atmosphere? What would they do for food once their 2-week bomb shelter supply was exhausted? This is not a pretty picture to paint, but it is the truth—the cold, hard facts of survival in a nuclear war.

William F. Schreiber, associate professor of electrical engineering at the Massachusetts Institute of Technology, also criticized the civil defense program, as now conducted, before the House subcommittee yesterday. He stated that any potential enemy would almost certainly use high-altitude airbursts of large bombs in attacks against our cities, blasting and burning vast areas around their targets. He stated that the number of lives needlessly lost in firetrap shelters outside the circle of total devastation would probably exceed the number of lives that the so-called shelter system could possibly save.

Mr. President, these facts along with the many others presented before this committee and the Congress over the years, present a dismal and horrifying picture of what nuclear war can mean. No one can be the winner in a modern war. If it should ever come—and God forbid that it does—all mankind will be the loser. When the late Prof. Albert Einstein was asked what kind of weapons would be used in a third world war, he answered he did not know, but he did know what weapons would be used in the fourth world war—slingshots.

Mr. President, the only remedy—the only hope—is to prevent nuclear war. We must strive to the uttermost to work out nuclear test-ban agreements and agreements for disarmament with adequate safeguards, and try to find a basis for permanent peace. Peace is our only permanent shelter.

In my view, no civil defense program will adequately protect our citizenry should war strike. The survival of 180 million Americans—indeed, of all mankind—depends not on civil defense but on peace. It depends not on futile shelter programs inspired by a caveman complex, but on solid, workable international agreements to disarm. Shelter building represents a psychology of fear. It is interesting to note that many of those who talk the loudest about civil defense talk the least about peace.

In the meantime, we must maintain our armed might to deter any possible aggressor from embarking on a nuclear holocaust. The United States is the

most powerful nation that ever existed under the bending sky of God. We must keep it so until men and nations have proved that they can live together with mutual tolerance.

LEGISLATIVE SESSION

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

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

RATIFICATION OF THE ANTI-POLL-TAX AMENDMENT BY THE STATE OF KENTUCKY

Mr. HOLLAND. Mr. President, I am indeed happy to announce that the Kentucky Legislature yesterday ratified the anti-poll-tax amendment to the Constitution when its house of representatives approved the ratifying resolution unanimously by a vote of 74 to 0. The Kentucky Senate had approved the resolution on Monday by a vote of 29 to 2.

Thus Kentucky, the Blue Grass State, becomes the 36th State to ratify this amendment which would eliminate the requisite for payment of a poll tax for voting in national elections.

I wish to express my deep appreciation to my distinguished colleagues from Kentucky, Senator COOPER and Senator MORTON, each of whom cosponsored in the 87th Congress my resolution proposing this amendment, vigorously supported its passage in the Senate, and has worked diligently since submission of the amendment for ratification by their great State.

I also wish to express my appreciation to Gov. Bert T. Combs, of Kentucky, who included this particular objective in his call of the special session and recommended ratification, and to the leaders of both houses of the Kentucky Legislature who were responsible for the prompt action by the legislature on this matter during its special session which convened but a few days ago. This again is a fine example of the bipartisan spirit with which the respective States have acted on this matter.

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

Mr. HOLLAND. I yield.

Mr. COOPER. Mr. President, I appreciate the comments of the distinguished senior Senator from Florida with respect to the ratification by the General Assembly of the Commonwealth of Kentucky of the proposed constitutional amendment prohibiting the imposition of a poll tax as a condition for voting.

By its action, the Commonwealth of Kentucky became the 36th State to ratify the proposed amendment to the Constitution. I am greatly pleased by the action of the general assembly of my State. The senate had previously approved the proposal by a vote of 29 to 2. Yesterday the house, in which I once had the honor of serving, gave its approval by a unanimous vote of 74 to 0.

The Governor of Kentucky, the Honorable Bert T. Combs, is to be commended for including, in his call for a special session of the general assembly, the proposal for the ratification of the constitutional amendment. All the members of the legislature, of both houses, of both parties, and the leadership of both parties have shown by their action and by their votes their support of the purposes of the constitutional amendment.

Kentucky does not impose a poll tax as a condition for voting. It imposes no literacy test. In its history it has not discriminated in any way against the equal right of all citizens to vote.

I am proud of my State, but I would like to say that this action by our State and other States would not have been possible except for the initiative, persistence, and determined fight of the distinguished senior Senator from Florida [Mr. HOLLAND]. Today, I pay tribute not alone to the members of the General Assembly of Kentucky, and to the people of our State, but I pay my tribute also to the great fighter, the senior Senator from Florida, Senator HOLLAND, who will deserve the chief credit for the final ratification of the constitutional amendment.

Mr. HOLLAND. I deeply appreciate the Senator's generous words. I hold him in high esteem. In my judgment, the senior Senator from Kentucky and the junior Senator from Kentucky have shown themselves to be worthy successors of the great Henry Clay. I am glad to pay my tribute to them, without whom this most happy action by the Assembly of Kentucky would not have taken place. I am also deeply grateful to the great Governor of the State of Kentucky.

Mr. KUCHEL. Mr. President, I would be entirely recreant in my duty to a fellow Senator and friend if I did not rise to say that I associate myself with every word that our friend from Kentucky, the very able senior Senator [Mr. COOPER], has said with respect to the excellent and successful exertions by our good friend from Florida. I rise to spread this tribute on the RECORD and to salute him.

Mr. HOLLAND. I thank my distinguished friend from California.

Mr. President, if I may have a few additional minutes, I should like to speak further very briefly on this subject.

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

Mr. HOLLAND. Mr. President, I shall not at this time repeat the many sound arguments which exist for the ratification of the anti-poll-tax amendment so that it may become a part of our Federal Constitution. It is most encouraging to note, however, that the legislatures of 36 States of the 38 required for ratification have, by their affirmative action in ratifying the amendment, shown that they agree with the very large majorities in both Houses of Congress who submitted the amendment last year that this amendment should be speedily adopted so as to allow all of our citizens who are otherwise qualified to participate in the election of their President, Vice President, Senators, Members of the House of Representatives, and presidential electors in primaries and general elections without paying a money price to exercise that important privilege of citizenship. This affirmative action of 36 States has been taken in the period of 9 months since the submission of this proposed amendment to the 50 States in September of 1962. I am strongly hopeful that such affirmative action may be taken at an early date by at least two additional States so as to complete the ratification of the amendment by early 1964 or sooner if special sessions of the legislatures are called in the meantime.

In order to have the record show just how great a waste of time of the Congress has been involved in the effort to repeal the poll tax in the years since the attempt to accomplish such repeal was begun in 1939 and extending through 1962, I have asked the Library of Congress to prepare a careful compilation showing the exact facts as disclosed by the records of Congress. These facts are shown through a letter to me from the Legislative Reference Service of the Library of Congress dated May 6, 1963.

Among the impressive facts shown by that letter and indicating the immense amount of time that Congress has devoted to this subject, at a period in the history of our Nation and the world when so many other vital things require our time and attention, are the following facts:

1. One hundred and ninety-six bills and joint resolutions were introduced from the 76th Congress through the 87th Congress.

2. Hearings were held during eight separate Congresses on the subject (does not include bills on which hearings were held and to which poll tax amendments were subsequently offered). As a result of the hearings (a) 1,436 pages were printed; (b) 36 days were involved; (c) 114 witnesses testified.

3. Thirteen committee reports were printed and issued (three of these were in two parts holding both the majority and the minority views). One hundred and thirty-six pages were required to print these reports.

4. Senate and House floor debate on poll tax issues provides the following statistics: (a) 1,010 pages of the CONGRESSIONAL RECORD contained debate on the issue; (b) 60 days were involved on which Congress debated the poll tax issue.

5. Eighteen rollcall votes were taken in the Senate. Sixteen rollcall votes were taken in the House. (According to the office of the tally clerk of the House of Representatives and the legislative clerk of the Senate a rough estimate of the average time taken on rollcall votes is 25 to 30 minutes in the House and 12 to 18 minutes in the Senate.)

I wish it clearly to appear that these statistics do not involve numerous discussions on the floor which were held when poll-tax amendments were offered to other proposed legislation; nor do they involve references to the poll tax in many pages of hearings that were held on other subjects not directly related to the poll tax.

However, the compilation does show rather conclusively what an immense wastage of time has been involved at a time, when our Nation can so ill afford to lose the time and attention and manpower and brainpower of its Senate and its House of Representatives in the discussion of this question.

I ask unanimous consent that the letter addressed to me by the Library of Congress, dated May 6, 1963, which contains not only the essential facts but also

the documentation thereof, be printed at this point in the RECORD, as a portion of my remarks.

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

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., May 6, 1963.

To: Honorable SPESSARD L. HOLLAND.
From: American Law Division.
Subject: Poll tax legislation.

In accordance with your request of April 26, 1963, for documentary evidence and statistics on major legislative actions involving the poll tax issue we have made a study of the period since the introduction of the first poll tax bill in the 76th Congress (H.R. 7534 introduced by Mr. Geyer, August 5, 1939) through the 87th Congress which enacted Senate Joint Resolution 29 abolishing the poll tax as a prerequisite for voting.

The major portion of this study is based on all actions taken by Congress on the subject subsequent to the introduction of a bill or resolution. However, for statistical purposes we have included the total number of bills and resolutions introduced in Congress during the period. We have not included incidental remarks not spoken directly to a bill or resolution and the numerous insertions in the daily CONGRESSIONAL RECORD.

In addition to the statistics included in this study the poll tax issue has been offered on other occasions to bills which were not specifically poll tax bills. For example see the Federal Voting Assistance Act of 1955 (Public Law 296, 84th Cong.; H.R. 4048) which, as enacted, contained an amendment relating to poll tax and servicemen's absentee balloting. We have included only those which were debated and on which there was a rollcall vote.

The result of our study shows:

1. One hundred and ninety-six bills and joint resolutions were introduced from the 76th Congress through the 87th Congress.

2. Hearings were held during eight separate Congresses on the subject (does not include bills on which hearings were held and to which poll tax amendments were subsequently offered). As a result of the hearings, (a) 1,436 pages were printed; (b) 36 days were involved; (c) 114 witnesses testified.

3. Thirteen committee reports were printed and issued (3 of these were in 2 parts holding both the majority and the minority views); 136 pages were required to print these reports.

4. Senate and House floor debate on poll tax issues provides the following statistics: (a) 1,010 pages of the CONGRESSIONAL RECORD contained debate on the issue; (b) 60 days were involved on which Congress debated the poll tax issue.

5. Eighteen rollcall votes were taken in the Senate. Sixteen rollcall votes were taken in the House. (According to the office of the tally clerk of the House of Representatives and the legislative clerk of the Senate a rough estimate of the average time taken on rollcall votes is 25 to 30 minutes in the House and 12 to 18 minutes in the Senate.)

With the exception of the number of bills introduced, which we have not listed, the following basic information was used as the source for the above statistics.

HEARINGS

The 77th Congress

S. 1280: Hearings before a subcommittee on the Committee on the Judiciary, U.S. Senate, 77th Congress, 2d session, on S. 1280, a bill making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or general election for national officers—July 19, 1941; March 12, 13, 14; July 30; September 22 and 23, 1942; 475 pages; 7 days; 46 witnesses.

The 78th Congress

H.R. 7: Hearings before the Committee on the Judiciary, U.S. Senate, 78th Congress, 1st session, on H.R. 7, an act making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers—October 25, 26, and November 2, 1943; 103 pages; 3 days; 4 witnesses.

The 80th Congress

H.R. 29: Hearings before the Committee on Rules and Administration, U.S. Senate, 80th Congress, 2d session, on H.R. 29, an act making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers—March 22, 23, 24, and 25, 1948; 336 pages; 4 days; 21 witnesses.

The 81st Congress

Senate Joint Resolution 34, qualifications of electors (poll taxes): Hearing before a Subcommittee of the Committee on the Judiciary, U.S. Senate, 81st Congress, 1st session, on Senate Joint Resolution 34, a joint resolution proposing an amendment to the Constitution of the United States, relating to the qualifications of electors—May 18, 1949; 28 pages; 1 day; 1 witness.

The 83d Congress

Qualifications of electors: Hearing before a subcommittee of the Committee on the Judiciary, U.S. Senate, 83d Congress, 2d session, on Senate Joint Resolution 25, a resolution proposing an amendment to the Constitution of the United States relating to the qualifications of electors—May 11, 1954; 47 pages; 1 day; 1 witness.

The 84th Congress

Qualifications of electors: Hearings before a subcommittee of the Committee on the Judiciary, U.S. Senate, 84th Congress, 2d session, on Senate Joint Resolution 29—April 11 and 13, 1956; 71 pages; 2 days, 3 witnesses.

Civil rights proposals: Hearings before the Committee on the Judiciary, U.S. Senate, 84th Congress, 2d session, on S. 900 and others. Hearings held April 24, May 16, 25, June 1, 12, 25, 26, 27, and July 6 and 13, 1956. (These hearings on several civil rights proposals were printed in 346 pages, covered 10 days, and heard 20 witnesses. The poll tax issue was heard separately (on Senate Joint Resolution 29), but in the hearings cited above there was testimony directed to poll tax to the extent cited below); 13 pages; 5 days; 5 witnesses.

The 86th Congress

Senate Committee on the Judiciary: 86th Congress, 1st session, Senate Joint Resolution 126, Senate Joint Resolution 60, Senate Joint Resolution 71, and Senate Joint Resolution 134.

Poll tax and enfranchisement of District of Columbia: August 17 and 27, 1959; 106 pages; 2 days; 6 witnesses.

The 87th Congress

House Committee on the Judiciary: 87th Congress, 2d session, House Joint Resolutions 404, 425, 434, 594, 601, 632, 655, 663, 670; Senate Joint Resolution 29.

Abolition of poll tax in Federal elections: March 12, 1962, May 14, 1962; 105 pages; 2 days; 20 witnesses.

Senate Joint Resolution 1 and others (includes Senate Joint Resolution 58): Senate Committee on the Judiciary, Constitutional Amendments Subcommittee, nomination and election of President and Vice President and qualifications for voting, part 5, August 25, 30, September 8, 1961; 101 pages; 3 days; 1 witness.

The 87th Congress

Nomination and election of President and Vice President and qualification for voting: Hearings before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, U.S. Senate, 87th Congress, 1st session, on Senate Joint Resolution 58. Hearings held May 23, 26, June 8, 27, 28, 29, July 13, August 25, 30, and September 8, 1961. (These hearings were printed in five parts covering a period of 10 days. Part 5 containing 101 pages and covering 3 days was devoted entirely to the poll tax issue (see hearings on Senate Joint Resolution 1 and others). Other civil rights proposals made up the major portion of the other four parts. However, 51 pages of testimony involving 6 days were scattered through parts 1, 2, and 3); 51 pages; 6 days; 6 witnesses.

COMMITTEE REPORTS ISSUED

In the 77th Congress, on H.R. 1024: Senate Report No. 1662, 2d session, October 27, 1942 (2 parts), 20 pages.

In the 78th Congress, on H.R. 7: Senate Report No. 530, 1st session, 41 pages.

In the 79th Congress, on H.R. 7: Senate Report No. 625, 1st session, 16 pages; on Senate Joint Resolution 92, Senate Report No. 614, 1st session, 3 pages.

In the 80th Congress, on S. 2655: House Report No. 2438 (conference), 2d session, 5 pages.

In the 80th Congress, on H.R. 29: House Report No. 947 (two parts), 1st session, 4 pages; Senate Report No. 1225 (two parts), 2d session, 17 pages.

In the 81st Congress, on H.R. 3199: House Report No. 912, 1st session, 4 pages.

In the 86th Congress, on Senate Joint Resolution 39: Senate Report No. 561, 1st session—Alexander Hamilton Memorial (not included in statistics); House Report No. 1698, 2d session, 8 pages.

In the 87th Congress, on Senate Joint Resolution 29: Senate Report No. 1227, 2d session, 5 pages; House Report No. 1821, 2d session, 9 pages.

In the 88th Congress, on Senate Resolution 259 (87th Cong.): Senate Report No. 80 (constitutional amendments study), 4 pages (pp. 2–5 on poll tax).

NUMBER OF CONGRESSIONAL RECORD PAGES AND NUMBER OF DAYS POLL TAX WAS DEBATED IN THE SENATE AND HOUSE

H.R. 1024, 77th Congress (poll tax): 227 pages, 11 days.

H.R. 7, 78 Congress (poll tax): 170 pages, 8 days.

H.R. 7, 79th Congress (poll tax): 49 pages, 9 days.

House Joint Resolution 225, 79th Congress (submerged lands—Morse poll tax amendment): 8 pages, 1 day.

H.R. 29, 80th Congress (poll tax): 122 pages, 10 days.

H.R. 3199, 81st Congress (poll tax): 29 pages, 1 day.

H.R. 2023, 81st Congress (oleomargarine bill—Langer poll tax amendment): 8 pages, 1 day.

Senate Joint Resolution 39, 86th Congress (District of Columbia voting): 107 pages, 6 days.

H.R. 8601, 86th Congress (civil rights bill—Celler poll tax amendment): 14 pages, 1 day.

Senate Joint Resolution 29, 87th Congress (poll tax): 276 pages, 12 days.

ROLLCALL VOTES

Senate

H.R. 1024, 77th Congress:

On Mr. Barkley's motion to lay on the table Mr. Connally's appeal from the decision of the Chair, November 18, 1942; 88 CONGRESSIONAL RECORD 8933 (37–23).

On Mr. Barkley's motion to lay on the table appeal of Mr. Connally from the decision of the Chair, November 17, 1942; 88 CONGRESSIONAL RECORD 8899 (41–23).

On Mr. Barkley's motion to lay on the table Mr. Russell's appeal from the decision of the Chair, November 17, 1942; 88 CONGRESSIONAL RECORD 8899 (41–23).

On Mr. Barkley's motion to lay on the table Mr. Russell's motion to amend the Journal of the proceedings of Monday, November 16, 1942; November 18, 1942; 88 CONGRESSIONAL RECORD 8924 (39–21).

On motion to adjourn November 20, 1942, November 20, 1942; 88 CONGRESSIONAL RECORD 9014 (23–37).

On motion to adjourn until Monday, November 23, 1942, November 20, 1942; 88 CONGRESSIONAL RECORD 9015 (24–35).

On motion to close debate November 23, 1942; 88 CONGRESSIONAL RECORD 9065 (37–41).

H.R. 7, 78th Congress: On motion to close the debate in Senate May 15, 1944; 90 CONGRESSIONAL RECORD 4470 (36–44).

H.R. 7, 79th Congress: On motion to close debate July 31, 1946; 92 CONGRESSIONAL RECORD 10512 (39–33).

House Joint Resolution 225, 79th Congress: On Barkley motion to lay on the table Mr. MORSE's amendment, the so-called anti-poll-tax amendment (submerged lands bill); 92 CONGRESSIONAL RECORD 9641 (54–23).

H.R. 29, 80th Congress: On Wherry motion to adjourn until August 5, 1948 (during discussion of the poll tax bill); CONGRESSIONAL RECORD, volume 94, part 8, page 9738 (60–16).

H.R. 2023, 81st Congress: On Fulbright motion to lay on the table the Langer amendment regarding the anti-poll-tax (oleomargarine bill); CONGRESSIONAL RECORD, volume 96, part 1, page 551 (59–17).

House Joint Resolution 39, 86th Congress: On Holland amendment to add new section providing that right to vote in national elections shall not be denied because of failure to pay poll tax; CONGRESSIONAL RECORD, volume 106, part 2, page 1748 (72–16).

On Holland motion to table the Javits amendment (in nature of a substitute for the bill) to make unlawful any requirement that poll tax be paid as prerequisite to voting in a national election; CONGRESSIONAL RECORD, volume 106, part 2, page 1754 (50–37).

Senate Joint Resolution 29, 87th Congress: Establishes Alexander Hamilton's home as a national memorial. On motion of MANSFIELD to proceed to consideration of resolution; CONGRESSIONAL RECORD, volume 108, part 4, page 5042 (62–15).

On Mansfield motion to table Russell point of order as to constitutionality of Holland substitute amendment proposing a constitutional amendment providing that the right of citizens to vote in Federal elections shall not be abridged by reason of failure to pay a poll tax; CONGRESSIONAL RECORD, volume 108, part 4, page 5087 (58–34).

On Mansfield motion to table Javits substitute amendment (to Holland substitute for the resolution) providing statutory authority for elimination of poll tax in election of Federal officials; CONGRESSIONAL RECORD, volume 108, part 4, page 5101 (59–34).

On passage; CONGRESSIONAL RECORD, volume 108, part 4, page 5105 (77–16).

House

H.R. 1024, 77th Congress:

October 12, 1942, poll tax bill.

On motion to discharge Rules Committee from consideration, 88 CONGRESSIONAL RECORD 8079 (251–85).

On House Resolution 110 for consideration of bill, 88 CONGRESSIONAL RECORD 8080 (250–84).

On passage, October 13, 1942, 88 CONGRESSIONAL RECORD 8174 (254–84).

H.R. 7, 78th Congress:

On motion to discharge committee from further consideration of House Resolution 131 calling for consideration of bill, May 24, 1943, 89 CONGRESSIONAL RECORD 4812 (268–110).

On agreeing to House Resolution 131, May 24 1943, 89 CONGRESSIONAL RECORD 4813 (265–105).

On passage, May 25, 1943, 89 CONGRESSIONAL RECORD 4889 (265–110).

H.R. 7, 79th Congress:

On motion to discharge the Rules Committee from further consideration of House Resolution 139 providing for consideration of bill, June 11, 1945, 91 CONGRESSIONAL RECORD 5895 (224–95).

On agreeing to House Resolution 139, June 11, 1945, 91 CONGRESSIONAL RECORD 5896 (220–94).

On passage, June 12, 1945, 91 CONGRESSIONAL RECORD 6003 (251–105).

H.R. 29, 80th Congress:

On motion to adjourn, July 21, 1947, 93 CONGRESSIONAL RECORD 9523 (85–299).

On motion to suspend the rules and passage, July 21, 1947, 93 CONGRESSIONAL RECORD 9551 (290–112).

H.R. 3199, 81st Congress:

On previous question on adoption of House Resolution 276 providing for consideration of the bill, CONGRESSIONAL RECORD, volume 95, part 8, pages 10095–10096 (262–100).

On agreeing to resolution, CONGRESSIONAL RECORD, volume 95, part 8, page 10097 (265–100).

On motion to recommit to the House Administration Committee, CONGRESSIONAL RECORD, volume 95, part 8, page 10247 (123–267).

On passage, CONGRESSIONAL RECORD, volume 95, part 8, page 10248 (273–116).

Senate Joint Resolution 29, 87th Congress (citations are to daily CONGRESSIONAL RECORD): On motion to suspend the rules and pass the resolution, CONGRESSIONAL RECORD, volume 108, part 8, page 17670 (295–86).

EDWIN B. KENNERLY,
Editor, Digest of Public General Bills.

A BILL OF OBLIGATIONS—ADDRESS BY DR. NORMAN TOPPING, PRESIDENT, UNIVERSITY OF SOUTHERN CALIFORNIA

Mr. KUCHEL. Mr. President, several days ago I was privileged to participate in the 80th commencement exercises of my alma mater, the University of Southern California. The president of the University of Southern California, Dr. Norman Topping, is a distinguished American educator. He addressed the several thousand graduates on the occasion of those ceremonies. He made an excellent, eloquent, and very timely presentation. In his address, Dr. Topping said, in part:

Where are we today? We have come a long way since the Age of Enlightenment. We have enjoyed great progress toward a higher standard of living. But we have not come nearly far enough toward a higher standard—of living together with our fellow man.

* * * * *

What we need—what you who are graduating can in good measure provide—is a restoration of balance to our internal affairs. You can give great help in uniting our nearly divided Nation, and you may eventually help restore a wholly divided world.

* * * * *

Perhaps our Nation's greatest danger is immoderate, inflammatory action by social and political extremists. The extremists have made the threat of violent division an almost normal hazard of the world environment in 1963.

* * * * *

In this Nation, we have—in addition to our two major political parties and their responsible leaders—an extreme leftwing and an extreme right.

The radical left says, "Make every concession to keep the peace," and the radical right demands that we exterminate every enemy—real or imagined—before they exterminate us.

* * * * *

What saves us and what has always saved us from lunatic courses leading to the totalitarian state is reason. Calm deliberation. Moral, social, and political balance.

* * * * *

Above all, we have an obligation to act. We must not act in haste or upon little knowledge and less judgment. But it is our solemn obligation to act in time—out of full understanding—upon sound judgment—and with the transcendent concern that what we do will perpetuate unity in the house we keep.

Mr. President, there is a prescription, not merely for college and university graduates in 1963, but for all Americans. We need to apply the rule of reason to the problems which plague our Nation, precisely as the president of the university urged.

I am honored to ask unanimous consent that the entire text of this splendid address, entitled "A Bill of Obligations," be printed at this point in the RECORD.

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

A BILL OF OBLIGATIONS

(By Dr. Norman Topping, president, University of Southern California, University of Southern California 80th commencement, Alumni Park, June 13, 1963)

Ladies and gentlemen, it is always a great honor to be asked to serve in any way by one's own university. And it is a very special privilege, indeed, to have been asked by our board of trustees to share some thoughts with you.

I would like to congratulate each of you who, in a few minutes, will become alumni of the University of Southern California. Your time here has been well spent, I know, and you have left a heritage of high scholarship which we shall be proud to keep. You will, I am hopeful, look upon your diploma as a permanent welcome to this campus at any time.

I am confident that, in the years ahead, the quality of your work will continue to be a great compliment to this university and a great credit to yourselves. It is within your power to be distinguished by a succession of achievements. Indeed, it is within your ability to give memorable and meaningful service to men everywhere because you possess a special key.

Each of you has a vital key to continuing education beyond the academic world. You have the knowledge of how to approach knowledge. This is the fundamental benefit of higher education. It is to be hoped you will use this knowledge to your material benefit, and certainly it is proper that you should.

Of greatest importance, you are called upon to use your education effectively, for the social and political development of our Nation, perhaps to the benefit of all men.

In the past, some people have been prevented from responding to this call by two dangerous obstacles. One obstacle is a kind of paralyzing despair that no individual action can be of any real value. The other obstacle is a misplaced confidence in extreme and even violent action.

You must surmount both paralysis and extremism with knowledge, with reason, and with compassion.

There are those who find it most difficult to believe that any individual action could be effective against the powerful social and political currents of this age. There are those who find it difficult to believe that individual action could benefit one's community, much less the whole of mankind. There are those who have no faith in the individual at all.

It was during the 17th and 18th centuries—in what we call the age of enlightenment—that the individual began to come into his own. Men began to believe that the individual deserved and could secure justice, freedom, and dignity as a human being.

What happened to enlightenment in the centuries that have passed? We know it was threatened by the rise of dictatorships in our century. We know that man's regard for individual human dignity was all but smothered by the ovens at Buchenwald. We know it is threatened today by the slave camps in Siberia.

Still, man's respect for individual human dignity has not been extinguished. The great threat now is that enlightenment will flicker its last in the most subtle forms of subjugation—subjugation practiced on majorities, east of the Iron Curtain—on minorities, much closer to home.

And the great question is whether or not the educated individual citizen, in our age, can bring reason effectively to bear upon the destiny of mankind. The answer must be given voice by this Nation. The answer depends largely upon the determination of our educated citizens to accept the increasing demands of American citizenship.

While the Federal Government may be able to enforce justice for all and a precarious freedom for all—only each citizen, acting with knowledge, reason, and compassion, can maintain regard for the individual human dignity of all his fellow Americans.

The task of keeping this Nation and the world from becoming forever divided—nation by nation, race by race, atom by atom—may seem too vast and remote for any but men of superhuman power. The task may seem too great because some of us fail to regard ourselves as men of even normal ability. Scholars tell us we are oppressed by a sense of inadequacy in a massive world. Too often, our reaction to this feeling of oppression has been withdrawal from combat—from the serious debates which concern our future.

We need not be superhuman to discharge our responsibilities as citizens. Yet, some of us drop out of political organizations in our communities. Some of us either avoid the voting booth entirely or cast ballots with too little study of candidates and issues.

Others cancel subscriptions to the more profound periodicals and concentrate on the literature of escape and of escapade. Many of us have no opinions, and a few of us want none.

When the world seems beyond our control, many of us speed to our retreats in the suburbs. There at least, we can control our television sets and tune quickly away from any serious documentary or discussion. Our biggest battle is the war we wage against crabgrass.

Indeed, once we start in the direction of least resistance, we may as well give up entirely the heavy burden of individual freedom and clap on the lighter shackles of slavery.

However, you are expected to take a more difficult direction toward further knowledge, toward further analysis, and toward further participation in the life around you.

In this way, you can help control events that may mean a new stride toward world understanding.

You are not called upon for sudden, heroic action. Rather, you are asked to take up the mundane, lifelong task of heavy housekeeping. The house you must keep is the ramshackle house of mankind—and, as you must well know, the task is heavy with responsibility for each man and woman.

Your credentials for this burdensome occupation are your intelligence, your citizenship, and your education. And what will your compensation be? Perhaps it will be a full life in the light of reality instead of a half life in the electronic glare of illusion. Perhaps it will be an awareness of personal worth which comes with purposeful living—wealth not easily entered in a passbook. Perhaps it will be the reward of a parent in 1970, when his child asks, "Why has there never been a third world war?"

For many, it will be enough to know that they have been men of their time, and not fugitives from it. For each one, it may be enough to know that individual action is possible, that you have been capable of it, and that individual action is, indeed, our Nation's greatest source of strength.

Perhaps our Nation's greatest danger is immoderate, inflammatory action by social and political extremists. The extremists have made the threat of violent division an almost normal hazard of the world environment in 1963.

In 1858, at the Republican convention which had nominated him candidate for U.S. Senator, Abraham Lincoln spoke concerning the danger of division faced by our country. In his famous "house divided" speech, Mr. Lincoln advised us to act upon knowledge and with reason. He said we must ask "where we are and whither we are tending" if we would "judge what to do and how to do it."

Where are we today? We have come a long way since the age of enlightenment. We have enjoyed great progress toward a higher standard of living. But we have not come nearly far enough toward a higher standard—of living together with our fellow man.

Moreover, we are under attack. For at least the last 18 years the Western World has been under relentless, humiliating attack. Communist threats strike at our institutions. Communist walls rise to block our aims and to hide their own. Communist mockery publishes our failures and distorts our successes.

We are in a state of insecurity without precedent in the history of this Nation. Some of us are inclined to flail out in any direction—if not at our enemies on the other side of an iron curtain, then at those with whom we should be friends—at those, for example, whom we have dismissed to the other side of a color curtain.

Still further, some of us tend to group into extreme political camps. And then to fragment again into extreme religious attitudes. We have moved toward a realm of the mind where tolerance has no definition and where calm, deliberate thought has no application.

In short, we have come very close to losing our balance: our moral and intellectual balance.

Where are we? This Nation is where each citizen stands. The question is, Do enough of us stand with reason? with moderation? with compassion?

And where are we going? The house of this Nation can go nowhere but down unless our internal divisions are repaired. Moderation in social and political action is our mightiest bulwark against violent collapse.

In too much of the world, we see the extremists in power. They have not only divided nations, they have virtually drawn and quartered them. We must not permit their kind to have power here.

What we need—what you who are graduating can in good measure provide—is a restoration of balance to our internal affairs. You can give great help in uniting our nearly divided Nation, and you may eventually help restore a wholly divided world.

At its best, our democracy is sometimes imperfectly understood by many nations. We cannot expect others to understand, respect, or emulate us, so long as we allow extremists to perpetuate disunity.

Some of the seeming discords within the United States are actually the natural, peaceful, and lawful manifestations of a working democracy. Nevertheless, to much of the world, a democracy at work is a source of utter bewilderment.

Nations unfamiliar with the great aspects of our democracy cannot understand, for example, a recent dispute between our State Department and some of our citizens in the residential area of Chevy Chase, near our Nation's Capital.

The Department of State wants to build a new embassy in Moscow. The Soviets have consented, but they want permission to build a new embassy of their own in Chevy Chase. The State Department said yes to the Soviets. However, the citizens of Chevy Chase said no on the basis of zoning regulations, and began a campaign to ban the Russian Embassy.

Their campaign is legal and has been mounted with energy and determination. So far, construction in Chevy Chase has been blocked. The State Department has been somewhat embarrassed. And Soviet intelligence is struggling to discover whether the secret power behind our Federal Government might be, after all, the American people.

In this instance, where individuals of a community have acted within the law to contest an action of the State Department, we have demonstrated two things which are vital to our Nation. First, citizens acting responsibly, moderately, and within the law in their own behalf. Second, the existence of rights for these citizens which cannot be overruled by Federal whim.

Unfortunately, it is not always easy for other nations to see that lawful contest between citizens and government is not the same thing as mob defiance of the law of the land.

Unfortunately, through all our disputes, whether within the United States, or among fellow nations of the West, we can be seen by others as divided. Indeed, our division can be heard in the moderate, unbalanced, and corrosive clamor between political extremes.

In this Nation we have, in addition to our two major political parties and their responsible leaders, an extreme left wing and an extreme right.

The radical left says, "Make every concession to keep the peace," and the radical right demands that we exterminate every enemy—real or imagined—before they exterminate us.

The radical left advocates what they call a dictatorship of the people. The radical right would impose a dictatorship of an omniscient elite.

Neither of these ultimate extremes is likely to come to power. Among their many deficiencies is a total lack of reason and compassion. And yet, the likelihood would grow if the conservatives and liberals in our major parties were to move far from the moderate and balanced center.

At this vital center, calm deliberate thought precedes action. Political and social remedies are analyzed before they are allowed on the market. Poison is not mistaken for penicillin. Mob violence is not mistaken for group therapy.

The moderate man, the analytical man, the rational man, is not deceived by labels. While he stands for world peace, national security, and States rights, he does not endorse the Communist sympathizer who passes defense information in the name of world peace. He does not endorse the American Fascist who, in the name of national security, declares that all of a certain minority are traitors to our Nation. He does not endorse the segregationist who, in the name of States rights, screams profanity at schoolchildren.

Clearly, the extremists do not have at heart the equality and freedom of the individual. Therefore, they make no contri-

bution to our national purpose or to our relations with the rest of the world.

We must show that we exalt man, the individual, but that above man we hold man's law to be supreme. In this regard, Lincoln gave us sound advice when he said:

"There is even now something of ill omen among us. I mean the increasing disregard for law which pervades the country; the growing disposition to substitute wild and furious passions in lieu of the sober judgments of courts.

"As the patriots of seventy-six did to the support of the Declaration of Independence, so to the support of the Constitution and laws let every American pledge his life, property, and his sacred honor; let every man remember that to violate the law is to trample on the blood of his father, and to tear the charter of his own and his children's liberty."

One of the most important things you, as individuals, can do is to remember Mr. Lincoln's words. Against them, the extremists become an ineffectual collection of Marxist slogans, yellowed bluebooks, and crumpled armbands.

Real unity is built upon respect for law, considered dissension, responsible discussion, and the enlightened decision of all citizens. Real unity is a balance of all these factors.

Balance is vital to us throughout our lives. As infants, we needed balance to get off our knees and walk, and so must we keep balance in thought and deed to walk as freemen. As children, we could not ride a bicycle without balance and moderation. We could not safely ride too fast or slow, lean too far back or forward, veer too sharply right or left. We had to look carefully in all directions and plot a course that would keep us upright and moving forward to our destination.

Just as we learned to use balance to confound the force of gravity, we must learn to use intellectual and political balance against the grave forces which would have our nation on its knees.

The balance we need requires considerable education and maturity. The purpose of higher education is to give an intelligent person the opportunity to read, think, discuss, and eventually to develop the tools for thinking maturely and analytically about all sides of a problem.

If this kind of thought were not essential, how much easier would be the life of the research scientist. He could throw out his electron microscope and his delicate scales and recording devices. He would need only a crucible and an alchemist's handbook. What discoveries could he not proclaim? What conclusions could he not reach? And who, in an unthinking world, could dispute him?

In a government where moderation is not applied, virtually any problem can be solved with great speed. In a State which fails to be moderate, to give a man his day in court or to hold free elections would be considered a waste of time. Government by hasty decree would replace our present methodical system of checks and balances.

Without moderation, we might not succeed in ushering in the millennium, but we should certainly be able to reach 1984 ahead of schedule.

What saves us and what has always saved us from lunatic courses leading to the totalitarian state is reason. Calm deliberation. Moral, social, and political balance.

Inherent among the goals of education in America are balance and moderation leading to central truths and away from the extremes of foolishness and falsehood. Inherent, as well, is the obligation to act as educated Americans, to maintain our rights and those of our fellow citizens.

In a recent address, the President of the United States stressed that the educated man has the greatest responsibilities. The President emphasized the need for all of us to use our education to protect the freedoms we enjoy under the Bill of Rights.

What then, must we do to protect these freedoms?

There is something of surpassing value within the ability of each one here. Each of us can, as we treasure our Constitution and Bill of Rights, take upon our conscience a bill of obligations.

The obligations we must keep are these: An obligation, under our freedom of speech, to have something to say—something meaningful and worthwhile.

An obligation, as we assemble, to meet peaceably and for good purpose.

An obligation, as we enjoy security of home and person, to respect the security of others.

An obligation, as we are protected by law, to live according to that law.

An obligation, as we, or our States, use powers reserved for us by the Constitution, to use our powers with justice and humility.

Above all, we have an obligation to act. We must not act in haste or upon little knowledge and less judgment. But it is our solemn obligation to act in time, out of full understanding, upon sound judgment, and with the transcendent concern that what we do will perpetuate unity in the house we keep.

It is a matter of reason, a matter of conscience, that educated men must do these things. This much we can do, and it may well be enough. Thank you.

ABOLITION OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS IN KENTUCKY

Mr. COOPER. Mr. President, yesterday, the Governor of Kentucky, the Honorable Bert T. Combs, issued an executive order requiring public accommodations in Kentucky—that is, businesses and professions which have been licensed by the State—to be open for the public use of all citizens without discrimination. The order of the Governor follows a similar action taken earlier this year by the board of aldermen of the city of Louisville, Ky. On May 14, under the leadership of Mayor William Cowger, the board of aldermen of the city of Louisville adopted an ordinance opening all public accommodations to the equal use of all citizens, without discrimination.

I speak my own view and, I believe, the view of the majority of the citizens of my State when I say that Governor Combs deserves commendation for his courage and leadership. I believe it is always best and in harmony with our representative system of government that the substantive rights of our people be declared by legislative action—whether by the Congress, the legislature of a State, or the legislative body of a subdivision of a State. It would be best if the States would use their unquestioned legislative power to deal with the great issue of civil rights. But in saying this, I do not derogate the objectives of the Governor of Kentucky.

This action has a certain interest to me in relation to some of the issues which face the Congress. Various committees of Congress now have before them civil rights proposals made by the President of the United States. One proposal deals with public accommodations. The President's proposal with respect to public accommodations is based upon the commerce clause of the Constitution. I think this approach is constitutional, but I do not think it is the best one. If it were adopted it would confirm a kind of inequality—inequality between citizens who desire to use public accommodations, because some would be prohibited from using some public accommodations, although permitted to use others; inequality between businesses, inasmuch as some would be declared to be open to all citizens, while others, by action of the Congress, would be exempted. In my judgment, such inequalities would provoke litigation and trouble. But the chief point I wish to make is that the "commerce clause" is unworthy of the issues involved. If there is a right of all citizens to use equally public accommodations, it is a constitutional right, and it cannot be diminished by act of the Congress. It should not be based upon the economic and business aspects of the commerce clause, or upon the argument that segregation is a burden upon commerce. If it is a right, and I believe so, it is a legal right, a constitutional right, a human right, and a right of dignity which grows out of the 14th amendment.

Six weeks ago, the senior Senator from Connecticut [Mr. DODD] and I submitted a public accommodations bill, and a similar proposal introduced by Congressman LINDSAY and others is before the House of Representatives. Our bill applies to all business and facilities licensed by the State or its subdivisions, and held out for public use. It does not apply to the professions, because they do not hold themselves out to the public generally. But our bill does apply to businesses and facilities, and it is based on the 14th amendment.

I believe it clear that Governor Combs based his action upon the 14th amendment, and upon the authority of the States to deal with the subject under their licensing power. The States, in licensing businesses, exercise the police power of the States. In so acting, these businesses become affected with a State interest, and in my judgment, fall within the comprehension of a statement in one of the recent decisions by the Supreme Court of the United States—that the Congress, as well as the States, can act with respect to public accommodations, when they are affected with a State interest.

I believe the action of the Governor of Kentucky has great importance in connection with the debate which soon will commence in the U.S. Congress.

I am very proud of the continued action by my State—action which began several years ago in our schools, after the Brown decision, and even before—action which has been continued without partisanship first in the city of Louisville under a Republican administration, and now by the Democratic Governor of Kentucky.

I ask unanimous consent to have printed in the RECORD a very complete article published today in the New York Times, respecting this matter and one on Governor Combs, entitled "Unorthodox Kentuckian." Of course, I have always thought that most Kentuckians were unorthodox.

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

UNORTHODOX KENTUCKIAN: BERT THOMAS COMBS

The Governor of Kentucky was once introduced to a political rally as "the first Baptist Governor of our State in 100 years." From the rear of the audience, a man shouted, "And if he doesn't do a little better, he'll be the last one for 100 years." Nobody on the staff of Gov. Bert Thomas Combs remembers the incident. But the Governor tells the story with delight as he roams the State, meeting people and listening for ideas.

That he issued an executive order yesterday banning discrimination in places of public accommodation is no surprise to those who know Mr. Combs. He has often said that segregation is coming to an end, and that those who fight it are only spreading bitterness.

Despite a fondness for stories, most of them self-deprecating, Mr. Combs is no orthodox politician, at least not in a State that has produced A. B. (Happy) Chandler, Alben W. Barkley and Earle C. Clements.

His opponents call him a "captive" of more experienced professionals.

He is also sometimes accused within his party of having backed away from supporting John F. Kennedy for President and the Kennedy administration. In Kentucky, where politicians say pockets of religious intolerance remain, Richard M. Nixon outpolled Mr. Kennedy, a Roman Catholic, in 1960.

Mr. Combs made his first bid for public office in 1955, seeking the Democratic gubernatorial nomination against Mr. Chandler, former Governor, who was a national figure.

"Bert had been on the State Court of Appeals, Kentucky's supreme court," a friend said recently. "He campaigned like a judge—responsibly, methodically and unsuccessfully."

Four years later Mr. Combs ran again, defeating a Chandler protege, 203,802 to 177,191. He then easily beat the Republican nominee.

In his successful campaign Mr. Combs was considerably more caustic about Mr. Chandler. As a result, when Mr. Chandler attempted a comeback last spring, he centered his attack on Governor Combs. He particularly gibed at a $50,000 floral clock planted on the Capitol lawn.

Because Kentucky law forbids a second successive term, Governor Combs backed his protege for the post, Edward T. Breathitt, Jr., 38-year-old former legislator.

Mr. Breathitt defeated Mr. Chandler in the primary. Mr. Combs, pleased, commented in an afterthought that the floral clock was paying for itself as a tourist attraction.

The Governor was born August 13, 1911, in Clay County, in the heart of Kentucky's mountains.

"He's almost the perfect man to deal with the racial situation in this State," a friend said. "In his home area, around Manchester, there's just no problem. He brought no bias or emotion to his deliberations on the issue."

Mr. Combs quit school in 1931 to work as a clerk in the State highway department. Two years later he entered the University of Kentucky and worked his way through law school, graduating second in his class.

He joined the Army in 1942 as a private and was discharged as a captain 4 years later.

Returning to civilian life, he became city attorney in Prestonburg in 1950 and the Kentucky equivalent of district attorney soon afterward.

A restless man who enjoys traveling, the Governor likes to take along his staff in visits to small towns around the State. In Calhoun or West Liberty, he would open an office for a day, listening to anyone's complaint.

With retirement from office facing him next December 9, Mr. Combs has indicated he will not accept another judgeship. "I'm going to sit back and give a lot of free advice to all of those who have been so generous with advice to me over the past 4 years," he has said.

Mr. Combs and his wife, the former Mabel Hall, have two children, Lois Ann, 19, and Thomas, 17.

Mr. COOPER. Mr. President, I also ask unanimous consent to have printed in the RECORD an article entitled "Kentucky Forbids Bias in Businesses." This article was also published today in the New York Times.

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

KENTUCKY FORBIDS BIAS IN BUSINESSES—GOVERNOR'S ORDER AFFECTS ALL LICENSED ACTIVITIES—HE PRODS SCHOOL DISTRICTS

FRANKFORT, KY., June 26.—Gov. Bert T. Combs signed an executive order today forbidding racial discrimination in all businesses licensed by the State.

The order, which went into effect immediately, covers such businesses as taverns, restaurants, barber shops, beauty parlors, funeral homes, and real estate concerns.

The Governor warned that school districts which need accreditation by the State department of education, would be in danger of losing State and Federal funds if they did not integrate.

His order directed those State agencies empowered to license businesses to prepare reports within 60 days on how they planned to enforce the order.

Mr. Combs suggested that enforcement could be patterned after the procedures of the State alcoholic beverage control board.

COULD LOOSE LICENSE

After an illegal act has been charged, the board cites a licensee and orders him to appear for a hearing to show cause why he should not have his license suspended or revoked.

Hence, the Governor noted, "the penalty under this executive order also would go to a man's pocketbook."

Mr. Combs acted as a special session of the general assembly, the legislature, met here. Civil rights groups and Mayor William O. Cowger, of Louisville, had urged the Governor to broaden the special session to include consideration of a State antidiscrimination law.

The session had been called to provide State aid for four eastern Kentucky hospitals owned and operated by the United Mine Workers of America. The union plans to close the hospitals this summer because of economic reasons.

Governor Combs said he had declined to place a civil rights bill before the legislators because many had come unprepared to consider such legislation.

In addition, he said, "it is my judgment, based on contacts with key members of the legislature, that an effective bill could not be passed at this extraordinary session."

He asserted that an order "will be much more effective than filing a citation with the local court," as a State law would require.

"While Kentucky has made great strides, both for voluntary and legislative action, additional action is needed to make it possible for all Kentuckians to become first-class citizens," he declared.

He said a civil rights bill would come before the legislature, but did not specify when.

In his order the Democratic Governor declared that discrimination "in places of public accommodation is unfair, unjust, and inconsistent with the public policy of the Commonwealth of Kentucky."

The order stressed that the Governor "is charged with an obligation and duty to assure that (State) laws are thoroughly administered without discrimination."

Mr. Comb's 4-year term expires in December. He is prohibited by statute from succeeding himself. Edward T. Breathitt, Democratic nominee in the gubernatorial election next fall is supported by the Combs administration.

The order was considered broad by some civil rights leaders. Several said they would investigate the possibility that the order could include discriminatory practices in private employment.

This was the second move in 2 months to end racial discrimination in places of public accommodation.

The first occurred in May, when the Louisville Board of Aldermen passed an antidiscrimination ordinance, to go into effect within 90 days.

The Louisville ordinance and the executive order came without the pressure of demonstrations by Negro groups. In some cases, however, civil rights leaders were hard pressed to contain their followers.

Feelings in the State were intensified by the demonstrations in Montgomery, Ala., and Jackson, Miss. Negro leaders in Louisville, however, cited their record of having achieved desegregation in that city and the State by quiet persuasion.

The Louisville school system desegregated in 1956 without the necessity of court action. In the last 8 years there has been progress in desegregating parks, swimming pools, hotels, restaurants, and theaters.

In 1960 Governor Combs pushed through a law forbidding discrimination in the State's merit system for employees. He also succeeded in having legislation passed to create a State human rights commission.

Earlier this year, he signed an order forbidding discrimination in employment by State contractors and subcontractors.

Of the State's 3,100,000 population about one-eighth are Negroes. The Negro leadership is centered in Louisville. Mostly it is educated and dedicated to moral and political persuasion to achieve its goals.

CONFERRED IN WASHINGTON

WASHINGTON, June 26.—Governor Combs consulted with Burke Marshall, the Justice Department's civil rights chief, before issuing his executive order.

Mr. Marshall encouraged him to go ahead with it.

About 30 States and several localities have laws against discrimination by hotels, restaurants, and other places of public accommodation. Only Indiana previously had acted by executive order.

How effective the executive technique will be compared with legislation remains to be seen.

AREA REDEVELOPMENT ACT

Mr. METCALF. Mr. President, yesterday the Senate passed the supplemental appropriations to the Area Redevelopment Act. During the debate, there was concern expressed by some of my colleagues as to the value of the program.

While it was not part of the discussion yesterday, a very important aspect of the Area Redevelopment Act is the retraining program. Today I want to emphasize the great benefit the training program has given to those who have participated in it. There is a need for skilled workers and this act helps answer that need at a very low cost per trainee.

I received many letters from people who completed the initial classes set up in my home State and, almost without exception, the 8-week training program

enabled these people to get a job where previously they could not. As I read through the letters I was deeply impressed by the change these short courses had wrought in their lives.

The excerpts from these letters do not begin to reflect the depth of feeling and gratitude which the full letter would, but will give some indication of the training course's undoubted success from the standpoint of giving these citizens a new hope in life as well as from the standpoint of upgrading our labor force.

Mr. President, I ask unanimous consent that the excerpts from the letters be incorporated at this point in the RECORD.

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

1. Nurses aid: "I have thought many times (how) lucky I was to take the training. I am still at the Silver Bow General (Hospital)."

2. Lumber grader (had been unemployed 14 weeks) (age 28): "I finished the school on a Friday and started work for Diehl Lumber Co. at Plains, Mont., on the next Monday. It has given me and my family the opportunity to better our income and standard of living."

3. Nurses aid: "As of the result of it (the 8-week training program to become a nurses aid) I have been very successful in maintaining a job and security.

"Your program is just wonderful. Thanks again.

"It's wonderful to be able to see (the patients) get well and know I was of some help."

4. Ward attendant (unemployed 2 years) (age 38): "The ARA program helped me a great deal insofar as the field that I am in now, it gave me a lot more confidence in myself.

"Regardless of what type of work goes into on an ARA program, if the instructors and supervisors are as good as the ones we had and the students take their training seriously they can't help but come out on top."

5. Motor analyst (unemployed 20 weeks) (age 19): "(The course) has enabled me to find a steady paying educational job as a motor analyst.

"I feel through rewarding experience that this good work should be continued assisting people that wish to find work but are unable to through lack of knowledge and training."

6. Service station attendant (unemployed 26 weeks) (age 32): "I am sure very thankful that I took this training, for it has helped me very much.

"It has help me to maintain a better job."

7. Motor analyst (unemployed 18 weeks) (age 32): "This course has helped me to such an extent I cannot express my gratitude. I have gone into business for myself just because of this schooling."

8. Nurses aid: "Since completing the nurses aid course, I have been employed continuously.

"(I) am truly grateful for the opportunity afforded me through this training course."

9. Ward attendant (unemployed 5 weeks) (age 60): "(The ARA training) has advanced me in many ways.

"I know we got the best (training) because, I know, it shows up in the ward."

10. Ward attendant (unemployed 10 months) (age 20): "If not for the classes of ARA it would not have been possible for me to work at the State hospital. My husband and I were out of work and no prospects of a job but now we are both working."

11. Welder: "I have had work most always since leaving the school other than a short time between jobs due to a layoff."

12. Engineering aid: "I am still employed as an engineering aid due to the training I received in the training course that I was fortunate enough to take in Butte last year."

13. Lumber grader (unemployed over 1 year) (age 48): "I think this course is especially valuable to people in my age group."

14. Nurses aid: "I have been successfully employed since completing the course. I sincerely believe that training of this kind would be beneficial to others."

15. Engineering aid: "The program made it possible for me to acquire employment in order to secure the finances so college could be completed. I truly hope that the program can and will be continued and will continue to offer programs to our youth to fit them into America's progression."

16. Stenographer (unemployed 26 weeks) (age 44): "Thank you seems to be such an inadequate word for the good the area redevelopment stenographer course did for all of the girls including myself, but (I) will say thank you all very much for the wonderful opportunity."

17. Lumber grader (unemployed 50 weeks) (age 52): "I have been employed as a lumber grader by the Northern Timber Co. of Deer Lodge since June 6, 1962 (11 days after completing course)."

18. Ward attendants, husband (unemployed 21 weeks) (age 43), wife (unemployed 47 weeks) (age 41): "Happiest day of my life reporting to Montana State Hospital knowing that along with my husband to join in on this venture of a new jobs ahead for both of us. My husband's and my employment is working out 100 percent here. We started out at $230 per month.

"This ARA class and course gave both myself and my husband confidence in knowing we had been taught the essentials in nursing."

19. Engineering aid: "I would not have been hired for this type of work without the training that I had received."

20. Rodman (unemployed 26 weeks) (age 19): "After completing the ARA training course I have been employed by the Bureau of Public Roads. This schooling has done wonders for me as far as job opportunities go and for steady employment."

21. Stenographer (unemployed over 52 weeks) (age 40): "I cannot tell you how much I appreciate the opportunity.

"I am employed at present with the U.S. Department of Agriculture."

22. Engineering aid: "The training I received from the ARA has been the direct cause of my being employed. Through taking the course I'm working today."

TOWN OF MILLBURY

Mr. SALTONSTALL. Mr. President, I am pleased to bring to the attention of the Senate that the town of Millbury, Mass., is officially celebrating its 150th anniversary this week with an outstanding program of events to honor the fine accomplishments of the citizens of Millbury during the past century and one-half.

On June 11, 1813, the town of Millbury was incorporated by a bill approved by the General Court of Massachusetts and signed by Caleb Strong, the 10th Governor of the Commonwealth. At that time the inhabitants of Millbury numbered about 500. Many of these people were engaged directly in textile manufacturing established along the Blackstone River. The opening of the Blackstone Canal in 1828 gave an added impetus to the textile industries. When the canal closed in 1848, the Providence & Worcester Railroad provided the major transportation facilities maintaining the town's progress. Spinning of woolen yarns, weaving, wool scouring, and the manufacture of textile machinery continue in Millbury's present economy.

Today Millbury is primarily an industrial and residential community offering steady employment for many of its 10,000 residents. Manufacturing with 67.8 percent of the total employed population is the largest source of employment. Second in importance is the wholesale and retail trade. In addition, many of the townspeople are employed in the nearby city of Worcester.

Millbury proudly boasts many firsts. In the early days of the Revolutionary War, the Province of Millbury erected the only powder mill in the area. The first papermill in central Massachusetts was established there, and the first scythes made in the country were manufactured in Millbury.

Among Millbury's famed citizens is Thomas Blanchard who perfected the calm motion principle and invented the eccentric lathe for turning irregular forms. Dr. Leonard Gale, who assisted Samuel B. Morse in perfecting the telegraph, is another of Millbury's outstanding residents.

President William Howard Taft spent part of his boyhood in Millbury and attended the public schools there. In 1913, Taft attended Millbury's centennial celebration, and he was a guest speaker at the centennial banquet.

Millbury is a progressive community with a history of which not only its residents but also the country can be proud. The accomplishments of the people of Millbury are the results of the sort of civic spirit, initiative, and leadership which characterize these United States. On this, their 150th anniversary, I salute the residents, past and present, of the town of Millbury.

FEDERAL DEPOSIT AND SHARE ACCOUNT INSURANCE ACT

Mr. ROBERTSON. Yesterday I introduced a bill, S. 1799, at the request of the Secretary of the Treasury. At that time I obtained unanimous consent to insert in the RECORD the transmittal letter from the Secretary of the Treasury, in order to inform the Senate and other interested persons of the nature of the bill.

I have now had many requests for copies of the section-by-section analysis of the bill which was sent to the Senate along with Secretary Dillon's letter and I, therefore, request unanimous consent to insert this section-by-section analysis in the RECORD at this point.

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

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED FEDERAL DEPOSIT AND SHARE ACCOUNT INSURANCE ACT OF 1963

Section 1 would entitle the bill the "Federal Deposit and Share Account Insurance Act of 1963."

COVERAGE OF INSURANCE

Sections 2 and 3 would increase from $10,000 to $15,000 the maximum amounts of insurance coverage per deposit or share account provided by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

Section 2 also provides that in the case of a bank closing prior to September 21, 1950, the maximum amount of the insured deposit of any depositor shall be $5,000, and in the case of a bank closing on or after September 21, 1950, and prior to the effective date of this bill, the maximum amount of the insured deposit of any depositor shall be $10,000.

Section 3 provides that the higher coverage for Federal Savings and Loan insurance shall not be applicable to certain claims arising from default prior to the effective date of this bill.

INTEREST AND DIVIDEND RATES

Sections 4 and 5 would change from a mandatory to a standby basis the authority of the Board of Governors of the Federal Reserve System to limit the rates of interest that may be paid by member banks on time and savings deposits and the authority of the Board of Directors of the Federal Deposit Insurance Corporation to limit the rates of interest or dividends which may be paid by insured nonmember banks (including insured mutual savings banks) on time and savings deposits. The authority could be invoked (1) if required by general credit conditions or to prevent competitive practices that would endanger the safety and solvency of such banks, and (2) when consistent with policies to promote economic stability and maximum employment, in a manner calculated to foster free competitive enterprise and the general welfare. Such sections further provide for the exercise by the Board of Governors of its limiting authority after consultation with the Federal Deposit Insurance Corporation and Federal Home Loan Bank Board and the exercise by the Board of Directors of the Federal Deposit Insurance Corporation of its limiting authority after consultation with the Federal Reserve Board and Federal Home Loan Bank Board. However, foreign official deposits, which presently are exempted from limitation until 1965, would not be subject to this standby authority until expiration of this existing exemption. Any limitations on interest rates established under these sections could differ for different classes of deposits or banks on various bases, including the location of the depositors.

Section 6 would grant standby authority to the Federal Home Loan Bank Board, after consultation with the Federal Reserve Board and the Federal Deposit Insurance Corporation to limit the rates of interest or dividends which may be paid by members of any Federal home loan bank (other than those insured by the Federal Deposit Insurance Corporation), and by institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. The criteria for invoking such authority would be the same as for the Federal Reserve Board and Federal Deposit Insurance Corporation. There is no existing statutory authority in the Federal Home Loan Bank Board to limit the rates of such interest or dividends.

LIQUIDITY REQUIREMENTS

Section 7 would revise and improve the present liquidity requirement for institutions which are members of a Federal home loan bank or the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. The present general liquidity requirement of 4 to 8 percent in cash and obligations of the United States of a member's obligations on withdrawable accounts would be replaced by a general liquidity requirement of not less than 4 percent nor more than 10 percent of a member's obligations on withdrawable accounts and borrowings. The Federal Home Loan Bank Board is also accorded clearer and broader authority to specify the proportion of cash and the type and maturity of obligations eligible for meeting the general requirement. The accounting and enforcement provisions are improved and made more explicit.

In addition, the Board is authorized to impose a special liquidity requirement on an institution or group of institutions if, in the Board's opinion, the asset composition or quality, the structure of the liabilities, or the ratio of its nonwithdrawable capital, surplus and reserves to withdrawable accounts of the institution or institutions, requires a further limitation of risk to protect the safety and soundness of the institution or institutions. The total of the general and special liquidity requirements could not exceed 15 percent of withdrawable accounts and borrowings. Thus, the Board would be provided with explicit supplementary powers of a kind that have, in practice, long been exercised in the banking industry on the basis of established tradition and supervisory authority.

The provisions of section 7 would continue the present authority provided by section 5A to the Federal Home Loan Bank Board over mutual savings banks which become members of a Federal home loan bank. Similarly, the Federal Deposit Insurance Corporation, for those mutual savings banks insured by it, would continue to be the primary authority in the examination, supervision, or regulation of any such bank, and nothing in this bill is intended to affect or alter that situation.

RESERVES AND DIVIDENDS OF FEDERAL HOME LOAN BANKS

Section 8 would amend the present law relating to the reserves and dividends of each Federal home loan bank so as to limit dividends to not more than 6 percent per annum on paid-in capital. It is the intent of this section that the excess net earnings of a Federal home loan bank, after its reserves have reached 100 percent of paid-in capital and all allocations and chargeoffs required by the Board have been provided for and all dividend claims have been fully met, should be paid into the Treasury of the United States.

CONFLICTS OF INTEREST

Section 9 would extend the statutory noncriminal conflict of interest and related restraints now applicable to member banks, and as strengthened by section 10, to insured nonmember banks, subject to supervision and regulation by the Federal Deposit Insurance Corporation. (Conflict-of-interest restraints for insured nonmember banks are now effectuated by administrative action of the Federal Deposit Insurance Corporation.) The statutory restraints provided pertain to specified transactions between insured nonmember banks and their directors, officers, employees, attorneys, or affiliates, including the purchase or sale of securities or other property, loans or extensions of credit and investments, and preclude, except in limited classes of cases allowed by the Federal Deposit Insurance Corporation, certain persons primarily engaged in the sale or distribution of securities from serving at the same time as officers, directors, or employees of such banks. In addition to the specific statutory prohibitions, the Federal Deposit Insurance Corporation would also be authorized to establish rules and regulations at their discretion to assure that directors and officers do not participate in transactions that would result in a conflict of their personal interest with those of the bank they serve. Such section, however, would permit a nonmember insured bank to extend credit to any executive officer thereof in an amount not exceeding $5,000, or, in the case of a first mortgage loan on a home owned and occupied or to be owned and occupied by such officer, in such amount as the Federal Deposit Insurance Corporation may prescribe, provided that the terms of any such loan are not more favorable than those extended to other borrowers.

Section 9(c) of the bill adds a new section 20 to the Federal Deposit Insurance Act dealing with transactions with affiliates. The term "affiliate," with respect to any insured State nonmember bank, is defined so as to include any organization that would be an affiliate or holding company affiliate of such bank under section 2 of the Banking Act of 1933, even though such bank is not a member bank to which the definition in the Banking Act of 1933 is limited.

Section 10 would strengthen the noncriminal conflict of interest restraints with respect to transactions between national and State member banks and their directors, officers, and affiliates subject to supervision and regulation by the Comptroller of the Currency and the Federal Reserve Board, respectively, principally by adding a paragraph permitting the relevant supervisory authority to establish rules and regulations supplementing specific present statutory prohibitions, at their discretion, in conflict of interest situations. Limitations on loans by member banks to their affiliates would be tightened in certain respects and for this purpose the definition of affiliates would be broadened. (Similar limitations would be made applicable to nonmember insured banks under provisions of sec. 9.) Such section, however, would increase from $2,500 to $5,000 the amount of credit that could be extended by a member bank to any executive officer and permit a first mortgage loan from a member bank to any executive officer on a home owned and occupied or to be owned and occupied by such officer in such amount as may be determined by regulation, provided that the terms of such loan are not more favorable than those extended to other borrowers.

Section 1 also provides exemptions with respect to limitations on investments that member banks may make in their affiliates. (Sec. 9 would provide like exemptions for insured State nonmember banks).

Section 11 would provide for noncriminal conflict of interest restraints with respect to transactions between institutions which are members of any Federal Home Loan Bank (other than those insured by the Federal Deposit Insurance Corporation) or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation and officers, directors, employees, or attorneys of such institutions. Prohibited transactions would include the making or purchase of any loans, and the purchase or sale of securities or other property, between the institution and any such party, or any partnership or trust in which they have any interest, or any corporation in which any such party owns, controls, or holds with power to vote more than 15 percent of the outstanding voting securities, or in which all such parties own, control, or hold with power to vote more than 25 percent of the outstanding voting securities. An institution would be permitted to make loans on the security of a first lien on a home owned and occupied by a director, officer, employee, or attorney of the institution, in such amount as may be permitted by regulation of the Board, and to make other loans of a type that it may lawfully make to any such party, in an aggregate amount not exceeding $5,000, provided that the terms of any such loans are not more favorable than those extended to other borrowers.

Section 11 would incorporate into law applying to the above member and insured associations much of the substance of current conflict-of-interest regulations governing Federal savings and loan associations, and it is also roughly analogous to the noncriminal conflict-of-interest provisions which sections 9 and 10 would extend to member and nonmember banks. In addition to the restraints specified in this section, the Federal Home Loan Bank Board is extended the

right to establish rules and regulations to assure that directors and officers do not participate in transactions that would result in a conflict of their own personal interests with those of the institution which they serve. (The statement in subsec. (e) of sec. 11 that directors and officers occupy a fiduciary relationship to the institution of which they are directors or officers, and to its shareholders and stockholders, is declaratory of a common law principle which has been upheld by the courts.)

Section 12 would extend to examiners appointed by the Federal Home Loan Bank Board the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act and the Federal Reserve Act. Subject to such limitations as the Federal Home Loan Bank Board may prescribe, they would have in the exercise of their functions the same powers and privileges as are vested by law in such examiners.

Section 13 would make certain criminal provisions relating to conflict of interest now applicable to insured banks also applicable to officers, directors or employees of institutions which are members of any Federal Home Loan Bank or the accounts of which are insured by the Federal Savings and Loan Insurance Corporation and to examiners appointed by the Federal Home Loan Bank Board. This section would permit public examiners to obtain home loans from insured institutions which they may examine.

EFFECTIVE DATE

Section 14 would provide for the act to take effect on January 1, 1964.

PUTTING CIVIL RIGHTS LEGISLATING MANEUVERING IN PROPER PERSPECTIVE

Mr. MUNDT. Mr. President, in the June 26, 1963, issue of the Washington Evening Star there is a column by Richard Wilson which I feel sets in true perspective the coming great debate on the civil rights issue. Richard Wilson has cut through the mass of verbiage which has been written about enactment of civil rights legislation, and pinpointed most effectively the fact that if Democrats want to take credit publicly for civil rights legislation then they must also assume responsibility for any defections from their ranks which might defeat their objectives.

I commend to my colleagues this article since it certainly sets the record straight on this politically explosive issue. Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

PUTTING RIGHTS PROGRAM THROUGH—DEMOCRATS REMINDED THEY HAVE VOTES AND CAN'T BLAME GOP IF BILL STALLS

(By Richard Wilson)

It is little noted, but the Democratic majority in the U.S. Senate is exactly the number needed to force a vote on the President's new civil rights program.

A two-thirds vote of the Senate can break a filibuster. The Democrats have 67 votes and the Republicans 33. Yet it will be charged, in fact it is already intimidated, that Republicans will be responsible if Congress fails to pass a new civil rights law.

This is the reason Republican leaders have conferred with President Kennedy on a bipartisan approach with their fingers crossed. However sincere the President's motives, Republicans in the Senate will not be spared mendacious attack if civil rights legislation fails of passage.

Yet the reason why such legislation cannot be passed lies in the simple fact that the Kennedy administration has no control of the overwhelming Democratic majorities in the Senate and House.

The Democratic majority is like Barnum and Bailey's menagerie, a big tent housing carefully caged animals which would eat each other in the jungle. The Senate Democratic leaders say they cannot break a filibuster and pass the President's program without 20 to 25 Republican votes. Therefore, the Republicans are to blame if they don't vote to a man for the President's program.

Democratic leaders could well afford to blush while making such a confession of the ineffectuality of their powers of leadership. Nor is their ineffectuality confined to civil rights. They cannot claim that only on the racial issue are the fierce conflicts within the Democratic Party exposed. The flagrant schism is equally evident on social, economic, and labor legislation.

Whatever the President's popularity in this and other countries, his prestige in the Congress of the United States is at low ebb. According to old hands in Congress, the resentment against the President of the United States has no parallel except possibly the revolt against Franklin D. Roosevelt when he sought to pack the Supreme Court with new appointees. Roosevelt lost his hold on Congress then, though he continued to enjoy a public adulation which Mr. Kennedy has never had in anywhere near the same degree.

The congressional discontent with Mr. Kennedy is not confined to the Southern Democrats, nor the Republicans. The liberals are dissatisfied with what they consider to be half measures. Even some of the moderates think Mr. Kennedy has helped to create, by unfulfillable promises and bravura statements, the conditions for racial demonstrations of a dangerous character. When faced by this dangerous condition, the Kennedy tone quickly changes. Equality will have to come slow and not by legislation alone.

It is in this atmosphere that the President has proposed his program to hasten the inevitable advance of Negroes toward higher levels of equality. And it is a shame that this question cannot be considered apart from its political aspects.

But those political aspects exist and it is truly amazing that Negro leaders do not recognize them. Negroes made their greatest advances since their emancipation in a Republican administration. Whatever Negro leaders may think today, no civil rights legislation was recommended to Congress by Roosevelt and none was enacted. Harry Truman was the first President to offer a comprehensive program. It was not enacted. President Eisenhower offered a program in 1956 and it was enacted in major part. Again in 1960 on President Eisenhower's initiative civil rights legislation was enacted.

In spite of the urgent promises of the Democratic platform of 1960, Mr. Kennedy delayed for more than 2 years offering any kind of general civil rights legislation, and he does so now under the pressure of mounting racial demonstration, and with sentiment built up in Congress against him.

These are the facts. Now it is to be seen whether President Kennedy, with two-thirds of Congress under Democratic control, can do as much as did President Eisenhower, whose party did not have control of Congress.

And if Mr. Kennedy cannot win, then let the blame go where it ought to.

CIGARETTE SMOKING, S. 1682

Mr. MOSS. Mr. President, the schedule for publication of facts determined by the U.S. Public Health survey on the effects of cigarette smoking has now been set for the end of this year. The committee making the survey will not start drafting recommendations for action until after the factual section of the survey is made public. This means it will probably be a year, at least, before any specific legislative recommendations come to the Congress from the executive branch of the Government for action on the health aspects of smoking.

Meanwhile, the growing number of articles about the harmful effects of tobacco, and particularly cigarette smoking, indicate the growing concern of the American public with this problem. The fact that a password contestant on a national TV program immediately said "cancer" when asked what word she associated with "cigarettes" was most revealing.

I ask unanimous consent that a Time magazine article of June 28, detailing this incident, and discussing the cigarette problem, be printed in the CONGRESSIONAL RECORD.

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

TOBACCO: TROUBLE IS THE WORD

In a nationally televised game called Password one night last week, a contestant stared her partner in the eye and asked him for the word that people most logically associate with cigarette. Without hesitation, the partner blurted "Cancer." The audience roared with laughter and applause, and the master of ceremonies gulped, as if seeing all the leaders of the $8 billion-a-year U.S. tobacco industry frowning collectively at him. The health issue has caused the tobacco industry to slide from peaks that it may never reach again.

Though sales reached records last year, per capita smoking of cigarettes in the United States declined for the first time since 1954. Profit margins dropped for every major U.S. tobacco company except Philip Morris, and cigarette company stocks are still far below the highs set before last year's market crash. The industry finds itself under harsh fire from doctors, teachers, parents, and legislators. The U.S. Air Force has stopped distributing cigarettes in lunch packs to flight crews. U.S. Surgeon General Luther L. Terry is preparing to release a definitive smoking-and-health report that tobacco men fear will be widely damaging to them.

NO LONGER CHICKEN

The industry's big export markets have already been crimped by newly imposed restrictions on tobacco advertising in Europe. Last week, following an example set on British TV, two Canadian cigarettemakers agreed not to advertise on Canadian TV until 9 p.m., when children are presumably safely abed. After many U.S. universities banned cigarette ads from campus publications at the urging of the American Cancer Society, five major cigarette companies last week announced that they will discontinue all campus advertising and promotion.

What worries tobacco men most is the increasing difficulty, in the face of such pressure, of attracting the young smokers on whom their future depends. Though half of U.S. adults and 44 percent of all high school seniors are said to be regular smokers, a teenager no longer need feel chicken or prim for not smoking. The Cancer Society claims marked success from its stepped-up showings of cigarette-warning films in schools, and youngsters who quit find themselves in good company. Among adult quitters: LeRoy Collins, who almost lost his job as president of the National Association of Broadcasters when he expressed disapproval of

cigarette ads pitched to youngsters, and President James M. Hester, of New York University, who last week asked the press to discard old photos showing him puffing cigarettes, since he has discontinued smoking.

SCRAMBLE FOR SPACE

Instead of flatly condemning reports of a cancer link, as manufacturers once did, the industry's Tobacco Institute now prefers to stress a crusade for research. While waiting for the results of that crusade, tobacco companies have stepped up their $200 million advertising campaign, which associates smoking with virility and romance. Manufacturers scramble hard for spots in vending machines, which now account for 16 percent of cigarette sales. Partly because the automatic vendors ask no questions of underage smokers (who are breaking the law in 46 States whenever they buy cigarettes), four States are considering imposing restrictions on the machines. Vending machines can stock up to 20 brands, and are so well patronized that all the cigarette companies except top-selling R. J. Reynolds (Camel, Winston, Salem) offer premiums of up to $32.10 annually per machine to vendors who agree to stock their brands.

Space is at a premium in the vending machines because of the extraordinary proliferation of new brands. Tobacco men hope not only to fit every taste and soothe every fear, but also to cater to the restlessness that is one result of the concern about smoking. Most of the new brands have a consciously antiseptic image—notably the filters (which have now captured 56 percent of the U.S. market), the lengthy kings (20 percent of the market), and the menthols (14 percent). Liggett & Myers has launched Lark with a 3-piece Keith filter, and Brown & Williamson is test-marketing Breeze filters with menthol and a "touch" of clove. American Tobacco has brought out menthol Montclair; last week Philip Morris started selling nationally its filter-menthol Paxton, which comes in a thin plastic "humidor" case. Launching each new brand costs some $10 million, but most of them seem to burn out quickly nowadays. Among the recent failures: R. J. Reynolds' Brandon, Philip Morris' Commander, American Tobacco's Riviera, Brown & Williamson's Kentucky Kings.

While they talk bravely of the future and are confident that old habits die hard, tobacco men are hedging by diversifying their interests. U.S. Tobacco now makes candy too. Philip Morris has bought out Burma Shave, Clark Chewing Gum and American Safety Razor (Personna, Pal, Gem). R. J. Reynolds has gone into several lines from fruit punch to packaging.

PUTTING THE "PARK" IN PARK CITY

Mr. MOSS. Mr. President, yesterday we discussed and this body passed a bill authorizing further funding of ARA. In that discussion the ARA loan to United Park City Mines for construction of a recreation area was mentioned. This development depends on a loan of $1,200,000 from ARA. The Deseret News, of Salt Lake City, published an editorial on May 13, 1963, approving the new recreation area. Unmentioned was the ARA loan, but I ask that the editorial be printed in the RECORD at this point.

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

PUTTING THE "PARK" IN PARK CITY

Picturesque and colorful Park City, which became a ghost town, is well on its way to becoming a boom town as it was in the days of the Old West.

The new bonanza this time is not mining as of yore, but recreation and sports, and it couldn't have happened to a more deserving community. Park City has shown that it knows how to weather a crisis.

Faith and vision have been put to work on a project designed to make Park City truly and actually a park—a vast recreational complex with ski facilities, a golf course, swimming pools, tennis courts, horseshoe pitching areas, sun terraces, riding academy, mountain restaurant, and a ride through an abandoned silver mine to the top of a gondola lift, 10,000 feet to Mount Jupiter.

Park City is a natural for the new development. It lies at 7,000 feet on the east slope of the Wasatch Mountains—cool and crisp in summer, snow-laden in winter. It is situated only a few miles from Salt Lake City—center of scenic America, the heart of a fast-growing metropolitan area and focal point of tourism, and jet, rail, and bus lines. Over the mountains on either side are the Wasatch State Park, now being developed, and the Alta-Brighton ski areas.

The rejuvenation of Park City provides a glowing chapter to one of the most dramatic stories in the annals of the Old West. Old timers, remember fires, economic slumps, epidemics, mine shutdowns, and other reverses which all but put the town out of business. One fire wiped out 200 business houses and dwellings and cost more than $1 million. The more recent mine closings throttled the town's principal source of income.

Park City residents have looked upon these adversities as just another crisis soon to pass away.

The new Park City development, as one giant recreation complex, should provide the State with a vacation and tourist facility that will be a real asset. It looms large as a product of the vision and enterprise of a community that has learned how to weather a crisis.

WHAT THE DAUGHTERS DO

Mr. THURMOND. Mr. President, on Monday, June 24, 1963, the Senate considered and approved Senate Resolution 159, a resolution authorizing, as in the past, the printing of the annual report of the National Society of the Daughters of the American Revolution for the year ended March 1, 1962. At that time, the distinguished junior Senator from Oregon [Mrs. NEUBERGER] made some remarks about the activities of the DAR. These remarks are printed on pages 11376–11379 of the June 24, 1963, issue of the RECORD.

Since that time, Mr. President, the able president general of this great, patriotic organization, Mrs. Robert V. H. Duncan, has issued a public statement in response to the distinguished Senator's remarks. I ask unanimous consent, Mr. President, to have printed in the RECORD the news release issued on June 25, 1963, by this great organization, which has done as much or more than any organization in this country to promote education, historic preservation, and love of country. I also ask unanimous consent to have printed in the RECORD following these remarks a brief brochure entitled "What the Daughters Do."

There being no objection, the news release and brochure were ordered to be printed in the RECORD, as follows:

STATEMENT BY MRS. ROBERT V. H. DUNCAN, PRESIDENT GENERAL, NSDAR, WASHINGTON, D.C.

"There is nothing secret about the National Society, Daughters of the American Revolution, its policies, actions or purposes," said Mrs. Robert V. H. Duncan, president general. "As president general, I am glad and perfectly willing to answer bona fide questions concerning the organization," she affirmed.

"Further, any interested inquiry is welcome as it provides an opportunity to inform the public at large of the comprehensive NSDAR program—in the fields of historic preservation, promotion of education and patriotic endeavor—which has been steadfastly and conscientiously maintained and supported over more than 72 years. We are proud of this record and feel it speaks for itself."

"So far as the term 'politicking' is concerned, I am surprised at its use and am at something of a loss to know just what is meant inasmuch as the National Society maintains no lobby at National, State, or local government levels, contributes to no political party or candidates in any way, initiates no legislation, and does not—as do a number of organizations—even in its own internal setup have any legislative chairmen. Yes, the DAR being interested in the preservation and maintenance of our constitutional Republic, does urge its members, as individual good American citizens to be informed and to exercise the privilege of the franchise and vote, but how one votes is entirely up to the individual," said Mrs. Duncan.

"Relative to the 'tax-free' inference, there are several pertinent factors which have direct bearing on this and I begin with Constitution Hall. Aside from the fact that the DAR was not organized and has never been operated for profit, for the past 30 years its privately owned auditorium has been made available on an at cost basis—when no other or similar facility was available—for the furtherance of cultural and educational pursuits in the Nation's Capital. On this the NSDAR pays business taxes to the District of Columbia; last year these ran over $20,000. This year they will run more," stated Mrs. Duncan.

"As respects patriotic endeavor, the taking of stands and passing of resolutions, the recent newspaper-carried statement assigning political motivation to the activities of the NSDAR, on national and international problems, is misleading.

"The NSDAR was founded in 1890 and in 1895 chartered by the Congress of the United States for historic, educational, and patriotic purposes. It always has been and remains today just such an organization.

"The national society through the years has patriotically supported and encouraged appreciation of our American heritage and way of life wherein lie the fundamental principles and ideals that have given this Nation and its people the greatest freedom, most justice, and the highest standard of living known to man.

"This has been the unwavering course of the NSDAR irrespective of changes in political administrations, whether in the executive or legislative branches of the Federal Government, or both.

"The DAR acts independently and takes its stands alone, without affiliation or identity with any other organization. Further, whether one agrees with DAR stands or not, it is noteworthy that not once—never—in the course of its existence has it ever passed a resolution asking anything for itself—no special consideration, favor of any kind, grant or subsidy.

"In considering the overall subject, there are certain other important facts and figures which I believe have real significance to the general public, certainly to the interested and the serious-minded," continued Mrs. Duncan. She elaborated and enumerated as follows:

"NSDAR annual contributions to schools alone totals approximately $200,000 yearly. This is exclusive of the incalculable amount given direct through loans and scholarships at local and State levels to students irrespective of race, color, or creed. In addition, the DAR materially assists the American Indians; in 1962 the amount ran over $34,000. Further, the DAR owns and operates two schools in the Southeastern mountains; one in South Carolina and one in Alabama, an investment of better than $2 million.

"The DAR has a unique position in extending a helping hand to immigrants and naturalized citizens. Not only did it start, own and run the first naturalization school, over the years it has provided free copies of the 'DAR Manual for Citizenship,' a textbook of instructions to prepare new citizens to pass citizenship tests. To date, over 9 million have been distributed free of charge.

"Deserving attention is the youth activities program pursued by the DAR. This is through nationwide programs promoting good citizenship, leadership, dependability, and service. The special character of these programs—good citizens, junior American citizens and children of the American Revolution—is that all are entirely volunteer on the part of the participants; winners at local and State levels are not hand-picked by the DAR or its members, but rather by fellow students and faculty groups. Much effort and money go into this work; results of which are highly rewarding.

"In the historic field, the National Society has been outstanding in marking, restoring and maintaining landmarks of importance. It also constructed (and gave to the Valley Forge Foundation, Inc.) the famous Memorial Bell Tower in Pennsylvania at a cost of better than $400,000 and erected the Madonna of the Trail statues across country, marking the movement of America westward.

"Visitors to Washington, D.C., as well as archivists and antique lovers are familiar with the fact that the NSDAR, at its national headquarters, maintains as a public service—open daily—both a genealogical and historic research library and an Americana museum.

"The foregoing items, chosen at random," said Mrs. Duncan, "give some idea of the scope of the DAR program and activities. The record speaks for itself and speaks creditably, I think. Many people know or think of the DAR in different ways," mused Mrs. Duncan, "I have cited some typical examples.

"Should any inquiry be made the DAR will readily cooperate. Any organization that has been in existence nearly three-quarters of a century, which has made a contribution should welcome the opportunity to explain its purposes and operations. The national society's record of accomplishment is a source of pride to its members, and is open to all. Annually, as per act of incorporation by Congress in 1895, this record in condensed form but including full summary of funds collected and disbursed has been submitted to the Congress of the United States by way of the Smithsonian Institution. The decision to reprint this report at public expense has always been the voluntary act of Congresses since the national society came into being and can, I think, be taken as a recognition of the public service our society performs."

WHAT THE DAUGHTERS DO

(Compiled by Mrs. Felix Irwin, recording secretary general)

FOREWORD

Since its organization October 11, 1890, the National Society, Daughters of the American Revolution, has steadfastly pursued its threefold objectives: Historic appreciation, promotion of education and patriotic service.

Over the years, the vision and dedication of the four founding daughters—Miss Eugenia Washington, Miss Mary Desha, Mrs. Ellen Hardin Walworth and Mrs. Mary S. Lockwood—although expanded through committee work have been maintained and adhered to faithfully as evidenced by an outstanding record of accomplishment.

This booklet attempts to give the scope of activities of the national society and to set forth a brief résumé of work achieved. Condensed facts used here have been gleaned from annual reports of national officers and national chairmen. A full account of these reports is available in the published proceedings of the Continental Congress and in the annual report this society renders to the Smithsonian Institution.

The ability and foresight of the national officers and national chairmen who have directed our membership in the various phases of activity have been outstanding. It has been an inestimable service in which we take pride and for which we have overwhelming gratitude. In large measure, such dedication accounts for the strength and integrity which has typified the society for over 70 years.

The headquarters of the NSDAR in Washington—one full city block of buildings—houses an outstanding genealogical library, a lovely museum of Americana dating prior to 1830, together with 28 period-furnitured rooms, Constitution Hall (available as a center of cultural life in the Nation's Capital) and in addition, our own society's administrative offices. A visit there proclaims the ideals of women descendants of American patriots to preserve our country, its constitutional Republic and the American way of life.

MRS. ROBERT V. H. DUNCAN,
President General, NSDAR.

The National Society of the Daughters of the American Revolution was founded on October 11, 1890: (1) to perpetuate the memory and spirit of the men and women who achieved American Independence; (2) to carry out the injunction of Washington in his farewell address to the American people, "to promote, as an object of primary importance, institutions for the general diffusion of knowledge"; (3) to cherish, maintain and extend the institutions of American freedom, to foster true patriotism and love of country, and to aid in securing for mankind all the blessings of liberty. The founders were: Miss Eugenia Washington, Miss Mary Desha, Mrs. Ellen Hardin Walworth, and Mrs. Mary S. Lockwood.

As of June 1, 1962, the active membership of the DAR was 185,146, and 2,861 chapters in the United States, Canal Zone, Cuba, England, France, Mexico, and Puerto Rico.

The DAR was incorporated under the laws of the District of Columbia on June 8, 1891; was granted a charter by the U.S. Congress, signed by President Grover Cleveland in 1896.

The society reports annually to the Secretary of the Smithsonian Institution concerning its proceedings, who in turn reports to the U.S. Congress. An important section of this report lists the location of graves of Revolutionary soldiers and their wives.

The DAR property, 1776 D Street NW, Washington, D.C., is composed of three buildings occupying an entire city block in the most beautiful section of our Nation's Capital, the largest group of buildings in the world owned exclusively by women.

Memorial Continental Hall, the original building, houses the DAR Genealogical Library and 28 period staterooms. The gavel used by Gen. George Washington when he laid the cornerstone of the Capitol in 1793, was used at the laying of the cornerstone of this building on April 19, 1904.

The administration building houses the offices of the national officers, who serve the society for 3-year terms without remuneration, and a personnel staff of over 100. An exceptionally fine museum gallery is located on the first floor and the Americana collection in the archives room on the second floor.

Constitution Hall, the third building, contains the largest auditorium in the District of Columbia. It was built to house the DAR Continental Congress, the annual meeting of the national society, held during the week of the anniversary of the Battle of Lexington, April 19, which is attended by 4,000 delegates and members from all parts of the country.

In compliance with requests for rental of the hall by the people of Washington the Daughters consented to lease it as a public service. During the concert season, Constitution Hall is used as Washington's chief and largest cultural center.

Each year our society awards a prize of a $100 U.S. savings bond, or its equivalent, to the winning classman in the following academies: U.S. Air Force, U.S. Coast Guard, U.S. Marine Corps, U.S. Merchant Marine, U.S. Military Academy, and U.S. Naval Academy.

We were first to award trophies for excellence in antiaircraft gunnery.

The DAR Hospital Corps was organized April 26, 1898, to recruit nurses for service during the Spanish-American War, and became the nucleus of the Army Nurse Corps. The national society provided pensions for these nurses whose service was not of sufficient duration to receive Government pensions.

Relief work during this period, distribution of food and clothing, cash, and nurses supplies, amounted to more than $70,000.

During World War I cash and gifts from DAR members totaled $3,730,385, including aid to French war orphans and the restoration of the water system in the village of Tilloloy, France. The DAR purchased over $130,015,230 in war bonds.

During World War II the DAR purchased bonds in the amount of $206,619,715; and gave $1,329,811 in projects, and $1,279,848 to the American Red Cross. State rooms in Memorial Continental Hall and the corridors of Constitution Hall were turned over to our neighbor, the American Red Cross, for additional office space.

The erection of the Memorial Bell Tower at Valley Forge by the DAR, at a cost of half a million dollars, represents the largest undertaking of the society to mark an historic spot. The tower houses a carillon of 56 bells and is consecrated "To the glory of God and the memory of our American heroes."

AMERICAN INDIANS

DAR aid to American Indians is coordinated through the American Indians Committee. Over $100,000 was given last year for scholarships and clothing: $21,755 to Bacone Indian College, Muskogee, Okla.; $34,000 to

St. Mary's School for Indian Girls, Springfield, S. Dak. DAR members also help the Indian help himself by buying and selling his beautiful handcraft.

AMERICAN MUSIC

Music about America and by American composers is promoted in churches, clubs, industry, through essay contests and musical programs in schools, and as therapy in hospitals. American Music Week is observed by DAR chapters.

AMERICANISM AND DAR MANUAL FOR CITIZENSHIP

Citizenship training and study of American Government and institutions are promoted through this committee.

Over 9 million copies of the DAR Manual for Citizenship have been distributed. This study book given free to foreign born applying for citizenship contains the Declaration of Independence, the Constitution of the United States, rules governing the flag of the United States, responsibilities of citizenship, and requirements for naturalization.

Thousands of aliens receive help in preparing for naturalization examinations. Throughout our 50 States and the District of Columbia members of this society have given of their time and means in teaching classes vital American laws and principles. This aid is widely commended. One Federal examiner stated that those showing the keenest intelligence in Naturalization Courts are taught by the DAR. This society believes Americanism is best fostered by friendships between aliens and citizens and by inculcating the ideals of our country in the hearts and minds of those who have made this country their choice.

Members of this committee attend Naturalization Court ceremonies and present the citizens with U.S. flags, welcome cards, and patriotic literature. Members continue to visit the new citizens following their naturalization, take them to church, to libraries and historical places, and assist them to register and vote.

This committee sponsors Americanism essay contests for children in the public schools; 1,547 prizes were presented the winners last year. The DAR assists in carrying out all phases of the program and supports it financially.

The Americanization School in Washington, D.C., was founded by the DAR in 1913 and is the only school of its kind in the United States. By an act of Congress this school was incorporated into the District of Columbia school system in 1919. Approximately 1,500 students from 80 nations attend this school.

CHILDREN OF THE AMERICAN REVOLUTION

This committee helps organize societies in the CAR. The national society, Children of the American Revolution, was authorized by the 4th Continental Congress of the DAR in 1895, "To secure * * * a perception and adoption of those American principles and institutions for which their ancestors fought and died." There are more than 18,000 members of the CAR.

CONSERVATION

This committee, authorized in 1909, coordinates the vital work of DAR chapters whose members planted 8,755,019 trees, shrubs, and seedlings last year, many in public parks and along highways. Thousands of bulbs and wild flower gardens were planted in public places. Many towns and cities were designated as bird sanctuaries through the efforts of DAR chapters.

Education of youth in conservation has been stressed. Chapters assist CAR societies, JAC, 4H, and other youth groups in planning programs; sponsor essay, poster, and scrapbook contests and junior conservation societies. Conservation literature was distributed to schools and libraries. Seventy-seven scholarships were given to students and teachers studying conservation.

DAR GOOD CITIZENS

Citizenship training is the goal of this committee. A nationwide contest open to senior high school girls is held each year, and winners are chosen for the qualities of dependability, leadership, service, and patriotism. Our society presents a certificate and pin to the good citizen in each school, a $100 U.S. Savings Bond and pin to each State good citizen, and a $1,000 scholarship to the National DAR Good Citizen for use at the college of her choice.

DAR LIBRARY

The DAR Genealogical Library, one of the finest in the world, occupies the main floor of Memorial Continental Hall, and contains more than 49,000 books and pamphlets and 22,000 manuscripts.

The library is open to the public Monday through Friday, 9:30 to 4. There is a fee of $1 a day for nonmembers. The month of April is reserved for DAR members.

DAR MAGAZINE

The DAR magazine is the official organ of the national society, first published in 1892. It contains articles of historic and national interest, as well as a message each month from the president general, the parliamentarian, DAR committees, chapter and member news, a general timely news page, and the minutes of the national board of management. Subscriptions for the magazine come from the public as well as members.

DAR MAGAZINE ADVERTISING

This committee secures advertisements for the DAR magazine, as they help finance the magazine as well as add to the interest. Many States advertise their beautiful vacation resorts, historic restorations, and their most important industries.

DAR MUSEUM

The DAR Museum is dedicated to the colonial, Revolutionary, and early Federal periods of our country's growth and in general these periods, prior to 1830, are represented by the collection in the museum and 28 State rooms. Guides are available to conduct the many visitors, including tours from out of town and many schoolchildren.

The museum is open to the public, at no cost—9 to 4—Monday through Friday, but closed except to the membership during Continental Congress, the week of the 19th of April.

DAR SCHOOL

The work of this committee began in 1903 under the patriotic education committee. Two schools depend upon DAR funds for maintenance—Kate Duncan Smith in Alabama and Tamassee in South Carolina.

Kate Duncan Smith DAR School is located at Grant, in Marshall County, Ala., on Gunter Mountain. It was established in 1924 by the Alabama Society of the Daughters of the American Revolution.

This day school with an enrollment of approximately 656 is a 12-grade school, primary through high school, and many outstanding graduates attend institutions of higher learning with DAR financial assistance. With 25 buildings, 240 acres (90 in the model farm), and thousands of dollars worth of equipment, it represents an investment of approximately $1 million. Of far greater value, however, is the contribution it makes to the life of the community, State, and Nation.

Tamassee DAR School, Tamassee, S.C., started in 1919 by the South Carolina DAR, has 30 buildings on 790 acres of land in Oconee County near the junction of South Carolina, North Carolina, and Georgia, and located in scenic mountain territory.

Tamassee furnishes food and clothing as well as education to its 250 boarders and educates 250 day students as well. To be a boarding student at Tamassee, a child must not live within walking distance of a school or highway. No child is ever turned away because of inability to pay the small fees.

DAR members contribute to seven other schools, mainly in the form of gifts and scholarships. Over $180,500 was contributed last year.

THE FLAG OF THE UNITED STATES OF AMERICA

Love and respect for our flag are taught by the DAR and more than 26,000 flags and 40,000 flag codes were presented last year to newly naturalized citizens, schools, Boy and Girl Scout troops, Camp Fire Girls, churches, hospitals and organizations.

GENEALOGICAL RECORDS

The basic work of this committee is collecting unpublished genealogical source material and preparing it for the DAR Library. This work has been augmented to include specific assistance to potential members. A total of 149,808 pages of unpublished records and 7 reels of microfilm was contributed last year.

HISTORICAL

The preservation and marking of historic sites, and the location and marking of graves of Revolutionary soldiers and their wives are interwoven with the promotion of February as American History Month, with exhibits and celebrations. Essay contests on American history are held in schools and colleges throughout the country, and last year 5,596 History Certificates of Award were given by the DAR.

Many documents of historical value were added to our collection of Americana.

HONOR ROLL

This committee serves as a guide for chapter work and recognizes chapters, attaining certain goals in carrying forward the work of the DAR.

JUNIOR AMERICAN CITIZENS

The work of the Junior American Citizens Committee is to encourage and teach all aspects of good American citizenship to our young people through JAC clubs. The program is adaptable to all age groups from kindergarten through high school and embraces children of every race, creed, or color. There are no dues in these clubs, and all material such as handbooks, song sheets, study guides and pins are furnished by the DAR. Each child wears a membership button, each club elects its own officers and conducts its meetings by parliamentary procedure. The motto is Justice, Americanism and Character. A pennant and song have also been approved.

The vast majority of JAC clubs is organized in the public schools, and at the elementary grade level. Reports show that they are also organized in private and parochial schools, community and settlement houses, boys clubs, churches, classes for mentally retarded children, as well as State and church homes for children.

JAC activities include patriotism, history, respect for the flag, good citizenship, civics and government, conservation, health, safety, parliamentary procedure, and community service, and of course parties, picnics, hobbies, projects, crafts.

DAR chapters last year sponsored 8,569 JAC clubs, with a membership of 338,804. The subject for the JAC contests was "What JAC Can Do To Help Preserve Our Freedoms." More than 200 prizes were presented.

JUNIOR MEMBERSHIP

The young women of the society form the junior membership committee and are active in all phases of DAR work, holding many chapter offices. Their special project is the Helen Pouch Scholarship Fund which amounted to over $7,000 last year.

The junior bazaar, held each year during Continental Congress, adds to the scholarship fund.

MEMBERSHIP

A constant growth in membership is the responsibility of this committee, and gains have been steadily recorded.

MOTION PICTURE

Young people make up more than half of the attendance at motion picture theaters. Therefore the motion picture committee considers that one of its most important functions is to alert our membership as to the content of every film released for commercial showing. This is done through the DAR Motion Picture Review, which contains composites prepared by the editor from reviews written by members of the previewing committee; 36 members living within commuting distance of New York City give 1 day weekly as a service to the society and screen each motion picture before it is released to the public. This assures our membership of the opportunity to check the quality of a film before it opens in their own communities. This past year 167 reviews were printed in 11 issues. Of these, only 25 were rated for family viewing and 57 were rated as suitable for adults only. The review will be printed in the DAR magazine. Listed among the subscribers are schools, libraries, hospitals, better films councils, as well as DAR members.

Last year at Continental Congress our society presented an award to the producers of the best film for children, "Babes in Toyland."

DAR chapters sponsor many 16 mm. films for use in schools, hospitals, and throughout their communities.

NATIONAL DEFENSE

The objects of this committee are both educational and patriotic and serve to alert our members to any potential danger to our Republic; to stimulate constructive action in the preservation of the Constitution of the United States of America and adequate defense for our country.

Monthly mailings and the National Defender bring to the chapters in condensed form the most interesting and timely news. Our mailing list of 8,500 includes many nonmembers interested in our resolutions and documented reports. Articles by the chairman also appear in the DAR magazine.

Good citizenship medals were awarded to 3,500 schoolchildren through this committee.

Observance of Constitution Week, September 17–23, is promoted to inspire greater appreciation of this great document, the Constitution of the United States of America, and of the sacrifices and forethought of the Founding Fathers in embodying in it the rights and freedoms which are so dear to the American people.

PROGRAM

Programs reflecting the work and objectives of the DAR are available for chapter use. The files of this committee contain papers on famous people and events in the history of our country and a splendid library of color slides of the showplaces of many States, including historic restorations.

PUBLIC RELATIONS

This committee releases to the press items of special interest regarding the work of the DAR: News of the president general and State conferences, naturalization ceremonies, presentation of flags, Governors' proclamations of February as American History Month, observances of Constitution Week, September 17 to 23; good citizenship awards, presentation of Americanism medals, awards to U.S. Service Academies, celebration of national holidays, other activities at the national, State, and local levels, and news of DAR schools.

Radio and television stations are generous in giving free time to our society for news of State conferences, programs on historic shrines, patriotic anniversaries, and celebrations.

The DAR story was carried last year in 2,600 daily and 2,000 weekly newspapers.

STUDENT LOAN AND SCHOLARSHIP

Loans and scholarships are available to deserving students through DAR chapter and State funds. Last year 556 students received over $400,000.

The Caroline E. Holt Educational Fund was established in 1913 as the Philippine scholarship fund to provide nursing training for Filipino girls, and has since been extended to Alaskan and Negro girls.

DAR scholarships are provided for medical training also.

The national society established and maintained an occupational therapy department in public health hospitals at Angel and Ellis Islands until these hospitals were closed by the Government, and now maintains several $500 scholarships annually to help train students in occupational therapy.

TRANSPORTATION

Traffic safety is an important part of the work of this committee. DAR members are active in promoting legislation in their States to increase safety on the Nation's highways. A contest was held last year.

Arrangements are made through this committee for historic tours, as well as providing transportation to chapter meetings.

STUDY TO DETERMINE EFFECTS OF ANTITRUST LAWS ON SMALL BUSINESS

Mr. HUMPHREY. Mr. President, I call to the attention of the Senate a letter that I received from Mr. John E. Horne, Administrator of the Small Business Administration, which is in relation to my recent resolution, resolution 138, calling for a White House Conference to determine the effects of antitrust laws on small business concerns. This letter points up the great need for a study of this kind. In fact, Mr. Horne stated that he considered this problem "to be one of the most important matters facing the small business community today. I would welcome such a project, for I think it could throw considerable light upon the extent to which the operation of these laws is compatible with the legitimate interests of small business concerns."

Such a study either conducted by a White House Conference on Small Business or by a special committee which would include representatives from the legal, small business, large business, and educational sectors is badly needed and would be most beneficial to all concerned.

I ask unanimous consent to have Mr. Horne's letter printed in the RECORD.

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

SMALL BUSINESS ADMINISTRATION,
Washington, D.C., May 29, 1963.

HON. HUBERT H. HUMPHREY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I was interested to read your remarks in the CONGRESSIONAL RECORD of May 8, submitting a resolution expressing the sense of the Senate that a study should be conducted to determine the effects of the antitrust laws on small business. This has long been a concern of mine, as I know it has been of yours, and I consider it to be one of the most important matters facing the small business community today. I would welcome such a project, for I think it could throw considerable light upon the extent to which the operation of these laws is compatible with the legitimate interests of small business concerns.

While I have not been in contact with either the Attorney General or the Chairman of the Federal Trade Commission on this matter, I feel sure that they too would want to insure that the laws under their respective jurisdictions are not operating to the detriment of the small business community. Perhaps you will want to explore with them the question of the most effective and feasible method of conducting a study such as you propose, and of the degree to which the executive branch might usefully participate.

My initial reaction is that the White House Committee on Small Business would be—as you indicated at the outset of your remarks—an appropriate agency to conduct such a project. In any event, I feel certain that an effective study would require the appropriation of funds for the hiring of personnel beyond those already employed by the Government agencies affected.

With warmest regards, I am,

JOHN E. HORNE,
Administrator.

PRESIDENT KENNEDY CONTINUES TO WAGE PEACE OFFENSIVE IN EUROPE

Mr. HUMPHREY. Mr. President, yesterday in Berlin President Kennedy continued bringing the words of peace and freedom to our stanch allies in Western Germany. His almost unbelievable reception by the West Berliners cannot go unnoticed by the Communist masters of East Germany. President Kennedy's pledge to defend the liberty of West Berlin also contained the words of hope that our ultimate goal remains peace and reconciliation between East and West on the basis of justice, liberty, and self-determination. This is the only possible formula for the reunification of East and West Germany. The enthusiastic response of the West Berliners to this message should serve as proof of the Allies' determination to pursue this course, however long it may take, and whatever sacrifices are asked.

Mr. President, I ask unanimous consent that President Kennedy's address at West Berlin's Free University, his speech at the West Berlin City Hall, and his short message delivered at Tegel Airport be printed in the RECORD. I also ask unanimous consent that an editorial from this morning's New York Times entitled, "The President in Berlin," be printed in the RECORD.

There being no objection, the address, speech, message, and editorial were ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Post, June 27, 1963]

TEXT OF ADDRESS BY PRESIDENT AT FREE UNIVERSITY OF WEST BERLIN

I am deeply honored by the opportunity to address this distinguished gathering and to receive the award of honorary citizen of the Free University of Berlin. During the last hundred years, countless thousands of American students attended the famous universities in Berlin and elsewhere in Germany. I regret that I can share this opportunity only for a day.

Goethe, whose home city I visited yesterday, believed that education and culture were the answer to international strife. With sufficient learning, he wrote, a scholar forgets national hatreds, "stands above nations, and

feels the well-being or troubles of a neighboring people as if they happened to his own."

This is the kind of scholar, I am certain, that the Free University is training. This university was founded by a group of professors and students who believed in education instead of indoctrination. They found that hate was being taught in the old Berlin University in the eastern sector of this city. And, with the help of American authorities, they founded in 1948 this new institution, dedicated in its motto and seal to three enduring ideals—truth, justice and liberty.

FIFTEEN TURBULENT YEARS

In these 15 turbulent years, much has changed. The university enrollment has increased more than sevenfold, and related colleges have been formed. West Berlin has been blockaded, threatened, and harassed, but it continues to grow in industry, culture, size and in the hearts of all freemen. Germany has changed. Western Europe and indeed the whole world have changed. But this university has maintained its fidelity to these three ideals—truth, justice and liberty.

I have chosen, therefore, to discuss the future of this city briefly in the context of these three obligations. Speaking a short time ago at the Rathaus (city hall), I reaffirmed my country's commitments to West Berlin's freedom and restated our confidence in its people and their courage. The shield of moral and military commitment with which we guard the freedom of the West Berliners will not be lowered or put aside so long as its presence is needed.

But behind that shield, it is not enough to mark time, to adhere to the status quo while awaiting a change for the better. In a situation fraught with challenge, in an era of rapid change, every resident of West Berlin has a duty to consider where he is, where his city is going, and how it best can get there.

The scholar, the teacher, and the intellectual have a higher duty than all others. For society has trained you to be leaders, both thinkers and doers. This community did not facilitate your education merely to give you a head start in earning an income.

This university has been built and maintained by the dedication of those who believed in the future of this city. All of you, therefore, have a special obligation to help forge that future, and to do so in terms of truth, justice, and liberty.

DEALING WITH REALITIES

First, what does the truth require? It requires us to face the facts—to cast off self-deception, to refuse to think merely in slogans. If we are to work for the future of this city, let us deal with the realities as they actually are, not as they might have been and not as we wish they were.

Reunification, I believe, will some day be a reality. The lessons of history support that belief, especially the history of the world in the last 18 years. The strongest force in the world today has been the strength of the state, of the ideal of nationalism, of a people, and in Africa, Latin America, and Asia, all around the globe countries have sprung into existence, determined to maintain their freedom.

This has been one of the strongest forces on the side of freedom, and it is a source of satisfaction to me that so many countries in Western Europe recognize this and chose to move with this great tide, and therefore that tide does serve us and not our adversaries.

But we all know that a police state regime has been imposed on the eastern sector of this city and country. The peaceful reunification of Berlin and Germany will, therefore, not be either quick or easy. We must first bring others to see their own true interest better than they do today.

What will count in the long run are the realities of Western strength, the realities of Western commitment, the realities of Germany as a nation and the Germans as people, without regard to artificial boundaries of barbed wire. Those are the realities on which we rely—and others, too, would do well to recognize them.

Secondly, what does justice require? In the end, it requires liberty, and I shall come to that. But in the meantime, justice requires us to do whatever we can, in this transition period, to improve the lot and maintain the hopes of those on the other side.

It is important that the people in the barren confines to the East be kept in touch with Western society, through all the contacts and communications that can be established, through all the trade that Western security permits.

SEES CITY MORALE HIGH

Above all, whether they see much or little of the West, what they see must be so bright as to contradict the daily drumbeat of distortion from the East. You have no higher opportunity, therefore, than to stay here in West Berlin, to contribute your talents and skills to its life, to show your neighbors democracy at work, a growing and productive city offering freedom and a good life to all.

You are helping now by your studies and by your devotion to freedom, and you have earned the admiration of your fellow students, both East and West.

Today I have had a chance to see all this for myself. I have seen new housing going up, new factories, new office buildings. I have seen examples of thriving commerce and of vigorous academic and scientific life. Best of all, I have seen the wonderful people of West Berlin.

I will tell my countrymen that morale in West Berlin is high. Your standard of living is high. Your faith in the future is high. And this is not an isolated outpost cut off from the world. Students come here from many countries. The developing nations send missions here to see freedom at work. Conventions held here draw attendance from all over the globe. And in the future, new projects of science, learning, and industry will bring more people to this city.

Those of you who may return from study here to other parts of Western Europe will still be helping to forge a society which most of those across the wall yearn to join. The Federal Republic of Germany, as I now know better than ever, has created a free and dynamic economy from the disasters of defeat, a bulwark of freedom from the ruins of tyranny.

DEDICATION DEMONSTRATED

West Berlin and West Germany have demonstrated their dedication to the liberty of the human mind, the welfare of the community, and peace among nations.

They offer social and economic security to all their citizens—good health, good homes, good schools. And all this has been accomplished through the revival not only of their economic plant but of their democratic traditions.

Finally, what does liberty require? The answer is clear: a united Berlin, in a united Germany, united by self-determination—and living in peace.

This right of free choice is no special privilege claimed for Germans alone. It is an elemental requirement of human justice. So this is a goal we shall never abandon. And it is a goal which may well be obtainable most readily in the context of a reconstitution of the larger Europe on both sides of the harsh line which now divides it.

This idea is not new in the postwar West. Secretary Marshall, soon after his famous speech at Harvard University urging aid to the reconstruction of Europe, was asked what area his proposal might cover. And he replied that he was "taking the commonly accepted geography of Europe—west of Asia."

WINDS OF CHANGE BLOW

His offer of help and friendship was rejected, but it is not too early to think once again in terms of all of Europe. For the winds of change are blowing across the Iron Curtain as well as in the rest of the world. The cause of human rights and dignity, some two centuries after its birth in Europe and the United States, is still moving men and nations with ever-increasing momentum.

The Negro citizens of my own country have strengthened their demand for equality and opportunity—and the American people and Government are going to respond. The pace of decolonization has quickened in Africa. The peoples of the developing nations have intensified their pursuit of social and economic justice.

The people of Eastern Europe, even after 18 years of oppression, are not immune to change. The truth never dies. The desire for liberty can never be fully suppressed. The people of the Soviet Union, even after 45 years of party dictatorship, feel the forces of historical evolution. The harsh precepts of Stalinism are officially recognized as bankrupt. Economic and political variation and dissent are appearing, for example, in Poland, Rumania, and the Soviet Union itself.

The growing emphasis on scientific and industrial achievement has been accompanied by increased education and intellectual ferment. Indeed, the very nature of the modern technological society requires human initiative and the diversity of free minds. So history itself runs against Marxist dogma, not toward it. Nor are such systems equipped to cope with the organization of modern agriculture and the diverse energies of the modern consumer in a developed society.

In short, these dogmatic police states are an anachronism. Like the division of Germany, the division of Europe is against the tide of history. The new Europe of the West—dynamic, diverse, and democratic—must exert an ever-increasing attraction on the peoples to the East. And when the possibilities of reconciliation appear, we in the West will make it clear that we are not hostile to any people or system, provided they choose their own destiny without interfering with the free choice of others.

WOUNDS TO BE HEALED

There will be wounds to be healed and suspicions to be eased on both sides. The difference in living standards will have to be reduced, by leveling up, not down. Fair and effective agreements to end the arms race must be reached.

These changes will not come today or tomorrow, but our efforts for a real settlement must continue undiminished.

As I said this morning, I am not impressed by the opportunities opened to popular fronts throughout the world. I do not believe that any Democrat can successfully ride that tiger. But I do believe in the necessity of great powers working together to preserve the human race or otherwise we can be destroyed.

This process can only be helped by the growing unity of the West, and we must all work for that unity.

For in unity there is strength, and any sign of division or weakness now could only tempt others into new and hostile adventures. Nor can the West ever negotiate a peaceful reunification of Germany from a divided and uncertain base.

In short, only if they see over a period of time that we are strong and united, that we are vigilant and determined, are others likely to abandon the courses of armed aggression or subversion; only then will genuine, mutually acceptable proposals to reduce hostility have a chance to succeed.

This is not an easy course. There is no easy course to the reunification of Germany and the reconstitution of Europe. But there is work to be done and obligations to be met—"obligations to truth, justice, and liberty."

[From the New York (N.Y.) Times]

TEXT OF KENNEDY STATEMENTS IN BERLIN

AT TEGEL AIRPORT

I want to express my warm thanks to Mayor Brandt for his generous welcome. I am very proud to come here and meet the distinguished Chancellor and to be accompanied by an old veteran of this frontier, Gen. Lucius D. Clay, who in good times and bad has been identified with the best in the life of this city.

I do not come here to reassure the people of West Berlin. Words are not so important, but the record of the three powers, our French friends, whose hospitality we enjoy here, our British friends, and the people of the United States—their record is written in rock.

AT CITY HALL

I am proud to come to this city as the guest of your distinguished mayor, who has symbolized throughout the world the fighting spirit of West Berlin.

And I am proud to visit the Federal Republic with your distinguished Chancellor, who for so many years has committed Germany to democracy and freedom and progress, and to come here in the company of my fellow American, General Clay, who has been in this city during its great moments of crisis and will come again if ever needed.

Two thousand years ago the proudest boast was "civis Romanus sum." Today in the world of freedom the proudest boast is "Ich bin ein Berliner."

I appreciate my interpreter translating my German.

There are many people in the world who really don't understand—or say they don't understand—what is the great issue between the free world and the Communist world. Let them come to Berlin.

There are some who say that communism is the wave of the future. Let them come to Berlin.

And there are some who say in Europe and elsewhere "we can work with the Communists." Let them come to Berlin.

And there are even a few who say that it's true that communism is an evil system but it permits us to make economic progress. Let them come to Berlin.

FREEDOM NEEDS NO WALL

Freedom has many difficulties and democracy is not perfect. But we have never had to put a wall up to keep our people in, to prevent them from leaving us.

I want to say on behalf of my countrymen who live many miles away on the other side of the Atlantic, who are far distant from you, that they take the greatest pride that they have been able to share with you, even from a distance the story of the last 18 years.

I know of no town, no city that has been besieged for 18 years that still lives with the vitality and the force and the hope and the determination of the city of West Berlin.

While the wall is the most obvious and vivid demonstration of the failures of the Communist system, all the world can see we take no satisfaction in it, for it is, as your mayor has said, an offense not only against history, but an offense against humanity, separating families, dividing husbands and wives and brothers and sisters and dividing a people who wish to be joined together.

What is true of this city is true of Germany. Real lasting peace in Europe can never be assured as long as one German out of four is denied the elementary right of free men, and that is to make a free choice.

RIGHT TO BE FREE EARNED

In 18 years of peace and good faith this generation of Germans has earned the right to be free, including the right to unite their families and their nation in lasting peace with good will to all people.

You live in a defended island of freedom, but your life is part of the main. So let me ask you as I close, to lift your eyes beyond the dangers of today to the hopes of tomorrow, beyond the freedom merely of this city of Berlin and all your country of Germany to the advance of freedom everywhere, beyond the wall to the day of peace with justice, beyond yourselves and ourselves to all mankind.

Freedom is indivisible and when one man is enslaved, Who are free? When all are free, then we can look forward to that day when this city will be joined as one and this country and this great continent of Europe in a peaceful and hopeful globe.

When that day finally comes, as it will, the people of West Berlin can take sober satisfaction in the fact that they were in the frontlines for almost two decades.

All free men, wherever they may live, are citizens of Berlin. And, therefore, as a freeman, I take pride in the words "Ich bin ein Berliner."

[From the New York (N.Y.) Times, June 27, 1963]

THE PRESIDENT IN BERLIN

On the 15th anniversary of the start of the Allied airlift that broke Stalin's blockade of Berlin, President Kennedy strode up to the Berlin wall, peered over it into drab Communist-ruled territory and denounced the barricade as a symbol of communism's failure and an offense against history and humanity. For the hundredth time, but this time to the deafening cheers of wildly enthusiastic West Berliners, he reaffirmed Western determination to defend their liberty and pointed out that, above all rifts in the alliance, French, British, and American soldiers are standing shoulder to shoulder to guard this outpost on the frontier of freedom.

Defense, vital as it is, is only one aspect of Mr. Kennedy's "strategy of peace," which he also carried to and over the wall. Precluding any possible Communist charge of provocation, he reiterated that his ultimate goal is peace and reconciliation between East and West. Such a peace, he rightly emphasized, must be based on justice, liberty, and self-determination. That is indeed the way, and the only possible way, to reunite Berlin, German and, beyond them, to create even a "larger Europe" across the Iron Curtain.

The President made it plain that he wanted to raise no illusions in German minds. To hotheads who might call for more direct action he emphasized that there is no quick or easy way to the goal and he asked his listeners to face facts, cast off self-deception and stop thinking in slogans. But the winds of change are unmistakably blowing across the Iron Curtain, undermining the anachronistic police state and creating a new climate which will some day permit a reunification of peoples. The President again reminded us that if the West remains strong, dynamic, and democratic, it will exert an ever-increasing attraction on the East.

President Kennedy thus left to Berlin, Germany and all of Europe—East and West—a message of hope and caution. No realistic German will quarrel with it. Premier Khrushchev, who is now rushing to Berlin, may dispute the course of history, but even he cannot seriously dispute the President's peaceful intent.

COMMON MARKET POLICY

Mr. HUMPHREY. Mr. President, I call to the attention of the Senate a recent action by the Council of Ministers of the European Economic Community in connection with the Common Market's policy on agriculture.

A press release from the European Community Information Service states that the Council of Ministers has decided on some moves toward eventual harmonization of grain prices throughout the Community, and to reduce the threshold price applied to poultry imports from nonmember countries.

It is significant that this action was taken just prior to the GATT negotiations on poultry, which began in Geneva June 25 and now are in progress.

It also bears significance in light of a concurrent resolution the distinguished minority leader [Senator DIRKSEN] and I submitted Tuesday. The concurrent resolution calls upon our negotiators with the Common Market to obtain adequate assurances that access to export markets for our agricultural products be maintained, and urging the executive branch of our Government to continue to use all its resources to expand trade in agricultural commodities on a nondiscriminatory basis.

While the Council of Ministers did not reduce the threshold price on poultry to the level desired by the United States or the EEC Commission, it is significant that action was taken, limited though it was.

I am hopeful this will result in a lowering of the supplemental levy on poultry imports. I also hope the negotiations now going on in Geneva with regard to poultry will result in a reduction of the levy to a point where U.S. poultry producers again can compete for markets within the European Economic Community.

Mr. President, I ask unanimous consent that the press release to which I have referred be inserted at this point in the RECORD.

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

COMMON MARKET MAKES BREAKTHROUGH ON FARM POLICY—COUNCIL OF MINISTERS MOVES TOWARD HARMONIZED GRAIN PRICES, REDUCES POULTRY THRESHOLD PRICE SLIGHTLY

The Council of Ministers of the European Economic Community made a limited but significant breakthrough in the development of the Community's agricultural policy at its Brussels meeting last week (June 17–21).

Despite major difficulties in reaching agreement, the Ministers decided on some moves toward eventual harmonization of grain prices throughout the Community—an essential element of the agricultural policy.

The Council also decided to reduce the threshold price applied to poultry imports from nonmember countries, although the reduction was less than that recommended by the EEC Commission and desired by the United States.

There were in fact two Council meetings in June—one of the agricultural ministers and one of foreign ministers.

FOREIGN MINISTERS HAD HEAVY AGENDA

The foreign ministers met on June 17–18. They were expected to discuss the Community's working program for the rest of 1963—a planned agenda submitted by the permanent representatives and intended to restore the momentum lost within the Community after the suspension of negotiations with Britain.

(The working program covers the decisions to be taken on such matters as the pattern of future Community contacts with Britain and a timetable for action needed in the agricultural field to enable the Community to participate fully in the forthcoming "Kennedy round" of GATT trade negotiations. While these decisions have been accepted in principle by the six EEC governments for inclusion in the working program, other matters remain undecided, and many details have to be worked out.)

Because certain foreign ministers were unable to attend the June 17–18 meeting and were represented by deputies, discussion of the working program was postponed until the next Council meeting, scheduled for July 10–11.

At last week's Council meeting the foreign ministers did, however, empower the Commission to meet U.S. Government representatives in Geneva on June 25 to hear American complaints concerning the Community levy on poultry imports.

U.S. exports of poultry to the Community have declined sharply since the application in July 1962 of the Common Market's poultry regulations under the common agricultural policy. The U.S. Government had asked for negotiations on the basis of an agreement reached in 1962 at the close of the last GATT tariff negotiations ("Dillon round"). This agreement states that the Community undertakes "after adoption of the agricultural policy for * * * poultry * * * to enter into negotiations with the United States on the situation of exports of these products by the United States."

AGRICULTURAL MINISTERS MET A DEADLINE

At their June 18–21 meeting the agricultural ministers revised some grain prices and made changes in quality standards which now or in the future will have the effect of narrowing differences between grain prices in the member States.

By these decisions they met an important deadline. Under the original agreement on the common agricultural policy, reached by the six member countries in January 1962, it was decided that upper and lower limits for Community grain prices should be fixed by the Council in time for the 1963–64 selling period, which begins next week (July 1).

For soft wheat, the price range will remain the same for the 1963–64 selling period as it was in the previous year—from $89.43 to $118.92 per metric ton.

For barley and rye, existing upper price limits remain unchanged, but acceptance by Germany and Luxembourg of different quality standards means a price reduction in practice in these countries.

The lower price limit for barley was raised by $.75 and for rye by $2 throughout the Community. The new price ranges are: $72.17 to $103.07 a ton for barley; $67.71 to $108.17 a ton for rye.

The existing lower limit of maize prices was raised to $65.60 a ton.

The agricultural ministers also decided on the principle for fixing minimum import prices for grains imported from nonmember countries.

These come into play when the importing country has no guaranteed price for its own farmers for the grain in question—which would otherwise automatically govern import price levels.

According to the Council's decision, import prices will be keyed to the agreed range of barley prices currently being applied in the member countries. For example, Germany will be able to set the import price for sorghum in a range of 90 to 105 percent of her prevailing barley price. For other imported grains, the percentages vary, but the same principle of keying these grains to the barley price will be followed.

In addition, the agricultural ministers decided to reduce the threshold price applied to poultry imports by $0.015 to $0.71 per kilogram. This decision was taken on the basis of a change in the "conversion factor" (the number of kilos of poultry feed needed to produce one kilo of chicken meat). The Council dropped the old factor of 2.7 kilograms and instituted a new one of 2.6. The Commission had recommended 2.5, which would have meant an even lower threshold price.

The new reduction of the threshold price has the effect of modifying an earlier decision taken by the ministers at their May 30–31 meeting. At that time they decided to raise the supplementary levy on poultry imports into the Community by 10 pfennigs to a total of 30 pfennigs a kilo ($0.075). (This reversed a provisional decision of the Common Market Commission which had given preferential treatment to U.S. poultry exports by reducing the levy on imports from the United States from 20 to 15 pfennigs a kilo ($0.0375), while increasing the levy to $0.075 a kilo for imports from all other sources.) The latest action will to some extent counteract the earlier increase in the supplementary levy.

Finally, the agricultural ministers decided to abolish Community tariffs on tea and tropical timber. This concession is due to take effect on January 1, 1964, unless the Community's new association agreement with the 18 independent African countries has still not been signed by then.

COMMUNITY'S CONTACTS WITH BRITAIN STILL TO BE DECIDED

Earlier, the question of the future pattern of Community contacts with Great Britain was discussed at length at the Council's May 30–31 meeting. The ministers of Germany, Netherlands, Belgium, Luxembourg, and Italy urged that there should be periodic meetings between the Community countries' Permanent Representatives in Brussels and the head of the British Mission to the European Community, the recently appointed Sir Douglas Walter O'Neill.

This proposal was opposed by French Foreign Minister Maurice Couve de Murville on the grounds that it would give Britain a voice in the Community's internal discussions without the obligations of membership. M. Couve de Murville said that he was in favor of maintaining contact with Britain but that this would be done through existing channels—principally contacts between the Common Market Commission and the British Mission in Brussels.

The Council is expected to return to this problem at its next meeting in July, scheduled for July 10–11.

The question of contacts between Britain and the Community was also raised in Paris on June 5, at the assembly of the Western European Union (WEU), the only body currently uniting the Six and Britain. Lord Privy Seal Edward Heath, in a speech to the assembly, said that the WEU Council should hold a meeting at ministerial level in the near future. French Secretary of State for Foreign Affairs Michel Habib-Deloncle stated that the French Government would not oppose a ministerial meeting in principle, providing prior agreement were reached on an agenda which did not include questions within the jurisdiction of other organizations. Most observers took this to mean that the French Government would veto any discussion on matters affecting the European Community as such.

Common Market Commission President Walter Hallstein said, during a press conference in Brussels on June 17, that he was convinced that the most effective solution would be to increase bilateral contacts between the Commission and the British Mission in Brussels. The Commission's opposition to multilateral contacts, he added, was based on the fact that it wished to emphasize that the Community was a single unit.

Whatever the outcome of the Council of Ministers' meeting in the near future, President Hallstein continued, the Commission would remain true to its "action program," which had received the full support of both the European Parliament and the Community's Economic and Social Committee. As part of this action program (for the second stage of the Common Market), the Commission had already submitted proposals on a common transport policy to the Council of Ministers, and it would soon submit proposals on harmonizing the Community countries' monetary and financial policies, he said. "In this way, the Council's difficulties will not paralyze the Community's normal business: The Council will still have to pronounce on the proposals of the Executive (the Commission) in accordance with the Treaty rules," President Hallstein concluded.

ORDER OF BUSINESS

The PRESIDING OFFICER. Pursuant to the unanimous-consent agreement entered into yesterday, the Chair now recognizes the Senator from Oregon [Mr. MORSE], inasmuch as the hour of 1 o'clock has now arrived.

Mr. GRUENING. Mr. President, is the morning hour over?

The PRESIDING OFFICER. The Senator from Oregon has been recognized, pursuant to the agreement entered into yesterday. The Senator from Oregon may utilize the time in any way he wishes.

Mr. MORSE. Mr. President, I am delighted to yield to the Senator from Alaska.

Mr. GRUENING. Mr. President, I appreciate the courtesy of the Senator from Oregon, but I do not wish to impose upon his time.

Mr. MORSE. Mr. President, I am very glad to yield to the Senator from Alaska, to permit him to make an insertion in the RECORD.

Mr. GRUENING. Mr. President, I appreciate very much the customary courtesy of the Senator from Oregon.

LET US HAVE EQUALITY FOR WOMEN—WE ARE FLAGRANTLY DISCRIMINATING AGAINST THEM

Mr. GRUENING. Mr. President, the United States, I regret to say, has suffered a severe defeat in one very important aspect of human rights. It was a needless defeat. It need not have happened and should not have happened.

I refer to the failure on the part of the U.S. Space Agency to recognize the right of women to play an equal part in the space program. Our defeat—and it is a defeat for the whole American people—has been dramatically highlighted by the Russians' sending of Valentina Tereshkova, a woman, into orbit.

If it were not for the unfortunate tensions of the cold war and our consciousness of the ever-declared purpose of the Kremlin to impose its totalitarian tyranny on all mankind, we could rejoice in Russia's advanced and commendable attitude toward women, manifestly—I am sorry to have to say it—superior to ours.

This Russian attitude and our own shortcomings in this respect have been highlighted soundly, justly, graphically, and devastatingly by Clare Boothe Luce in her article in the current issue of Life magazine.

Mrs. Luce properly not only pays tribute to the Russians for sending a woman cosmonaut into space, but also points out how very much better the Russians have done in opening the professions and other avenues of opportunity to women.

I strongly recommend a reading of Clare Boothe Luce's righteously indignant presentation of this failure on our part.

The same issue of Life contains the pictures of a baker's dozen of American women—most of them trained and expert aviators, with a description of their qualifications and achievements—who, but for the narrow exclusiveness of our space agency, could have been vouchsafed the same opportunity that the Russian Government afforded. Their names and descriptions merit repetition here. They include, let it be pointed out, the talented wife of our own colleague, PHIL HART:

Rhea Hurrle Allison: A schoolteacher before she turned pilot, she and her husband have an aircraft brokerage business in Texas, and she delivers planes to their customers around the country.

Myrtle Cagle: A flight instructor in Macon, Ga., and is married to an expupil. As a child she once jumped from the roof with only a pillowcase to slow her descent. She flew airplanes at age 14.

Jerrie Cobb: First U.S. woman to undergo tests for space flight, she has been flying 20 years—since she was 12. She is an aircraft company executive in Oklahoma City, has won many flying awards, and established four world's records.

Jan Dietrich: Company pilot for a large California construction firm, she has logged over 8,000 hours of flying time and is one of the select group of women with an airline transport pilot's rating.

Marion Dietrich: Like her twin sister Jan, she is a pilot in California. She flies charter planes, is an accomplished pianist and writes freelance articles. She also has a degree in psychology.

Mary Wallace Funk II: She is a chief pilot for a California flying service. Last year, on her own initiative, she went through centrifuge tests and a U.S. Marine high-altitude chamber.

Sarah Lee Gorelick: Trained in mathematics, physics, and chemistry, as well as flying, she left her job at A.T. & T. when her astronaut tests began taking too much time. She lives in Kansas City.

Jane Hart: Married to Senator PHILIP HART, Michigan Democrat, she has often flown him around on campaign tours, frequently takes their eight children aloft.

Jean Hixson: A fifth-grade teacher in Akron, Ohio, she is an Air Force Reserve captain. Once a WASP test pilot and flight instructor, Jean flies everything from blimps to gliders to jets.

Irene Leverton: Supervisor of a flying school in California, she has independently undergone rigorous prespace flight tests at Edwards Air Force Base. She parachutes and skis to keep in shape.

Geraldine Sloan: A pilot for a Dallas aviation firm, she has an 11-year-old son:

I do pushups and watch my diet—

She says—

but I'm getting tired of staying in shape for nothing.

Bernice Trimble Steadman: A lawyer's wife, she owns and operates a charter service and flying school at the Flint, Mich., airport. She gives frequent lectures on space opportunities for youth and women.

Gene Nora Stumbough: An amateur cello player with a degree in English, she works for an aircraft manufacturer in Wichita, Kans. She formerly taught flying, now demonstrates and sells airplanes.

Doubtless there are others. In the psychological war which the Russians are waging upon the free world, their first triumph in the field of space was the launching of the sputnik. It should have been a cause of regret on the part of all Americans, although at the time officials of the Eisenhower administration sought to depreciate this great achievement and to make light of it, and dismissed it as having the unimportance of tossing a basketball into the asmosphere.

However, we are catching up rapidly in the conquest of space, and are on the way to overcoming the Russian head start. But the sending of a woman into space—and as it happens, she was not even a flier—is, in my judgment, a far greater defeat for us, because its implications are far wider.

It is a challenge to a land which traditionally has esteemed and exalted women, presumably above all other peoples. Clearly it is time that instead of putting women on a theoretical pedestal, with all the gallantry that supposedly goes with it, we launch a realistic program on every front to give them the full equality of opportunity which our space agency, in this instance, has flagrantly denied them.

And we might extend the same equality of opportunity to the professions and in public life, in which their participation has been grossly and unfairly inadequate. We should have more than two women among the 100 Senators. How admirably those two Members—MARGARET CHASE SMITH and MAURINE NEUBERGER—have performed both for their constituencies and for the whole Nation. There should be more than 11 women Representatives out of the 435 in the House. There should be more women in our judicial system. No woman is either on the Supreme Court or among the 78 incumbents of 10 Federal circuit courts, and the Federal district court system has 305 men judges and only 2 women. It is shocking and disgraceful. We should have more women doctors, lawyers, engineers, architects.

I ask unanimous consent that Clare Boothe Luce's article, entitled: "But Some People Simply Never Get the Message," be printed at this point in my remarks.

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

BUT SOME PEOPLE SIMPLY NEVER GET THE MESSAGE

(By Clare Boothe Luce)

Why did the Soviet Union launch a woman cosmonaut into space? Failure of American men to give the right answer to this question may yet prove to be their costliest cold war blunder. But already they are giving the wrong answers.

The first wrong answer is coming from U.S. space experts. According to the press, they hold—to a man—the view that Valentina Tereshkova was fired from the launching pad as a Soviet space program female guinea pig, and that the experiment is useless, at least for the foreseeable future.

Harold M. Schmeck, Jr., writing in the New York Times, reported: "If space exploration continues to grow * * * women are considered likely to play a part in it over the long range * * * but there appears to be no hard evidence that female physiology or psychology would confer any special advantages on a woman space traveler." Astronaut John Glenn commented more cautiously that "so far we felt the qualifications we were looking for * * * were best taken care of by men." An unidentified NASA spokesman gave much stronger vent to his prejudices. He said that the talk of an American space woman "makes me sick at my stomach."

The second wrong answer, stemming from the first (the inherent superiority of men as astronauts), is that the Russians launched Valentina as a propaganda gimmick. Lt. Gen. Leighton Davis, commander of the Air Force Missile Test Center at Cape Canaveral, dismissed the flight as "merely a publicity stunt." Brooklyn Congressman EMANUEL CELLER, who greatly enjoys his role as a leader against racial and religious discrimination, also called it "just a sort of stunt." The silliest and, to women, most irritating comment of all was Senator KENNETH KEATING'S kiss-off: "It is carrying romance to a new high."

It is easy for the American male to dismiss Russia's thrust of a woman cosmonaut into space as propaganda. The advertising fraternity has long used sex to sell everything from deodorants to automobiles. It is easy for Americans to assume that once again "sexiness" has rung the bell: the flight of the sea gull has made far bigger world headlines than a solo flight of the hawk would have done.

But neither the answer that Valentina Tereshkova is a scientific guinea pig of small worth or that she is the Moscow version of Madison Avenue's sexy publicity gimmicks is the right answer. The right answer is that Soviet Russia put a woman into space because communism preaches and, since the revolution of 1917, has tried to practice the inherent equality of men and women.

The progress of women in all Communist countries, but especially in the U.S.S.R., has been spectacular. In 1929 there were but 3,118,000 Soviet women who earned wages and salaries; in 1961 there were 31,609,000. In 1917, Russia had 600 women engineers; by 1961 there were 379,000, or 31 percent of all the engineers in the U.S.S.R. In 1961, 53 percent of the professional people in the Soviet Union were women. Of the total membership of the Supreme Soviet today, 26 percent are women. Some 20,000 village soviets are headed by women.

But the brightest example of women's advance in Russia has been in the medical profession. Of all Russian doctors and surgeons, 74 percent are women—332,400 women physicians in 1962, while last year the AMA listed only a little more than 14,000 in the United States.

The Communist system confronts the American system in a life-and-death struggle. Russia's men know it; so do her women. They do a far greater amount of manual or heavy labor than American women do. Many visitors returning from the Soviet Union point to the numbers of women who are mixing cement, driving buses, pitching hay, sweeping streets. Russian leadership utilizes to the utmost the brainpower and the musclepower of Russian women at every level of society.

It is against this background of the participation of Russian women in every effort, from sweeping the stables to combing the stars, that we must view the flight of the first woman cosmonaut.

The astronaut of today is the world's most prestigious popular idol. Once launched into space he holds in his hands something far more costly and precious than the millions of dollars' worth of equipment in his capsule; he holds the prestige and the honor of his country. These have been entrusted to him because he is deemed to possess high technical skills and even higher virtues of intelligence, endurance, resourcefulness, discipline, courage, and the capacity to make life-and-death decisions. But the astronaut is also something else: he is the symbol of the way of life of his nation.

In entrusting a 26-year-old girl with a cosmonaut mission, the Soviet Union has given its women unmistakable proof that it believes them to possess these same virtues. The flight of Valentina Tereshkova is, consequently, symbolic of the emancipation of the Communist woman. It symbolizes to Russian women that they actively share (not passively bask, like American women) in the glory of conquering space.

News reports after Valentina's blast-off said that women were dancing in the streets of Moscow while men hurled compliments and showered kisses upon them. Not so in America. The flight has become a source of bitter argument between the sexes. Miss Jerrie Cobb, one of the 13 American women pilots who have passed tests for space flight—not including the hurdle of male prejudice—warned NASA, and then the U.S. Congress a year ago, that Russia was preparing to put a woman in orbit. She said that she has been a consultant to NASA since 1961. But this high-woman-on-the-token-pole added acidly, "I'm the most unconsulted consultant in any government agency."

Another woman pilot who has passed astronaut tests, Jane Hart, wife of Michigan's Senator PHILIP A. HART, said even more bitterly, "I'm tempted to go out to the barn and tell the whole story to my horse and listen to him laugh."

It is estimated that Elizabeth Taylor, America's current female idol, will bring $60 million clinking into the tills of Twentieth Century-Fox. But few who understand women can doubt that Junior Lt. Valentina Tereshkova delivered a performance of far greater value to at least 60 million Russians.

The United States could have been first to put a woman up in space merely by deciding to do so. Way back in February of 1960 a girl pilot named Jerrie Cobb successfully underwent the same gruelling physical examination that the Mercury astronauts had taken. By 1961, 12 other women had gone through the same battery of tests. All of them were experienced pilots with qualifications far more impressive than Valentina Tereshkova's. To a woman, they were eager to go into orbit. "I'd like to see what's up there and help America explore space," said Mary Wallace Funk. "One of us better make it fast," warned Irene Leverton, "because the Russians are darned well going to send up women."

Until Astronaut Alan Shepard made the first American flight in May of 1961, NASA steadfastly disclaimed any connection with woman-in-space training. Only then was Jerrie Cobb appointed to her job as a never-consulted consultant to NASA Administrator James Webb. Even after her appointment, any training the ladies received has been unofficial and due entirely to their own stubborn efforts.

Two years ago, when Russian space scientists visiting the United States first let on that they had a training program for female cosmonauts, Jerrie Cobb went to Washington, collaring anyone who would listen, pleading for a formal American woman-in-space program. The best she got was polite indifference. Jerrie and her 12 colleagues are exhilarated by Valentina's feat, but depressed that it wasn't American. "Now," Jerrie said, "maybe we'll get some action."

Mr. MORSE. Mr. President, I ask unanimous consent that I may yield to the Senator from Connecticut [Mr. RIBICOFF] without losing my right to the floor.

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

Mr. RIBICOFF. Mr. President, I am very grateful to the distinguished Senator from Oregon for yielding to me at this point.

RESPONSIBILITY IN THE CIVIL RIGHTS CRISIS—A MUST FOR NEGRO AND WHITE, CITIZEN AND LEGISLATOR

Mr. RIBICOFF. Mr. President, the civil rights crisis which this country now faces imposes heavy responsibilities on us all—white and Negro, citizen and legislator. Too little has been said about these responsibilities, yet there are many things that must be said. If they are not said, and repeated often throughout the country, there will be no solution to this crisis. Indeed the possibility exists that large segments of our population who sincerely want to end the last vestiges of discrimination will lose their enthusiasm for this great cause and thus postpone for a considerable time the full achievement of equality in this land.

First of all, there is a responsibility to recognize that the securing of legal rights is just one part of our problem. Of course these rights must be protected and legal remedies must be supplied to insure that these rights are fully enjoyed. But so much more remains to be done after this has been accomplished. The root problems must be attacked: the lack of education, the lack of training, the lack of skills, the lack of decent home environment, the lack of mature guidance in a child's formative years.

The Negro must have the right to equality but it is just as important that he be able to take advantage of the opportunity for equality. Discrimination in hiring can and must be ended, but there must also be trained Negroes to apply for jobs. Barriers to promotion can and must be ended, but there must be Negroes with skills to merit increased positions of responsibility. Racial restrictions at colleges and graduate schools can and must be ended, but there must be Negroes in sufficient number who have completed high school and have the preparation to succeed in higher education.

Equipping the Negro, and every other person whose opportunities have been limited, with the education, the training and the skills he needs requires the attention—and the resources—of this entire Nation. The bill I introduced today is one small example of what must be done. It is an effort to help those on relief learn a trade and qualify for a job. It is a step forward to what must become a total effort to educate and train all the people of our country and develop their individual talents to the fullest. This means more education, more schools and more teachers, dedication to higher standards of education, vastly expanded vocational education programs, job retraining and a full-scale assault on the conditions that limit opportunity—poverty, illiteracy, slum housing, and disease. There is a Federal role in this effort, but it is by no means an exclusive role. The resources of our States, our communities, and our private organizations must all be devoted to this challenge.

The best answer to discrimination has always been equality of opportunity. When I ran for Governor of my State in 1954 there were those who said a Jew should not be Governor. As the campaign progressed, this issue was raised and it became apparent that I had to speak about it directly. I told the people of my State that whether I became Governor or not was not the important thing. What really mattered was that I had the opportunity to become a Governor of my State. What really mattered was that any person could have the opportunity to aspire to that office and be judged by his fellow men on the basis of his views, his background, his qualifications, his character, and his personality. When I ran for reelection 4 years later there was no issue of religion. I had been given an opportunity and I was judged on what I had been able to do with that opportunity.

In 1956 I saw this same issue develop again when the question arose in a smoke-filled room at the Stockyard's Inn in Chicago, whether a young Senator from Massachusetts should be the Democratic candidate for Vice President. There were many in that room who questioned whether a Catholic could be a Vice President or perhaps a President. When this question was raised, many voices in that room were silent. And so I stood alone to make the argument, against the leaders of the Democratic Party, that a Catholic should have the opportunity to seek election by all the people of this Nation.

During the next 4 years I repeated this argument to all who would listen to me. I told them that the opportunity to run was the important thing. The outcome would depend on the basic decency of the American public to judge a man on his individual merit. So President Kennedy was elected. There will be many issues which will decide on his reelection in 1964. His religion will not be one of them.

I was given the opportunity I sought. John Kennedy was given the opportunity he sought. And what more than anything else made it possible for us to have these opportunities? It was our education. It was the fact that irrespective of our religions, each of us had the edu-

cation to prepare us to take advantage of our opportunities. I know there have been successful men who never had a formal education, and there will always be such men. But education was crucial to my becoming a Governor and to John Kennedy's becoming a President, and education will always be the single most important fact in the success of every individual, especially those who seek to overcome discriminations, who seek not just the prize, but the opportunity to compete.

There is a responsibility on those who seek equality of opportunity to fight to remove discrimination—all discrimination—not to make discrimination a weapon to be used in their favor.

Denying a man a job because he is a Negro is indefensible. Granting him a job if he is not qualified just because he is a Negro cannot be justified either. Those who claim that x number of jobs or y percent of jobs must be set aside for Negroes are not favoring equality of opportunity. They are saying that opportunity does not matter, that merit does not matter, that only arbitrary numbers and percentages matter. That point of view will undermine the whole effort to achieve equality in this country.

Discrimination is wrong whether it works against a man or for him. Unless the test is ability, someone will always be the victim of discrimination. But if the test of ability is to be meaningful, each person must have the full opportunity to be educated, to learn skills and to qualify for the position he seeks. White and Negro leadership must recognize that only when a person qualifies for a job can he expect to receive a job. This is what responsible Negro leaders have been pointing out for years. This is the concern they have expressed fully two decades before the current claimants to leadership appeared on the scene. And it would be a great tragedy if these responsible leaders who have been urging education and training for their own people should be ground under by those who, in their own bid for leadership, ignore the need to qualify for a job and seek only the job itself. In the long run, only after a person participates, proves his merit, will he be accepted on worth irrespective of race, color, or religion. We must continuously strive in this country to give every person this chance.

There is a responsibility on all of us to use the law to end discrimination, but there is an equal responsibility to make sure that the efforts to promote the law do not subvert the law.

We must have new laws to give meaning and certainty to the principles of equality that are announced in our Declaration of Independence and guaranteed in our Constitution. The legislation recommended by the President is urgently needed, and I have been proud to become a cosponsor of this legislation.

But I firmly believe that those who urge the need for law have a responsibility to insist that law is observed.

If the law is to protect the rights of some citizens, it must protect the rights of all citizens. The law does protect the right of any citizen to peaceably assemble and petition for a redress of their grievances, but the law also protects the right of all citizens to be secure in their homes and to be safe on the public streets.

There has been outrageous violence perpetrated upon Negroes and it has properly been condemned. But violence has come to white citizens, and too few voices of responsibility have been raised. The thrown rock, the smashed storefront, and the rifle shot that wounds or kills make the culprit a criminal, whether he is white or Negro. Yet such acts have been committed by members of both races in recent weeks.

It is just as wrong to condemn all demonstrations because some lead to violence as it is to condone all violence because some of it results from demonstrations.

When citizens peacefully assemble to make their views known, when they hold mass meetings to call attention to their grievances, they are exercising a fundamental right in the great tradition of our country. But when they disregard the rights of others, when they obstruct the peaceful activities of others, when they contribute to public disorder, they place themselves outside the law, and they forfeit their claim to achieving their own objective—the law's protection.

Let me put this squarely in the context of current news. We are told that 100,000 Negroes will come to Washington at the end of August. Some say, without reservation, this is wonderful. Others say, also without reservation, this is terrible. I say that we who will be petitioned and those who will do the petitioning have a responsibility to look at matters more critically and make more careful judgments.

The 100,000 Negroes have an absolute right to come to this city and make their views known in a peaceful, orderly way. They can hold a mass meeting or, under reasonable regulation by local authorities, as to time and place, parade or talk or sing or pray in public parks or in public streets. They can make their views known to their own Congressmen and Senators.

But there is no justification for violence or even disorder, as the leaders of the protest demonstrations have consistently counseled. Government can be petitioned by expression of views, not by massing of bodies in rooms and hallways that must be kept open for all members of the public to come and go unmolested. The very fact that 100,000 Negroes would come to Washington in support of civil rights legislation would be eloquent testimony to the deeply felt need for this bill. But if 10—or even 1—of the demonstrators commit acts of disorder, the prospects for this bill would be grievously injured.

Finally, may I be permitted a word about the responsibilities which I believe rest upon us as legislators who will be dealing with these problems in the critical days ahead.

While we deliberate we bear a heavy responsibility, one that not only affects the success of our current enterprise, but also will shape our future activity as well. It is the responsibility to match firmness of purpose with respect of person. I do not have in mind the amenities of Senatorial debate. Their observance can be presumed. I mean the attitude we of the contending sides will reflect toward each other, within this chamber and upon the understanding of the Nation.

Next to the passage of the legislation itself, I deem the most important aspect of this coming debate to be the maintenance of our mutual respect. The most fundamental difference of viewpoint and conviction must not cause disagreement to be replaced with distrust, criticism with calumny, or opposition with opprobrium.

Let no one mistake my own position in this matter. I support the full protection of the civil rights of every American by every law that may be necessary. I support the legislation that has been introduced, and I am prepared to support additional legislation if it is needed.

These basic issues cannot be compromised, and this very fact adds immeasurably to our responsibilities. I will vote in favor of these laws.

I believe those who oppose these laws are wrong—they are wrong on the legal issue of rights and the moral issue of humanity.

But those who oppose have every right to express their opposition and to expect that their arguments on the merits of these proposals will be respected. The opposition will earnestly challenge the need for many of the proposed provisions, they will dispute their constitutionality, they will question their efficacy. These challenges can all be answered. It is of the utmost importance that each one of them is answered.

But we who advance these proposals have a right to expect that opposition to them will be concerned with the merits.

Condemnation of individuals has no place on either side of this debate. Those who advance these proposals are sincere and dedicated men, acting upon principles in which they deeply believe. Those who oppose are equally sincere. Let the dispute center in the principles on which we disagree—the issue of Federal power, the need for legal remedies, and the desirability of the proposed provisions. All of us are sworn to uphold the Constitution and its guarantees. All of us take that obligation with the utmost seriousness. There is room to debate how these guarantees should be enforced. There is no room to dodge the main issues by claiming racism on one side or political expediency on the other.

Finally, let us realize that even as we stand opposed on many aspects of the President's proposals, there may well be significant areas of agreement. The sharp division on the issue of legal rights must not undermine our ability to find agreement on new programs for vocational education, for job retraining, and for work opportunities for those on relief. In the long run, the progress we make in these fields may prove to have more meaning than the securing of legal rights.

Let us also keep uppermost in our minds the important leadership roles those who oppose us today must play,

in the years ahead, after the current battle has been won. These new laws will be placed on the statute books. These rights will be secured. New opportunities will be opened up. But that will not end the problems that concern us all as Americans. That will merely signal the start of a new era in which the effort to solve them can go forward as never before. And in that era one of our most urgent needs will be enlightened political leadership, precisely the type of leadership we can and must expect from those who stand opposed in the current dispute. It is my fervent hope that nothing said or occurring in the ensuing debate will impair their capacity for leadership in those areas and in those days when it will be most needed. After the statutes have been passed, there will one day be a transition of mind and even of heart. It will not come quickly. But thoughtlessness in what we do here could cause a serious delay.

There are deeply held convictions on both sides of this issue. There has also been considerable hypocrisy; some of it ill-intentioned, some based on ignorance. Many who decry discrimination have practiced or condoned it. Many who point a condemning finger at the South are unaware, for example, that in no Northern city can be found the extent and quality of private residential housing for Negroes that exists in Atlanta, Ga. Of course, quality of housing does not excuse segregation of housing whether in Atlanta or any Northern city. The point is the Northern resident had better view and remedy the slums in his own town before he decries problems of another region. Many who are quick to condemn discrimination 1,500 miles away have never looked at what is happening 6 blocks from their own homes.

I hope this debate will do much to dispel both ignorance and hypocrisy. I hope the issues will be debated frankly and honestly between men who recognize each other to be frank and honest legislators, and who respect their differences. That kind of debate will lead not only to the passage of these urgently needed measures, it will lead as well to a strengthened Nation in which the principle of equality will be more than legislated, it will ultimately be lived.

Mr. MORSE. Mr. President, I wish to commend and highly compliment the Senator from Connecticut for the great speech he has just delivered on the floor of the Senate, for, in my judgment, he struck the tone that must prevail, in the public interest, throughout the historic debate that will take place in the weeks ahead on the issue of civil rights. I would have the RECORD show today that I wish to be associated with the Senator from Connecticut in every statement that he uttered in his magnificent speech.

I truly hope that, so far as the Senate debate is concerned, each Member of the Senate will give careful heed to the code of conduct the Senator from Connecticut proposed in his speech today, because, in one sense, that is the way it could be described.

I also hope the American citizenry generally, colored and white, will give heed to the plea that he raised that they have a responsibility of citizenship and statesmanship to maintain during this very critical time when we must come to grips, at long last, with the issue of constitutional rights and the right of all citizens, colored and white, to have the same guarantees of constitutional rights delivered to them and be allowed to enjoy without any form of discrimination whatsoever.

PROPOSED LEGISLATION RELATING TO THE EXPEDITIOUS TRIAL OF CRIMINAL CASES

Mr. MORSE. Mr. President, I turn now to the subject matter of my speech today. Last night, as the CONGRESSIONAL RECORD shows, I introduced two bills and obtained consent that the bills remain at the desk until Tuesday next at 5 p.m. for receiving any additional cosponsorship from Senators who might indicate a desire to join as cosponsors of the bill.

The first bill I introduced is one to protect the integrity of the courts and the jury function in criminal cases. It is cosponsored by the Senators from Hawaii [Mr. FONG and Mr. INOUYE] and the Senator from Ohio [Mr. YOUNG], and I am authorized to say today that the Senator from South Carolina [Mr. JOHNSTON], a member of the Judiciary Committee, wishes to have his name added to both of the bills I introduced last night, as a cosponsor.

He would be here today to make that announcement were it not for the fact that he was involved in an automobile accident, and, although not seriously injured, was painfully injured. I am pleased to report to the Senate that he is making a very satisfactory recovery and probably will be with us tomorrow, or certainly in the very near future. But the RECORD should show that the name of Senator OLIN JOHNSTON should be added as a cosponsor to each of these bills.

The second bill I introduced last night is one to effectuate the provision of the sixth amendment of the U.S. Constitution requiring that defendants in criminal cases be given the right to a speedy trial.

I shall later this afternoon discuss the facts and circumstances that justify postponement for cause. Nobody is asking the prosecutor to go to trial if there has not been adequate time for preparation of the prosecution.

What we are trying to do is to apply the rules of the playground to the rules of the court. I mean just that. When all is said and done, I wonder if we ever overlook the fact that so much of our conception of justice is based upon our conception of fair play, which we have had drilled into us as little boys and girls from the time we first entered the playground. It is so typical of what we may call the American culture, the American way of life. We have built up a great system of justice that is built more on our conception of fair play than many of us realize.

Whenever we find that the rules of fair play are being violated, we seek legislative remedy. The senior Senator from Oregon this afternoon is seeking some legislative remedy, because in some particulars I am coming to believe, on the basis of the writings of the authorities that I shall cite this afternoon, not all of our Federal court procedure is bottomed upon our conception of fair play.

The purpose of the second bill that I introduced last night is to effectuate the provisions of the sixth amendment of the U.S. Constitution requiring that defendants in criminal cases be given the right to a speedy trial. It is sponsored by Senators INOUYE, FONG, YOUNG of Ohio, and JOHNSTON.

Mr. President, I ask unanimous consent that the text of these bill be printed again in the RECORD at this point in my remarks, so that anyone turning to the RECORD will have the bills in the RECORD at this point, rather than having to go to the RECORD of yesterday to find the bills.

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

S. 1802

A bill to protect the integrity of the court and jury functions in criminal cases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Criminal Code of the United States, title 18 of the United States Code, be amended by adding the following section:

"§ 1512. Contempt to publish information not properly admitted in criminal case.

"It shall constitute a contempt of court for any employee of the United States, or for any defendant or his attorney or the agent of either, to publish information not already properly filed with the court which might affect the outcome of any pending criminal litigation, except evidence that has already been admitted at the trial, and said contempt shall be punished summarily by the court, on motion of any party to the litigation, by a fine of not less than $500 for each such publication."

S. 1801

A bill to effectuate the provision of the sixth amendment of the U.S. Constitution requiring that defendants in criminal cases be given the right to a speedy trial

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Criminal Code of the United States, Title 18 of the United States Code, be amended by adding the following sections:

"§ 3291. Unreasonable delay in presenting criminal charges.

"If there has been unreasonable delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer in a district court, the court shall dismiss the indictment, information or complaint, even where the applicable period of limitations prescribed by statute has not yet expired. It shall not be deemed 'unreasonable delay' if the filing of the indictment or information was delayed in order to protect the national security of the United States.

"§ 3292. Voluntary dismissal of indictment, information or complaint.

"The Attorney General or the United States attorney may by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal, unless secured by the consentor fraud or deceit of

the defendant, shall serve as a bar to subsequent prosecution for the offense charged in the dismissed indictment, information or complaint.

"§ 3293. Multiple indictments or informations: order of trial.

"A person against whom there is pending more than one indictment or information shall be brought to trial in the same order in which the indictments were returned or the informations were filed. Whenever a case shall go to trial on an indictment or information, the court in which an earlier indictment or information is pending against the same defendant shall, on motion of the defendant, dismiss such earlier indictment or information and the dismissal shall have the same effect as a judgment entered on a jury verdict of not guilty.

"§ 3294. Speedy trial.

"On the motion of a defendant under indictment or against whom an information has been filed, he shall have the right to be tried on that indictment or information no later than nine months after the indictment is returned or the information filed, except that a court may, in its discretion, extend the time within which the case shall be tried on good cause shown. In the event that a defendant is incarcerated pending trial, on the motion of the defendant, the case shall be tried within six months after the indictment is returned or the information filed or the indictment or information shall be dismissed.

"§ 3295. Time for sentencing.

"A defendant who has been convicted of a crime in a court of the United States shall be sentenced for that crime by said court no later than sixty days after the judgment of conviction is entered, unless it be demonstrated to the court that postponement of sentence would be in furtherance of the national security of the United States."

Mr. TALMADGE. Mr. President, will the Senator yield at that point?

Mr. MORSE. Yes; I yield.

Mr. TALMADGE. I read from amendment VI of the Constitution of the United States:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

Does the Senator's bill apply itself to amendment VI of the Constitution of the United States when he refers to a speedy trial?

Mr. MORSE. That is correct.

Mr. TALMADGE. Is there now no statute on the books that implements that particular provision of the Constitution of the United States?

Mr. MORSE. The bill that I am proposing would implement it more effectually than any existing law.

Mr. TALMADGE. May I ask the Senator a hypothetical question? Would it be possible now for the Government of the United States to indict me for a crime and then, even though my counsel requested a speedy trial, have the indictment remain on the docket pending, without trial, to damage my character and reputation?

Mr. MORSE. Before I get through with my speech this afternoon I hope to satisfy the Senator from Georgia beyond a reasonable doubt that that kind of administration of justice is now possible under the Federal criminal statutes.

Mr. TALMADGE. It is my opinion that anyone indicted for a crime, whether it be in a Federal court, a State court, or any other court, under amendment VI of the Constitution of the United States, should be able to demand and receive a speedy trial.

In the State of Georgia there is a State statute that authorizes anyone who has been indicted for a crime to demand a speedy trial, and when that demand is filed with the clerk of the court, if the prosecuting attorney does not proceed to try the accused by the end of the second term, the accused stands automatically acquitted. In that way, I think that statute guarantees the administration of justice.

If it is possible for anyone to be indicted for a crime and have the indictment stand on the record without trial, certainly he is in a serious situation, and certainly that does not conform, in my judgment, to the standards of the constitutional amendment that guarantees a fair and speedy trial.

Mr. MORSE. I could not agree more with the Senator from Georgia. Of course, he is far ahead of the Senator from Oregon, but I am not surprised, knowing him for the able lawyer he is. The comments he has made and the questions he has raised indicate very clearly that he has in mind the same objectives I have in mind in connection with my presentation of these bills.

Before the afternoon is over—and I am sorry this is not going to be one of my briefer speeches—I shall be discussing some of the State statutes, because, as the Senator from Georgia has indicated, the Federal Government, in the field of criminal prosecution, in my judgment, is lagging far behind a good many of our States. I shall be mentioning a good many State statutes along the line of the Georgia statute, which the Senator has mentioned, which result, in my judgment, in fairer procedure for the conducting of criminal trials than is followed, in many instances, in connection with Federal prosecutions.

That does not mean Federal prosecutors could not follow such procedures. What these bills seek to do is to impose inhibitions and prohibitions and checks upon the execution of prosecutor discretion at the Federal level. They reflect on no one. I want to make that clear. I shall have more to say about that momentarily. They are directed toward improving existing Federal criminal procedure so that such unfairness and wrongs implied by the Senator from Georgia cannot exist at the Federal level.

Mr. TALMADGE. First let me thank the distinguished Senator for his generous references. He is always far more generous than the junior Senator from Georgia deserves.

I shall read the speech of the Senator from Oregon with much interest. I wish to hear as much of it as I can, but, unfortunately, I have appointments which will take me from the Chamber. It seems only fair and proper under that provision of the Constitution that anyone who is indicted, regardless of his guilt or innocence, whatever his crime may be, or whatever the charge may be, in this day of justice, or alleged justice, in which we live, no one ought to be compelled to languish in jail without a speedy trial by a jury of his peers.

Mr. MORSE. Not only languish in jail, but languish on bail.

Mr. TALMADGE. Yes. That is certainly true—or languish under indictment.

Mr. MORSE. Or languish under indictment, because all the time that he is under indictment, his reputation is clouded. He is entitled to have it cleared up, and cleared up quickly, with a speedy trial.

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

Mr. MORSE. I yield.

Mr. DIRKSEN. As a member of the Committee on the Judiciary, I have had some expressions of interest, in general, in what the distinguished Senator from Oregon refers to as contained in the bills he has introduced.

I have on my staff a number of young men whom I regard as topflight lawyers. One, in particular, has served as a U.S. attorney in Chicago. So that among them they bring both sides of the picture into good perspective.

I have already asked for and have had done a little work in this field, and I shall follow with interest and read with great interest the remarks of the distinguished Senator from Oregon.

Mr. MORSE. I thank the Senator from Illinois very much.

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

Mr. MORSE. I yield.

Mr. BEALL. I should like to ask the Senator a question. It has come to my attention that 40 States require that an accused must be brought to trial within two or three terms of the court after the indictment is returned. Would this bill apply to the Federal courts the rule which is now in effect in 40 State jurisdictions?

Mr. MORSE. The Senator is correct. That is a correct general statement of what the second bill proposes to do. The Senator's question is in line with the observation made by the Senator from Georgia [Mr. TALMADGE], in which he cited specifically the Georgia law, which is one of the State laws, among 40, that I shall discuss later, which gives a guarantee of a speedy trial at the State jurisdictional level. That is the basic purpose of the bill that I have just mentioned.

Mr. BEALL. I have one further question. Does not trial by press release tend to subvert the protection afforded the accused by the rules of evidence which would outlaw hearsay and other types of evidence, but which the prosecutor can get across to the jury by incorporating the same release in evidence.

Mr. MORSE. The Senator is correct. To prevent such a course of action the first bill is introduced, which is probably the more controversial of the two. It raises many ancillary problems. I will undoubtedly be criticized and attacked by some persons for alleged interference with the freedom of the press. I hope to show that that is not the case.

I wish to make it clear—and I will do it now because the Senator's question causes this to flash through my mind—that I am offering the bills on the basis

of evidence that I shall produce which establishes a prima facie case for them.

However, I offer the bills, as I always offer a bill, with an open mind toward any amendments that may be offered which would improve the bill. If anyone can show that either bill or both bills do not merit passage, the senior Senator from Oregon will vote against them. I would not introduce these bills if I were not satisfied that the information and the evidence that I now have sufficiently support them. So if I were asked now to answer a yea and nay vote, on the basis of my present knowledge of these bills, I would vote to pass them.

Mr. BEALL. I thank the Senator.

Mr. MORSE. Mr. President, I wish to give credit where credit is due. Although I have done a considerable amount of research on my own on these bills, and although for many years I taught criminal law and criminal procedure at the University of Oregon Law School, I am greatly indebted for much of the research material that I shall present this afternoon to Prof. Philip B. Kurland, professor of law at the University of Chicago Law School.

Of course I shall assume responsibility for the information that I present. As any student of law would do, I have checked my citations and have satisfied myself that the cases I am citing this afternoon are apropos to the subject matter. At the same time I admit that I am also a plagiarizer this afternoon in the Senate, because I could not discuss these bills this afternoon without leaning heavily upon the writings and the scholarship of Professor Kurland.

Professor Kurland, professor of law at the University of Chicago, one of the best law schools in the country, is recognized among legal scholars as a keen scholar. He is the editor of the Supreme Court Review of 1962, a volume which I hold in my hand. One need only read his writings in this volume, or read his other legal writings, to recognize that I am presenting to the Senate this afternoon through my lips a very keen witness whose legal scholarship is beyond dispute.

Mr. President, Professor Kurland has been at work in the field of Federal criminal procedure reform since long before the Hoffa cases. I want to take care of that matter at the very beginning of this speech. I know that when one stands on the floor of the Senate and discusses a subject that is general in its scope and uniform in its application to all citizens, but is also applicable to a celebrated instance that exists at the moment of the discussion, that Senator's detractors and critics will be quick to describe these bills as Hoffa bills.

I have stood in this position before in my many years in the Senate. It does not make any difference to me what a man's name is, what his record is, or who he is; if the problem involved raises questions of public policy, the voice of the senior Senator from Oregon will never be silenced because of any fear of what detractors may say.

I know nothing about the merits of the indictments and the charges against Hoffa. I remember standing on the floor of the Senate some years ago and defending the former Senator from Massachusetts, now the President of the United States, against one of the most unfair, uncalled-for attacks by a man named Jimmy Hoffa that I ever heard in my years of public life. I think I made it clear then that I follow where the facts lead. I am never deterred or motivated by ad hominem arguments.

It is true that the controversy Hoffa is having with the United States Government in the field of criminal prosecution is an instant case, an operative case, one that is necessarily involved in any discussion of the applicability of the proposed bills to existing Federal criminal procedure. But if Hoffa had never been born, the basic legal problem involved would still be the same, and it would still be the duty of the senior Senator from Oregon to participate in the subject of discussion this afternoon.

If Hoffa is guilty of any of the charges in any of the indictments outstanding, I want him to be put in prison. If he is not guilty, he is entitled to a speedy trial. He and every other American citizen who may be subject to indictment at any time are entitled to the same fair procedure.

I wish to read to the Senate a letter that I received from Professor Philip B. Kurland, Professor of Law at the University of Chicago Law School. His letter is the primary basis for my interest in the bills I have introduced. In fairness to Professor Kurland, I know from my own knowledge, as a result of my longtime interest in criminal law, its administration, and the criminal procedure involved in its administration, that he also was interested in this subject as a legal scholar long before Hoffa hit the front pages of the press of the Nation. Under date of June 17, 1963, Professor Kurland wrote to me as follows:

THE LAW SCHOOL,
UNIVERSITY OF CHICAGO,
Chicago Ill., June 17, 1963.

Senator WAYNE MORSE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MORSE: I am enclosing herewith two of the six bills about which I have spoken to you, together with background memoranda on each. All six bills are concerned with the effectuation of the purposes of the sixth amendment, which purports to guarantee to a defendant in national courts a fair and speedy trial by a jury of his peers from the vicinage.

The first of the two bills is concerned directly with the provision requiring that the United States afford a speedy trial to those whom it has accused, officially or more indirectly. The second is concerned with the limitation of the all too common practice of trying prominent defendants in the newspapers rather than in the courts, with the result that no unbiased jury can be secured in the event that the case goes to trial and, if it does not, the accused has been smeared without being given an opportunity to clear his name.

Neither the remedies contemplated in these bills, nor those contained in the other four that I shall forward to you shortly, are original in concept. They represent ideas that have long been the subject of consideration by bar associations and legal scholars. With the unfortunately typical tendency of the bar toward procrastination in its usually futile efforts to reform the law, these suggestions tend to be relegated to law review and bar association committee discussion or, in these modern times, to be made the subject of extensive foundation-sponsored research projects which almost never come to reach the practical stage of legislative action, the more so since they represent inhibitions on the political use of prosecutors' offices. With neither the bar associations nor the research projects prepared to beard the lion in his den, the Douglas in his hall, it remains for a courageous legislature to stand up to the executive and direct the prosecutors in the Federal courts to behave with that minimal decency implicit in the sixth amendment of the Constitution.

With all good wishes, and with the hope that the much-needed reforms of the prosecutorial system can be brought about, I remain,

Sincerely yours,

PHILIP B. KURLAND,
Professor of Law.

Mr. President, the spring 1963 issue of the Syracuse Law Review contains an excellent note article by an obviously brilliant law student member of the editorial board of this outstanding law journal, Mr. Gerald Stern. The title of the Review's note is "The Two Forums of a Criminal Trial: The Courtroom and the Press." The subheading of the title is the quotation from the sixth amendment already referred to by the distinguished Senator from Georgia [Mr. TALMADGE]:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

Mr. President, I ask unanimous consent that the Syracuse Law Review article be printed at this point in my remarks.

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

THE TWO FORUMS OF A CRIMINAL TRIAL: THE COURTROOM AND THE PRESS

(In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.—U.S. Constitution amendment VI.)

INTRODUCTION

The constitutional rights of an accused are first jeopardized when the crime is reported in the newspapers. The victim is eulogized [1] while the perpetrator is maligned; [2] the reader feels compassion for the

[1] New York Post, Oct. 14, 1962, p. 3, cols. 1-3. The deceased, shown in a cap and gown—graduation picture, was described as "an obedient and respectful boy" who participated in athletics and had a part-time job. In a further attempt to draw sorrow from its readers the press showed bereaved members of the family holding a picture of the deceased. Daily News, Aug. 3, 1959, p. 4, cols. 2-3 (caption—"Heartbreak Is Written on [Deceased's Widow's] Face"). New York Mirror, Aug. 3, 1959, p. 4, cols. 3-4, showed a picture of a little girl (with one eye on the photographer who obviously set up the pose) kissing a woman. The caption read: "Carole Brush, 7, Kisses Grandmother, Whose Husband Was Fatally Beaten by Boy in Highland Park, Brooklyn." (The boy was later acquitted; it was never established that a boy committed the crime.)

[2] Daily News, Sept. 19, 1962, p. 6, cols. 1-3 ("Beast Hunted in Robbery and Rape of Widow, 71"). When a specific person is sought by the police, the press may obtain some derogatory information from anyone so that the facts may be spiced a bit. E.g., Daily News, Oct. 20, 1962, p. 3, cols. 3-5 ("Actress, 16, Is Slain; Hunt 'Mean' Stepdad"). Query: Would the commentary be admissible as evidence?

former and malice toward the latter. Communal fury is naturally directed at the accused upon his detention by police. After being unfavorably described,[3] "police leaks" report that he is the "prime suspect" [4] or that he had a "definite part" [5] in the crime. If he claims innocence it may be stated that he is "defiant" [6] and "admits nothing." [7] Police or FBI sources assert that this is one of the most "arrogant" [8] or "vicious" [9] persons ever encountered.

Upon arraignment of the accused, a judge delivers a sermon (reported in bold print in the newspapers) which assumes the man guilty.[10] The press refers to the accused as the person who committed the crime.[11] Rumor,[12] speculation,[13] past deeds [14] and a barrage of prejudicial information [15] are reported. The newspapers print editorials which incite bias by demanding action for a solution of the crime [16] and incriminating a particular suspect.[17] The New York Journal, in reaction to the Lindbergh kidnaping, selected 12 people at random to act as "Hauptmann's jury of peers" and reported that the "jurors" found him guilty "on the basis of the evidence deduced." [18] Since the trial had not yet begun it is not conjecture to assume that the term "evidence" referred to the material presented on the "trial by newspaper."

The purpose of this note is to survey the implications of "trial by newspaper" and to ascertain the reaction of the courts.

I. RULES OF EVIDENCE AS A STANDARD

A. Scope of the rules of evidence

Our judicial system seeks "the ascertainment of truth according to the rules of evidence." [19] In a criminal action facts are proved with "evidence which is permitted by the rules, regardless of the instrinsic worth of proof upon which [defendant] * * * relies." [20] Certain evidence is excluded because of its tendency to "confuse, mislead, or prejudice juries." [21] Mere suspicion, choice of possibility or probability, surmise, speculation, conjecture, and insinuations are not regarded as evidence in a judicial proceeding." [22] A district attorney is not permitted to introduce any evidence which does not conform to the rules of evidence. However, when the press releases a vast amount of publicity, the jurors are faced with information unchecked by the selective processes of the law. The people who supply the printed information are "unsworn * * * unconfronted * * * uncross-examined * * * [and] uncontradicted." [23]

Newspapers print information which, if offered by the district attorney, would result in a mistrial. On August 23, 1961, defendant was arrested, amidst a flurry of publicity, in Syracuse, N.Y., and charged with the murder of a woman. On the trial, the district attorney's cross-examination of a parole officer had the effect of relating that the defendant had a criminal record. A mistrial was declared on the grounds that the introduction of a defendant's criminal record is prohibited by the rules of evidence unless the defendant becomes a witness. The executive editor of the Syracuse Herald-Journal, while excoriating the district attorney for causing the mistrial, explained that, "It is established practice in this State that testimony about previous convictions is prejudicial to the defendant and that admission of such testimony is reason for appeal, in the case of conviction, as reversible error." [24] The Syracuse Herald-Journal reported on numerous occasions, including 7 consecutive days,[25] that the defendant had committed a prior felony. Query: since the members of the press recognize that certain testimony is prejudicial, can they deny that the same material read by the jurors is equally prejudicial?

B. Guilty on the "trial by press"; not guilty on the trial by jury

On July 30, 1959, an elderly man was beaten to death in Highland Park, Brooklyn. The police arrested a 16-year-old boy on the basis of statements made by his 13-year-old girl friend. The defendant was acquitted after it was learned that his girl friend had lied when she asserted that he kicked the old man to death.

The New York Herald Tribune reported the following on its front page: "Murder in Park: Boy, 15, Is Held," "Petter, Scolded, Stomps Man, 65." [26] The account described how the accused killed his victim, as related by the police. The Daily News gave a more detailed account of how the boy committed the crime and referred to the accused in its headline, as a "Hard Kid." [27] The New York Mirror reported: "As police reconstructed the story, the boy jumped up and knocked Butler's glasses off. Butler who had undergone operations for cataracts on both eyes, could hardly see. 'Mind your own business old man,' the boy snarled and started to beat Butler." [28] The newspaper in reporting that the account was a reconstruction of the gory crime, gave the distorted impression that the events definitely occurred. The accused was described by an assistant district attorney as "a tough punk * * * sullen * * * defiant," and "one of the most arrogant" he had ever encountered.[29]

The newspaper accounts contained a barrage of prejudicial and distorted information much of which was inadmissible on the trial. The jury foreman asserted: "All the stories that I read prior to the trial showed that Peter Manceri was guilty." [30] Manceri was represented by excellent defense counsel who proved that the sole witness for the prosecution had lied. It is submitted that the actions of the press might have sent a boy to his death if his innocence had not been so apparent.

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[3] Daily News, Aug. 3, 1962, p. 10, cols. 1–2 ("Nab Three Punks"); Tonawanda News, Nov. 5, 1962, p. 1, col. 4 ("Crafty Leader of One of the Nation's Most Notorious Bank Robbery Teams"); New York Post, Aug. 28, 1962, p. 1 headline ("Nab S.I. Banker, Hint Racket Tie"); New York Post, Aug. 5, 1962, p. 4, cols. 1–2 ("Believed To Be Members of a Gang Who Committed Other Crimes"). It should be noted that this information is not admissible during a trial.

[4] Syracuse Herald-Journal, Dec. 11, 1962, p. 17, cols. 5–6. A Green Bay, Wis., police chief recently called a missing suspect the "presumed killer." Syracuse Herald-Journal, Feb. 19, 1963, p. 1, col. 8. Query: Is the presumption of innocence a mere fiction?

[5] The Philadelphia Inquirer, Nov. 2, 1962, p. 1, col. 2 ("It was also disclosed that [the suspect] had a 'definite part' in the murder").

[6] New York World-Telegram & Sun, Aug. 3, 1959, p. 4, cols. 2–5. The article described the defendant's "sneering defiance" after stating that he "admitted nothing." He was later acquitted. Query: If a person refuses to incriminate himself, does this make him "defiant"?

[7] New York Post, Oct. 15, 1962, p. 3, cols. 1–3 ("the two friends admitted nothing"). New York World-Telegram & Sun, Aug. 3, 1959, p. 4 (Defendant "admitted nothing").

[8] Daily News, Aug. 3, 1959, p. 4, cols. 1–3 ("described by an assistant district attorney as one of the 'most arrogant' he has ever met"—the boy was later acquitted).

[9] *People* v. *Hryciuk*, 5 Ill. 2d 176, 125 N.E. 2d 61, 66 (1954) ("vicious degenerate").

[10] New York Mirror, Oct. 18, 1959, p. 5, cols. 3–5, reported: "'I'm not prejudging your case, but sometimes justice doesn't triumph' Magistrate Bernard Dubin told him in Ridgewood Felony Court, Queens. 'Here you are accused of a crime similar to one for which you were just acquitted. If these charges are true you have a depraved mind and a vicious character and should be taken off the streets of the city.'"

[11] New York Post, Nov. 5, 1962, p. 5, cols. 3–5 ("Bank Robber"); See *Commercial Pub. Co.* v. *Smith*, 149 Fed. 704 (6th Cir. 1907) ("Murderer Arrested"—the man was later acquitted). *Stroble* v. *California*, 343 U.S. 181 (1952). (The accused was described as a "werewolf," "fiend," and "sex-mad killer.")

[12] *Leviton* v. *United States*, 343 U.S. 946 (1952). During the trial the New York Times reported that the defendant offered to bribe an important witness and was part of a much larger ring. Neither of these charges were ever brought out on the trial.

[13] *Beck* v. *Washington*, 369 U.S. 541, 544 (1962). (Press quoted Senator McClellan who said it was his "belief that he [defendant] has committed many criminal offenses.")

[14] New York Times, Aug. 3, 1962, p. 38M, col. 5 ("arrested for rape—accused of 50 muggings"). *People* v. *Hryciuk*, 5 Ill. 2d 176, 125 N.E. 2d 61 (1954) (press claimed that the defendant boasted of attacks on 50 women). Daily News, Dec. 16, 1952, p. 1, col. 2 ("convicted bootlegger," "mobster").

[15] *Irvin* v. *Dowd*, 366 U.S. 717 (1960). New York Post, July 22, 1962, p. 1, cols. 1–5 ("Link Mob to Wall St. Hauls"—the article purported to link the crime to a "mob" by stating that the accused has a brother who is allegedly a "mob leader"). *People* v. *Hryciuk*, 5 Ill. 2d 176, 125 N.E. 2d 61 (1954). The press reported that the accused boasted of attacks on 50 women.

[16] Syracuse Herald-Journal, Nov. 28, 1962, p. 18, cols. 1–2. Id., Dec. 2, 1962, p. 44, cols. 1–2.

[17] New York World Telegram & Sun, Sept. 1, 1950, p. 20, col. 1; Holmes, "The Sheppard Murder Case," 50–57 (1961). (The press demanded the arrest of Dr. Sheppard.)

[18] Hallam, "Some Object Lessons on Publicity in Criminal Trials," 24 Minn. L. Rev. 453, 485 (1940); citing New York Journal September 1934.

[19] Conrad, "Modern Trial Evidence," preface V (1956).

[20] Id. at 3–4.

[21] Id. at 26.

[22] Id. at 2.

[23] Id. at 19.

[24] Syracuse Herald-Journal, May 4, 1962, p. 24, col. 2. Mr. Jones asserted that "This newspaper leaned backward in this case * * * to be completely objective in its reports. There certainly could not be charges of prejudiced pretrial or trial slanting of reports in these columns." The reader might survey the news reports cited in footnote 25, infra, to ascertain whether the mass publicity campaign was detrimental to the rights of the defendant.

[25] Syracuse Herald-Journal, Aug. 23, 1961, p. 1, cols. 1–8; id., Aug. 24, 1961, p. 11, cols. 1–6; id., Aug. 25, 1961, p. 19, cols. 2–5; id., Aug. 26, 1961, p. 1, cols. 4–7; id., Aug. 27, 1961, p. 1, cols. 1–8, p. 5, cols. 1–4; id., Aug. 28, 1961, p. 7, cols. 1–2; id., Aug. 29, 1961, p. 6, col. 1. On the ninth day the information was again reported. Syracuse Herald-Journal, Aug. 31, 1961, p. 2, cols. 1–8.

[26] New York Herald Tribune, Aug. 3, 1959, p. 1, col. 2.

[27] Daily News, Aug. 3, 1959, p. 4, cols. 1–3.

[28] New York Mirror, Aug. 3, 1959, p. 2, cols. 1–5.

[29] Ibid. Even the New York Times printed this prejudicial information. New York Times, Aug. 3, 1959, p. 13, cols. 1–3.

[30] See script of CBS Reports, "A Real Case of Murder: The People Versus Peter Manceri" as broadcast over the CBS Television Network, Thursday, Mar. 2, 1961.

II. THE REPORTING OF A CONFESSION

A. Inadmissible confessions

Mr. Alexander F. Jones, executive editor of the Syracuse Herald-Journal has asked: "What difference does it make in the final analysis whether a confession is prepublished or produced in evidence?" [31] The question assumes that the "confession" will be produced in evidence. There are numerous cases which show that confessions have been involuntarily extracted from the defendant and hence held inadmissible as evidence.[32] In reversing convictions because of inability to receive a fair trial, the courts have laid particular stress on published confessions, inadmissible on trial, which have convinced the jurors of the defendant's guilt.[33] The Supreme Court has presciently advised that reported confessions are not necessarily reliable.

"In the police station a prisoner is surrounded by known hostile forces. He is disoriented from the world he knows and in which he finds support. He is subject to coercing impingements, undermining even if not obvious pressures of every variety. In such an atmosphere, questioning that is long continued—even if it is only repeated at intervals, never protracted to the point of physical exhaustion—inevitably suggests that the questioner has a right to, and expects, an answer. This is so, certainly, when the prisoner has never been told that he need not answer and when * * * he has every reason to believe that he will be held and interrogated until he speaks." [34]

Mr. Jones' question also assumes that a defendant must have confessed if the police inform the press that he has confessed. On August 2, 1962, the New York Post reported in a full-page headline: "Say Boy Admits Killing Two Brooklyn Women." A later edition of the same newspaper reported on page 5 in a small article that, "Police at first reported that the teenager had confessed two of the slaying but Capt. William Averill, of Brooklyn South Detectives, later denied this." [35]

The press has fabricated news stories relating to confessions. Two Supreme Court cases [36] indicate that the news media concoct reported confessions without receiving such information from any source. Confessions are publicized out of context and with added color and spice. After a man allegedly confessed to the murder of three persons, the press reported: "Ex-Con Admits He's 'Mad Dog' Killer of Three." [37] If the "ex-con" subsequently claimed innocence he would have faced the stigma of a "mad dog" label and would have been tried by a jury who knew of his criminal record. A published report of a defendant's statement may be an exaggeration of the police report given to the press. After police conveyed defendant's statement to the press, one newspaper reported that the defendant had confessed and another newspaper reported that he had not confessed.[38]

Innocent men have been convicted of crimes as a result of being named in the confessions of others.[39] Thus, a man may be greatly prejudiced after being implicated by the well-publicized confession of his alleged cohort.[40] Indeed, if the confederate's confession is involuntary, and found to be such by a higher court, it is obvious that the implicated party could not have received a fair trial.

B. A coerced confession and a conviction for the press

In *State* v. *Taborsky*,[41] a highly publicized murder case, the defendant's motion for a change of venue was denied. The court, admitting there had been "unusual publicity" [42] connected with the case, stated that there was no evidence before the court indicating prejudicial results from such publicity.[43]

The Hartford Times devoted its headlines and a great quantity of space to the case for five successive days. In its headline report that the suspect was being "quized," [44] the paper quoted a police official as saying that "Taborsky's story * * * didn't hold water." [45] The newspaper reported the accused's past criminal record and referred to his release from prison after a murder conviction 4 years earlier.[46] On four other occasions in the next 4 days the reader was reminded that the suspect was released from prison and "never exonerated." [47]

On February 28, 1957, the newspaper reported in headline form: "Culombe [defendant's alleged cohort] in eight confessions says Taborsky was 'Mad Killer' in State's Crime Wave." [48] The front page expressed numerous commendations for the police. The acting Governor was quoted as lauding the police for bringing "to an end the rash of holdup murders that has plagued Connecticut." [49] Seven pictures and numerous articles referring to the suspects as "killers" were also included in the newspaper that day.[50] On the following day, the Hartford Times reported in its headline that Taborsky had planned to "Shoot way out of court." [51] The editorial that day commended the police for solving the crime wave.

The court stated that: "Undoubtedly such publicity had an impact on general public opinion and probably created indelible marks. * * * But despite the efficient publicity, it is doubtful that there are many people in the county who would be unwilling to accord the defendants a fair trial." [52] The court treated the problem as if the community could be impartial at its will despite the unconscious effects of the "indelible" marks which were created by the press. A deluge of prejudicial information was printed that would never be admitted as evidence in a courtroom. The degree of prejudice multiplied when Culombe confessed. Four years later, the Supreme Court of the United States, reversed Culombe's conviction on the ground that the confession was coerced.[53] The Court held that due to the involuntary nature of the confession it could not be admitted in evidence. It is submitted that the effect of Culombe's coerced confession was to force Taborsky to be tried by a biased jury.

C. A publicized confession: The People against Ralph Dennis

In Syracuse, N.Y., on November 24, 1962, a woman was killed when she fell and struck her head on the pavement from the resulting force of a purse snatch. Both local newspapers devoted large quantities of space to the event while reporting that war was declared on "hoods." [54] The press called the situation critical [55] and reported that the

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[31] 26 N.Y.S. Bar Bull. 202, 208 (1954).

[32] E.g., *Culombe* v. *Connecticut;* 367 U.S. 568 (1961). Recently a highly publicized case evolved in which an airman was held for 7 months for two murders on the basis of his confession. Upon being released, after another man confessed, he asserted that he was "confused from the continued prolonged questioning and badgering." Newsweek, Dec. 17, 1962, p. 27–28, cols. 1–3. Syracuse Herald-Journal, Nov. 24, 1962, p. 5, cols. 1–2. In this regard see Rogge, "Why Men Confess," 67–73 (1959).

[33] E.g., *People* v. *Hryciuk,* 5 Ill. 2d 176, 125 N.E. 2d 61 (1954).

[34] *Culombe* v. *Connecticut,* 367 U.S. 568, 575–576 (1961).

[35] New York Post, Aug. 2, 1962, p. 5, col. 3. The newspaper chose to disregard the denial of the "confession," by later reporting what the police originally said. "He named the other two youths as his companions in a series of rape murders, police said at first." The New York Post's crime reporting policy seems to contravene its fine editorial policy. Indicative of this was a Nov. 18, 1962, editorial (p. M8, col. 1) which commented on the State liquor authority investigation by the district attorney's office. It read: "Nothing has so far been proven, there is not yet even a clear picture of the nature of the allegations. Obviously there is the intimation of payoff. * * * Mr. Hogan's inquiry should clear the air." The following day, the New York Post ran a full, front-page headline which read: "How the Liquor License Racket Works."

[36] *Shepherd* v. *Florida,* 341 U.S. 50 (1951); *Maryland* v. *Baltimore Radio Show Inc.,* 338 U.S. 912 (1950).

[37] Daily News, Aug. 14, 1959, p. 1, cols. 1–5, reported "Ex-Con Admits He's 'Mad Dog' Killer of Three."

[38] Daily News, Apr. 27 1962, p. 4 ("Father of Four Admits Strangling Love"). New York Mirror, Apr. 27, 1962, p. 5 ("admitted he put his hand on her throat during the quarrel, but did not confess killing her").

[39] An innocent man was convicted of a felony in Syracuse, N.Y., after being named by the guilty party as an accomplice. The Post-Standard, May 19, 1931, p. 8, col. 2. See, Frank, "Not Guilty" (1957).

[40] *State* v. *Taborsky,* 20 Conn. Sup. 242, 131 A. 2d 337 (1957), aff'd, 147 Conn. 194, 158 A. 2d 239 (1960).

[41] 20 Conn. Sup. 242, 131 A.2d 337 (1957), aff'd, 147 Conn. 194, 158 A.2d 239 (1960).

[42] 20 Conn. Sup. 242, 131 A.2d at 338 (1957), aff'd, 147 Conn. 194, 158 A.2d 239 (1960).

[43] Ibid.

[44] The Hartford Times, Feb. 25, 1957, p. 1, cols. 1–8.

[45] The Hartford Times, Feb. 25, 1957, p. 1, col. 8.

[46] Ibid.

[47] The Hartford Times, Feb. 27, 1957, p. 1; id., Feb. 28, 1957, p. 16; id., Feb. 28, 1957, p. 25; id., Feb. 26, 1957, p. 1.

[48] The Hartford Times, Feb. 28, 1957, p. 1, cols. 1–8.

[49] The Hartford Times, Feb. 28, 1957, p. 1.

[50] The Hartford Times, Feb. 28, 1957, pp. 16, 25.

[51] The Hartford Times, Mar. 1, 1957, p. 1, cols. 1–8.

[52] *State* v. *Taborsky,* 20 Conn. Sup. 242, 131 A. 2d 337, 338 (1957), aff'd, 147 Conn. 194, 158 A. 2d 239 (1960). The judge asserted that: "So strongly is the American system of justice embedded in the minds of our citizens that outraged feelings usually give way to a desire for orderly procedure." The judge refused to apply the Supreme Court case of *Shepherd* v. *Florida* since "no such [southern] prejudice could possibly exist in Hartford County." Id. at 339.

[53] *Culombe* v. *Connecticut,* 367 U.S. 568 (1961).

[54] The Post-Standard, Nov. 25, 1962, p. 1, cols. 1–2 ("Woman Slain in Mugging"); Syracuse Herald-Journal, Nov. 25, 1962, p. 1, cols. 1–8 ("Purse Snatched, Woman Dies"); The Post-Standard, Nov. 26, 1962, p. 1, cols. 5–8 ("Police To Crack Down on Teenage Hoods—Purse Snatch Death Brings Tough Policy"); Syracuse Herald American, Nov. 26, 1962, p. 1, cols. 1–8 ("Cops "Take Off the Kid Gloves"—Situation Is Called Critical"); The Post-Standard, Nov. 27, 1962, p. 1, cols. 1–8 ("City Declares War on Hoods"); Syracuse Herald-Journal, Nov. 27, 1962, p. 1, cols. 1–3 ("Police Step Up War on Hoods").

[55] Syracuse Herald-Journal, Nov. 26, 1962, p. 1, cols. 1–8 (Subheadline read: "Situation Is Called Critical").

city was outraged[56] and justly aroused.[57] The afternoon newspaper listed recent undated crimes, thereby creating an exaggerated impression of the daily crime rate.[58] Ralph Dennis, a 15-year-old Negro boy, was arrested and supposedly confessed after 4 days of questioning and lie detector tests, during which time he was not allowed to contact his parents. The Post-Standard, after asserting that "the streets of the city are much safer," stated that the "punishment must fit the crime" and "the youth should be confined where he will have a very long time to repent." The newspaper then advised: "This is no time for maudlin sympathy."[59]

During each of the 10 days following the crime the Post-Standard printed, on page 1, the results of the crime or reports concerning the suspect. The Syracuse Herald-Journal made the accounts first-page news on 9 of the 10 days and printed seven full headlines. There were eight editorials devoted to the crime during that 10-day period.

The newspaper accounts, while assuming the boy's guilt, contained a deluge of distorted and false information.[60] The sole witness to the crime stated that she was unable to determine whether the perpetrator was Negro or Caucasian and described him as "dark" and 5 feet 2 inches tall. The press reported that the witness identified the perpetrator as "dark skinned."[61] The press described Ralph Dennis as "approximately 5 feet tall"[62] which would obviously fit the witness's description of the perpetrator. The boy is actually 5 feet 7 inches tall.

It was reported by the press the suspect admitted his crime to another youth.[63] Although such evidence is admissible on trial under the rules of evidence, the youth was not called to testify at the hearing. Another example of circumventing the rules of evidence is an article which quoted the police as saying that the boy "purchased a variety of expensive clothing on the night of November 24 after the purse-snatch death of Miss Snyder."[64] No such evidence was presented at the hearing and, in fact, the boy was charged with taking $1.25 from the purse.

Both newspapers, in printing assertions attributed to the director of Hillbrook Detention Home, stated that the boy "was involved in a number of fights with other boys at the home and ripped electrical wiring from a wall." It was also reported that the boy asked the director's wife "what she would do if her 16-year-old daughter were kidnaped."[65] This information could only have the effect of creating in the aroused community even more animosity toward the youth.

In reporting that the boy could not be tried for murder because of his age, the press, radio, and television stations never even implied that he might be innocent. The underlying implication was that due to legal technicalities a murderer would be treated as a juvenile delinquent.[66]

On the day following the confession, the boy had asserted that the statements made to the police were false, and that he had been pressured into admitting the crime. The press did not report the boy's denial of the confession. Thus, throughout the period that the crime was front-page news the press created the impression that the boy continually maintained his guilt.

The accused was held to have violated a prior probation by being absent from school for 3 days and was sentenced by the family court to a detention home for a period not to exceed 3 years. Three months later the boy had a hearing on the purse-snatch charge and was adjudicated a juvenile delinquent.[67]

As a result of the mass publicity given to the Dennis case, it would have been extremely difficult to locate anyone who had not read the biased and false reports. During the first adjudicatory hearing, defense counsel was attempting to show various Family Court Act violations by the police. The presiding judge asserted: "My recollection from reading the newspapers and watching TV was that [the suspect] was taken over to police headquarters and arraigned there."[68]

The Syracuse Herald-Journal is one of the newspapers involved in the distribution of the reports which have jeopardized the boy's guaranteed rights. Ironically, the executive editor of that newspaper, in 1954, challenged an American Bar Association representative "to produce one case where newspapers have so hounded any individual or influenced any court or jury that a man was sent to prison in a miscarriage of justice."[69]

D. The effect of a printed confession

District Attorney Hogan of New York County made an office rule in 1954 against premature publications of confessions in advance of trial. The district attorney stated that "widely disseminated information that a defendant has 'confessed' has the effect of convincing the general public that he is unquestionably guilty and that any trial will be a mere formality. * * * In its practical effect, such publication tends to destroy the presumption that an accused is innocent until he is proven guilty beyond a reasonable doubt in a court of law."[70]

It seems undeniable that the press has been guilty of printing prejudicial information which has caused those accused of crimes to face biased and hostile courts and juries.[71] When a confession is reported, any safeguards that might have been observed are abandoned and the newspaper accounts often do not contain even an implication that the accused might be innocent.[72]

III. CASE LAW

A. The effect of adverse publicity

As a result of newspaper publicity there are numerous pleas before the courts each year to: grant motions for change of venue;[73]

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[56] Syracuse Herald-Journal, Nov. 26, 1962, p. 1, cols. 1-8 ("Woman's Death Outrages City; War on Hoods").

[57] Syracuse Herald-Journal, Nov. 28, 1962, p. 18, cols. 1-2 (Editorial read: "The community is justly aroused over the death of Miss Irma Snyder * * * a kindly little woman").

[58] Syracuse Herald-Journal, Nov. 26, 1962, p. 1, cols. 7-8.

[59] The Post-Standard, Dec. 1, 1962, p. 4, cols. 1-2 (the punishment will be "a warning to other young hoodlums").

[60] Syracuse Herald-Journal, Dec. 1, 1962, p. 1, cols. 1-8, p. 3, col 2 (The boy was referred to as a "purse slayer" and a "purse murderer"). After the press convinced the people of Syracuse that Ralph Dennis was unquestionably guilty, three youths notified the local newspapers that they were in a movie theater with the suspect on the day of the crime. The deputy police chief, in reporting the arrest of the boys for "conspiracy to obstruct justice," was quoted as saying that the alibi was a "fabricated story compiled from newspaper clippings * * * (and was) full of inconsistencies." The Post-Standard, Dec. 3, 1962, p. 1, col. 8. The result of this publication was to completely demolish the veracity of the boys' stories which were later to become an essential part of defense counsel's case. Subsequently, two of the youths were charged with conspiracy to obstruct justice. The charges against both youths were dismissed for insufficiency of evidence. The press, which had reported the alibi with banner headlines and a front-page picture of the youths, reported one of the dismissals in a four-sentence article on p. 30. Syracuse Herald-Journal, Apr. 11, 1963, p. 30.

[61] Syracuse Herald-Journal, Nov. 25, 1962, p. 1, col. 5.

[62] The Post-Standard, Dec. 1, 1962, p. 6, col. 6 ("approximately 5 feet tall, [he] tried to hide his face with his hands as he was taken from Deputy Chief Ryan's office into the chambers").

[63] The Post-Standard, Dec. 1, 1962, p. 1, col. 8.

[64] The Post-Standard, Dec. 4, 1962, p. 6, cols. 6-7. The same article reported that the youth "has so far failed to aid police in the recovery of the pocketbook," and that he "may have belonged to a gang whose specialty was purse-snatching."

[65] Syracuse Herald-Journal, Dec. 11, 1962, p. 40, col. 1. The Post-Standard in reporting the story, gave the daughter's age as 6.

[66] E.g., "Youth's Age Eliminates Purse Murder Charge." Syracuse Herald-Journal, Dec. 21, 1962, p. 6, col. 5.

[67] Appeals on both cases concerning Ralph Dennis are pending before the appellate division, fourth department. In reporting the news of the hearing, the Post-Standard ironically asserted that "The youth's age prevents the mention of his name." The Post-Standard, Mar. 15, 1963, p. 8, col. 2.

[68] This statement is contained in the official record and in defense counsel's brief.

[69] The statement was made to Mr. Louis Waldman, chairman of the Committee on Civil Rights, New York Bar Association, 26 N.Y.S. Bar Bull. 202, 206 (1954). This same editor, who so stanchly defended the press wrote three editorials concerning the case. He reported in the Syracuse Herald-Journal, Nov. 28, 1962, p. 18, cols. 1-2, that "the community is justly aroused," and predicted that the perpetrator "almost certainly lived within a few blocks of where the crime took place" (essentially inhabited by Negroes). The editorial declared that a newspaper's duty was to "identify racial groups in public disorder to establish who is responsible for unlawful outbreaks." He also remarked that complaints of police brutality should all be treated "as hogwash." In the Syracuse Herald American, Dec. 2, 1962, p. 44, cols. 1-2, the executive editor called on Negroes to form street patrols to guard their area. He also challenged Negroes "to prove they are not demanding the maximum in political rights and exercising the minimum in civic responsibility." The answer to the problems of "hoodlumism" was offered: "What is needed is a truly aroused community demanding action."

[70] 131 N.Y.L.J., No. 77, Apr. 22, 1954, p. 4, cols. 3-4.

[71] See Lofton, "Justice and the Press," 6 St. Louis L., Rev. 449 (1961); Note, 34 N.Y.U.L. Rev. 1278 (1959). Mr. Justice Douglas has observed that, "Passion and public outcry, aided and abetted by the press, have at times so possessed a community and its courthouse as to make the trial a mere mockery of justice." The press, according to the esteemed Supreme Court Justice "may so beat the drums of prejudice and passion as to make it doubtful whether a trial in the local courthouse can be fair to a particular defendant." Douglas, "The Public Trial and the Free Press," 33 Rocky Mt. L. Rev. 1, 3 (1960).

[72] E.g., New York Mirror, Oct. 6, 1962, p. 1, cols. 1-5. The headline reported: "Portrait of a Deb Who Slew."

[73] *United States* v. *Florio*, 13 F.D.R. 296 (S.D.N.Y. 1952) (motion granted); *State* v. *Taborsky*, 20 Conn. Sup. 242, 131 A. 2d 337, aff'd, 147 Conn. 194, 158 A. 2d 239 (1960) (motion denied). *State* v. *Chapman*, 103 Conn. 453, 130 Atl. 899 (1925) (affirmance of denial of motion although the press "exploited, spiced, dramatized and colored" the reports); *People* v. *Fernandez*, 195 Misc. 95,

reverse convictions;[74] or grant motions for continuance.[75] The courts have held that extensive newspaper comment does not establish inability to receive a fair trial.[76] However, in certain situations, there may appear a strong probability that bias exists in the minds of the jurors as a result of an intensive campaign by the press in publishing prejudicial material.[77] It is usually held that the defendant does not prove inability to receive a fair trial merely by showing that such publicity was read by the jurors.[78] The defendant supposedly has the burden of proving that the jurors have been actually prejudiced by such material.[79] The courts, however, have not specifically indicated how they expect the defense counsel to prove that prejudice actually exists. Indeed, attempts to show the effects of the publicity on jurors by expert testimony have been thwarted.[80]

Many courts have denied challenges for cause where an admittedly prejudiced juror states that he can lay aside his prejudices and give the defendant the presumption of innocence.[81] The Supreme Court has declared that "Bias or prejudice is such an elusive condition of the mind that it is most difficult, if not impossible, to always recognize its existence, and it might exist in the mind of one * * * who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence." [82] The majority of States, however, give a juror's statement of impartiality great weight and only if the court is convinced that the juror is lying will the challenge for cause be granted.[83] Indeed, many courts have held that even where a juror has a fixed opinion of guilt, he is not disqualified if he states that he can decide the case on the evidence presented.[84] In essence, the courts have believed that a juror may assume a man guilty and presume him innocent.

It has been held that prejudicial publicity did not prevent a fair trial where: the defense was given an unlimited number of peremptory challenges;[85] the jurors claimed they merely scanned the articles;[86] or the material was read by only two jurors.[87] One court reasoned that jurors tend to forget what they read.[88] Most courts have overlooked the unconscious effects of publicity and have reasoned that: the trial was "quiet and orderly;" [89] the residents of a particular county are "eminently fair and tolerant" and "capable of using discrimination in the formation and exercise of their individual judgment;" [90] and "most people are willing to give the defendants a fair trial." [91] In *State* v. *Taborsky*, the court stated: "So strongly is the American system of justice embedded in the minds of our citizens that outraged feelings usually give way to a desire for orderly procedure." [92]

Many appellate courts cite as proof of a fair trial the fact that the defendant did not: utilize all of his peremptory challenges; [93] seek a change of venue or a continuance; [94] or ask for a mistrial.[95] In *United States* v. *Rosenberg*,[96] the court characterized a press release given to the New York Times by the prosecutor as "wholly reprehensible" [97] which should be "severely condemned." [98] The court stated that a cautionary instruction to the jury "would not suffice" and the defendants should have been granted a mistrial if they had so requested.[99] The court deduced that since there was no motion made for a mistrial, the defense "obviously concluded that the prosecutor's statement to the press had not prejudiced the jury." [1] Thus, "they may not, after an adverse judgment, ask the court to reach a contrary conclusion." [2] The fact that the defendant did not receive a fair trial was admitted by the court but he was penalized for not taking advantage of a motion which was not a prerequisite for the relief sought.

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89 N.Y.S. 2d 421 (Queens County 1949) (motion granted). See 60 Colum. L. Rev. 349 (1960) where the writer states that most change of venue motions, based on adverse publicity, are denied.

[74] *Stroble* v. *California*, 343 U.S. 181 (1952). (Conviction affirmed although the defendant was described as: "werewolf," "fiend," "sex-mad killer.")

[75] *State* v. *Beck*, 56 Wash. 2d 474, 349 P. 2d 387 (1960).

[76] *People* v. *Broady*, 195 Misc. 349, 90 N.Y.S. 2d 864 (Sup. Ct. 1949).

[77] *People* v. *Sandgren*, 190 Misc. 810, 75 N.Y.S. 2d 753 (1947). In *United States* v. *Florio*, 13 F.R.D. 296 (S.D.N.Y. 1952), Judge Kaufman granted a motion for a change of venue due to inflammatory publicity. *Juelich* v. *United States*, 214 F. 2d 950 (5th Cir. 1954). The court reversed after motions for continuance and change of venue were denied since all of the jurors read the news reports and formed opinions of guilt. Query: Can a defendant receive a fair trial where less than all of the jurors have formed opinions of guilt?

[78] *Smith* v. *State*, 205 Tenn. 502, 327 S.W. 2d 308, cert. denied, 361 U.S. 930 (1959), citing *People* v. *Malmenato*, 14 Ill. 2d 52, 150 N.E. 2d 806, cert. denied, 358 U.S. 899 (1958), which after stating that due consideration should be given to the newspaper articles, affirmed the conviction. In *State* v. *Taborsky*, 20 Conn. Sup. 242, 131 A. 2d 337, 340 (1957), aff'd, 147 Conn. 194, 158 A. 2d 239 (1960), the court asserted that "Proof that derogatory articles were published * * * and publicized throughout the county * * * is not proof that a fair trial cannot be held within the county."

[79] *Morgan* v. *State*, 211 Ga. 172, 84 S.E. 2d 365 (1954). Contra, *Cox* v. *State*, 90 Tex. Cr. R. 106, 234 S.W. 72 (1921).

[80] See *United States* v. *Rosenberg*, 200 F. 2d 666, 669 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953) where defense counsel wished to offer testimony of an expert on mass psychology. The trial court declined to grant a hearing to receive the evidence.

[81] *State* v. *Johnson*, 362 Mo. 833, 245 S.W. 2d 43 (1952). (Juror acceptable although he admitted it would take evidence to change his opinion.)

[82] *Crawford* v. *United States*, 212 U.S. 183, 196 (1909).

[83] *Howell* v. *State*, 220 Ark. 278, 247 S.W. 2d 952 (1952), *People* v. *Duncan*, 53 Cal. 2d 824, 350 P. 2d 103 (1960), cert. denied, 366 U.S. 417 (1961). This principle overlooks the unconscious attitudes that cannot be set aside and the conscious attitudes of jurors who want to convict the defendant. See *People* v. *Moran*, 35 Misc. 2d 1078, 232 N.Y.S. 2d 201 (Sup. Ct. 1962). It is interesting to note that in many of the situations where jurors are said to have voiced the opinion that they can be impartial, the trial judge or prosecutor actually has led them to this conclusion. In *Lauderdale* v. *State*, 343 S.W. 2d 422, 424–25 (1961) the court conducted the voir dire:

"Question. You can and will set this preconceived opinion aside and go in the jury box with an open mind and try the case solely on the law and the evidence developed here and give both sides a fair and impartial trial.

"Answer. That's correct."

In *Howell* v. *State*, 220 Ark. 350, 247 S.W. 2d 952 (1952):

"Question. Mr. Mack, do you have such an opinion on your mind at this time as would take evidence to overcome it?

"Answer. Yes sir, I don't know if the State supports what I have read of the thing, I have that opinion if that is true now.

"Question. Could you, and would you go into the trial of this matter with an open mind and discharge any preconceived notion or opinion?"

The juror responded, "I think I could" to the question and, despite the qualification and his prior answer, the appellate court held that it was not error to allow the juror to sit in the jury box. In *People* v. *Duncan*, 53 Cal. 2d 824, 350 P. 2d 103 (1960), three jurors stated: (1) that they would not want to be tried by jurors with their frame of mind; (2) that such jurors could not be impartial; and (3) evidence would be required to overcome their opinions. The three jurors, after agreeing to act impartially, remained as jurors on the murder trial.

[84] *Geagan* v. *Gavin*, 292 F. 2d 244 (1st Cir. 1961); *Rowe* v. *State*, 224 Ark. 671, 275 S.W. 2d 887 (1955); *State* v. *Brazile*, 234 La. 145, 99 So. 2d 62 (1958); *State* v. *Johnson*, 362 Mo. 833, 245 S.W. 2d 43 (1962); *State* v. *Flack*, 77 S.D. 176, 89 N.W. 2d 30 (1958); Compare *Reynolds* v. *United States*, 98 U.S. 145 (1878) where the Supreme Court held that a "fixed and decided opinion" makes a person incompetent as a juror.

[85] *United States* v. *Shaffer*, 291 F. 2d 689 (7th Cir. 1961).

[86] *United States* v. *Carlucci*, 288 F. 2d 691 (3d Cir.), cert. denied, 366 U.S. 961 (1961).

[87] *United States* v. *Gibes*, 300 F. 2d 836 (7th Cir. 1962).

[88] *People* v. *Broady*, 195 Misc. 349, 90 N.Y.S. 2d 864 (Sup. Ct. 1949).

[89] *Owens* v. *State*, 215 Ala. 42, 109 So. 109, 111 (1926).

[90] *People* v. *Hines*, 168 Misc. 453, 470, 6 N.Y.S. 2d 15, 16 (Sup. Ct. 1938).

[91] *State* v. *Taborsky*, 20 Conn. Sup. 242, 131 A. 2d 337, 338 (1957), aff'd, 158 A. 2d 239 (1960).

[92] Ibid.

[93] *United States* v. *Moran*, 236 F. 2d 361 (2d Cir.), cert denied, 352 U.S. 909 (1956) (although the publicity was described as "inflammatory"). A note in 27 Cincinnati L. Rev. 87 (1958) criticizes the reasoning of the courts on this matter.

[94] *Palakiko* v. *Harper*, 209 F. 2d 75 (9th Cir. 1953); *United States* v. *Rosenberg*, 200 F. 2d 666 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953).

[95] *United States* v. *Rosenberg*, 200 F. 2d 666 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953).

[96] 200 F. 2d 666 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953). The New York Mirror reported the defendant's arrest with a headline which read, "Nab Fourth Man in Atom Spy ring" and then quoted J. Edgar Hoover as saying that the defendant is "another important link in the Soviet espionage apparatus." New York Mirror, July 18, 1950, p. 2, cols. 1–2. See, Daily News, July 18, 1950, pp. 1, 24, cols. 1–2, for other prejudicial remarks. In the Daily News, Aug. 12, 1950, p. 12, col. 5, an assistant U.S. attorney who was prosecuting the case blamed the Korean war on the defendant. It is extremely difficult to obtain a fair trial in a security case after the resulting adverse publicity. The Syracuse Herald American, Nov. 18, 1962, p. 1, cols. 3–5, in reporting the arrest of three Cubans stated that the suspects planned "to set off arms and explosives in New York department stores and oil and gasoline refineries." The New York Herald Tribune, Nov. 17, 1962, p. 1, as well as other newspapers also described in specific detail the plans of the Cubans. It is interesting to note that, according to the press, the suspects denied the charges and it is therefore difficult to conceive how the specific plans were known. The publicity connected with the Alger Hiss case is depicted in an excellent book by A. J. Liebling. See, Liebling, "The Press," 144–62 (1961).

[97] Id. at 670.

[98] Ibid.

[99] Ibid.

[1] Ibid.

[2] Ibid.

In *United States* v. *Dennis*,[3] the defendant had been convicted of a Smith Act violation amidst an aroused environment. The court asserted: "it is urged that it was impossible * * * to get an impartial jury because of the heated public feeling against Communists. That such feeling did exist among many persons—probably a large majority—is indeed true; but there would be no reason to suppose that it would subside by any delay * * *. The choice was between using the best means available to secure an impartial jury and letting the prosecution lapse."[4] It was further stated that there was "no reasonable hope that * * * [the prejudice] would fade" and "we must do as best we can with the means we have."[5]

It is submitted that the constitutional guarantee of an "impartial jury" trial does not merely offer "the best we can" but actually guarantees an impartial trial. If the "best we can" offer falls short of an impartial trial, the conviction is a travesty of justice. The decision is a curious one and can only be explained by the fact that it was the conclusion of a highly publicized security case.

The difficulties involved in proving that prejudice exists in a juror's mind have obviously been recognized by the Supreme Court which has found the existence of prejudice solely on the basis of the newspaper material.[6] The Court has assumed that jurors have read the newspapers in cases where the prejudicial reports were voluminous. Jurors' statements that they were able to decide the case solely on the evidence presented in court have been disregarded in recent Supreme Court decisions.[7]

B. Marshall v. *United States*

In the 1959 case of *Marshall* v. *United States*,[8] the Supreme Court reversed the conviction of a defendant who was held to have unlawfully dispensed certain drugs without a prescription in violation of a Federal statute. After the judge refused to permit the Government to introduce evidence of the defendant's past criminal record, the jurors received such information from reading newspapers. In granting a new trial the Supreme Court declared that the trial judge had found that the information was too prejudicial to be admitted as evidence. The Court stated that the prejudice to the defendant would be "as great when the evidence reaches the jury through news accounts as when it is part of the prosecution's evidence."[9] In reversing the conviction, the Court disregarded jurors' statements that they could give the defendant a fair trial.

C. Irvin v. *Dowd*

A murder conviction was reversed and remanded by the Supreme Court in the 1960 case of *Irvin* v. *Dowd*[10] after "a barrage of newspaper headlines, articles, cartoons, and pictures was unleashed against (defendant) during the 6 or 7 months preceding his trial."[11] Eight of twelve jurors indicated that they could render an impartial verdict despite their opinions that defendant was guilty. In dictum, the Court asserted that the jurors need not be totally ignorant of all the facts and issues involved. A juror can be impartial although he has "formed some impression or opinion as to the merits of the case."[12] It was recognized by the Court that it may be possible for a juror to "lay aside his impression or opinion and render a verdict based on the evidence presented in court."[13] However, the Court did not state that this judgment should be made by the jurors. The Court granted that "each juror was sincere when he said he would be fair and impartial," but declared that the "influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man."[14]

D. 1962 cases

A New York court of appeals case[15] relied on the *Irvin* v. *Dowd* dictum in affirming a conviction and accepted the statements of eight jurors that the prejudicial material they had read would not be considered. The court had described the articles as revealing a "callous disregard of fair trial requirements."[16] Chief Judge Desmond, in dissent, stated:

"Jurors who would not be influenced by accusations such as those made in the newspapers against this defendant would either be of a sort whose minds for some reason do not react at all to what they read, or those whose existing prejudices had already hardened to a point where nothing could worsen them. * * * I refuse to concede * * * that we must be satisfied by the incredible statements of jurors that they can read such stuff and then wipe it off their minds."[17]

The 1962 case which had the greatest effect on the law in this area is the Supreme Court case of *Beck* v. *Washington*.[18] The defendant had been convicted of grand larceny after having been "tried and convicted" by a Senate committee headed by Senator JOHN L. MCCLELLAN. The committee, making various prejudicial remarks to the press, accused Beck of "many criminal acts,"[19] and of having "apparently"[20] stolen money. The trial judge, in denying a motion for a continuance, indicated that the motion was an insult to the "intelligence and fairness of the high-calibered jurors" in the community.[21] The Supreme Court, in a 4-to-3 decision, affirmed the conviction and apparently disregarded prior decisions in Marshall and Irvin.

The U.S. Supreme Court denied certiorari recently to a case which appears to contravene prior Supreme Court case law. The First Circuit of the Court of Appeals in *Geagan* v. *Gavin*[22] had denied petitioner's motion for habeas corpus and had held that the jurors met the constitutional test of impartiality laid down in *Irvin* v. *Dowd*.[23] It was stated that despite the great volume of publicity there were no "feelings of rage and revulsion touching off widespread public clamor for vengeance."[24] Although some of the news mentioned that defendants were involved in other murders the court found this was not prejudicial since the "rubbing out of a few small-time hoodlums is not enough to cause any general public clamor for revenge."[25] The particular crime involved did not "arouse public passions and emotion" and the "trial * * * was conducted from first to last with dignity and decorum in a calm judicial atmosphere."[26] It is obvious that the court completely misconstrued the effects of prejudice when it implied that a biased juror is one who reeks with revenge and hate. It is no wonder that there was no mention of the leading Marshall case since that decision could not be reconciled with the present holding.

In its attempt to distinguish *Irvin* v. *Dowd*, the court noted that 90 percent[27] of the jurors called in that case formed an opinion whereas in the *Geagan* case only 72 percent of the prospective jurors formed an opinion.[28] In *Irvin* v. *Dowd* the jury panel consisted of 430 persons of whom 268 were excused for having opinions of guilt.[29] In the *Geagan* case there were 1,104 jurors called and 659 admitted forming an opinion.[30] The court mentioned in a footnote that "we can hardly assume that all those with an opinion thought the defendants guilty."[31] In holding that the jurors were impartial, the court relied heavily on the voir dire examination. One of the jurors who tried the case asserted that he formed a "tentative opinion."

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[3] 183 F. 2d 201 (2d Cir. 1950), aff'd, 341 U.S. 494 (1951).

[4] Id. at 226.

[5] Ibid.

[6] *Irvin* v. *Dowd*, 366 U.S. 717 (1960).

[7] Ibid.

[8] *Marshall* v. *United States*, 360 U.S. 310 (1959).

[9] Id. at 313.

[10] *Irvin* v. *Dowd*, 366 U.S. 717 (1960).

[11] Id. at 725. In *Reynolds* v. *United States*, 98 U.S. 145 (1878), the Court stated that "a juror who has formed an opinion cannot be impartial," however he may "entertain" an opinion and be impartial. Whether a presumption of partiality is raised on the strength and nature of the opinion is a decision for the court.

[12] *Irvin* v. *Dowd*, 366 U.S. 717, 722 (1960).

[13] Id. at 723.

[14] Id. at 727. There have been other perceptive voices which have excoriated the absurd fiction that a juror is capable of setting aside his prejudice. In *Delaney* v. *United States*, 199 F. 2d 107, 113 (1st Cir. 1952), the court stated that "One cannot assume that the average juror is so endowed with a sense of detachment, so clear in his introspective perception of his own mental processes, that he may confidently exclude even the unconscious influence of his preconceptions as to probable guilt, engendered by a pervasive pretrial publicity." Jurors have been held to be "incapable of knowing the effect which prejudicial matters have upon their unconscious minds." *People* v. *Hryciuk*, 5 Ill. 2d 176, 125 N.E. 2d 61 (1954). The court in *People* v. *McLaughlin*, 150 N.Y. 365 (1896) asserted that the influence of prejudice is "subtle, insidious, and often unconsciously warps the judgment and blinds the intelligence of those surrounded by its atmosphere."

[15] *People* v. *Genovese*, 10 N.Y. 2d 478, 180 N.E. 2d 419, 225 N.Y.S. 2d 26 (1962).

[16] Id. at 480, 180 N.E. 2d at 420 225 N.Y.S. 2d at 27.

[17] Id. at 486–87, 180 N.E. 2d at 424–25, 225 N.Y.S. 2d at 32–34. The majority expressed the New York rule as accepting a juror who has formed an opinion if he swears he can set it aside and the court is satisfied that he will. It is submitted that the court, as well as the courts in a majority of States, does not apply the rule; it merely tends to rely on the statements of jurors. The courts have generally not applied that part of the rule which expresses that the court itself is to be the final judge.

[18] 369 U.S. 541 (1962). Compare the leading case of *Delaney* v. *United States*, 199 F. 2d 107 (1st Cir. 1952) where press reports of public hearings were held to bar the possibility of a fair trial. In *United States* v. *Florio*, 13 F.R.D. 296 (1953) the press reported hearings before the New York State Crime Commission which the Daily News described as a "damning mass of testimony" against the "ruthless * * * convicted bootlegger" who manages the "rackets." Daily News, Dec. 16, 1952, pp. 1, c-3, 10.

[19] See *State* v. *Beck*, 349 P. 2d 387, 411 (1960).

[20] Ibid.

[21] Id. at 394.

[22] 292 F. 2d 244 (1st Cir. 1961), cert. denied, 370 U.S. 903 (1962).

[23] The court implied that the constitutional test laid down in *Irvin* v. *Dowd* was that a juror who swears that he can be impartial is impartial. This common error overlooks the fact that the jurors in *Irvin* v. *Dowd* were found to be biased by the Supreme Court despite their personal assertions to the contrary.

[24] *Geagan* v. *Gavin*, 292 F. 2d 244, 247 (1st Cir. 1961), cert. denied, 370 U.S. 903 (1962).

[25] Id. at 247, n. 5.

[26] Id. at 247.

[27] The correct percentage is 86.04.

[28] Ibid.

[29] *Irvin* v. *Dowd*, 366 U.S. 717, 727 (1960).

[30] *Geagan* v. *Gavin*, 292 F. 2d 244, 247 (1961), cert. denied, 370 U.S. 903 (1962).

[31] Ibid.

On the voir dire examination the trial judge asked the juror:

"Question. If you are accepted as a juror, an oath will be administered to you that you will well and truly try the issues between the commonwealth and these defendants, according to the evidence, which means that you should serve with an open mind and decide the case purely on the evidence as it will be presented here, uninfluenced by any preconceived notion, ideas, or opinions that you may now have. Do you think that you could take that oath and adhere to it faithfully?

"Answer. I do, Your Honor.[32]

"Question. Mr. Leary, if you are sworn as a juror, you will be instructed by the court that every defendant is presumed to be innocent, and that it will be your duty to bring in a verdict, return a verdict of "not guilty," unless you are convinced beyond a reasonable doubt on the evidence and the law that he is guilty.

"Now, do you think that your opinion, or whatever notion you have, will interfere with carrying out that oath. Those instructions?

"Answer. No, Your Honor." [33]

The court stated that the "voir dire examinations speak eloquently for themselves" [34] but what they seem to say is that a juror has little choice in expressing his thoughts. It is obvious that prejudice may lurk in the unconscious but even where it is in the conscious the juror is told what his obligation is and then asked whether he can perform his duty. Indeed, the question might well have been asked whether the juror loves his country.

In *United States* v. *Accardo*,[35] the Court of Appeals, Seventh Circuit, after citing *Marshall* v. *United States*,[36] stated that each case based upon the issue of adverse publicity must "rest on its 'special facts.'" [37] The court, in reversing the conviction, asserted that the published material would have been inadmissible in evidence because of its tendency to prejudice the defendant. Thus, the information must be considered prejudicial if it reaches the jury through news accounts. The dissenting opinion noted that the defendant was considered to be newsworthy and so the press "had a right to publish as news any facts pertaining to him, subject to legal redress in libel actions for any abuse in that regard." [38] Apparently the dissenting judge would give the press license to prejudice jurors with no corresponding right of an impartial jury trial guaranteed by the Constitution. The defendant would be able to recover a monetary judgment while incarcerated in prison.

The District Court of Vermont granted a petition for a writ of habeas corpus in *United States* v. *Smith* [39] on the bases of failure to accord petitioner a fair trial by a panel of "indifferent" jurors and denial of State appellate review. The court found that public disclosure of petitioner's alleged criminal record was directly attributable to the prosecutor. The petitioner's counsel offered testimony to show that the publicity, which the court expressed as having "blanketed" the county, created prejudice. Six of the twelve jurors in addition to the two alternates admitted having read the prejudicial news reports.[40] The Court of Appeals, Second Circuit,[41] in citing *Beck* v. *Washington*, reversed and held that the district court judge was speculating when he found that the jury was not impartial. The court declared that the petitioner did not prove that the jurors were biased and the *Marshall* case did not apply since the prosecutor's statements to the press occurred 3 months prior to the trial, whereas in *Marshall* the statements were given to the press shortly before trial. It is submitted that petitioner did all that he could in proving the existence of prejudice and the distinction between this case and *Marshall* is not valid since eight of the jurors admitted reading and recalling the adverse publicity.

Other recent cases, in finding that an impartial jury trial could be secured despite publicity, relied heavily on the dictum of *Irvin* v. *Dowd* and the decision of *Beck* v. *Washington*.[42] In *United States* v. *Decker*,[43] the Court of Appeals, Sixth Circuit, in affirming the denial of a motion for a continuance, saw no significance in the fact that there was only a 12-day delay between the arraignment and the trial. It would be very difficult to distinguish the *Marshall* case, if it were attempted, since the press reported a prior conviction and the fact that other indictments were pending against the defendant.

The defendant's counsel was portrayed as "passive" by the Court of Appeals, Eighth Circuit, in *Dranow* v. *United States*,[44] since he did not "challenge any juror for cause," [45] offer the judge instructions for the jury telling them to disregard the publicity,[46] or ask that the jury be interrogated concerning any publicity.[47] The counsel made motions for a continuance and for a change of venue which were denied.[48] It is submitted that counsel, in requesting a mistrial on several occasions,[49] a change of venue, a continuance and in submitting a deluge of biased and false news reports,[50] was certainly not "passive" and, indeed, did more than should be expected in order to show the lack of an impartial jury. The court relied heavily on the dictum of *Irvin* v. *Dowd* which stated: "It is not required * * * that * * * jurors be totally ignorant of the facts and issues involved." [51] The court further cited the Supreme Court's statement in Irvin that "scarcely any of the best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case * * *. To hold that the mere existence of any preconceived notion as to the guilt or innocence of accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard." [52] It is indeed an anomaly that the majority of courts that have cited *Irvin* v. *Dowd* quote its dictum in support of findings which are contrary in result to that Supreme Court case. In *Irvin* v. *Dowd* the court found that a fair trial was not afforded the defendant notwithstanding that all of the jurors claimed they could afford the defendant the presumption of innocence and hear the issues with an impartial mind.

A Missouri district court,[53] in finding that a defendant received a fair trial, stated that "publicity is a problem that courts must face * * * if the courts are to say that persons charged with a crime cannot be fairly tried because of the amount of publicity they generally receive, there would be little law enforcement, or little punishment for crime." [54] Inherent in the rationale of most of the court decisions is a hopeless knowledge that although a defendant is unable to secure his constitutional rights, the courts must do as "best they can." [55] Indeed, even where convictions are reversed the defendant must be retried in the publicity-saturated community with the probability of a renewed burst of press reports.

IV. CONCLUSION

It is generally accepted that if the prosecution offers to the jurors information which is not in accordance with the rules of evidence, a fair trial cannot be granted. Thus, it would logically follow that a fair trial cannot be afforded where the jurors are confronted with published information which would be deemed too prejudicial to be admitted into evidence. It is impossible to specify what factual showing a defendant must make in order to prove that a fair trial was not received. The courts are prone to distinguish the leading cases in which convictions were reversed where the fact situations differ in any respect.[56] Since the courts do not control newspapers as they control the prosecution, they apparently are unable to cope with the problem of "trial by press."

Much has been said about employing contempt statutes in order to silence the press.[57]

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[32] Id. at 248.
[33] Id. at 249.
[34] Ibid.
[35] 298 F. 2d 133 (7th Cir. 1962).
[36] *Marshall* v. *United States*, 360 U.S. 310 (1959).
[37] *United States* v. *Accardo*, 298 F. 2d 133, 136 (7th Cir. 1962).
[38] Id. at 142.
[39] 200 F. Supp. 885 (D. Vt. 1962).
[40] Id. at 900.
[41] *United States* v. *Smith*, 306 F. 2d 596 (2d Cir. 1962).
[42] It appears that the rash of 1962 decisions which have refused to follow *Irvin* v. *Dowd* and *Marshall* v. *United States* have been influenced by the case of *Beck* v. *Washington*.
[43] 304 F. 2d 702 (6th Cir. 1962).
[44] 307 F. 2d 545 (8th Cir. 1962).
[45] Id. at 562.
[46] Ibid.
[47] Id. at 562–63.
[48] Ibid.
[49] Id. at 562.
[50] Id. at 560 n. 8.
[51] *Irvin* v. *Dowd*, 366 U.S. 717, 722 (1960).
[52] Id. at 722–23.
[53] *Wolfe* v. *Nash*, 205 F. Supp. 219 (W.D. Mo. 1962).
[54] Id. at 226.
[55] *Harney* v. *United States*, 306 F. 2d 523 (1st Cir. 1962) relied on *United States* v. *Dennis*, 183 F. 2d 201 (2d Cir. 1950), aff'd, 341 U.S. 494 (1951).
[56] E.g., *People* v. *Genovese*, 10 N.Y. 2d 478, 180 N.E. 2d 419, 225 N.Y.S. 2d 26 (1962); *United States* v. *Rosenberg*, 200 F. 2d 666, 669 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953). In *United States* v. *Shaffer*, 291 F. 2d 689 (7th Cir.), cert. denied, 368 U.S. 915 (1961), the court held that *Marshall* v. *United States* cannot be applied if all peremptory challenges are not utilized. In 41 A.B.A.J. 219, 282 (1955), the writer opposed to the exercise of the contempt power to restrict the press, states that "Liberty and restraint can never be reconciled." Query: Is it not possible that liberty may have to be restrained if it is the only means to preserve liberty?
[57] Holtzoff, "The Relation Between the Right to a Fair Trial and the Right of Freedom of the Press," 1 Syracuse L. Rev. 369 (1949). LeViness III, "Crime News," 66 U.S.L. Rev. 370 (1932). The author cites the famous news commentator, Walter Lippmann, as being "unable to believe that the press would be less free if some reasonable restraint were put upon the right to make instantaneous copy out of clues which are vital to the detection of a crime." In stating that journalistic codes of ethics break down, the author cites H. L. Mencken who declares that the much needed purge of journalism "must be accomplished by external forces, and through the medium of penalties exteriorly inflicted." Perry, "Trial by Newspaper," 66 U.S.L. Rev. 374, 375 ("Trial by newspaper * * * is a disease that does not cure itself"). The author cites Clarence Darrow in saying that "Trial by jury is rapidly being destroyed in America by the manner in which the newspapers handle all sensational cases." Mr. Perry agrees with Clarence Darrow on the premise that judges are afraid to hold the newspapers in contempt of court. In the Daily News, Jan. 31, 1927, p. 13, col. 1, the editorial writer asserted that "as long as there is more newspaper circulation in more smut, some presses will be found to roll out the smut. Some unusually ruthless manager or editor leads the parade toward smut's farthest boundary line. The others—or many of the others—follow * * *

In England, any publication having a tendency to create prejudice is a contempt of court.[58] The result has been to insure defendants a fairer jury trial than can be had in the United States. The right to a trial by an impartial jury and freedom of the press are both guaranteed by the U.S. Constitution. The conflict that may result between the two guarantees poses a serious dilemma in the administration of justice. Although a free press is a necessity in any democratic society, an irresponsible press may cause individuals to be tried by biased juries in contravention of the Constitution.

Undoubtedly, the greatest source of prejudicial information stems from the police and the prosecutor. The prosecutor should be prohibited from divulging any information on the basis of an interpretation of canon 20 of the "Legal Canons of Ethics."[59] A member of the bench described police as "the most prolific source of biased information" for the press. The judge asserted that "Police are tempted by friendship, hopes of advancement, and other considerations[60] to make accusations and to give information prejudicial to the accused."[61] Generally, the press precedes the harmful news accounts with the words, "according to police." A limitation on the right of the press to print such information involves the constitutional guarantee of freedom of the press. However, no such constitutional question exists if the police, the prime source of biased publicity, are prohibited from issuing this information. The local governing officials, being responsible for the machinery of criminal jurisprudence, must be prodded to prevent "police leaks." It is submitted that if the press is unable to solicit information from their chief sources, there will be less damaging information printed.

The courts could aid the plight of the defendant by granting motions for change of venue more freely although this practice may be of little use in some cases. The press in the "new" community may take advantage of the crime, or the publicity in the "old" community may have reached all parts of the State. Indeed, publicity stemming from a criminal trial may reach all parts of the country if it helps to sell newspapers.[62] However, at least in some instances, the defendant would be better protected in a community in which the crime was not committed.

In a city that has two or three newspapers, crime reporters could be summoned before a board of judges and reminded which evidence in a particular case is not admissible in court. The board could request omission of sensational reporting, particularly the type that might assume the accused guilty. Recently in Syracuse, N.Y., the presiding judge in a murder case requested that the reporters representing the two local papers refrain from printing certain material. The judges' initiative showed great results and many details connected with the murder trial were not printed.[63]

An ancient practice of "insuring" a defendant of a fair trial has been to instruct the jury that they should disregard the prejudicial accounts.[64] This act is a farce by itself since it obviously does not insulate the trial from hostile sentiment. Judge Frank of the Court of Appeals, Second Circuit, remarked that such an instruction "is like the Mark Twain story of the little boy who was told to stand in a corner and not to think of a white elephant."[65]

In 1900, a Pennsylvania district court declared:

"It is greatly to be deplored that a practice of which we see too many examples, should exist, and that persons accused of crime should be put on trial in the columns of the newspapers, and should be declared to be guilty and denounced as criminals before there has been a careful and impartial trial in the proper and lawful tribunal."[66]

Today, the problem depicted by the court, 63 years ago, still exists. Although great strides have been taken to insure that those people accused of crime will be amply protected in the courtroom there has been virtually no progress in eliminating the press as a criminal forum.

The Court of Appeals, Sixth Circuit, has declared that one of the "fundamental rules of criminal law is that a defendant in a criminal case is entitled to be tried by jurors who should determine the facts submitted to them wholly on the evidence offered in open court, unbiased and uninfluenced by anything they may have seen or heard outside of the actual trial of the case."[67] If the preceding statement is to be more than mere fiction, something must be done to convince the police, the prosecutor, and the press of their legal and ethical responsibilities.[68] If this is impossible, the individual's constitutional rights must be safeguarded at the sake of the rights of the press.

GERALD STERN.

Mr. MORSE. Mr. President, a number of Senators have spoken to me prior to my speech this afternoon concerning the subject of my speech, because it has generated a great amount of discussion in the cloakrooms and offices of the Senate for some time. To those who have expressed an interest in the presentation of the material that I shall offer to the Senate this afternoon, I wish to say: Start your reading with the Syracuse Law Review article.

censorship of the press * * * must come." The Daily News boasts of having twice the circulation of any other newspaper. See footnotes 1, 3, 8, 27, 51, infra, for examples of its daily reporting methods.

[58] Holtzoff, "The Relation Between the Right to a Fair Trial and the Right of Freedom of the Press," 1 Syracuse L. Rev. 369 (1949).

[59] A.B.A., "Canons of Professional Ethics," canon 20 reads in part: "Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial. * * * Generally they are to be condemned."

[60] In the Syracuse purse-snatch case, supra note 56, the police chief announced in advance that the arresting officers would receive an "extra week's vacation." Syracuse Herald-Journal, Nov. 30, 1962, p. 1, col. 4.

[61] Niles, "The Power of the Court and a Free Press," N.Y.L.J. Sept. 28, 1962, p. 4, cols. 1–3.

[62] Walter Winchell played roles in both the Sheppard case and the Lindbergh kidnaping case by reporting harmful information and predictions which came to the attention of the jurors. Waller, "Kidnap," 294 (1961). Holmes, "The Sheppard Murder Case," 305 (1961). Both books describe the nationwide publicity that follows a famous crime.

[63] Syracuse Herald-Journal, Nov. 14, 1962, p. 32, col. 3. Judge Fred M. Marshall of the Erie County court presided over the case.

[64] E.g., *Finnegan* v. *United States*, 204 F. 2d 105 (8th Cir.), cert. denied, 346 U.S. 821 (1953), *Hart* v. *United States*, 112 F. 2d 128 (5th Cir.), cert. denied, 311 U.S. 684 (1940).

[65] *Leviton* v. *United States*, 193 F. 2d 848 (2d Cir. 1951), cert. denied, 343 U.S. 946 (1952).

[66] *United States* v. *Ogden*, 105 Fed. 371, 373 (D.C. Pa. 1900).

[67] *Briggs* v. *United States*, 221 F. 2d 636 (6th Cir. 1955).

[68] Mr. Edwin Otterbourg, a distinguished attorney, has warned the press that the Government has imposed mandatory legislation on "Other industries which were too slow in utilizing self-imposed regulation. See, Otterbourg, "Fair Trial and Free Press: A New Look in 1954," 40 A.B.A.J. 838 (1954) for an excellent review of attempts to voluntarily agree on codes of ethics.

AMENDMENT OF DISTRICT OF COLUMBIA REDEVELOPMENT ACT OF 1945

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The LEGISLATIVE CLERK. A bill (S. 628) to amend the District of Columbia Redevelopment Act of 1945.

PROPOSED LEGISLATION RELATING TO THE EXPEDITIOUS TRIAL OF CRIMINAL CASES

Mr. MORSE. Mr. President, I say to my colleagues that in reaching their final decision as to whether by next Tuesday, at 5 p.m., they will add their names as cosponsors to either one or both of these bills, I hope they will begin by reading the article in the Syracuse Law Review. It is a keen analysis of the problems which give rise to the first bill I have introduced .

As a legislator I am interested in making certain that our procedures for criminal prosecution are fair and in keeping with our concept of American justice; it is important that they be fair to Hoffa and to anyone else in this country who is charged with crime, regardless of his or her name or station in life.

In the February 1963 issue of the Progessive magazine, there was published an article, written by Sidney Lens, entitled "The Pursuit of Jimmy Hoffa." I ask unanimous consent that the entire article be printed at this point in the RECORD, in connection with my remarks.

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

THE PURSUIT OF JIMMY HOFFA

(By Sidney Lens)

(NOTE.—Sidney Lens, Chicago labor leader and writer, attracted attention more than a decade ago with his critical survey of the labor movement, "Left, Right, and Center." His other books are "The Crisis of American Labor," "A World in Revolution," and "The Counterfeit Revolution." Mr. Lens' articles have appeared in Harper's, the Yale Review, the Commonweal, Harvard Business Review, and Fellowship.)

A hung jury in a Nashville, Tenn., Federal court which refused to convict James R. Hoffa, president of the Teamsters Union, of taking a roundabout payoff from a trucking firm recently gave Hoffa still another victory in his running battle with Attorney General Robert F. Kennedy and the U.S. Department of Justice. A review of the record of that battle raises some troublesome questions:

Has the campaign against Hoffa become a vendetta, a deliberate harassment designed to get the man, rather than to enforce the law? Is the Government, and more specifically Attorney General Kennedy, trying to put Hoffa in jail, regardless of method, because he is James Hoffa and the head of the most powerful union in the country, or does it have solid ground for its investigations and prosecutions? Does the Department of Justice have a double set of standards—one relating to Hoffa and similarly stigmatized men, and another for those regarded as respectable, or is justice being administered impartially?

This is the fourth time the Federal Government has attempted to pin some legal transgression on Hoffa. Each time the effort has failed. The McClellan committee hearings, beginning in 1957, left Hoffa bruised but not beaten. Neither the charge that he attempted to bribe a Senate investigator nor the one that he tapped telephone wires of subordinates in his own union office could be sustained in court. The Teamster leader was acquitted in both cases. In the most recent trial, known as the Test Fleet case, the Government failed to convince the jury that Hoffa was guilty of a crime.

But the Kennedy-Hoffa imbroglio is far from finished. The next chapter is expected to be the so-called Sun Valley trial in Florida. Here Hoffa is accused of misusing, for his personal benefit, a half million dollars of Teamster money intended to develop a model city for retired persons.

When the Teamster leader was acquitted in the previous court cases, it seemed as if the Government might run out of material on which to base further charges. But the Attorney General has expressed a determination to pin something on Hoffa, sooner or later. It was common knowledge in Washington that young Robert Kennedy was dissatisfied with the efforts of Eisenhower's Attorney General, William P. Rogers, to topple Hoffa; for his part, Rogers felt Kennedy's interrogations before the McClellan committee were so inept that they precluded effective court action. Senator John F. Kennedy alluded to this dissatisfaction during the 1960 presidential campaign when he said at Springfield, Ill.: "I want to make it very clear that I don't believe the Department of Justice (under President Eisenhower) has carried out the laws in the case of Mr. Hoffa with vigor."

Since January 1961, however, Robert Kennedy himself has been in the Attorney General's seat, and he brought with him into the Justice Department a number of assistants with experience in the investigation of Teamster affairs.

Both the Test Fleet and Sun Valley cases are barometers of Robert Kennedy's tenacity. The Sun Valley indictment, first returned in December 1960, was dismissed 7 months later by Judge Joseph P. Lieb on the ground that Negroes were excluded from the grand jury. Kennedy has reinstituted the proceedings, carefully avoiding further technical pitfalls. The Test Fleet case was first brought to light by Congressman Clare Hoffman's investigation in 1953, and reviewed during the McClellan hearings in 1958, but President Eisenhower's Attorney General declined to prosecute.

In his pursuit of new material on which to base a prosecution, Robert Kennedy has fanned out in several directions. One is a thorough investigation into the Teamsters' $180 million Central States, Southeast, and Southwest areas pension fund. Hundreds of businessmen across the Nation are being interviewed and some are being summoned before a score of grand juries to explain the terms under which they secured loans from this fund. According to Hoffa, "They ask each one five questions. 'Do you know Hoffa? Have you had any business with him or his fund? Did you give him any money? Did you give him any money through a third party? Has he threatened you?' "

Another facet of Kennedy's offensives is his campaign against Hoffa's subordinates. No one has kept a scorecard on the number of indictments against lesser Teamster officials, but the consensus is that about 30 are now pending and more are awaited daily. According to a Wall Street Journal estimate some months ago there were then 14 juries at work on Teamster affairs around the country and more in the offing. Hoffa recently claimed there are now at least 32.

The roster of indictments includes a charge of evasion of $1,197 in income tax by a local Teamster official in Detroit, acceptance by a Chicago Teamster of a $9,600 payoff by an employer, another indictment involving $7,584 in payoffs, and similar accusations. If these charges are true, they constitute serious crimes and should be prosecuted to protect the interests of the union membership and the public.

There are a few footnotes that must be added to this record, however. One is that this is the same kind of charge that has been leveled—and often proved—against union officials in decentralized industries ever since the turn of the century. Those industries with thousands of small employers, such as drycleaning, laundry, construction, hotel, restaurant, and many others, have been prey to rackets throughout the years. None of these rackets is excusable; but they began before Hoffa was born; they have existed in many industries other than trucking; and they are not one-sided affairs in which the employer is a harassed "good guy" and the unionist a terrorizing "bad guy." To create the impression that Hoffa has created a new kind of racketeering is a distortion of history. The old ones are bad enough.

Furthermore, if the Justice Department were somewhat less emotional about Hoffa, it would acknowledge that Hoffa's centralizing of the process of collective bargaining in the trucking industry has effectively put a stop to certain types of racketeering. The Teamsters' Union now signs multistate contracts in trucking and Hoffa hopes soon to sign a nationwide agreement. Thus an individual employer cannot make a special deal with an official in some local union.

A second footnote to the Kennedy indictments is that many of the charges seem so trivial they would almost certainly not be pressed against anyone except the Teamsters. One, for instance, involves solicitation of employers to buy tickets to a Teamster dinner. Another charges a Teamster with perjury because he denied asking his boss to buy a $100 ticket. Still another indictment accuses a Teamster official of making a long distance telephone call to a woman, and of putting his wife's air travel fare on his union credit card.

A third footnote is that in almost no instances are the employers also indicted along with the union officials it is charged they paid off. In the Test Fleet case, involving Hoffa himself, the New York Times asked critically why the trucking firm officials were not prosecuted as well. "If there were illegal payments," the Times stated, "the illegality was as much on the part of those who made them as those who received them." The Justice Department is charged with equal enforcement of the law. If a Teamster official is prosecuted for taking a bribe, so should the employer who gave it and benefited from it.

A fourth footnote carries the gravest implication of all, a threat to one of labor's most basic rights, the right to strike. It concerns the indictments against 20 striking employees of the Bowman Transportation Co. in Gadsden, Ala., the South's largest nonunion trucking firm. These men are charged with violating the Hobbs Act against racketeering, because they allegedly entered into a conspiracy to "extort" a labor contract with higher wages and better working conditions. The union had won an election covering some 300 drivers, but the company, instead of concluding an agreement with the union, hired a number of strikebreakers, some of whom, it is charged by Hoffa, were armed. Violence flared on both sides, and Teamster rank-and-file members were arrested. On being released from jail they were handed indictments charging them with "conspiracy" to "extort" a union contract.

Should this charge stick, few unions would be free from prosecution. This is similar in substance to the kind of conspiracy charges—dating back to the historic Philadelphia cordwainers' (shoemakers') strike and subsequent trial of 1806—that labor has had to resist for a century and a half.

None of these footnotes to the Justice Department's indictments is intended in any way to extenuate crime in the labor movement generally or the Teamsters specifically, but rather to place these events in a rational perspective. They compel the conclusion that however one may feel about the man, the entire campaign of the Justice Department to get Hoffa has the curious goal of removing him from his union post rather than being designed primarily to maintain law and order.

The Wall Street Journal of June 11, 1962, carried a headline, "Government's Plan To Oust Hoffa by '64." The subhead stated: "War on Teamster Boss To Stress Suspected Use of Pension Funds and Harassment of His Associates." The same newspaper, on October 20, 1959, carried a similar headline: "Anti-Hoffa Strategy. United States Tries To Topple Him by Removing Key Teamster Supporters. Grand Jury Probes of Aids Are Stepped Up; Monitors, New Law Exert Pressures. Will His Foes Get Elected?"

The lead in the 1959 story said: "The Government quietly is stepping up its efforts to topple Teamsters boss Jimmy Hoffa." The 1962 lead stated: "Though their best-laid plans have gone awry in the past, Government investigators are confident they've devised a strategy grand enough in concept to insure the ouster of James R. Hoffa as Teamster president—not this year, but maybe next, or the year after." If The Journal's estimate is accurate, it reveals a strange objective for a Federal administration. To convict a man of the commission of a crime, if it can be proved, is a legitimate goal. But to harass him and his associates in order to deprive him of his union position is hardly the proper business of the Justice Department as the law-enforcement arm of the National Government.

The "get Hoffa" theme is neither a publicity man's invention nor idle speculation by the Wall Street Journal. During the Kennedy-Nixon television debates in the 1960 presidential campaign, Candidate John F. Kennedy said: "I'm not satisfied when I see men like Jimmy Hoffa in charge of the largest union in the United States still free." Asked by a reporter why he made this statement, Senator Kennedy replied: "Because I think Mr. Hoffa has breached national law, State law. I don't think the prosecutions have been handled against him very satisfactorily."

On another occasion the future President said: "In my judgment, an effective Attorney General with the present laws we now have on the books can remove Mr. Hoffa from office. And I assure you that both my brother and myself have a very deep conviction on the subject of Mr. Hoffa." This "get Hoffa" attitude betrays an emotional involvement on the part of the Kennedy brothers that would seem to conflict with their responsibility for equal enforcement of the law. It is an attitude that has given rise to the use of tactics and techniques of legal investigation and prosecution that carry a serious threat to our constitutional liberties.

The Teamsters' troubles began soon after the AFL and CIO were merged in December 1955. Dave Beck, then the president of the union, objected to the merger. Perhaps the investigation of the Teamsters by the McClellan committee would not have taken place at all except for this fact. The AFL–CIO leadership never once objected to the methods used by the committee against Beck or Hoffa, and it is reported that some AFL–CIO unionists regularly supplied material to Senator McCLELLAN and Robert Kennedy.

In any case, the record is clear that the committee carefully chose both its victims and its facts. For example, Hoffa was charged

with having rigged the elections of delegates to the 1957 convention which elected him president. Robert Kennedy claims in his book, "The Enemy Within," that only 4.8 percent of the delegates had "any clearly legal right to be at the convention and to vote." Much of this charge is based on technicalities, such as the time set for the election, but much of it may very well be true. Yet there is one union in the AFL–CIO which did not hold an election for almost three decades, and probably would not have held one yet if it were not for the Landrum-Griffin bill. This union was never called by the McClellan committee to explain.

One of the results of the McClellan hearings was that 13 members of the Teamsters' Union protested Hoffa's election, and eventually Federal Judge F. Dickinson Letts appointed a board of three monitors to supervise union affairs and prepare for another election. This was a compromise Hoffa agreed to, but it turned out to be a useless legal gesture. Seventeen times Hoffa's attorney Edward Bennett Williams, a distinguished civil libertarian, appealed a monitor and court decision; in 15 instances he was upheld. When the monitorship was finally dissolved, after costing more than a million dollars, Hoffa was elected president again—legally and unchallenged—with only token opposition.

From a trade union point of view, Hoffa is open to serious criticism for a lack of broader social vision, a lack he shares with many of his enemies in the union movement. His dealings in the Test Fleet case are open to serious question on moral grounds, even though he was not found legally guilty. Some of his friends and associates are unsavory. But there are some points to be made in Hoffa's defense:

Hoffa has negotiated far better union contracts than any of his major rivals in the union movement.

Despite widespread impressions to the contrary, the fact persists that the majority of Teamster unions—especially those which deal with big employers—have not been tainted with scandal.

Of the 150 Teamster officials against whom Robert Kennedy claims there is "derogatory information" in his files, the majority are either no longer with the union or are in reality rank-and-file members, some of whom merely drive a truck. In a breakdown prepared last year by the Teamster, official publication of Hoffa's union—obviously pro-Hoffa but never successfully challenged—16 of the accused were listed as never having belonged to the union, 9 were men required by union shop agreement to belong to a Teamster local but were not officers, 35 were former officers or employees but no longer associated with the Teamsters in any capacity, 7 were officers or employees who have been arrested but never convicted of any crime, 26 were men who were convicted before they became officials in the Teamsters' Union. Fourteen were convicted while holding office, but even of these, some were guilty only of such minor offense as disorderly conduct on picket lines or traffic violations. Even with considerable allowance for exaggeration or bias, this review presents a picture far different from the widely accepted image of a union with one and a half million members ridden through and through with hoodlums.

No balanced estimate would place James R. Hoffa among the angels. But neither do the facts prove him to be the kind of devil portrayed by the press and some AFL–CIO leaders. In contrast, in the top AFL–CIO leadership are some men with demonstrably worse records—one of them, Maurice Hutcheson of the Carpenters' Union, is appealing a conviction—but none has been subjected to the same opprobrium.

It is this opprobrium which makes it possible for the Justice Department to conduct a campaign against Hoffa in which almost anything goes. In 1957 Hoffa was tried on the charge of wiretapping the telephones of his subordinates in the Teamster office in Detroit. The first trial ended in a hung jury; in the second trial, in 1958, he was acquitted. Even if he had been guilty this was a singular charge to be made by a Justice Department which admits it is using wiretaps itself, and by a Government which is wiretapping hundreds of its own offices. A Government Operations Committee of the House of Representatives has reported that the administration is monitoring 4,790 of its own wires. The Justice Department concedes that it maintains some 80 wiretaps of private citizens.

Another charge against Hoffa was that he attempted to bribe a McClellan committee investigator, Cye Cheasty, to give him information. Again Hoffa was acquitted. A third accusation involved the instance last year when Sam Baron, a top Teamster organizer for 9 years, accused Hoffa of slugging him. This case was dropped when the prosecutor in Washington, D.C., was unable to find witnesses who would corroborate Baron's charges.

If the methods used by congressional committees and the Justice Department in the campaign to "get Hoffa" were to be extended universally, the American system of dispensing legal justice would be destroyed. It is not Hoffa, then, that is the issue, but the threat to the very roots of our judicial traditions. It is not the man that concerns us here, but the methods. Does the Justice Department have the right to go fishing into every area of a person's activities, looking for possible crime? Or should the Department investigate only specific charges where it has reasonable assurance that a crime has been committed? The Government has a right to subpena a particular businessman if it has reasonable grounds to believe that he made a payoff to Hoffa to get a loan from the Teamster Pension Fund. But it has no right to subpena a hundred businessmen, or even to send FBI agents to interrogate them, just on the chance that one of them did make such a payoff. Yet the Justice Department is following the latter course, hitting out in all directions in the hope that something will be uncovered which can be used to "get Hoffa."

Edward Bennett Williams, Hoffa's attorney, gave this account of the long campaign against the Teamsters' president. For 4 years the McClellan committee held hearings—20,000 pages of testimony, filling 59 volumes. "The victims were accused often by rumor and hearsay. If they admitted the accusation, they faced conviction. If they denied it, they faced perjury. And if they stood silent, they faced contempt." When all the accusations had been thoroughly sifted, Williams said, six of them became indictments against top Teamsters, and in each of the six cases there was an acquittal. On February 5, 1959, he recorded, Hoffa had been served with a subpena ordering him to deliver "all books and records * * * for the period from January 1, 1945, until the present time. * * *" If Hoffa had complied with this request it would have taken 100 freight cars to deliver the documents and would have cost, according to Williams, $1 million. Fortunately the request was modified, but the incident demonstrated the "fishing expedition" nature of the investigation.

In 1961 Federal Judge Fred W. Kaess of Detroit ruled that the Labor Department could not subpena the books of locals 299 and 614 merely to see if they were accurate. Although he was overruled in the higher courts, the danger Judge Kaess cited of Government indulging "itself with the luxury of a personal vendetta" cannot be dismissed lightly. "The subpenas by themselves," said the judge, "are so broad that they constitute a complete seizure unrelated to any recorded purposeful investigation. * * * The Department of Labor has refused to show, or has been unable to show, any basis for this investigation." There are a number of instances where one agency of government has subpenaed the Teamsters' books only to have a second agency issue another subpena. Each time the union must photostat what it turns over to the Government. It has difficulty keeping track of its own documents. "If any paper is lost," observed Hoffa, "we are in trouble."

On at least three occasions, according to Hoffa, Federal officials have urged Teamster employees to turn state's evidence. One employee at the Washington headquarters was allegedly told: "We've checked you out. You're clean. But you know all the facts about the operation. Give us the dope so we can put Hoffa in jail." A southern Teamster—again according to Hoffa—was advised: "We're going to indict your boss. You're going to be investigated too. But if you cooperate with us, you won't be indicted." One man was picked up in Nashville and told that the Government knew Hoffa had given him $2,500 to get a Teamster out of jail. Presumably he was to use these funds for bribery, at Hoffa's direction.

Hoffa insists that he and other Teamster officials are being followed, that their wires are tapped, that the Government has on at least one occasion, in Orlando, Fla., planted a listening device in a hotel room where four union lawyers were planning a court defense. Sid Zagri, Teamster lobbyist, claims he found a wiretap inside his telephone, and that his mail and that of other union officials is being watched. On another occasion, Zagri reported, he received a letter addressed to his home, but delivered to the union office. "How could this have happened," he asked, "if they weren't putting our mail aside for a check?"

Hoffa has expressed the belief that a considerable share of the evidence against him in the Sun Valley case was secured through wiretapping. His lawyers subpenaed Senator MCCLELLAN and members of his staff to bring in all records and recordings they might have. The Senate passed a resolution that MCCLELLAN need not testify; and that is where the matter stands. An employee of the McClellan committee was put on the stand in Orlando, Fla., and asked whether he had conducted any wiretapping relative to Hoffa's case. He refused to answer, claiming the protection of the fifth amendment.

Teamster officials claim that they have had briefcases stolen from their hotel rooms; that 50 FBI agents descended on a recent hotel meeting of their board of directors in the role of busboys, bellhops, and the like; that wiretap recordings were played back to a witness in the Test Fleet case in an attempt to induce him to testify against Hoffa; that a conversation between a Teamster employee and a Senator was monitored and the information divulged. They claim that a prospective employee was threatened with investigation if he took a job with the union.

The Justice Department denies these charges. It denies, first of all, that its investigations constitute a vendetta. It denies that it has tapped wires either in Teamster headquarters or in the Orlando, Fla., hotel room where the four lawyers were meeting. It denies any mail checks involving Teamster officials. But on specific questions concerning whether Hoffa or his staff are being followed, whether employees are urged to turn evidence against Hoffa, or whether businessmen who receive loans from the pension fund are being questioned, the answer is simply that the Justice Department is conducting a thorough investigation.

Even if there is only a modest degree of truth in Hoffa's charges, the implications for

our system of justice would be grave indeed. What happens to Hoffa may be important, but it is secondary to what happens to the judicial process, which involves every American.

In the past two decades new techniques have undermined the traditional and constitutional legal process. They might be described this way: If the Government cannot convict a man in court by due process of law, it can convict him in the public mind through legislative investigation and then use his testimony as the basis for legal prosecution. The procedure is, in a sense, a massive policy of entrapment. This methodology has proved disturbingly successful. Reputations are destroyed, jobs are lost, men are snared for future legal prosecution—all without due process of law, the right of cross-examination, or other constitutional safeguards.

These extralegal techniques were first used by the House Un-American Activities Committee in its effort to "get the Communists." It is these techniques which now bedevil Hoffa and his associates. Gradually over the past decade the extralegal procedure of the congressional committee has shifted its emphasis from Communists to fellow travelers, then to former Communists, then to liberals, and finally to unpopular union officials.

The McClellan committee, for which Robert Kennedy was counsel, conducted itself with a greater degree of decorum than did the House Un-American Activities Committee or the McCarthy committee. Its purpose however, like theirs, was not primarily the formulation of legislation, but prosecution by Congress and the newspapers. During the McClellan committee's hearings scores of men were damned publicly without the opportunity to reply, and often through distorted evaluations of the "evidence."

In our society it has been axiomatic that it is better that 10 guilty men escape than that 1 innocent person suffer. Hence the numerous safeguards for the accused, the insistence that a man must be proven guilty beyond a reasonable doubt and that he must not be compelled either to prove himself innocent or testify against himself. All this is changing quietly and perniciously.

The damage the new approach of recent years has done to American traditions of social justice is cause for grave concern. Polls taken among teenagers indicate that they are sadly misinformed on the concepts of fair trial and judicial safeguards. Edward Bennett Williams cited a poll conducted by a professor at one of the Nation's great universities. "To the chagrin and the amazement of the professors," Williams reported, "a majority [of the students] indicated that they did not believe in the peaceable right of assembly for all Americans. They did not believe in the right of every accused to confront his accuser and subject him to cross-examination. They did not believe in the privilege against self-incrimination, nor in the principle of double jeopardy. * * *"

These attitudes reflect an infinitely greater danger to our Nation than James R. Hoffa could ever possibly be. Reaffirming the fundamental guarantees of our judicial system, even if it meant that Hoffa were never prosecuted, is vital to the continuation and development of the democratic process. To say this today leaves one open to the charge of being soft on Hoffa. On the contrary, the real softness is displayed by those willing to subvert our judicial traditions, to sacrifice vital civil liberties principles, for the sake of getting one man.

Mr. MORSE. The article is a typical one, similar to others we have been reading of late, which have been appearing with increasing frequency. These articles set forth allegations that our Federal criminal procedure needs modification. I think Senators should read the article. I ask that they do so—although not with any idea that they agree with the conclusions which Mr. Lens reaches in the article, because in some particulars I do not agree with his conclusions. However, my disagreement is not germane or relevant to the legal thesis which I present this afternoon. Therefore, I have no intention of arguing on the floor of the Senate any of my disagreements with the conclusions set forth in the article. However, I think Mr. Lens has performed a service in presenting in the article his point of view, and I think those who are interested in my bills would profit by reading the article.

As all Members of the Senate know, I never pass any cards under the table or never knowingly sweep anything under the rug. The next material I shall place in the RECORD was received by me from the chief counsel for the defense of Hoffa in the so-called Tampa case. I propose to read this material to the Senate because the Tampa case will be involved in any analysis of the position of the Teamsters in connection with the subject matter under discussion. So I shall read the material only for the information of the Senate. In reading it, I do not wish it understood that I approve the contentions made by the counsel for Mr. Hoffa. I read the material because in my judgment I owe it to the Senate to make this record a full one. In connection with this presentation I have the same obligation to the Senate that I would have to a judge in court; and I would owe it to the court to present all the information I might have on a particular case. So I owe it to the Senate to tell it all I know by way of background which led me to decide to introduce these two bills.

The memorandum was submitted by the chief counsel for the defense in Tampa case—Frank Ragano—and reads as follows:

On May 17, 1963, a demand for a speedy trial or in the alternative, a dismissal of the indictment in the Florida case, the so-called Sun Valley case was filed with the District Court for the Middle District of Florida where the case of the *United States* v. *James R. Hoffa and Robert E. McCarthy, Jr.*, was pending. The gist of the demand for trial was that the case had been pending since October 17, 1961, which was the date of the return of the indictment after the first indictment which was returned on December 7, 1960, had been dismissed by the court, and that a period of some 9 years and 4 months had expired from the time of the first alleged overt act set forth in the indictment until the time of the filing of the demand for a speedy trial and that the Government had not indicated when it intended to try the Florida case, if ever, and it became obvious that the Government desired to have the case pending indefinitely.

On May 28, 1963, the U.S. District Court for the Middle District of Florida notified the counsel for the Government and the defendant that the defendants' demand for a speedy trial would be heard on June 6, 1963, at 2 p.m.

On Tuesday, June 4, 1963, the Government simultaneously with the return of an indictment in Chicago against James R. Hoffa and others, filed a motion to dismiss the Florida case. As grounds for the motion to dismiss, the Government alleged that certain segments of the Florida case were incorporated in the Chicago case.

I digress from my reading of the memorandum to state that if the counsel is correct, this means that one of the reasons for dismissing the Tampa case in Florida, for which there had been a long-standing indictment, was that the case more recently filed against Hoffa in Chicago would involve some of the elements involved in the Tampa case. That is interesting, because it is my understanding that the defendant was not consulted in connection with that dismissal, and that the result was that there was really, in a sense, a change of venue, in that he would then be required to answer in Chicago at least a part of the charges involved in the Tampa case. That is an interesting switch of jurisdiction. In that connection, Mr. President, let us forget about Hoffa, and let us refer to Mr. X. This situation raises a serious question as to whether that procedure can be considered fair play.

I read further from the memorandum by the counsel:

On the same date the U.S. District Court for the Middle District of Florida entered an order dismissing the Florida case and at the same time canceled the hearing which was scheduled for June 6, 1963, at 2 p.m. on the defendants' demand for a speedy trial. The truth of the matter is that the Chicago case and the Florida case are altogether and entirely different, distinct and separate cases in that James R. Hoffa and Robert E. McCarthy, Jr., were charged in the Florida case with using the mails to carry out a scheme to misuse $500,000 belonging to local 299 of the Teamsters Union which is and was located in Detroit, Mich.; whereas the Chicago case charges the defendant, James R. Hoffa, with fraudulently obtaining loans from the pension fund of the Central States, Southeast, and Southwest area health and welfare fund from which loans he allegedly benefited monetarily. Proof of this statement lies in the fact that if the Chicago case did include the Florida case then why wasn't James R. Hoffa's codefendant Robert E. McCarthy, Jr., in the Florida case also indicted in Chicago?

It is significant and noteworthy that on May 28, 1963, at approximately 2:30 p.m., two individuals who described themselves as being Government agents called in person at the home of Robert E. McCarthy, Jr., at which time Robert E. McCarthy was not at home. The two agents talked to Robert E. McCarthy, Jr.'s wife. His wife in turn informed him that the Government agents wanted to speak to him about certain matters which would be of great benefit to him. On the following day, Wednesday, May 29, 1963, Robert E. McCarthy, Jr., telephoned a Mr. James McKeon at the telephone number that he had left with his wife with instructions to telephone him. At that time Robert E. McCarthy, Jr., was advised by Mr. James McKeon that it would be to his benefit for him to come to his office in the Federal Building in Detroit and have a talk with a Mr. William French whom Robert E. McCarthy believed was the other Federal agent who called at his home the previous day.

At about noon on the 29th day of May, 1963, Robert E. McCarthy did go to Mr. James McKeon's office in the Federal Building, pursuant to Mr. James McKeon's request and had a talk with Mr. James McKeon and Mr. William French in room 235 of the Federal Building. Mr. McKeon and Mr. French informed Mr. McCarthy that they wanted to talk to him about his employment at the Public Bank in Detroit and that if he spoke to him about the Public Bank he, McCarthy,

would be absolved of all responsibility in the case which was pending against him and James R. Hoffa in Florida. The gist of the conversation was that if McCarthy cooperated with Mr. McKeon and Mr. French he would be freed in the Florida case. Mr. McKeon and Mr. French then offered McCarthy immunity in the form of a "letter of good faith" which would clear him of any pending charges against him in the Florida case. McCarthy advised Mr. McKeon and Mr. French that he was innocent of any wrongdoings and that he knew of nothing concerning Mr. James R. Hoffa or anyone else that could possibly help them. Mr. McKeon and Mr. French spoke to McCarthy for a period of approximately 45 minutes during which time Mr. McKeon and Mr. French alternated in making statements to McCarthy, the gist of which was that they wanted McCarthy to talk to them about the Florida case and that they would offer him immunity if he did talk to them about the case. After McCarthy made it clear to them that he did not know of anything concerning Mr. James R. Hoffa that would be helpful to them they asked him to contact them at their office before June 4, 1963, in the event that he changed his mind. McCarthy did not thereafter contact either Mr. McKeon or Mr. French. It is significant that Mr. McKeon and Mr. French were desirous of obtaining statements from Mr. McCarthy which would be damaging to Mr. James R. Hoffa prior to June 4, 1963, which was the date that the Government filed a motion to dismiss the Florida case.

I digress from the counsel's memorandum for a moment to point out an interesting fact. McCarthy had a lawyer. McCarthy was under indictment. McCarthy's lawyer had the responsibility of protecting his interest. McCarthy's lawyer was unaware of the compact between Federal officials and his client.

I used to teach legal ethics. I taught my students—and the law is clear—that when an individual is under indictment and has a lawyer, and someone wishes to communicate with that individual, he communicates through the lawyer, or at least notifies the lawyer of his desire to communicate with the client.

Returning to the memorandum, counsel for Hoffa said:

To illustrate the tactics employed by the Justice Department in this matter, it is to be noted that on June 5, 1962, counsel for the Justice Department filed a written announcement of "ready for trial" with the U.S. District Court of the Southern District of Florida in the Florida case. At that time the defendants also announced to the court that they were ready for trial and a trial date was set for October 15, 1962. On August 2, 1962, the counsel for the Justice Department filed a motion in the U.S. District Court for the Middle District of Tennessee requesting that the Nashville case be set for trial on the grounds that a new district would be created in the State of Florida on October 29, 1962, which motion was thereafter granted by the U.S. District Court for the Middle District of Tennessee.

On August 6, 1962, the chief judge for the southern district of Florida entered an order removing all cases which could not be completed before October 28, 1962, from the docket. On August 10, 1962, the defendants filed a motion to reset the Florida case for trial at the earliest possible date. A hearing was had on the defendants' motion to have the Florida case reset for trial on August 20, 1962, at which time counsel for the Justice Department strenuously objected and opposed the setting of the Florida case for trial at an early date. On August 20, 1962, the U.S. district court denied the defendants' written demand that the case be reset for trial without setting it for trial at a future date or even indicating when the Florida case would be tried. On August 27, 1962, the defendants filed with the U.S. district court a motion to dismiss the indictment for lack of a speedy trial which was denied by the court without a hearing.

On October 29, 1962, a new middle district of Florida was created and thereafter counsel for the defendants began making inquiries of the U.S. district attorney for the middle district of Florida and counsel for the Justice Department as to when they intended to try the Florida case. However, although the said inquiries were made numerous times over a period of several months, counsel for the defendants were invariably told that they had no idea as to when the Florida case would be tried and in most instances the replies were simply "no comment," which prompted the defendants to file the demand for a speedy trial or in the alternative a dismissal of the indictment in the Florida case on May 17, 1963.

According to the Department of Justice press release of June 4, the Tampa case was dismissed without prejudice on the ground that elements of the Tampa case were included in the Chicago case.

Assuming that the Government is correct in its contention would it not be proper for the Government to proceed immediately in the Chicago case so that the defendant may have an opportunity to clear his name, which has been under a cloud in the Tampa case since December 1960?

Mr. President, counsel supplied me with a copy of the order of dismissal in the Tampa case dated June 4, 1963. I ask unanimous consent that it be printed at this point in the RECORD.

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

[U.S. District Court, Middle District of Florida, Tampa Division—Criminal No. S132-T. Cr.]

UNITED STATES OF AMERICA
v.
JAMES R. HOFFA AND
ROBERT E. MCCARTHY, JR.

ORDER FOR DISMISSAL

Pursuant to rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the U.S. attorney for the middle district of Florida hereby dismisses the indictment returned October 11, 1961, against James R. Hoffa and Robert E. McCarthy, Jr., defendants.

Telephonic authority for this dismissal was granted by the Department of Justice on June 4, 1963.

———— ————,
U.S. Attorney.

Leave of court is granted for the filing of the foregoing dismissal.

JOSEPH P. LIEB,
U.S. District Judge.

Date: June —, 1963.

Mr. MORSE. Mr. President, counsel also submitted to me for my consideration—and I pass them on to the Senate, because I think the Senate should have exactly the same material supplied to me—certain press releases of the Department of Justice on the various Hoffa cases. According to the view of counsel, they have tended to prejudice the opportunity of his client to have a fair trial before an unbiased jury. It is claimed that such press releases as these are bound to prejudice the population in an area from which a jury is to be selected—which gives rise to the type of proposal that Professor Kurland has submitted and which I have offered in bill form for hearings, consideration, and final evaluation.

These press releases, according to counsel, have the effect of prejudicing his client because, as Senators will see upon reading them, they dig up old cases, old charges, and old indictments and create the impression that the recent indictment is of an individual who allegedly has a bad previous record. They fail to point out that in those previous cases there were either dismissals or acquittals, in case after case.

I shall read one press release, and I ask unanimous consent that thereafter the others may be printed in the RECORD.

The PRESIDING OFFICER (Mr. KENNEDY in the chair). Is there objection to the request by the Senator from Oregon? The Chair hears none, and it is so ordered.

Mr. MORSE. Mr. President, this is a press release from the Department of Justice entitled "Summary of Past Criminal Actions Against James R. Hoffa."

In the past, the following criminal actions have been taken against James R. Hoffa, general president of the International Brotherhood of Teamsters:

1. On February 20, 1942, Hoffa and the late Owen "Bert" Brennan, a former vice president of the IBT, entered pleas of nolo contendere in Detroit, Mich., to Federal charges of violating the antitrust laws and were each fined $1,000.

2. Wiretap trials: On May 14, 1957, a Federal grand jury for the Southern District of New York charged James Riddle Hoffa, the late Owen "Bert" Brennan, and Bernard B. Spindel in a one-count indictment charging them with conspiracy to violate the wiretapping law. The indictment charged that beginning in 1953 the defendants conspired to intercept the telephone conversation of officials and employees of the Teamsters Union at the Teamsters headquarters, Detroit, Mich., who might be called to appear as witnesses before a congressional committee and a Detroit grand jury investigating labor racketeering. The first trial of this indictment resulted in a hung jury, and the jury was dismissed on December 20, 1957. The newspapers reported that the jurors stood 11 to 1 for a conviction. Upon retrial the defendants were all acquitted on June 23, 1958.

3. Cheasty trial: On March 13, 1957, James R. Hoffa was arrested in the District of Columbia and charged with the bribery of John Cye Cheasty, an investigator for the McClellan committee. Mr. Hoffa was tried and acquitted during the summer of 1957 in the U.S. District Court for the District of Columbia.

4. Sun Valley, Inc.: James R. Hoffa was indicted on December 7, 1960, in the Sun Valley matter on 12 counts of Federal mail and wire fraud. This indictment was dismissed on July 12, 1961, for defect in the selection of the grand jury. Mr. Hoffa was then reindicted on October 11, 1961, on 15 counts of mail and wire fraud and one of conspiracy. This matter is awaiting trial in the middle district of Florida.

5. Assault of Samuel Baron: On May 17, 1962, James R. Hoffa was charged with assault of Samuel Baron, a former IBT official, and released on $500 bail. On May 18, 1962, he pleaded not guilty to the above charge and demanded a jury trial. Baron subsequently withdrew the charges.

6. Test fleet: On May 18, 1962, Hoffa was indicted in Nashville, Tenn., on charges of accepting payments from Commercial Carriers, Inc., between May 1949 and May 1958

in violation of the Taft-Hartley Act. On June 7, 1962, Hoffa entered a plea of not guilty. Trial started on October 22, 1962, and ended on December 23, 1962, at which time a mistrial was declared due to a hung jury.

It is alleged that the issuing of such press releases constitutes a trial of the defendant in the press by the Department of Justice, which has a detrimental effect upon the defendant and makes it difficult for him to obtain a fair jury—and without a fair jury there can be no fair trial.

I have already obtained unanimous consent to have the other press releases of the Department of Justice printed in the RECORD. I enumerate them as follows: May 9, 1963; May 18, 1962; and June 4, 1963.

The press releases, ordered to be printed in the RECORD, are as follows:

DEPARTMENT OF JUSTICE PRESS RELEASE

THURSDAY, MAY 9, 1963.

James R. Hoffa, president of the International Brotherhood of Teamsters, was indicted by a Federal grand jury in Nashville, Tenn., today on five counts of conspiring and attempting to influence the jury in his recent trial on charges of accepting illegal payments from an employer.

The indictment charged Hoffa with "aiding, commanding, and inducing" specific attempts to influence two jurors and a prospective juror to vote for his acquittal, in exchange for money or favors.

The grand jury also named as defendants: Ewing King, president of Teamster Local 327, Nashville; Allen Dorfman, Chicago insurance broker, who has handled large amounts of insurance for the Teamster union; Larry Campbell, Inkster, Mich., a business agent of Teamster Local 299, Detroit, which Hoffa heads; Thomas E. Parks, Nashville, Tenn., Campbell's uncle; Nicholas J. Tweel, Huntington, W. Va., president of Continental Tobacco Co., New York City; Lawrence W. Medlin, a Nashville merchant.

Hoffa was named as a defendant in all five counts and the other defendants were named in one count each.

The indictment was based on extensive work by the FBI which began its investigation 7 months ago.

The first count, naming only Hoffa, charged he conspired to influence the jury in his trial. The remaining four counts charged him and one or more of the other defendants with attempting to influence specific jurors.

The prospective juror was offered $10,000; the son of one juror was offered the same amount—to share with his father; and the husband of the other juror was offered assistance in obtaining a promotion, the grand jury charged.

Hoffa was indicted in Nashville May 18, 1962, for accepting $1,008,057 in payments from Commercial Carriers, Inc., an automobile transport company, in violation of the Taft-Hartley Act. His trial began October 22, 1962.

A mistrial was declared December 23, 1962, when the jury was unable to agree on a verdict. At that time, U.S. District Judge William E. Miller disclosed that two jurors had been dismissed at closed hearings as a precautionary measure and that attempts to influence them apparently had failed.

Judge Miller ordered a special grand jury to investigate reported efforts to contact and influence members of the trial jury. The grand jury began sitting on January 17.

The two jurors were Gratin Fields, of Nashville, and Mrs. James M. Paschal, of Woodbury, Tenn. The prospective juror was James C. Tippens, of Nashville, who had been tentatively placed on the jury and accepted by the Government but who was approached prior to the final jury selection.

Mrs. Paschal was removed following a closed hearing December 6 and Mr. Fields was removed after a closed hearing December 20. Judge Miller made the records of both closed hearings public after the mistrial was declared.

One of the four substantive counts of the indictment charged Hoffa, Campbell, and Parks with seeking to influence Mr. Fields through his son, Carl. Parks assertedly met with Carl Fields and offered him $10,000—$5,000 for himself and $5,000 for his father, if Gratin Fields would vote for Hoffa's acquittal.

The indictment said that sometime in October or November, Parks met with Carl Fields and gave him a sum of money.

The grand jury said Hoffa also conspired to try to get Gratin Fields' daughter, Mattie Leath, also of Nashville, to influence her father to vote for Hoffa's acquittal.

King was named as a defendant with Hoffa in the count charging the attempt to influence Mrs. Paschal. The indictment charged that at Hoffa's direction, King met Mrs. Paschal's husband, James, a Tennessee State highway patrolman, at about 1:30 a.m., November 18, in the vicinity of Woodbury.

King offered to assist Patrolman Paschal in securing a promotion if he would influence Mrs. Paschal to vote for Hoffa's acquittal, the grand jury charged.

Medlin and Hoffa were named as defendants in the count charging the attempt to influence Mr. Tippens. The indictment asserted that Medlin, at Hoffa's direction, met with Mr. Tippens on October 23, 1962—the day after the trial began—and offered him $10,000 in exchange for a vote to acquit Hoffa.

Dorfman and Tweel were named as defendants with Hoffa in the remaining count. It charged them with attempting to influence jurors through Dallas Hall, of Nashville.

The indictment said that in late November, Hoffa and Dorfman entered the Louisville and Nashville Railroad Union Station in Nashville, where Dorfman made a call to Tweel, in West Virginia. Tweel assertedly called Hall, in Nashville.

It was part of the asserted conspiracy to have Hall determine the identity of acquaintances of any trial jurors. During November, the indictment said, Tweel promised money and "things of value" to Hall if Hall would contact jurors—or have others do so—in connection with their votes and opinions on the trial.

Maximum penalty for attempting to influence a jury—an offense covered by the obstruction of justice statute—is 5 years in prison and $5,000 on each count.

The Government will ask the court to call the grand jury back into session to consider related matters.

DEPARTMENT OF JUSTICE PRESS RELEASE

FRIDAY, MAY 18, 1962.

James R. Hoffa, president of the International Brotherhood of Teamsters, today was indicted by a Federal grand jury in Nashville, Tenn., on charges of accepting illegal payments from a Michigan trucking company between May 1949 and May 1958.

Attorney General Robert F. Kennedy said the two-count indictment charged that Hoffa, 49, and the late Owen Bert Brennan, former Teamster vice president, received a total of $1,008,057 from Commercial Carriers, Inc., a nationwide automobile transport company, in violation of the Taft-Hartley Act. Both Hoffa and Commercial Carriers were named as defendants.

Mr. Kennedy said one count of the indictment, naming only Hoffa as a defendant, charged that receipt of funds by Hoffa and Brennan violated the Taft-Hartley provision forbidding employee representatives to demand or receive payments from employers, except for wages or other specified reasons.

The second count, naming Hoffa and Commerical Carriers as defendants, charged they conspired from January 1947 to the present to violate the same Taft-Hartley provision.

Brennan, who was 57 when he died in Detroit May 28, 1961, after an illness, was named as coconspirator.

Mr. Kennedy said return of the indictment followed extensive investigation by the FBI.

The money, of which $242,273 assertedly was net income before taxes, was paid to Hoffa and Brennan by Commercial Carriers through a Tennessee firm, the Test Fleet Corp., established in April 1949, the grand jury charged. The firm has been known since March 1954 as the Hobren Corp.

Commercial, whose headquarters are in Detroit, established Test Fleet in Nashville and then transferred all of its stock to Hoffa and Brennan's wives—Josephine Poszywak Hoffa and Alice Johnson Brennan—in their maiden names, the indictment said.

Commercial established the firm so Test Fleet could take title to 10 trucks, lease them to Commercial, and have them all assigned by Commercial to delivering Cadillacs, the most profitable aspect of Commercial's business, the grand jury said.

Test Fleet then distributed rental earnings from the trucks to its stockholders, the indictment said.

The change to the present Hobren name was made in an effort to conceal the true ownership of the corporation and to perpetuate a scheme through which Hoffa and Brennan received illegal payments, the grand jury charged.

The indictment said Commercial employs members of Teamster Local 299 and described Hoffa, president of local 299, as a representative of those employees.

Mr. Kennedy said the conspiracy count of the indictment charged that James W. Wrape, a Memphis, Tenn., attorney and former general counsel of Commercial, incorporated Test Fleet in his name and then transferred all of its stock, in equal shares, to Mrs. Hoffa and Mrs. Brennan.

The grand jury charged that Commercial officers arranged for necessary financing—including a $20,062.80 loan from a St. Louis, Mo., bank—and arranged to buy trucks at Commercial's fleet discount rate and turn them over to Test Fleet before Test Fleet's financing was complete.

Commercial also operated the Test Fleet Corp. at no expense to Test Fleet, Hoffa, or Brennan, and agreed to lease all of Test Fleet's trucks for an unlimited period, the indictment said.

Maximum penalty for Hoffa would be a year in prison and $10,000 on each of the two counts. Maximum for Commercial, named only in the conspiracy count, would be $10,000.

DEPARTMENT OF JUSTICE PRESS RELEASE

TUESDAY, JUNE 4, 1963.

James R. Hoffa and 7 other men were indicted in Chicago today on charges of fraudulently obtaining more than $20 million in 14 loans for themselves and others from the Central States Teamster pension fund.

The 28-count mail and wire fraud indictment charged that the 8 men diverted more than $1 million from the loans for their personal benefit.

This total included at least $100,000 used to help extricate Hoffa from personal financial involvement in Sun Valley, Inc., a Brevard County, Fla., retirement homes development, the indictment asserted.

The indictment was returned by a Federal grand jury in U.S. district court in Chicago following 2 years of FBI and grand jury investigation. Related matters remain under investigation.

The grand jury accused Hoffa of violating his duty as a trustee of the $200 million pension fund, by making false and misleading statements to his fellow trustees about persons seeking loans and by using his influence as president of the Teamsters' Union to obtain approval of the loans.

Besides Hoffa, 50, who is president of Teamster Local 299 in Detroit as well as general president of the International Brotherhood of Teamsters, the indictment named these defendants: Benjamin Dranow, 55, former Minneapolis department store executive who is now serving prison terms for mail, wire and bankruptcy fraud, and tax evasion at the Federal Correctional Institution, Sandstone, Minn., and whose bail-jumping conviction is now on appeal; Abe I. Weinblatt, 67, Miami Beach retired businessman and former business associate of Dranow; S. George Burris, 65, a New York City accountant; Herbert R. Burris, 41, his son, a New York City attorney; Samuel Hyman, 69, Miami Beach, a Key West, Fla., real estate operator; Calvin Kovens, 39, Miami Beach builder and real estate operator; Zachary A. Strate, Jr., 43, New Orleans builder and real estate operator.

Dranow, S. George Burris, Hyman, Kovens, and Strate have been principals in or connected with companies which have received pension fund loans. The grand jury accused them and the other defendants of submitting false and misleading information in support of loan applications.

The indictment charged all 8 defendants with 20 counts of mail fraud, 7 counts of wire fraud, and 1 count of conspiracy to defraud the pension fund and to obtain money from the fund through "false and fraudulent pretenses."

The fund's full name is the Central States, Southeast and Southwest Areas Pension Fund, with offices at 29 East Madison Street, Chicago. It was set up in March 1955, and collects contributions from employers for retirement, disability and death benefits for more than 177,000 rank-and-file Teamsters in about 20 States.

The fund is administered by eight employer and eight Teamster trustees. Hoffa was the only trustee indicted.

The eight defendants were charged with devising and carrying out a scheme to defraud the pension fund starting sometime before July 1958.

Hoffa was charged with influencing the trustees to approve the loans sought by the other seven defendants for themselves or others, and with referring prospective borrowers to the elder Burris. Kovens was charged with referring prospective borrowers to Dranow.

The indictment said the Burrises and Dranow sought out persons needing loans and represented themselves as being in a favored position to obtain pension fund loans because of their close association with Hoffa.

Hoffa, the indictment said, used "fraud, deceit, misrepresenation and overreaching" and abused his "position of trust" as a trustee, by seeking to influence and obtain approval of the loans.

The grand jury said he personally familiarized himself with loan applications prior to their application to the trustees; personally presented applications to them; made false representations and misleading statements to the trustees and professional advisers; and spoke out and voted in favor of the loans, in conference telephone calls as well as at meetings.

The eight defendants were charged with demanding and receiving fees, stock options, and stock interests as compensation for their services in obtaining the loans from the pension fund.

The indictment cited 14 loans obtained by the defendants for the financing of companies or for construction of hotels, shopping centers, and other projects in six States—Florida, Louisiana, Alabama, Missouri, New Jersey, and California.

The false and misleading information submitted by the defendants to the trustees assertedly included representations that pension fund loans were used for construction or remodeling when, in fact, all or part of the loaned funds had been spent for other purposes.

In one of these instances, the indictment said, the defendants informed the trustees that $2 million in loaned funds was used for construction of a North Miami, Fla., hospital, while, in fact, a substantial portion of the funds had been diverted.

In another instance, the defendants represented to the board that a corporation which had applied for a pension fund loan had a net worth of more than $3,600,000 when its actual net worth was less than $5,000, the indictment said.

The indictment charged that one purpose of the fraud scheme was to obtain money with which to pay off Sun Valley's debts and permit Hoffa to extricate himself from its operations.

In conjunction with return of the indictment, the Department of Justice today will move in U.S. district court in Tampa, Fla., to dismiss a 16-count mail and wire fraud indictment of Hoffa involving Sun Valley, returned October 11, 1961.

The motion states that aspects of the Sun Valley case are necessarily embodied in the new Chicago indictment.

According to the new indictment, 45 percent of Sun Valley's stock was held in trust for Hoffa and another person, not named, and Hoffa had an option to purchase an additional 45 percent.

At Hoffa's direction, $400,000 of local 299 funds had been deposited in a non-interest-bearing account in a Florida bank as security for the bank's loans to Sun Valley, the indictment said.

In September 1959, the court-appointed board of monitors for the Teamsters challenged this deposit as a breach of Hoffa's fiduciary duties. Local 299 remained unable to withdraw the $400,000, however, because of Sun Valley's financial difficulties.

The indictment alleged that Dranow—with Hoffa's knowledge and consent—set up the Union Land & Home Co., Inc. to acquire the assets of Sun Valley, pay off its debts, and thus secure the release of the local 299 deposit.

The defendants were charged with using at least $100,000 of the money they assertedly diverted from pension fund loans to help satisfy the Sun Valley debts and to permit the withdrawal of the Local 299 deposit.

The indictment said the defendants obtained pension fund loans involving:

New Everglades Hotel, Miami; Fontainebleau Motor Hotel, New Orleans; Key West Foundation (Flagler Apartments, Flagler Village Shopping Center, Ponciana Apartments), Key West; Casa Marina Hotel, Key West; LaConcha Hotel, Key West; Four-Three-O-Six Duncan Corp., St. Louis, Mo.; Cornell Buildings and Beverly-Wilshire Health Club, Los Angeles; Miracle Plaza Shopping Center, Vero Beach, Fla.; North Miami General Hospital, North Miami; Miami International Airport Hotel; Birmingham Airport Hotel, Birmingham, Ala.; Causeway Inn, Tampa, Fla.; and Club 300, Upper Saddle River, N.J.

Hyman owns the controlling interest in Key West Foundation, LaConcha Hotel and Casa Marina Hotel. Strate owned a controlling interest in Pelican State Hotels Corp. (Fontainbleau Motor Hotel).

Kovens owns a controlling interest in Good Samaritan Hospital, Inc. (North Miami General Hospital) and Miracle Plaza Shopping Center, and S. George Burris owns a controlling interest in First Berkeley Corp. (Cornell Buildings and Beverly-Wilshire Health Club).

The conspiracy count of the indictment charged the eight men with combining to use the mails and wire communications to execute "a scheme and artifice to defraud" the pension fund. The remaining 27 counts each related to a telephone call or letter connected with specific loan applications to the trustees.

In addition to Hoffa, the present union trustees are:

Floyd C. Webb, Joplin, Mo.; Murray W. Miller, Dallas, Tex.; Gordon R. Conklin, St. Paul, Minn.; Roy L. Williams, Kansas City, Mo.; Odell Smith, Little Rock, Ark.; William Presser, Cleveland, Ohio; and Frank E. Fitzsimmons, Detroit, Mich. Fitzsimmons replaced Gene San Soucie, deceased Indianapolis union official.

The present employer trustees are: Albert D. Matheson, Detroit, Mich.; Fred W. Strecker, Jr., St. Louis, Mo.; Champ J. Madigan, Cleveland, Ohio; John A. Murphy, LaCrosse, Wis.; Charles J. Morse, St. Louis, Mo.; Thomas J. Duffey, Milwaukee, Wis.; John Spickerman, Atlanta, Ga.; and Marvin Blakeney, Jr., Dallas, Tex. Duffey replaced Cyril Wissel, Dubuque, Iowa; Spickerman replaced Joe Katz, Atlanta; and Blakeney replaced Kirke Couch, Shreveport, La.

Maximum penalty for each of the 8 defendants would be 5 years in prison and a $1,000 fine on each of the 27 substantive counts and 5 years and $10,000 on the conspiracy count.

Mr. MORSE. Mr. President, I have already referred to the comments in counsel's memorandum about the conferences between Government officials representing the Department of Justice and Mr. Robert E. McCarthy, Jr., a joint defendant in the Tampa case. I read for the RECORD an affidavit which has been supplied to me, signed and sworn to by McCarthy, relative to the conferences he had with the Department of Justice representatives:

[U.S. District Court for the Middle District of Florida, Tampa Division—No. 8132-T.-Crim.]

UNITED STATES OF AMERICA v. JAMES R. HOFFA AND ROBERT E. MCCARTHY, JR.

AFFIDAVIT OF ROBERT E. M'CARTHY, JR.

The undersigned affiant, Robert E. McCarthy, Jr., after being first duly sworn, deposes and says:

That affiant is the same Robert E. McCarthy named as defendant in the above-entitled cause;

That affiant resides at 1943 Huntington Boulevard, Grosse Pointe Woods, Mich.

That on the 28th day of May 1963, at approximately 2:30 p.m., two individuals who described themselves as being Government agents called in person at the affiant's home; that the affiant was not at home so they talked to the affiant's wife;

That the affiant was informed, and verily believes, that the names of the persons who were at his home were James McKeon and William French;

That the affiant was informed by his wife that the said Government agents informed her that they wanted to talk to the affiant about certain things; and although they did not elaborate at that time as to what they wanted to talk about they did inform affiant's wife that they wanted to talk to affiant concerning things which would be of great benefit to affiant.

That on the following day, Wednesday, May 29, 1963, affiant telephoned Mr. McKeon at the number he left with affiant's wife with instructions for affiant to contact him; and that at that time affiant was advised by Mr. McKeon that it would be to his benefit for him to come down to his office in the Federal building in Detroit and have a talk with him and Mr. French;

That about noon on the 29th day of May, 1963, affiant did go down to McKeon's office in the Federal Building pursuant to Mr. McKeon's request, and affiant talked to Mr. McKeon and Mr. French in what he believes was room No. 235;

That affiant was informed at that time that if he were to talk to them about his employment at the Public Bank he would be absolved of all responsibility in the Florida case;

That the nature of their conversation was clear; that they told affiant that if he would cooperate with them he would be free of the Florida case;

That affiant was offered immunity in the form of "a letter of good faith" which would clear him of any pending charges against him in the Florida case;

That affiant made it clear to them that he was innocent of any of the pending charges and that he knew of nothing concerning Mr. Hoffa or any one else that could possibly help them;

That affiant was with them for a period of time which he estimates to be about 45 minutes;

That Mr. French and Mr. McKeon alternated in making statements during affiant's conversation with them; that most of the conversation centered and revolved around their request that affiant talk to them about the case; that they offered the affiant immunity if he would talk to them about the case;

That when affiant was ready to leave, Mr. McKeon asked him to contact their office before the 4th day of June 1963;

That affiant then left;

That affiant requests the court in the above-entitled cause to set this case down for trial as quickly as possible;

Further deponent sayeth not.

ROBERT E. MCCARTHY, Jr.

Subscribed and sworn to before me this 31st day of May 1963.

LYDIA A. RUHL,
Notary Public, Wayne County, State of Michigan.

My commission expires June 7, 1964.

Mr. MORSE. Mr. President, I ask unanimous consent that the memorandum which was sent to me by counsel for the Teamsters Union be printed in the RECORD immediately following my reading of the McCarthy affidavit, so that I will not have to take time now to read it.

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

"SUN VALLEY, INC.—James R. Hoffa was indicted on December 7, 1960, in the Sun Valley matter on 12 counts of Federal mail and wire fraud. This indictment was dismissed on July 12, 1961, for defect in the selection of the grand jury. Mr. Hoffa was then reindicted on October 11, 1961, on 15 counts of mail and wire fraud and 1 of conspiracy. This matter is awaiting trial in the Middle District of Florida."

This press release was published in the Nashville newspapers.

A motion immediately was filed in Tampa asking that the indictment in the Sun Valley matter be set down for trial or dismissed.

This motion was listed for a hearing on June 6, 1963, at 2 p.m. in Tampa, Fla.

On June 4, 1963, by telephone, the Department of Justice authorized the entire dismissal of the Sun Valley indictment and the Court granted the dismissal of the indictment.

On the same day, June 4, 1963, the defendant, James R. Hoffa and other defendants were indicted in North District of Illinois Eastern Division on charges of mail fraud and wire fraud.

It is the position of James R. Hoffa that this new indictment on June 4, 1963, was brought solely and only for the purpose of influencing his matters in Nashville, Tenn., and that the indictment has absolutely no merit whatsoever and is brought for purely propaganda purposes. Therefore, in all fairness to the defendant since the Government claims in its press release that the Sun Valley matter has been incorporated in this new indictment—it is only fair that he should be tried on this new indictment before any trial in Nashville, Tenn. There is not the slightest doubt that this new indictment was done only to influence the course of any trial in Nashville, Tenn.

Mr. MORSE. In connection with the legal point which I raised concerning Government agents talking to a defendant under indictment, without communication with counsel and outside the presence of counsel, I wish to place in the RECORD at this point a very interesting note in The United States Law Week for February 12, 1963, commenting on a Pennsylvania tort case, decided by Judge Musmanno.

It reads as follows:

TORTS—CONTRACT INTERFERENCE

Pennsylvania lawyer retained by railroad employee injured in work accident can recover both compensatory and punitive damages from railroad claim agent and union officials who told employee he would get no more help from them until he "shed" lawyer and who helped him draft revocation of power of attorney he had given lawyer.

The employee was visited in the hospital by the railroad claim agent who informed him that it would be to his best interest to deal with the railroad company in settling his case. Several months later, when the employee's railroad retirement benefits were exhausted, the claim agent advanced him $250 to provide for living necessities, the amount to be credited against his ultimate settlement with the railroad.

The following month the employee called on a union shop steward to speak about his accident and hoped-for award. The shop steward said that he would turn the employee's case over to a union protective committeeman who would call on him the following day. The committeeman failed to make the promised call and the employee accordingly engaged the lawyer to represent him.

The next evening the committeeman called at the employee's home and, after learning of the attorney relationship, told the employee, "You did the wrong thing." He also told the employee that the claim agent "won't let you have any more money," and "you can't have any time for that lawyer. You are going to be out of a job."

The next day the employee went to see the claim agent in his office. The committeeman was there. The employee testified that the claim agent told him "we can't do anything for you as long as you have got that lawyer." The employee then asked him how he could go about getting rid of the lawyer.

The claim agent gave him a typed letter and told him to go outside the office. The committeeman went along with him and instructed him to copy in his own handwriting the words on the typed letter. He did this and the letter was mailed by the committeeman to the lawyer. The letter read as follows: "I am hereby revoking my power of attorney I signed with you as I have never wanted any attorney to represent me and my claim against the * * * railroad."

It is patently clear that the language in the letter could hardly have come from the employee, a person of extremely limited education.

TEXT

"There can be no doubt that the above cited testimony, if believed, made out a prima facie case of unwarranted interference in the business relationship between [employee] and his attorney. We have here a practically illiterate man, 58 years of age at the time, injured, unable to get around except on crutches, destitute, hoping to get funds which would assure him of food for himself and wife, being threatened that if he didn't discharge his attorney who could help him to get what he was entitled to for his injury, he would not only receive no immediate funds but he would lose his job.

"The evidence in the case justified the verdict which was rendered. Anyone has the right to advise a person in legal difficulties to change lawyers just as one concerned about a friend's health may recommend him to a doctor other than the one presently prescribing for him. Such advice, however, must not be accompanied with threats. The use of such threats, all accruing to the serious disadvantage of the persons involved, may well be interpreted as reflecting malice, vindictiveness and wanton disregard of the lawyer's or doctor's rights which would call for punitive damages."—J. Musmanno.

Ch. J. Bell, dissents.

That court decision makes very clear that the matter of lawyer-client relationship is a very important fiduciary relationship in this country. When there is an interference with it, or when it is ignored, the courts subsequently must take into account the course of action which was followed by the intervenors.

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

Mr. MORSE. I yield.

Mr. PROXMIRE. As I understand, the Senator from Oregon has introduced two bills. One bill is to provide for the right to a speedy trial.

Mr. MORSE. That is correct.

Mr. PROXMIRE. The second bill is aimed, if I may use the vernacular, at preventing trial by press release.

Mr. MORSE. That is correct.

Mr. PROXMIRE. The Senator from Oregon has been very frank in saying that the abuse which has existed under present law has at least in some part developed out of the legal difficulties of the head of the Teamsters, Mr. James Hoffa. Is that correct?

Mr. MORSE. Those are the allegations that have been made. I have been discussing the Hoffa case only to make perfectly clear the full background of the participation by the senior Senator from Oregon in the discussion this afternoon. Although the Hoffa case is completely irrelevant to the position of the Senator from Oregon on these bills, this information has been presented to me as an example of the need for the legislation.

I stand on the legal analysis I shall present later to the Senate for the need of this kind of criminal law procedure reform, which has nothing to do with the merits or demerits of the Hoffa cases.

Mr. PROXMIRE. I understand. Is it true that Professor Kurland had something to do with the drafting of the proposed legislation?

Mr. MORSE. He is my "brain trust."

Mr. PROXMIRE. What qualifications does Professor Kurland have to draft legislation of this kind?

Mr. MORSE. Professor Kurland is a law teacher of 13 years' experience. He

is a recognized scholar in the field of criminal law and procedure. He is the editor of the volume previously referred to, which I hold in my hand, the Supreme Court Review, published by the University of Chicago Press. He has written extensively in this field. He has done research on this particular subject for a number of years. He was active in his research in this field, and his interest predated any so-called Hoffa controversy.

Mr. PROXMIRE. Does Professor Kurland have any position in the American Bar Association?

Mr. MORSE. He is a very active member of the American Bar Association.

Mr. PROXMIRE. It is my understanding that he has occupied office in the American Bar Association, and that he is a recognized authority.

Mr. MORSE. He has occupied offices in certain sections of the American Bar Association. The work of the association is divided into working sections. There is a section on procedure. I have been a member, and am still a member, of several sections. For a long time I was a member of the section on criminal law and criminal procedure of the American Bar Association, which I understand is also true of Professor Kurland.

Mr. PROXMIRE. I understand that Professor Kurland has drafted the proposed law, together with the Senator from Oregon, with a universal application in mind. It is true that the Hoffa case may have provided a dramatic example, but this proposal unquestionably has universal application, and I take it there are many other instances which could be adduced to support both these bills.

Mr. MORSE. We are discussing this subject as we discuss the legal precedents that show the need for such legislation.

Mr. PROXMIRE. The Senator from Oregon has no brief for the head of the Teamsters Union, Mr. Hoffa. He is not at the moment making any brief for Mr. Hoffa. He is not taking any position in Mr. Hoffa's difficulties, pro or con. He is not attempting to try Mr. Hoffa on the floor of the Senate, or condemning or defending Mr. Hoffa.

Mr. MORSE. That is correct. I have been critical of Mr. Hoffa on the floor of the Senate in some instances, as I pointed out, when I thought he was following a course of action that justified criticism. I will criticize him tomorrow or today, if I have sufficient reason for criticizing him. But I will defend him today or tomorrow against any wrong which may be committed against him, because I am professional and impartial in this matter. That is my obligation of trust as a U.S. Senator. I am never deterred from fighting what is wrong on the floor of the Senate merely because someone involved in it may be unpopular. The Senator from Wisconsin or I may be in that position tomorrow.

Mr. PROXMIRE. I recall the Senator's great fight in the Mallory case. He has spoken often on the floor of the Senate in reference to that case, dramatizing the importance that American law shall apply to all persons, whether they are skid-row derelicts, bank presidents, university professors, convicted Communists, or labor leaders. No matter what the person's position is, he should have equal protection of the law.

Mr. MORSE. How could one support any other premise? The Mallory decision happens to deal with a Negro of subaverage intelligence. In the Mallory case we are dealing with a Negro who the record shows was recognized as having below-average intelligence. He was caused to sign a confession containing words which were beyond his vocabulary.

Mr. PROXMIRE. In the judgment of the Senator from Wisconsin, the great glory of the American system is that we apply the law equally to all people. Of course, we have a government of men as well as of law. Ideally and theoretically, it is a government primarily of law, but the law must be administered by human beings. We know the importance of prestige, family position, and reputation. We know that, after all, when the law is interpreted and decided, it is going to be applied on the basis of some human prejudice. That is why it is so important that the concept of trial by press release be stopped, because, after all, it prevents equal application of the law. A man who has not been in public life, who has no background whatsoever that is known to the public, has no basis for being incriminated in the public eye. Some other person who may have such a background is stigmatized and prevented from having a public trial and prevented from having equal treatment under the law because of trial by press release.

Mr. MORSE. The Senator is correct.

Mr. PROXMIRE. It seems to me the principle involved in the bill introduced by the Senator from Oregon is sound and solid.

Let me ask the senior Senator from Oregon a question. A speedy trial, it seems to me, is something that exists in most of our courts. Is that not correct?

Mr. MORSE. At the State level, much more; much more in our State courts than in our Federal courts, although it is guaranteed, as I said earlier, by the Constitution itself.

Mr. PROXMIRE. Yet under present law it is possible for a man's reputation to be destroyed, or at least called into very serious question, by an indictment.

Mr. MORSE. That is correct.

Mr. PROXMIRE. That man may not be able to clear his name by trial in a matter of weeks or months, or, for that matter, years.

Mr. MORSE. That is correct.

Mr. PROXMIRE. What the Senator proposes is that the trial be had within 9 months.

Mr. MORSE. Yes.

Mr. PROXMIRE. And that sentence be passed within 60 days.

Mr. MORSE. That is correct.

Mr. PROXMIRE. What could be fairer than that?

Mr. MORSE. I do not know.

Mr. PROXMIRE. In 9 months it should be possible to bring a man to trial.

Mr. MORSE. The bill provides for a continuance for cause shown, but that puts it up to the judge, and the judge must make a record.

Mr. PROXMIRE. The judge cannot continue it if there is no just basis for a continuance.

Mr. MORSE. That is correct. That rule is common in the State courts.

Mr. PROXMIRE. This is another example of the fact that whether a cause is unpopular, or politically unwise, whether it brings him political retribution, as usual the Senator from Oregon is not deterred from making the fight. It is a fight in which I am proud to follow his leadership.

Mr. MORSE. The Senator is very kind.

Mr. PROXMIRE. He is making a brilliant speech this afternoon. He has introduced two bills which have great merit.

Mr. MORSE. The Senator is very kind, as usual.

The Senator stood shoulder to shoulder with me in similar situations when the rights of the American people were involved and were debated in the floor of the Senate. He stood with me in the Mallory debate, and in the wiretapping debate. He stands with me now in this great fight which involves the problem of the legal procedural rights of the American people, supposedly guaranteed by the Constitution.

One need only walk out the front door of the Capitol a few hundreds yards and stand in front of that great citadel of justice, the Supreme Court, to be a better American every time one stands there, for having read the great inscription on that citadel of justice, and to recognize that there before one is the symbol of equality before the law, of uniform application of the law to all individuals in this country, irrespective of their guilt or innocence.

Sometimes I wonder if the American people are not almost ready to lay aside the precious guarantees that make them freemen and women.

I was shocked to read a while back about a questionnaire which had been sent out to college students. One question was whether they thought the fifth amendment to the Constitution ought to be repealed. An overwhelming majority of them said, "Yes." My response was, What in the world is happening to the educational system of this country, with an oncoming generation, if that is typical—and I refuse to believe that it is—and what is happening to our educational system if we are getting a generation that believes the right to refuse to testify against oneself ought to be taken away from Americans?

Have they forgotten our history? Have they forgotten our contest with the British Crown? Are they unaware of what happens in a police state, where a man has to prove his innocence, instead of the State having to prove his guilt? We are talking about some very basic things here today when we are talking about a speedy trial, the right guaranteed by the Constitution. However, the Constitution is not worth the paper it is written on unless we implement by legislation the rights guaranteed in it.

What is the great fight over civil rights all about? The Negroes in this country have the same rights that the Senator and I have as white men; but those

rights are denied to them, because the appropriate legislation is not on the books to implement the 14th amendment, as the commerce clause of the Constitution and other parts of the Constitution are implemented. The 14th amendment must be implemented if Negroes for the first time in our history are to have the Constitution delivered to them. The white people of the United States have never delivered the Constitution to the Negroes of America.

I thank God that I am serving under a great President in the White House who sent to the Senate a few days ago a message which will go down in history as comparable to Lincoln's Emancipation Proclamation. John F. Kennedy sent us a civil rights message the other day which seeks to carry out Lincoln's Emancipation Proclamation. Until the legislation proposed by President Kennedy is written on the statute books of this country, the Constitution is a dead letter so far as the Negroes of America are concerned. That is what this great crisis is all about. That is why in the next few weeks we shall start what in my judgment will be the most historic debate that has ever taken place on the floor of the Senate since the great debates prior to the Civil War.

I wish Senators would read some of those debates. I have read them recently. They make one tremble. They make cold shivers run up one's spine. In 1963 we are hearing some of the same bigoted arguments, some of the same prejudiced arguments, based on inhumanity to man because of the color of the skin of the victims of the inhumanity.

I do not mean to imply that we are in any danger in this country of such a catastrophe as befell us at the time of the Civil War. I mean to state categorically that some of the same basic issues on the substantive side of the issue are involved in the oncoming civil rights debates.

As a member of the Foreign Relations Committee, I wish to make clear on the floor of the Senate that we cannot maintain America's prestige in the free world, to say nothing about the Communist world, until we have delivered the Constitution to the Negroes of America. How in the world can we, if we have any religious faith at all, as professed Christians or as Jews or as believers in one Deity, deny to a Negro his constitutional rights to walk into a public restaurant and be served, if his behavior is decorous; or deny him a room in a hotel; or an opportunity to swim at a public beach; or to play golf on a municipal golf course?

We had better catch up with the times. I have sat in international conferences representing my Government, and I have represented my Government in the United Nations. I have been at a loss at times for an answer—and I am not too frequently at a loss, at least for some kind of answer—when fellow delegates have said right into my teeth: "What do you mean by freedom? When are you people in the United States going to practice your preachments about freedom?"

We are charged with hypocrisy by foreign delegates in one international conference after another. They are right. We are guilty, for we are a shockingly hypocritical Nation in the field of human rights. That is involved in what we are talking about this afternoon, for what we are talking about is seeing to it that the minority is protected; that the indicted is entitled to a fair trial; and that the person indicted is given assurance of an unprejudiced jury.

It is easy for the American people to forget about these abstract principles of justice and freedom, the preservation and effectuation of which will determine completely whether they remain free men and women. Take away the abstract rights under the fifth amendment, for example, and we have destroyed a substantial part of the freedom of every American citizen. I remember that it was only a few years ago when, I say regretfully, even in the U.S. Senate some talked almost in whispers about the fifth amendment. But I shall always be proud to have my decendents read that I joined with a few other Members of this body in protesting an attempt to McCarthyize people because they exercised their precious right under the fifth amendment.

Witnesses called before Senate committees pleaded the fifth amendment, but there were Members of this body who considered them guilty because they pleaded the fifth amendment. But I did not, for years, teach law and the precious legal guarantees of freedom under the Constitution of the United States only to walk out on those teachings for political reasons merely because I walked into the Senate of the United States. The job has never been worth it, and never would be worth it.

Mr. McGEE. Mr. President, will the Senator from Oregon yield?

Mr. MORSE. I shall yield in a moment. For this digression of mine, put the blame on the Senator from Wisconsin [Mr. PROXMIRE], because he was kind enough to say undeserved complimentary things about the Senator from Oregon.

The implication of some of the things he said caused me to make these comments about how important it is that the American people sit down and reread their Constitution and constitutional history, and recognize that they must make up their minds whether they want to continue to live under our constitutional system of freedom, or whether they want to let prejudice and bigotry stalk the Nation again, as it did prior to the Civil War, and split us. We cannot afford any kind of split in this country, for the problems that will face this country in the next 25 years call for the maximum unity among us. We will not unite the country until we give to every citizen his or her full constitutional rights.

I am sorry to have taken so long by way of digression; but I intended to say it some time, so I might as well have said it this afternoon.

I yield to the Senator from Wyoming.

Mr. McGEE. Mr. President, I pay my tribute to the Senator from Oregon and remind Senators that while he has, indeed, left the halls of ivy, where he was busily inculcating the principles of constitutional law, he continues his role in this body as a teacher of us all.

As a former professor of constitutional history, I have been deeply concerned with constitutional principles. I know of no single individual who has done more to remind all of us of the essential qualities of those principles than the Senator from Oregon, whose courage is uppermost in our minds at this particular time.

I was particularly interested in his inquiry about what had happened to the younger generation, because he referred to one group of college students who apparently voted, rather overwhelmingly, to do away with the fifth amendment. I should think this might be a subject for further reflection on the zeal of our schools, because attempts are deliberately being made by certain rightwing groups to supererogate to themselves all the answers as to what is truth, the result being that they would now destroy our whole purpose in education. They are imposing their own warped principles of thought on those who are in search of truth, and are imbuing them with the cliches of the rightwing.

I suspect that what the Senator from Oregon is speaking about is the success they have met with in certain segments of our school population. I deplore that kind of attack on the educational system of this country.

I also commend the Senator for the bills he has introduced and discussed today. I wish to raise a question and have the benefit of his opinion.

Mr. MORSE. Before the Senator raises his question, I wish to interrupt him to say that I greatly appreciate his kind references to me. I do not return them merely because the Senator has made them; but the RECORD ought to show my appreciation for the courageous, brave fight the Senator from Wyoming is making against rightwing groups in this country. They seek to do exactly what he has described. They are indoctrinators. They want to tell the teachers what they can teach. They do not believe in academic freedom. They do not believe that the objective of education is to lead students to finding where the facts lead.

The Senator from Wyoming is deserving of the commendation of all of us for all the political risks he is willing to run to stand up against this kind of police state tactic, as I call it, that we find in the groups that want to destroy the fifth amendment. What they really want to do is to make the Supreme Court impotent. They are behind the proposals for the three shocking constitutional amendments which, if adopted, would change our form of government.

I am now in the midst of research on that subject. I intend within the next couple of weeks to devote myself to a major speech in the Senate on what would happen to our form of government if those three constitutional amendments, which have the support of rightwing groups, ever should be adopted and added to our Constitution.

The Senator from Wyoming [Mr. McGEE] has been one of our courageous

leaders. He has stood out against such a weakening of our constitutional system.

Mr. McGEE. May I add at this point, if it is permissible, that not only are we concerned about the inroads being made in education in our schools; but the legislative body of my State is one of the very few bodies in this country that enacted all three of the proposed constitutional amendments, which would completely tear apart our Federal Government. The citizenry of my State is rightly aroused over the infiltration that has already occurred.

Here, again, is a case in which the extremist groups have come into our State and imposed ideas that are not Wyoming ideas, not grassroot ideas, but ideas that have been packaged in New York, New Jersey, Houston, Tex., and in parts of Virginia, and are peddling them 2,000 miles away. They are producing results by repeating them so often that people begin to repeat them only out of habit, because they do not always hear the alternative, and they react to them as our legislature did.

This is a complete embarrassment to people who do not really feel that way; who were taken into the action before they realized what it meant. But such action symbolizes the formula of those on the extreme right; namely, they know what they want, and they know how to get it.

They take advantage of people who are busily doing other things. Their simple formula is a declaration that 10 men who care are more than a match for 100 who do not. They have proved the devastating power of that approach to the public at the present time. We are hopeful, out our way, that an adjustment or a correction will be made that will place the record of the wonderful State and people of Wyoming on a correct level, in the right sense, before we are through with this issue in the Rocky Mountain West.

Mr. MORSE. I thank the Senator very much. I think the best way I can pay tribute to the observations he has just made is to ask unanimous consent to have printed in the RECORD an editorial entitled "Back to Freedom," which was published today in the Washington Post. The editorial was handed to me just now by able staff counsel. It deals with the great controversy on the question of academic freedom which has been occurring at the University of California; and the editorial closes by quoting Clark Kerr, a long, longtime personal friend and academic associate of mine, and a colleague, during the war, on the War Labor Board. In the editorial he is quoted as follows:

"The university" Clark Kerr observed a couple of years ago, "is not engaged in making ideas safe for students. It is engaged in making students safe for ideas." It would be hard to contrive a better definition of a university's function. We welcome the University of California's formal return to its own high purpose.

The great constitutional guarantees we have been discussing this afternoon really were designed by the wise and farsighted constitutional fathers in order to make this country safe for its citizens, so that they could follow wherever the facts lead, and so that they could enjoy the precious rights of freedom, based upon just such abstract principles of democratic government as those the Senator from Oregon, the Senator from Wyoming, the Senator from Wisconsin, and other Senators have been discussing this afternoon.

Mr. President, I ask unanimous consent to have the entire editorial from the Washington Post printed at this point in the RECORD.

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

BACK TO FREEDOM

The whole country can rejoice that the great University of California has come home at last to the tradition of free inquiry which is the mark of a university. Its board of regents voted on Friday, 15–2, to rescind a ban which had kept Communist speakers off all of its campuses ever since 1951. Students and faculty of the university and President Clark Kerr have long sought removal of the ban which had left UC as the only major university with such a restriction on its open forum policy. There is something significant and symbolic in the step.

The ban on Communist speakers was a symptom of the emotional binge commonly called McCarthyism on which much of the United States embarked in the early 1950's. The binge produced its own brand of delirium tremens in the form of imaginary Communist hobgoblins under every bed and every classroom desk and its own tragic hangover in the form of a fear of freedom. There is something happily healthy in the resolution adopted by the California regents:

"The regents of the University of California have confidence in students of the university and in their judgment in properly evaluating any and all beliefs and ideologies that may be expressed in university faculties by offcampus speakers. This is in the best American tradition."

"The university," Clark Kerr observed a couple of years ago, "is not engaged in making ideas safe for students. It is engaged in making students safe for ideas." It would be hard to contrive a better definition of a university's function. We welcome the University of California's formal return to its own high purpose.

Mr. McGEE. Mr. President, let me ask the Senator from Oregon about the bills he has introduced. Is not one of them for the purpose of trying to prevent the trial of cases in the newspapers?

Mr. MORSE. That is correct.

Mr. McGEE. Is the bill designed to be a deliberate assist to the Teamsters Union?

Mr. MORSE. No; it has nothing to do with the Teamsters Union.

Mr. McGEE. I asked the question only because it has been asked of me. I think the RECORD should show that an important principle is at stake. Is not that correct?

Mr. MORSE. Yes. Of course the question the Senator from Wyoming has asked will be asked again and again, because probably one of the first persons who would seek the protections which such a law would provide would be Mr. Hoffa. However, we are seeking the enactment of legislation to protect all Americans, regardless of who they may be. Once an American is indicted for a crime, he should be allowed to have his case tried in a courtroom, not in the press.

Mr. McGEE. Does not the power of the Attorney General of the United States to hold an indictment over the head of an accused for an indefinite period of time likewise unfairly endanger the rights of the accused?

Mr. MORSE. Yes; that is the position I take, and it is also the position which is taken by Professor Kurland. The elimination of that danger is one of the purposes of one of the bills I have introduced. That, too, is an impersonal proposal; it makes no difference to me who the Attorney General is at any time, or whether he is a Democrat or a Republican. The guarantee to protect the rights of a defendant should be preserved at all times, regardless of what particular person may serve in the Office of Attorney General of the United States.

Mr. McGEE. And one of the reasons for the introduction of the bill, as I understand it, is the failure to bring up the indictments in the order in which they were filed.

Mr. MORSE. That is true. In some circles that procedure is called "shopping for trial time." I think it is unfair. I think the indictments should be taken up in the order in which they are filed. If a person has been indicted and if, following that indictment, he is in the process of preparing his defense, certainly it is unfair to him that he be required to defend himself in court following a subsequent indictment, at a time when he has had little opportunity to prepare his defense in the second case. Furthermore, the greater the delay the greater the likelihood that evidence of importance to the defendant will be lost or that witnesses will die or will move away.

So we seek to insure fair procedure—which exists in many States—by requiring that the trials occur in the order of the filing of the indictments.

Mr. McGEE. An opportunity for a union leader or a corporate executive to contend with a battery of U.S. attorneys is one thing; but I am thinking more of the average person who might be the victim of such a shuffling of indictments.

Mr. MORSE. Yes. The trouble is that we rarely hear of their plight.

Mr. McGEE. It is their protection that the Senator from Oregon is seeking to guarantee by means of these bills, is it not?

Mr. MORSE. Yes. One of the reasons why I have always been an ardent advocate of a public defender is that so many persons in our country become involved in the toils of the law, but are not familiar with its complexities and are ignorant of their rights. Many of them feel that they do not have enough money with which to defend themselves. Therefore, I have taken the position that another branch or division of the Department of Justice is needed—not only a branch to prosecute, but also a branch to defend—and that an American citizen should have a right to look to his Government for his defense, if he can show that he meets the conditions imposed by a public-defender law—in other words, that he is indigent, or that his means

are so small that the conduct of his defense in a complicated case would bankrupt him, and subsequently would require that he go on public welfare—which, of course, would not involve any saving for the taxpayers—and that thus he has a right to have a public defender appointed to defend him.

Mr. McGEE. I thank the Senator from Oregon for his forthright answers to my questions. Again I commend him for his courage and leadership in bringing to the floor of this body his cause of justice and his bills for the protection of legal rights.

Mr. MORSE. I thank the Senator from Wyoming.

Mr. President, up to now I have sought generally to outline the purposes of the proposed legislation and, in the second place, to place on top of the table the background information which led me to introduce these bills at this time.

I now turn to a legal discussion of the substantive merits of the bills. I shall deal first with the bill which involves restrictions upon trial by press release.

As I said earlier—but I wish to repeat it now, so there will be no misunderstanding—I am relying heavily upon the research and the scholarship of Professor Kurland, who proposed the bills in the first instance, and also approved the final drafts of the bills. The bills are now somewhat different from their form when they were first submitted by Professor Kurland; but the objectives of the bills, as they are now in their final form, meet with his scholarly approval.

The remarks I am about to make, under the subject "The Problem" will deal with the so-called press release bill. I am talking now about the so-called press release bill.

I. THE PROBLEM

More than a dozen years ago, Simon H. Rifkind, who had been one of the distinguished judges of the U.S. District Court for the Southern District of New York and has since been a leading lawyer in that community, stated the problem in authoritative terms. The lapse of time has not seen the resolution of the problem, only an exacerbation of it because of the enormous development of news coverage by television. Rifkind titled his piece in the Journal of the American Judicature Society—volume 34, page 46, 1950—"When the Press Collides With Justice." This is what he had to say:

There has been much talk lately of what is called trial by newspaper. In recent months there have been a number of cases in the courts which have aroused widespread public interest, and there has been a correspondingly widespread coverage of the details of the cases—from the first rumors of charges to the final verdict of the jury.

Although the problem has been accentuated recently, it is not a new one. I need not emphasize that there have been clashes between court and press at certain times long before the current controversy. There is a vast literature on the subject but, like the weather, it is something we constantly talk about but never do anything about. Now, however, that the citizens of New York are trying to do something about the weather, perhaps the citizens of our country can be induced to take some steps to resolve this conflict between court and press.

If one stops to inspect the collision which occasionally occurs between the courts and the press, one discovers that it is a contest, not between right and wrong, but between two rights. All contests have dramatic arts to which this particular contest belongs. I think we should find it to be that class which the Greeks called tragedy. It is a contest between hero and hero, not between hero and villain. In such a tragedy the end is always disastrous, and in those unfortunate cases where conflict develops between court and press, the result is frequently disastrous to justice itself.

There are many parts of the world today where judicial forms are used to accomplish results foreign to the judicial process. They have a courtroom, a bench, judges and people called lawyers. They often have persons identified as witnesses. But if you read the record of their proceedings, you feel that a great institution has been subverted and preverted to an utterly foreign purpose. Naturally we feel a revulsion when we read of that kind of activity. It is important for us, therefore, to be alert to any intrusion into the judicial process which may impair the high idealism which animates it. The process functions successfully only as long as the public feels that it grinds out what they can accept without—to use the title of a recent book—a "sense of injustice." Law loses its normative function the minute the public loses faith in the judicial process and feels that it is a mill that grinds out sometimes justice sometimes injustice. Then order can be maintained only by the force of tyranny.

Lawyers and judges make heroic efforts and resort to much ritual to preserve public confidence in the judicial system. We go to great lengths to make certain that our juries are free from prejudice. After they are impaneled, the judge keeps reminding the jurors, and thereby himself, that they must decide the case solely on the facts openly adduced in court and on argument openly heard in court. We proceed in an orderly manner, so that first one side and then the other is given the fullest opportunity to speak. By means of the rules of evidence, an impartial judge screens the information which is passed to the jury to make certain that nothing enters which can pollute the stream of information upon which the jury is to decide the rights of the litigants. An atmosphere of dispassionateness, of objectivity, of serenity prevails in the courtroom.

That time-honored procedure, forged through the generations to the single end that issues shall be impartially determined on relevant evidence alone, works fairly well in all cases but one—the celebrated case. As soon as the cause celebre comes in, the judges and lawyers no longer enjoy a monopoly. They have a partner in the enterprise and that partner is the press.

The process of erosion begins long before the trial. The area from which the jury panel is to be called is drenched with all kinds of information—some true, some false—all unchecked by the selective processes of the law, all uncleansed of the dross which it is the object of the law of evidence to exclude. By the time the panel is called to the courthouse, its members have been living in a climate surcharged with emotion either favorable or unfavorable to one of the litigants. To exclude from the jury panel all who have read about the case or heard about it over the radio is to reduce the jury to the blind, the deaf and the illiterate. So the jury must be selected from these precharged human vessels.

And then comes the trial itself. Recently my colleague, Judge McGohey, told me of a simple case before him involving an injured seaman. There was something in the papers in the case about the man's origin and early history which was inflammatory, and which would have diverted the jury from its duty to decide the case on the relevant facts. Judge McGohey told me that, as a matter of course, he called counsel to the bench and secured an agreement that that material should not be disclosed to the jury. The jury never heard about it, and decided the case without reference to this prejudicial material.

If that were a celebrated case, what would have happened? Judge McGohey would have had the same agreement with counsel, and the material would have been kept from the eyes and ears of the jury that afternoon. That night the 12 men and women would start for home and, 50 feet from the courthouse, they would receive a copy of their evening paper and there, on the front page, would see the excluded material. If any one of them was nearsighted, he would arrive home, turn on the radio at 7, 8, or 9 o'clock, and hear a commentator express his views on this piece of excluded evidence.

The next morning the jurors, on their way to the courthouse, would open their morning papers and there read the column of a hypothetical columnist whom I shall call Sokolborn. In his column would appear the statement, conveying this thought: "I don't think this witness ought to be believed. After all, he has a bad reputation and is a convicted liar. But I think every intelligent juror should place credence in the other witness."

Or it may be that in the courtroom a question is asked and objection is taken. The judge listens to the argument and during a recess consults Wigmore on Evidence. Wigmore refers him to some cases which he reads. After some meditation he returns and renders his reflected decision: "Objection sustained." The answer is not given in the courtroom. But that night, in Mr. Sokolborn's column, the jurors find the question and they find the answer—but with a difference. The answer they find is not protected by an oath and whoever supplies the answer does not take upon himself what we used to call the risk of the pains and penalties of perjury. Further, whoever supplies the information for that column does not have to confront the defendant as he would if he were a witness in the case. The informant is not subject to cross-examination, a process which has been called the greatest instrument ever invented for the discovery of truth. So we have unsworn testimony, unconfronted-witness-testimony, uncross-examined testimony going to the jurors. Moreover, it is uncontradicted testimony because the story in Sokolborn's column is not received in evidence, and therefore the poor defendant or plaintiff, as the case may be, is not afforded the opportunity to put anyone on the witness stand to contradict or explain it * * *.

Certain correctives suggest themselves, but on examination are found to be unrealistic. Change of venue was all right in the days of the horse and buggy, but today, in a celebrated case, the newspapers and radio blanket the country and most communities are deluged with information and opinion about the case.

Some of my colleagues caution the jurors not to read the papers or listen to the radio during the trial. Not only does the warning usually come a little late, but if you are dealing with a celebrated cause in which juror John Doe sees his name in the newspapers for the first time in his life, it is probably futile. To prevent that man from reading the papers will result in his death from frustration. You might just as well ask Katherine Hepburn not to read her press notices following an opening night.

You can lock up the jury during the trial. But I doubt whether my colleagues believe they would have obtained juries in certain protracted cases if they had informed the members of the panel that they would be held incommunicado for a period of months.

Judge Rifkind's proferred solution was an attempt to work out voluntary standards for the press to adhere to and for a watchdog committee to secure enforcement of the standards. The lapse of 12 years and the absence of any such solution speaks only too well of the vitality of that solution.

II. THE ENGLISH SOLUTION OF THE PROBLEM

Lord Devlin has described the governing rule in England in his book "The Criminal Prosecution in England" 119–21 (1958):

This process, for contempt of court, is the weapon used by the court to restrain press comment before and during the trial. It is used in a manner which I am sure would startle some (newspapermen) in the United States. What is sometimes called trial by newspaper is not tolerated in any form. Thus in 1924 it was held that when an accused person was under arrest, it was a contempt of court for a newspaper to employ amateur detectives for the purpose of investigating the facts of the alleged crime and to publish the results of the investigation (*R.* v. *Evening Standard*, 40 T.L.R. 833 (1924)). It is not only trial by newspaper that is condemned. Any comment on a matter that is sub judice and the publication of any facts, not part of the evidence, that might influence a jury one way or the other is capable of being contempt of court, even though it was done innocently or by an error of judgment or under an honest mistake. I can best describe the sort of thing that is objected to by taking three or four cases that have occurred in the last decade. In 1949 a newspaper published an article describing a man who had been charged with murder as a vampire and saying that he had murdered other people, giving their names (*R.* v. *Bolam*, 93 S.J. 220 (1940)). Evidence of other crimes is not, as I have said, ordinarily admissible, and no evidence of this sort had been given at the preliminary proceedings. The police had heard in some way of the proposed publication and a warning by them had been disregarded. The Lord Chief Justice said that it was a disgrace to English journalism and the court was satisfied that it was done not as an error of judgment but as a matter of policy in pandering to sensationalism in order to increase the circulation. The editor was sent to prison for 3 months, the directors of the newspapers were told that if it happened again they might be treated likewise, and the company which owned the newspaper was fined £10,000.

In 1954 a newspaper reporter by an honest mistake attributed to one of the witnesses at the trial a piece of evidence which he did not give (*R.* v. *Evening Standard*, (1954) 1 All Eng. Rep. 1026); it was, in fact, evidence which was to have been given by another witness, but when the prosecution tendered it, the judge had rejected it as inadmissible, and the other witness was never called. The prisoner was not prejudiced, since he was acquitted. The newspaper was fined £1,000.

Another case in 1957 concerned an American magazine which was compiled and edited in the United States and imported into England and distributed there (*R.* v. *Griffiths*, (1957) 2 All Eng. Rep. 379). One of the issues contained objectionable paragraphs in relation to a pending trial, reporting scandalous and prejudicial gossip concerning the prisoner. The only persons who could be brought before the court were the wholesale distributors in England. They said they were quite unaware of the prejudicial matter and that it was quite impossible for them to read all the material in the magazines they distributed. Nevertheless, the court said they must be held responsible in law. Since it was the first case of its sort, the court imposed a nominal fine of £50 but indicated that similar leniency might not be extended in the future * * *.

The English cases on the subject are summarized and set out in the appendices to Mr. Justice Frankfurter's opinion in *Maryland* v. *Baltimore Radio Show, Inc.*, 338 U.S. 912, 921 (1950). It does not have the later cases referred to by Lord Devlin but does exhaust the authorities for the period up to 1950.

III. THE AMERICAN LAW ON THE SUBJECT

A. The contempt power applied to news media.

For all practical purposes, if not as a matter of doctrine, the decisions of the Supreme Court of the United States preclude the utilization of the contempt power as a means of curbing expressions in public information media about matters which are sub judice. Each time that the Supreme Court has been called upon to pass on the question of the utilization of the contempt power to punish for publication about a matter that was sub judice, it held that the utilization of the power violated the provisions of the first amendment guaranteeing freedom of the press—see *Wood* v. *Georgia*, 370 U.S. (1962); *Craig* v. *Harney*, 331 U.S. 367 (1947); *Pennekamp* v. *Florida*, 328 U.S. 331 (1946); *Bridges* v. *California*, 314 U.S. 252 (1941). Earlier the courts did use the contempt power for the purpose of protecting the sanctity of the trial. See, for example, *In re Independent Publishing Co.*, 228 Fed. 787 (D. Mont. (1916), affirmed, 240 Fed. 849 (CA 9th 1917); *State* v. *Howell*, 80 Conn. 668 (1908); *Herald-Republican Publishing Co.* v. *Lewis*, 42 Utah 188 (1913). There have been no recent examples. And the decision of the high court of Maryland that the power was so severely circumscribed by the first amendment as to preclude its application was left unchallenged by the Supreme Court. *Baltimore Radio Show, Inc.* v. *State*, 193 Md. 300 (1949), certiorari denied, 338 U.S. 912 (1950).

B. New trial as the appropriate remedy. There is little doubt that the power exists in a Federal court for vitiating a conviction returned by a jury corrupted by newspaper accounts relating to the trial. In *Marshall* v. *United States*, 360 U.S. 310 (1959), the Supreme Court took it upon itself to reverse two lower courts that had refused such relief. There, two news accounts of previous convictions of the defendant and other deleterious information reached the jury.

The trial judge on learning that these news accounts had reached the jurors summoned them into his chamber one by one and inquired if they had seen the articles. Three had read the first of the two * * * and one had read both. Three others had scanned the first article and one of those had also seen the second. Each of the seven had told the trial judge that he would not be influenced by the news articles, that he could decide the case only on the evidence of record, and that he felt no prejudice against petitioner as a result of the articles. The trial judge, stating he felt there was no prejudice to the petitioner, denied the motion for mistrial.

The trial judge has a large discretion in ruling on the issue of prejudice resulting from the reading by jurors of news articles concerning the trial. *Holt* v. *United States*, 218 U.S. 245, 251. Generalizations beyond that statement are not profitable, because each case must turn on its special facts. We have here the exposure of jurors to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence. The prejudice to the defendant is almost certain to be as great when that evidence reaches the jury through the news accounts as when it is a part of the prosecution's evidence. * * * It may indeed be greater for it is then not tempered by protective procedures.

In the exercise of our supervisory power to formulate and apply proper standards for enforcement of the criminal law in the Federal courts * * *, we think a new trial should be granted. Id. at 312–13.

Again, in *Janko* v. *United States*, 366 U.S. 716 (1961).

The Court was compelled * * * to reverse a conviction in which prejudicial newspaper intrusion has poisoned the outcome. *Irvin* v. *Dowd*, 366 U.S. 717, 730 (1961).

Indeed, the Court has gone so far as to grant the writ of habeas corpus where a State convicted a defendant in an atmosphere created by the newspapers that made it impossible for him to secure a fair trial. *Irvin* v. *Dowd*, supra.

We should not forget, Mr. President, that that cost the American taxpayer a great deal of money. Every time a case is set aside because the appellate court—or, for that matter, the lower court—finds that the result was prejudiced by a newspaper which published information and evidence which was not admissible in court, there should be, and usually is, a retrial. Cases are not tried for nothing. So there is a cost in money and there is a cost in justice because, very frequently, the result is a miscarriage of justice. On a retrial a person might be acquitted when, in the first trial, without the intervention of improper evidence set forth in a news story, he might be convicted. In the intervening time between the first trial and the second trial a good many things can happen. An important witness may die. There may be a fire, and important documents may be destroyed. All sorts of things may happen. So what we have always pressed for in American justice is a speedy trial, because we know that a speedy trial affords the best prospect for a fair trial and the best opportunity for doing justice.

There are other recent cases in which judgments of convictions have been upset by reason of improper interference with the processes of the trial by public news media: *United States* v. *Accardo*, 298 F. 2d 133 (CA 7th 1962); *Coppedge* v. *United States*, 272 F. 2d 504 (CA DC 1959); see *Holmes* v. *United States*, 284 F. 2d 716, 718 (CA 4th 1960). But the effectiveness of the salutary rule is severely limited by two devices. One is a reliance on the notion that the question should be left for resolution to the discretion of the trial court judge, which means in effect permitting tainted convictions to stand. See *United States* v. *Feldman*, 299 F. 2d 914, 919 (CA 2d 1962); *Dranow* v. *United States*, 307 F. 2d 545 (CA 8th 1962); *United States* v. *Carruthers*, 152 F. 2d 512 (CA 7th 1945); *Rowley* v. *United States*, 185 F. 2d 523

(CA 8th 1950). A similar result is brought about by the proposition that the burden of showing prejudice is on the defendant, a burden of extraordinary proportion when, in some cases, jurors are prohibited from testifying that the publicity did prejudice their conclusion. *United States* v. *Crosby*, 294 F. 2d 928, 949–50 (CA 2d 1961); *Cohen* v. *United States*, 297 F. 2d 760, 763–64 (CA 2d 1962); *United States* v. *Vita*, 294 F. 2d 524 (CA 2d 1961); *Welch* v. *United States*, 135 F. 2d 465 (CA DC 1943); *Gicinto* v. *United States*, 212 F. 2d 8 (CA 8th 1954).

The proposed statute would make meaningful the standards applied by the court in Marshall, Janko, Accardo, and Coppedge, supra, by requiring the defendant to show only that the jury had access to evidence that would have been excluded from the trial because of its prejudicial nature; the burden would then shift to the prosecution to show that it had no adverse effect on the conduct of the trial.

I think it is only fair. Not only is the burden upon the Government to prove the guilt of the defendant, but, when challenged, the burden should be on the Government to show that the defendant received a fair trial. For, if the trial is not fair, there is automatic interference with the question of sustaining the burden of establishing guilt, so far as the Government is concerned.

C. The contempt power applied to litigants and counsel: One reason why it is difficult to push the notion of contempt against the news media is that the sources of the information they publish are only too frequently the attorneys involved in the litigation. It is because such conduct would be unthinkable in England that it is possible for the legal profession to tell the publicists that they must behave. It is not only the attorneys that require restriction, however, as the following materials demonstrate.

Mr. Justice Jackson in his concurring opinion in *Shepherd* v. *Florida*, 341 U.S. 50, 51–52 (1951), described a not untypical situation:

> But prejudicial influences outside the courtroom, becoming all too typical of a highly publicized trial, were brought to bear on this jury with such force that the conclusion is inescapable that these defendants were prejudged as guilty and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which it generated.
>
> Newspapers published as a fact, and attributed the information to the sheriff, that these defendants had confessed. No one, including the sheriff, repudiated the story. Witnesses and persons called as jurors said they had read or heard of this statement. However, no confession was offered at the trial. The only rational explanations for its nonproduction in court are that the story was false or that the confession was obtained under circumstances which made it inadmissible or its use inexpedient.
>
> If the prosecutor in the courtroom had told the jury that the accused had confessed but did not offer to prove the confession, the court would undoubtedly have declared a mistrial and cited the attorney for contempt. If a confession had been offered in court, the defendant would have had the right to be confronted by the persons who claimed to have witnessed it, to cross-examine them, and to contradict their testimony. If the court had allowed an involuntary confession to be placed before the jury, we would not hestitate to consider it a denial of due process of law and reverse. When such events take place in the courtroom, defendant's counsel can meet them with evidence, arguments and requests for instructions, and can at least preserve his objections on the record.
>
> But neither counsel nor court can control the admission of evidence if unproven, and probably unprovable, "confessions" are put before the jury by newspapers and radio. Rights of the defendant to be confronted by witnesses against him and to cross-examine them are thereby circumvented. It is hard to imagine a more prejudicial influence than a press release by the officer of the court charged with defendants' custody stating that they had confessed, and here just such a statement, unsworn to, unseen, uncross-examined and uncontradicted, was conveyed by the press to the jury. * * * Newspapers, in the enjoyment of their constitutional rights, may not deprive persons of their right to a fair trial. These convictions, accompanied by such events, do not meet any civilized conception of due process of law. That alone is sufficient, to my mind, to warrant reversal.

The opprobrious conduct of the sheriff in Shepherd was not an isolated event. Nor was the equally base conduct revealed in *United States* v. *Milanovich*, 303 F. 2d 626 (C.A. 4th 1962):

> A second issue presented on this appeal relates to the conduct of the special assistant to the Attorney General of the United States, assigned to prosecute this case for the Government * * * the allegation is that the prosecutor volunteered information to a local radio station concerning Mrs. Milanovich's alleged criminal record. The prosecutor happened to be the attorney for the radio station. When there for consultation on other matters, he allegedly made the statements about the appellant at the solicitation of the news broadcaster, with knowledge that they would be repeated over the air. His assertions that Mrs. Milanovich was a woman with a long record of arrests on charges of prostitution and liquor sales were broadcast at least three times during the week preceding the second trial * * *.
>
> The Government makes no attempt to defend such conduct of a prosecutor. Indeed, it conceded that it constitutes a violation of the duties and responsibilities of his office. (Id., at 629.)

Because the defendant did not show that the jurors were prejudiced by these broadcasts, the court sustained the conviction.

In *Henslee* v. *United States* (246 F. 2d 190 (C.A. 5th 1957)), the court applied a more appropriate standard, although there was no showing that the publicity secured affected the jury deliberations or that the action of the prosecuting attorney was willful, as it so clearly was in Milanovich:

> Where, as here, unwanted publicity resulted from action taken by the assistant U.S. attorney in connection with something entirely apart from the proper conduct of the trial, however innocent he may have been of any willful purpose to influence the jury, a much higher standard prevails. As said by the Supreme Court in *Berger* v. *United States* (295 U.S. 78, 55 S. Ct. 629, 633, 74 L. Ed. 1314):
>
> "The U.S. attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer."

That is one of the great quotations in American jurisprudence. It is one of the great principles which law schools seek to drill into the heads of law students, many of whom will be prosecuting attorneys. It is the great principle of the obligation of a prosecutor representing the U.S. Government to realize, that—as the Court so eloquently said in this great quotation—as a prosecutor, he is in a peculiar and a very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

The Court went on to say in the Berger case:

> Without in any way imputing an improper motive to the prosecuting officer here, we do find that in the proper conduct of the affairs of his office it should have been apparent that for him to file this motion with the inclusion of the self-serving and irrelevant statements of offenses and crimes not comprehended in the indictment for which Henslee was on trial might well produce the highly unfortunate publicity that actually resulted. His failure to apprehend the natural result of his act is as damaging to the cause of justice as if he had failed in his duty to act with a scrupulous regard for fairness (id. at 193).

The proposed legislation seeks to incorporate the standards suggested by the fifth circuit in the Henslee case. That the courts cannot be relied upon to demand this high but necessary standard of conduct from prosecutors is revealed by the decision in *Stroble* v. *California* (343 U.S. 181 (1952)):

> We turn now to petitioner's contention that the newspaper accounts of his arrest and confession were so inflammatory as to make a fair trial in the Los Angeles area impossible—even though a period of 6 weeks intervened between the day of his arrest and confession and the beginning of the trial. Here we are not faced with any questions as to the permissible scope of newspaper comment regarding pending litigation * * *; but with the question whether newspaper accounts aroused such prejudice in the community that petitioner's trial was fatally infected with an absence of that fundamental fairness essential to the very concept of justice. * * *
>
> The search for and apprehension of petitioner was attended by much newspaper publicity. Between the time of the murder and the time of petitioner's arrest, the newspapers of general circulation in the Los Angeles area featured in banner headlines the manhunt which the police were conducting for petitioner. On the day of petitioner's arrest these newspapers printed extensive excerpts from his confession in the district attorney's office, the details of the confession having been released to the press by the district attorney at periodic intervals while petitioner was giving the confession. * * *
>
> While we may deprecate the action of the district attorney in releasing to the press, on the day of petitioner's arrest, certain details of the confession which petitioner made petitioner can show no prejudice. (Id. at 192–193.)

The habit of prosecuting attorneys trying their cases in the press is so deep that the district attorney of New York County felt it appropriate to explain why he did not disclose statements made by accused persons or make comments thereon for the benefit of the press. Mr.

Hogan, in a letter to the New York Law Journal, April 22, 1954, wrote:

> The sole purpose is to protect the right of a defendant to a fair trial by not disclosing before trial, that he may have incriminated himself * * *. It seems undeniable that widely disseminated information that a defendant has "confessed" has the effect of convincing the general public that he is unquestionably guilty and that any trial will be a mere formality. To obtain an impartial jury under such circumstances, therefore, may be a most difficult task. In its practical effect, such publication tends to destroy the presumption that an accused is innocent until he is proven guilty beyond a reasonable doubt.

Certainly the issuance of press releases by prosecuting attorneys is a violation of canon 20 of the code of ethics of the American Bar Association:

> Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid ex parte statement.

But there are no teeth in the codes of ethics that bar associations so readily adopt but even more readily ignore. The bar has had ample opportunity to police itself. It has thus far refused to do so.

The problem is a serious one; no voluntary solutions have been proffered; no adequate sanctions have yet been developed by the courts. The appropriate action by the legislature seems evident and that takes the form of the legislation I have proposed in the first bill.

I turn now to a discussion of the second bill. First, a brief summary of its purposes.

This bill would provide that—

First. An indictment or complaint shall be dismissed, even where the statute of limitation has not run, if there has been unnecessary delay in making the presentment or filing the information;

Second. Where the Department of Justice files a dismissal of an indictment, except where the defendant consents, it shall serve as a bar to subsequent prosecution;

Third. Where more than one indictment is involved, the person shall be brought to trial on the indictments in the order in which they were returned. When a case goes to trial on an indictment, the court in which earlier indictments are pending against the same defendant shall dismiss the earlier indictments with the effect of a judgment of not guilty;

Fourth. The defendant shall be tried on an indictment, no later than 9 months after the indictment was filed, except that the court may extend the time on a showing of good cause; and

Fifth. A defendant who has been found guilty shall be sentenced no later than 60 days after judgment.

It is alleged by counsel for the Teamsters that none of Hoffa's difficulties have been characterized by untold delays, of a harassing nature. The Tampa case has been going on for an extended period, with the result that four witnesses and a codefendant in that case are now deceased.

This bill would seek to effectuate the defendant's right under the sixth amendment to a speedy trial.

Prosecuting authorities of the United States have frequently abused the rights of a defendant to a speedy trial, although that right is purportedly guaranteed by the Constitution of the United States. The States have, by experience, demonstrated that this right, if it is to be meaningful, must be enforced by legislative as well as judicial action. The proposed legislation benefits from the examples set by the States in this area and is the more necessary because the Federal courts have been less diligent than those of the States in enforcing this right.

A very able statement was made by the Senator from Georgia [Mr. TALMADGE] earlier this afternoon on this very point. He indicated that in the State of Georgia there does exist the principle under State law of the second bill I am introducing today. His statement, I consider to be of great aid to me in my presentation of my argument this afternoon; I shall show momentarily, however, as I discuss the situation in other States, that Senator after Senator could make a parallel statement to the one which the Senator from Georgia [Mr. TALMADGE] made earlier this afternoon.

The principle and the procedure that I am urging be adopted by the passage of my bill would make applicable to Federal prosecutions procedures which exist in a very large number of States.

I turn now to an analysis of the bill from the standpoint of what I consider to be a sound body of law and to the legal authority which supports it.

I. THE CONSTITUTIONAL PROVISION AND THE PROBLEM

Clause 40 of the Magna Carta provides: "To none will we sell, to none deny or delay right of justice." The sixth amendment to the U.S. Constitution provides: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial." And yet, as recently as 1957, our English brethren were able to point the finger of scorn at us because of our failure to make meaningful the content of these fundamental documents.

It is axiomatic—

Said the Law Quarterly Review, England's foremost law journal—

> that justice delayed is justice denied, but little has been done in recent years to deal with scandalous delays in many criminal prosecutions in the United States. (73 L.Q. Rev. 13 (1957)).

Nor was that review relying on any lesser authority than the opinion of a Justice of the Supreme Court of the United States, Mr. Justice Frankfurter's opinion in *Ward* v. *United States*, 76 S. Ct. 1063, 1 L. Ed. 2d 25, 28:

> Nothing has disturbed me more during my years on the Court than the timespan, in so many cases that come here, between the date of an indictment and the final appellate disposition of a conviction. Such untoward delays seem to me inimical to the fair and effective administraton of the criminal law. * * * I do not mean to imply criticism of any person judge or court for what is a good illustration of the general leaden-footedness of criminal prosecutions. The fault lies with the habit of acquiescence in what I deem to be a reprehensible system.

It was the scandalous delays of such a reprehensible system that the sixth amendment was intended to avoid, but in fact this provision of the Bill of Rights has never been adequately effectuated by the national courts or the National Legislature.

II. FEDERAL JUDICIAL PRECEDENTS

There are many gratuitous statements strewn through Federal judicial opinions about the possible invocation of the "right to a speedy trial" provision of the sixth amendment. Thus, Mr. Chief Justice Warren stated, in *Smith* v. *United States*, 360 U.S. 1, 10 (1959):

> Moreover, if, contrary to sound judicial administration in our Federal system, arrest and incarceration are followed by inordinate delay prior to indictment, a defendant may, under appropriate circumstances, invoke the protection of the sixth amendment.

Even in dictum, the right to speedy trial becomes equated with a right to avoid "inordinate delay" and then only under the amorphous "appropriate circumstances." In *Pollard* v. *United States*, 352 U.S. 354, 364 (1957), the Chief Justice, this time in dissent, noted:

> Our law, based upon centuries of tragic human experience, requires that before a man can be sent to the penitentiary, he is entitled to a speedy trial. * * * These are not mere ceremonials to be neglected at will in the interests of a crowded calendar or other expediencies. They are basic rights. They bulk large in the totality of procedural rights guaranteed to a person accused of crime.

The fact of the matter is that despite the constitutional provisions, for a long period of our history, there would appear to have been a conflict over the question of power in the Federal courts to use the only sanction that is meaningful to preclude abuse of the defendant's right to a speedy trial: dismissal of the charge. As the court said in the leading case of *Frankel* v. *Woodrough*, 7 F. 2d 796, 798 (C.A. 8th 1925):

> The constitutions of most of the States have provisions similar to the sixth amendment and many of the States have statutory definitions of the time or number of court terms within which criminal accusations must be tried. Such statutes provide usually for the discharge of accused unless the trial is within the limits so defined. The United States has no such statutory provisions and we think an accused would not be entitled to a discharge even though he were denied a speedy trial within the meaning of the Constitution. His right and only remedy would be to apply to the proper appellate court for a writ of mandamus to compel trial.

There were contrary indications of the existence of the power of discharge. For example, in *Ex parte Altman*, 34 F. Supp. 106, 108 (S.D. Calif. 1940), the court said:

> It is not questioned that the court, in the exercise of its jurisdiction, has the inherent power to order a dismissal for failure to prosecute. * * * We can conceive the anarchy which would result if the power to terminate a criminal proceeding for want of prosecution did not exist. Defendants might

have prosecutions hang over their heads, like the sword of Damocles, for years, without an effort being made to bring them to trial. And yet, if the prosecutor should refuse to try them, and the court acquiesce, they would be at his mercy. The constitutional guarantee of speedy trial * * * would be brought to nought, if, when the court set a cause for trial and the prosecutor was not prepared to proceed, the court were powerless to dismiss it for failure to proceed diligently.

The purpose of the bill is to set such time limits as are set in various State statutes, to make them applicable to Federal prosecutions; and further to provide that if the Federal prosecutors did not comply with such time limits, the cases would be automatically dismissed.

It is true that in 1944, the "Federal Rules of Criminal Procedure," rule 48, made explicit the power of the district court to dismiss for want of prosecution. And there have been a few instances where this discretion has been exercised in favor of the defendant. See, for example, *United States* v. *McWilliams*, 163 F. 2d 695 (C.A. D.C. 1947); *Petition of Provoo*, 17 F.R.D. 183 (D. Md. 1955), aff'd 350 U.S. 857 (1955). The fact is, however, that the discretionary power in the courts is obviously inadequate as a reading of the annotations to rule 48(d) readily makes apparent. Two examples demonstrate the ineffectiveness of the rule. In *United States* v. *Van Allen*, 288 F. 2d 825 (C.A. 2d, 1961), dismissal was denied under the rule although the indictment was not filed until the very end of the period of limitations and then 6 years elapsed without the case being brought to trial. In *Harlow* v. *United States*, 301 F. 2d 316 (C.A. 5th, 1962), the indictment was not filed until 4 years after the alleged criminal act occurred and 2 years later the case still had not been brought to trial. A Federal court dismissed the case where there was a delay of 8 years after the indictment was returned. *United States* v. *Dillon*, 183 F. Supp. 541 (S.D.N.Y. 1960). But where the delay was only 7 years, all that the court was prepared to do was to set the case for immediate trial. *United States* v. *Research Foundations, Inc.*, 155 F. Supp. 650 (S.D.N.Y. 1957). Certainly the Federal courts have thus given a strange meaning to the constitutional requirement of a speedy trial. Certainly the Federal courts have not given effect to the meaning of the constitutional provision so cogently stated in 1 Cooley, Constitutional Limitations, 645, eighth edition, 1927:

In this country, where officers are specially appointed or elected to represent the people in these prosecutions, their position gives them an immense power for oppression; and it is to be feared they do not always sufficiently appreciate the responsibility, and wield the power with due regard to the legal rights and privileges of the accused. When a person charged with crime is willing to proceed at once to trial, no delay on the part of the prosecution is reasonable, except only that which is necessary for proper preparation and to secure the attendance of witnesses.

III. STATE PROTECTIONS OF THE RIGHT TO A SPEEDY TRIAL

The States, by constitutional provision, by judicial decision, and by legislative action have generally been far more cognizant of the obligations of the State to its citizens to afford them a speedy trial. From the outset, the State courts have followed the construction offered by the Pennsylvania Supreme Court in 1827 in *Commonwealth* v. *Sheriff & Gaoler of Allegheny County*, 16 Serg. & R. 304:

I think it was intended to provide against the abuse of a protracted trial, to provide not only against the malice of the prosecutor, but against his negligence, against all his delays, whether with cause or without cause, against every possible act, or want of action, of the prosecutor; but not to shield a prisoner in any case from the consequences of any delay made necessary by the law itself.

But the States were not satisfied to leave a discretionary power in the hands of the judiciary; they generally provided by statute that unless the defendant were tried within a specified period after indictment he was to be discharged. A few examples, chosen at random, reveal the approach of the majority of State jurisdictions.

A. KANSAS

In Kansas, section 10 of the State constitution requires "a speedy public trial," words not dissimilar to those of the National Constitution. The judicial construction of the provision has been made clear:

This is not the grant of a mere privilege; it is the grant to an accused person of a right, of which he cannot be deprived by the laches of public officers. (*In re Trull*, 133 Kan. 165; *State* v. *Brockelman*, 173 Kan. 469.) Its provisions are a directive to prosecuting officers to act, and not to delay, the prosecution of persons charged with criminal offenses. (*In re Trull*, 133 Kan. 165, 169.) The whole responsibility of seeing to it that the accused is given a speedy trial therefore rests upon the prosecution and not the accused. (*In re Trull*, 133 Kan. 165, 168; *State* v. *Hess*, 180 Kan. 472, 474 (1956).)

The legislative implementation of the constitutional provision has really effectuated the policy thus stated. General Statutes 62–1431 and 62–1432 provide respectively that a defendant who remains in prison must be tried before the end of the second term of court following information or indictment; a defendant who has been bailed must be tried before the expiration of the third term.

These statutes supplement the Bill of Rights and render it effective (*In re Trull*, 133 Kan. 165, 167) by prescribing a definite and uniform rule for the government of courts. (*In re McMicken*, 39 Kan. 406, 408.) They constitute a legislative definition of what is, under the circumstances named, a reasonable, and proper delay in bringing the accused to trial. (*In re Trull*, 133 Kan. 165, 167.) Their purpose is to carry into effect the constitutional guaranty of a speedy trial. (*State* v. *Campbell*, 73 Kan. 688, 695.) * * * An accused need not insist upon, nor even ask for a speedy trial, nor need he protest against or object to the delay. Failure to object to continuance is not equivalent either to an application for such continuance nor to a consent to the State's request for a continuance. (*Nicolay* v. *Kill*, 161 Kan. 667, 671; *State* v. *Dewey*, 73 Kan. 739, 741.) All that a defendant needs to do to retain the protection of the constitutional guaranty is to refrain from any affirmative act, application, or agreement, the necessary and discrete effect of which will be to delay the trial. *State* v. *Hess*, 180 Kan. 472, 474–75 (1956).

B. COLORADO

The situation in Colorado is similarly reflected in *Hicks* v. *People*, 364 P. 2d 877 (Colo. 1961). There defendant's counsel relied on the legislative supplementation to the State constitutional guarantee in Colorado Revised Statutes, 1953, 39–7–12:

If any person shall be committed for any criminal or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the expiration of the second term of the court having jurisdiction of the offense, the prisoner shall be set at liberty by the court, unless the delay shall have been on the application of the prisoner. If such court at the second term shall be satisfied that due exertions have been made to procure the evidence for and on behalf of the people, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have the power to continue such case until the third term.

Defendant also relied on section 16 of the Colorado constitution which guaranteed a speedy public trial. The attorney general sought to excuse the delay, inter alia, on the ground that the defendant was on bail and the statute therefore not applicable and on the ground that the defendant had never demanded a trial and so had waived the right to a speedy trial.

With reference to point 1 above, it is sufficient to say that the statute relied on * * * cannot be effective to place any limitation upon the constitutional right of an accused person to have a speedy public trial. In the instant case the trial was had, over defendant's objection, in the fourth term of court following the assumption of jurisdiction and after a delay of 14 months. We think the following language of this court in *In re Miller*, 66 Colo. 261, 180 P. 749, 750, is applicable: "The fact that he was at large under bond manifestly does not divest him of the right to that speedy trial which is guaranteed by the Constitution, and regardless of the statute he is in any event clearly within section 16, article 2 of the Constitution, and under the facts disclosed entitled to the relief prayed." * * * The defendant is not under a duty to demand trial within any specific time before he can claim the protection of a mandatory provision of the Constitution which says that he "shall have the right to a speedy public trial." 364 P. 2d at 879–880.

C. OKLAHOMA

In re Gregory, 309 P. 2d 1083 (Okla. Cr. 1957), affords a third typical example of State judicial and statutory, as well as constitutional, provisions for the effectuation of the right to a speedy trial.

On the issue of the defendant's right to dismissal of the charges for failure to afford him a speedy prosecution, this court has expressed itself in numerous cases. In *Hembree* v. *Howell*, 90 Okla. Cr. 371, 214 P. 2d 458, 460, we quoted from *Brummitt* v. *Higgins*, 80 Okla. Cr. 183, 157 P. 2d 922, as follows: "The bill of rights of the Oklahoma constitution provides: 'Right and justice shall be administered without sale, denial, delay, or prejudice,' article 2, section 6; and further 'in all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed.' Article 2, section 20."

Title 22 O.S. 1941 section 812, provides:

If a defendant, prosecuted for a public offense, whose trial has not been postponed

upon his application, is not brought to trial at the next term of court in which the indictment or information is triable after it is filed, the court must order the prosecution to be dismissed unless good cause to the contrary be shown. 309 P. 2d at 1085.

The Court of Criminal Appeals then proceeded to rule that the absence of funds to provide for criminal trials at the next term of court was not an adequate excuse, nor was the failure of the defendant to demand a trial. The court's peroration, if a bit long is nonetheless worthy of repetition:

The fact that this accused may have been charged with the commission of several heinous crimes by no means diminishes the gravity of the denial of his right to a speedy trial, in view of the fact that regardless of the charges pending against him, he too is presumed to be innocent until proven guilty. While right to a speedy trial by jury is essentially a benefit for the innocent, no governmental power may prejudge the accused and deny the right. It must, as it has always been under constitutional government, be open to all alike, the guilty as well as the innocent. The right to speedy trial being one of the imperative obligations of government in this country, it is one that must be met. It cannot be lightly regarded or entirely evaded because of inconvenience or lack of funds. It is the intention of this court to maintain the rights of every citizen, regardless of the fact that sometimes it seems the law moves with leaden feet.

It has been rightfully said, the price of liberty is eternal vigilance. On many occasions since this case was published at the time of the hearing, we have been asked "How could such delay prevail in this country in the face of the constitutional provision for speedy trial?" The answer is, the remonstrative voice of an accused oftentimes. cannot be heard from behind prison walls. The people, being uninformed of his plight, have no cause to be disturbed. Hence, the accused, as a prisoner, must depend upon the judiciary and especially the local judge under whose jurisdiction he first feels the force of law. If the judge, under whose jurisdiction he falls, lacks interest, is lethargic toward his responsibilities, or is derelict to duty, "Lo freedom weeps, wrong rules the land, and waiting justice sleeps." There is no higher duty of the judiciary than to rise in preservation of the rights of those who unfortunately become enmeshed with the law, and whose rights are either being ignored or trampled underfoot. The judge, under his oath, is bound to uphold the Constitution of the United States and the State of Oklahoma, as well as the statutory rights of the people, the guilty as well as the innocent, the ignorant as well as the educated, the poor as well as the rich. Judges have no other choice under the law. They should seek no other course. The trial judge controls the setting of cases on the dockets. In fact, in so doing he is the primary bulwark between the accused and despotic delays. It should not require 16 months for judicial intervention on the local level into a situation as herein involved. For, the judge on that level is the watchman to whom those silent sentinels of constitutional safeguards repetitiously cry out, "Watchman, what of the night?" Our Founding Fathers, steeped in historical examples of abuse of power, were unwilling to rest the safeguards of the Bill of Rights alone to the uncertainties of judicial fervor which sometimes falters or may fail in the protection of sacred rights. Instead they insisted that these rights be spelled out in black and white in the Bill of Rights, U.S. Constitution sixth amendment, and in article 2, sections 6 and 20, Oklahoma constitution, which do not require a lawyer to interpret. Then, to make doubly sure, Oklahoma's founders by legislative action spelled out definitive limitations in 22 O.S.A. section 812 to the right to a speedy trial, apparently to relieve it of elasticity and prevent relaxation of its true meaning through judicial interpretation. All this they did in order that the right to speedy trial might not be frittered away and the citizen made a pawn of dictatorial government and a slave of despotic police action. Through sacrifice and bloodshed, the precious Bill of Rights was won. Jealously, these rights have been guarded through the years. To their perpetuation both judges and the laity should assert themselves with increased devotion for therein lies the security of freemen in America; men who are masters of the State and not slaves of despotic power (309 P. 2d 1087–88).

D. NEW YORK

New York provides a fourth example in the opinion by Chief Judge Desmond in *People* v. *Wilson*, 8 N.Y. 2d 391 (1960). New York does not have a constitutional provision commanding speedy trials in criminal cases. Its statutes made for some ambiguity, not about the right to a dismissal for failure of prompt prosecution but rather as to the right to reindict after the original dismissal. It was this issue that the court of appeals resolved in favor of the fundamental right to prompt trial. The court, in Wilson, said:

Section 8 of our Code of Criminal Procedure and section 12 of the Civil Rights Law list a speedy and public trial as one of the rights of a defendant in a criminal trial. This affirmation as our Prosser opinion [*People* v. *Prosser*, 309 N.Y. 353] points out, is no less a guarantee because not written into our State constitution. The method of enforcement of the right is described in section 668 of the Code of Criminal Procedure under which this defendant won his dismissal, and which directs a dismissal on defendant's motion if the defendant be not brought to trial at the next term of the court in which the indictment is triable and no good cause is shown for the delay. This defendant moved for and was entitled to dismissal 21 months after indictment and won a dismissal more than a year after the making of the motion, only to be reindicted and brought to trial and to a guilty plea four and a half years after the original indictment had been found. Justification for this incongruous result is discovered in two statutes: section 673 of the Code of Criminal Procedure, which asserts that an order for dismissal is not a bar to another prosecution if the offense charged be a felony, and section 142 of the Code of Criminal Procedure, which sets a 5-year limit for commencing the prosecution of felonies.

These statutes cannot reasonably be reconciled—or, at least, they cannot all be literally applied in cases like this. If we read section 673 as complete and automatic permission for reinstatement of a felony indictment after a section 668 dismissal, we produce a result that cannot be squared with the guarantee of a speedy trial as found in the other statutes. Everyone now agrees that the right to a prompt trial is a fundamental one. The State of New York does not present a fundamental right with one hand, and take it away with the other. As Judge Fuld wrote in *People* v. *Prosser* (309 N.Y. 353, 356, *supra*): "The speedy trial guarantee, preventing undue delay between the time of indictment and trial, serves a threefold purpose. It protects the accused, if held in jail to await trial, against prolonged imprisonment; it relieves him of the anxiety and public suspicion attendant upon an untried accusation of crime; and, finally, like statutes of limitation, it prevents him from being 'exposed to the hazard of a trial, after so great a lapse of time' that 'the means of proving his innocence may not be within his reach'—as, for instance, by the loss of witnesses or the dulling of memory." The delay in the present case was almost as long as that in Prosser's but, since the second indictment against this defendant was not less than 5 years after the crime, the long delay was held to be without sanction or remedy. Whatever may be the result under other combinations of facts, we should hold that this defendant did not get the "speedy trial" guaranteed him. 8 N.Y. 2d at 395–96.

These four examples purport to be nothing more than that. Over 40 States of this Union have constitutional and statutory protections for the right to a speedy trial that far exceed those that are now available to a defendant in a Federal court. The insistence of the legislature on the enforcement of this right has been the primary means by which the rights of the accused are protected in this area. Along with the legislatures of a small minority of States, the legislature of the United States has been laggard on this score. There is no reason why it should remain so.

Mr. President, there are such statutes in New York. But the courts of New York talk about a fundamental right, under our American system of justice, to a speedy trial. The withholding of a speedy trial with such delays as those upon which the courts have commented, and which are involved in the decisions I have cited and from which I have quoted in my manuscript, constitute a denial of justice, justifying the courts in ordering a dismissal of further prosecution or the setting aside of convictions already obtained.

All I am seeking to do in the bill is to give to American citizens, when being prosecuted by Federal prosecutors, the same precious guarantee that they have as American citizens in the States when being prosecuted by State prosecutors. Such a provision is long overdue. As I said earlier today, the fact that the question arises at a time when there is a cause célèbre, which was discussed by one of the authorities I cited, should not in any way influence us in the Senate to delay any longer seeing to it that this correction in Federal criminal justice feature is adopted. It should have been done years ago. We ought to do it now.

Before the Senator from South Carolina leaves the Chamber, I desire to say to him that I could not have had a greater encouragement paid me than to have the chairman of the subcommittee of the Senate Judiciary Committee, to which committee bills of the type proposed are usually referred, not only tell me that he was in favor of the objective that I seek in connection with the bills, but ask to be a cosponsor of them. I do not know how a man could express his convictions and beliefs better than that. As I did in his absence earlier today, I thank him in his presence for his statesmanship in connection with this subject. I do not think that we ought to let this void in our code of criminal procedure go any longer. We ought to plug the void by the passage of these bills, so that the benefit of these guarantees can be made available to all defendants—I do not care what their names are—to Communists, to anarchists, to Socialists, to murderers, to

rapists, to prostitutes—all of whom may be charged with crime, guilty or innocent, for, as I tried to point out earlier today, I shall not be deterred by names of individuals to whom the bills might be applied. We are dealing with an abstract principle of justice. Congress has been derelict for decades in this matter, but not the legislatures of what I understand are nearly 40 or more States that have put into State statutes the abstract principle of guarantee of a fair trial, for which the Senator from Oregon and his cosponsors are pleading this afternoon.

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

Mr. MORSE. I yield to the Senator from South Carolina.

Mr. JOHNSTON. I thank the Senator for his remarks. I, too, believe that anyone who is indicted or accused is and should be considered innocent until he is proven guilty. For that reason such persons ought to have certain rights and privileges. It makes no difference who they are. I agree thoroughly with the Senator in his way of looking at the laws of our land.

Mr. MORSE. I thank the Senator very much.

Mr. President, I wish to discuss this subject under the fourth heading.

IV. THE MANY FACES OF THE PROBLEM OF DELAY OF PROSECUTIONS

Unnecessary and unreasonable, and really unconstitutional, delay in the prosecution of criminal cases in the Federal courts is to be found at almost every stage of the process of criminal adjudication.

A. DELAY IN BRINGING CHARGES

First, there are the many instances in which the Government, aware of an alleged violation of the law, fails to bring charges against the accused not because it does not intend to make the accusation but because it prefers to hold the threat of prosecution over the head of the alleged wrongdoer. The problem is spelled out in some detail in a very able note in 5 Stanford Law Review 95 (1952). This problem is probably the least amenable to legislative resolution. It can be handled by a courageous judiciary by invoking the doctrine of laches to prevent a stale prosecution brought within the period of limitations set by statute. The power would seem to have been granted by rule 48(b) of the Federal Rules of Criminal Procedure, which provides:

> If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer in a district court * * * the court may dismiss the indictment, information or complaint.

Despite this clear language, however, the courts have held that "delay from the time of the commission of the offense to the commencement of the criminal proceedings is controlled by the statute of limitations." *Hoopengarner* v. *United States*, 270 F. 2d 465 (C.A. 6th 1959); *Harlow* v. *United States*, 301 F. 2d 361 (C.A. 5th 1962).

The proposed statutory provisions would make clear that the court may dismiss for unnecessary delay in seeking an indictment or filing an information or complaint, even where the period of limitations has not yet run. If this proves ineffective, it may be necessary to reexamine the various applicable periods of limitations to limit the possibilities of abuse of the kind just noted.

B. DELAYS RESULTING FROM NOLLE PROSEQUI

One of the methods used, or abused, by prosecuting officials to secure delay is the voluntary dismissal of an indictment or information by the Government, which then later secures or files an indictment or information alleging the same charges. This power of repetitive accusation results from the fact that a nolle prosequi is not treated as a dismissal on the merits and is, therefore, not a bar to further prosecution. See, for example, *United States* v. *Fox*, 130 F. 2d 56 (C.A. 3d 1942), cert. den., 317 U.S. 666. Until 1948, the Federal prosecutor would appear to have had absolute discretion to secure a voluntary dismissal. See *Confiscation* cases, 7 Wall. 454, 457 (1869). The fact that the defendant has been put to considerable trouble and expense preparing the defense and is stranded without exoneration by the voluntary dismissal is no barrier to its entry by the court. See, for example, *United States* v. *New York Great Atlantic & Pacific Tea Co.*, 54 F. Supp. 257 (N.D. Tex. 1944).

The 1948 promulgation of the Federal rules took a partial step toward limiting the discretion of the prosecutor. It provides that—

> The Attorney General or the U.S. attorney may by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without consent of the defendant.

This is only a limited inroad on the abuse of power that is possible. The readiness of the courts to indulge the prosecutor by a dismissal without prejudice is apparent. See, for example, *Nesbitt* v. *United States*, 249 F. 2d 17 (C.A. 6th 1957). Correction of the evil can be effected by making the dismissal a bar to a later prosecution.

The proposed amendment to the judicial code would accomplish this end.

C. MULTIPLE INDICTMENTS

A third means of keeping a sword hanging over the head of an accused that is used by the Government is the filing of multiple indictments in different districts charging the same or related crimes or even unrelated crimes, with freedom in the prosecution to decide which indictment it will move on and at what time. The defendant is put to the necessity for preparing multiple defenses without knowing which case will be tried first or which will be tried at all.

Let us take a look at how the Government operates in the preparation of such cases. We should not forget that in my hypothetical there is only one defendant, but the Department of Justice has many lawyers. So they get the multiple indictment and say to the first group of lawyers, "You get ready and prepare this case." To the next group of lawyers they say, "You get ready and prepare this case." And to another group of lawyers they say, "You get ready and prepare the third case." But the defendant must get ready on all three. Under the existing procedures he does not have the slightest idea when the sword will fall.

What I seek to do by the bill is to provide that the indictments shall be taken in order, and that the defendant shall be allowed to prepare his defense on the first indictment; and that that indictment shall be tried before any other indictment is tried. And, if the Government wanted to dismiss the indictment, that would be all right, but that would dismiss the charge, unless the defendant joined in the motion to dismiss. The defendant is entitled, as we all know, to a reasonable time to proceed to prepare for the second batch of Government attorneys who have been working on the second indictment. And there would follow the same procedure.

What is unfair about that?

Earlier this afternoon I said that, after all, when one stops to analyze our system of American justice, he finds that it is based upon the foundations of fairplay which we learn as little children the first time we walk on the playground. It explains in no small measure why, as a people, we are so just.

We cannot reconcile the multiple indictment system with fair play. The defendant is kept in doubt as to what indictment will be tried first; or whether there will be a telephone call to the judge by the prosecuting attorney to get the indictment dismissed, without any conference with the defendant, only to have the defendant, 6 months later, reindicted on the same charge. That cannot be reconciled with fairplay.

The Senator from Oregon is introducing a fairplay bill. He is introducing a bill which is reconcilable to the rules of the American playground. He is introducing a bill which any fairminded person will say is fairplay. He is saying to the Department of Justice, "Make up your minds, boys, what case you will try first under what indictment, and bring that indictment; and then you will be bound to try that case in that order of indictment."

The other procedure, of multiple indictments, with no rule as to which indictment shall be tried first, is referred to very often in the legal field as "shopping for jurisdiction."

Get an indictment in jurisdiction X. Then get a second indictment in jurisdiction Y, involving some of the same alleged illegal conduct. Then get an indictment in jurisdiction Z; in Tampa, Chicago, and Nashville; or in any other case in San Francisco, Oklahoma, or New York City; or in any other case in New Orleans; Houston, Tex.; or Portland, Oreg. Keep the defendant guessing. Delay and delay. Dismiss an indictment without consultation with the defendant, and then reindict 6 months later.

What kind of game is that? What does this kind of procedure have to do with the concept of justice we have been talking about all afternoon? It is foreign to it.

What do I seek to do? I seek to bring the American playground into the American courtroom, for the rules of fairplay of the playground ought to be applied in the procedures of the courtroom.

So the bill says, "Bring as many indictments as you wish, but try them in the order you bring them, and if you dismiss without the consent of the defendant or the joining of the defendant, you have dismissed the charges for good."

In order to avoid a misunderstanding of my position, I want to say it is obviously undesirable to set a limit on the number of accusations the Government may properly make against a single defendant. They should be permitted to make charges wherever there is evidence sufficient to satisfy a grand jury or a magistrate that such charge might be sustained. It is equally obvious, however, that the defendant should be protected against the abuse of such procedure. Indeed, only a partial protection is feasible and that is the one preferred in the bill: the Government shall proceed against the defendant in the order in which it has brought the accusations.

D. DELAY BETWEEN INDICTMENT AND INFORMATION AND TRIAL

A majority method by which the defendant is denied his right to a speedy trial is the simple delay in commencing a trial after indictment or information. This is perhaps the most important, in terms of quantity, but at the same time the most readily curable evasion of the constitutional guarantee. The States, as described above, have cured this problem, to the extent that it is curable, by fixing the time within which the trial must take place. The proposed bill adopts this approach but, because terms of court are no longer significant in the Federal courts, it substitutes a time period broad enough to allow preparation for trial to both the prosecution and defendant, but not so gross as to permit the continuation of the denial of a defendant's rights to a speedy trial.

I think that is a very fair time limitation. I think it, too, will appeal to fair-minded people.

E. DELAY BETWEEN CONVICTION AND SENTENCE

A defendant convicted of a crime but not yet sentenced is, of course, beholden to those who might influence the terms of the sentence. By postponement of the sentence day, the prosecution is in the position to compel action or inaction by the defendant which is inimical to the proper pursuits of justice by the prosecution. It is conceded that postponement of sentence improperly could constitute a violation of the right to a speedy trial—see *Pollard* v. *United States*, 352 U.S. 354 (1957). It is not agreed as to how long it is proper to put off sentence. Both the Supreme Court, over vigorous dissent—see *Pollard* v. *United States, supra*, and lower Federal courts—see *Kaye* v. *United States*, 235 F. 2d 187 (C.A. 6th 1956)—have sustained sentences imposed as late as 2 years after conviction, in spite of the fact that rule 32(a) requires the imposition of sentence "without unreasonable delay." It had long been the rule in American courts that "it is the duty of the court on a conviction or plea of guilty to impose sentence within a reasonable time, and an indefinite postponement of sentence deprives the court of jurisdiction over the prisoner, and a subsequent sentence is without judicial authority and void"—3 ALR 1003, 1004; 97 ALR 802. Generally, this required sentence by the expiration of the term following that within which the judgment of guilty was entered. In the absence of the possibility of using terms of court in the Federal system, it is suggested that a fixed period of time be set forth in the statute, within which sentence must be imposed. The period of time must be broad enough to permit securing appropriate reports on which the sentence may be based, but not so long as to result in a deprivation of defendant's constitutional right.

That is exactly what I have provided in the bill. We say, "You must have time, of course, to make an investigation for parole or probation, but you must fix a sentence within a reasonable time, and you will not be allowed to keep this convicted person in doubt as to the final disposal of his case." Sentence is a very important part of the disposal of a case.

F. DELAY BETWEEN CONVICTION AND APPELLATE REVIEW

The bill is silent on the last of the problems of delay which plagues the Federal courts, the one to which Mr. Justice Frankfurter's quotation adverts, the delay in completing appeals. This is, perhaps, peculiarly within the province of the courts to reform. And with the example set forth by the proposed statute, it is to be hoped that the courts will give serious study to the issue. For it is here that legislative intervention should follow only after judicial abdication of the power to clean its own house.

G. CONCLUSION

The proposed legislation is necesary to give effect and meaning to the constitutional command to proceed with diligence in the trial of criminal cases. Certainly the legislation will, in some ways, inhibit the power of the prosecuting authorities. The constitutional provision was intended to limit that power. It is hard to understand how an executive branch of the Government which has been so active in seeking to impose its notions of civil liberties on the various States can refuse to convince by example when it is prepared to coerce by force. It would seem hardly possible that a President who, in his state of Union message, proclaims the need for providing counsel to impecunious defendants, would countenance the deprivation of those essential rights without which the right to counsel is only a mockery.

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

Mr. MORSE. I yield.

Mr. DODD. I regret that I was not present to hear the entire statement of the distinguished Senator from Oregon on this important matter. I am somewhat familiar with the two bills, and I believe it is typical of the Senator from Oregon that he would take such a deep interest in the problems he has been discussing here this afternoon. It is of the greatest importance that we make corrections along the lines he proposes.

For some time, dating back to the days when I was an assistant U.S. attorney in my own State, I have been aware of these great defects. I often thought that, somehow or other, we should remedy them.

The Senator from Oregon, in my opinion, has given us real remedies. If we are to talk about fair play and even-handed justice, it is high time that we corrected the situation.

Again, I commend the Senator from Oregon. I hope the other Members of the Senate will read what he has had to say and will join in support of the two proposals which he has submitted.

Mr. MORSE. Mr. President, I cannot begin to express my appreciation for the remarks made by the Senator from Connecticut [Mr. DODD], because the American people, or those who have become interested in this subject matter sufficiently to read the RECORD, should know that the Senator from Connecticut not only is one of the most able lawyers in the Senate, but is a man who comes to us with a long background of official experience in the field of prosecution. He knows the prosecution side. As a lawyer, he knows the defense side. He has a very able record of investigating in this field. He has demonstrated over and over again his insistence that we always do those things necessary to guarantee to the American people that their procedural rights will be protected.

In closing my statement on this subject, before I turn to the other subject which I shall discuss briefly this afternoon, I want to say in summary that I have introduced these two bills because, in my judgment, the Federal statutes have a great void in them in respect to the rights of individuals encompassed by these bills. The bills would fill that void, and there would be a fairer system of justice if the bills were enacted into law.

I thank my many colleagues who have participated with me in the discussion this afternoon. I sincerely hope, after the bills go to committee next Tuesday, that there will be early hearings. I hope many of my colleagues will participate as witnesses in those hearings.

I announce now to the Judiciary Committee that I shall submit a list of experts that I hope the committee will see fit to call as witnesses, because I am satisfied that as the legal scholars are called in to testify on these bills, I will get support in addition to the very helpful support I received this afternoon on the floor of the Senate.

COSPONSORING A BILL TO IMPLEMENT ARTICLE VI OF THE BILL OF RIGHTS

Mr. FONG. Mr. President, article VI of the U.S. Constitution's Bill of Rights provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed.

This basic right to a speedy trial is accorded all American citizens who are accused of committing a crime. I believe the purpose of the sixth amendment to our Constitution was to—

First. Prevent the Government from delay in bringing charges against the accused;

Second. Prevent the Government from repeatedly bringing the same charge against the defendant by securing a voluntary dismissal of previously filed charges;

Third. Prevent the Government from filing multiple indictments in different districts charging the same related, or unrelated crimes, but having the freedom to decide which indictment to prosecute and at what time, thus preventing a defendant from knowing which case will be tried first, if at all;

Fourth. Prevent a long delay in beginning a trial after charges have been filed; and

Fifth. Prevent any delay in imposing sentence on the convicted defendant.

Therefore, I have joined with my colleagues in cosponsoring a bill to implement each of these sixth amendment protections.

I believe that this bill effectuates the Constitutional guarantee of fairplay in criminal proceedings, in that the Government should always proceed without undue delay.

In this regard, many have raised the question as to whether some of these constitutional standards of fairplay have not been followed in the James Hoffa case.

As a member of the Senate Judiciary Committee and as one who has the highest regard for our judicial processes, I am constrained to make a few observations.

An article appearing in the Washington Post on May 15, 1963, reports on the background of the Government's effort to bring Hoffa to trial. Since the publication of the article, an eighth indictment has been brought after a seventh indictment was dismissed.

The Department of Justice has brought criminal charges against Hoffa eight times, and in none of the cases has he been found guilty of the charges brought against him.

The Government may well have enough evidence in the eighth indictment to prove, beyond a reasonable doubt, that he is guilty as charged. If this is so, he should, of course, be brought to trial.

Until the trial has been completed, we do not know whether or not he is guilty of the charges against him. Should the evidence be insufficient for a conviction, however, then in my judgment no indictment should have been brought in the first instance. For, in my estimation, another failure to secure a conviction might lessen our people's high regard for our judicial process. It would again raise many questions—already noted in the Washington Post article—as to the propriety of the indictments and as to whether there has been fairplay in bringing these indictments.

Because of its timeliness and significance, I ask unanimous consent that the Washington Post article by James E. Clayton, entitled "Battle of R. F. Kennedy, Hoffa at Decisive Stage," be printed in the RECORD.

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

BATTLE OF R. F. KENNEDY AND HOFFA AT DECISIVE STAGE

(By James E. Clayton)

The angry battle that began 7 years ago between Robert F. Kennedy and James R. Hoffa has now reached the decisive stage.

It came on Thursday when a special Federal grand jury in Nashville charged the Teamster boss and six associates with attempting to bribe jurors during a trial held there last fall.

Kennedy and the Justice Department, long sensitive to charges that a vendetta is being conducted against Hoffa, may well have staked their last hopes of nailing him on this case.

An acquittal, Justice Department officials admit privately, would seriously prejudice any future charges that might be brought against Hoffa. It could convince many that Hoffa's claim of persecution is true.

A conviction, on the other hand, might put Hoffa out of action for a long time. Each of the five counts in the indictment against him carries a maximum sentence of 5 years in prison and a $5,000 fine.

The claim of persecution is one that Hoffa has returned to again and again in recent months.

In Los Angeles in February, when he was called before a grand jury, Hoffa said, "Bobby Kennedy is using his Office, in violation of his oath of office, to continue the persecution campaign."

SEES A GESTAPO

In Denver in March, Hoffa charged that Kennedy was trying to break the Teamsters with "a conspiracy * * * to create a Gestapo of 76 police agents, 23 prosecutors, and 32 grand juries."

In New York in April, Hoffa said Kennedy was running a vendetta because "he never in his life ran up against a situation he couldn't dominate. He's just a spoiled young millionaire."

Kennedy's response has been merely to deny any vendetta and to refuse further comment because Hoffa was under indictment. This does not mean that the Attorney General has changed his once-expressed view that Hoffa is the most sinister figure in the Nation because of his "venality, his shady business deals, his gangster connections, his roughshod abuse of democratic procedure within the union."

In almost every battle between the two, Kennedy has come out second best.

Hoffa was indicted in 1957 in the bribery of an investigator for the McClellan committee. Kennedy, counsel for the committee, said he would jump off the Capitol if Hoffa was acquitted. Hoffa was acquitted and offered to send a parachute.

Afterward came a drive aimed at ousting Hoffa from leadership of the Teamsters, a drive in which Kennedy played a major role. Hoffa is still the Teamsters international president.

A year ago, Hoffa was indicted in Nashville for accepting a million dollars in payments from a company with which his union negotiated contracts. The jury, which Hoffa is now charged with attempting to fix, was unable to reach a verdict. Seven jurors reportedly voted for acquittal and five for conviction.

Two other Federal cases have been brought against Hoffa in recent years, both of them filed during the Eisenhower administration when William P. Rogers was Attorney General. One was a charge of conspiring to tap telephones. Hoffa was acquitted. The other, a charge of mail fraud, is still awaiting trial in Florida.

LIMITED U.S. SUCCESS

In the meantime, however, Kennedy and the Justice Department have had some limited success. In the last 2 years, 126 Teamster leaders and associates of Hoffa have been indicted. Of these, 56 have been convicted and 8 acquitted. The others await trial.

This volume of cases has come out of a section of the criminal division of the Department of Justice sometimes referred to as the Hoffa section. Its jurisdiction covers more than the Teamsters, however, and it has successfully prosecuted leaders of other unions, ranging from the United Auto Workers to the old Bakery Workers Union.

It has been clear that the next case against Hoffa would be carefully selected so that the chances of a conviction would be unusually high. But the jury-tampering charge took the choice of cases out of Kennedy's hands.

Judge William E. Miller, who presided over the Nashville trial, ordered a special grand jury after hearing evidence which he said indicated attempts "by close labor-union associates of the defendant to contact and influence certain members of the jury."

During that trial, Judge Miller had removed two jurors. Hoffa and others are now charged with offering money to the son of one of these and promising to aid in getting a promotion for the husband of another if they would influence the jurors to vote for an acquittal.

Mr. KEATING. Mr. President, these two bills deal with very difficult sixth amendment problems which deserve the attention of Congress.

The right to a speedy trial is essential to the fair and effective administration of justice—and yet we know that in many cases years elapse between the indictment of a defendant and the final disposition of his case. The law's delays are not confined, of course, to criminal cases, but the burden of delay, I am certain we would all agree, is much more onerous where life and liberty are so directly involved.

The Federal Rules of Criminal Procedure authorize dismissal of an indictment for want of prosecution, and, of course, there is a statute of limitations for virtually every criminal offense. But it may well be that additional legislation is needed to discourage any unfair delaying tactics in Federal criminal cases, and certainly this bill should be given consideration by the Congress.

The right to an impartial trial stands on at least the same elevated plane as the right to a speedy trial. The legislation proposed would implement this constitutional safeguard by subjecting to summary contempt proceeding any Federal prosecutor or defense attorney who publishes "information not already properly filed with the court which might affect the outcome of any pending criminal litigation."

Under our concepts of due process, of course, cases must be tried in the courts and not in the newspapers, and public comments by lawyers on the merits of pending cases generally is condemned by the canons of professional ethics. However, the right of a free press and the people's right to know also become involved in some instances, and the American Bar Association does recognize that there may be extreme circumstances in some cases which justify a statement to

the public, despite the general prohibition.

In addition, the Supreme Court has narrowed very considerably the conditions under which contempt of court cases may be tried summarily, and it may be that the bill will need revision in view of these precedents.

In general, however, both of these proposals deal with fundamental concepts of fairness in the administration of justice. As a member of the Senate Committee on the Judiciary, I will certainly cooperate in having them carefully considered by the committee on their merits.

AMENDMENT OF EXPEDITING ACT

Mr. JOHNSTON rose.

Mr. MORSE. Mr. President, I am delighted to note the presence in the Chamber of my friend, the Senator from South Carolina [Mr. JOHNSTON], about whom I spoke earlier today. I want him to know that I have added his name as a cosponsor of the two bills I have introduced today. At the time when I introduced them, I stated—in line with my understanding at that time, because the Senator from South Carolina had been involved in an automobile accident, from which he is making a speedy recovery, I am glad to say—that he would not be here today, to join in sponsoring these bills. I am delighted that he has now returned to the floor, and we are greatly relieved to learn, from his personal appearance, that his injury was no more serious than it was.

At this time, I wish to yield to him.

Mr. JOHNSTON. First, Mr. President, let me say that I appreciate very much the kind remarks of the senior Senator from Oregon. Senator MORSE is one of my closest friends, and I regard him as one of the best Members of the U.S. Senate.

Mr. MORSE. Mr. President, I appreciate the Senator's kind remarks.

Mr. JOHNSTON. Mr. President, I now wish to introduce a bill similar to the bills the Senator from Oregon has introduced.

There was published on June 24, in the Washington Post, an editorial entitled "Unnatural Burden." It calls attention to the fact that the Supreme Court has said something should be done along the lines of the bill I am now introducing.

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

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

UNNATURAL BURDEN

A footnote appended to the Supreme Court's opinion in the case of the Singer Manufacturing Co. should have prompt attention in Congress. Back in 1903 Congress provided that in antitrust suits brought by the Government appeals from the judgment of a district court would go directly to the Supreme Court. The Singer case came directly to the Supreme Court from the Southern District Court of New York, which had dismissed the Government's antitrust charges. The Supreme Court took the case, as Justice Clark noted in his opinion, only because a decision not to take it would have deprived the parties of any appellate review.

As a result the Supreme Court had to examine a record of 1,723 pages, in addition to briefs and the arguments of counsel. Eight justices joined in a most unusual declaration that such "direct appeals not only place a great burden on the Court but also deprive us of the valuable assistance of the court of appeals." If there was ever any point in imposing this special obligation on the Supreme Court, it has long since vanished with the multiplication of the Court's responsibilities. Congress should respond at once to the Court's call for relief.

Mr. JOHNSTON. Mr. President, on behalf of myself and the Senator from Nebraska [Mr. HRUSKA], I now introduce, for appropriate reference, the bill which I send to the desk.

This bill responsive to suggestions by two Justices of the Supreme Court—and concurred in by all but one of the Justices—that the present system of direct and automatic Supreme Court review of all district Court judgments in civil antitrust cases brought by the Justice Department operates to place an unnecessary burden on the crowded Supreme Court docket, and is no longer appropriate in most antitrust cases.

The bill is endorsed by a unanimous resolution of the board of governors of the American Bar Association; it was drafted by members of the association's section of antitrust law.

The bill would repeal the Expediting Act with respect to civil antitrust cases brought by the Justice Department. Its principal effect would be to eliminate automatic direct appeal from the trial court to the Supreme Court in such cases, thus placing them on an equal footing with other government civil litigation in which appeals from district court decision ordinarily go to the courts of appeals, with discretionary review in the Supreme Court thereafter under its certiorari jurisdiction.

The bill would leave the Expediting Act intact as to certain Interstate Commerce Commission cases to which it is also applicable.

The Expediting Act was enacted in 1903 to provide special procedures for the trial and appeal of suits in equity, brought by the United States, under the Sherman Act, the Interstate Commerce Commission Act "or any other acts having a like purpose." After the procedural merger of law and equity, the act was amended to apply to any "civil action" brought by the United States under these statutes.

Section 1 of the Expediting Act provides that, in cases to which the act applies, the Attorney General may file with the district court a certificate that, in his opinion, the case is of "general public importance," whereupon the action shall be tried before a three-judge court, assigned for hearing at the earliest practicable date and "in every way expedited."

Section 2 provides that, regardless of whether the action is originally tried by a one-judge or three-judge court under the procedure authorized by section 1, any appeal from the trial court's final judgment lies only to the Supreme Court.

Whatever valid arguments may have existed in 1903 in support of the Expediting Act, it has been clear for some time that the act is today an anachronism in the antitrust field.

Section 1 has long since fallen into disuse. With dockets as crowded as they are today, the Federal judiciary has made clear its antagonism to three-judge trial courts, and it has been many years since the Attorney General invoked such a court.

Unfortunately, however, section 2 of the Expediting Act, which routes appeals from final district court judgments directly to the Supreme Court, has not been permitted to die a natural death. This is because, as indicated, the provisions of section 2 are mandatory and operate wholly without regard to the wishes of the Attorney General, the private defendant, or either of the courts involved.

For some time strong sentiment has developed for the repeal of the Expediting Act, particularly section 2 with its mandatory direct appeal provisions.

Opposition to mandatory direct appeal is based on recognition that, whereas in 1903 antitrust cases involved pioneering questions of judicial interpretation, the majority of such cases ought not to go directly to the Supreme Court. Such cases are today largely fact cases, typically involving detailed economic inquiry and analysis of thousands of pages of record.

Careful and thorough Supreme Court review of such massive records is, considering the overcrowded docket of that Court, virtually impossible. As a result, neither party—the Government or the private defendant—may receive the thorough review of the record to which it is entitled under the Federal Rules of Civil Procedure and which it would receive, if the burden were spread among the courts of appeals, whose workloads are generally considerably less.

Supreme Court dissatisfaction with the Expediting Act stems from the same considerations, and was made explicit by two of the Justices in the recent Brown Shoe case. (*Brown Shoe Co., Inc.* v. *United States*, 370 U.S. 294 (1962)). Justice Harlan, in a concurring opinion, stated:

I venture to predict that a critical reappraisal of the problem would lead to the conclusion that "expedition" and also, overall, more satisfactory appellate review would be achieved in these (antitrust) cases were primary appellate jurisdiction returned to the court of appeals, leaving this Court free to exercise its certiorari power with respect to particular cases deemed deserving of further review (370 U.S. at 364–365). (See also the opinion of Justice Clark, 370 U.S. at 355.)

Justice Clark expressed similar views in a separate opinion in the Brown Shoe case, 370 U.S. at 355. And in a footnote to the Court's opinion in the very recent Singer Mfg. Co. case (— U.S. —— (June 17, 1963)), in which eight Justices concurred, Justice Clark stated:

Whatever may have been the wisdom of the Expediting Act in providing direct appeals in antitrust cases at the time of its enactment in 1903, time has proven it unsatisfactory. (See, e.g., Gesell, "Much Needed Reform—Repeal of the Expediting Act for Antitrust Cases," 1961 Antitrust L. Sym. 98.) Direct appeals not only place a great burden on the court, but also deprive us of the valuable assistance of the court of appeals.

The purpose of my bill is exactly as suggested by Justices Harlan and Clark, to return primary appellate jurisdiction of Government civil antitrust cases to the courts of appeals. This would be accomplished by section 1 of my bill, which would amend section 1 of the Expediting Act to eliminate the phrase "An act to protect trade and commerce against unlawful restraints and monopolies, approved July second, eighteen hundred and ninety," and thereby make both that section—three-judge courts—and the succeeding section—direct appeals—which builds on it, inapplicable to antitrust cases.

Section 2 of my bill makes clear that repeal of the Expediting Act as to antitrust cases is not intended to eliminate Supreme Court review of Government civil antitrust litigation, but merely to make such review discretionary with the Supreme Court under the certiorari procedures, as is the case in the vast majority of other civil actions brought by the United States.

Section 2 also makes clear that repeal of the Expediting Act leaves room even for direct Supreme Court review of trial court judgments in the rare and important case when such review would be in the public interest.

As in the case of other civil litigation to which the Government is a party, however, the Supreme Court itself would have the discretion to determine the exceptional circumstances in which such direct review, short-circuiting the courts of appeals, would be appropriate.

Section 3 of my bill provides that the interlocutory appeal procedures of 28 U.S.C. 1292(a)(1) and (b) would be available to both parties to civil antitrust cases brought by the United States. The first of these provisions, 28 U.S.C. 1292(a)(1), authorizes appeals to the court of appeals from orders of the district court relating to preliminary injunctions. Section 1292(b) authorizes discretionary review of interlocutory orders not otherwise appealable where the district court certifies that the appeal involves a controlling question of law as to which there is substantial ground for difference of opinion and further certifies that resolution of the question by the appellate court might materially advance the ultimate determination of the litigation.

If the Expediting Act were repealed as to antitrust cases, there would be no reason not to view 28 U.S.C. 1292(a)(1) and (b) as applying to such cases. However, because some doubt may currently exist with respect to the application of these provisions to civil antitrust cases brought by the United States (see, *e.g., United States* v. *California Cooperative Canneries*, 279 U.S. 553, 558 (1929)), it is desirable to make the matter absolutely clear.

Both of these provisions presently apply to most Federal litigation as well as to private antitrust cases.

Section 4 of the bill would provide that the Expediting Act would still apply to any civil antitrust proceeding brought by the United States in which, in pursuance of the Act's provisions, a notice of appeal to the Supreme Court had been filed prior to the enactment of this bill repealing the Expediting Act.

Mr. President, I appreciate very much the courtesy of the Senator from Oregon in yielding to me at this time. I ask that the text of the bill I have introduced be printed at this point in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 1811) to amend the Expediting Act, and for other purposes, introduced by Mr. JOHNSTON (for himself and Mr. HRUSKA), was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Act of February 11, 1903 (ch. 544, 32 Stat. 823, as amended, 15 U.S.C. 28, 49 U.S.C. 44), commonly known as the Expediting Act, is amended to read as follows:

"That in any civil action brought in any district court of the United States under the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is plaintiff, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge) of the circuit in which the case is pending. Upon receipt of the copy of such certificate, it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited."

SEC. 2. This Act shall not be construed as limiting or narrowing in any respect the right of any party to any civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, or any other Acts having a like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff, from seeking direct review by the Supreme Court of a final judgment of a district court of the United States by appealing to a court of appeals and petitioning the Supreme Court for a writ of certiorari, under section 1254(1) of title 28, United States Code, before rendition of judgment.

SEC. 3. The provisions of sections 1292(a)(1) and (b) of title 28, United States Code, shall be applicable in any civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, or any other Acts having a like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff.

SEC. 4. The amendment made by the first section of this Act shall not apply to any case in which a notice of appeal to the Supreme Court has been filed prior to the date of enactment of this Act.

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

Mr. MORSE. I yield to the Senator from Nebraska with the same understanding.

Mr. HRUSKA. I thank the Senator from Oregon for yielding so that I can express my pleasure in joining with the distinguished chairman of the Subcommittee on Improvement of Judicial Machinery in its attempt to amend the Expediting Act of 1903. That act has outlived its usefulness. Circumstances governing the trial of antitrust cases have changed vastly since 1903. Therefore, I am pleased to join as a cosponsor of the bill.

Do I understand correctly that the Senator requested that the text of the bill be printed at the conclusion of his remarks?

Mr. JOHNSTON. Yes.

Mr. HRUSKA. Mr. President, I am pleased to join with the distinguished chairman of the Subcommittee on Improvement in Judicial Machinery [Mr. JOHNSTON], in cosponsoring the bill to amend the Expediting Act of 1903.

The Expediting Act has outlived its usefulness. It was enacted in 1903 to authorize certain special procedures in the trial of civil cases brought by the United States under the Interstate Commerce Commission Act and under the antitrust laws.

The act also provided that appeals in these cases, whether or not the special trial procedures authorized by the act were invoked, could only be taken to the Supreme Court.

I am not aware that direct appeal of Government ICC cases has provoked discontent in any quarter, and no reason appears for amending the Expediting Act insofar as ICC cases are concerned.

However, there have been complaints—from the bar and from the Supreme Court itself—that the Expediting Act has long since outlived its usefulness in the antitrust field.

Strong feeling exists that in many cases the act operates positively to impede the orderly and just disposition of antitrust cases.

The reasons relate to profound changes that have occurred since 1903, both in the workload of the Supreme Court and in the antitrust laws themselves.

In 1903, when the Expediting Act was enacted, only one civil antitrust action was filed by the Government.

The Sherman Act had been on the books for 13 years but the rule of reason, which really breathed life into it, was still 8 years away and the Clayton Act had yet to be enacted.

The importance of prompt and authoritative judicial guidance, to give content to such phrases as "contract, combination," "restraint of trade" and "monopolize" was universally recognized.

The situation is altogether different today. During the fiscal year 1962, 41 civil antitrust suits were filed by the United States.

And while the antitrust laws, like other laws, are undergoing constant modification and expansion, through

the process of judicial decision, the controlling principles are well settled.

There is still uncertainty in antitrust, but this is inherent in any system whereby broad principles of law are sought to be applied in minute, detailed and extraordinarily complex factual contexts.

It is no longer necessary, or even necessarily appropriate, for the Supreme Court to rule on every civil antitrust action brought by the United States which one or the other party elects to appeal.

It is far more suitable that such cases be reviewed in the manner of the vast majority of other civil litigation brought by the United States—that is, by direct appeal of district court decisions to a court of appeals, with discretionary review in the Supreme Court under the latter's certiorari jurisdiction.

In addition to the fact that the profound changes in the antitrust laws have made the Expediting Act, as to them, anachronistic, the workload of the Supreme Court has made it impractical.

In the term of Court ending in June 1903, the nine Justices of the Supreme Court disposed of 423 cases.

In contrast, in the term ending in June 1963, the Court disposed of 2,350 cases.

It is manifest that, with the Supreme Court bearing the burden of case decision indicated by these statistics, every effort should be made to provide judicial machinery to facilitate the Supreme Court's reviewing only those cases truly appropriate for decision by the highest Court in the land.

This has been a guiding principle of legislation dealing with the judiciary since the Judiciary Act of 1925. This act drastically reduced the number and classifications of cases that the Supreme Court was required to review on appeal.

At the same time, the Judiciary Act of 1925, through its provisions relating to writs of certiorari, substituted the privilege of discretionary review of a wide variety of cases—including private antitrust suits and Government civil suits other than those specifically covered by the Expediting Act.

The proposed bill to amend the Expediting Act to make it inapplicable to antitrust cases—leaving those cases to normal certiorari procedures—is squarely in the tradition of this trend away from mandatory and unselective Supreme Court review.

THE CRISIS IN BRITISH GUIANA

Mr. DODD. Mr. President, I wish to bring to the attention of my colleagues an exchange of telegrams I have recently had with Mr. J. H. Pollydore of the British Guiana Trades Union Council and with the Department of State.

On June 20 I received the following telegram from Mr. Pollydore:

British Guiana Trades Union Council representing 50,000 organized workers including civil service association and other government employers has been engaged in 9-week-old general strike to preserve freedom of movement against encroachments of Communist government of Premier Cheddi Jagan. Strike in danger of being broken by Soviet and Cuban shipping. Latest move is importation of Russian oil on Cuban tanker to be stored in U.S. Government-owned oil tanks at Atkinson Airfield under protection of British warship and British troops. We the workers of Guiana fighting for our freedom from communism respectfully ask if U.S. pronouncements on objectives of Alliance for Progress declarations that Castro will not be permitted to export communism from Cuba (agents and arms are sent to Guiana from Cuba regularly) are mere political propaganda or evidences of true American policy. We would appreciate any assistance your office might give us to alert the American public to the dangers of permitting the establishment of another Communist satellite in this hemisphere.

On June 22 I sent the following telegram to Secretary of State Rusk:

I wish to congratulate State Department on its resistance, as reported in this morning's paper, to proposed use of oil storage facilities at Atkinson Field, British Guiana, for storing Soviet oil. I was all the more pleased by this move because only yesterday I received the following wire from Mr. Pollydore of the British Guiana Trades Union Council: "British Guiana Trades Union Council representing 50,000 organized workers including civil service association and other government employees has been engaged in 9 week old general strike to preserve freedom of movement against encroachments of Communist government of Premier Cheddi Jagan. Strike in danger of being broken by Soviet and Cuban shipping. Latest move is importation of Russian oil on Cuban tanker to be stored in United States Government-owned oil tanks at Atkinson Airfield under protection of British warship and British troops. We the workers of Guiana fighting for our freedom from communism respectfully ask if United States pronouncements on objectives of Alliance for Progress declarations that Castro will not be permitted to export communism from Cuba (agents and arms are sent to Guiana from Cuba regularly) are mere political propaganda or evidences of true American policy. We would appreciate any assistance your office might give us to alert the American public to the dangers of permitting the establishment of another Communist satellite in this hemisphere.

I earnestly hope that Department will find means to resist effort by Jagan to requisition Atkinson base facilities. I also hope Department can persuade British authorities not to take any steps which will strengthen Jagan. The British regrettably intervened on one previous occasion to save Jagan. If they now help him to crush opposition a second time, we may soon have a second full fledged Castro regime in the hemisphere. I plan to speak on this matter in the Senate within next few days and would greatly appreciate briefing from Department on U.S. policy in the current British Guiana crisis.

After conversations with the Department of State during the course of this week I sent the following reply to Mr. Pollydore yesterday. I quote:

Mr. J. H. POLLYDORE,
British Guiana Trades Union Council,
Georgetown, British Guiana:

I wish to acknowledge receipt of your wire of the 20th. I have discussed its contents with the Department of State. As you know, despite the rumors that were put out, the tanks at Atkinson Field have not been used for storage of Cuban oil, and I am confident that the U.S. Government will not agree to their use for this purpose. You can take courage from the fact that the American people at all levels are increasingly aware of the significance of the British Guiana crisis for the future of freedom in this hemisphere and that you have their sympathy in the valiant struggle which you and your colleagues are waging against the efforts to establish Communist control over your free trade unions.

The contest that has been going on in British Guiana for almost 10 weeks now may well have decisive impact on the struggle between the forces of communism and the forces of freedom in the Western Hemisphere.

In August 1961, Dr. Cheddi Jagan was elected Prime Minister of British Guiana. Although a self-avowed Marxist and an admirer of Fidel Castro, Jagan did not campaign on a Communist program, nor is there any reason to believe that the bulk of his followers are Communists. As an East Indian, he appealed to the large East Indian population on frankly racial grounds against the Negro and white populations, and the two political parties which represented them.

Although he obtained only 43 percent of the vote, he won a majority of two seats in the legislature. But Communists are never troubled by the lack of a popular majority or by the fact that the votes they have garnered have not been votes for communism but votes obtained by fraud. For them all means are permissible for the purpose of achieving power. With his slim majority, Jagan has proceeded to move British Guiana into the Soviet orbit even in advance of British Guiana's complete independence from the British Crown. He has concluded trade pacts with Castro and East Germany. He has invited a Soviet trade mission and Soviet oil exploration teams to British Guiana. He has opened up his country to some 2,000 Cuban tourists—and there have been increasing reports in recent months of arms shipments from Cuba to British Guiana.

Although British Guiana is a small country, if it were ever converted into a second Cuba, as Prime Minister Jagan is endeavoring to do, it would have the gravest implications for our own security and the security of the hemisphere. It would give international communism the first political and military beachhead on the South American Continent. It would give it immediate access to the already troubled areas of Venezuela and Colombia. It would put the oil riches of Venezuela within their potential grasp. It would enormously enhance their military position and the threat to the Panama Canal by giving them military bases at both the northern and the southern entrances of the Caribbean Sea.

But to achieve these objectives, partial control is not enough for Prime Minister Jagan, he requires total control, which can only be achieved by the total destruction of the opposition.

Some 9 weeks ago, Prime Minister Jagan endeavored to force through the legislature a bill which would give his government the power to designate all labor representatives. The purpose of this move was obvious to all: Jagan could not impose a Castro-style dictatorship on British Guiana without first crushing the free trade union movement,

which was solidly and militantly anti-Communist.

The British Guiana Trades Union Council responded to this challenge by calling a general strike—not on economic grounds, but for the prime purpose of forcing Prime Minister Jagan to withdraw his totalitarian labor legislation.

The general strike has been completely effective. The factories, the sugar plantations, the bauxite companies, all public transportation including the international airport, the government offices and even the schools are closed down. In order not to cut off all communications with the outside world, however, the trade unions have kept the wire services open.

I marvel that our newspapers have paid so little attention to the situation in British Guiana. Every week or so a minor article dealing with the British Guiana situation will appear in our major newspapers—but that is all. Because the press has dealt with this situation in so perfunctory a manner, the public awareness is close to nil. I venture to suggest that if it were a matter of a Communist-led general strike directed against a free government, the press would every day be carrying headline stories about developments in British Guiana. But here, for the first time in history, the general strike, which, according to Communist theory, is a weapon of the working class against the capitalist class, is being used by the working class as a weapon of self-defense against an incipient Communist dictatorship.

I fail to understand the lukewarm interest displayed by our press because to me this is an intensely newsworthy situation. It has all the ingredients that go into the making of significant news. Our national security and the security of the hemisphere are involved. There is also the aspect of Soviet-Castroite infiltration and expansion. And finally, there is the human drama of the general strike itself—the drama of scores of thousands of workers who are prepared to endure hardship and if need be, starvation, in order to protect their freedoms against the machinations of an aspiring Communist dictator.

But, in addition to its newsworthiness, I believe there is another reason why the American press should seek to devote more space to the British Guiana situation than it has heretofore. In any situation where publicity can help the cause of freedom, it is the moral duty of the press, in my opinion, to seek means of publicizing and emphasizing. The British Guiana crisis is one such situation.

Nothing would do more to encourage the workers of British Guiana to hold out against the Jagan dictatorship than the knowledge that they have the active sympathy and support of the American people. Unless the public is informed, however, it cannot sympathize and the lamentable fact is that, by and large, the American public is not informed about the situation in British Guiana and therefore does not sympathize.

While this is true of the general public, there has been one notable exception. Together with the free labor unions in other countries, the AFL–CIO has taken an intense interest in the life or death struggle which the British Guiana unions are now waging. President Meany has sent a telegram to Richard Ishmael, president of the British Guiana Trades Union Council, expressing his support and the support of his organization for the objectives of the British Guiana Trades Union Council in calling the general strike. The AFL–CIO has also contributed to the unions' relief funds, so that the striking workers will not starve.

The support of the AFL–CIO for the general strike has infuriated the Jagans. Prime Minister Jagan has appointed a commission to examine the support the local unions are receiving from the AFL–CIO. His wife, Janet Jagan, a Communist hatchet woman who hails from Chicago, and who was recently placed in charge of all internal security by her husband, further informed a press conference that the AFL–CIO has poured several hundred thousand dollars into British Guiana. By this diversion the Jagans are endeavoring to create the impression that the workers are not striking because they are opposed to his plans for the communization of the country, but because of American imperialist subversion.

Again, I want to congratulate the Department of State on the firm stand it has taken in refusing to make the oil storage tanks at Atkinson Field available to the Jagan government to help it break the general strike.

The problem is to find concrete means, short of direct intervention, of helping the people of British Guiana to assert their popular will and rid themselves of the Jagan dictatorship. The sands of time are running out, and our opportunity to help the Guianese people grows smaller every day. There are, however, certain concrete possibilities open to the free world in this situation.

As a first measure I believe that our press and our Government information services should devote far more attention than they have heretofore to the heroic struggle of the British Guiana workers. I believe that they should join with the AFL–CIO in a campaign frankly designed to stimulate public sympathy for the Guianese freedom fighters.

The second measure is essentially up to our British allies. The opposition parties in British Guiana have urged the British Government to institute a referendum on proportional representation. Such a referendum, they have no doubt, would be supported by a substantial majority of the people; and once this referendum was carried it would be impossible for Jagan to obtain a parliamentary majority. Without proportional representation, however, the chances are that Jagan still would be able to obtain a slim parliamentary majority in any new election.

I believe that if we concert our policies with our British allies and that if we clearly indicate our support for the democratic forces in British Guiana, the country can be saved from Jagan and from communism.

We cannot permit a second Castro regime to establish itself in this hemisphere and I therefore hope that the British Government will take no step that will have the effect of strengthening or fortifying the Jagan government; and I further hope that the two senior partners in the NATO alliance will take those measures which fall within the framework of democratic action and which would enable the forces of democracy in British Guiana to eliminate Jagan by their own popular action and their own popular vote.

FOREIGN AID—THE MEXICAN BORDER PROJECT

Mr. MORSE. Mr. President, I turn now to my daily discussion of foreign aid. I shall not speak at length. However, before I turn to that subject, I wish to make further comment, as a matter of personal privilege, about the false charge made against me in Hanson's Latin American letter, on which I commented yesterday. I read to the Senate his false charge, in which he stated:

MEXICO: BORDER PROGRAM

The administration is now confronted with Senator MORSE's challenge on foreign aid arising out of AID's refusal to provide grants for the Mexican border program in response to MORSE's advocacy of the program. AID had been warned that if it refused to yield to MORSE's interpretation of the desirability of using grants to finance self-liquidating foreign projects (an outrageous thesis as far as the legislative history of foreign aid and Eximbank is concerned), it would be confronted with a challenge to all foreign aid proposals made on the Hill.

Later in this letter Hanson writes:

If Senator MORSE's new drive against AID's appropriation were to be regarded as remediable only by payment of legislative blackmail, the Mexican program might conceivably go forward with grants, but only at the cost of a very bad black eye among legislators here generally.

In response to that statment, I said yesterday;

Mr. President, I do not know whether Mr. Hanson is a psychopathic liar, but I know that the words of the two paragraphs I have read constitute a lie. There is not a scintilla of truth in a single word that Mr. Hanson has written that I have just read to the Senate in regard to his false allegation as to the basis of my opposition to the foreign aid bill.

At no time have I advocated grants to the Mexican border program, and at no time have I taken the position that loans should be made for the border project.

Because we are obviously dealing with such an unreliable person, and because people of his stripe try to take out of context statements made, I make this further statement this afternoon. When I said yesterday, that at no time have I taken the position that loans should be made for the border project, the claim may be made that the Subcommittee on Latin American Affairs, of which I am the chairman, called upon the State Department to advise us as to whether or not the border project qualified for loans.

At no time did the Senator from Oregon ever advocate grants to the border project, for the Senator from Oregon is the author of the amendment that was written into the Alliance for Progress program—it is the law of the land—that the Alliance shall be a loan pro-

gram, not a grant program. I have always fought for loans, not for grants.

Many months ago, as the material that I shall shortly place in the RECORD will show, the Mexican Government sent to Washington its director of the border project, Senator Antonio Bermudez. He met with the Committee on Foreign Relations; we had a luncheon for him. He described and explained the program. Subsequently he met with the President of the United States, to whom he described and explained the program. It was the consensus of opinion among us that the program could be fitted into the Alliance for Progress program on a loan basis, if the Mexican Government could prove its case and make an application.

As the Presiding Officer [Mr. INOUYE] well knows, there are certain procedures that any country must follow in order to obtain a loan under the foreign trade program. The form in which the Mexican Government was seeking some assistance under the Alliance for Progress program did not comply with the procedures or the conditions of the Alliance for Progress program. Mr. Moscoso explained it to Senator Bermuez. I shall shortly place in the RECORD the conversation I had with the President of Mexico on the subject, and which I had already reported to the Senate.

The Mexican Government has never submitted to the United States Government a list of priorities for the projects it wants to have considered under any lending program; and it has never listed the border project in a list of priorities. When this was explained to us, we all took the position that the border project would not be eligible for consideration for a loan until the Mexican Government first made its case both procedurally and substantively. That is what I mean when I say I have never advocated a loan for the border project. I have insisted that before the question of a loan for the border project could be considered, the Mexican Government would have to comply with the procedures and requirements in connection with an application for a loan.

The Mexican border project is an exceedingly worthwhile project from the standpoint of the interest of the United States. Chambers of commerce in a number of American cities along the border have said that the improvement of cities on the Mexican side of the border would prove to be of great economic advantage to cities on the American side. For example, such improvement would be a great boon to tourism. As the president of a chamber of commerce in a city on the American side of the border said:

If we could develop this kind of program on the Mexican side, it would lead to a similar program on the American side, where needed. Thus, instead of Americans flying directly to Mexico City, they would be more inclined to drive from their homes in the United States to American cities along the border and then cross to Mexican cities across the border, before proceeding to Mexico City. That would be a great economic boon to tourism in American cities.

The Senator from Oregon has never taken the position that any grant money should be made available to Mexico, for I am opposed to grant money under the Alliance for Progress program. I have never taken the position that any loan should be made to Mexico for the border project separate and distinct from the program with which the Mexican Government would have to comply in order to obtain a loan; and it has never met the conditions, has never proved its case, and has never qualified for a loan.

Therefore, until Mexico does qualify, I stand shoulder to shoulder with the administrators of our foreign aid program and our Alliance for Progress program in saying that we cannot consider a loan until Mexico complies with the procedure and the conditions necessary to be met before any loan possibly could be granted.

Mr. President, so that it may all be at one place, I ask unanimous consent to have printed at this point in the RECORD an insertion I made in the RECORD of July 10, 1962, on the subject "Joint Planning and Development Along California-Mexican Border."

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

[From the CONGRESSIONAL RECORD, July 10, 1962]

JOINT PLANNING AND DEVELOPMENT ALONG CALIFORNIA-MEXICAN BORDER

(Extension of remarks of Hon. WAYNE MORSE, of Oregon, in the Senate of the United States, Tuesday, July 10, 1962)

Mr. MORSE. Madam President, I ask unanimous consent that there be printed in the CONGRESSIONAL RECORD a resolution passed by the Assembly of the California Legislature in the 1962 session.

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

"RESOLUTION OF THE ASSEMBLY, CALIFORNIA LEGISLATURE, 1962 (FIRST EXTRAORDINARY) SESSION RELATING TO JOINT PLANNING AND DEVELOPMENT ALONG CALIFORNIA-MEXICAN BORDER

"(By Hon. Thomas M. Rees, of the 59th district; Hon. Sheridan N. Hegland, of the 77th district, and Hon. Frank Luckel, of the 78th district)

"Whereas California is one of four States which share our Nation's southern international frontier with the Republic of Mexico; and

"Whereas that portion of the border contained within California traverses an area having many common planning and development problems, which problems require joint collaboration between Federal, State, and local government and the Mexican Government; and

"Whereas the Republic of Mexico has already initiated a comprehensive program along the entire length of its frontier with the United States, and is especially desirous of collaborating with the State of California and the county and city governments directly affected in the counties of San Diego and Imperial, and certain informal exploratory talks have already taken place; and

"Whereas there exists opportunities to utilize the Federal planning assistance grant program to permit the State office of planning, and counties, and cities, to participate in such a joint planning effort: Now, therefore, be it

"Resolved by the Assembly of the State of California, That the State office of planning in the department of finance be requested to explore in collaboration with local governments in the border zone, the possibility for joint planning with the Republic of Mexico to the end that this area of mutual social and economic interest, and of longstanding international amity may develop in the most satisfactory manner and contribute more fully to the traditional good will and social and commercial ties which have long existed between California and its great Latin American neighbor; and be it further

"Resolved, That the speaker appoint two members of this house to participate in such conferences and meetings as may be necessary to give effect to this resolution; and be it further

"Resolved, That the chief clerk of the assembly is directed to transmit copies of this resolution to the State office of planning, to the counties of San Diego and Imperial, and to the appropriate Mexican officials.

"House Resolution 63, read and adopted unanimously April 9, 1962.

"Signed JESSE M. UNRUH,
"Speaker of the Assembly.

"Attest:

"ARTHUR A. OHNIMUS,
"Chief Clerk of the Assembly."

Mr. MORSE. The resolution relates to joint planning and development along the California-Mexican border of a project that has become known as the Mexican border project. It is a project that seeks to improve the living conditions in many of the Mexican towns on the Mexican side of the border. It is a slum clearance program. It is more than that. It is a program that calls for the building of schools, hospitals, and cultural centers. It is a program that has elicited a great deal of support, not only from the California Legislature but from chambers of commerce in California and in Texas. It is a project that I know the President of Mexico has made clear is one that he considers to be of high priority ranking in the projects that Mexico has in mind in connection with the Alliance for Progress program. I think it is particularly interesting that we have the resolution passed by the California Assembly of the California Legislature in dealing with the project. It is, of course, a project that would be a great showcase as to what the Alliance for Progress program can really do for millions of citizens of the United States who will see it over the years.

Incidentally, as American chambers of commerce represent, the project would be a great inducement also for similar improvements in towns on the American side of the border. Of course, there is no doubt about the fact that the American groups have a selfish interest in the project, but it is a legitimate selfish interest, for the improvement of living conditions in the Mexican towns involved in the border project would not only bring great and needed benefits to thousands and thousands of American cities, but also would be a great inducement to tourism. Some of our American friends in Texas and California have said in their communications to us, that instead of flying to Mexico City, thousands of Americans will drive to Mexico through California and Texas and through the beautiful cities in Mexico which will result from the project.

Mr. MORSE. I ask unanimous consent to have printed at this point in the RECORD my remarks of January 29, 1963, relating to the conversation I had with President Lopez Mateos, of Mexico.

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

VISIT TO MEXICO BY SENATOR MORSE

Mr. MORSE. Mr. President, yesterday, January 28, I had the privilege and the honor of representing the Committee on Foreign Relations of the Senate at the dedication of the beautiful archway that has been built between Brownsville, Tex., and Matamoros,

Tamps., Mexico. The great President of Mexico, Hon. Lopez Mateos, attended the dedication.

I had the privilege of flying with President Lopez Mateos to Mexico City yesterday afternoon. Following the dedication I discussed with President Lopez Mateos some of the problems which are arising from United States-Mexican relations in connection with the Alliance for Progress program and other matters. I should like to take this moment to thank the President of Mexico for his courtesy, and also for his kind participation in and understanding of the problems of the Alliance for Progress vis-a-vis Mexico and the United States. I consider the President of Mexico to be one of the great democratic leaders of all Latin America. One could not confer with him, as I did yesterday, and not appreciate fully that we have in him a great friend of freedom in Latin America and an understanding ally in the great purposes of the Alliance for Progress program.

The major speech at the dedication was delivered by another great Mexican, Senator Antonio J. Bermudez, who, under appointment by the President of Mexico, is Director General of the Mexican national border program. Before I finish these comments, I shall ask unanimous consent to have the speech by Senator Bermudez printed in the RECORD. It sets forth in detail and with great clarity the purposes and objectives of the inspiring Mexican national border project.

Mr. President, not only is this program one which seeks to build a series of bridges and archways connecting the United States and Mexico; it is also a program which seeks to help to industrialize the cities on the Mexican side of the border. In many respects, it is an urban renewal program. It seeks to eliminate some of the troublesome and unfortunate slum areas which exist in those Mexican cities. They are areas which create many of the social and economic problems which always arise when human beings have to live in a below-standard condition. It is a program that seeks to improve the housing conditions of many of the people of low income in those Mexican border cities, who are living under the present slum environment conditions.

Senator Bermudez is one of the finest humanitarians I have ever known anywhere in the world. Although he is a man of some wealth, at least so I understand, his greatest wealth is his understanding and personal dedication to the spiritual teaching that we are our brother's keeper. He knows that each one of us has the moral obligation to face up to the human misery that many of our fellow men live in. He believes that society as a whole must assume a societal responsibility for the substandard living conditions of the victims of slums.

Senator Bermudez does not ignore the fact that communism breeds in slums and feeds upon the hopelessness of hunger, disease, and discouragement. The housing needs of the border cities of Mexico make the Mexican border program a noble endeavor if it contained none of its many other fine objectives and inspiring ideals and visions.

The problem of housing in Mexico—and, for that matter, in all of Latin America—is not only one of the most vital problems facing millions of Latin American people, but, in my judgment, it is one of the great problems facing the United States in connection with the implementation of the Alliance for Progress program. We all recognize, that if there is family farmownership in the country and private homeownership in the cities, it is not necessary to worry about communism in such a society. If I were to be asked, as chairman of the Subcommittee on American Republics Affairs, the greatest economic service we could help to perform, not only for Mexico, but also for all of Latin America, I would say: Let us place emphasis upon family farmownership in the country and private homeownership in the cities. If we give emphasis to that economic problem, we will strike a body blow into the heart of communism.

The border project on which Mexico plans to spend a good many millions of dollars for development is one of the greatest hopes for the improvement of the standard of living of a great many Mexicans who at the present time live under very substandard conditions.

But we, in the United States too, have a responsibility in connection with this border project. As Mexico improves her cities along the American border, numerous benefits will result to the U.S. economy. My subcommittee has received a series of telegrams and resolutions from one chamber of commerce after another along the entire United States-Mexican border, urging that the United States give favorable consideration to assisting Mexico in the development of this project. I think we ought to study the problem very carefully. In fact the Subcommittee on American Republics Affairs proposes to study it very carefully. We wish to make it very clear that we should give no approval at the present time, not even tentatively, other than to say that the project merits careful attention and cooperation on the part of the United States.

It was reported to me yesterday in my conference with Mexican officials that some American representatives of the Alliance for Progress program seem to be frowning on the national border program because it might help industrialize the Mexican border cities. Apparently they argue that more jobs for Mexicans in Mexico would result in Mexico selling more to the United States and buying less from the United States. Mr. President, what a silly non sequitur argument. As we build up the purchasing power of Mexicans through industrialization we increase their purchasing power to the benefit of both Mexican and United States business firms.

There is one project involved in this study about which I spoke with the President of Mexico yesterday afternoon, because it was raised by Senator Bermudez in his speech at the dedication yesterday. It is a very delicate problem. It has plagued United States-Mexican relations for about half a century. I think that all who have dealt with it realize that the time has come when this controversy between the United States and Mexico must be settled. It is imperative to settle it if we are to have good will and mutual understanding between these two great democracies in the Western Hemisphere. I refer, of course, to the Chamizal land. It is that very small area of not so many acres which has been a great bone of contention between Mexico and the United States for 50 years. The controversy is with respect to which country owns that little piece of land. In my judgment, the symbolism of this controversy has ballooned all out of proportion to its importance.

In his speech yesterday, Senator Bermudez presented a suggestion in regard to this controversy which I think deserves the very careful and, I hope, favorable attention of our State Department and our Government. It is a suggestion, as will be seen when I read that part of the speech, which has the complete approval of the Mexican Government. I discussed the problem with the President of Mexico yesterday. In his speech, Senator Bermudez said:

"Along the entire Mexican-United States border and for more than five decades only one obstacle has existed, to which I should like to refer at this point. To be able to construct the Great Gateway to Mexico between the two border cities that are the most important from a demographic and economic standpoint—Ciudad Juárez, Chihuahua, and El Paso, Tex.—the case of the Chamizal lands must be solved; and there is no legitimate reason for lack of settlement. Every Mexican resolutely supports the patriotic efforts of President López Mateos aimed at recovering this small but symbolic piece of Mexican land and applauds all his actions on behalf of such recovery, an endeavor without precedent in recent years.

"We know that the President of the United States, Mexico's friend, also earnestly seeks a settlement, which will bring great benefit to both countries—a benefit that of a surety is not of an economic or material nature. Although we Mexicans rely on the fulfillment of President Kennedy's promise regarding the restitution of the Chamizal, I am permitting myself the liberty of taking advantage of the presence of distinguished U.S. officials with whose attendance we are honored on this occasion, and of the gentlemen of the press from our neighboring country, to bring once again to the Government and the people of the United States a message to express our trust that the voice of our President will be heard, demanding that the Chamizal problem be solved, and at an early date."

Then he made a specific suggestion for its solution, as follows:

"However, in keeping with projects mapped out in principles by the President of the Republic, Adolfo López Mateos, we will go even further.

"On that plot of recovered ground, we propose to construct yet another symbol of the friendship and union between peoples; but a living and creative symbol: the Continental University, to be attended by young people from all the countries of America, without distinction as to race, ideology, creed, or social or economic group. There, within the broad outlines of freedom of instruction and investigation, and removed from all religious and political doctrines or intellectual limitations of any type, an awareness of international solidarity will be fostered, founded on the democratic ideals of fraternity and juridical equality of all men everywhere.

"Mexico will have the high honor of converting a land area that has been the object of dispute between two friendly nations into the seat of an organization dedicated to peace and union among men."

Mr. President, the area called the Chamizal lands is of small acreage. It could be used in its entirety by the campus of a great continental university. That would be in keeping with a great tenet of Jeffersonian democracy; namely, that a democracy can be no stronger than the enlightenment of its people. Yesterday afternoon I suggested that if such a university were built, it would be very appropriate to have somewhere on the campus a statue of the great Jefferson, because he also symbolizes education as one of the most effective forms of enlightening the people of a democracy. I think the suggestion being made by the leaders of Mexico is a very constructive one. Certainly it is based on a great ideal which I believe we should cooperate in putting into action. I sincerely hope the leaders of our Government will give very favorable and serious consideration to the suggestion which a spokesman for the Mexican Government made yesterday at the dedication of the great archway at Matamoros. I hope our Government also will appreciate what such a settlement could do as a great symbol of friendship in the Western Hemisphere. Our agreeing to this Mexican proposal would show that we are willing to join in erecting a great continental university of the Western Hemisphere, to which the young people from all the Latin American countries and from the United States could go for the intellectual commingling which is so important if we are to develop the continental understanding which is essential in the years ahead in order to maintain the peace and prosperity which must be maintained if we are to have in the West-

ern Hemisphere not only a perpetuation but a strengthening of freedom.

To the President of Mexico and to Senator Bermudez, I extend from my desk in the Senate today my compliments for the foresight, the insight, and the idealism expressed yesterday at the dedication, in speeches such as the main speech given by Senator Bermudez. I believe we should give them, in return, the assurance that we intend to embrace them in the common cause of strengthening freedom in the Western Hemisphere.

I ask unanimous consent that the speech delivered by Senator Bermudez be printed at this point in the RECORD.

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

"ADDRESS DELIVERED BY MR. ANTONIO J. BERMUDEZ, DIRECTOR GENERAL OF THE NATIONAL BORDER PROGRAM, AT THE DEDICATION, BY PRESIDENT ADOLFO LOPEZ MATEOS, OF THE 'GREAT GATEWAY TO MEXICO' IN MATAMORAS, TAMPS., JANUARY 28, 1963

"Mr. President of Mexico, Mr. Governor of the State, guests of honor, ladies and gentlemen, the presence of our Chief Executive enhances the high significance of the solemn ceremony in which we offer to the nation the Great Gateway to Mexico, in this heroic city of Matamoras. His presence also gives us cause for gratitude, for it constitutes a singular stimulus toward continuing with greater dedication the endeavor of which he is the author: the transformation and ennobling of our border areas.

"We are grateful also for the high honor bestowed on us by the presence of distinguished officials and other outstanding personages from Mexico and the United States.

"The first impression the traveler receives on entering into Mexico through the Great Gateway is furnished by the Plaza of the Flags, conceived as a monument to the unity existing between the nations of this continent, bulwark of peace, liberty, and democracy. When we watch the flags of our sister republics to the south proudly flying, we will always be reminded of the highly significant fact that this spot at which we are gathered today marks the real beginning of the Latin American frontier.

"Not too many years ago certain well-known Mexican politicians coined phrases describing the sad situation prevailing traditionally in Mexican-United States relations. We recall the famed complaint that 'we are so far from God and so close to the United States,' seconded by another motto: 'Between Mexico and the United States—the desert.'

"Today, however, we have the right of regarding the future from another perspective. Inexorable international realities demand that the old patterns of policy between countries be discarded; moreover, the Mexican Revolution, by giving us a new and sounder sense of our standing as Mexicans, has definitely erased from our minds any feeling of inferiority or fear—a circumstance which has constituted the real and true basis of the increasing and local understanding at which we have arrived with our neighbors.

"For this reason, facing the majestic Plaza of the Flags we have placed our tricolored insignia and our national coat of arms, symbols of our sovereignty and 'Mexicanness.' They stand for the thorough conviction we Mexicans have of our historic destiny, within which dealings with the other peoples of the world are governed by equality, mutual understanding, and respect.

"Only in this way is true friendship between nations possible, a friendship which we Mexicans hold in especial esteem. We believe that friendship, as a noble and generous sentiment filled with understanding and devoid of selfish interest, is the most powerful instrument for problem solving, whether between individuals or communities, for it always succeeds, even where diplomacy and politics fail.

"It is for this reason that we have firmly resolved that this great gateway to Mexico—and here I particularly address our U.S. guests—shall be a constant invitation to friendship, and an important and valuable element of cooperation in the good neighbor policy.

"Mexico's great gateway is a standing invitation for our friends to get to know us better. They will find that life in Mexico has an outline and contents that are unmistakably those of a people with a natural vocation for peace. Peace to us is a permanent ideal within our historic development, for in peace we see the fruit of liberty and social justice. We advocate peace with the moral authority and irrefutable testimony of a people that lives in peace, and for peace. And world peace, may we emphatically affirm, has in Mexico one of its most loyal and steadfast subjects; and in the person of her President, one of its most dedicated and intrepid leaders.

"The great gateway to Mexico is hence also a symbol of peace, for it bears witness to the world how two nations, so different from each other, should be, and can be, neighbors and friends.

"We are convinced that the national border program constitutes a very Mexican answer to the fact—materially quite important—that year in and year out 70 million people cross our border. This, in the first place, has stirred our traditional sense of hospitality. For the sake of courtesy and friendship, it is our duty to see to it that our guests find the cleanliness, order, facilities, and comfort that they deserve. With that aim in view, we have included within the complex forming the great gateway to Mexico certain buildings devoted to customs, immigration, health, and tourism services. These units have been designed in such way as to provide the habitual Mexican courtesy with an appropriate setting where it can be manifested in speed, efficiency, and cleanliness in our dealings with those who visit us. The basic intent is for our friends from the United States to confirm the fact that hospitality is one of the most typical Mexican characteristics.

"We are aware, however, that most of our visitors do not go beyond the border areas. Of the $770 million they spend in our country, only $170 million are spent in the interior of the Republic. This is to be regretted, for we Mexicans know of natural beauties in our country that defy description but go unvisited; of regions filled with color and folklore; of impressive monuments, the heritage of our centuries' old culture; of cities that are so different from each other, and so interesting. Proud of our native land because of its natural features as well as the trail left by the millenia of human habitation and tradition, we sincerely want Mexico to be known in its entirety. For that reason, the great gateway to Mexico should also serve by way of introduction, however brief, to what we are. We believe that the impressive incoming tide of U.S. citizens can and should be the carrier of a dual and positive message: First, letting us become acquainted, by contact with the individual visitors, with what the United States is really like; and second, by enabling those visitors to take back with them a fairer and more realistic concept of what we are.

"To round out the meaning for us Mexicans of Mexico's great gateway, may I quote the words of the President of Mexico, Adolfo Lopez Mateos:

" 'Our boundary lines do not mark the end, but the beginning of our country. The frontier areas, because of their geographic characteristics and social conditions prevailing there, have been the subject of special attention on the part of the Government of the Republic.' Referring on another occasion to our border regions, our Chief Executive also affirmed: 'Just as they are a window to the outside, they must also be a showcase of the social progress of the Mexican people who, fully cognizant of their destiny, work for their own well-being and occupy a worthy and respected place in the concert of nations.'

"These two presidential statements express the essence of the work undertaken by the national border program. From the very moment of birth we Mexicans feel a complete devotion to our native land. Upon reaching individual maturity, this devotion is transformed into a true mystique, that ineffable mystique of Mexicanness that everyone who visits us experiences, as though inexplicably bewitched. And this mystique has today invaded the will and earnest endeavor of the men of the frontier, urging them to transform and exalt it, for the first firm step toward the betterment of our homeland lies in our conviction that it is within our power and up to us to do so.

"Supplying authority and resources, President Lopez Mateos' administration has, for the first time in our history, initiated the task of raising the standard of living of our border inhabitants by linking their economic, social, and cultural life with that of the rest of the country.

"Every Mexican without exception should participate in this endeavor. However, this applies most particularly to those who by virtue of their work, intelligence, and willpower have managed to accumulate resources suitable for investment in this great task. Many of these persons should repatriate their savings or capital held abroad, in the United States or Switzerland, and make such funds available to the prodigious creative effort the country demands.

"The border market represents 25 percent of that comprising the nation as a whole and has the highest economic potential in the country: Per capita income amounts to 656 U.S. Cy. per year, or 135 percent higher than the national average. Mexico needs markets to consume the output of her industries, and to capture and expand the border market constitutes a challenge to our intelligence, our ability and our patriotism.

"This conquest should favorably influence the solution of other national problems, among them, that of creating a greater number of job opportunities. (By the end of the next 6-year presidential term, we will have had to find jobs for no less than 4 million additional young Mexicans who will have joined the productive ranks.) With an eye to this problem, it is our earnest desire that the total transformation of the strip of territory constituting his frontier region will contribute to the creation of new sources of employment, and to the effective employment of our manpower, including the braceros (Mexican laborers who work in the United States).

"Bracerismo, which came into being in May 1943 as a wartime contribution by Mexico in response to an express petition by President Roosevelt, addressed to Mexico's unforgettable President Avila Camacho, has with the passage of time become a matter of embarrassment and grave concern, for instead of commodities, we are exporting men. The strong arms of the Mexican braceros should contribute to a greater Mexico, and to her agricultural and industrial development.

"National border program activities likewise qualify as an eloquent expression of the harmony that does and must exist between government effort and that of private enterprise.

"Here in Matamoras we are certain that Mexican private enterprise, however modest, will join in the endeavor underway, since the Government cannot, should not, do everything. In modern Mexico there is no time to lose nor is there room for defeatism, inferiority complexes or pessimistic attitudes.

We must not regard any problem as insuperable; there is but one motto, one conviction, and one insignia for all: the betterment of our country. For we have fought throughout our history to aggrandize Mexico and thereby make it more our own; we have learned from our elders that the first requisite for a better country is always that it be our country. It is in that spirit that we must understand the obligations inherent in frontier living.

"Today we have completed this gateway to Mexico as the first stage in the projects planned for this city. Next we will construct a commercial center and a tourist zone. As fast as the availability of resources will permit, we will continue working in order to conduct the same program in all the cities along our northern and southern borders, bringing to them the excellent features of our historic and cultural values so that they may be the true and authentic reflection of our national essence. We expect to be able very soon—in the course of the present year—to repeat this invitation in order to have the pleasure of your company at other gateways to Mexico, and at the dedication of various other projects.

"On this occasion the President of the Republic, Adolfo López Mateos, has honored us by delivering the master regulatory plans that will govern the development of five major cities within this border zone. Consequently, the projects conducted by the program will not be in the form of building groups isolated from the other population centers. These are to expand in harmonious fashion, in keeping with the most precise technical indications, and each city is to become in its entirety a worthy gateway to Mexico, the object of admiration of outsiders and a cause for satisfaction on our part.

"Along the entire Mexican-United States border and for more than five decades only one obstacle has existed, to which I should like to refer at this point. To be able to construct the great gateway to Mexico between the two border cities that are the most important from a demographic and economic standpoint—Ciudad Juárez, Chihuahua, and El Paso, Tex.—the case of the Chamizal lands must be solved; and there is no legitimate reason for lack of settlement. Every Mexican resolutely supports the patriotic effort of President López Mateos aimed at recovering this small but symbolic piece of Mexican land and applauds all his actions on behalf of such recovery, an endeavor without precedent in recent years.

"We know that the President of the United States, Mexico's friend, also earnestly seeks a settlement, which will bring great benefit to both countries—a benefit that of a surety is not of an economic or material nature. Although we Mexicans rely on the fulfillment of President Kennedy's promise regarding the restitution of the Chamizal, I am permitting myself the liberty of taking advantage of the presence of distinguished U.S. officials with whose attendance we are honored on this occasion, and of the gentlemen of the press from our neighboring country, to bring once again to the Government and the people of the United States a message to express our trust that the voice of our President will be heard, demanding that the Chamizal problem be solved, and at an early date.

"Once the new and legitimate boundary line is established, we plan to construct in Ciudad Juárez, as in other border towns, the great gateway to Mexico that will communicate with us the progressive and friendly city of El Paso, Tex.

"However, in keeping with projects mapped out in principle by the President of the Republic, Adolfo López Mateos, we will go even further.

"On that plot of recovered ground, we propose to construct yet another symbol of the friendship and union between peoples; but a living and creative symbol: the Continental University, to be attended by young people from all the countries of America, without distinction as to race, ideology, creed, or social or economic group.

"There, within the broad outlines of freedom of instruction and investigation, and removed from all religious and political doctrines or intellectual limitations of any type, an awareness of international solidarity will be fostered, founded on the democratic ideals of fraternity and juridical equality of all men everywhere.

"Mexico will have the high honor of converting a land area that has been the object of dispute between two friendly nations into the seat of an organization dedicated to peace and union among men.

"In closing, I should like to refer once again to the spirit which inspires the national border program, in keeping with the directives issued by the President of the Republic, Adolfo López Mateos—to raise our standard of living and point up our Mexican-ness. These two objectives, when achieved, will not only strengthen Mexican unity, but will facilitate genuine friendship between two great neighboring nations, for such friendship will be founded on reciprocal treatment characterized by respect, equality, and understanding."

SHORTCOMING OF AID PROGRAM FOR LATIN AMERICA

Mr. MORSE. Mr. President, for a few moments, I wish to discuss, for the third day in a row, certain features of the Alliance for Progress program as they relate to the foreign aid bill.

In recent days, I have been devoting my comments about the foreign aid program and its shortcomings to our aid program for Latin America. Today, I wish to raise more questions about whether what we are calling the Alliance for Progress is moving toward its objectives, and indeed, whether it has specific and manageable objectives.

As I said in the Senate on Tuesday, I believe there is much to be said for the recommendation of former President Lleras of Colombia that more responsibility be given to the Latin Americans themselves for the selection of projects and the setting down of conditions that must be met before loans may be extended. We know from long experience that multilaterial bodies can be and usually are much tougher and more successful in requiring conditions and reforms as a condition of financial aid.

However, there are some reservations I would suggest to such a procedure. One is that an American veto must remain over any extension of funds. Certainly the United States must be protected from the contingency of having its money go for some project that would clearly not be in our interests, however much it may be supported by our partners. I do not have any specific issue in mind, but it seems to me that this protection for the American taxpayers must be maintained by our Government.

A second reservation I would raise is the possible need for limitation on what will be available for Latin America. The possibility that the recipient nations themselves would have a free hand in the allocation of American money, with no ceiling and no limitation on what is to be dispensed or in what time period, would certainly doom the chance for a multilateral administration of the program. As I have said before, if there is no limit on the capital to be invested, there is no reason to plan for the maximizing of its effect. This has been a major defect in our aid program in Asia and the Near East, as well as in Latin America.

A third problem that is not covered by the proposals for multilateral administration of the Alliance for Progress is the aid still available from the United States outside the Alliance. I am frank to say that I am disturbed by the breakdown of aid to Latin American countries for the fiscal years 1962 and 1963, which shows several of them receiving assistance from foreign aid categories outside the Alliance for Progress. Nonproject aid has been going to several of them in the form of supporting assistance, contingency funds, and development loans.

It seems quite possible to me that the benefit of having a multilateral board process the Alliance funds would be defeated by the fact that governments which decline to meet conditions laid down by the board may still be bailed out through the contingency fund or some other form of aid.

All these questions need to be studied by the officials of the Alliance for Progress, by our Latin American partners, and most certainly, by the Congress before it votes this year on the AID bill.

The urgency of these questions is pointed up by a document which I received from the Center of International Studies of Princeton University, and which I assume was also sent to all members of the Foreign Relations Committee, and probably to all Senators. It is by Prof. Edmundo Flores, and is entitled "Land Reform and the Alliance for Progress."

In the introduction, the director of the center, Klaus Knorr, tells us:

> I frankly do not know whether the analysis presented by Dr. Flores is fully realistic. But even if it were not—and we would expect differences of interpretation when it comes to a region so complex and full of change—the fact that a person of Dr. Flores' background and experience holds these views, and holds them very strongly, seems to make this a document that should be interesting to a considerable public in the United States.

Dr. Flores holds a Ph. D. degree in agricultural economics from the University of Wisconsin, one of the Nation's leading institutions in that field. He is professor of agricultural economics at the University of Mexico, and has worked on land reform problems for the Technical Assistance Administration of the United Nations and for the Food and Agriculture Organizations.

Dr. Flores begins:

> Unless President Kennedy and his advisers are willing to accept the necessity for drastic—and sometimes violent—revolutionary change in Latin America, his ambitious Alliance for Progress will fail, no matter how many billions of dollars the United States is willing to spend on it.

It is the general burden of Dr. Flores' article that the ruling oligarchies of Latin America will not undertake the reforms needed to move their countries along the road of progress, because to do

so would be a voluntary relinquishment of power, and that to relinquish it would be just as distasteful to them as to be overthrown by revolution.

He speaks of the tax-reform objective of the Alliance.

It will be recalled that yesterday I discussed on the floor of the Senate the problem of tax reform. We must insist on it in many instances before we agree to pour more money into Latin America. Senators cannot justify voting to pour into any Latin American country AID money which belongs to the taxpayers of the United States, unless the Government of that country is maintaining for its own people a tax structure based on ability to pay.

As chairman of the Subcommittee on Latin American Affairs, I wish to say that in Latin America there is place after place where tax evasion is a national pastime—great areas of land on which not 1 cent in taxes is paid, or, if any taxes are paid, on which only nominal taxes are paid. Just taxing that land would bring about a land reform although it is the thesis of Dr. Flores that even progressive taxation is insufficient to meet the economic problem of concentration of wealth.

The oligarchs who reap their harvests and profits off that land invest their money in Swiss banks and New York banks, instead of investing it in the future economic freedom of their own country. Until they bring economic freedom to their own country, there is no hope of political freedom for it, because it is impossible to have the latter until there is first the former.

We cannot begin to pour enough money into Latin America, to save Latin America from communism, if the governments of the Latin American countries leave the entire problem up to us. We do not have that much money. They should get busy with some of these needed reforms—tax reform and land reform—and they should establish the institutions of economic freedom. One of the great institutions of economic freedom is family-farm ownership. If in the rural areas of any Latin American country the heads of the families own the land they till, one does not need to worry that communism will develop there. If in the cities of a Latin American country the people do not live in the shocking slum conditions which today can be seen in one Latin American city after another, but, instead, own the roofs over their heads—in private home ownership, no matter how humble the abodes—one does not need to worry that communism will develop there.

But today the oligarchs of Latin America—and I speak generally, although some magnificent exceptions exist—simply will not, as a class, face that reality. That is what Dr. Flores is talking about. I say to this administration that this is what one authority after another on Latin America has been saying for years. That is shown by the reports which the Senate paid for to the tune of more than $100,000—the amount which was appropriated to my subcommittee, and which we used in contracts with American research foundations, universities, and Latin American scholars, in order to have them prepare the reports for us, so we would have the facts on which to base a judgment.

As Senators know, the senior Senator from Oregon, the then Senator Kennedy, of Massachusetts, the Senator from Iowa, Mr. Hickenlooper, the Senator from Vermont, Mr. Aiken, the Senator from Alabama, Mr. Sparkman, the Senator from Louisiana, Mr. Long—all my colleagues on the Foreign Relations Committee—worked for several years, prior to its final inauguration, on the Alliance for Progress program; and in the whole Senate there is no stancher supporter of the objectives of that program than the senior Senator from Oregon.

But I do not follow a dogma; I do not substitute a name or a label for facts. The fact is that the Alliance for Progress is in trouble; and it will remain in trouble until Congress appropriates more wisely in connection with it, and until the Latin American countries themselves go much further than they have gone in carrying out the clear objectives envisioned and the clear obligations stated and agreed to in the Act of Bogotá and the Act of Punta del Este. They have not gone far enough or fast enough with land reform and tax reform and interest-rate reform.

How in the world can we hope to have private ownership of hovels in Latin America with interest rates of 16 percent, 20 percent, and 25 percent? It is impossible.

So my approach to the Alliance for Progress program in the foreign aid bill this year is not the approach of one who is opposed to loans for the Alliance for Progress, but one that will insist upon sound loans. There is quite a difference between unsound loans and sound loans. We had better give heed to the Dr. Floreses. We had better give heed to the ex-President Llerases. We had better give heed to the wise men of Latin America, for they have been inclined to be much more frank and objective about the whole problem than many in our own Government, including many in the Congress of the United States.

So on the subject of tax reform, objective of the Alliance, Dr. Flores said:

In their present stage of development, most Latin American countries cannot apply progressive income taxation for several reasons. First, the really powerful people in most of these countries do not want it, since it would be tantamount to abdicating their power. Second, underdevelopment itself precludes the possibility of efficient taxation because, for one thing, all major as well as minor appointments are political and there is hence no effective civil service to carry it out. For another, administrative corruption prevails throughout the Latin American governments that are dominated by tiny minorities of the rich, and there is a longstanding tradition of tax evasion.

Tax reform is difficult to accomplish, but the problems Dr. Flores mentions are not insurmountable. They may explain why there has been little tax reform, but they do not make a case for its economic infeasibility.

He continues:

It should be understood that, with the possible exceptions of Argentina, Brazil, Chile, Costa Rica, Mexico, and Uruguay, there are no appreciable middle classes in Latin America and consequently there is a desperate shortage of trained personnel on the lower levels.

It may not be difficult to find aggressive lawyers, cultured priests, chivalrous soldiers, and even good doctors. But trained nurses, moderately efficient stenographers, or reliable proofreaders are terribly scarce even in the more advanced countries. The rigid social structure, the lack of employment opportunities, and a tradition which equates leisure with a high social status have prevented the emergence of this new class in either industry, commerce, or the bureaucracy.

Thus political opposition, administrative corruption, and the shortage of trained personnel on the lower levels create a vicious circle which can only be eliminated in the long run.

As I said yesterday, I believe our own administrators bear a great responsibility for the failure to make much progress toward tax reform even in the long run. We have done little to set up evaluation techniques for purposes of AID, much less to extend technical help to these countries in the admittedly difficult and sophisticated field of taxation.

PROBLEM OF LAND REFORM GREATEST OBSTACLE TO PROGRESS

I desire to say a few words about the problem of land reform as the greatest obstacle to progress. Most of Dr. Flores' article is devoted to an examination of his own special field—land reform. It is here that he feels are the greatest obstacles to the success of the alliance.

He tells us:

Since in underdeveloped countries the main sources of wealth are land and mineral resources, it is obvious that their pattern of income distribution is ultimately determined by the pattern of land and mineral ownership. Therefore, the income shifts required for development must necessarily take place in these economic areas. As Professor Raymond Penn put it bluntly, "U.S. industry cannot operate in a feudal country without accepting the rules of feudalism and thus sharing the villain's role for those who want to strengthen the economic and legal position of the landless and jobless." There is no doubt that this unfortunate symbiosis will complicate tremendously the launching of land reforms in Latin America.

In Mexico and Bolivia before their agrarian reforms, approximately 3 percent of the population owned 90 percent of the productive land; that meant that a correspondingly large proportion of agricultural cash income accrued to only a tiny proportion of the total population. Such a high concentration of land ownership and agricultural income prevails today in many Latin American countries and this explains precisely why such countries have lacked development.

It is quite natural that Professor Flores believes the land reform program in Mexico has been especially successful and deserves to be a pattern for similar reform elsewhere. He also feels that the consequences of land reform have been the very industrial development so desired by other nations. To quote again:

With the land reform it became imperative to increase productivity, to diversify production, and to industrialize. Since 1930, the agricultural product has increased at an average annual rate of 5.4 percent, while the gross national product increased at a rate of 6.2 percent annually.

Meanwhile the population rose from 15 million before the Revolution to 36 million today. In 1910, 90 percent of the total labor force was engaged in farming; today, only 50 percent are farmers and the rest have shifted

to newly created urban-industrial jobs or have joined the ranks of the unemployed. Despite rapid industrialization, Mexico has not been able to create enough new jobs each year and unemployment is its most severe problem.

I should say parenthetically that Mexico is better off in respect to its employment situation than are most other Latin American countries. And the military aid we send to Mexico relative to its population is only a tiny fraction of what we must send to other countries of the hemisphere to preserve what is known as internal security.

The senior Senator from Oregon will offer amendments to the foreign aid bill that will cut drastically into the proposed military aid program to Latin America, for the reason that I am convinced such aid is not needed. I would rather spend the money for bread than bullets.

Continuing to quote from Dr. Flores:

Undoubtedly the breakup of the hacienda was the catalyst which released and set in motion the multitude of complex forces to which Mexico owes its sustained rates of agricultural and industrial growth. It gave the rural population an opportunity for both horizontal and vertical mobility; it destroyed the "caste" system; it profoundly affected the political environment and brought the country out of the colonial impasse; it opened it up to technological progress and paved the way for the beginning of road building and irrigation programs. Urban expansion and the public works policy created a huge demand for cement, steel, and other products of the construction industry, thus setting the basis for Mexico's industrial revolution.

Without the agrarian revolution, Mexico would probably be today in a situation similar to that of contemporary Colombia, Peru, or Venezuela. There would be good roads leading from ports to mines, oil wells, and plantations; industry and farming would show development along a few specific lines. One would find urban expansion, Hilton hotels, air conditioning, supermarkets, funiculars, submarines, and other conspicuous construction. In patches, the economy would display a semblance of technological sophistication. But there would be little or no evidence of the rise of new classes that accompanied the industrial growth of the advanced nations.

Professor Flores continues, by emphasizing that effective land reform must be far more drastic than anything presently contemplated by the Alliance for Progress.

Experience indicates, therefore, that it is a serious mistake to consider land reform as merely a matter of introducing more efficient farming methods, opening new lands, and partitioning large idle estates. Land reform is much more than that, regardless of what influential Latin American landlords disguised as progressives may say about it, and regardless of the misleading and naive utterances occasionally emanating from Washington which describe it as a measure that is not going to hurt anybody.

Land reform should not be confused with the introduction of efficiency in farming by means of hybrid seeds, extension services, or the like. These measures necessary as they are, do not basically alter income distribution or the social and political structure. Efforts to increase efficiency must be applied after land reform takes place, not instead of it.

Land reform should not be confused with attempts either to reclaim unproductive land to settle in uninhabited areas. Here a word of warning seems appropriate, since some Latin American countries (Guatemala, Colombia,, and Peru) already are embarking upon such a travesty under the Alliance for Progress. Opening public domain lands before industrial development gets under way is inadvisable, because their fertility is highly questionable and the large capital outlays required can be put to better use elsewhere in the economy.

These are some severe criticisms of what is contemplated under the Alliance for Progress.

As chairman of the Subcommittee on Latin American Affairs, which has committee jurisdiction over this program, I am greatly concerned and I am very much disturbed.

The general conclusion this writer presents is that unless reform is really basic and deep rooted, the money that the United States spends under it will be wasted. That is a fear I have had myself, and it is growing as I see the laxity in the administration standards for making funds available and the slowness with which only superficial reforms are moving in the nations to the south.

But Professor Flores goes much further, and into another conclusion which I do not necessarily endorse. Nonetheless, it deserves to be considered and studied by all of us who have responsibility in this field. It is that land reform, to be successful, must be a capital levy upon landlords.

He put it this way:

Land reform in fact amounts to the adoption of a new pattern of income distribution: a capital levy on a few landlords that is distributed among many peasants and the states. This initial income shift greatly facilitates the increase of the domestic rate of capital formation, as proven spectacularly in the case of Mexico, where from 1910 to 1942 all sources of foreign capital were closed owing to widespread expropriations. Nonetheless, during this period Mexico set the basis for her industrial and agricultural expansion.

If the land is purchased—rather than expropriated—this represents not land reform but merely a real estate transaction. If proprietors receive cash compensation, there is an income redistribution effect only to the degree to which cash compensation is inferior to the price of land. If the government pays the large landowners in bonds, this in effect forces landowners to lend to the government an amount equal to the price they receive for the land.

In other words, to be effective land reform has to take productive land (and its income) from the landlords without immediate compensation. Otherwise it is not a redistributive measure. To pretend that landlords should be fully compensated is as absurd as to expect that taxpayers of advanced countries should receive cash compensation or bonds by an amount equal to their taxes.

Viewed in its true light, land reform is a very drastic measure which crushes the power of the landed elite wherever it is applied. Landlords know this and, regardless of the lip service they pay to the Alianza, they will frustrate it in every possible way. It would not be surprising if they pocketed as much of the $20 billion as they can on the grounds of political self-defense. One need only remember, for instance, that food grants to Peru and other Latin American countries under the point 4 program often failed to go to famine areas and instead were sold on the markets, and the money went into the pockets of speculators. Administrative corruption and graft is an art about which underdeveloped countries have little to learn and may even be able to teach something to developed ones.

Thus the position of the U.S. Government is tragic, and perhaps absurd: it wishes to entrust what is nothing less than a revolution to the very group—the safe conservative element—which in its own interest must block it, as it always has.

It may seem from the paragraphs I have read that Professor Flores thinks that only Communist revolutions can deal with this condition and that he is recommending the solutions of communism. Yet he also rejects that approach, pointing out that the Communists have failed to champion land reform when and where it was most urgently needed, apparently because they have put purely political considerations ahead of the needs of the people.

But I do not suppose that Professor Flores' prescription will meet with any sympathy among any of the officials or participants in the Alliance for Progress. I am not sure myself that it has a sound basis.

But I do recognize that the gap between existing conditions in Latin America and what we are trying to accomplish seem to be growing, rather than diminishing. When I see that increasing amounts of military aid are going into Latin America for internal security purposes, that domestic capital is leaving these countries almost faster than the American taxpayers can put it in, that the food and housing needs of the people in many of the countries are growing instead of diminishing, serious questions arise in my mind of whether American capital in any amount can do much about what is wrong in Latin America.

If Professor Flores' article contains nothing else, it does contain a strong case for the fact that it is basic reform that is needed in these countries and that without it, the United States will merely waste its money in the Alliance for Progress.

So far as my own view on land reform is concerned, I believe that what we ought to be seeking is to influence and persuade our Latin American allies to adopt land reform programs, and to urge them to proceed much more rapidly in passing through their parliaments legislation which will call for redistribution of land on the basis of a reasonable compensation for it. I should like to see that principle tried. Although it may be true, as Dr. Flores says, that compensation would use up money that is urgently needed for other purposes, it is for this very reason that the United States stands ready to finance it.

There is no question that basic in the issue of freedom is the protection of one's property rights, and that when one is required to give up those property rights, one should receive fair compensation for them. We stand ready to help finance it. But unless and until such plans for land reform get the go-ahead in Latin American countries, I share Dr. Flores' feeling that whatever else we finance will not make much of a dent in centuries-old backlog of their problems.

I think it has already been demonstrated in some Latin American countries that land redistribution of the type I have called for does plant the seeds of

economic freedom, does make it possible for family farmownership to develop, does strengthen the economy, and does thereby make possible the strengthening also of a system of political democracy.

Nevertheless, we are indebted to Professor Flores for the challenging analysis of the land reform program as he sees it, and its relationship to the other problems of the hemisphere. I hope that his point of view will be a stimulus to the oligarchs in Latin America, to give more support than they have to date to the redistribution of land under a condemnation procedure, under which the land owner receives a reasonable compensation for the land that ought to be redistributed in the interest of the general welfare of the country concerned. His views should also be a warning to the Congress and the American people that we stand to waste billions of dollars in the Alliance for Progress unless it deals with more basic issues than it has to date.

Mr. President, I yield the floor.

NEITHER WAR NOR PEACE: QUESTIONS ABOUT OUR CUBAN POLICY

Mr. McGOVERN. Mr. President, on March 15, I suggested that we had become obsessed with Fidel Castro and the Cuban problem. Considering the significance of the Cuban regime and its limited economic and military potential, I asked if we had not exaggerated this as a threat to our security. I characterized our obsession with Castro as a fixation that was causing us to lose sight of other more fundamental challenges in the hemisphere and elsewhere in the world. The real bombshells of Latin America—poverty, illiteracy, disease, feudalism, injustice—were being underestimated. Too many critics, I concluded, seemed willing to risk countless lives in a military invasion or naval confrontation leading possibly to nuclear war, while not enough courageous and thoughtful men were giving attention to the basic problems which made Castro possible. What Castro is primarily a threat to is not the United States, but the possibility of peaceful, domocratic development in the hemisphere.

Recognizing the necessity for keeping the Cuban dictator under surveillance, I suggested that we devote less time and energy to his fulminations and more to removing the conditions which are the seedbed of violence and communism throughout Latin America.

But bringing the Castro threat into perspective and strengthening such constructive forces as the Alliance for Progress will not directly solve the problem of Castro's Cuba. What, then, can we do specifically about this foreign policy stickler?

There are a few who suggest that we ought to make a direct onslaught against Castro, and, indeed, we have the military force to crush his government. This course is not supported by the Kennedy administration, nor does there seem to be any indication that Congress is ready to enact a resolution calling for a war against Cuba. The American people expressed overwhelming opposition to a military invasion of Cuba in a Gallup poll taken this spring.

Most of our citizens seem to understand, even if some few politicians do not, that a war with Cuba would doubtless create greater problems than it would solve. Historically, even the most well-intentioned U.S. military interventions have poisoned our relations with Latin America for long periods. And if we were to clash with Soviet forces in Cuba, who can be sure that this would not trigger world war III?

Some have suggested that we invoke a naval blockade against Soviet oil shipments to Cuba. But here again, this means a direct clash of American and Soviet power, albeit on the high seas. To forcefully stop another nation's ships on the open seas is an act of war. Who is to guarantee that this would not balloon into a nuclear exchange?

It is true that when President Kennedy invoked a partial blockade against Cuba last October, he said that we would require the removal of offensive Soviet missiles followed by U.N. inspection as the price for lifting our naval sanction. The missiles were withdrawn, but the Cubans balked at permitting U.N. inspection unless such inspections were extended to U.S. staging areas in Florida.

Those who argue that the President capitulated by removing the naval sanction in the absence of U.N. inspection of Cuba should bear in mind that our reconnaissance planes have been permitted to fly over Cuban territory daily without interference. U.S. photo reconnaissance is fantastically effective in giving our strategists a daily picture of the situation in Cuba.

Actually, President Kennedy scored one of the most spectacular victories of the cold war when he forced Mr. Khrushchev to get his missiles out of Cuba without war. That action was successful because it was thoughtfully planned to achieve important but limited American objectives that gave our adversary enough room to maneuver short of a nuclear showdown.

Those who now call with more partisanship than prudence for precipitous action, invasion, or blockade should count the consequences of their proposals. We are no longer dealing with flintlock rifles or frigates of the early years of our Republic.

Cuba is only one of a score of tension spots around the world, any one of which could escalate into a global holocaust of unspeakable horror.

Those who propose the establishment of an American-backed Cuban government-in-exile at Guantanamo Bay are suggesting that we violate our treaty rights. The U.S. Government has a signed treaty with Cuba which gives us permission to operate a naval base on Cuban soil as a coaling and naval station only. It is both morally repugnant and politically unsound to suggest that we flaunt our treaty obligations by attempting to set up a military force at Guantanamo aimed at the overthrow of the Cuban Government. It is no excuse to say that the Cuban Government is scornful of its obligations. The United States of America did not become the world's greatest champion of human freedom and dignity by adopting the immorality and illegality of our most obnoxious enemies.

Before we condemn our President for his patient efforts to avoid war with Cuba while stimulating the forces of freedom in the hemisphere, we should look out on the world from the eyes of the White House.

President Kennedy admittedly has made mistakes in Cuba, the prime example being the ill-fated Bay of Pigs invasion. That invasion was conceived by the previous administration but it was approved by Mr. Kennedy and he courageously assumed the full blame. But to suggest now that the President is weak kneed because he does not involve us in another wild venture of this sort seems incomprehensible.

The President of the United States is charged with a higher obligation than to risk taking this great Nation into war and possibly trigger a nuclear Armageddon unless every other alternative has failed.

President Kennedy is no weakling or appeaser. He will carry to his grave painful injuries suffered in military combat. He carries in his heart the memory of his brother who died in aerial combat. He has on his shoulders the fate of 189 million Americans, and, indeed, all mankind.

He needs our help and our patience and our prayers—not the strictures of bombastic critics and careless partisans.

To reject the counsels of recklessness, however, is not to suggest that we sit on dead center relative to Castro's Cuba. There is an urgent need for constant evaluation and thoughtful, restrained criticism of American foreign policy, and especially our Cuban policy. Isolating Castro and refusing to talk to him may be a practical, temporary expedient. It is not a positive or permanent policy.

Our present position seems built on the doubtful assumption that Castro, shut off from hemispheric aid and political support, will wither away. But will he? And if he does, what then? Do we have in mind a positive political alternative to Castro? The exiles appear hopelessly divided, sharing only a hatred of Castro. Do they, or we, wish to restore the economic and political conditions that existed under Batista—the very conditions that insured the success of Castro's grab for power? If not, how much of Castro's changes will they, or we, accept? Do we accept the expropriation of the sugar and cattle lands? The seizure of the oil refineries? The land reforms? The educational reforms? Can we see beyond the Castro revolution to the conditions that would exist in a Cuba without Castro?

Aside from these longer range problems, we appear to be in a corner on the issue of Cuba even insofar as immediate goals are concerned. We will not negotiate; neither will we take aggressive action. We will not trade with Castro; yet, we resent each new trade arrangement he concludes with the Soviet bloc or other sources. We shield the exiles from Castro's tyranny, but will not suffer them to strike blows at their enemy. We resent the presence of Soviet forces

in Cuba; yet, we cannot entirely deny Castro's claim that he invited them to come because of his fear of an American-assisted invasion of his island.

At home, our bipartisanship on foreign affairs is shattered as the administration comes under attack for the apparent stalemate of our Cuban policy. Our Cuban fever is bound to rise and fall with each succeeding event. We are at the mercy of every political opportunist both at home and abroad who exploits our lack of a dynamic, positive policy.

In view of these facts, would it not make sense in Prof. Roger Fisher's words to "slice up the Cuban problem"? Can we define certain limited goals in Cuba that give some realistic hope of attainment?

I believe that we can. I trust that such feasible alternatives to our present policy are now under the most active and serious consideration by our policy planners.

At a later date, I hope to suggest certain constructive steps that might be taken to open the way to a more satisfactory relationship with Cuba. Perhaps some Senators and Congressmen more experienced than I in foreign affairs will join in that effort.

Mr. COOPER. 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. COOPER. I ask unanimous consent that the order for a quorum call be rescinded.

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

ADJOURNMENT

Mr. McGOVERN. Mr. President, under the order previously entered, I now move that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 45 minutes p.m.) the Senate adjourned, under the previous order, until tomorrow, Friday, June 28, 1963, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate, June 27, 1963:

DEPARTMENT OF THE AIR FORCE

Gen. Curtis E. LeMay, U.S. Air Force, to be reappointed as Chief of Staff of the Air Force for a term of 1 year.

IN THE ARMY

The nominations for promotion to major beginning Peter A. Abbruzzese, and ending Frank C. Leitnaker, Jr., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 24, 1963.

EXTENSIONS OF REMARKS

Foreign Gambling

EXTENSION OF REMARKS
OF
HON. PAUL A. FINO
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 27, 1963

Mr. FINO. Mr. Speaker, today, I would like to take the Members of this House to Europe and observe the gambling operations in four more foreign countries. These nations are among the 77 foreign countries which recognize and accept the fact that the urge to gamble is a universal, instinctive human trait which should be controlled and regulated for the Government's benefit and the people's welfare.

England has, since 1956, a premium bond lottery. Under this proposal, the interest earned on the bonds is paid in the form of prizes. In addition thereto, England does have many other forms of legalized gambling such as horse racing, dog racing, and football pools. Last year, the Government sold $199 million in bonds and awarded $43 million in prizes. This lottery device has helped England sell its bonds which prior thereto were not selling sufficiently to meet the Government's need for revenue.

Finland is a small nation of a little over 4 million people, but size notwithstanding, it is noted for cultural and artistic attainment. The Finns are not a rich people, and they find it difficult to provide for the sustenance and promotion of their cultural heritage. They are quite dependent upon the national lottery as a means to this end. There is no evidence that they find this money somewhat tainted, for unlike many Americans they are not plagued by pious hypocrisy in these matters.

In 1962, the total gross receipts came to over $6 million. The net income to the Government amounted to over $2 million. The profit was divided for the promotion of science and fine arts, the national opera and the national theater.

Gibraltar does very well with its lottery operation. The total gross receipts for 1962 amounted to $1,776,000. After payment of prizes and expenses, the total net income to the Government came to $417,000. The profits are used to help finance the building of new houses for the people.

Holland is also a small nation but its lottery operation is a very profitable one. The Dutch recognize that people love to gamble and it is better that they be able to do so under Government auspices. In 1962, the gross receipts came to almost $10 million. The Government's share was over $1 million which was turned over as general revenue.

Mr. Speaker, we, in the United States would do well to come to the same realization with our own national lottery. Gambling in this country is a $50-billion-a-year industry which is practically untapped. If we were not blind to human and financial reality, we could learn quite a bit from all of these foreign countries. A national lottery in the United States can easily and voluntarily pump into our own Treasury over $10 billion a year in new revenue which would allow a tax cut and a reduction of our national debt. What are we waiting for?

Inequities in Expense Account Law

EXTENSION OF REMARKS
OF
HON. JAMES C. HEALEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 27, 1963

Mr. HEALEY. The serious economic effects brought on by the Revenue Act of 1962 and the confusion surrounding it as it pertains to travel and entertainment expenditures have led me to introduce a bill, H.R. 6244. This bill would abolish the artificial and arbitrary standards of the present law in favor of a standard of reasonableness.

The repressive economic effects of the present law will result in the abolition of 140,000 jobs and a loss of $1 billion in sales in the food and lodging industry if allowed to continue, according to a survey taken by the National Restaurant Association. In New York City alone, an annual sales loss of $117 million and the elimination of 14,000 jobs can be expected. The Revenue Act of 1962 was designed to produce revenue; unfortunately it is causing a tremendous sales loss and resultant unemployment, the ultimate effect being the loss of revenue. Treasury Department statistics indicated that $100 million in increased revenue could be expected, but $50 million in lost income from workers can be anticipated and $30 million in lost taxes from vanished business income. When we add $126 million for unemployment compensation benefits, we can see a loss of more money than the law had intended to produce.

What is the cause of all this? Much of the loss of business in the food and lodging industry can be attributed to the confusion surrounding the law. A befuddlement among the business community as to what is, and what is no longer, deductible is heightened by the 174 pages of implementing regulations that attempt to clarify the law and set down the recordkeeping requirements.

Why is the businessman confused? Because he is faced with new and totally unrealistic artificial standards of deductibility. No longer is he safe when he incurs an ordinary and necessary expense in the business entertainment area. He must consider the surroundings not in the light of his own intentions or practices but as they will appear to the revenue agent who audits his return.

If he wants to entertain merely to convey good will, he must do so in a quiet place, for there he does not have to talk