for the consideration of H.R. 860. A bill to amend section 302(c) of the Labor-Management Relations Act, 1947, to permit employer contributions for joint industry promotion of products in certain instances. (Rept. No. 91–796). Referred to the House Calendar.

Mr. COLMER: H. Res. 792. Committee on Rules. A resolution providing for the consideration of H.R. 14864. A bill to amend the Internal Security Act of 1950 to authorize the Federal Government to institute measures for the protection of defense production and of classified information released to industry against acts of subversion, and for other purposes. (Rept. No. 91–797). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BENNETT:

H.R. 15507. A bill relating to the control of organized crime in the United States; to the Committee on Judiciary.

By Mr. EDWARDS of Alabama:

H.R. 15508. A bill to amend title 5, United States Code, to correct inequities resulting from the exclusion from entitlement to severance pay of employees who, at the time of separation from the service, decline to accept employment in equivalent positions in different commuting areas, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. HAGAN:

H.R. 15509. A bill to amend title 5, United States Code, to correct certain inequities in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes; to the Committee on Post Offie and Civil Service.

By Mr. HORTON:

H.R. 15510. A bill to amend chapter 83, title 5, United States Code, to eliminate the reduction in the annuities of employees or Members who elected reduced annuities in order to provide a survivor annuity if predeceased by the person named as survivor and permit a retired employee or Member to designate a new spouse as survivor if predeceased by the person named as survivor at the time of retirement; to the Committee on Post Office and Civil Service.

By Mr. MATSUNAGA:

H.R. 15511. A bill to authorize the U.S. Commissioner of Education to establish educational programs to encourage understanding of policies and support of activities designed to enhance environmental quality and maintain ecological balance; to the Committee on Education and Labor.

By Mr. MOSS:

H.R. 15512. A bill to create a comprehensive Federal system for determining the ownership of and amount of compensation to be paid for inventions and proposals for technical improvement made by employed persons; to the Committee on the Judiciary.

H.R. 15513. A bill to amend title 18, United States Code, to prohibit the establishment of emergency detention camps and to provide that no citizen of the United States shall be committed for detention or imprisonment in any facility of the U.S. Government except in conformity with the provisions of title 18; to the Committee on the Judiciary.

By Mr. RANDALL:

H.R. 15514. A bill to amend the Railroad Retirement Acts of 1935 and 1937 to provide a 15-percent across-the-board increase in pensions and annuities paid thereunder; to the Committee on Interstate and Foreign Commerce.

By Mr. RIVERS:

H.R. 15515. A bill to amend the act of August 11, 1959, Public Law 86–155 (73 Stat. 333), as amended, and for other purposes; to the Committee on Armed Services.

By Mr. STAGGERS:

H.R. 15516. A bill to provide for the transfer to the Federal Power Commission of all functions and administrative authority now vested in the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935; to the Committee on Interstate and Foreign Commerce.

By Mr. ULLMAN:

H.R. 15517. A bill to consolidate the administration of grants and loans for basic public water and sewer facilites and waste treatment works; to the Committee on Banking and Currency.

By Mr. UTT:

H.R. 15518. A bill to amend the Tariff Act of 1930 to eliminate, in the case of shrimp vessels, the duty on repairs made to, and repair parts and equipments purchased for, such vessels in foreign countries, and for other purposes; to the Committee on Ways and Means.

By Mr. BENNETT (for himself, Mr. BROCK, Mr. BROOMFIELD, Mr. CHAPPELL, Mr. CLEVELAND, Mr. DADDARIO, Mr. DULSKI, Mr. EDMONDSON, Mr. FOLEY, Mr. HELSTOSKI, Mr. HULL, Mr. KEE, Mr. KUYKENDALL, Mr. MCCLOSKEY, Mr. MIKVA, Mrs. MINK, Mr. OLSEN, Mr. PRYOR of Arkansas, Mr. PURCELL, Mr. RARICK, Mr. REIFEL, Mr. RUPPE, Mr. SAYLOR, Mr. SCHERLE, and Mr. SKUBITZ):

H.R. 15521. A bill to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data; to the Committee on Interior and Insular Affairs.

By Mr. BENNETT (for himself, Mr. STEPHENS, Mr. TIERNAN, Mr. TUNNEY, Mr. UDALL, Mr. WALDIE, and Mr. VANIK):

H.R. 15522. A bill to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data; to the Committee on Interior and Insular Affairs.

By Mr. FASCELL:

H. Con. Res. 481. A resolution to express the sense of the Congress relating to the Middle East; to the Committee on Foreign Affairs.

By Mr. MOORHEAD:

H. Con. Res. 482. A resolution to express the sense of the House with respect to peace in the Middle East; to the Committee on Foreign Affairs.

By Mr. PEPPER (for himself, Mr. MADDEN, Mr. DELANEY, Mr. MOORHEAD, Mr. KYROS, Mr. SISK, Mr. ADDABBO, Mr. ST. ONGE, Mr. GIAIMO, and Mr. CHARLES H. WILSON):

H. Con. Res. 483. Concurrent resolution to express the sense of the House with respect to peace in the Middle East; to the Committee on Foreign Affairs.

By Mr. RODINO:

H. Con. Res. 484. Concurrent resolution to express the sense of the House with respect to peace in the Middle East; to the Committee on Foreign Affairs.

By Mr. CRANE (for himself, Mr. BUCHANAN, Mr. DERWINSKI, Mr. ADDABBO, Mr. COWGER, Mr. CRAMER, Mr. DENT, Mr. MCCULLOCH, Mr. MACGREGOR, Mr. POLLOCK, Mr. SIKES, Mr. WHALLEY, and Mr. WYDLER):

H. Res. 793. A resolution to express the sense of the House with respect to peace in the Middle East; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. MATSUNAGA:

H.R. 15519. A bill for the relief of Ignacio Gebella Espanola; to the Committee on the Judiciary.

H.R. 15520. A bill for the relief of Fukumatsu Sato; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII,

273. The SPEAKER presented a memorial of the Senate of the General Assembly of the Commonwealth of Kentucky, relative to establishing January 15 as a legal holiday honoring Dr. Martin Luther King, Jr.; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

377. The SPEAKER presented a petition of the chairman, National Association of State Universities and Land Grant Colleges Water Resources Committee, Pullman, Wash., relative to proposed legislation to amend the Water Resources Research Act of 1965; to the Committee on Interior and Insular Affairs.

SENATE—*Thursday, January 22, 1970*

The Senate met at 12 o'clock meridian and was called to order by the Vice President.

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

Almighty God, source of our being, sovereign ruler of men and nations, bless this land which Thou has given us. Abide in our hearts and in our homes. Strengthen our institutions. Visit our cities, towns, and countryside with a new and lofty patriotism and with pure religion. Guide us in the use of natural resources and in the employment of the new revelations of science. Spare us from violence, panic, and enervating fear. Grant us poise and peace and spiritual power. Unite the people with their government in common devotion to the higher order and better world Thou hast promised to all who seek first the kingdom of God and His righteousness.

Bestow Thy blessing upon the President. Give him wisdom and strength for his solemn responsibilities, that he may grow in the knowledge of Thee and of Thy kingdom.

Through Jesus Christ our Lord. Amen.

WELCOME TO THE VICE PRESIDENT

Mr. MANSFIELD. Mr. President, welcome back.

The VICE PRESIDENT. Thank you, sir.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, January 21, 1970, be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS—UNFINISHED BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, with statements therein limited to 3 minutes; that at the conclusion of 13 minutes past 12 o'clock, the period for the transaction of morning business be brought to a conclusion; and that at that time the unfinished business be laid before the Senate.

The VICE PRESIDENT. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today, after the state of the Union message of the President of the United States.

The VICE PRESIDENT. Without objection, it is so ordered.

ATTENDANCE OF A SENATOR

Mr. HIRAM L. FONG, a Senator from the State of Hawaii, attended the session of the Senate today.

JOINT DEMOCRATIC LEADERSHIP'S STATEMENTS ON POLLUTION AND THE ENVIRONMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a statement on pollution which I made at a press conference on yesterday with the distinguished Speaker of the House, Mr. McCORMACK, and a statement made by the distinguished majority leader of the House, Mr. ALBERT, on that occasion be printed in the RECORD.

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

STATEMENT OF HON. MIKE MANSFIELD, MAJORITY LEADER OF THE SENATE

Mr. MANSFIELD. It is my understanding that "progress" in this nation adds up each year to 200 million tons of smoke and fumes, 7 million junked cars, 20 million tons of paper, 40 billion cans and 28 billion bottles. Under our fiscal 1970 budget, the amount allocated per person for defense amounts to about $400 and for all health programs about $13. Surely somewhere in the defense expenditures, which are marked by costly overruns, poor preparation on contracts and much in the way of obsolescence before a weapon or a missile is acceptable, we can find the few dollars necessary to undertake the anti-pollution programs which will save our lakes, such as Lake Erie and others which are on the way to disintegration; we can save our rivers and our creeks which are even affected in my own state of Montana. Such programs are needed to protect our environment and to protect the health of all our people because if we do not, the cost will be astronomical, and we may be too late. The time is now, and I repeat "now" to face up to this problem of blight caused by our own blindness and recognize the fact that not millions, not hundreds of millions, but billions of dollars will have to be spent to cope with this problem which affects all of us. We have been too free and easy in the acceptance of our environment. We have looked on our air and water as free without recognizing the need for control and care.

The cost will be stupendous. We have littered the countryside with beer bottles and beer cans. We have created auto dumps in every direction. In other words, we have just taken too much for granted, and the time and the place is here and now to push this program of pollution control through a coordinated effort on the part of the Administration and the Congress on the Federal level, on the part of the states and the municipalities, and on the part of industry which should divert some of its profits to cope with this problem which they have helped create.

I want to commend Senators Muskie, Nelson and Jackson for their pioneering efforts in trying to save the environment, and I want to extend my thanks also to Congressman Blatnik, House Majority Leader Albert and all those other Members of the House who have become aware of this problem—a problem which is non-partisan, non-political, but not non-faceable.

The purpose of this meeting this morning is to indicate the growing concern of the Democratic leadership for the quality of life in this nation today and as it will affect future generations and to try to publicize the frightening variety of hazards and environmental offenses over which we have had to this time little or no control.

REMARKS OF THE HON. CARL ALBERT, MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES

Mr. ALBERT. We believe this Congress of 1970 must, and will, show its continuing concern for those things troubling most Americans. A dominant question, and one of growing concern, is the quality of life for present and future generations. The contemporary American is surrounded by a frightening variety of hazards, and environmental offenses over which he has little or no control. We must attack these problems with full commitment or forever lose the chance to make this continent, indeed this planet Earth, a fit or even tolerable place to live, for us, for our children and for generations beyond.

The Congress has initiated much major environmental legislation. These measures include the Clean Air Act, the Water Quality Act, the Land and Water Conservation Fund Act, the Water Resources Planning Act, Solid Waste Disposal Act, and the National Environmental Policy Act.

Presently the Water Quality Improvement Act, another Congressionally-initiated measure, is pending in a joint House-Senate Conference Committee. That legislation would provide the President with broad new enforcement powers to deal with oil pollution, bring federally supported or authorized projects or activities into compliance with water quality standards, would require control of sewage discharges from vessels and would authorize the staff necessary for effective functioning of the President's Council on Environmental Quality.

We hope and expect the Water Quality Improvement Act to be sent to the President for signature by the Lincoln's Birthday Recess.

We are committed to provide the full $1.25 billion authorized for the Water Quality Improvement Program to meet Sewage Treatment construction grant needs.

Similarly, we must seek increased funding for preservation of America's natural heritage, to clean the air, to provide intelligent control for new technologies, and to insure a better quality life in healthy and attractive surroundings.

We propose the establishment of a joint House-Senate committee on the environment to expand the congressional capacity to deal with environmental problems. The Joint Committee would be a non-legislative Committee, organized to provide a clear focus on the difficult environmental decisions which must be made, and to provide the legislative Committees with the necessary background to insure effective action on short-term and long-term environmental problems and needs. While the Congress is acting to meet its needs in this area, the time has come for the Executive Branch to reexamine its structure as it relates to environmental protection and improvement programs.

Congress is aware of its responsibility to act on pending legislation which is designed to improve the quality of the environment. We must, this year, extend and broaden the environmental programs which deal with hazardous substances, solid waste, noise, and air quality. We must examine water pollution measures which will provide innovative means to finance the cost of pollution control beyond 1971.

We must begin to develop a considered national land use policy and examine the need to replace the present haphazard methods of site selection for major industrial facilities with a system designed to assure environmental balance. Closely related to these questions are the problems of population growth and concentration in urban areas, and the need for continuation of the expansion of our national wilderness, park and recreation system to meet the nation's responsibilities. All of these problems must be dealt with in terms of our domestic concerns and the opportunities for international cooperation in the quest for a more livable world.

Finally, we have asked the Chairman of concerned committees to expedite consideration of authorizing legislation and appropriations, and to hold public hearings to seek new ideas for Environmental Improvement Act programs.

Confronted with the problems we face and the need for commitment and for an immediate counterattack, Congress is ready. We have begun, and we must, with the necessary concern, continue.

We in Congress have listened to the concerns of the American people, especially the young. For those who would listen, as we in Congress have, the majority has not been silent on this issue.

We are ready to expand the legislative beginnings we have made into a comprehensive national program committed to the investment of time, resources and funds which must be made to secure the birthright of every American to have a clean, safe and pleasant nation in which to grow and enjoy life.

We are ready to make the investment which must be made in this decade of the 1970s if the contemporary American and his children are to have a clean, safe and pleasant nation in which to live and grow and prosper.

WELCOME BACK, MR. VICE PRESIDENT

Mr. SCOTT. Mr. President, I join with the distinguished majority leader in saying welcome back to our Presiding Officer.

At the risk of possible embarrassment to our distinguished Presiding Officer, let me seize this occasion to say briefly that the trip to many Asian countries

by our distinguished Vice President was met everywhere with notable success, and that we are proud of his achievements in advancing the foreign policy of the United States in making clear our firm position and friendly attitude toward those nations.

It was my great privilege to be with the distinguished Vice President in Taiwan at the time of the state dinner and interview with His Excellency, the President of the Republic of China, Chiang Kai-shek. I was impressed—as all observers, American and Asian, were impressed—with the very fine work which the Vice President did. We are very proud of that and very happy to have him back with us.

The VICE PRESIDENT. The Chair thanks the distinguished Senator from Pennsylvania.

INFLATION—PORK BARREL PRIORITIES

Mr. WILLIAMS of Delaware. Mr. President, at a time when so much lip-service is being given to the problem of inflation, I believe it would be well for all Members of the Senate to read a very appropriate editorial published in today's Wall Street Journal entitled, "Pork Barrel Priorities," and I ask unanimous consent to have it printed in the RECORD.

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

PORK BARREL PRIORITIES

We can understand that Senate Democrats would want to spent a lot more Government money on education, and for that matter nearly everything else, just as they have every year for 40 years. We're more than a little confused, though, by their talk about "national priorities."

We used to think there was general agreement that the current priorities of this nation are: Doing something about Vietnam first, doing something about inflation second, and everything else a long ways third. Before this latest round of talk, we thought we had it pretty clear.

Now the Senate comes along with an extra billion-plus dollars in aid to education and health, and the lawmakers think maybe they can override the Presidential veto that might result from the spending's inflationary potential.

The biggest single increase, the political grease that has helped move the bill, and the political stick that creates the possibility of overriding a veto is an increase in Federal aid to "impacted" schools. Which is to say, more spending for schools near Federal installations in the districts of key Congressmen.

Or in other words, pork barrel first, inflation control last, and then talk a lot about priorities. Some gall.

S. 14465—REFERRAL OF BILL TO COMMITTEE ON FINANCE

Mr. MAGNUSON. Mr. President, on December 5, my Committee on Commerce reported to the Senate the House-passed airport/airways bill, H.R. 14465. After being reported the bill was placed on the Senate Calendar. At the same time, the Commerce Committee also reported the committee-drafted and approved airport/airways program, S. 3108. At that time I asked unanimous consent that the Senate bill be referred to the Senate Committee on Finance for consideration and application of tax provisions which are necessarily a part of the total program. It was my hope that the Finance Committee would add to S. 3108 tax provisions and language after which it would be reported to the Senate floor for final action.

It had been our plan, following final Senate passage of S. 3108 to seek unanimous consent to substitute the language of that bill for that of the House passed bill, H.R. 14465 and send the bill back to the House in order to initiate a conference.

Pursuant to an agreement I have reached with the distinguished chairman of the Finance Committee, the junior Senator from Louisiana, I seek unanimous consent from the Senate to also refer to the Senate Committee on Finance, H.R. 14465 so that that committee might consider the tax aspects of the airport/airways development legislation approved by the House. Senator LONG has assured me that his committee will report to the Senate Calendar, without amendment, S. 3108, where it will reside until such time as the Finance Committee completes action on the tax provisions of H.R. 14465.

At that time the Senate will be able to consider the substantive aspects of S. 3108 as the first three titles of a complete legislative package; then consider the Finance Committee approved tax provisions of H.R. 14465 as title IV of the program.

I am delighted that Senator LONG and his committee are moving ahead so expeditiously on consideration of this important matter and have been assured that the airport/airways development program will be cleared for floor consideration at a very early date.

At this point, I ask unanimous consent that H.R. 14465 be referred to the Senate Committee on Finance.

The VICE PRESIDENT. Without objection, it is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REVIEWING THE COMMITMENT—A REPORT ON ACADEMIC EXCHANGES

A letter from the Chairman, the Board of Foreign Scholars, transmitting, pursuant to law, their annual report, "Reviewing the Committee—A Report on Academic Exchanges," dated October 1969 (with an accompanying report); to the Committee on Foreign Relations.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on construction of industrial facilities at Government-owned plants without disclosure to the Congress, Department of the Navy and Department of the Air Force, dated January 21, 1970 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the questionable payment of taxes to other governments on U.S. defense activities overseas, Department of Defense and Department of State, dated January 20, 1970 (with an accompanying report); to the Committee on Government Operations.

REPORT OF ACTIVITIES OF THE COMMUNITY RELATIONS SERVICE

A letter from the Attorney General of the United States, transmitting, pursuant to law, a report of the activities of the Community Relations Service for fiscal year 1969 (with an accompanying report); to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

Petitions, etc. were laid before the Senate, or presented, and referred as indicated:

By the VICE PRESIDENT:

A resolution adopted by the Quarterly Court of Sumner County, Tenn., petitioning the General Assembly of the State of Tennessee to adopt and forward a joint resolution to the Senate and House of Representatives of the United States praying for the enactment of a constitutional amendment, prohibiting the enactment of legislation permitting taxation on State or local bonds; to the Committee on the Judiciary.

A resolution adopted by the City Council, City of Seattle, praying for the repeal of Title II of the Internal Security Act of 1950; to the Committee on the Judiciary.

SENATE RESOLUTION 317—RESOLUTION REPORTED AUTHORIZING THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE TO MAKE CERTAIN INVESTIGATIONS (S. REPT. NO. 91-635)

Mr. McGEE, from the Committee on Post Office and Civil Service, reported the following original resolution (S. Res. 317), and submitted a report thereon; which was referred to the Committee on Rules and Administration:

S. RES. 317

Resolved, That the Committee on Post Office and Civil Service, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified by rule XXV of the Standing Rules of the Senate to examine, investigate, and conduct such studies as may be deemed necessary with respect to any and all aspects of—

(1) the postal service, with particular emphasis upon inquiries into the desirability of major organizational restructuring and modernization. Included in these investigations, directed toward improving postal service in the United States, are mechanization, labor-management relations, ratemaking, capital funding, wages, hours, work schedules, management techniques, and utilization of manpower;

(2) the Federal civil service, including retirement, life and health insurance, and general consideration of legislation to improve the quality of Federal employment and Federal personnel policies and practices; and

(3) committee jurisdiction concerning the census and the collection of statistics.

SEC. 2. For the purposes of this resolution the committee, from February 1, 1970, until January 31, 1971, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ on a temporary basis technical, clerical, and other assistants and consultants: *Provided*, That the minority is authorized to select one person for appointment, and the person so selected shall be appointed and his compensation shall be so fixed that his gross

rate shall not be less by more than $2,700 than the highest gross rate paid to any other employee; and (3) with the prior consent of the heads of the departments and agencies concerned and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government.

SEC. 3. The committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1971.

SEC. 4. Expenses of the committee under this resolution, which shall not exceed $275,000, shall be paid out of the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 318—RESOLUTION REPORTED PROVIDING FOR A STUDY OF MATTERS PERTAINING TO THE FOREIGN POLICY OF THE UNITED STATES BY THE COMMITTEE ON FOREIGN RELATIONS

Mr. FULBRIGHT, from the Committee on Foreign Relations, reported the following original (S. Res. 318); which was referred to the Committee on Rules and Administration:

S. RES. 318

Resolved, That the Committee on Foreign Relations, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified by rule XXV of the Standing Rules of the Senate, to examine, investigate, and make complete studies of any and all matters pertaining to the foreign policies of the United States and their administration.

SEC. 2. For the purposes of this resolution the committee, from February 1, 1970, to January 31, 1971, inclusive, is authorized (1) to make such expenditures; (2) to employ, upon a temporary basis, technical, clerical, and other assistants and consultants; (3) to hold such hearings to take such testimony, to sit and act at such times and places during the sessions, recesses, and adjourned period of the Senate, and to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents; and (4) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the sessions, recesses, and adjourned periods of the Senate, and to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents; and (4) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government, as the committee deems advisable.

SEC. 3. In the conduct of its studies the committee may use the experience, knowledge, and advice of private organizations, schools, institutions, and individuals in its discretion, and it is authorzed to divide the work of the studies among such individuals, groups, and institutions as it may deem appropriate, and may enter into contracts for this purpose.

SEC. 4. Expenses of the committee, under this resolution, which shall not exceed $300,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

BILLS INTRODUCED

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

By Mr. INOUYE:

S. 3321. A bill to amend certain maritime legislation affecting the transportation by water of property in the domestic Hawaii trade; to the Committee on Commerce.

(The remarks of Mr. INOUYE when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. McGEE:

S. 3322. A bill to require that the appointment of decennial census employees be based upon open, competitive examinations; and

S. 3323. A bill to prohibit the Postmaster General from requiring the labeling of mail matter containing mailable firearms; to the Committee on Post Office and Civil Service.

By Mr. GOODELL:

S. 3324. A bill to amend the Military Selective Service Act of 1967 to establish a National Selective Service Commission to head the Selective Service System;

S. 3325. A bill to amend the Military Selective Service Act of 1967 to establish a National Conscientious Objector Appeals Board, and for other purposes; and

S. 3326. A bill to amend the Military Selective Service Act of 1967 to eliminate student deferments; to the Committee on Armed Services.

(The remarks of Mr. GOODELL when he introduced the bills appear later in the RECORD under the appropriate heading.)

By Mr. DODD:

S. 3327. A bill for the relief of Panagiotis Laladelis; to the Committee on the Judiciary.

By Mr. BURDICK:

S. 3328. A bill to authorize the establishment of the Fort Buford Unit of the Fort Union Trading Post National Historic Site in the State of North Dakota, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 3321—INTRODUCTION OF THE HAWAII WATER CARRIERS ACT

Mr. INOUYE. Mr. President, I introduce today a bill which I believe will have a major and beneficial impact upon the development of my State and the economic welfare of all Hawaii's residents.

For many years we have discussed the role of transportation in increasing Hawaii's living costs. Studies have been undertaken, reports have been prepared and filed, but we have seen no action. It is in the hope that this proposal may act as a vehicle for moving forward to concrete action that I now introduce the Hawaii Water Carriers Act.

Hawaii needs and deserves a special regulatory and promotional program for the domestic ocean transportation system that plays so unique and vital a role in the State's life and economy. General Federal regulation designed to meet the interests and problems of the mainland's oceanborne transportation service can no longer be accepted as appropriate for special problems and interests of Hawaii's domestic service.

One of Hawaii's major assets is its strategic location in the Pacific between the mainland United States, Canada, and Mexico on the east, and Japan, the Far East, Australia, and New Zealand on the west. It is the natural hub of the rapidly developing Pacific Basin. Hawaii's opportunity to develop as a foreign trade center, through which would pass goods from all corners of the Pacific and beyond, offers potential not only for more jobs and more dollars for the citizens of Hawaii but also for greater U.S. participation in this huge trade pool to the benefit of the Nation's export trades, its balance-of-payment situation, and its merchant marine. The proposed Hawaii Water Carriers Act will enhance this development.

At the same time, many of the State's problems are linked to the central fact of Hawaii's location in the middle of the Pacific. Unlike any other State with the possible exception of Alaska, Hawaii cannot rely on rail or motor carrier transportation to connect it with the rest of the United States, and for all but a few commodities air transportation is not an economically feasible alternative. The result is that the quality and cost of the ocean transportation system that serves Hawaii critically affect its basic economy and have a direct bearing on the availability of job opportunities and the State's cost of living. Promotion and constructive regulation of the ocean transportation system can insure that Hawaii's present and future needs will continue to be satisfied and would attract new industry to Hawaii, aid the further development of existing industry and insure fair and equitable treatment to Hawaii's consuming public.

The assurance that full transportation service will continue to be provided the neighbor islands is needed to spur their development, reverse the population drain to Honolulu and promote social and economic balance.

Finally, there is the critical problem of insuring the continued use of modern vessels in the mainland-Hawaii trade. Taxes paid by Hawaiian citizens help finance the Nation's subsidized shipbuilding program. However, this program does not help reduce Hawaii's transportation costs or improve the efficiency of its transportation service because the program excludes subsidization of vessels for use in the mainland-Hawaii trade, except incidentally where the vessels serve Hawaii as an intermediate point in foreign trade operations. Equitable treatment of Hawaii's taxpayers requires that construction subsidy be made available for the State's special transportation needs.

A. CERTIFICATION

The proposed Hawaii Water Carriers Act would require Federal Maritime Commission certification of all common carriers by water in the domestic Hawaii trade. Except for "grandfather" carriers presently serving the trade, applicants for certification would have to satisfy a public convenience and necessity standard, pursuant to which a public hearing would be conducted. The hearing procedure would allow participation by shipper and local citizen interests and help assure that new operators in the domestic Hawaii trade will be responsible and that their service will be in the public interest.

Grandfather rights are normal provisions in such certification schemes. Thus, presently operating carriers would be exempted from the act's hearing require-

ments on the ground that they have already demonstrated their ability to serve the trade. But, since these rights will be limited to the service provided by the operators in the past, changes in that service would have to undergo the full public convenience and necessity test. Moreover, the grandfather operators would have to provide service in accordance with other provisions of the act.

Under the act each operator's certificate would specify the route or routes and ports which the carrier would have to serve and whether the carrier would serve Hawaii in a strictly domestic turnaround operation or as an intermediate point in foreign trade. Deviation from these service requirements would be allowed only in emergency or temporary situations. Abandonment of part or all of an operator's service would be possible only upon prior FMC approval after hearing with provision for the protests and comments of local groups. Transfer of an operator's certificate would similarly be subject to a requirement of prior Commission approval.

One of the serious potential abuses which the bill would curb is carrier concentration on high profit segments of the Hawaii trade, to the exclusion of less-than-containerload shipments and less dense traffic areas. Such specialization would handicap business in Hawaii dependent on the transportation services thus discriminated against and increase the prices paid by citizens of the State for certain commodities; it would also deprive carriers providing comprehensive service of their proportionate share of the high value trade, without which their ability to provide full service would be severely impaired. Accordingly, under the act all certificated carriers would be required to carry breakbulk and less-than-containerload shipments, unless excused from this requirement by the Commission for a period not to exceed 6 months from the date of issuance of their certificates. Certificated carriers would also be required to hold themselves out to serve the neighbor islands of Hawaii, Kauai, Maui, and Molokai. This requirement could be satisfied by transshipment or interline arrangements.

Since the operations of contract carriers could be disruptive of the stability, efficiency, and comprehensiveness sought for common carrier operations in the domestic Hawaii trade, it is necessary that they be included within the ambit of the proposed legislation. Accordingly, contract carriers would be subject to regulations similar to but less comprehensive than those governing common carriers.

The proposal to vest in the Federal Maritime Commission certification and regulatory authority over the domestic Hawaii trade by water assures the trade's regulation by that agency of the Federal Government most experienced in and responsive to ocean transportation needs and problems. The Federal Maritime Commission already has jurisdiction over Hawaii's ocean transportation service as part of its authority over domestic and worldwide waterborne commerce. Congressional judgment that jurisdiction over Hawaii water carriers should be allocated to the FMC was incorporated in the Hawaii Statehood Act and that judgment continues to be valid. The Interstate Commerce Commission's primary concern with land transportation strongly suggests that it would not be the appropriate Government body to administer this portion of the proposed Hawaii Water Carriers Act.

B. GOVERNMENT CARGO

The problem of transportation services specializing in certain cargoes to the detriment of other cargoes is also posed by Government-impelled traffic which constitutes a large and discrete cargo pool readily susceptible to separate carriage. Such cargo aggregations are particularly prone to special rate or preferential service arrangements, with the cost of such preferential treatment inevitably borne by commercial shippers in the form of high rates or less efficient service. The consuming public served by these commercial shippers should not have to subsidize military shipments.

The proposed legislation would amend section 6 of the Intercoastal Act of 1933, which now permits special rates on the carriage of Government cargo in the domestic Hawaii trade, so that Government cargoes in this trade, like the cargoes of all other shippers, would be subject to the principle of nondiscriminatory rates and services. Since Hawaiian domestic offshore rates are subject to economic regulation, the Government would still receive full protection against excessive charges; and it would still be possible for the Government to secure reduced rates for high volume shipments in the same manner as any other shipper.

C. FACILITATION OF THROUGH SERVICE

The most important recent development in cargo transportation is the so-called container revolution. Containerization makes possible the transportation of goods from an inland point to dockside, by ship to another dockside and then to another inland point, all without the delays and costs of unpacking and repacking at each step in the process. The economies and time savings made possible by this process have been particularly dramatic in transportation involving ocean carriers. Given Hawaii's dependence on ocean transportation, it is manifestly in the interest of the State's industries, their employees and the consuming public that the potential of containerization be realized to the fullest possible extent in the Hawaii domestic trade.

Full realization of the potential of containerization would result in a system of single through rates covering all of the services of the underlying carriers, regardless of the transportation modes involved. However, the development of joint rates and through services where the overland phases of the transportation process in question are merely incidental to its oceangoing phases—as is often the case in the domestic Hawaii trade—has been hindered by two recent court decisions. *Alaska S.S. Co.* v. *FMC*, 399 F. 2d 623 (9th Cir. 1968) and *Sea-Land Service, Inc.* v. *FMC.*, 404 F. 2d 824 (D.C. Cir. 1968). Under these decisions full FMC jurisdiction over such through services can be avoided where the arrangement is structured so as to involve an oceangoing common carrier and a motor carrier as joint participants, even though the latter performs only incidental pickup or delivery services, and even though the FMC has jurisdiction if the water carrier itself contracts for the incidental ICC-motor carrier services.

These decisions invite forum shopping between Government regulatory agencies, discrimination, rate instability, and other potential abuses which threaten to prevent realization of the full benefits of containerization. Because of Hawaii's vital interest in the development of through service arrangements involving FMC-regulated water carriers, the act would, in effect, reverse the Alaska S.S. and Sea-Land opinions by vesting in the FMC complete authority over through service in the domestic Hawaii trade in cases where the underlying motor carrier service is merely incidental to the water carriers service. The FMC is better equipped than the ICC to exercise this authority because of the predominate role of the FMC-regulated water carriers in such service and because of the ICC's traditionally more narrow interest in water transportation and its primary concern with motor and rail carriage.

With respect to through service involving more substantial operations by ICC-regulated common carriers, regulatory authority would be vested in a joint board consisting of appointees named by the Chairman of the FMC and ICC. Patterned after a provision of the Federal Aviation Act, this arrangement would permit coordinated regulation of joint land-water through service by both the responsible agencies.

D. AVAILABILITY OF SHIPS FOR HAWAIIAN TRADE AT WORLD PRICES

No State is so exclusively dependent on ocean transportation as Hawaii. Yet for the most part it is excluded from Government programs designed to promote the ready availability of modern and efficient ships—the all important ingredient in providing and maintaining a low-cost water transportation system to serve the Hawaiian public. Steps must be taken to enable the prompt introduction of increased numbers of modern ships into the domestic Hawaiian trade at reasonable prices.

Section 27 of the Merchant Marine Act of 1920 restricts the Hawaii-mainland ocean trade to American-built ships. But the cost of constructing modern vessels in U.S. shipyards is high—more than twice as much as construction costs in foreign shipyards.

The dilemma posed by the need for modern vessels and the high costs of their construction in American shipyards has been met in the U.S. foreign trade by the construction differential subsidy program—CDS. Under this program ships are constructed in U.S. shipyards but the Government pays the difference between the actual U.S. shipyard cost and the cost if constructed abroad.

Hawaiians pay taxes to finance the construction subsidy program, and, because of their unique dependence on domestic ocean transportation, they should enjoy its benefits. Accordingly, under the

proposed act CDS would be made available to certificated operators in the Hawaii trade pursuant to the same procedures currently applicable to vessels subsidized for use in the foreign trade. Ships constructed with CDS for use in the Hawaii trade would be committed for their useful life to this trade, thereby protecting Hawaii's interest in their continued use in this trade and avoiding potential abuses in the CDS program.

But expanding the CDS program to include the Hawaiian trade is not enough. CDS funds are limited. The goal of improved, lower cost mainland-Hawaiian service should not be frustrated by the unavailability of sufficient CDS funds. Accordingly, the act provides that, if CDS funds are not available and if the Secretary of Commerce determines that the ships covered by an application for CDS cannot be constructed in U.S. shipyards at a cost or within a delivery period which is within 50 percent of the cost or delivery time for foreign-built ships, the use of U.S.-flag, U.S.-owned, foreign-built ships will be permitted in the domestic Hawaii trade. Such foreign-built vessels would also have to be committed to that trade for their useful life unless a waiver is granted by the Secretary of Commerce for use of the vessel in foreign trade. In this way ocean transportation in the domestic Hawaii trade would be placed on a footing similar to that of other modes of transportation—airlines, railroads, and motor carriers—where there is no similar restriction against foreign building.

Finally, the act provides that carriers already serving the trade on a turnaround mainland Hawaii basis will receive payment equivalent to CDS on any new or reconstructed vessels on which construction was commenced prior to introduction of the act and completed after January 1, 1969, and used by the carrier only in the domestic Hawaii trade since completion. When such payments in the nature of CDS are made, the sum received by the operator would be placed in a construction reserve fund for use in purchasing an additional new ship or ships for use in the domestic Hawaii trade. Both the original ships and any new ship would be committed to the Hawaii trade for their useful lives unless a waiver allowing use of the vessels in the foreign trade were obtained from the Secretary of Commerce. This provision would allow operators who have recently undertaken expensive construction or conversion of ships for the trade to compete fairly with new ships in the Hawaii trade built with CDS assistance or in foreign shipyards at less than half the U.S. shipyard cost. It would also provide an incentive for operators presently serving the domestic Hawaii trade to continue with their present shipbuilding programs and to place those vessels when completed into the domestic Hawaii trade, rather than into some other operation.

HAWAII AS A TRANSSHIPMENT CENTER

The provisions of the proposed act have thus far been described primarily in terms of how they would promote an improved Hawaii ocean transportation system which would help overcome certain impediments to business development, expand employment, and lower living costs. The reasoning has been that, since the quality and costs of transportation services are important economic factors, it is necessary to assure existing and potential business ventures in Hawaii of efficient, dependable, and low-cost service. The Hawaiian public is also entitled to living costs which reflect such a transportation service.

These proposals for a revitalized Hawaiian transportation policy are also designed to aid in the development of Hawaii as a foreign trade or "transshipment" center. Under such a transshipment system, cargoes bound from such diverse places as Japan, New Zealand, Australia, and other Far East ports would be consolidated in Hawaii for subsequent transportation to the west coast, the gulf area, the east coast, Europe, Alaska, and Mexico. And westbound cargoes would undergo a similar unloading, consolidation, and transshipment process. Additional efficiencies would be accomplished by combining the transshipment system with land-bridge transportation arrangements, whereby cargoes from the Pacific area consolidated in Hawaii would be shipped to west coast terminals to be met by special unit trains destined for cargo depots in various regions of the United States, some for susbequent shipment abroad. Such a system would provide vastly expanded employment opportunities in the transshipment process itself and the related service industries that would inevitably develop.

Many of the principal provisions of the proposed act would facilitate or strongly promote the development of such a transshipment service. The certification procedures would assure that reliable operators would launch and conduct the service. The prohibition against specialization in high-profit operations would assure that the full benefits of the transshipment process would be available to all shippers. The Federal Maritime Commission's jurisdiction over the domestic Hawaii trade would keep the entire ocean transportation segment of the system under the authority of the one agency which has the necessary specialized interest and expertise in this area. Extending that jurisdiction to incidental overland transportation service would facilitate the development of through service and single rates. Providing for a joint board to have jurisdiction over through routes involving more substantial overland operations would insure coordinated regulation by the Interstate Commerce Commission and Federal Maritime Commission.

Under a transshipment system the Hawaii-mainland operation would be the central link on which all other links would depend. As such, this service would have to be efficient, wholly reliable, up-to-date; hence, the necessity for the certification procedure. The Hawaiian-mainland service would have to be subject to the same regulatory scheme as the rest of the ocean transportation part of the system; hence, the need for Federal Maritime Commission jurisdiction over the domestic Hawaii trade. Finally, to implement such a system, additional modern vessels would have to be available to the domestic Hawaii trade at reasonable cost; hence, the need for extending CDS to ships to be used in this trade, or, if CDS is not available and ships cannot be constructed in U.S. shipyards on reasonable terms, for allowing U.S.-owned, U.S.-flag, foreign-built vessels in the trade.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 3321) to amend certain maritime legislation affecting the transportation by water of property in the domestic Hawaii trade, introduced by Mr. INOUYE, was received, read twice by its title, and referred to the Committee on Commerce.

S. 3324, S. 3325, AND S. 3326—INTRODUCTION OF BILLS ESTABLISHING A CIVILIAN NATIONAL COMMISSION TO ADMINISTER THE DRAFT, REVISING THE STANDARDS AND PROCEDURES RELATING TO CONSCIENTIOUS OBJECTORS, AND ELIMINATING STUDENT DEFERMENTS

Mr. GOODELL. Mr. President, our draft law is still unfair and completely out of date. In time of peace, this is bad enough; in time of war—when it determines who may live and who may perish—it is intolerable.

Eight months ago—in a speech entitled "Draft Reform Now" delivered in the Senate on May 6, 1969—I proposed a number of far-reaching reforms of the Selective Service System.

I am gratified that Congress and the President have in the meantime adopted two of the reforms I was urging—the selection of the youngest first, rather than the oldest first; and the establishment of a lottery system for selection.

This, however, is only a first step toward a fair and workable draft system.

The new lottery system has grave defects. It has not eliminated the sense of uncertainty, even for the young men who draw the highest numbers. It still fails to provide equal treatment: young men who draw a given number in the lottery—say, the number 100—have a greater or less chance of being called depending on the size and composition of the local manpower pool.

I am hopeful that workable measures for correcting the defects of the lottery system will emerge from the coming Senate draft reform hearings—and I will be submitting my own recommendations on this subject.

Three other basic reforms which I proposed last May have yet to be considered or implemented by Congress. These are:

The establishment of a civilian national commission to administer the draft, instead of a single national director;

The adoption of a fairer, more workable standard of conscientious objection; and

The abolition of the student deferment.

Today, I am introducing three bills to implement these proposals.

Every day, we hear politicians, professors, principals, and parents calling

upon the young to abide by the law. Yet how can we seriously expect young men to listen to this advice without cynicism, when the law that most vitally affects their lives and futures—the draft—is so patently unfair and out of date?

Any draft system—even the most carefully and fairly drawn—can be no better than a necessary evil. For any draft system entails involuntary servitude, in a sense. It requires young men to serve and to risk their lives, whether they will or not. Any system of conscription raises the question put so well by Representative James F. Byrnes, of South Carolina, over 50 years ago:

> Must we Prussianize ourselves to win democracy for the people of the world?

In the long run, the only good way to recruit men for our Armed Forces is on the basis of their free will. I wholeheartedly support the President's directive to proceed with the formulation of plans for an all-volunteer Army which would end reliance on the draft. Any volunteer Army should, of course, be subject to strict civilian control.

A voluntary Army, however, cannot be established immediately. There will be a period of years—which will be longer or shorter depending on the duration of the war in Vietnam—when we will have to use conscription to fulfill our military manpower needs. We will have to accept the draft as a necessary evil for a time.

Since the draft cannot be abolished immediately, it must be reformed immediately. We simply cannot afford to continue the obvious inequities of the present draft system while awaiting a volunteer Army.

Moreover, even when we reach the point of creating an all-volunteer Army, we will need to have a draft law in reserve to meet situations of national emergency.

Draftees are being killed in Vietnam now. The time for draft reform is now.

S. 3324—A BILL TO CREATE A CIVILIAN NATIONAL COMMISSION TO ADMINISTER THE DRAFT

For nearly 30 years, the Selective Service System has been the domain of a single individual—the Director of the System. This no longer makes sense.

We simply cannot afford to have a "czar" of the draft.

The man who served in this office for 29 years, General Hershey, was widely—and in many instances, I believe, justly—criticized for the manner in which he administered the Selective Service System.

Conceivably, another, younger man could have demonstrated more flexibility, more concern for individual rights, and more sympathy for the aspirations of the young.

However, the potential for abuse exists as long as the draft remains the fiefdom of one man.

Even the wisest and best intentioned individual can misuse the tremendous power that now resides in the Director of the Selective Service System. No one man can adequately represent the enormously diverse interests that are affected by the draft.

Moreover, we cannot afford to have military men run our draft system at the top level.

Even the Pentagon has civilian leadership. Only the Selective Service System does not. The Director of the System is a career officer, as are almost all of the division chiefs and top-level assistants. As long as the System has this purely military orientation, it cannot hope to be attuned to the profound social effects of the draft upon millions of civilians.

Another present abuse is the lack of uniformity on the part of 4,000 local draft boards in the standards used for classifications of registrants.

This lack of uniformity is glaringly apparent, for example, in the administration of the hardship deferment. The deferment of actor George Hamilton a few years ago because his mother allegedly was dependent on him for support is a well-publicized instance of loose construction of the hardship principle. On the other hand, I see examples of extremely strict construction in my own State every day. Young men, whose parents will actually have to go on welfare if they are inducted, are refused the hardship classification.

To reform the draft leadership, my first bill, S. 3324, would place a national civilian board in charge of the System and make it responsible for developing more uniform procedures of administration throughout all levels of the System.

The bill would abolish the office of the Director of the Selective Service System. In its stead, it would create a civilian, bipartisan five-man National Selective Service Commission to direct the operation of the draft.

The five members of the Commission would be appointed by the President with the advice and consent of the Senate for staggered 5-year terms. No member of the Armed Forces could serve. Not more than three members could be of the same political party. No member could be appointed for more than two terms—that is, for more than a total of 10 years.

This five-man civilian body avoids the dangers of arbitrary action inherent in a single "czar" of the draft. It would be more representative of the diverse interests affected by the draft. It would adopt the principle of civilian rule that is now basic to all our institutions, including the Department of Defense.

Limiting the maximum tenure of members to 10 years will help avoid an entrenched leadership, insensitive to change.

To help secure greater uniformity of administration in the draft system, the Commission would be required "to develop and implement procedures to assure that standards and criteria for classification and deferment are to the maximum extent feasible administered uniformly throughout all parts of the Selective Service System.

S. 3325—A BILL TO REFORM THE STANDARDS AND PROCEDURES RELATING TO CONSCIENTIOUS OBJECTORS

One of the worst inequities of the draft system is that it has attempted to induct literally hundreds of young men who truly object to war on grounds of conscience.

Some of the finest, the most idealistic, the most dedicated young men of this Nation are cast into prison or forced to leave their native land rather than fight in a war that to them is morally repugnant to conscience. When a society thus turns upon its very best, it is in profound danger of spirit.

Present law, it is true, purports to contain an exemption for conscientious objectors from military service. It is, however, so narrowly drawn and often so flagrantly misapplied by local boards as to be largely useless.

Three things are basically wrong with the present rules on conscientious objection.

First, existing law discriminates—in violation of constitutional guarantees of freedom of worship—against those whose moral objection to war is based on other than religious grounds.

Since the early days of World War I, Congress has recognized the principle of conscientious objection. Initially, most conscientious objectors were members of Quakers, Brethren, and other pacifist sects.

Under the 1940 Selective Service and Training Act, the exemption for conscientious objectors was limited to those whose objection to war was based on religious training and belief. This reflected the historical fact of the religious origin of conscientious objection.

It soon became apparent, however that those who objected to war on grounds of conscience included persons with humanist attitudes not rooted in formal religion.

From 1943 to 1965, the Federal courts broadened the construction of the conscientious objector's exemption. This trend culminated in the Supreme Court's 1965 decision in the Seeger case; there, the Court held that the exemption was applicable to any person whose antiwar convictions occupied a place in his life parallel to that filled by the "Supreme Being" of the religious conscientious objector.

Unfortunately, Congress in effect overruled the Seeger decision 2 years later. The 1967 Selective Service Act specifically excluded those whose objection to war was based on "essentially political, sociological, or philosophical views or a merely personal moral code." As a result, persons whose objection to war was not based on formal religion generally were barred from classification as conscientious objectors.

On April 1, 1969, Chief U.S. District Judge Charles W. Wyzanski, Jr., ruled that the 1967 act "unconstitutionally discriminates because it fails to recognize persons claiming conscientious objector status on other than religious grounds." He pointed out that such discrimination violates the provision of the first amendment that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

He said:

> Congress unconstitutionally discriminated against . . . men like [the defendant] who, whether they be religious or not, are motivated in their objections to the draft by profound moral beliefs which constitute the general convictions of their beings.

The National Council of Churches, commenting on this subject in February 1967, aptly made the same point:

Conscience is not a monopoly of Christians or of the religious traditions. Neither is there one kind of conscience that is "religions" and another that is "non-religious"; but only the human conscience.

Under the1967 law, young men, American citizens, are denied freedom of conscience—in violation of the U.S. Constitution.

Second, the statutory requirement that the registrant must establish his conscientious objection to "all war" is much too sweeping. A more selective standard is urgently needed.

A young man who wishes to qualify for conscientious objector status now must do more than establish his moral opposition to war in the present historical context. He must answer all sorts of hypothetical questions about what his attitudes would have been to wars in other historical situations. He is asked whether he would have fought in the Revolutionary War or whether he would have fought Hitler.

But how can he honestly answer questions like these? A 20-year-old's attitudes toward war can only really be formed on the basis of wars in his own lifetime—like the Vietnam war. How can he really know how he would have acted in World War II, which happened before he was born? We who are over 40 can remember World War II and can talk meaningfully about whether we would have served in it. But can any of us really say how we would have acted in the Civil War; in the Mexican-American War; in the Revolutionary War? These are hypothetical questions without any real meaning to a decision as profoundly personal as a matter of conscience.

We must bear in mind that conscientious objectors have to serve their country in other ways. A conscientious objector must serve in a noncombatant capacity in the military—for example—as a medic in the battlefield—or else he is assigned by his draft board to work for 2 years in "alternative civilian service in the national interest" at military pay—for example, as an attendant in a mental institution.

In administering the exemption for conscientious objectors, the emphasis should be not so much on the applicant's attitude toward hypothetical or long-past wars, but to war as it is now fought. The basic question should be whether his objection to war in its present historical context is truly based upon conscience—upon a profound moral repugnance against killing.

In short, it is spurious to attempt to distinguish "selective" conscientious objection from "total" conscientious objection. No man can honestly say what his conscience dictates, except in the situation with which he is actually confronted.

Third, the present law permits local draft boards to disregard the law and deny conscientious objector status even to those legally entitled to it.

Local boards now decide whether a registrant is entitled to draft exemption as a conscientious objector. If a board rules against a registrant, he may appeal to the State appeal board. If, however, the State appeal board unanimously sustains the local board, there is no further administrative remedy. The registrant's only recourse, in that event, lies in the courts.

It is an open secret that many local boards are overtly hostile to registrants claiming conscientious objector status. The fact that so many boards are composed of older persons, often themselves veterans, tends to create an atmosphere in which conscientious objector claimants are regarded as "cowardly" or "unpatriotic." This attitude—coupled with the fact that conscientious objection to war is a subjective matter not easily capable of proof—often makes it difficult to get a fair hearing at the local level. Moreover, the determination of the local board has a considerable degree of finality, as State appeal boards are reluctant to reverse local board's decisions in the absence of the clearest evidence.

In some instances, local boards have adopted standards of their own that clearly contravene the law.

Some boards, for example, have taken the view that no registrant who is not a member of a traditional pacifist sect can qualify for exemption. This summer the New York Times reported a particularly flagrant case where members of a Long Island local board admitted that they routinely denied conscientious objector status to Protestant, Catholic, or Jewish applicants, on the grounds that these religions have not adopted pacifism as a dogma. The board simply disregarded the fact that the law clearly makes the registrant's own personal religious convictions, rather than the official tenets of his religion, determinative of his right to the exemption.

My second bill, S. 3325, would seek to reform these abuses by adopting a more selective standard for conscientious objection, and changing the procedures for appealing a local board's denial of conscientious objector status.

The bill would exempt from military training and service any person "who, by reason of profound moral conviction, is conscientiously opposed to war in the historical context" at the time the registrant is applying for exemption.

This change in the statutory standard would accomplish two results.

It would, in the first place, eliminate the unconstitutional religious test that exists in present law.

The proposed standard would only require the registrant to establish that he was conscientiously opposed to war "by reason of profound moral conviction." There would be no requirement that this conviction has to be religious in nature.

It would, in the second place, drop the unrealistic present requirement that the registrant prove his opposition "to war in any form."

Instead, it would require him to establish his opposition to war "in the historical context" of the time his application is being considered.

This makes his attitude toward war as he actually knows it—war in the current historical context—determinative of his claim to conscientious objector status. He would no longer have to answer questions about his views about hypothetical or long past wars—views which hardly would affect his real moral attitudes toward military service.

The bill would also establish a "National Conscientious Objector Appeals Board." The Board, consisting of five civilian members appointed by the President for terms of 5 years, would have the sole function of hearing appeals by applicants for conscientious objector status.

If an applicant were refused conscientious objector exemption by a local board, and this refusal were upheld by the State appeal board, the registrant would have further appeal as of right to this national review agency.

The function of the National Board would be to assure that local boards are applying the statutory standards of conscientious objectors in a fair and lawful manner. Because the Board would deal exclusively with conscientious objector cases, it could develop some real familiarity with this field of law. If men of stature are appointed to the Board, it could do much to remedy the abuse that now exists in this sensitive area.

An additional provision would guarantee an applicant for conscientious objector status a reasonable time to prepare his case and the right to be represented by counsel both at the local board and the appeals levels. These elementary rights have not always been observed under present law.

S. 3326: ELIMINATION OF UNDERGRADUATE STUDENT DEFERMENTS

Under the present system, a student successfully pursuing an undergraduate degree is entitled to a student deferment until graduation. This automatic deferment should be abolished.

When a young man serves should not depend upon whether his parents' wealth or his intellectual abilities enable him to go to college. The draft system should not be used as an incentive for college education. Any automatic student deferment tends to discriminate against the less educated and less affluent.

The inherent unfairness of undergraduate deferments becomes particularly striking in times like today, when a war is going on. The young man who does not qualify for a student deferment is faced with being drafted to fight in Vietnam and possibly, being killed. The young man who qualifies for the deferment may postpone his service for 4 years, at which time the Vietnam war may be over.

My third bill, S. 3326, would abolish the undergraduate student deferment for students other than those already in college.

Under the bill, every young draft eligible young man who becomes of draft age after its effective date would be placed in the lottery, whether or not he plans to go to college. If he is chosen before he enters college, he will have to serve immediately, even though he wants to go to college. If he is already in college when he is chosen, he will have to interrupt his studies—but will under another provision of existing law, be entitled to a short deferment to enable him to complete his current year.

However, the bill would continue to

preserve deferment for students now in college. This is necessary to prevent those who are in the midst of their college careers from having their studies disrupted. Specifically, all students who had already entered college at the time of enactment of the bill would be entitled to the undergraduate deferment as long as they are successfully pursuing their studies.

Mr. President, I ask unanimous consent that the text of my bills be printed in the RECORD.

The VICE PRESIDENT. The bills will be received and appropriately referred; and, without objection, the bills will be printed in the RECORD.

The bills (S. 3324) to amend the Military Selective Service Act of 1967 to establish a National Selective Service Commission to head the Selective Service System;

(S. 3325) to amend the Military Selective Service Act of 1967 to establish a National Conscientious Objector Appeals Board, and for other purposes; and

(S. 3326) to amend the Military Selective Service Act of 1967 to eliminate student deferments, introduced by Mr. GOODELL, were received, read twice by their titles, and referred to the Committee on Armed Services, as follows:

S. 3324

A bill to amend the Military Selective Service Act of 1967 to establish a National Selective Service Commission to head the Selective Service System

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraphs (1) and (3) of section 10(a) of the Military Selective Service Act of 1967 are amended to read as follows:

"(1) There is hereby established in the executive branch of the Government an agency to be known as the Selective Service System and a National Selective Service Commission which shall direct the operations of the Selective Service System."

"(3) The National Selective Service Commission shall consist of five members appointed by the President by and with the advice and consent of the Senate. The terms of the members first appointed to the Commission shall be as follows: one shall be appointed for a term of one year; one for a term of two years; one for a term of three years; one for a term of four years; and one for a term of five years. All members of the Commission subsequently appointed shall be appointed for five-year terms except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed may be appointed only for the unexpired term of his predecessor. No member of the Commission may be appointed for more than two consecutive terms. No more than three members of the Commission may at any time be registered members of the same political party. Only citizens of the United States shall be appointed to the Commission and no member of the Armed Forces shall be eligible for appointment to the Commission. Each member of the Commission shall hold office for the term for which he was appointed and until his successor shall have been appointed and taken office. The President shall designate one of the members of the Commission to serve, during the term of such member, as chairman of the Commission."

SEC. 2. The Military Selective Service Act of 1967 is further amended as follows:

(1) Section 10(a) is amended by adding a new paragraph (5) to read as follows:

"(5) It shall be the responsibility of the National Selective Service Commission to develop and implement procedures to assure that standards and criteria for classification and deferment of persons registered under this title are to the maximum extent feasible administered uniformly throughout all parts of the Selective Service System."

(2) The first sentence of Section 4(g) is amended by striking out "Director of the Selective Service System" and inserting in lieu thereof "National Selective Service Commission"; and by striking out "Director of Selective Service" and inserting in lieu thereof "Commission".

(3) Section 12(c) is amended by striking out "Director of Selective Service System" and inserting in lieu thereof "National Selective Service Commission".

(4) Section 16(f) is amended to read as follows:

"(f) The term 'National Selective Service Commission' means the Commission established pursuant to section 10(a) of this title."

SEC. 3. (a) Section 5314 of title 5, United States Code, which prescribes executive pay rates for positions at level III, is amended by adding at the end thereof the following:

"(54) Chairman of the National Selective Service Commission."

(b) Section 5315 of such title, which prescribes executive pay rates for positions at level IV, is amended by striking out

"(70) Director of Selective Service."

and inserting in lieu thereof the following:

"(70) Members, National Selective Service Commission."

S. 3325

A bill to amend the Military Selective Service Act of 1967 to establish a National Conscientious Objector Appeals Board, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 6(j) of the Military Selective Service Act of 1967 is amended by striking out the first and second sentences of such section and inserting in lieu thereof the following: "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of profound moral conviction, is conscientiously opposed to participation in war in the historical context of the time such person would otherwise be subject to such combatant training and service."

(b) The third sentence of such section is amended by striking out "local board shall" and inserting in lieu thereof "local board or by an appeal board shall".

(c) Such section is further amended by adding at the end thereof the following: "Any person claiming exemption from combatant training and service because of conscientious objections shall, if such claim is not sustained by the appeal board for the area in which the local board having jurisdiction over the registrant is located, be entitled to an appeal to the National Conscientious Objector Appeals Board established pursuant to section 10(b)(3) of this title. Such National Conscientious Objector Appeal Board shall have the power to review the decision of such local board and such appeal board for such area with respect to such claim for exemption, on both the facts and the law."

SEC. 2. Section 10(b)(3) of the Military Selective Service Act of 1967 is amended by inserting after the fifth sentence following the second proviso the following: "There shall be an appeals board known as the 'National Conscientious Objector Appeals Board'. Such Board shall hear appeals from decisions of appeal boards below the Presidential level relating to claims of registrants for exemption from combatant training and service because of conscientious objection. Such Board shall be composed of five members appointed by the President from the public and private sector. The terms of members first appointed to the Board shall be as follows: one shall be appointed for a term of one year; one for a term of two years; one for a term of three years; one for a term of four years; and one for a term of five years. All members of the Board subsequently appointed shall be appointed for five-year terms except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed may be appointed only for the unexpired term of his predecessor. No member of the Board may be appointed for more than two consecutive terms. No member of the Armed Forces shall be eligible for appointment to the Board. Each member of the Board shall hold office for the term for which he was appointed and until his successor shall have been appointed and taken office. The President shall designate one of the members of the Board to serve, during the term of such member, as chairman of the Board. Members of the Board not otherwise employed by the Federal government shall receive compensation at the rate of $100 per day for each day they are engaged in the performance of their duties as members of the Board. All members shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Board."

Section 3. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of Section 2 of this Act.

S. 3326

A bill to amend the Military Selective Service Act of 1967 to eliminate student deferments

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 (h) (1) of the Military Selective Service Act is hereby repealed.

SEC. 2. The repeal made by the first section of this Act shall not apply in the case of any person who was granted a student deferment under section 6(h) of the Military Selective Service Act of 1967 if such deferment had not been terminated prior to the date of enactment of this Act.

ADDITIONAL COSPONSORS OF BILLS

S. 2804

Mr. MAGNUSON. Mr. President, I ask unanimous consent that, at the next printing, the names of the senior Senator from Colorado (Mr. ALLOTT), the senior Senator from North Dakota (Mr. YOUNG), and the senior Senator from Illinois (Mr. PERCY) be added as cosponsors of S. 2804, to permit a compact between the several States relating to taxation of multistate taxpayers.

The VICE PRESIDENT. Without objection, it is so ordered.

S. 3113

Mr. MAGNUSON. Mr. President, I ask unanimous consent that, at the next printing, the names of the senior Senator from Maryland (Mr. TYDINGS) and the senior Senator from West Virginia (Mr. RANDOLPH) be added as cosponsors of S. 3113, to provide for a separate session of Congress each year and to establish the calendar year as the fiscal year.

The VICE PRESIDENT. Without objection, it is so ordered.

SENATE RESOLUTION 319—SUBMISSION OF A RESOLUTION ESTABLISHING A SELECT COMMITTEE TO INVESTIGATE IMPROPER ACTIVITIES IN LABOR-MANAGEMENT RELATIONS

Mr. GRIFFIN submitted a resolution (S. Res. 319) establishing a Select Committee To Investigate Improper Activities in Labor-Management Relations.

(The remarks of Mr. GRIFFIN when he submitted the resolution appear later in the RECORD under the appropriate heading.)

URBAN MASS TRANSPORTATION ASSISTANCE ACT OF 1969—AMENDMENT

AMENDMENT NO. 449

Mr. CRANSTON submitted an amendment, intended to be proposed by him, to S. 3154, to provide long-term financing for expanded public transportation programs, and for other purposes, which was ordered to lie on the table and to be printed.

ORGANIZED CRIME CONTROL ACT OF 1969—AMENDMENT

AMENDMENT NO. 450

Mr. HART (for himself and Mr. KENNEDY) proposed an amendment to the bill (S. 30) relating to the control of organized crime in the United States, which was ordered to be printed.

(The remarks of Mr. HART when he proposed the amendment appear later in the RECORD under the appropriate heading.)

COURTS BRING CHAOS TO SOUTHERN SCHOOLS

Mr. RUSSELL. Mr. President, a recent column by David Lawrence, one of our Nation's most distinguished journalists, provides a penetrating insight into the chaos that has resulted from the recent decisions of the Federal courts, demanding instant integration throughout the Southern States.

Mr. Lawrence focuses his attention on a letter to the President from an Atlanta schoolteacher of some 14 years. It would be hard to find even a hint in this letter to indicate that this teacher possesses any of the prejudices critics of the South seem to think are so prevalent among southerners. Her concern is clearly with education and like many others in our part of the country, she apparently finds it difficult to comprehend how reasonable men can so arbitrarily place the achievement of racial balance in public education ahead of every administrative and educational consideration.

Atlanta is a unique city in many ways, but from the standpoint of economics and demography, Atlanta is only different from other cities throughout the United States like Newark, Cleveland, and Detroit because of its location on the map. But this difference seems to be sufficient for the Federal courts to impose one set of standards on Atlanta, while ignoring blatant segregation in northern cities.

Mr. President, the pusillanimous attitude of the Federal courts that they must accede to the demands of anyone asking for punitive treatment for the South has created great confusion in every town and county, but its impact on Atlanta is particularly ironic.

This city has been regarded by many as a model in the field of race relations. Many of the citizens who are responsible for this apparent atmosphere of tolerance and understanding are the ones who are most enraged by the current situation. They have even received support in their position from such unlikely persons as Congressman ADAM CLAYTON POWELL who said last week that the courts are mistaken in setting an arbitrary deadline of February 1, and that total integration should be delayed until the school year begins in September.

It is difficult to conceive of the chaos that has resulted from these forcible requirements. Educators—men and women who given their lives to developing good local school systems—are being treated with insolence and contempt. A new racism is being imposed on schoolchildren who are, in some cases, being transported great distances in order to achieve some arbitrary racial quota. The imposition of these requirements during midyear has been so disruptive that it is highly unlikely that any semblance of an atmosphere conducive to learning can be restored during this academic year.

Mr. President, I have been a close observer of American politics for many years, and I have seen the political pendulum make the full cycle many times. Although I have had reasons for concern, I have never lost my faith in the willingness of the American people to protect the basic freedoms that have made this country unique among the nations of history. I believe they recognize dangerous precedents and are alert to indications of totalitarianism. They realize that everyone's rights are placed in jeopardy when there is an imposition on the rights of anyone. They understand what may happen on another day in another situation.

Senators who maintain an attitude of indifference on the basis that their States are not bothered by these requirements may dangerously underestimate the concern of their constituencies.

I do not believe the people of the West and the North are going to stand by and watch public education destroyed in the South by judicial tyranny without realizing that their school systems may be eventually imperilled. And if I have any power over the situation, their fears will be well founded. I am opposed to permitting the Federal courts to take over public education, but I strongly favor equal treatment under the law. If they are determined to take over the schools of Georgia, I intend to exert every effort to insure that equal treatment is accorded to the systems of public education throughout the entire United States.

I do not believe I have ever been guilty of attempting to deceive the people of Georgia or to hold out false hopes. There is a great feeling of hopelessness and pessimism among my people over the future of public education and little can be said to dispel their despair. I have practically exhausted myself in attempting to prevent and postpone the arrival of the present state of affairs.

And now the only resort remaining for the people of the South rests with their fellow countrymen in other regions of the Nation and in their ability to perceive the threat to the future of public education in the country that these arbitrary edicts represent.

Mr. President, I ask unanimous consent that this article by David Lawrence be inserted in the RECORD.

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

FRUSTRATION IN SOUTHERN SCHOOLS

Probably few people realize the feeling of helplessness and frustration that pervades the public-school systems in the South today, particularly among the teachers. A woman who has been for 14 years a teacher in Atlanta, Ga., has written a letter to President Nixon to tell him what is really happening to education because of the failure of the courts to give adequate time for the adjustments necessary to deal with racial desegregation in the public schools.

The teacher points out that Atlanta has made every effort to meet each requirement by the federal government, and the school system at large has adopted the 58 percent white to 42 percent Negro ratio required for the faculty. But it appears this isn't enough as the federal court now is ordering that the faculty of each individual school must be integrated to that percentage and, as the Atlanta teacher writes, "worst of all, in the middle of a school year." She adds:

"Mr. Nixon, how can anyone fail to see what complete havoc will result from the transferral of approximately 1,700 teachers from one school to another in midyear. Any teacher can tell you what emotional turmoil this will create in the classrooms of Atlanta for both teachers and students alike. It surely would not take a teacher to understand the delay in the learning situation itself which would, of necessity, result from a change of this type.

"Any educator can tell you that a teacher spends much time and effort building up a good 'class climate' and an inter-relationship with his or her students which is conducive to good learning. This is not to mention the obvious fact that it takes time for a teacher to achieve a knowledge of the learning differences, both abilities and difficulties, of each of the children in the class. This is true not only with an elementary teacher with her average of 35 pupils, but more especially with a high-school teacher with a daily load of perhaps 150 different students.

"I mention this to try to bring out the point that if it is quality education—the type of situation that is best for each child in a school system—that the federal government is concerned about and is making an effort to achieve, then there needs to be some rethinking done, because such a step as this cannot fail to bring about the opposite result."

The teacher not only speaks of the disastrous effects of the changes taking place in the middle of the school year, but emphasizes also the inconveniences to the teachers of both races in finding it necessary to travel considerable distances twice each day to go to a school far from their own neighborhoods. This, she declares, has "built up a resentment which is unequal to any we have yet felt." She says:

"To be forced to change one's place of employment is against all that we, as Americans, have always held dear, and the fact that it is actually happening to us here in America is unbelievable."

There are some points which the Atlanta teacher didn't mention. Is the federal government, for instance, taking over the running of the public schools of the country? Originally the states were supposed to manage and operate the educational system. If fundamental changes are to be made, certainly ample time for readjustments would seem to be logical. But the courts also have stepped in and even fixed dates on which specific steps must be taken. Never has the judiciary so arbitrarily interfered with the operations of the educational system as it has in the last few months.

The bitterness in the South is deep, not because of desegregation, but because of the unfair tactics being used to accomplish it. Most of all, the people resent the fact that schools in other parts of the country are permitted to have segregation—in suburban areas as well as in the cities—and nothing is being done to apply the same rules outside the South that are being imposed in the South.

The situation is complicated even more by the confusion among local lawyers who are conscientiously trying to advise the school systems. They find that Congress has flatly stated that federal funds must not be used to "correct racial imbalance," and that no presidential regulation or law stipulates racial quotas for public schools. Indeed, the present administration has been inclined to let the courts take the full responsibility. But from a legal standpoint, the rights and obligations of the states and of the federal government are by no means clear.

THE C–5A WING FAILURE

Mr. STENNIS. Mr. President, on Monday of this week I announced that I had instructed the staff of the Preparedness Investigating Subcommittee to broaden its inquiry into the C–5A transport aircraft so as to include its structural soundness in view of the discovery of a large crack in the wing of one of these giant jet transports. As a part of this, I immediately dispatched a member of the staff to the manufacturer's plant at Marietta, Ga., for a firsthand and on-the-spot investigation. After visiting the plant, and after reviewing the problems associated with the aircraft with officials of the Air Force and Lockheed Aircraft Corp., the staff member has now returned and furnished me a report.

What I shall say is not final or conclusive but is based on the best information available at this time. I make this statement today because of the interest of the Congress in this plane and because of my own responsibility to do what I can to see that the Air Force gets a good and efficient aircraft at the lowest possible cost. This is of particular importance in view of the past problems with respect to the C–5A and the cost overruns the program has experienced.

It appears now, and it is the opinion of engineers and technical experts of both the Air Force and Lockheed, that the structural failure in the wing last week involved the same problem which resulted in the previous wing failure during the static test in July 1969. They believe that the same "fix" or modification which was tenatively developed as a result of last year's failure will also be applicable to the recent failure. However, this problem is still being studied, and restrictions have been placed on the operation of this aircraft until an approved modification is finalized and completed.

While the tentative fix is currently being placed on aircraft No. 3, it is not expected that the modification will be incorporated into production aircraft until aircraft No. 32 is delivered. Aircraft delivered before No. 32 will then have to be returned to the Lockheed plant to be retrofitted. I am concerned that so many aircraft will have been delivered and will be flying without having the wing structure beefed up. However, the Air Force asserts that, with the load restrictions in effect, flying the aircraft does not present a safety problem. I sincerely hope and pray they are right. In the meantime, I understand that the Air Force and the manufacturer are considering plans which may improve the modification schedule and I will follow this closely.

The Air Force states that the load limits or restrictions on this aircraft are not of great importance or significance at this time because the plane is involved in training only and is not operational. If the restrictions are still in effect when the plane joins the operational fleet, they will then become important.

We made inquiry as to who would bear the cost of the modification, which is tentatively estimated at about $80,000 per aircraft. The answer received was that the first 58 aircraft—known as run A—the entire cost would fall on the contractor. Because of the repricing formula in the contract, a portion of the cost for the remaining 23 aircraft—run B—will probably be borne by the Air Force. This, of course, is a preliminary conclusion.

The staff is aware of and is following two other potential problems affecting the development and delivery schedule of the C–5A, and I think that they should be brought to the attention of the Senate at this time.

One possible problem reported to me involves the radar system which I understand is not operating completely in all of the modes and conditions for which it is designed. Both Lockheed and the Air Force have been requested to present complete details with respect to this to the subcommittee staff.

The second problem involves the possibility of a program delivery schedule slippage for these aircraft. The extent of the slippage is not known at this time but the staff will follow up on this matter to determine how significant and serious it is. I have also been told that a labor strike at General Electric, the engine manufacturer, could soon have an adverse effect on the delivery schedule of the C–5A.

As I said at the outset I intend to do everything that I can to see that the Government receives a good and effective aircraft at the lowest possible cost, and I hope that the Air Force and Lockheed will marshal all the forces and resources which are necessary to eliminate these problems as promptly as possible. In the meantime, the staff will follow up on these matters vigorously and I will keep the Senate advised of all significant developments.

THE NEED FOR UNIFORM ACCOUNTING STANDARDS ON DEFENSE CONTRACTS

Mr. DODD. Mr. President, it is welcome news that the General Accounting Office has now recommended to Congress that uniform accounting standards be established on defense contracts.

Newspaper accounts which reported this development earlier this week made the point that the GAO report represents a personal victory for Adm. Hyman Rickover over the defense industry and over certain elements in the Defense Department.

Our Nation already owes a great debt to Admiral Rickover for inspiring our nuclear submarine program and for giving us a vital lead over the Soviet Union in this critical area of defense technology. In putting through this program, Admiral Rickover also had to overcome the opposition of some of the more conservative elements in our Defense Establishment.

The Nation owes Admiral Rickover recognition of an altogether different order for his personal crusade against waste in our Defense Establishment.

Admiral Rickover has long been urging the establishment of uniform accounting standards to check on the price of defense contracts and, in some cases, to prevent contractors from charging the Government twice for the same costs. In testimony before various congressional committees in recent years, he has hammered away at the argument that inconsistent and ill-defined standards were being used in determining costs of defense contracts, and that this practice inevitably made for overcharging and waste.

As a result of Admiral Rickover's campaign, the House Committee on Banking and Currency in 1968 inserted a provision in the Defense Production Act requiring the establishment of uniform accounting standards for defense contracts. Unfortunately, this proposal was defeated because of opposition in the Senate.

It is my hope, now that the General Accounting Office itself has recommended the establishment of uniform accounting standards, that Congress will act affirmatively on this request.

I believe this hope is realistic because the Defense Department itself, apparently, now shares the opinion of the General Accounting Office that uniform accounting standards are both feasible and desirable.

Admiral Rickover has estimated that uniform cost accounting could save the Pentagon as much as $2 billion a year. Clearly, here is a reform that we can no longer afford to neglect.

Citizens are complaining bitterly, and rightly so, of high taxes.

Other Government departments are being compelled to cut back even on essential programs because of the budgetary squeeze.

Under these circumstances, it seems to me all the more imperative that we do everything in our power to eliminate waste in the Defense Department and in other Government departments, and to

keep the cost of all Government contracts to a minimum.

Mr. President, I ask unanimous consent to have printed in the RECORD an article, captioned "New Check Asked on Defense Work," and published in the New York Times of January 19.

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

[From the New York Times, Jan. 19, 1970]

NEW CHECK ASKED ON DEFENSE WORK—G.A.O. URGES CONGRESS TO ORDER UNIFORM ACCOUNTING STANDARDS TO CUT COSTS

(By John W. Finney)

WASHINGTON, January 18.—The General Accounting Office has recommended to Congress that uniform accounting standards be established as a check on the price of defense contracts and to prevent contractors from charging the Government twice for certain costs.

The proposal was hailed today by Senator William Proxmire, Democrat of Wisconsin, who said it would "represent a long step toward bringing skyrocketing military costs under control."

In view of the continuing opposition of the defense industry, the proposal is certain to encounter controversy. But the respect commanded by the accounting office in Congress, combined with the new critical attitude in Congress toward defense spending, may be enough this year to tip the balance in favor of the proposal.

While the General Accounting Office made no estimate of potential saving. Vice Adm. Hyman G. Rickover, who has championed the establishment of uniform cost accounting standards in the negotiation of defense contracts, has said that the step could save the Pentagon $2-billion a year.

In a report on an 18-month study ordered by Congress, the accounting office—Congress' watchdog agency on Government spending—found, as had long been reported by Admiral Rickover in testimony before Congressional committees, that inconsistent, variable and ill-defined standards were being used in determining costs of defense contracts.

As a result, it said, Government procurement officers were at a disadvantage in negotiating the price of a defense contract, and defense contractors sometimes were able to charge the Government twice for the same cost.

Under the accounting office proposal uniform cost accounting standards would be established at Congressional direction to help to detemine the price on so-called negotiated contracts. The Pentagon uses this type of contract for the procurement of most of its weapons and materials.

HOW CONTRACTS ARE LET

Negotiated contracts are let on a noncompetitive basis, with Government procurement officials and the contractor sitting down to determine the price of the contract, based largely on expected costs submitted by the contractor.

In determining the cost, the accounting office's report said, accounting principles are presently being used that are designed primarily to determine the taxes or financial conditions of a company but that are "quite foreign to the purposes of contract costing."

In emphasizing the need for uniform cost accounting standards, the report said that a growing proportion of Defense Department purchases was made through negotiated contracts rather than by advertised competitive bids. In the last fiscal year, for example, 89 per cent of military procurement totaling more than $36-billion was made through negotiated contracts.

The accounting office's report, submitted to Congressional committees last week and to be made public tomorrow, represents in some way a personal victory for Admiral Rickover over the Defense Department and the defense industry.

As a result of the Rickover campaign, the House Banking and Currency Committee in 1968 inserted a provision in the Defense Production Act requiring the establishment of uniform accounting standards by the accounting office.

But in the Senate Banking Committee, the proposal ran into concerted opposition from the Pentagon and the defense industry. The Defense Department objected that uniform standards were "neither feasible nor desirable"—a position it has now reversed—and defense industry associations maintained they were unnecessary and impractical.

COMPROMISE REACHED

As a result, in extending the Defense Production Act in 1968, the Senate Banking Committee struck a compromise, ultimately adopted, calling upon the accounting office to study the feasibility of applying uniform accounting standards in negotiating a defense contract of more than $100,000.

In its report on the study, the accounting office said it was "feasible to establish and apply cost accounting standards to provide a greater degree of uniformity and consistency in cost accounting as a basis for negotiating and administering procurement contracts."

ACROSS-THE-BOARD PROGRESS IN THE TENNESSEE VALLEY

Mr. ALLEN. Mr. President, giving emphasis to the widespread benefits to people in and out of the Tennessee Valley is the 36th annual report of the Tennessee Valley Authority which was transmitted to the President and the Congress during the adjournment period just ended.

As always, the report is a story of progress—past, present, and future. It is an account of the amazing transformation that has been, is being and will be wrought in the great Tennessee Valley. For almost 37 years now, this river valley has been a pilot plan to show how men can develop their resources by democratic means and for the benefit of all the people.

The report tells us:

A river has been controlled and a region has been electrified.

The region has achieved a balance between outmigration and immigration, reflecting widening economic opportunity for its people. Industry has become the region's principal employer and new opportunities await development in the trades and service sector of the economy.

Mr. President, the Tennessee Valley Authority and the people of the region can take justifiable pride in their achievements. The unified development of the natural resources of the Tennessee River Basin by TVA is an inspiring record of accomplishments that skeptics and critics once said were impossible. Yet, the facts and figures are those for all to see.

During 1969 the number of customers served by TVA and the 160 municipal and cooperative distributors which retail TVA power in parts of seven States passed the 2 million mark. When TVA started in 1933, the entire region which is now served by TVA electricity used 1.5 billion kilowatt-hours in that year. Last year TVA sold 86.4 billion kilowatt-hours of electricity. To meet the region's increasing requirements for electricity, TVA is now engaged in the largest construction program in its history to add 9.7 million kilowatts of generating capacity within the next 5 years.

The report tells us that shipments of commercial freight on the Tennessee River Waterway totaled a record high tonnage for the seventh consecutive year—nearly 23 million tons. In addition, the waterway saved nearly $40 million in transportation costs to shippers. This is another record and more than five times the Federal costs of maintaining and operating the waterway. The report also revealed that private investment in new and expanded waterfront plants totaled $263 million. This is another high, and since 1933 nearly $1.8 billion has been invested by private industry along the waterway.

TVA reported that three floods were regulated during 1969, averting some $373,000 in damages. It pointed out that since TVA's first flood control project went into operation in 1936, more than $369 million in flood damages had been averted.

Turning to coal, TVA reported that during the last fiscal year it brought in 28.9 million tons from fives States to power furnaces at its steam generating plants. The agency also awarded coal contracts during the year for 159.7 million tons at a cost of more than $600 million.

Another boost to private enterprise came through the shipment of coal, with railroads carrying the heaviest tonnage, 14,681,000. Other methods of shipment included all barge, 5,669,000 tons; all truck, 4,986,000 tons; and rail-barge, 3,528,000 tons.

TVA continued to put increased emphasis on its splendid tributary area development program during 1969. The agency completed the first of four dams and reservoirs planned in the Bear Creek Watershed of northwest Alabama and continued construction on the multiple-purpose Tims Ford Dam on the Elk River. An agreement of particular significance in the future was reached on arrangements for building and developing a proposed river terminal and related industrial complex on the Yellow Creek embayment of Pickwick Reservoir. This long-range development program will unfold in the vicinity of the northern end of the connecting link of the long-awaited waterway to tie together the Tennessee and Tombigbee river systems. When the Tennessee-Tombigbee Canal is built, the benefits to the people of the entire Southern and Midwestern waterway empire will be incalculable. Water transportation will increase by millions of tons a year and great areas now denied the benefits of low-cost water transportation will enter a new day of economic growth.

TVA long ago proved its ability to pay its own way. Out of earnings, TVA is steadily repaying all U.S. Treasury funds employed in its power program and is consistently ahead of schedule. Last year TVA paid $68.1 million to the U.S. Treasury. In addition, 5 percent of TVA's gross proceeds from the sale of power is paid to States and counties as in-lieu tax

payments. Last year State and local governments received $37.4 million from TVA.

Mr. President, I have mentioned just a few highlights of TVA during the last fiscal year. In other areas, such as recreation, TVA continued to develop new concepts and improve existing programs. Continued progress was made on the development of urea-based products at the giant National Fertilizer Development Center at Muscle Shoals. In forestry, land and forest conservation is being practiced and taught in the Tennessee Valley as in perhaps no other region in the world. TVA is also undertaking programs of research and related actions to protect and improve the quality of the natural environment.

Yes, Mr. President, across-the-board progress continued to be the rule last year as TVA and the people of the Tennessee Valley marked the 36th year of their cooperative partnership to develop the natural resources of the area on a unified basis and to put them to work for all the people.

I commend the 36th TVA annual report to the Senate. I hope it will be carefully read by every Member of the Congress. For breadth of vision and accomplishment, for engineering excellence and social improvement, TVA is the one shining piece of American enterprise unquestionably admired and increasingly emulated throughout the world.

HUNGER IN AMERICA

Mr. KENNEDY. Mr. President, hunger in America has been highlighted as a national shame. In the midst of the greatest affluence, the most fantastic technological achievements, and the maximum in individual freedom known to man, one-third of our population is poor and by definition—hungry. The tremendous hope that we all have for correcting this shame is constantly renewed by the increasing concern that is being expressed by thoughtful Americans.

Youthful students, professors, scientists, parents, and government officials are being heard in their plea for effective action to end hunger in America. Official recognition from the Federal Government for the need to improve our food assistance efforts has been voiced in the councils of the Senate Select Committee on Nutrition and Human Needs, in the recent White House Conference on Nutrition and Health, and in the emergency food and medical programs administered by the Office of Economic Opportunity. I have worked constantly to help make the kind of changes in our Federal food assistance programs that are necessary to deliver needed help to the poor.

Today, Mr. President, I would like to present for the RECORD a recount of the comments and suggestions recently obtained from my very distinguished colleague from Indiana, Senator BAYH. In a TV interview on January 4, Senator BAYH offered his outlook for the future of our need for improved food assistance for those who cannot purchase an adequate diet. He explained the need to guarantee that every American citizen has a birthright to all the glamorous and glittering benefits of our Nation. But, each American also deserves full opportunity to enjoy and consume a healthy, nutritious diet. In that interview, the Senator from Indiana gives an eloquent discourse on why he supports the demands for guarantees to nutritious health, for every American citizen.

I am pleased, therefore, to ask for unanimous consent to enter in the RECORD, a copy of the transcript of the Senator's interview on the NBC–TV program, "Guideline."

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

[From the National Catholic Office for Radio and Television, Guideline, Jan. 4, 1970]

HUNGER: WHOSE PROBLEM?

Moderator: Prof. Charles Riker, with United States Senator Birch Bayh.

Produced by Joe Gallagher.

In association with the National Broadcasting Co.

Producer-Director for NBC: Martin Hoade.

ANNOUNCER. "Guidelines", the first in a series of four programs about life and its problems. The topic of today's program, "Hunger—whose problem?" On today's program, brought to you live from our studios in Washington, Senator Birch Bayh, Democrat of Indiana and Professor Charles Riker of Purdue University will discuss the issue of hunger and poverty from a moral and ethical point of view. Professor Riker.

Prof. CHARLES RIKER. From a moral and ethical point of view, what is your major concern about hunger and poverty in our nation today, Senator Bayh?

Senator BIRCH BAYH. Well, Professor Riker, I suppose I'd have to say that not just as a Senator but as an American citizen who has been fortunate in being reared in a home that didn't know poverty, and as a father of a 14 year old son who has never been hungry, my number one concern is that hunger exists. Here we live in a nation that has more of everything material than any civilization's ever had before, and yet there are some 30 million of our fellow Americans who live and breathe and look very much like you who do not have enough to eat, who do not have adequate shelter and clothing and the things you and I take for granted.

RIKER. There are empty bellies in the land, huh?

BAYH. There are a number of empty stomachs, with all of the fallout and detrimental aspects.

RIKER. From visiting with you, Senator, I get the very strong impression that you care about this issue, you care about the have-nots.

BAYH. Oh, I do, very much. I certainly do.

RIKER. Could you tell us why you care?

BAYH. Well, I suppose I care for many reasons. First of all, a very personal one, I suppose. Whenever I have a chance to view first hand in my capacity as a member of the Senate some of these conditions that exist, I say to myself down in the bottom of my conscience, there but for the grace of God go I. Or my son.

Secondly, I've had the good fortune that the people of my state have elected me to public office. This is my 16th year in government, and the reason I'm in government, I suppose, is that I'm not content to be silent, to remain on the sidelines saying nothing, just criticizing, but I want to be where the action is and want to do something about these problems. This is really a sad chapter in America's history. We have to admit that in this great system that is otherwise better than any man has ever devised we do have these shortcomings, that we haven't focused in on and haven't really properly dealt with yet.

RIKER. Senator, I have here a statement endorsed by all the bishops of New York State, read in all the churches in New York State, Catholic Churches on December 7th, 1969. Selected portions of that pastoral letter: "An affluent society contains shocking evidence of poverty. It is not only the existence of 30 million poor people that astounds us but the growing bitterness and resentment of their presence among us. Rather than seeking out the root causes of poverty and distributing the goods of creation, we tend to engage in invectives about the poor and malign their moral character." And then a plea at the end, the bishops say, "We urge you to support legislation and public and voluntary programs directed at alleviating the miseries of poor people."

My question to you, Senator, how would you account for the good, God-fearing church attending people acting in an apparently rejecting and unloving fashion to those who need help?

BAYH. First, I think it's because many of these God-fearing, good American citizens don't realize what poverty is, what hunger is. They haven't had the chance to see the shrivelled Indian babies on a Navajo Reservation. This is the real irony. Our first Americans now are suffering more than any other class of people because of poverty and hunger. Most Americans haven't seen the hollow faces of the economically deprived on an Appalachian ridge, where the parents are underemployed or totally unemployed. They haven't been in the ghettoes.

And one of the real ironies is that here within a stone's throw of where we're talking, right in the shadow of the nation's capital, with all that that means in the finest American tradition, there are those families who live with the number one fear in their heart of how to keep their newborn baby from being bitten by rats at night. Most Americans haven't had the chance to look in the stark face of hunger. So they don't know it exists.

Second, they don't really realize what it means to them and to our nation when we talk about hunger. When we talk about statistics, it's so easy to say things, and the bishops hit the nail on the head there, I think, about our attitudes. It's so easy to say there are the 30 million impoverished in our cities and in rural America. But what does this mean? Well, it means more than poverty in the traditional sense. It means more than empty bellies, as you described earlier. It means mental retardation, because we now have abundant statistics to prove that if a child does not get adequate protein and vitamins, is not adequately nourished through the first three or four very important years of life, he is going to be permanently affected and affected mentally. He's not going to be able to take advantage of first class opportunities that are prevalent for most of us. They don't realize what this means from the standpoint of unemployment, welfare, increase in mental retardation, increased cost of crime, all of this blight on society.

RIKER. I get the impression that both the bishops and you would—you'd like me to be different, wouldn't you? You'd like me to change my attitude about the poor?

BAYH. Well, I think it's absolutely imperative that the average American realize that we have a national responsibility to do something about this condition that exists.

RIKER. Well, I get your message, Senator, but why should I change? What's in it for me?

BAYH. Well, I think most of us in this country still are willing to look at this problem in a greater perspective than what's in it for me or for you personally. I think most of us are willing to look at it from the standpoint of what's in it for our country. And

I think this is one of the real, one of the basic problems we have today—making equal opportunity, making the American dream possible and real for these 30 million people.

There's a tendency, I think, in the minds of many Americans today to say, well, people who are poor get what they deserved. They don't want to work. They're lazy. Well, indeed, there are some people who fit into this category. But the irony, the real sad thing about poverty today is that most of those who live in Poverty, U.S.A., are children. And although it is easy for us to say, well, Mom and Dad are getting what they deserve, I defy anyone to say that a child born into environmental conditions almost beyond description has anything to do about his birth and those conditions. That's where I get back to "there but for the Grace of God go I." And we need to decide for ourselves today, it seems to me, that you and I as American citizens are going to do something about these babies, about these children that are born in the conditions beyond their control. We're going to make it possible for them to know a better life; we're going to give them the ingredients of adequate nutrition, adequate education, so that they'll have an adequate job, and we can break this vicious poverty cycle that has become almost self-consuming today.

RIKER. I'm out of breath.

BAYH. So am I.

RIKER. I'm impressed with your data and statistics, and I sit here, Senator, and I think—I wonder if this man realizes that the good people who trained me reminded me that they were poor, but they put their hand out and said, give the money to us, we'll help the poor. I don't recall in my training people saying to me, be concerned about the individual poor with one person, with one face. And then I have another distraction. I think in the past we were taught what we reap we sow. This is our puritan ethic and one of the very good qualities in our history.

Now, in the past we said there was opportunity in this nation for anyone to be—we're all created equal, anyone has a chance to earn a living. Now, that stands here very prominently in my vision. Then I hear you saying to me that I should be concerned about people who are either unwilling or incapable of doing what has been the tradition in the nation. What's happening? Is there a split? And when did it occur? And could you help me understand that, please?

BAYH. I'll try.

RIKER. Thanks.

BAYH. And I'm not certain that there is any one magic answer. All I can give you are Birch Bayh's thoughts on this; and I do not have infinite wisdom, unfortunately. I think we need to tailor-make the governmental approach today to today's problems. I think we need to be very careful as we program governmental response to problems that we don't destroy some things that are indispensable in our American system. One of these is incentive.

I think we need to be very careful that as we deal with the problems of the poor we don't destroy the incentive of the average man to do better for himself without governmental programing. I think that this can be done.

I think we need to be very careful that we don't destroy the bootstrap opportunity where many Americans who were born in poverty, through their own incentive and their own hard work, now live in suburbia and know a better life.

But basically what we have to recognize is that we are no longer a simple society. When we were primarily a rural society, it was much easier for the average person born in poverty to find the ingredients of a better life than it is now several decades—several generations later where this problem has been significantly compounded. We could spend the entire program talking about the mistakes that have been made, the emphasis that should have been placed on education, preschool education, better nutrition, better health care, all of these things, in past generations. This is to little avail; we need to start now. Fortunately I think some momentum has been started previously, but I think we need to start now, and we need to recognize that there are these 30 million people who are living in poverty, and the great preponderance of them are children that have no control over their own destiny. And the place for government to use its influence is to program resources to allocate priorities, monies, programs, talents, all of these things that go to effecting public policy.

RIKER. Senator, excuse me. In that direction, may I be specific about a current policy? Our government pays farmers four billion dollars a year not to grow food. And often in areas where many persons are hungry. Would you speak to that apparent contradiction?

BAYH. Well, it's a very decided contradiction. We do have a problem today of controling agricultural production. We have the ingredients in rural America to produce in such abundance that it would bring about, in my judgment, another depression like we had in the late 20's and late 30's. But I think it's unfortunate that we had not realized that this depressing aspect of our rural economy, if it is handled properly, can deal with the problem of hunger. And so we are spending these billions of dollars to control production; and we have not yet found a formula for distributing the productive capacity of our farms to those who have the capacity to consume. And so I think it is very possible to govern a program of agricultural production so that we don't bring about rural depression, and to do it in such a way that we find that the productive acres find the hungry stomachs, but we haven't been able to do that yet. We just have not.

RIKER. Would you consider our policy collectively immoral to some extent?

BAYH. Well, I think rather than immoral, which connotates something calculated in some mental design, I think it's insensitive. We just haven't realized the inconsistency. I don't think anyone in Congress really is sitting there calculating or trying to devise a way to keep people from getting at the productive wealth of our farms—oh, there may be a few, but I don't think there are very many; I don't think very many citizens want this to exist. But we must realize we have the productive capacity on our farms to feed everyone in this country adequately if we would just do it.

RIKER. I'd like to change our direction slightly. You indicated before that you believe in God, and I assume that that's your basis for acting in a moral fashion. When we talk about morality and ethics in our nation, many young adults immediately interpret this as an appeal to religious standards. Religious people are moral, that's their hangup. Many of them have tunedout religion as inappropriate in today's complex world. Is there a reason other than religious that a person should be moral?

BAYH. Well, I think so. I think so. In fact, here one assumes a rather egotistical stance if one attempts to appraise both religion and government, but let me risk that for just a moment, since you asked the question.

I very frankly, Professor Riker, feel that there's a great deal of similarity behind the reason why many people have tuned out religion and God and why many people have tuned out government. I think it is absolutely important to make religion meaningful, and the love of God and following the concepts of God and religious code—meaningful in terms of today's problems.

Some of our religious institutions have not done this. Some are very doctrinaire and don't make religion a meaningful, purposeful exercise. And so it is with governmental institutions, in which we spend so much time looking at the past and cherishing our heritage, which I think we must. But our forefathers had the foresight not just to fashion a doctrine and documents that were unheard of at the time that were really revolutionary in character—but they made them alive and breathing and living concepts, and they did not intend for America of the 1970's to try to govern America in the world of the space age by still using some of the doctrine and some of the structure that were designed for a horse and buggy economy and horse and buggy America. And yet some people are intent on doing this very thing.

RIKER. I come to you and I say, I've quit the church and I doubt that God exists. Why should I be moral?

BAYH. Well, I think you should be moral because I personally believe, and you're asking for my personal belief here.

RIKER. But you've got a religious base there, and I can't buy that one right now. . . .

BAYH. I happen to believe that the moral code, let's say the ten commandments are based on good common horsesense, that it is important if 200 million Americans are going to live together that we have some sense of order. Now to me, these fit in a religious, moral context. I think you or someone else who does not believe in God can put them in a scientific, practical context, a pragmatic context. Thou shalt not kill; thou shalt not covet thy neighbor's wife. Do unto others—all of these that some of us have learned since we were babes in a moral, religious context I think make common sense in a scientific context.

RIKER. Are you suggesting——?

BAYH. You have to have some degree of order, if 200 million Americans are going to live in a society as we know it today.

RIKER. Are you suggesting that there's a reason other than a moral reason why I should help the poor?

BAYH. Oh, yes, I think so. I certainly do. I feel that we need to help the poor because they're human beings, and I'd like to see them be better human beings and share some of the experiences that the rest of us share. But to those who aren't humanitarians, to those of you who may say, why should I help them, let me suggest you have a very personal and perhaps even a selfish reason for wanting to help see that a hungry child gets enough to eat. We have adequate data today, as I said earlier, to prove conclusively that a child in its early years of life, born into these environmental conditions over which it has no control, if it does not receive adequate nourishment, in all probability will be a problem for the rest of its life. It's going to be mentally retarded. The chances of it being on the welfare roll, of being unemployed or underemployed, of it being in a mental institution or a penal institution—all these chances are significantly increased. You know, I look at many things from a political standpoint. Look at the last campaign in 1968. One of the campaign issues—it was almost an all-consuming, all-encompassing campaign issue—was this whole issue of law and order, whether it was Governor Wallace, whether it was President Nixon or Vice President Humphrey—whether it was law and order—whether it was law and order with justice. I think it was the recognition of the fact that many, many Americans today are deeply concerned about the lawless element in society. They were concerned about the fact that they felt insecure in their own homes, in their own neighborhoods, that many people were afraid to go out in the finest neighborhoods, in their own hometowns, their own home communities, on the streets at night.

Yet this concern for doing something about law and order in the traditional po-

lice sense, although I think it is important, very frankly, to bring a higher degree of professionalism into our police force and to do something to compensate to a greater degree those who are giving of their time and their talent and their very lives to protect us—still those people who look at law and order from that standpoint do not realize how much better off we would be, and they would be, if we did something a little earlier in life, to try to keep a criminal from becoming a criminal in the first place.

RIKER. How will that affect me right now? What would I need to do earlier in a criminal's life? How would I participate as a citizen?

BAYH. Well, there are many things.

RIKER. What toll would it take on me? That's my concern about this. I hear you saying all this, and I'm wondering what it's going to cost me.

BAYH. It's a matter of how we're going to invest our national resources. Not just your personal time, but what our national goals are going to be. Are we going to say that we're going to feed all babies? We're going to see that this great productive capacity that we have in America produces the foodstuffs necessary and needed, that we're going to also develop a distribution system so that it reaches the hungry stomachs. I say we must see that all of our children get enough to eat, whether it's through the school lunch program or food stamps or whatever it might be—surplus commodities. I think we need to be more inventive, more creative. I think we can do this.

Secondly, I think we need to realize that the educational opportunity is the foundation of life and that we need to make educational opportunity available in a different form at an earlier age to those youngsters who live in the environmental conditions they know today.

Thirdly, I think we need so realize that idle hours are the hours in which young people become involved in criminal activity and juvenile delinquency. You and I as citizens have the opportunity of keeping playgrounds open, working with little league and police boys clubs and things like this to see that young people have the opportunity to expend normal, God-given youthful energy in a wholesome manner. These are just a few things that you and I can do. Basically what we need to do is change national directions.

RIKER. I have no doubt that you can do it, but I'm still concerned about myself. Please excuse my apparent selfishness, but I, as your constituent—I may be tunedout with government, and I may be tunedout with religion, and maybe I do need these things you tell me I need. But what I need to know is if you—when you come back into our state and talk with me, and you discover that I have tuned what you stand for out, are you going to tune me out personally? If I come to your office in the Senate Office Building, will you choose not to greet me? That's what I'm concerned about. You know, do I have to seem to be playing your game in order to get your services? Are you going to shut me out because I don't agree with you, Senator?

BAYH. No, of course not. One of the great things about our country, as you well know, is that we have differences of opinion. We need not all look at everything with the same set of values. I am going to do everything I can to convince you that what I feel about this is right, let me say that.

RIKER. I believe that; I believe that.

BAYH. Because I think it's important to the country that more and more Americans realize the futility—the futility of spending 30 billion dollars a year in Vietnam, for example, and less than two billion dollars a year to deal with this problem of hunger, to see that everyone gets an adequate balanced diet so that they'll develop mental capacity and skills, the way we're still unwilling to invest the amount of resources in educational opportunity for all youngsters that determine the whole future of these young people. I think our priorities are out of whack, and I'm going to try to convince you. And all—I think all—of our citizens need to recognize that we get out of our expenditures what we put into them.

RIKER. Most of our conversation so far, unfortunately, has been kind of depressing. Is there cause for hope, Senator Bayh?

BAYH. Oh, I think so. If my responses have been depressing, I apologize. I think——

RIKER. No, when you—by depressing, I meant when you face me with the facts.

BAYH. Right. Well, I think, you know, the young people today have this slogan, "tell it as it is."

BAYH. And I think most of us in America want that. They want it told as it is, and I think one of the reasons we haven't been able to deal with the problems today is that we've tried to sweep some of them under the rug instead of looking them in the eye. I believe America is stirring today. I think there is reason for hope. I think more and more Americans are becoming aware. There've been a number of studies—NBC did a tremendous documentary on hunger. There's a great deal of discussion today in the political forum about the silent majority. I don't know who that majority is. The people that I represent are not silent, certainly they're not blind; they're not deaf. I think they want to do what's right. I think what we need today is leadership, to point out what is right, not just what's politically expedient.

This whole subject that we've been discussing today is fraught with a great many political liabilities. But I think the people of America today are yearning for the type of leadership that "tells it as it is," that says this is what we need to do, and when we get this kind of leadership, they're going to follow and they're going to do what's right. I think the young people of today, very frankly, are a sign of great hope. There are a far-out few that I am not able to understand, very frankly, but most of them—most of them have a greater sense of social consciousness than any other generation. They're unwilling to sweep under the rug what we were when I was younger.

And I think we need their talents; we need their energies. And were living in extremely challenging times. We're living in vital times. To those of us in government—let me do a little soul searching here. I think each of us must remember that there are significantly large numbers of people who are beginning to drop out of our system because it won't respond to the problems—not just the problems of hunger, but the problems of how we bring this war to a close, how we deal with better environment. And I think we need to find a way to tune them in, to get them in the system, working in the system, and show them that this system will respond.

RIKER. We must quit, Senator. Thank you very much. That's all for today's "Guideline." Our thanks to United States Senator Birch Bayh of Indiana for discussing the issues of hunger and poverty.

Next week's program on hunger and poverty will feature a panel of three outstanding Catholic women: Mrs. Janey B. Hart, wife of United States Senator Philip Hart of Michigan; Sister Ruth Dowd, Vice Principal of Harlem Prep, a unique school and Miss Jane Vaya, a graduate student of theology at Marquette University in Milwaukee, Wisconsin. We hope you will join us then.

ANNOUNCER. Today, "Guideline" has presented the first in a series of programs about life and its problems. The topic for today was "Hunger—Whose Problem?" And came to you live from our studios in Washington.

THE DETROIT AUDUBON SOCIETY FAVORS 100,000-ACRE BIG THICKET NATIONAL PARK

Mr. YARBOROUGH. Mr. President, on December 13, 1969, the Detroit Audubon Society passed a resolution supporting my bill, S. 4, to create a Big Thicket National Park in southeast Texas. This respected organization has joined with an ever-increasing number of civic organizations and public-spirited citizens who are concerned about the fate of one of America's great wilderness areas.

One of the many reasons that the Big Thicket is of interest to naturalists is that the Big Thicket is the last known refuge of the legendary ivory-billed woodpecker. This beautiful and unusual bird is the largest woodpecker in America. It is the size of the crow and resides in hardwood trees that are found in river bottoms of the Big Thicket.

For many years the ivory-billed woodpecker was thought to be extinct until one was sighted in the Big Thicket. This was the first sighting of this bird in 62 years.

Unfortunately, the Big Thicket is in danger of being lost forever. Each day another 50 acres is destroyed by the operations of large lumber and real estate companies.

My bill would create a 100,000-acre national park and thus insure the preservation of at least a portion of this beautiful area for future generations.

Mr. President, I ask unanimous consent that the resolution be printed in the RECORD.

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

A RESOLUTION

Whereas The area known as Big Thicket in the eastern part of the State of Texas, covering parts of Hardin, Polk, Tyler, Liberty and San Jacinto Counties, is beautiful, wild, covered with dense vegetation and big trees, and

Whereas Big Thicket is the last stronghold of the Ivory-billed and Red-cockaded Woodpeckers and other rare birds, animals and wildlife, and

Whereas Big Thicket is now threatened with development and exploitation, therefore

Be it hereby resolved by the Detroit Audubon Society, that all possible consideration and support be given to Senate Bill 4, to create a Big Thicket National Park of at least 100,000 acres, as proposed by Senator Ralph W. Yarborough.

Unanimously approved by the Board of Directors of The Detroit Audubon Society, at its regularly scheduled meeting on December 12, 1969.

Submitted by the Conservation Committee of The Detroit Audubon Society, James A. Hewins, Chairman.

Duplicates of this resolution to be sent to:
Senator Philip A. Hart, of Michigan.
Senator Robert P. Griffin, of Michigan.
Senator John Tower, of Texas.
Senator Ralph W. Yarborough.

DRUG ADDICTION AND ABUSE

Mr. McINTYRE. Mr. President, as we begin the second session of the 91st Congress, there are many important and burning issues which we must try to resolve. In my opinion, however, there is no more serious problem this Congress must

face than the evergrowing menace of drug abuse.

As I traveled in my own State during the adjournment period, I found that people are more concerned about this problem than they are about the Vietnam war, inflation, or any of the other great issues of the day.

Despite the efforts of Congress in enacting the narcotics laws, the Drug Abuse Control Act of 1965, the Narcotic Rehabilitation Act, and other legislation, and of the executive branch in attempting to implement these laws, the drug abuse problem has steadily worsened. This fact is well demonstrated by the recent investigations of both the Senate Juvenile Delinquency Subcommittee and the House Select Committee on Crime. But in point of fact, one has to do little more than read the daily newspapers to realize that this is true. Each day their pages are filled with stories concerning crimes of violence and other human tragedies related to drug usage.

In view of this situation, it is my hope that the Senate will give prompt consideration to S. 3246, the Controlled Dangerous Substances Act, which has now been reported by the Judiciary Committee. In my opinion, the bill goes a long way toward solving at least the legal problems associated with drug abuse. It attempts to provide a more rational classification of drugs of abuse, related to the degree of danger involved. It also attempts to bring some order to the present tangle of penalties provided in the various statutes. Most importantly, however, it provides much harsher penalties for those convicted of trafficking in narcotics and other dangerous drugs, particularly where such sales involve minors or constitutes a continuing criminal enterprise.

But legislation and law enforcement do not alone provide a panacea for the drug abuse ill. They must be accompanied by massive efforts in the areas of education, prevention, and rehabilitation. Nor can the job be done by the Federal Government alone, or even by the Federal, State, and local governments combined. Private groups of parents, teachers, civic organizations and others must become involved at the grassroots level.

Such groups are already springing up in my own State of New Hampshire and I am certain that the same thing is happening in other parts of the country. To be successful, however, they will need strong finanical and other support from those of us in the Federal Government. I hope it will be forthcoming.

Mr. President, I believe that nothing short of a 100 percent national commitment will suffice to rid our society of the ugly blight of drug addiction and abuse.

ADDITIONAL DEATHS OF ALABAMIANS IN VIETNAM

Mr. ALLEN. Mr. President, I have previously placed in the RECORD the names of 950 Alabama servicemen who were listed as casualties of the Vietnam war through November 5, 1969. In the period from November 6 through December 31, 1969, the Department of Defense has notified 19 more Alabama families of the death of loved ones in the conflict of Vietnam, bringing the total number of casualties to 969.

I wish to place the names of these heroic Alabamians in the permanent archives of the Nation, paying tribute to them, on behalf of the people of Alabama, for their heroism and patriotism. May the time not be distant when there will be no occasion for more of these tragic lists.

I ask unanimous consent to have printed in the RECORD the names and the next of kin of these 19 Alabamians.

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

LIST OF CASUALTIES INCURRED BY U.S. MILITARY PERSONNEL FROM THE STATE OF ALABAMA IN CONNECTION WITH THE CONFLICT IN VIETNAM, NOVEMBER 6 THROUGH DECEMBER 31, 1969

ARMY

Sp4. William A. Anderson, son of Mr. and Mrs. Eddie D. Pugh, Route 1, Box 91, Mt. Vernon, 36560.

Sp4. Larry W. Robison, son of Mr. and Mrs. Osbon L. Robison, Box 555, Winfield, 35594.

Sfc. Vernon G. Holbrook, husband of Mrs. Sara F. Holbrook, 111 Sauage Street, Piedmont, 36272.

Pfc. James R. Lindsay, husband of Mrs. Brenda S. Lindsay, Box 20, Maylene, 35114.

Sp4. Joseph M. Ragsdale, son of Mr. and Mrs. Otto B. Ragsdale, Route 4, Box 85, Oneonta, 35121.

Sp4. Johnny W. Trainham, son of Mrs. Annie L. Green, Route 1, Box 70C, Thomasville, 36781.

Pfc. Adolphus Hall Jr., son of Mr. and Mrs. Adolphus Hall Sr., 1120 22d Avenue, North Birmingham, 35204.

Sgt. Larry A. Brown, husband of Mrs. Patricia C. Brown, 1014 Bebrah Street, Dothan, 36301.

Sp4. Raymond K. Dismukes, son of Mr. and Mrs. Robert L. Dismukes, 4167 49th Court, North, Birmingham, 35217.

Ssg. Grady L. Lewis, son of Mr. and Mrs. Robert Lewis, 4218 12th Street, NE., Tuscaloosa, 35401.

2nd Lt. Ray F. Long, son of Mr. and Mrs. Adam A. Long, 314 Hoffman Street, Athens, 35611.

Sp5. James L. Ferrell, son of Mrs. Ruby Brock, Route 1, Boaz, 35957.

Sp4. Stephen D. Lynn, son of Mr. and Mrs. Odell Lynn, 1111 Bruce Street, Albertville, 35950.

Sp4. John S. Ash, husband of Mrs. Lois M. Ash, 1626 Short 16th Street, Bessemer, 35020.

Sgt. Truman J. W. Gilbert, son of Mr. and Mrs. Howard T. Gilbert, 729 Haven Place, Birmingham, 35214.

Pfc. Otis Carthage Jr., son of Mr. and Mrs. Otis E. Carthage Sr., Star Route, Box 13, Northport, 35476.

MARINE CORPS

Pfc. Michael T. Rutherford, son of Mrs. Frances W. Rutherford, 106 Wooland Drive, Greenville.

L.Cpl. Ira E. McGowan, son of Mr. and Mrs. Jack McGowan, 5440 67th Street, South Birmingham.

Sgt. Thomas E. Askew, son of Mr. William O. Askew, 1407 Circle Drive, Tuscumbia.

SAN DIEGO TRIES PERFORMANCE CONTRACT APPROACH IN EDUCATION

Mr. MURPHY. Mr. President, in 1967 I authored the dropout prevention program. This program, whose merits have been recognized by both the previous administration and the Nixon administration, shows great promise and potential in helping to improve the performance of the educationally disadvantaged students.

One project funded under the dropout prevention program and one that has received so much national attention is the Texarkana project. Yesterday, in the Senate, I made, I believe, the first public announcement on the preliminary results, which are most favorable, of this project.

In the Texarkana project, the local school system has subcontracted on a performance contract basis with private industry to raise basic reading and math scores of emotionally disadvantaged students. In this form of contract, one must produce in order to get paid. Preliminary results show that 30 youngsters in the program have been tested and have evidenced a one-grade-level increase in math and approximately a two-grade increase in reading in 50 hours of instruction. The performance contract had stipulated a one-grade-level increase for 80 hours of instruction. Similarly, there are other exciting dropout prevention projects in the country, all of which are closely monitored and evaluated. Yet, the conferees for some reason did not look with favor on this program.

Today, in the Los Angeles Times I read a story by Mr. Harold Keen indicating that the city of San Diego plans to hire private industry on a performance contract, also. This will be the first large urban district in the country to try this approach.

I ask unanimous consent that this article be printed in the RECORD following my remarks.

Once again, this illustrates the potential for change that the dropout prevention program offers and points out, in my judgment, the tragic mistake that the conferees to the Labor-HEW appropriations bill made in not increasing the funding for the program.

Mr. President, I testified before the Appropriations Committee, urging $24 million, the amount requested by the administration, for this program, and the Senate committee provided $20 million. The conferees reduced the dropout prevention program funds to $5 million.

Mr. President, I ask unanimous consent that that portion of my testimony before the Senate Appropriations Committee dealing with the dropout prevention program be printed in the RECORD.

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

EXHIBIT 1

[From the Los Angeles Times, Jan. 21, 1970]

CONTRACT TO "INSURE" RESULTS: SAN DIEGO WILL HIRE FIRM TO IMPROVE STUDENT READING

(By Harold Keen)

SAN DIEGO.—The San Diego city schools announced plans Tuesday to contract with a private company which will guarantee reading improvement of minority children or face financial penalty.

The agreement would be the first of its kind in the nation involving a large urban school district, according to Supt. Jack Hornback who negotiated the contract with Educational Development Laboratories of New York.

A second private firm, Science Research Associates of Chicago, would sign a "cost commitment agreement" with the district to upgrade the reading level of other minority students.

But SRA would only face damage to its reputation rather than financial loss if it failed to meet its goals, school officials said.

EDL would not be paid the full amount of the proposed $1.4 million contract if pupils' reading disabilities were not reduced by 25% the first year, 50% the second year and 100% by the third year, under terms of the agreement.

Details of the contract pertaining to the size of the financial penalty which would be leveled against the firm if it fails to meet its commitment were not revealed pending completion of the contract.

The overall $2.4 million plan was unveiled Tuesday before the San Diego school board, which is scheduled to take action next Tuesday. If approved, an application for federal funds to run the program would be made to the U.S. Office of Education.

Hornback said the experiment with the private firms is being attempted because federal compensatory programs in predominantly minority schools of the district have not made sufficient progress in improving reading skills.

The district released its first school-by-school scores of statewide reading tests Tuesday, showing the most serious reading problems are at schools in the minority area of southeast San Diego.

EDL, a subsidiary of McGraw-Hill Publishing Co., would work with 9,600 students and 195 teachers at five district elementary schools and one Catholic elementary school in this area.

The firm would provide in-service training for teachers on how to use its techniques, consultants and materials.

A district spokesman said EDL's program would feature a reading laboratory equipped with such things as a reading pacer, which projects reading material on a screen to help pace students, as well as various tape recorders and visual aids.

Improvement among the students would be determined by an "evaluation plan" which was not revealed, a spokesman said.

SRA, a subsidiary of International Business Machines, would provide similar services at the same number of elementary schools in the minority area. About 6,000 students and 163 teachers would be involved in its $779,477 program.

In addition the district would launch a third project of its own, called the Maximum Effort Program. It would concentrate new techniques and materials in reading and mathematics at five elementary schools at a cost of $270,000.

Whether or not the projects meet their goals would be determined by results of the statewide reading tests, officials said.

EXHIBIT 2

TESTIMONY BY SENATOR MURPHY

Mr. Chairman. First, I want to thank the Subcommittee for giving me this opportunity to testify again this year. I want to discuss and strongly urge increased funding for the Dropout Prevention and the Bilingual programs. I believe that these two programs will prove themselves to be among the most significant, far-reaching, and wise investments that this nation has ever made.

Last year, when the House failed to provide a single cent for either program, I testified before this Subcommittee making a personal plea that the "shortsighted" action of the other body be reversed. The Committee, realizing both the magnitude of the problems and the merits of these two programs, responded, and in the HEW Appropriations measure passed by the Senate last year included $20 million for the Dropout Prevention program and $10 million for the Bilingual program. We were able to retain only $7.5 million for the Bilingual program and $5 million for the Dropout Prevention program in conference with the House.

This year, the House has come around somewhat and in the Labor/HEW Appropritions bill passed by the House, $10 million was provided for the Bilingual program and $5 million for the Dropout Prevention program. Given the size and seriousness of the problems to which these two programs are addressed, the sums provided by the House are clearly inadequate.

I am fully aware of the fiscal problems that we are facing, but nevertheless I believe that we must increase the funding of these two programs. I strongly urge $24 million for the Dropout Prevention program, which is the same figure recommended by both President Johnson and President Nixon in this year's budget. For the Bilingual program, I strongly recommend full funding—$40 million—which is in excess of the budget of $10 million, but which is fully justified.

Mr. Chairman, I authored the Dropout Prevention program, which was added to the Elementary and Secondary Education Amendments of 1967. The program is aimed at preventing and reducing dropouts. It was drafted in consultation with some of the nation's leading educators, including Dr. James Conant. Members will recall that Dr. Conant warned the nation in 1961 that "social dynamite" was accumulating in our cities. The accuracy of his warning is now history. Much of this "social dynamite" results from those who drop out of school and who are out of work. At one time the dropout posed no problem since those leaving school were able to find jobs in agriculture and industry demanding frequently little or minimum skill or education requirements. The knowledge explosion and the technological advances in the country have dramatically altered our national picture. That is why it is so alarming that approximately one million students are dropping out of school each year. In our nation's fifteen largest cities, the dropout rate varies from a high of 46.6 per cent to a low of 21.4 per cent. As high as these percentages are, they are for the entire city district. To really comprehend the seriousness of the problem, it is necessary to focus on the poverty-area schools within these cities. In these poverty-area schools, seventy per cent drop out.

Mr. Chairman, it is these statistics and these schools which prompted me to author the Dropout Prevention program. It is these statistics and these schools which prompted me to label the dropout problem as the Achilles' heel of our educational system. It is these statistics and these schools which compel me to urge the Congress to substantially increase the funding of the Dropout Prevention program.

Mr. Chairman, the Dropout Prevention program is based on the premise that answers have not as yet been found which will make dramatic changes in the poverty-area schools. The program provides maximum freedom and flexibility at the local level for experimentation. Under the program local and state educational agencies submit innovative proposals which zero resources on a particular school or on a particular classroom in an effort to have a major impact on the dropout problem. Eligible schools must be located in urban or rural areas having a high percentage of children from low-income families and a high percentage of children who drop out of school. The local educational agency, in addition to securing the approval of the state educational agency, is required to identify the dropout problem, analyze the reasons the students are leaving school, and tailor programs designed to prevent or reduce dropouts. Furthermore, the most significant, the program requires objective evaluation.

Mr. Chairman, the Dropout Prevention program is a no-nonsense approach to education. Dropout prevention projects must spell out clearly their objectives. Having stated their objectives, they will be held accountable for achieving them. Most importantly, and I believe this is a first for the Office of Education, an educational audit will be done on each dropout prevention project. This educational audit will seek to determine, in terms of student learning, what the taxpayer is getting for his tax dollar. This educational audit will be done by an independent organization outside of the project and will attempt to verify the project's performance. This is in addition to intensive in-house evaluations that will be done on the Dropout Prevention program.

In the National Education Journal of December 1966, the following statement appeared with respect to educational change and reform: "One often gets the eerie impression of huge clouds of educational reform drifting back and forth from coast to coast and only occasionally touching down to blanket an actual educational institution."

The Dropout Prevention program is causing educational waves. The Dropout program is "touching" actual educational institutions. The Dropout Prevention program will produce change, will bring about reform that will not only touch the particular educational system involved but also educational programs throughout the country. Although dropout projects are now underway, I would like to discuss two of them so that the Committee might judge their significance and the momentum of their educational waves for improvement in our educational programs.

The project perhaps that has generated the most national interest is the Texarkana one. In this program, the school districts of Texarkana, a Texas and Arkansas border community, have called on private industry in an effort to raise basic levels of potential dropouts. The school system has entered into what is called a performance contract with a private corporation to bring potential dropouts up to grade level in academic performance. As the name of the contract implies, the companies must perform or they do not get paid. In addition to this phase of the project, the Texarkana project is experimenting with a system of rewards and incentives for students. For example, successful students will receive coupons redeemable for merchandise and students who successfully complete two grade levels of achievement will receive transistor radios.

Another exciting project, Project STAY, in St. Louis, Missouri, places great emphasis on the work-study approach. St. Louis found that a desire to work and earn money and a lack of interest in our dissatisfaction with the school and the curriculum were among the major reasons for dropouts. In its attack, the community and the real world have been made part of the curriculum. Industry has warmly responded by providing positions wherein skills may be acquired, where the relevance of the classroom can be both seen and tested by the student and the system.

Some of the approaches are very unconventional, Mr. Chairman. For example, twenty students have been assigned to the McGraw-Hill Publishing Company where they will receive training in various job areas within the plant, including the operation and production of machinery used in the printing business. A teacher will accompany the students. This is rather unique because they will receive both academic instructions and job training here. For these students McGraw-Hill will be their school, home and their work assignment. This meant that the State Department of Education of Missouri had to relax somewhat their course requirements to permit this experiment. This they did.

The school system also has leased a Sinclair Oil service station. At this station, students will receive on-the-job training leading to such jobs as mechanics, service sta-

tion management, and even to service station ownership. The Sinclair Company has provided a trailer which will be located at the gas station for conducting demonstrations of functions of the service station business.

In addition, the City of St. Louis has purchased an apartment building with local funds and 64 students—32 in the morning and the other half in the afternoon—will learn skills useful in construction work under the supervision of industrial arts teachers. After the apartment is rehabilitated, it will be returned to the City of St. Louis, which will then use the building to help solve some of the housing needs of the city. This may have potential both for skill acquisition and city rehabilitation. The union and real estate interests have responded well to this educational pioneering.

The interest and potential of the program, Mr. Chairman, can be seen by the fact that over a thousand requests from local educational agencies to submit preliminary Dropout Prevention programs has been received by the Office of Education. To fund all of these programs would take over $700 million. Of course, I am not recommending the funding of all of them. The Dropout Prevention program was not intended to take care of all the dropouts. Rather, its intent was to identify and attack some of the worst situations in the country by establishing highly visible demonstration projects that are large enough to have a significant impact, while at the same time enough in number to be carefully monitored and evaluated so that, insofar as possible, success could be assured. Thereafter, it was hoped that the success of the program would be duplicated in other sections of the country. This educational R & D effort, the Dropout Prevention project, then are live local educational laboratories whose work has both great national interest and implications in solving one of the most persistent problems in American education.

Mr. Chairman, in my testimony before this Committee last year, I cited the growing realization of the relationship of education and income. I cited a study by Dr. Harold Kastner, a consultant for the Florida State Office of Education which divided individuals based on the 1960 census into levels of educational achievement as follows: Less than 8 years, 8 years, 1 to 3 years of high school, and 4 years of college. Dr. Kastner then projected the aggregate income gain if the individual had been able to complete the next income level. If those who had not completed the eighth grade and had been able to do so, and if those who had completed the eighth grade had been able to complete 1 to 3 years of high school, the national income would have increased annually by 6.5 per cent. A 6.5 per cent increase would have added $50 billion to our national wealth. These calculations help convey the monetary costs to society.

In addition to the earning loss to individuals and tax losses to the country, the dropout reappears in our crime statistics, on our juvenile delinquency rolls, in our corrective and penal institutions, and on our welfare rolls.

The investment of $24 million in this program with its great promise and potential is thus a small amount of money compared to the total money costs and waste of human potential. I am convinced that an investment of $24 million might save society billions of dollars in keeping dropouts from being a burden—or as the crime statistics indicate, even a menace—to our society.

PERSONAL STATEMENT OF SENATOR YOUNG OF OHIO

Mr. YOUNG of Ohio. Mr. President, as has been my practice from January 1959, throughout every year following, during the period of my service as U.S. Senator representing Ohio and the Nation I have regularly prepared and mailed an open letter to the Secretary of the Senate fully disclosing to the citizens of Ohio my financial holdings in stocks, bonds, and real estate and also from January 1960 on my income for the preceding year. It is my custom to send with such letter a certified copy of my income tax return, giving the Secretary of the Senate authority to make these reports and documents public.

Mr. President, in 1958, while a candidate for my first term, I learned that my cpponent, Senator John W. Bricker, who prior to serving two terms as a Senator of the United States had been a three-term Governor of my State and the Republican nominee for Vice President of the United States, in January 1959, at the same time he became U.S. Senator, organized a law firm in Columbus, Ohio. His law firm not only represented the Pennsylvania Railroad, the Baltimore & Ohio and other railroad corporations, but I regarded it as significant that of all Ohio Representatives in Congress, Republican and Democrat alike, he alone spoke out against and voted against the St. Lawrence Seaway and at the same time continued to profit from huge fees paid to his law firm by railroad corporations with whom the traffic on the St. Lawrence Seaway would directly compete. I denounced this conduct as a clear conflict of interest.

In campaigning in every area of Ohio, I constantly pledged that if citizens elected me I would withdraw altogether from the active practice of law and would fully at all times disclose my financial status, selling such stocks as I had the possession of which might raise the question of conflict of interest.

So for the final time I make this public disclosure.

Mr. President, I ask unanimous consent that there may be printed at this place in the RECORD the text of the letter I wrote the Secretary of the Senate, setting forth a complete statement of my financial status and holdings.

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

U.S. SENATE,
Washington, D.C., January 21, 1970.

HON. FRANCIS R. VALEO,
Secretary of the Senate,
Washington, D.C.

DEAR MR. SECRETARY: Early in 1959, directly following taking the oath of office as U.S. Senator and to keep a campaign pledge made in denouncing Senator Bricker for conflict of interest in remaining as head of his law firm representing the Pennsylvania Railroad Company and other railroad corporations and then voting as Senator against the St. Lawrence Seaway, I fulfilled my pledge to completely withdraw from the practice of law and to disclose my financial holdings and status.

In filing with your office a complete statement of my financial holdings I became the very *first* member of either branch of the United States Congress to make full and complete disclosure of my financial status.

The purpose of this letter is to fully disclose my income for the entire year of 1969 and my present financial status including all of my assets and all of my indebtedness. Therefore, citizens are in position to judge accurately whether or not at any time there was, and whether there is, any conflict of interest and whether for selfish personal aggrandizement I yielded to some improper demands and voted or conducted myself as a Senator of the United States at any time other than for the best interests of citizens I represent and of our Nation.

Mr. Secretary, I make the following complete financial disclosure. This is true and correct, and directly after the income tax return I shall file with the Internal Revenue Service for the year 1969 has been prepared and filed I shall mail you a copy to be attached to this letter.

During the year 1969 my income was as follows:

Salary as U.S. Senator	$40,416.67
Total income from long and short term capital gains on stocks and bonds sold in excess of long and short term capital losses incurred on sale of stocks and bonds	23,521.77
Net amount received as honoraria for speeches outside Ohio	500.00
Subtotal	64,438.44
Interest paid out on loans for which stocks and bonds are collateral including advanced payment of $16,931.54 to the Union Commerce Bank of Cleveland for interest payable for the period to June 1970 on recommendation of bank counsel	38,450.57
Amount received from interest on government and other bonds and dividends on stock holdings	32,527.68
Subtotal	5,922.89
Total net income for 1969 before making required deductions for Federal and State taxes	58,515.55

You will note not one cent was received by me for legal fees. For many years I engaged in the practice of law in Ohio and tried law suits also in other states. My law practice was very lucrative and satisfying as my financial records and income tax returns over the years disclose.

Also, Mr. Secretary, it may be of interest that much of my stock holdings and also bonds are in oil and gas producing corporations. Of course, in letters accompanying dividend checks earlier this year as in previous years, I read the usual propaganda "Write your Congressman and urge him to vote to retain the 27½% depletion allowance for oil and gas producing corporations." I never did that. In fact, in 1949 as a member of the Committee on Ways and Means of the House of Representatives and later on numerous occasions as U.S. Senator, I spoke out and voted to abolish this depletion allowance. I did so last year.

I withdrew from my law firm December 15, 1958.

In addition to the net income received in 1969 I report financial holdings as follows:

Real estate: Residence in Washington, D.C. and equity in dwelling in Florida, real estate in Ohio and Mississippi. Total approximate value, $98,000.

Life insurance: Substantial amount paid up life insurance including $10,000 GI World War policy. Total value in excess of $65,000.

Personal property: Including paintings, jewelry, furniture and 1969 Oldsmobile Cutlass. Estimated value, $30,000.

Bonds: As of January 1, 1970, I own U.S. Government bonds and bonds of W. R. Grace & Co., Gulf & Western Industries, Lerner Stores, AMK Corp., Radio Corp. of America, Tenneco, Inc., Lucky Stores, Inc. and Offshore Co. with a total value in excess of $200,000.

Preferred and common stocks owned by me: 100 Ashland Oil & Refining Co.; 100 Atlantic Richfield; 200 Braniff Airways; 300 British Petroleum; 100 Central Illinois Public Service; 100 Central Soya; 443 Continental Airlines; 1660 Continental Oil; 500 Delta Airlines; 300 Federal Pacific Electric pfd.; 300 General Fireproofing; 1710 W. R. Grace & Co.; 314 ITT Consumer Services pfd.; 300 Lamb Communications; 8128 Lucky Stores; 200 Manor Care; 500 Martin Marietta; 851 Monsanto; 100 Montana-Dakota Utilities; 200 Northern Pacific Rwy.; 1405 Occidental Petroleum; 100 Offshore Co.; 1200 Ohio Radio Inc.; 200 Peoples Gas Co.; 1900 Phillips Petroleum; 200 Radio Corp. of America; 600 Roan Selection Trust; 1550 Robbins & Myers; 700 Safeway Stores; 100 G. D. Searle; 200 Seilon, Inc.; 800 Stauffer Chemical; 600 Steel Company of Canada; 400 Trans World Airlines and 200 Del E. Webb Corp.

Indebtedness: I owe no individual or any corporation any unsecured loan. I do owe current bills to Ohio and Washington stores in a substantial amount, some representing recent purchases. Also, to Samuel Ready Boarding School, Baltimore, approximately $1100 as balance due for tuition for adopted daughter, Soon-Hie Young.

Am indebted to the Union Commerce Bank of Cleveland approximately $355,000 and the National Bank of Washington approximately $105,000. This indebtedness is amply secured by deposit of stocks and bonds.

The foregoing statement is just, true and correct and includes representing all the assets and liabilities and the entire financial status of Mrs. Young and me.

Mr. Secretary, you, of course, have my permission to make this statement public if you wish. It is my intention to follow my custom of reporting it in the Congressional Record.

My income tax return for 1969 has not been prepared. When it is prepared a copy will be mailed you.

Sincerely,

STEPHEN M. YOUNG.

RETIREMENT OF WILLIAM McCHESNEY MARTIN

Mr. SYMINGTON. Mr. President, it is with regret that the people of his home State of Missouri, along with many other citizens of the country, noted the retirement of one of the most able public servants of our time.

Any future financial history is bound to feature the contribution made to its security and prosperity by William McChesney Martin.

In this connection, I ask unanimous consent to insert at this point in the RECORD a column by Vermont Royster in the Wall Street Journal of January 21 and an article by Marquis Childs, entitled "The Nation Will Sorely Miss Fed's Uncompromising Martin," which appeared in the Washington Post of the same day.

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

[From the Wall Street Journal, Jan. 21, 1970]

BOY WONDER

(By Vermont Royster)

It was so long ago that it's hard now to remember him as the lanky, somewhat gangling young fellow who looked like a Charles Lindbergh with glasses and hid a militant mind behind a deceptive mien of shyness. He certainly didn't look like anybody's idea of a president of the New York Stock Exchange.

As a matter of fact, right now he doesn't look like most people's idea of the world's most powerful banker, although his hair has grayed a bit and time has furrowed his face. The shyness is still there, even though nobody is any longer fooled by it.

At the time, Wall Street couldn't quite take it in that William McChesney Martin, then barely 31, should have been picked for the Street's most prestigious post. The Age of Aquarius hadn't dawned in 1938, and the young were expected to defer to their elders and await their turn.

Of course there had been that business about Richard Whitney, who looked very much like a president of the Stock Exchange but who had tarnished the image by dipping into assorted tills. Moreover, the odor of the great crash hadn't blown off the Street, the memory of past high jinks lingered, and down in Washington the Roosevelt crowd seemed to be in a vengeful mood. Maybe it seemed like a good ploy to put a clean-cut boy up front.

All the same, there was some cynicism in the canyons hereabouts. The financial reporters, most of whom were older and scarred by experience, suspected that he might have been put up as a Patsy, useful for his image but otherwise malleable.

If that were the idea, everybody was quickly disabused. Settling into his new office, Bill Martin remarked, "I have no particular objection to Government intervention."

That suggested a surprising kind of stubbornness from a young man who came out of St. Louis to study for the ministry at Yale, who neither smoked nor drank and whose idea of whooping it up with the boys was to share a cup of hot chocolate. Indeed, around the newsrooms he was sometimes referred to as "Mr. Chocolate."

But even the Army found out he wasn't soft. Spurning deferment, he turned buck private after Pearl Harbor, and before it was through had bucked the Army all the way up to colonel. After the war President Truman appointed him to the Export-Import Bank, normally a quiet refuge. When he next surfaced he was Assistant Secretary of the Treasury.

In 1951 Harry Truman and Secretary Snyder were having their bouts with the Federal Reserve Board. They wanted the Fed to gear all of its policies to the needs of the Treasury and come what may to support Government bonds at par. They picked Martin for liaison man with the Board.

And that's where they got fooled. Bill Martin thought his elders' idea a bad one, that the Fed ought to have some independence and that it would be disastrous to pump out money just to support the Government bond market. So he negotiated his bosses into a surrender and then in a marvelous piece of diplomatic legerdemain passed it all off as an "accord" acceded to by the Fed.

He really should have been called down for deceptive advertising. Instead, in the aftermath Mr. Truman called on him to be chairman of the Federal Reserve Board. He's been giving Presidents trouble ever since, but the kind that usually left them grateful afterwards.

Part of the trouble was that recent Presidents have tended to be inflationists by political instinct if not by philosophy. That is, their interest has been in keeping the economy bubbling along, by pumping out money if necessary. Moreover, Secretaries of the Treasury have the mighty problem of financing a huge public debt; naturally they want to do it as easily and cheaply as possible.

Bill Martin, on the other hand, is a man with the long view. While he knew that the central bank could not, and indeed should not, stand aloof from the rest of the Government, he could not be persuaded that a casual "easy money" policy was in the long-range interest of the country, or the world, for that matter. So again and again he proved stubborn to political pressure.

Of course you win some, lose some. For one thing, the Fed's chairman isn't the whole works; there are other members and even other forces in the System outside the board itself. There have been times, too, when Martin himself seemed to waver, or maybe just misguessed. But all in all, he's been pretty stubborn.

Lyndon Johnson certainly found him so. In 1965 when the Fed raised the discount rate, the President had him down to the ranch for what was reported to be an arm-twisting session. Whatever happened, Bill Martin emerged with his tennis arm intact and the Fed's policy unchanged.

In spite of all this, William McChesney has been a strong supporting girder for every President, and the slightest suggestion that he might grow tired and quit has sent shudders through the executive offices. For in his 19 years at the Fed Mr. Martin built a world-wide reputation for integrity and ability in that small but powerful circle of central bankers. Time and again in times of crisis men have said his just being there was worth a billion dollars to U.S. reserves, and the rhetoric wasn't too much exaggerated.

Now he is stepping down because his *term* has run as long as the law allows, and the other evening President Nixon gave him a farewell White House dinner, which isn't bad for a young fellow from St. Louis. People got up and said things, all sorts of nice things. Listening, he must have had the feeling they were talking about some sort of institution, like a cathedral, maybe. He may also get the feeling, reading the newspaper pieces about him, that he's reading his own obit.

But Mr. Martin himself stays right in character. Most men leaving office like to leave the impression that they have solved all the problems and leave everything nice and tidy for their successor. Not our Bill. Ask him what he thinks and you'll get no rosy valedictory. He'll tell you—or the President—that he leaves behind, unsolved, "the worst inflation since the Civil War."

So maybe he doesn't qualify any longer as a Boy Wonder. He still is stubborn, honest, forthright and just as militant behind that mien of shyness. The difference between now and then is that everybody knows it.

And if you were Arthur Burns, how would you like to follow that act?

[From the Washington Post, Jan. 21, 1970]

THE NATION WILL SORELY MISS FED'S UNCOMPROMISING MARTIN

(By Marquis Childs)

In the hugger-mugger over the so-called tax reform bill that is now law, the White House and the congressional conference committee played a final round of threat and counter-threat. The President's aides insist that the massive 100-page bill would have been vetoed if the committee had not trimmed back certain benefits, conspicuously the individual exemption which the Senate had raised from the current $600 to $800.

Through it all there was one uncompromising voice. Twice, during the days when the decision presumably hung in the balance, President Nixon put in urgent calls for William McChesney Martin Jr., chairman of the Federal Reserve Board, at Harbour Island in the Bahamas where Martin was vacationing.

Asked for his advice, Martin recommended a veto. He was convinced the bill was inflationary. When the pluses and minuses are set off one against the other the total of tax reduction in the fiscal year 1971 adds up to $2.7 billion. As the Nixon budget-makers rave on candle ends to try to get a balanced budget, that sum looms very large.

At one point Martin believed the President, would veto the bill. But, given the great effort of the tax specialists in Congress over many months and the angry outcry which would have greeted a veto, that was more than could be expected of any President.

Now Martin is departing. Retiring at the end of the month, he has so long been a landmark that Washington will not be the same. In the era of affluence and inflation he stands out as a kind of rustic nay sayer, an early American artifact carved out of some tough, resistant wood.

The tight money policy that Martin has carried through with the considerable powers of the Fed's chairmanship is in large part responsible for the slowdown of the economy and the falling off of housing starts. The Wall Street community would cheerfully boil him in oil. Even some conservative economists believe the money supply has been turned down so tightly by the Fed's action that a recession is all but inevitable.

Often during his 19 years heading what has been, in effect, a fourth and autonomous branch of government, Martin has stood up to both President and Congress. His complaint has been that the burden of stemming inflation rests far too heavily on money policy—money and credit—as against fiscal policy where budget balancing is subject to irresistible political pressures. In 1965 Martin defied Lyndon Johnson, and the Federal Reserve Board raised the discount rate. The prime interest rate steadily climbed since then to today's record 8½ percent.

Yet he conducts himself with such evident goodwill, not to mention political skill, that he has remained on close terms with the five Presidents with whom he has dealt. James Reston dubbed him aptly The Happy Puritan. While his views often sound like those of an early Christian surveying the decadence and the runway economy of ancient Rome, he keeps a cheerful countenance.

When he goes to an occasional cocktail party (he neither smokes nor drinks) at his Bahamian retreat he is the sign and symbol of an earlier America. The other males are decked out in brilliant colored slacks and fancy blazers. Wearing a gray business suit off the rack of a department store, Martin is the model of the sober businessman who keeps a close eye on the books. Yet he enjoys life. At 63 his tennis is as fast as that of most players half his age.

His sombre thoughts on inflation are well-grounded. Prior to his service at the Fed, as president of the Export-Import Bank he knew at firsthand the plague that a price explosion can mean to a swiftly developing economy. He speaks of Brazil where seesawing—mostly upward—inflation threatens the nation's stability. The infusion of American government loans and private investment started the upward, largely unrestrained, spiral.

The disparity between extreme wealth and extreme poverty here at home widens despite what seem to be stringent tax laws. The number of billionaires has increased astonishingly in the past decade. Martin views this development with profound concern. Many of these newly made billionaires are comparatively obscure men who, thanks to shrewd and knowledgeable lawyers, have had the advantage of tax gimmicks beyond the reach of most.

THE MIDEAST CRISIS: OUR MISTAKES AND OUR RESPONSIBILITIES

Mr. DODD. Mr. President, on January 12 it was my privilege to address an overflow meeting in New Haven convened under the auspices of the New Haven Jewish Community Council. The members of the council had told me that they were concerned over U.S. policy in the Middle East and that they would therefore welcome an opportunity to discuss this problem with me.

In my remarks I set forth what I believe to be the four basic mistakes we have made in our approach to the Arab-Israel problem, under both Republican and Democratic administrations.

I was particularly critical of the Big Four conferences. I said that they held out no hope because the Soviet Union had no interest in terminating the Mideast conflict; on the contrary, the continuation of this conflict helps them to expand their influence in the Middle East at the expense of the free world.

In my closing remarks I outlined what I described as a new approach to the Mideast conflict.

First, I said we must seek to use all of our influence to bring about direct negotiations between the Arabs and the Israelis.

Second, while we should seek to act as a go-between and catalyst, we should not take it upon ourselves to draw up any detailed plans for the settlement of the Arab-Israel conflict.

Third, I urged that in cooperation with the other NATO countries, we should seek to provide Israel with modern arms to counterbalance the massive shipments of arms by Moscow to the Arab extremists. To this I added that I would be in favor of giving arms to Israel instead of selling them, as we have frequently given arms to other nations when we considered it to be in our national interest. Israel, I said, does not need any American expeditionary force to help her fight. She is quite capable of defending herself if she is only given the weapons with which to do so.

Fourth, I urged that we mount an energetic campaign of information to the Arab countries to make them realize that they are being used as pawns by Soviet imperialism, and to warn them that their very sovereignty is endangered by their growing dependence on Russia.

Finally, I said that, in order to discourage any miscalculations or any adventures, we should make it unmistakably clear that we could not remain indifferent to any effort by the Arab extremists and Communists to crush the State of Israel.

Mr. President, I ask unanimous consent to insert into the RECORD the complete text of my statement before the New Haven Jewish Community Council on January 12.

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

THE MIDEAST CRISIS: OUR MISTAKES AND OUR RESPONSIBILITIES

(By Senator THOMAS J. DODD, January 12, 1970)

As we meet today, the guns are blazing across the Suez Canal and the Jordan River. Arab terrorists attack Israeli settlements with bombs and mortar shells; and the Israeli forces respond with retaliatory strikes against terrorist bases.

It is not a state of all-out war. But the continuation of terrorist activities and of limited military actions by both sides carries with it the danger that a new and much larger Mideast war may erupt at any time.

This danger has been enormously aggravated by the massive shipments of Soviet arms to Nasser and the other Arab extremists, shipments which have now given the Arab powers 150 per cent of the military strength they had before the June, 1967, war.

The danger has been further aggravated by the reluctance of the Western powers to sell modern weapons to Israel.

It is tragic to think that France, which was for so long a friend of Israel, has been the worst offender in this respect. Not only has France refused to send Israel the 50 Mirage jets which were ordered and paid for several years ago, but now comes the news that the French government has decided to sell 50 Mirages to the new revolutionary government of Libya.

In view of the fact that the tiny Libyan air force has only six men who are qualified to fly jet trainers, many people are asking whether these high-performance jets will not ultimately wind up in the hands of the Nasser air force. Certainly, it's no secret that Nasser has been thinking of annexing Libya with its billion dollars a year in oil income.

The purpose of this meeting is to discuss the Mideast crisis, its implications for America, and what can be done about it.

It is proper that you should want to have my thinking as your representative. For my part, I want to tell you how much it means to me to be able to discuss this problem with a group of informed constituents, and to get the benefit of their thinking.

On the surface it appears that everyone believes in the need for a stable settlement of the Mideast conflict. The UN has expressed its concern in repeated resolutions and has appointed a special representative to serve as mediator. The Big Four powers have met repeatedly to discuss the issue.

But instead of improving, the situation has become increasingly acute with each passing month.

Before we consider whether there is any new approach that might offer greater promise, it might be a good idea to go back in history a very short while, and reexamine our entire policy of recent years. This will also have the advantage of letting me tell you where I have stood, and where I stand today.

OUR FOUR BASIC MISTAKES

I believe that we have been guilty of four basic mistakes in our approach to the Arab-Israeli problem.

The first mistake is that we have sought to appease the Arab extremists or to avoid antagonizing them. I say this in no partisan sense, because I believe this has been equally true of Republican and Democratic Administrations ever since the Suez crisis of 1956.

Our second mistake has been that we refuse to face up to the fact that the Soviet Union is committed to the subjugation of the free world, that it has been the principal architect of the Mideast crisis, and that it has a vested interest in perpetuating the Arab-Israeli conflict and no interest in terminating it.

Our third mistake has been that we have relied too heavily on the United Nations.

Finally, I think that our policy has suffered from an inadequate appreciation of the human and spiritual significance of the State of Israel and of its basic political importance to the entire free world.

NUREMBERG

I do not say these things as a matter of hindsight.

I was a believer in the Jewish homeland before it came into existence.

As Executive Trial Counsel at Nuremberg, I had spread before me in nightmarish detail the whole incredible story of Nazi barbarism, and of the gas chambers and crematoria that snuffed out the lives of so many millions of European Jews.

I could not escape the feeling that all of this would not have happened if Britain and France and America had had the foresight and determination to deal with Hitler's lunatic regime in a timely manner.

This entire situation created an inescapable moral obligation to encourage the creation of the Jewish homeland in Israel and to give it our continuing assistance.

THE APPEASEMENT OF NASSER: SUEZ AND AFTER

At the time of the Suez crisis, and many many times after, I spoke up against our failure to give Israel the support to which she was entitled, and against the folly of attempting to appease Nasser.

For it was the United States, and not the Soviet Union, that saved Nasser at the time of the Suez crisis. In fact, if it had not been for our intervention at the United Nations, the Nasser regime would probably be as defunct today as King Tut's mummy.

And I am equally certain that Nasser would not be the threat he is today if we had not continued to provide him with foreign aid, to the tune of almost 2 billion dollars over the years, despite his military preparations against Israel and the help he was giving the Soviet Union in expanding its influence throughout the area.

In May of 1962 I introduced a Senate resolution calling upon the American government to exercise all of its influence to bring about a just and final settlement of the Arab-Israeli conflict.

In doing so, I urged that we substitute firmness for appeasement; and I said that it does not encourage moderation on the part of the Arabs when we quietly accept Nasser's prohibition of the Suez Canal to Israel, in violation of the UN resolution.

Speaking the following year before the Connecticut Zionist Conference, I called for a frank reassessment of the consequences of our "do nothing" policy in the Mideast. This policy, I said, had not preserved the peace or fostered stability. It had, on the contrary, seen Soviet arms and Soviet agents brought into the Middle East in dangerous quantities; it had resulted in an upward spiraling arms race between Israel and the Arab States; it had encouraged Nasser in his extremist and imperialist tendencies. And I warned that if the United States and the United Nations continued to do nothing, we would not be able to escape the burden of responsibility when bloodshed did arrive.

In 1965, Nasser's conduct became so outrageously anti-American that both the House and Senate voted against the continued shipments of food aid to the UAR under Public Law 480. However, as a result of a last-minute request from the Administration, the Senate passed an amendment which left PL 480 shipments to the discretion of the Executive Branch.

I was one of the Senate minority who spoke and voted against this amendment. In doing so, I urged that the continuation of such shipments be made dependent on Nasser's good behavior. My appeal, I regret, was to no avail.

THE FINAL FAILURE OF THE UNITED NATIONS

I said in my earlier remarks that it has been a mistake to rely so heavily on the United Nations in the Middle East crisis. If this needed any further proof after the UN's failure to enforce its own resolution in the Suez, we were given this proof in the critical days that proceeded the June war of 1967.

In late May, with the Arab armies openly threatening to invade Israel, I introduced a Senate resolution urging that the UN Emergency Force should refuse Nasser's demand that it withdraw from the UAR, and that it should, instead, be reinforced. But when Secretary General U Thant capitulated adjectly to Nasser's demand and withdrew the UN Emergency Force, this marked the end of any illusion that the UN could serve to keep the peace between Israelis and Arabs.

THE FAILURE OF THE BIG FOUR CONFERENCES

The Big Four Conferences have been just as abject a failure as the UN in dealing with the Mideast crisis. They have failed for the simple reason that they have been based on the completely erroneous premise that the Soviet Union and the United States share a common interest in seeing the Arab-Israeli conflict settled.

When the possibility of Big Four action on the Mideast crisis was first broached just before the June 1967, war, I said that, while this approach might be an essential diptlomatic enterprise, there was little reason to be optimistic about the possibility of Soviet cooperation.

Instead of Big Four action, I introduced a Senate resolution on May 25, 1967, calling for joint action by the U.S., Britain, and France to keep the Gulf of Aqaba open and to prevent a Mideast war.

Today we are still pursuing the will-of-the-wisp of Soviet cooperation in resolving the Arab-Israeli conflict.

It is high time that we put an end to this fruitless and self-defeating exercise.

I am reasonably certain that the Soviet Union wishes to avoid all-out war with the United States. On the other hand I am even more certain that the Soviets want to keep the Mideast crisis at fever pitch because this makes the Arab extremists more heavily dependent on them. It helps them in expanding their own influence in the area and in undercutting the influence of the free world. Their ultimate goal, of course, is to drive the free world completely out of North Africa and the Arab countries and establish a Soviet monopoly over all the vast Middle East oil reserves that are so crucial to the economy of Western Europe and the free world.

A NEW APPROACH

When Congress reconvenes, I intend to suggest the following approach to the problem of peace in the Middle East.

First and foremost we must seek to use all of our influence to bring about direct negotiations between the Arabs and the Israelis. As Secretary of State Rogers, himself, pointed out, only the nations directly involved can make a durable peace; other powers can help, but an agreement among them cannot be a substitute for an agreement freely negotiated between Arabs and Israelis.

Second, while we should maintain maximum contact with all the parties to the conflict and seek to act as a go-between and a catalyst, we should not take it upon ourselves to draw up any detailed plans for the settlement of the Arab-Israel conflict.

The proposals which Secretary Rogers made in his speech of December 9 were well intentioned, and while I have differences with a few of them, a lot of them made sense. But the Israelis say, quite understandably, that they want to be in a position to make their own concessions and their own demands, in direct negotiations with the Arabs. If everything is spelled out in detail by the Big Powers in advance of their negotiations, there would be nothing left for the Arabs and the Israelis to negotiate.

In taking this stand the Israelis are not saying, "Take it or leave it." In February of last year, Prime Minister Eskhol told a *Newsweek* correspondent who questioned Israeli intentions: "Try us out, and you'll be surprised on the degree of give and take we are prepared for." I believe this to be true.

I want to emphasize again that I believe Secretary Rogers' proposals were well intentioned, that they reflected no hostility to Israel, and that many of them made sense. But I hope that we have learned something from the reaction to them.

We were criticized by our Israeli friends for conceding too much to the Arabs and for seeking to impose a settlement. And we were vehemently attacked by the Arabs and the Communists for being too pro-Israeli.

So let's avoid detailed public plans, and let's seek instead to serve as simple catalysts and go-betweens.

Third, I believe, that in cooperation with the other NATO countries, we must seek to provide Israel with modern arms to counter-balance the massive shipments of arms by Moscow to the Arab extremists. To leave the situation as unbalanced as it is today is an open invitation to renewed aggression.

In fact, I have often said that we ought to *give* arms to Israel instead of insisting on cash payment because an independent, democratic Israel provides a check to the Soviet conquest of the Middle East, and it is therefore in our interest that Israel should be able to defend herself.

We have given vast quantities of arms to other nations because we considered it to be in our interest. We have, for example, invested billions of dollars' worth of military assistance in South Vietnam because Vietnam, like Israel, was seeking to defend its independence against Communist-inspired aggression.

This much the Israel and Vietnam situations have in common. But here the resemblance ceases.

Because Vietnam was a primitive country lacking a strongly developed sense of nationhood, we have had to back our commitment there to the tune of 40,000 American war dead and several hundred thousand other casualties.

In the case of Israel, however, we are dealing with a solidly united, highly advanced and cultured people, sharing our commitment to democratic ideals. Because of this Israel does not need any American expeditionary force to help her fight. She is quite capable of defending herself, if she is only given the weapons with which to do so.

This, in my opinion, is the final and clinching argument in favor of *giving* arms to Israel rather than selling them.

My fourth proposal is that we mount an energetic campaign of information to the Arab countries to make them realize that they are being used as pawns by Soviet imperialism; that the interests of their peoples can best be served by calling off the ruinous arms race and by negotiating a just peace with Israel; that their sovereignty is endangered by their growing dependence on Communist Russia; that they stand to gain far more from cooperation with the free world.

Finally, in order to discourage any miscalculations or any adventures, I believe we should make it unmistakably clear that we could not remain indifferent to any effort by the Arab extremists and Communists to crush the State of Israel.

It is not just that the free world could not stand idly by and watch the Nazi genocide of the Jews repeated in Israel.

The fact is that, in the context of the world struggle between freedom and Communism, the survival of Israel is essential to the cause of freedom and to our own national security.

UKRAINIAN INDEPENDENCE DAY

Mr. BURDICK. Mr. President, today is the 52d anniversary of Proclamation of Independence of the Ukrainian National Republic and the 51st anniversary of the uniting of all Ukrainian lands into one independent and sovereign nation. I would like to take this opportunity to pay tribute to the people of Ukraine in whom the desire for freedom has been kept alive. I am proud that more than 75 years ago Ukrainians first came to North Dakota and since that time have continued to make important contributions to its development. The Honorable William L. Guy, Governor of North Dakota, has likewise recognized the Ukrainians by issuance of a proclamation declaring January 22 "Ukrainian Independence Day." I respectfully request unanimous consent that the Governor's

proclamation be printed at this point in the RECORD.

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

PROCLAMATION

Whereas, On January 22, 1970, Ukrainians in North Dakota and throughout the free world will solemnly observe the 52st anniversary of the proclamation of a free Ukrainian state, and

Whereas, After a defensive war lasting 4 years, the Ukrainian state was destroyed in 1920 and a puppet regime of the Ukrainian Soviet Socialist Republic was installed, later becoming a member state of the Soviet Union, and

Whereas, The once free Ukraine is now no more than a colony of Communist Russia and its vast human and economic resources are being exploited for the purpose of spreading communism, and

Whereas, The United States Congress and the President of the United States of America have recognized the legitimate right of the Ukrainian people to freedom and national independenee by respectively enacting and signing the Captive Nations Week Resolutions in July, 1959, which enumerated Ukraine as one of the captive nations enslaved and dominated by Communist Russia, and

Whereas, Some 25,000 Americans of Ukrainian descent now living in North Dakota have made significant contributions to both state and nation.

Now, therefore, I, William L. Guy, Governor of the State of North Dakota, do hereby proclaim Thursday, January 22, 1970, as "Ukrainian Independence Day" in North Dakota and urge all citizens to demonstrate their sympathy with an understanding of the aspirations of the Ukrainian nation to again achieve its rightful inheritance of freedom and independence.

In witness whereof, I have set my hand and caused the Seal of the Great State of North Dakota to be affixed this 19th day of January, 1970.

WILLIAM L. GUY,
Governor.

FOR BUSINESS, A CALL TO COMMITMENT

Mr. MUSKIE. Mr. President, the gap between our aspirations and our achievements is of increasing concern to millions of Americans. It has contributed to the divisions in our society, and it has raised doubts about the capacity of our political and economic institutions to meet the needs of all our people and to make our aspirations a reality.

I was encouraged to read in the Wall Street Journal today a speech by Gaylord A. Freeman, Jr., chairman of the First National Bank of Chicago, dealing with the need for a greater business commitment to making the benefits of our society available to all our citizens. I ask unanimous consent that the text of Mr. Freeman's speech be printed in the RECORD.

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

FOR BUSINESS, A CALL TO COMMITMENT

(By Gaylord A. Freeman Jr.[1])

If we were to step back from the immediate and consuming interest in our business and look at the conditions necessary for our success, we would realize that in order to make a profit—which is the basis of our present economy—we need a political system in which private property is respected and private profits are legally permitted, and economic conditions sufficiently stable that profits are possible and have continuing value.

We take these two conditions for granted and just assume their continuation—but we should not do so.

There is nothing in either the Ten Commandments or the United States Constitution that guarantees private property. There is nothing in the history, or present condition, of man that assures stability in the value of our currency or a continuation of our economic assumptions. If at any time the majority of our citizens—including our sons and daughters—should conclude that they would be better off under some other economic system, then our system will be changed.

If the majority of our people place full employment and rapid national growth ahead of monetary stability and, later, ahead of economic stability, then profits will no longer be economically possible or of continuing value.

Any fundamental change in our society seems so improbable that it may appear foolish to worry about the possibility. Perhaps so. But I do have some concern about the attitude of many honest, conscientious citizens—and not just those who are young or black—who see in the war in Vietnam, the continuing poverty of millions in this most affluent of societies, the pollution of our air and water, evidence of failure of our entire system and a reason for fundamental change.

I think our people are capable of understanding the merits of freedom, which is the basis of our system, if someone reminds them of its values, and someone improves the existing conditions (of inequality, poverty and pollution).

That "someone" has to be us—or it is no one. Who else has an equivalent motivation of self-interest to try to accomplish this?

JUSTIFYING CORPORATE SPENDING

The question is properly asked: "What right does a corporate executive have to spend his corporation's funds (or the time of his executives, who are paid by the stockholders) to achieve a cause which he thinks is appropriate?" My point is that the use of stockholders' assets to improve the society can be justified if the societal improvement redounds to the benefit of the corporation and redounds in some reasonable relationship to the expenditure—hopefully, at least, dollar for dollar. If by an expenditure of $25,000 or $2,500,000 or $25,000,000 (depending on its size) a corporation could substantially contribute to the continuation of the opportunity to conduct a profitable business for the next 100 years, the investment clearly would be justified.

If, on the other hand, the cause is just "a good cause," with no prospect of enhancing future earnings, then (unless it causes others to bring you additional profitable business—or it induces others to make social contributions which do enhance your earnings—or it can be supported as a form of compensation to your employes), it is an unjustified gift of funds belonging to the stockholders.

Much of the student criticism, the black criticism, the academic criticism of business is not a criticism of our business or our profit motivation, but, on the contrary, a criticism of our failure to utilize our magnificent business organizations to achieve ever-widening public purposes.

Whether or not we want to improve the society, whether or not we are motivated by self-interest in doing so, it is now expected of us. And if we fail to accept this responsibility, we will lose much of the public's confidence in the value of our private enterprise system.

The entrepreneurs who built the railroads were the giants of a century. They may not have observed all of the niceties of our current mores but they bullied through their lines; they built cities; they set the tax rates; they chose the Senators; and they built a nation. Magnificent! But they didn't care about the customer. Their social attitude was reflected by Vanderbilt when he exploded—"The public be damned!" That was a mistake. The individually insignificant farmers banded together and founded the Grange movement. One of their first purposes was to get the power of the railroads curtailed and their rates regulated. The railroads have suffered ever since. Caught between rising labor costs and government regulated rates, they are being squeezed to death. Only the entry into other, less regulated fields offers them a future.

Let's not let that happen to the rest of us.

We businessmen are so completely absorbed by our businesses that we don't take time to think much about the non-business problems facing our society. "Why study these problems when we don't have the time? Besides, in the last analysis, they are pretty simple."

There is a great temptation for us overcommitted businessmen to accept the ready-made convictions of our friends in the company or at the country club and, consequently, to avoid the necessity for the hard analytical thought which we reserve for our business problems.

This isn't a new phenomenon. As James Harvey Robinson pointed out many years ago: "Few of us take the pains to study the origin of our cherished convictions; indeed, we have a natural repugnance to so doing. We like to continue to believe what we have been accustomed to accept as true, and the resentment aroused when doubt is cast upon any of our assumptions leads us to seek every manner of excuse for clinging to them. The result is that most of our so-called reasoning consists in finding arguments for going on believing as we already do."

A Secretary of the Treasury once said to me that he thought that we should terminate the tax exemption of all universities because they were all full of liberals ("Pinkos" I think he called them). Think just a minute. If all the university people had to follow one line of thought, who would suffer the most? We would. We, the less than one per cent who have the greatest benefits in this society. All that is required is to destroy freedom of thought, and we go down the drain with it. I don't know the solution to campus demonstration or the indefensible destruction of property or the disruption of teaching of those who want to learn, but I do know that the universities are our greatest defense—not because professors or students like us (generally they don't), but because they preserve the anarchy of freedom of thought and expression without which we could never demonstrate the importance of the freedom of individual initiative and the resulting social benefits.

THE FREEDOM TO DIFFER

And I suspect that related to our tendency to accept standardized, simplistic attitudes is a similar tendency to lump many quite heterogeneous groups into one mold. At the same moment that we cheer for individual freedom, we may criticize the boy who grows a beard or the girl who demonstrates for peace. We must be careful to preserve the freedom to differ as well as the freedom to conform.

Many of us lived through the depression. Those of us older ones who had to walk the streets looking for a job will never forget the experience. Perhaps that makes security, hence job tenure, hence conformity, too important. The young people today want "to do their own thing." They want to dress and live their own way, at least, for a while. They don't have our fear of losing a job—they can

[1] The author is chairman of the First National Bank of Chicago. This article is part of an address to the annual meeting of the St. Paul Chamber of Commerce.

get another one without missing a day's pay. Some of these attitudes will change as they grow older, but some will not.

We are, undoubtedly, entering a period with less emphasis on production of goods and with greater emphasis on culture, leisure, individual self-expression—on the quality of life. Even our labor negotiations will have to offer individual employees more individual options at the expense of our paternal security. This rattles us. But it shouldn't. It is merely an expression of the wider affluence—a recognition by a larger number of our people of the very values which we have always defended for ourselves—individual freedom.

We have all read of "powerful business interests" and figured it referred to some people we didn't know. We have had acquaintances refer to our positions as positions of power and influence and we have tried to look a little important while secretly we thought the remarks greatly exaggerated.

But the fact was brought home to me a little while ago when, with a few other business leaders, I was negotiating with a group of blacks. One of them said:

"I don't like you honkies, but we have to deal with you. City Hall has got it made, and they don't want to change nuthin'. The guys in the churches are soft-hearted, but they are also soft-headed and have no power. The professors study everything but never follow through with any conclusion. The Federal Government guys are interested, but when it comes right down to the punch, they're afraid to take action for political reasons. So there's nobody else left to talk to but you guys who represent the Establishment that we're supposed to be fighting. The fact is, you cats got the clout."

I have thought about that a good deal since. We do have some clout, some power. We have the economic power to hire, to invest, to locate a plant, etc., which decisions are invariably made on such a strict dollar and cents basis that we don't think of it as power. We never think of using this for our personal benefit so we never think of it as personal power.

BUSINESS PREROGATIVES

As the head of a business, you can ask other leaders to lunch (at company expense), and if they are free, they will come. If it is inconvenient for them, you can send a car (with a company driver) to get them. If you want to urge the Mayor or the Governor to take a certain action, you can call him on the phone and he will at least listen to you. Or you can get the chamber of commerce or your trade association to mobilize other opinions and communicate with the official.

The fact is, "we cats do have clout." We don't have as much as outsiders may think and we don't use it indiscriminately, but we do have it.

But we have it only when we feel committed. We influence others only if we are willing to put up the first $25,000 or give the time of two vice presidents or otherwise indicate that this project is of great importance to us.

Thus, the message is: "Let's get committed. This is our country. This is our society. Let's improve it and, by improving it for all of the people, we can preserve it not only for ourselves but for all citizens. The job is expected of us, and its accomplishment will be deeply rewarding."

THE 51ST ANNIVERSARY OF UKRAINIAN INDEPENDENCE

Mr. KENNEDY. Mr. President, today marks the 51st anniversary of the independence of the Ukrainian State. Ukrainian Americans across the Nation will gather today to recall the proud—though brief—accomplishment of their people and their nation.

For one brief moment in modern history, the freedom-loving people of the Ukraine achieved their independence from the foreign powers which had held them subject for centuries. The opportunity for national freedom came—and was grasped—with the overthrow of the Russian czarist regime in 1917 and the dissolution of the Austro-Hungarian Empire. On January 22, 1918, in defiance of a newly emerging Soviet nation, independence was declared and 300 years of Russian domination was ended.

But in less than 3 years—a new Russian government—one dedicated to a goal of world domination—withdrew its recognition of the fledgling National Ukrainian Republic, invaded its territory, and conquered its people once again.

Not satisfied with domination of the country, the Soviets—recognizing the threat inherent in those who have tasted freedom—began a systematic destruction of Ukrainian nationalism. Leaders of the Republic—even those who had fled to other nations—were assassinated. National religions were persecuted and destroyed; 600,000 people perished in famines organized by the Kremlin to force acceptance of collective farming; language and culture were Russified and the economic viability of the people was ruined.

And let, through it all, and through the 48 years of the "Ukrainian Soviet Socialist Republic", the people of the Ukraine have resisted spiritual domination and a flame of hope still burns in their hearts that one day they will again be free.

Mr. President, as our great Nation moves toward the 200th anniversary of its own independence—happily a constant and continuing independence—it is well that our people pause to give tribute and support to those people once free who are now enslaved.

It is an honor for me to join with Ukrainian Americans in support and hope for a great people who refused to be bowed.

Taras Shevchenko, one of the most honored of the Ukrainian poets, has expressed the intense nationalistic feeling of his people and described their yearning for freedom in the beautiful poem, "The Legacy":

When I shall die, pray let my bones
  High on a mound remain
Amid the steppeland's vast expanse
  In my beloved Ukraine:
That I may gaze on mighty fields,
  On Dnieper and his shore,
And echoed by his craggy banks
  May hear the Great One roar.
When from Ukraine that stream shall bear
  Over the sea's blue sills
Our Foemen's blood, at last shall I
  Forsake the fields and hills
And soar up to commune with God
  In his eternal hall.
But till that Day of Liberty—
  I know no God at all.

AN APPEAL TO THE GOVERNMENT OF NIGERIA

Mr. DODD. Mr. President, when the Nigerian-Biafran war was drawing to a close, the Nigerian Government assured the defeated Ibo tribesmen of a general amnesty, and it issued stringent directives to the Nigerian forces against the maltreatment of civilians and prisoners. The Ibos were told that they would be welcomed back as brothers into a reunited Nigerian nation.

I know that we are all greatly encouraged by these statements. But the acid test of Nigerian intentions will be the manner in which the Lagos Government handles the problem of mass hunger in the area of recent hostilities.

A week ago there were assurances from a small team of neutral officers, as well as from the Nigerian Government, that the situation was under control and that there was no problem of mass starvation. These assurances, I must say, were rather difficult to believe in view of the unchallenged facts that 2 million Ibos have died of starvation over the past 2 years and that millions more have been kept alive only by an emergency airlift of food to Uli airstrip.

Within the last 48 hours foreign correspondents have been permitted to visit the former territory of Biafra. Despite the fact that their movements were subject to some restriction, the stories they dispatched and the films they transmitted via satellite TV do not bear out the assurances that the situation is under control and that the Nigerian Government is able to cope without the assistance of the major relief organizations which previously functioned in the area.

On TV last night we saw the same hordes of starving children, with their skeleton-like bodies and swollen bellies. We were told that there was no serious apparatus of distribution, even in the city of Owerri, and that in most cases food was being sold for Nigerian currency only, which very few Ibos possess.

All the indications were that the situation in the area of recent hostilities is already catastrophic and that it is getting worse by the day.

Under these circumstances, I hope that Major General Gowon, the chief of state of Nigeria, will reconsider his decision banning the operations of Joint Church Aid, Caritas, and the International Red Cross.

These three great organizations, which have borne the brunt of relief in the previous territory of Biafra, have large stockpiles of food in nearby centers. They have a readymade apparatus and experienced personnel who are familiar with the problem of food distribution in the area.

If this apparatus is now dismantled, it may take months before a new apparatus can be assembled to take over from it.

In that period of time, millions of innocent civilians can die.

I know that the Nigerian Government is disposed to believe that Joint Church Aid and the International Red Cross were sympathetic to the Biafran cause. However, I know of no statement by either organization that warrants this judgment; so far as I am aware, their only concern has been the feeding of starving people.

If the Nigerian Government is truly prepared to welcome the Ibos back into a reunited Nigeria and to treat them as brothers, then it seems to me that it should also be willing to forget any complaint it may have had about the attitude or policies of those international relief agencies which sought to prevent mass civilian starvation in Biafra.

The Nigerian Government will have to pay a heavy price in world opinion if hundreds of thousands of women and children were to die in coming months because of its refusal to accept the cooperation of all those organizations which wish to help and can help.

Conversely, I believe that the Nigerian Government would inspire confidence in its intentions and win new good will for itself if it frankly recognized the gravity of the situation, permitted the resumption of the airlift to Uli, and invited the continued cooperation of all foreign relief agencies, to head off the possibility of mass starvation.

The essential requirement of Nigerian control could be adequately met by requiring that foreign relief agencies, both public and private, operate under the supervision of the Nigerian Red Cross or some other competent Nigerian agency.

I have been assured that the major agencies involved would accept such supervision gladly and without reservation, and that they would be prepared to cooperate loyally with the Nigerian Government.

As our own Civil War was drawing to a close, President Lincoln, in his most memorable address, called for charity for all and malice toward none. Let us all hope that the Nigerian Government will find the wisdom and the strength to conduct itself in this spirit in dealing with its defeated foes.

STARVATION IN BIAFRA

Mr. RIBICOFF. Mr. President, it is a great tragedy that over 2 million Biafrans have already died in the 30 months of the Biafran-Nigerian conflict. It is even more tragic that no one knows for sure just how many more Biafrans will unnecessarily continue to die in the aftermath of this war. To the 1.5 million Biafrans in need of immediate relief, the end of the war has not meant an end to their starvation. It could be a week, a day, or perhaps just a matter of hours before they too will become part of the statistics of Biafran war victims.

As a sponsor for the Food for Biafra Relief Committee, I was deeply concerned by the plight of starving men, women, and children during the course of the conflict.

And I am equally concerned with their plight now.

After the surrender of Biafra to Nigeria, the Nigerian Government promised that it would provide full emergency relief measures to meet the needs of the victims of the war.

But the Nigerian Government has also insisted that it will not accept aid from nations and foreign agencies that aided Biafra during the war.

Mr. President, this is no time to put political grudges above the preservation of human life.

This is no time to be more concerned with whose label is on the package, or whose hands are giving out the food, than with the efficient distribution of this food.

What is most crucial is the speed with which food supplies are being distributed to the Biafran population.

But the dimensions of this relief program are too vast for one nation to manage alone.

In barring the assistance of Joint Church Aid, Caritas, Canairelief, and the Nordic Red Cross, the Nigerian Government is barring the assistance of those very people who could make this relief program a more organized and efficient operation. It is these relief personnel who are familiar with the management of the food centers, and the best means of getting supplies to the population. It is they, and not the Nigerian Government, who have been most familiar during the past 30 months with the needs of the victims of starvation.

There have been conflicting reports as to how successfully the Nigerian relief program is actually operating. Many of us have been hesitant to speak up without being able to verify certain facts. But it has been practically impossible to obtain accurate information on whether or not supplies are being delivered into the enclave area, and on the number of people in critical condition.

But U Thant has stated, just returning from Nigeria, that there is need for further assistance. And the latest news reports have also indicated that although there are adequate stocks of emergency food in various Nigerian centers, the distribution of that food is "hopelessly inadequate."

Mr. President, I have always felt that it would be far better to provide too much assistance, rather than too little, too much relief rather than not enough.

I commend the work of the Senate Judiciary Subcommittee on Refugees for currently holding hearings on the status of Biafran relief. We need to ask questions and we need to obtain answers.

It is most unfortunate that there has been such a conspiracy of silence surrounding the present situation. It is also unfortunate that the figures released by the State Department are those of a report made in October. Dr. Karl Weston, in that report, stated that the enclave's civilian population was then 3.24 million, and of that number, 1 million had edema—a swelling of the body indicating severe protein deficiency.

But that survey was made in October, and it is only logical to assume that conditions would have worsened since that time.

We need more accurate information. We need to know how many feeding centers are in the enclave area, how many people are in the last stages of starvation, and how adequately the food is getting to those who need it most.

But we cannot afford to wait too long. We cannot underestimate a situation where human lives are at stake.

Our Government has responded to the urgency of the situation. I was most pleased to learn that President Nixon authorized the allocation of $10 million in foodstuffs, and medicine, up to $2 million to the United Nations Children Fund for the care of children in Nigeria, and has readied eight C–130 cargo aircraft and four helicopters to assist deliveries to the refugees.

I was also pleased to note that the United States is providing three portable hospitals, 50 jeeps, and 50 trucks at the request of the Nigerian Government.

But the Nigerian Government has still refused to allow the assistance of foreign relief agencies.

And they have still refused to accept the offer of C–130 aircraft because they are military rather than commercial aircraft.

I believe that the relief effort could be vastly speeded up if the Nigerian Government were to allow more personnel assistance and were to use helicopters and aircraft in getting supplies into the enclave and bush areas.

If the Nigerian Government continues to insist that no supplies be utilized from previously pro-Biafran sources, then I suggest that such supplies be funneled through the United Nations. If it is the label on the package that the Nigerian Government is worried about, then let them use whatever label they desire. We will not object, even if they choose the Nigerian stamp. As for us, our immediate concern is the relief of the Biafran population.

Mr. President, I ask unanimous consent that the following article, "Ibos Need Food Badly, Reporters Find" from this morning's Washington Post be inserted in the RECORD.

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

IBOS NEED FOOD BADLY, REPORTERS FIND

(By Bridget Bloom)

OWERRI, January 21.—There is no evidence of mass starvation in the former Biafran enclave, but many of the people here are very hungry.

They are hungry because the Nigerian relief machine is not geared to feed and care for them. There are adequate stocks of emergency food in various centers outside the worst-hit areas. Within these areas, as well as outside them, there is plenty of local food. But, for the time being, transport to ferry the food to the needy is hopelessly inadequate.

This is the immediate conclusion correspondents drew from a 12-hour, 150-mile journey along many of the major roads of what until a week ago was Biafra. We traveled, except for a brief detour of a few miles, only along main roads, from Aba on the southeast tip of the former enclave through Owerri, its provisional capital, to Orlu, home of Radio Biafra, and back through Ihiala and Uli.

The Nigerians' press tour did not include the rural areas, where the situation may be quite different from the towns. Neither was it possible to get reliable information of the medical effects and gravity of the widespread hunger.

The worst situation, because the majority of the hungry are refugees from other towns, is in Owerri.

The road from Aba to Owerri was remarkable, considering the circumstances, for its normality. Small groups of people trekking in both directions, interspersed with obvious refugees, appeared to be engaged in normal farming or trading activities. Well established and freshly tilled patches of cassava, the staple food, abounded. In several places land was being burnt in preparation for new planting.

In Owerri itself, however, which before the war was a town of only some 20,000 people, the situation was dramatically different. It was impossible to know how many people lined the town's main street—they were at least ten deep for at least half a mile. Although all were not refugees in the strict

sense, all had returned to the town since it was captured, empty of people, on Jan. 10. Most appeared to be housed, after a fashion, in abandoned houses and shops.

There were very few "living skeletons" and most people were reasonably clad. But any stranger to the town is besieged by hungry faces and the unvaried plea—"Can we get something to eat, we have not eaten for two, three or four days."

In the other area seen, the refugee problem seemed to be less severe. At the main Orlu crossroads, the crowds were much smaller and the complaints of hunger fewer, while on the roads within the enclave—from Owerri to Orlu, from there to Ihiala and back to Owerri through Uli airstrip—the numbers trekking were relatively few. Again, even on these roads there were many signs of normal life.

The shooting war apparently has stopped. But the federal government's program—of sending the army back to barracks and of leaving the maintenance of law and order in the hands of the police as the initial stage in rebuilding the IBO civilian confidence—is far from being achieved.

The army's presence is everywhere and in some areas there appears to be considerable indiscipline.

There is a good deal of looting. As we stood in Owerri's main street soldiers commandeered furniture from refugees and drove it away. A young widow said soldiers had taken her belongings and food and threatened to take her, too.

There have been many stories of rape. It was noticeable that in the groups along the roads there were few young women. They are apparently in hiding for fear, as the local phrase apparently goes, of "being conscripted."

Asked about allegations of rape, looting and other indiscipline, Lt. Col. Akinrinade, second in command of the 3d Division, to whom Biafra fell, admitted that some soldiers had "behaved outside the general pattern."

So soon after Biafra's collapse, he said, officers could not always be present to discipline troops, but any reported cases were investigated and in one case, a soldier attempting rape had been shot (in the foot, according to later reports).

Correspondents on the tour heard as many reports of correct behavior by federal troops as of indiscipline.

The international observer team, which is again touring the former enclave, was in the Owerri-Orlu area today. Its leader said the team had no reason to change its opinion, published in an interim report in Lagos last week, that the behavior of troops was in general correct, and that incidents reported were being investigated and offenders punished.

Food, not looting or rape, is the major problem. There seem to be three main reasons for the hunger at Owerri in particular and for the failure of the federal administration so far to cope wtih it.

Everyone, from the federal administration in Lagos to the federal army in the field and the skeletal (ex-Biafran) relief administration on the spot, was disorientated by Biafra's collapse. No one expected it to be so sudden or so soon.

Relief workers estimate that within the enclave itself there are between 1.5 and 2 million people, but there has been no census of people even in Owerri. While it is widely believed that a high proportion need to be supplied with full rations, no one is sure.

The same goes for the medical condition of the people within the enclave. Medical attention is undoubtedly very inadequate, but no one seems to know how many people need drugs or clinic or hospital treatment.

The federal government's contingency plans all but collapsed with Biafra's sudden demise. The new plans, announced last week and involving the Ministry of Economic Development in a co-ordinating role over the whole operation, have yet to have any significant effect in the field.

Red Cross officials we met in the field all complain about the critical lack of transport. Donated trucks and Land-Rovers are not likely to reach the scene before the end of this week.

Another reason why refugees are going hungry is more complex. Biafran currency now is worthless. Only Nigerian currency is acceptable. This has led to an absurd and tragic situation.

Probably 90 per cent of the refugees here have enough Biafran money to buy essential food. The food is here, too—traders, mostly from parts north of here, have moved in. But, because they have only Biafran currency, the refugees are unable to buy.

PROPOSED SALE OF 100 MIRAGES TO LIBYA

Mr. CRANSTON. Mr. President, the French Government's plan to sell 100 Mirages to Libya is a sad commentary on the policies and current politics of a country that has traditionally been our oldest ally.

Against the wishes of the vast majority of its own people, the Government of France—the France of Lafayette and Emile Zola—is peddling weapons to the Arab world to curry favor for advantages when oil concessions open up. This is a selfish and short-sighted policy.

Coming at a time when tensions in the Middle East are at a peak, such a sordid, contemptible case of influence peddling makes a mockery of the Pompidou government's pretense of promoting peace in the Middle East.

The French logic escapes me. On the one hand, the French Government declares an arms embargo against all nations involved in the 1967 war in the Middle East, even at the price of failing to honor commitments already made to Israel. On the other hand, France sees no inconsistency in selling approximately $800 million worth of sophisticated, offensive military weapons to Libya.

Libya, having recently experienced a bloodless coup, is hardly in a position to utilize these weapons. Furthermore, the Libyan air force is ill equipped and poorly trained in the use of these highly technical weapons of war. It is difficult to imagine any possible use of these planes except in a war against Israel. Though there is a clause in the arms contract against the sale of these planes to third parties—notably Egypt, Jordan, and Syria—there can be no real enforcement of this provision once the sale has been made.

Whatever reasons the French Government has for this sale, they obviously do not include a desire to promote peace. France is clearly motivated solely by a short-sighted desire to maintain and improve her position in the Mediterranean and continue the Gaullist policy of seeking to consolidate French political and economic interests in the Arab countries. Oil is a crucial commodity in the Middle East and France is an important buyer. Arms sales constitute one way of balancing French trade in that area.

Through its unilateral action, the French Government has dramatically and drastically increased the tensions in what is already a tense and dangerous area of the world. When these jets arrive, the balance of power in the Middle East will be significantly and critically shifted in favor of the Arab nations. The recurrence of the larger scale war the Arabs constantly threaten will be closer to becoming a tragic reality.

The one clear task which confronts the nations of the Middle East is to find ways to reduce hostilities and tensions so a viable peace can be negotiated. This precipitous action by France can only be seen as harmful to that end. The people of France would have wished that its government took the path of the peacemaker. The Pompidou government has chosen the path of the influence-peddler instead.

I am sure that Senators will remember this episode the next time there is a run on the French franc.

RISING LEVEL OF VIOLENCE IN PUBLIC SCHOOLS

Mr. SPONG. Mr. President, the rising level of violence in our public schools is an aspect of the crime problem which up to now has received little legislative attention; yet, it poses a serious threat to our whole educational system.

As chairman of the Subcommittee on Education of the Committee on the District of Columbia, I conducted hearings last October on the situation in Washington schools. I was appalled by what I heard.

For example, the principal of a junior high school reported 30 cases of extortion, 20 assaults, 23 locker break-ins, two school burglaries, and innumerable cases of vandalism in just one 3-week period this year.

Another principal testified that his school experienced an average of two or three purse snatchings a day and had recently had a mugging on the building's front steps.

At another high school, an assistant principal was murdered by youths fleeing after robbing the school bank, and last month, a junior high school student was shot and killed in a hallway.

In common with other school systems in this country, the District is also experiencing a growing drug abuse problem.

School crime is an extremely complex and many-sided phenomenon and there are no simple solutions. Still, I am disappointed that in the 4 months since our hearings, District school authorities have not yet done more to come to grips with it.

After reviewing the situation with school and community leaders, however, I have concluded that the problem has grown beyond anything our school personnel are trained or equipped to handle. Traditional methods of discipline simply cannot cope with the new levels and types of crime occurring in schools today, nor can they come to grips with the problem of drugs and narcotics.

We are not talking any longer about simple truancy and schoolboy pranks. We are talking about criminal behavior—about assaults, robberies, murder,

extortion, and drug peddling. And, frankly, the schools are not equipped to control it.

This is not a problem which is confined to the District but one which afflicts schools across the Nation.

Let me read a few excerpts from the Report of the President's Task Force on Urban Education:

It is estimated that the public school systems in the Nation's 193 largest urban areas have suffered at least $70 million from school vandalism each year since 1960 . . .

In Philadelphia . . . there was a 500 percent increase in the number of reported assaults on or threats to school personnel in the period 1962 to 1967.

In Chicago . . . the assaults upon teachers during the first six months of the September 1968 term were up to 30 percent over the same period in 1967.

In its most shocking note, the task force reports that three out of four of East St. Louis' 900 teachers are today carrying guns.

Clearly we are faced here with a crisis of national proportions. And, I have written today urging President Nixon, Commissioner of Education Allen, and Attorney General Mitchell to assign the highest priority to meeting it.

I believe there is need for some kind of safe schools legislation to provide grant assistance for special training of teachers and other school personnel, development of better counseling techniques, research into the connection between school violence and the drug abuse, curricular reviews and development of new kinds of community-school organizations.

Crime in the schools is only one facet of our overall crime problem, but it must be recognized that education is the key to everything we hope to accomplish in this field. If we cannot provide a safe environment in our schools, if we cannot protect our schools, if we cannot protect our children from attacks, intimidation, and corruption in their very classrooms, then I submit we are beaten in the war on crime before we begin.

DEVELOPMENT OF THE MIRV

Mr. CRANSTON. Mr. President, the issue of development of the multiple independently targetable reentry vehicle—MIRV—is indeed a critical one, for it relates directly to the prospects for progress in the crucial arms limitation talks we have now begun with the Soviet Union. These talks represent what I hope will be the beginning of significant and substantial arms reductions by the major powers of the world. For when we have mutually reversed the spiraling arms race we will have taken a critical step away from the abyss of annihilation and the destruction of mankind.

MIRV, furthermore, represents only the latest addition to the alphabet nightmare of weapons of war. It is wonderfully deluding to refer to these weapons as ABM, MIRV, and others. In this way we blind ourselves to the deadly, insane nature of their destructiveness.

I am totally opposed to the further development of MIRV and have joined many of my colleagues in cosponsoring my good friend Senator BROOKE's resolution, Senate Resolution 211, which is designed to achieve this end.

Thus, I am pleased to ask unanimous consent to have printed in the RECORD the editorial from the Christian Science Monitor which analyzes the issue and its implications so well. It is good to note that while I may disagree with Dr. DuBridge on the matter of offshore oil drilling in California, I can readily agree with his reported desire to halt the development of this destructive weapon of war.

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

A STEP FULL OF PROMISE

We have long felt, and stressed, that the first major opening step of the forthcoming American-Russian arms limitation talks should be a joint agreement to halt development of the MIRV (multiple independently targetable reentry vehicle). We feel that neither side would run any grave risk in doing so, since each already has overwhelming deterrent striking power.

But this is only a negative argument. There is, more importantly, a positive argument for such a MIRV testing moratorium. This is the impetus which any such American-Russian agreement would give to the whole search for arms control and peace. Were the coming April conference in Vienna opened with such a dramatic step, it could have a remarkably healthy influence on all subsequent decisions. It would have pointed the conference in the right direction, that is towards agreement and positive action. In short, a MIRV standstill would create a foundation of forward-movement and success, upon which further and even more important decisions could be built.

Thus we are delighted to note reports that President Nixon's scientific adviser, Dr. Lee DuBridge, has become convinced that such a moratorium is not only feasible but desirable. Dr. DuBridge is a man of no little influence, and his decision, made after a long period of weighing pros and cons, could be of very considerable weight. Nor can Dr. DuBridge be accused of being merely airily optimistic, since he is understood to be strongly opposed to a one-sided American stopping of MIRV development.

The step-off meetings between Americans and Russians in Helsinki went encouragingly well. Both sides seemed to demonstrate a basic wish to reach some kind of an agreement which would lift both the burden and the danger of the present arms race from their shoulders. Each, in the interim between Helsinki and Vienna, have repeated their hopes for agreement.

But there is universal recognition that, on an issue of this nature, an immense distance remains to be trodden. What is needed is some bright mark that can serve as a beacon lighting the path to further progress. Such a beacon would be a moratorium (first temporarily, then, hopefully, permanent) on this hydro-headed weapon of destruction. The American and Russian people, along with the rest of crucially interested mankind, long for progress on weapons control. They are ready to see their governments take a reasonable chance on peace. A moratorium on MIRV could, and we believe would, be as a step full of promise.

ENVIRONMENTAL QUALITY: PLANNING WASTE MANAGEMENT

Mr. TYDINGS. Mr. President, the consideration of proper waste management is a vital factor in environmental planning. We have increasing evidence of the crucial role sewage disposal plays in maintaining delicate ecological balances.

The wise use of effluents to benefit rather than damage the environment is the subject of a thorough and thoughtful article written by Lee Berton and published in the Wall Street Journal of December 2, 1969. In studying the critical problem of recycling nutrients in wastes and sewage into nature, ecologists find that effluents which pollute lakes and streams can enrich the soil as well; phosphates from sewage plants which cause pollution of lakes can be sprayed on forests to encourage plant growth. A major threat to Maryland's Chesapeake Bay is pollution by noxious substances, such as organisms found in white perch which could cause typhoid fever and dysentery.

As John Cantlon, former president of the Ecological Society of America, says:

We've got to plan our cities and rural areas so that waste management is one of the major elements, and we put in enough green space or swamp land to absorb our effluents through enrichment of the soil rather than pollution of our lakes and streams.

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

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

[From the Wall Street Journal, Dec. 2, 1969]

ECOLOGY AND PROBLEMS BEYOND POLLUTION

(By Lee Berton)

"U.S. cities are mining the productive soils of the prairies and dumping useful nutrients into places like New York harbor, where they are harmful, and the Hackensack Meadows in New Jersey, where they are useless."

That, says University of Pennsylvania Professor Ian McHarg, is perhaps the most pressing environmental problem uncovered in a just-completed five-year aerial and ground-level inventory of natural resources in the Delaware River Basin. Mr. McHarg is chairman of the department of landscape architecture and regional planning at Penn, and the survey taken under his direction is one of the most extensive projects yet in the fledgling science of ecology, or the study of man's relationship with his total environment.

The problem of environment, ecologists stress, goes far beyond merely pollution, for all its current popularity in headlines and on television screens. For too long, they contend, man has thought merely of disposing of wastes, preferably in some innocuous way. But, Mr. McHarg declares, "burning garbage at incineration plants or burying it in landfill is stupid and senseless. All we get for our troubles are poisonous methane gas and poor foundations."

The real solution to waste management, the ecologists say, is to use sewage and other effluents wisely, so they benefit rather than damage the environment. By and large, wastes are fertilizers and foods needed by some organisms. Put in the right place they can be useful; but put in the wrong place they entirely upset the balance of the environment.

SEWER DISPOSAL DIFFICULTIES

The problem is particularly obvious, and particularly pressing, in the treatment and disposal of sewage. Current treatment depends heavily on aeration to kill harmful bacteria and remove offensive odors. The resulting effluent is released into lakes and streams.

The process breaks sewage down into its constituent compounds of phosphorous, nitrogen and the like. These compounds are

food for many organisms, and releasing too much of them into waters stimulates a clogging overgrowth. The much publicized "pollution" of Lake Erie, for example, does not actually result from inherently noxious chemicals. Rather it comes from an overabundance of generally beneficial ones, stimulating an excessive plant growth that uses up so much of the available oxygen fish can no longer survive.

John Cantlon, former president of the Ecological Society of America, says "We've got to plan our cities and rural areas so that waste management is one of the major elements, and we put in enough green space or swamp land to absorb our effluents through enrichment of the soil rather than pollution of our lakes and streams."

Ecologists generally support that opinion strongly. The principle is clear enough. Rather than run phosphates from sewage plants into Lake Erie, for example, spray them on green belts or forests surrounding cities, where more plant growth is needed. In working out the details, though, many projects remain only in the idea stage, and others serve mostly to suggest the difficulties and expense involved.

George M. Woodwell, a senior ecologist at Brookhaven National Laboratories in Upton, N.Y., suggests building small marshes and ponds as "great sinks for these nutrients." In these water bodies, Mr. Woodwell would harvest carp and rice, which he describes as excellent crops for absorbing sewage plant effluent. He has asked the Atomic Energy Commission for a grant of several million dollars to conduct a 10-year study of these "terrestrial and aquatic swamps," which he describes as similar to Southeast Asia's "paddy-and-fish" irrigation systems.

At Lake Mendota near Madison, Wis., University of Wisconsin researchers have been removing aquatic plants with special harvesting equipment for the past three years. "Before the city of Madison stopped spewing its sewage into the lake three years ago, the waters became so thick with milfoil, a spruce-like underwater growth, that boats and canoes couldn't sail and fish and humans couldn't swim," recalls Arthur Hasler, director of the university's Laboratory of Limnology (the study of fresh inland waterways).

Professor Hasler says these aquatic plants are being cut up after harvesting and are being used for hog feed and compost. "But we are removing the plants choking up Mendota with only three machines, which is like using one lawnmower on all our city parks," he says. "We need at least 10 of these weed harvesters or we're simply making a gesture rather than a real effort." The harvesters, however, cost $40,000 each and the city of Madison and surrounding Dane County can't afford more than three, he adds.

Michigan State University in East Lansing began a project two years ago to absorb the sewage effluent from its 40,000 students without polluting nearby lakes. Researchers at the university's Institute of Water Research discovered that if they construct a system of connected ponds and small plots of woods and specific crops, they could absorb the nutrients in the effluent without upsetting the ecological balance of the landscape.

Marvin E. Stephenson, an associate professor working on the project, says five pounds and 200 acres of three-to-five acre plots of hardwoods or corn and alfalfa cover 450 acres. Pollution of the ponds decreases as each is drained into another and the final pond, which is five times the size of the other four, is clean enough for swimming. The first few ponds, which get the brunt of the sewage, are occasionally harvested of overgrowths of water weeds and plants.

Nutrients from the smaller ponds are used to fertilize small plots of land and each plot is being studied to see which plants or vegetables absorb phosphates or nitrates quickest. The budget for the project is $1.4 million.

At present the project is infeasible for large cities. Professor Stephenson estimates that 350 square miles of ponds and plots would be needed to treat all New York City's effluent; the city itself covers only 320 square miles. "The land area needed to absorb without pollution the 15 billion gallons of treated sewage of the U.S. daily would encompass 3,500 square miles, or more than Rhode Island and Delaware together," he points out.

Some communities are diverting effluent from nearby lakes to distant irrigation reservoirs used by farmers. Professor Hasler is a consultant to the South Tahoe Public Utility District, which raised $9 million locally and received a $10 million Federal grant to pipe treated sewage over the mountains into California rather than into Lake Tahoe in Nevada. He recalls, "At first the farmers weren't too keen on using 'night soil' to fertilize their fields, but they've discovered it doesn't smell that bad and is much better than commercial chemicals."

USE THE OCEANS?

While methods of recycling nutrients into nature are being studied and perfected, some ecologists believe a useful stopgap would be dumping sewage far out into the oceans, well beyond the continental shelf. William Niering, a botany professor at Connecticut College in New London, suggests isolating sections of the oceans with plastic barriers for dumping contaminants. "We could create self-contained ponding areas that wouldn't spread sewage," he says, adding that the open ocean is now a "biological desert" that could absorb organic fertilizers without harmful pollution.

To promote better handling of wastes, David Gates, a St. Louis ecologist, has asked Congress to establish a National Institute of Ecology. He also recommends the creation of ecosystem analysis task forces, which would study certain geographical areas and try to save animal and plant species being eliminated by pollution or competing, less desirable species.

Ecologists concede that improving waste management will require huge spending. To manage the nation as an orderly ecosystem, Mr. Gates says, would be "like fighting a major war," and would cost billions of dollars. He adds that while this sounds expensive, so, a decade ago, did sending a man to the moon. "Attacking pollution is more important than space travel and we've got to abandon the notion we can't afford new ecosystems. We're poisoning our world and we can't afford not to spend the money as soon as possible."

Most ecologists are discouraged over whether such funds will become available, for they see the Federal Government as the only logical source. Total national expenditures for disposing of solid wastes, both public and private, now run about $4.5 billion a year. Robert Finch, Secretary of Health, Education, and Welfare, concedes that these outlays "have simply not been effective in preserving or improving the quality of our landscape." But he told a Senate subcommittee recently that the Administration wants industry rather than Government to pay for coping with the nation's growing mountains of trash.

INADEQUATE AND UNSANITARY

Much of today's waste disposal, moreover, is inadequate even from the traditional standpoint of simple sanitation, let alone from the more modern perspectives of the ecologists Federal officials say that 75% of the country's municipal incinerators are "unsatisfactory from the standpoint of public health, efficiency or protection of natural resources."

Instances of pollution by noxious substances also remain a serious problem. White perch caught in Chesapeake Bay were found to contain organisms that could cause typhoid fever, dysentery and tuberculosis. Coho salmon caught in the Great Lakes were found to contain dangerously high levels of DDT.

It seems clear, through, that the ecologists' point that the old standards are not enough will demand more attention in tne future. Whatever the level or source of funding for waste management, the problem will be not merely waste disposal but proper use of the resulting nutrients.

"If man continues to degrade his land by dumping nutrients into the wrong places," says Brookhaven Labs' Mr. Woodwell, "We'll eventually kill off all species of fish, fowl, birds and animals that we like, while species we don't like will survive." Crab grass, rats, crows and inedible fish will survive, he warns, "but eagles, pine trees and trout will disappear."

PRESIDENT NIXON EMPHASIZES NATIONAL NEEDS AND GOALS IN PLEDGING ACTION ON URGENT PROBLEMS

Mr. RANDOLPH. Mr. President, the President's state of the Union message was a broad assessment of the problems facing our Nation. I commend the President for his assurance to the American people that the administration will move forward on several fronts to achieve results in areas of concern to all citizens.

I welcome the President's endorsement of programs to cope with the staggering problems of pollution, which have brought about the degradation of our environment. The Congress has acted positively on many aspects in this area since 1965, and the Public Works Committee is considering legislation to extend these efforts. With the experience thus gained, we can accurately judge the changes that are necessary.

The President recognizes the tremendous and continuing rise in crime throughout the Nation, and he will have my active cooperation in attacking this menace.

He correctly evaluated the need for revitalizing our rural areas. The Appalachian development program has made strides in meeting the needs of a largely rural section and may well serve as a model for a broader undertaking.

I concur that peace is our foremost priority and hope that the President will advance on every avenue which might lead to peace—peace with justice. It is a must.

I hope the President will send to the Congress strong, positive programs dealing with the urgent challenges that he outlined. And if he is willing to give them unqualified endorsement and adequate financing, I believe the Congress will respond positively. He will also need the full participation of Federal agencies to bring these programs to reality.

FEDERAL ROLE IN ENVIRONMENTAL PROTECTION

Mr. GOODELL. Mr. President, our once-beautiful earth is becoming a wasteland of refuse. Planless industrialization, sprawling urbanization and the population explosion threaten our environment—and the future of civilization itself.

In the last decade, the Federal Government has made some tentative attempts to respond to the crisis of our environment—but they continue to be woefully inadequate. These Federal programs have suffered from inadequate funding and more importantly, from failure to impose sufficiently rigorous Federal standards and controls.

If we are to stem the tide of pollution that is engulfing us, Congress and the President will have to be willing to fund Federal environmental programs at adequate levels and adopt stringent Federal controls and rigorous enforcement procedures.

On January 13, I delivered the Abbott Memorial Lecture at Colorado College, Colorado Springs entitled "The Federal Role in a National Strategy for Environmental Protection." In that lecture, I urged that the Federal Government take a far more active role in the entire pollution control field—especially in the implementation and enforcement of nationwide environmental quality standards. I ask that the full text of my remarks be included in the RECORD for the benefit of my colleagues.

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

THE FEDERAL ROLE IN A NATIONAL STRATEGY FOR ENVIRONMENTAL PROTECTION

(By Senator CHARLES E. GOODELL)

The wastes of civilization today threaten to consume civilization itself.

Standing on the moon, in the glow of a magnificent earthrise, we know that our world is an oasis in the vastness of space, supporting the only known life in the universe.

Yet, we see our own verdant planet pillaged and *disfigured*—by a "no deposit, no return" philosophy which threatens the integrity, stability and beauty of the entire biosphere.

Can man survive the offal of his civilization?

Is man willing to tame the three-headed Cerberus of our age—planless industrialization, sprawling urbanization and the population explosion?

The answer is surely in doubt.

The polluted, paralyzed and overpopulated environment of the American megalopolis is a clear and present danger to the health and well-being of its inhabitants.

Ever-expanding metropolitan areas such as "Boswash"—the formless and oozing urban complex stretching almost five hundred miles from Boston to Washington—are but harbingers of a still more constricted, more suffocating life for the future.

To document the gravity of the ecologic backlash, we need only use our eyes and noses and ears.

We need only see the rotting slums of a hundred ghettos; the decaying downtown centers of cities large and small across the nation; the industrial wastelands that disfigure our countryside.

We need only smell—and, alas, see—the filthy air of New York City and Los Angeles.

We need only hear the deafening noise around every big jetport in the nation.

We need only look at the junkyards, billboards and abandoned car lots that litter our highways.

We need only travel on congested highways through vast and chaotic suburban settlements that have sprung up around so many of our cities.

We need only regard the blackened and dying waters of our great rivers and lakes.

No more dramatic examples may be cited than the Potomac River.

We have seen photographs of President William Howard Taft a half a century ago taking his recreation by floating on the Potomac. Only last summer, a member of my staff fell into the same river while canoeing and had to be hospitalized overnight for observation and treatment.

The known facts and figures grimly confirm the evidence of our senses.

Americans spew 150 million tons of pollutants into the atmosphere every year, principally from the burning of fossil fuels. The resulting damage amounts to about $12 billion annually.

Much of our fresh water supply is unfit for human or animal consumption, for agricultural use, or even for industrial purposes. It has been rendered unsuitable for recreational use or as a habitat for fish or aquatic life. Two of the largest bodies of fresh water in the world, Lake Michigan, and Lake Erie bordering my own State of New York, have been overtaken by advanced "eutrophication"—that is, ecological aging.

Noise pollution, thermal pollution—the ecological disturbance caused by the warming of our sources of fresh water—and the dangers of radioactivity posed by the proliferation of nuclear power plants are other serious threats to our environment.

The gravity of the crisis of our environment demands vigorous and comprehensive governmental action now. A tough, realistic and effective commitment to the solution of the problem today will forestall the need for far more drastic measures tomorrow.

Moreover, if we act now, we can still meet the problem in the context of our democratic traditions and free institutions. If we wait too long—if we delay until the problem becomes an immediate one of life or death—this will no longer be possible.

We can still meet the problem of the population explosion in America by voluntary programs, not by government compulsion. If after several decades such growth continues unchecked, it is likely that our immediate needs for survival will no longer allow this approach.

We can still meet the problem of industrial wastes by imposing emission standards, not by limiting the amount of waste-producing goods that can be manufactured or consumed. If after several decades of inaction our air or water supply is in immediate danger of annihilation, the more drastic approach will inevitably prove necessary in the interests of sheer survival.

In recent years, we have seen some initial attempts to respond to the crisis of the environment, but they continue to be woefully inadequate.

The last decade has witnessed the entry of the Federal government into the field of pollution control. Congress passed the Clean Air Act, the Water Quality Act, the Motor Vehicle Pollution Control Act, the Solid Waste Disposal Act, the Clean Waters Restoration Act and the Air Quality Act, which established our basic Federal programs for the treatment of air, water and solid waste pollution.

With the enactment of these programs, Federal spending on environmental programs has risen to over half a billion dollars in fiscal 1969. The Federal Water Pollution Control Administration in the Department of the Interior operated last year with a budget of $300.8 million; the Air Pollution Control Administration in the Department of Health, Education and Welfare with a budget of $88.5 million; and the Office of Solid Waste in the same Department with a budget of $15 million.

Despite this effort, the existing Federal programs have suffered from fundamental flaws.

A major weakness lies in the financing. Congress and the Executive have created some ambitious programs, but have defaulted on their commitment to fund these programs adequately.

A drastic example of this failure is seen in the funding of the largest federal water pollution control program, of Federal grants for the construction of municipal waste treatment plants. In fiscal 1969, this important program was authorized at the level of $700 million, but actually funded by Congress at less than one-third of this amount, $214 million. In earlier years, there were similar gaps between authorization and appropriation. As a result, municipalities are moving far below the rate necessary to begin meeting water quality standard goals.

This failure of funding has not only slowed down the implementation of Federal programs; it has undermined confidence in the programs themselves. Many states and localities have proven reluctant to embark upon costly pollution control projects, in view of the risk that the Federal government will fail to meet its share of the costs. Others—such as New York—that have had the commitment to proceed with their projects have had to shoulder the main cost burden themselves.

A still more fundamental weakness has been the failure to impose truly effective Federal standards and controls.

In some vital fields, there simply are no Federal standards or enforcement procedures. This is true in the case of solid waste pollution.

Municipalities and industrial operations generate over 190 million tons of solid wastes annually, and this figure is expected to rise to 340 million tons by the end of this decade. Traditional disposal of municipal solid waste is by landfill and incineration, which often result in pollution of land, water and the atmosphere. About 90 per cent of the total disposal is in landfills, only a small percentage of which are satisfactory from the standpoint of pollution control. And in the areas where volume of solid waste is the highest, land for this purpose is becoming extremely scarce.

Existing law provides for Federal demonstration grants to states and municipalities for construction of solid waste disposal facilities. However, the sums available—under $6 million in fiscal 1969—are negligible in relation to the problem.

There is no provision in Federal law requiring municipalities and industries to live up to any standards for their treatment of solid wastes. This is simply left to state and local regulation. As a result, the incentive for municipalities and industry to develop and implement adequate disposal procedures is small, indeed.

Even where present Federal law seeks to impose standards, serious inadequacies are evident.

In some cases, the enforcement responsibility is given to the wrong agency. This is true of the Federal noise abatement legislation enacted in 1968, which empowers the Federal Aviation Agency to set noise and sonic boom requirements as part of its authority to certify aircraft. The FAA is essentially an aviation development agency, with close ties to the aircraft industry. Giving this agency the responsibility to set noise standards is like putting the cat in charge of the canary cage.

In other instances, too much authority is left to the states, given the fact that pollution is a phenomenon which transcends state lines. This is true of the Federal Water Quality Act, which requires each state to adopt its own water quality standards, subject to Federal approval. At least two states, Iowa and Virginia, still have not developed water quality standards acceptable implementation plans to the Federal authorities, for their interstate waters. A regional approach to water quality standards—one that took into account the great interstate river systems that exist in this nation—would have been far more rational and effective than this state-by-state approach.

Another weakness is that of too many built-in delays. This is true of the Federal Air Quality Act. With all the procedural and due-process delays inherent in the legislation, more than five years could pass from the time of the law's enactment in 1967 before air quality standards would be in use.

Another defect of existing legislation has been the inadequacy of the standards actually imposed. This is true of the present motor vehicle exhaust criteria adopted under the Clean Air Act. The Senate Commerce Committee's March 25, 1969, report on low-emission vehicles says "present emission standards will not stabilize, much less reduce, vehicular air pollution . . . Under existing controls, automobile air pollution in the United States will more than double in the next 30 years because of the projected increase in both the number of vehicles and miles driven by each vehicle."

A last weakness is the absence of swift and effective enforcement procedures. Under Federal air quality legislation, for example, the Federal agency administering the program has no power to issue cease and desist orders against industries violating air quality standards. In fact, enforcement is simply delegated to the states, with an elaborate and time-consuming procedure for the institution of suit by the Attorney General in the event a state fails to enforce the quality standards.

How, then, can we make reforms that will assure a more effective Federal role in the protection of our environment? It is by the adoption of much tougher Federal standards.

The treatment of wastes is an extremely costly process. It is one in which our market system—which ordinarily works so well for distributing and pricing goods and services—operates in reverse. The cheapest and competitively most effective way for a private producer to dispose of residuals is often the most harmful way—that of dumping them untreated into the air or water or soil. The ordinary safeguard of quality in a market economy—the demand of the consumer to be served well—does not operate because the individual consumer does not feel directly affected by such pollution.

Because of these economic factors, pollution can never be effectively controlled on a voluntary basis. The costs to the individual producer are too great and the returns too small. It can be controlled only if government intervenes—and imposes standards.

The Federal government is the only one that can impose pollution control standards which are uniform and fair.

As a general philosophical matter, I am by no means an advocate of further centralizing decisions in Washington. In fact, my preference has been just the opposite—for decentralizing the decision-making process to the extent feasible. For the last ten years, for example, I have been a strong supporter of Federal revenue sharing—a plan to strengthen the fiscal base of states and localities by returning to them a portion of Federal revenues without Federal controls.

Pollution, however, is a special case. It is one where Federal initiative and Federal control are essential.

Pollution is a problem which is national in scope and which shows no respect for state or local boundaries.

A river system flowing through several states should have one standard of water quality for the entire system. It also needs one system of enforcement under which those located downstream who suffer the effects of pollution have a clear and effective remedy against those located upstream in a different state who are guilty of causing the pollution. It simply makes no sense to have overlapping standards or enforcement procedures for the different states through which the river flows.

The same holds true for air pollution. Industrial wastes discharged into the air in New Jersey inevitably affect the quality of the air in New York City. A single rule and a unified enforcement procedure must be applicable for the entire metropolitan region.

Some states, I might vote, have attempted to deal with the regional nature of pollution problems through interstate compacts. New York State, for example, has joined in a compact with its neighbors for controlling the pollution of the Delaware River. Other states, unfortunately, have not been willing to follow this approach. For example, California and Nevada have still been unable to agree on measures for abating the pollution of Lake Tahoe.

Federal standards are also made necessary by the realities of interstate and interarea competition.

Pollution control is, as I have said before, extremely costly. The expense should be borne on a fair basis by competing producers throughout the nation. If not—if stricter standards are in force in one area than in another—those industries located in the area of greater leniency will have the unwarranted competitive advantage of being able to sell their products more cheaply.

Interstate and interarea competition sharply limit the ability of states and localities to take the initiative in imposing effective pollution controls. Because of expense factors, industry will tend to gravitate away from jurisdictions which make the greatest effort to protect their environment and toward the jurisdictions which make the least effort.

In short, if the primary burden of environmental controls rests with states and localities, a competition in laxity among these jurisdictions will undermine effective environmental protection.

Present law reflects a timid and tentative attempt to develop Federal standards in some areas. There is an urgent need, however, for much greater Federal initiative, stricter Federal standards and uncompromising and uniform Federal enforcement procedures.

Reform is particularly needed in the following areas:

First, Congress should authorize the imposition of Federal pollution control standards for the disposal of solid wastes and for other serious environmental hazards of national scope that are now left purely to state and local regulation.

Second, Federal standards should aim toward a reasonable degree of uniformity throughout the nation, with appropriate regional variations to reflect regional ecologic differences. Only by such an approach can we avoid creating unfair competitive disparities among producers in different sections of the country, while taking into account diversities in regional needs.

Third, states and localities should be consulted in the formulation of Federal standards, but the main initiative should come from the Federal level. Effort should be made to avoid discrepancies and delays in the formulation of standards—such as those inherent in the state-by-state approach of the present water quality legislation, where each state formulates its own standards and submits them for Federal approval.

Fourth, enforcement of Federal standards should also be primarily a Federal function, not automatically turned back to state and local governments. Provision should be made for adequate enforcement powers at the Federal level, including in appropriate cases the authority to issue cease and desist orders.

Fifth, the Federal agency administering the standards should be adequately and competently staffed and should develop simple and effective procedures that avoid delays and red tape. Still more important, the agency should avoid identification with the industry it regulates. In short, the Federal standards have to be vigorously and impartially administered—or else they are useless.

In making these suggestions, I do not mean to minimize in any way the pioneering efforts of states such as New York, which led the fight against pollution long before the Federal government entered the field.

Where a state, such as my own, has taken the initiative to develop effective pollution control programs, it can perform an invaluable role in supporting the Federal efforts. Its enforcement machinery can be used on a cooperative basis to police Federal standards. Its research and grant-in-aid programs will provide a much-needed supplement to the Federal funding programs.

The costs to industry of meeting rigorous and effective Federal controls will undoubtedly be in the order of many billions of dollars. Given the other demands upon the Federal budget, a portion of these costs will undoubtedly have to be borne by industry itself—and ultimately shared by the entire economy as producers pass costs on to consumers.

However, Federal grant-in-aid and research programs can continue to play an important supplementary role in helping industry to meet some of the extraordinary initial investment expense of developing and installing pollution control equipment to comply with Federal standards.

In addition, special Federal subsidies or tax incentives might in certain instances be needed for industries whose conversion to pollution control procedures are shown to impair their capacity to compete in international commerce.

Federal support is also urgently needed for a major campaign of public education.

A large segment of the public still has not fully understood the proportions and urgency of our environmental crisis and the threat it represents to the quality of human life.

The nature of environmental problems is not easy to grasp in personal, immediate terms. The threat that pollution represents to health, for example, is not broadly and fully understood.

Air and water pollution become progressively worse at imperceptible rates, making it easier to accept living in a polluted environment. In many communities, industrial smokestacks belching waste into the air have traditionally symbolized prosperity and jobs, making it harder for the inhabitants to recognize its offensive and dangerous side effects.

The United States can never hope to succeed against the problems of the environment without broad public understanding and support.

During the last session of Congress, I introduced in the Senate a bill, "The Environmental Reclamation Education Act of 1969" (S. 3237). This proposed legislation authorizes the Secretary of Health, Education, and Welfare to develop a $37 million national environmental-ecological education program ranging from the pre-school to the graduate level. The bill would also establish a National Commission on Technology and the Environment to examine the capacity of the Federal government to manage technological change consistent with our national environmental goals.

Environmental education can be the catalyst to an informed citizenry able and willing to act to meet the threat of our degraded environment.

Unlike so many problems that are confronting America today, the environment is not a black problem or a white problem, a class, regional or sectional problem. It is not "their" problem, but "our" problem. It is a problem which we can unite to solve and from which we can draw strength and renewed confidence in solving.

Given the steadily deteriorating condition of the earth's delicate biota, how many years have we left before the tide of pollution and poison engulfs us all?

At stake is the very balance of life on this planet.

Sealed in our tiny ship of earth in the vastness of space, we must now all be stewards in the preservation of the cargo of life.

CONCLUSION OF MORNING BUSINESS

The VICE PRESIDENT. Is there further morning business? If not, morning business is concluded.

ORGANIZED CRIME CONTROL ACT OF 1968

The VICE PRESIDENT. The Chair, pursuant to the previous order, lays before the Senate the unfinished business which will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 30) relating to the control of organized crime in the United States.

ORDER OF BUSINESS

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

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

RECESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair for the purpose of having the Senate proceed in a body to the Hall of the House of Representatives to hear the President of the United States deliver his state of the Union message.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

At 12 o'clock and 12 minutes p.m. the Senate took a recess subject to the call of the Chair.

Thereupon the Senate, preceded by the Sergeant at Arms, Mr. Robert G. Dunphy; the Chief Clerk of the Senate, Mr. Darrell St. Claire; and the Vice President of the United States, proceeded to the Hall of the House of Representatives to hear the address by the President of the United States on the state of the Union.

(The address by the President of the United States, delivered by him at the joint session of the two Houses of Congress, appears in the proceedings of the House of Representatives in today's RECORD.)

At 1:19 p.m., on the expiration of the recess, the Senate, having returned to its Chamber, reassembled, and was called to order by the Presiding Officer (Mr. HUGHES in the Chair).

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I be permitted to speak for 5 minutes notwithstanding rule VIII.

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

FLYING FICKLE FINGER OF FATE AWARD PRESENTED TO THE AIR FORCE

Mr. PROXMIRE. Mr. President, a year ago last November, A. E. Fitzgerald testified before the Subcommittee on Economy in Government of the Joint Economic Committee that there was a $2 billion overrun on the C–5A.

Soon things began to happen to him. His newly won career status in the civil service was withdrawn on grounds that it was a "computer error." He was no longer invited to important meetings. Colleagues snubbed him. His major duties over the cost of major weapons systems were withdrawn and he was given the "important" job of examining the cost overruns in bowling alleys and military mess halls in Thailand. He was wrongly and spitefully charged with leaking classified information to Congress—a charge which is utterly untrue for he was absolutely meticulous in going through channels in presenting information to my committee. After publicly denying it, the Air Force in fact conducted a one-sided investigation into his past, hoping they might turn up something derogatory. They did not. All they found was that he was a cost-conscious civil servant who drove a Rambler to prove how parsimonious he really was. Incidentally, that investigation file failed to include some very favorable comments about Fitzgerald from those who were interviewed. I know this because I saw the file.

In addition to testifying truthfully about the overruns, Fitzgerald warned the committee last June about structural defects and poor performance of the C–5A. The Air Force denied this, but last week the few existing planes were grounded when a crack developed in the wing. Fitzgerald was right on this count too.

Finally, the Air Force, in an alleged economy move, abolished his job. The truth was that in turn he was harassed, ostracized, investigated, and fired.

In November when Secretary of the Air Force Seamans testified before my subcommittee, I asked him with whom he had consulted before he fired Fitzgerald. The Secretary demurred.

He said:

I did not decide to fire Mr. Fitzgerald. I prefer to use the term, the correct term, "to abolish his job."

When the Secretary said that, the audience laughed. In fact, the staff laughed, the press laughed, and the committee laughed. In my almost 13 years in the Senate, I remember no occasion in which a witness was so obviously embarrassed by his own statement.

On January 12, 1970, a few days ago, the Rowan and Martin "Laugh In" show on NBC memorialized that occasion. They gave the Flying Fickle Finger of Fate Award to the Air Force.

Mr. President, I will read the transcript of that portion of the program where Dick and Dan presented Secretary of the Air Force Seamans with the Flying Fickle Finger of Fate Award:

FLYING FICKLE FINGER OF FATE AWARD, AS BROADCAST JANUARY 12, 1970

Boys enter, Dick holds award.

Music: Fanfare.

DAN. Well, as they used to say on "My Little Margie" . . . It's time for the Flying Fickle Finger of Fate.

DICK. Tell me . . . who gets the potent prober this time?

DAN. Just about to tell you . . . The United States Department of the Air Force.

DICK. They go a little wild in the old blue yonder?

DAN. In a way, yes . . . Mr. A. E. Fitzgerald, a top efficiency expert for the Air Force said that the cost of the C5A transport project would go two billion dollars over budget.

DICK. Ah ha . . . so the Air Force commended him for his good work, uh?

DAN. Not quite! You see, Mr. Fitzgerald blamed the extra cost on bad management and inadequate cost control on the part of the Air Force . . . And he said so before the Senate Subcommittee.

DICK. But isn't that his job?

DAN. Not any more.

DICK. He got fired for *that*?

DAN. Not according to an Air Force spokesman.

DICK. Well, it *sounds* like he got fired for *that*.

DAN. What the Air Force *did* was to eliminate his job.

DICK. He got *fired* for that alright.

DAN. Air Force secretary Robert Seamans said Mr. Fitzgerald's job was abolished in an effort to save money.

DICK. Whoops . . . watch it, Mr. Secretary. You know what happened to Mr. Fitzgerald . . . for trying to save money!

DAN. Better be careful . . . So here it is, Air Force Department . . . Take good care of it.

DICK. With proper management and adequate cost control this can really help you take off!

GENOCIDE CONVENTION IN PERSPECTIVE

Mr. PROXMIRE. Mr. President—

For centuries, the advance of civilization has been measured by the progress made in securing human rights.

Writing to the U.S. Commission for the observance of Human Rights, candidate Richard M. Nixon continued:

It is America's role and responsibility . . . so to conduct itself as to provide an example that will truly light the world.

I strongly share these sentiments expressed by Richard Nixon and I urge him now as President of the United States to take the lead in giving his active support to persuade the Senate to ratify the several human rights conventions now before it.

In particular, I am concerned with the Human Rights Conventions on Genocide, Forced Labor, and Women's Rights.

Recently Bruno V. Bitker, a distinguished Wisconsin lawyer, chairman of the Wisconsin advisory committee of the U.S. Commission on Civil Rights, and a member of the U.S. National Commission for UNESCO, discussed the problems of ratification of the genocide convention. In an article appearing in the January 1970 issue of the American Bar Association Journal, Mr. Bitker traces the history of the genocide convention, examines and disposes of arguments used in the past by the bar association to sustain its reservations on the convention, and urges the bar association to now forcefully take the initiative in getting the convention ratified.

I warmly endorse Mr. Bitker's thoughts

and ask unanimous consent that Mr. Bitker's article be printed in the RECORD.

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

GENOCIDE REVISITED

(By Bruno V. Bitker)

(NOTE.—More than two decades have passed since the United Nations General Assembly unanimously adopted the Convention on Genocide. At that time the United States signed the convention, but it has yet to ratify it. In 1949, the year the convention was submitted to the Senate, the American Bar Association went on record as opposing approval of the treaty as submitted. It is time the Association reconsidered whether such charges as that the convention would abridge American citizens' freedom of speech and right to a jury trial are valid.)

The time has come for the American Bar Association to take a new look at the United Nations Convention on Genocide. More than twenty years have elapsed since the convention was unanimously adopted by the United Nations General Assembly on December 9, 1948, and signed by the United States. The convention came into force on January 12, 1951, for those nations that ratified it. By the beginning of 1970 no less than seventy-five nations had ratified or acceded.

The convention was transmitted by President Truman to the United States Senate on June 16, 1949, for its advice and consent to ratification. In due course the Senate referred the treaty to its Foreign Relations Committee, which invited interested parties, including the American Bar Association, to testify for or against the treaty.

Two entities within the Association originally presented reports on the treaty to the House of Delegates: the Section of International and Comparative Law [1] and the Committee on Peace and Law Through United Nations.[2] The former recommended ratification with certain understandings or reservations, and the latter opposed ratification. When the House of Delegates had the two conflicting reports before it in September, 1949, it appointed its own special committee. This committee reported back to the House recommending that the proposed convention not be approved as submitted because it "involves important constitutional questions" and "raises important fundamental questions but does not resolve them in a manner consistent with our form of Government".[3] This resolution was adopted by the House. That was the last time the matter has been considered by the Association.

Hearings before a subcommittee of the Senate Foreign Relations Committee were held in 1950.[4] The American Bar Association's position was presented, as were those of the Committee on Peace and Law Through United Nations and of the Section of International and Comparative Law. A brief was presented in favor of ratification by an ad hoc legal advisory committee headed by the Honorable Robert P. Patterson. Testimony in support came from high government officials and a number of private citizens and organizations. Opposition was voiced by individual lawyers.

On May 23, 1950, the Senate subcommittee reported out the convention favorably with one declaration and four understandings.[5] The declaration was to the effect that the Senate was acting pursuant to Article I, Section 8, Clause 10 of the Constitution "and, consequently, the traditional jurisdiction of the several States of the Union with regard to crime is in no way abridged".[6] The understandings, subsequently discussed by the full committee as reservations, were to the effect that a state could not be held liable in damages for injuries inflicted by it on its own nationals; the intent to destroy a group must affect a substantial portion of the group; mental harm means permanent physical injury to mental faculties; and "complicity in genocide" means "participation before and after the fact and aiding and abetting in the commission of the crime".[7]

TABLED 20 YEARS AGO, IS THE CONVENTION BURIED?

The full Senate committee subsequently tabled the matter, and no further action has been taken in the Senate since 1950. The chairman of the Senate Committee on Foreign Relations, Senator Fulbright, in April, 1969, stated that it was his view that the committee could resume consideration at any time the members wish. He noted, too, that "the Committee's disposition may be influenced if the American Bar Association were to recommend ratification".[8]

The convention defines genocide to mean certain acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. The acts include killing, causing serious bodily or mental harm, inflicting conditions of life calculated to bring about physical destruction, imposing birth prevention measures and forcible transfer of children. The parties undertake to punish guilty persons and to enact the necessary implementing legislation. There is a provision for trial by a court of the state where the act was committed or by any international penal tribunal that may have jurisdiction. Extradition is provided for in accordance with laws and treaties, with genocide not to be considered a political crime. Submission of disputes to the International Court of Justice is recognized.

The "important constitutional questions" that are claimed to be involved or what "important fundamental questions" are raised but not resolved "in a manner consistent with our form of Government" are not explicitly spelled out in the 1949 American Bar Association resolution. However, everything that could be said, pro and con, was probably said at the Senate hearings in 1950.[9]

The United States' basic commitment to the subject matter of the convention goes back to 1945. The United States, by an almost unanimous vote of the Senate, ratified the United Nations Charter and thereby assumed the obligation to further its objectives. One of these (Article 1) was to achieve "universal respect for, and observance of, human rights and fundamental freedoms for all". Articles 13, 55, 56, 62 and 68 of the charter spell out the commitments in greater detail.

As Phillip C. Jessup, a former member of the International Court of Justice, has said:

"It is already law at least for members of the United Nations, that respect for human dignity and fundamental human rights is obligatory. The duty is imposed by the Charter, a treaty to which they are parties." [10]

The objections to ratification of the Convention on Genocide may be summarized as follows: The treaty is unconstitutional because it deals with a matter not of international concern and, therefore, beyond the treaty-making power; being self-executing, it would interfere with our accepted federal-state relationship by acting on matters of state and local concern; by making "direct and public incitement to commit Genocide" a punishable act it would conflict with our constitutionally protected freedoms of speech and press; the treaty would deprive American citizens of their constitutional right to a jury trial; an American citizen would be tried by an unfriendly foreign court in a foreign land. Another objection, more political than legal, is that the whole effort toward protecting human rights internationally is a subtle but basic attack on our form of government. It is argued, too, that if the door is opened to one human rights treaty, which might be innocuous in itself, then the engulfing flood follows. This is the "opening wedge" objection. It is obviously meaningless in light of American hesitancy to approve other human rights treaties.

The treaty-making power is covered in the Report of the Special Committee of Lawyers of the President's Commission for the Observance of Human Rights Year published in October, 1969. The committee's findings are best summarized by Justice Tom C. Clark, its chairman, in his letter of transmittal of August 20, 1969, wherein he says in part:

"I would like to reiterate here, however, our findings after a thorough review of judicial, Congressional and diplomatic precedents, that human rights are matters of international concern; and that the President, with the United States Senate concurring, may, on behalf of the United States, under the treaty power of the Constitution, ratify or adhere to any international human rights convention that does not contravene a specific constitutional prohibition."

The treaty-making power under our Constitution (Article II, Section 2) is very broad.[11] The power does not, of course, rise above the Constitution. But, subject to that limitation, it is extensive. As the Supreme Court said in *Geofroy* v. *Riggs*, 133 U.S. 258, 267 (1890):

"It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter without its consent. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching on any matter which is properly the subject of negotiations with a foreign country."

It has been suggested that the subject matter of a treaty must be wholly "foreign" or "international" or "external". But a long line of decisions dealing with such subjects as debts, land titles and escheat, establishes the rule to be otherwise.[12]

MANY SUBJECTS ARE COVERED BY TREATIES

Antisocial conduct and the denial of human rights are proper subjects of international concern. This view was accepted and acted on long ago by the United States. We have made treaties prohibiting white slave traffic, traffic in arms and traffic in narcotic drugs and treaties concerning the nationality of women and the suppression of the slave trade and slavery. Most recently, the United States entered into two human rights treaties—the Supplementary Convention on Slavery (1967) and the Supplementary Convention on Refugees (1968).

Significantly, the recent slavery treaty *inter alia* obligated the United States to abolish practices whereby "a woman, without the right to refuse, is promised in marriage on payment of a consideration of money or in kind to parents, guardian, family or any other person . . ." and to abolish any institution whereby "a woman on the death of her husband is liable to be inherited by another". It is hard to conceive of something more likely to be an exclusively domestic subject than the right of inheritance. Yet, in this instance, because of humanitarian issues, inheritance is considered a proper subject for an international treaty. This treaty was specifically endorsed for ratification by the American Bar Association in 1967.

TREATIES CAN REGULATE AMERICAN CITIZENS

The action of the United States Senate in ratifying a slavery treaty in 1926 and broadening its coverage in 1967 recognized that what is of domestic concern can also be of international concern. It also lends support to the proposition that treaties can regulate the activities of United States citizens within the United States.[13] The American Bar Asso-

Footnotes at end of article.

ciation likewise recognized this fact by its 1967 approval.

An analysis of whether human rights are proper subjects for treaties is contained in the *Restatement (Second) of Foreign Relations Law of the United States* (1965). The reporter's note to Section 118, "Scope of Treaty", reads:

"Treaties relating to human rights. Proposed treaties dealing wtih human rights have raised questions in the U.S. and, indeed, in other countries as to whether or not they deal with matters that are appropriate for settlement by agreements between nations. The issues are not unlike those presented by international labor conventions under the constitution of the International Labor Organizations. Although such conventions generally specify standards already observed in the U.S. it has an interest in seeing that they are observed by as many states as possible, not merely to protect its own standards but to promote conditions abroad that will foster economic development and democratic institutions that are conducive to prosperity in the United States and achievement of its foreign policy objectives. It cannot effectively urge other states to adhere to such conventions without doing so itself."

Fear has been expressed by opponents of the treaty that, being self-executing, it could result in criminal prosecution without Congress having provided for any such action. The convention is not self-executing because criminal prosecution under it would not be possible without subsequent legislation. "It is not the function of treaties to enact the fiscal or criminal law of a nation. For this purpose no treaty is self-executing . . .".[14]

The treaty would obligate the United States (a) not itself to engage in genocide and (b) to attempt, in accordance with its constitutional system (Article V) to obtain legislation that would make committing genocide an offense. Congress is free to prescribe the offenses punishable or to use the definitions under international law as it did with piracy.[15] There is nothing novel about the United States becoming a party to a convention that requires the Government to suppress criminal conduct that has become a matter of international concern. The United States has signed treaties dealing with submarine cables, fur seals, and slavery and other antisocial conduct by which it obligated itself to make certain actions criminal, and the Congress has enacted the necessary criminal legislation.

PROTECT PEOPLE IN ADDITION TO SEALS AND BIRDS

If our country can protect the lives of seals and migratory birds through agreements with other nations, it should be able to prevent mass murder of human beings.

It has been asserted that because Article III(c) declares "direct and public incitement to commit Genocide" to be punishable, it, therefore, conflicts with our constitutionally protected freedom of speech. The convention itself does not make an act punishable under United States law. The convention, Article V, specifically provides that the contracting parties shall "undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the Convention."

The convention does not mandate any precise legislation. Obviously, if the Congress adopted statutes abridging constitutional freedom of speech, or if authorities applied legislation so as to produce such a result, the United States courts could strike down the legislation or halt the improper application of proper legislation. However, there is no constitutional prohibition against making it a crime to incite criminal action. As the Court stated in *Frohwerk* v. *United States*, 249 U.S. 204, 206 (1919):

"We venture to believe that neither Hamilton nor Madison, nor any other competent person then or later, ever supposed that to make criminal the counseling of a murder within the jurisdiction of Congress would be an unconstitutional interference with free speech."

And again in *Giboney* v. *Empire Storage Company*, 336 U.S. 490, 498 (1949), it said:

"It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a criminal statute. We reject the contention now."

Another objection asserted is that an American citizen could be deprived of his constitutional right to a trial by jury because he would be tried in some foreign court under procedures not American. This fear is asserted despite the clear language of Article VI of the convention. It provides:

"Persons charged with Genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which have accepted its jurisdiction."

Since no such international tribunal now exists, the accused would be tried by a United States court. Nothing in the convention makes mandatory American participation in an international tribunal. In the more than twenty years since the adoption of the convention no such tribunal has come into being. Although a proposal for one was presented to the United Nations, it was last discussed by the Legal Committee in 1957, and the project was indefinitely postponed.

If at some future date such a court is in fact created, and if an appropriate treaty is adopted by the United Nations, and if the President of the United States decides to submit it to the Senate for its advice and consent, then and only then will this country, through its elected Senators, by open debate and after full consideration of the merits, determine whether it wishes to agree to the court's jurisdiction.

WOULD THE PRESIDENT AND SENATE DIMINISH CONSTITUTIONAL RIGHTS?

It seems most unlikely that any President with the support of the Senate would ratify a convention that in any way diminished the constitutional rights of Americans. Perhaps more attention is given to this objection than it deserves. However, it had such an emotional appeal at the time of the Senate hearings in 1950 that it seems desirable to again dispose of it.

One other objection, more of phraseology than of substance, goes to the definition of genocide (Article II(b) as including acts "causing serious bodily or mental harm to the members of the group". It is asserted that this is too vague to describe a crime.

It is clear, however, that the opening portion of Article II is specific enough to describe the crime and the victims. It reads: "In the present convention, Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."

The drafting history of the convention (debates on Committee 6 and Plenary of the 3d General Assembly) establishes that serious mental harm would have to be inflicted on the group with intent to destroy it. As was said by the State Department: "The destruction of a group may be caused not only by killing. Bodily mutilation or disintegration of the mind caused by the imposition of stupefying drugs may destroy a group. So may sterilization of a group, as may the dispersal of its children."[16]

Article 2 (7) of the United Nations Charter provides that "nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter."

This article, of course, is a limitation upon the United Nations itself and upon such activities as depend on the charter for their authority. This does not prevent the member states from making any agreements they wish to make by a specific treaty to carry out one of the basic purposes of the United Nations. If any meaning is to be given to the principles expressed in the purpose clause (and elsewhere) in the charter, obviously it would not be an interpretation that prevents members from carrying forward those objectives; on the contrary, it is conceivable that member states may be found to be obligated to do so without a separate document.

GOVERNMENTS THAT DISREGARD THE RIGHTS OF THEIR OWN PEOPLE

Tomes have been written on genocide as an international crime. But its international aspect was most clearly and simply stated by General George Marshall when, during the 1948 debates on the convention in the United Nations, he said: "Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field."[17]

It might be recalled, too, that the 1949 resolution of the American Bar Association, which opposed ratification, is prefaced by the statement:

"That it is the sense of the American Bar Association that the conscience of America like that of the civilized world revolts against Genocide (mass killing and destruction of peoples); that such acts are contrary to the moral law and are abhorrent to all who have a proper and decent regard for the dignity of human beings, regardless of the national, ethnical, racial, religious or political group to which they belong; that Genocide as thus understood should have the constant opposition of the government of the United States and of all of its people."

In December 1968, Chief Justice Earl Warren noted that:

"We as a nation should have been the first to ratify the Genocide Convention. . . . Instead we may well be the last to ratify the Genocide Convention which has about 80 parties to it already.[18]

Although speaking in more general terms, President Nixon—then a Presidential candidate—pointed out the role of the United States in this field. In a message in October, 1968, to the United States Commission for the Observance of Human Rights Year he said:

"For centuries, the advance of civilization has been measured by the progress made in securing human rights. It is America's role and responsibility, as the brightest beacon of freedom, so to conduct itself as to provide an example that will truly light the world."

It is difficult to find any weaknesses in the genocide treaty that would subject it to successful attack on constitutional grounds; it seems equally difficult to find specific provisions that are not supportable on a legal basis. If the objections are legal only, then there is no reason for delaying ratification. If there are justifiable policy reasons for not ratifying, they have not been advanced.

In the interest of the international community and in our own national interest, the treaty should be ratified. The American Bar Association should now assume leadership to achieve that objective.

FOOTNOTES

[1] 74 A.B.A. REP. 146 (1949).
[2] 74 A.B.A. REP. 316 (1949).
[3] 74 A.B.A. REP. 146 (1949).
[4] *Hearings on Executive O Before a Subcomm. of the Senate Comm. on Foreign Relations*, 81st Cong., 2d Sess. (1950).

[5] Summarized in LEGISLATIVE HISTORY OF THE COMM. ON FOREIGN RELATIONS, S. DOC. No. 247, 81st Cong., 2d Sess. 27 (1950).

[6] *Id.* at 28.

[7] *Id.* at 28.

[8] Letter to the author, April 2, 1969.

[9] There is no lack of references in support of the convention. See McDougal & Leighton in 14 LAW & CONTEMP. PROB. 490 (1949); McDougal & Arens, 3 VAND. L. REV. 683 (1950); Chafee, 1951 WISC. L. REV. 389, 623; Henkin, 116 U. PA. L. REV. 1012 (1968).

[10] JESSUP, MODERN LAW OF NATIONS 91 (1968).

[11] For recent comment on the extent of the treaty power under the Constitution, see Henkin, 63 AM. J. INT'L L. 272 (1969). This brief article traces the history of the phrase "international concern". The author argues that since the Constitution places no limits on the treaty-making power, there is no implication that restricts bona fide agreements between two nations to certain subjects.

[12] *Ware* v. *Hylton*, 3 Dall. 199 (1796); *Fairfax's Devisee* v. *Hunter's Lessee*, 7 Cr. 603 (1813); *Chirac* v. *Chirac*, 2 Wheat. 259 (1817); *Haverstein* v. *Lynbain*, 100 U.S. 483 (1879); *Geofroy* v. *Riggs*, 133 U.S. 258 (1890); *Missouri* v. *Holland*, 252 U.S. 416 (1920); *Asakara* v. *Seattle*, 256 U.S. 332 (1924); *Perlson* v. *Johnson*, 279 U.S. 47 (1929).

[13] A partial list of such treaties is presented in the *Hearings on the Slavery Treaty Before a Subcomm. of the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess., pt. 2, at 89 (1967).

[14] *The Over the Top*, 5 F. 2d 838 at 845 (D. Conn. 1925).

[15] *United States* v. *Smith*, 5 Wheat. 157 (1820).

[16] *Hearings on Executive O Before a Subcomm. of the Senate Comm. on Foreign Relations*, 81st Cong., 1st Sess., at 4 (1950).

[17] DEPT OF STATE PUB. No. 3416, February, 1949, at 27.

[18] Address before the Conference on Continuing Action for Human Rights, Washington, D.C., December 4, 1968.

PRESIDENT NIXON'S STATE OF THE UNION ADDRESS

Mr. PROXMIRE. Mr. President, I was particularly pleased and gratified that the President, in his state of the Union address, indicated support for a method to control water pollution that I recently introduced in the Senate; namely, a user, or effluent charge. His remarks were so generalized that it was not clear he was talking about this kind of charge, but in context it is clear he supports my bill.

My bill, S. 3181, entitled the Regional Water Quality Act of 1970, would establish a system of national effluent charges. S. 3181 was introduced on November 25, 1969, and 12 of my colleagues in the Senate, including Majority Leader MANSFIELD and Majority Whip KENNEDY, have added their support as cosponsors.

The charges would be imposed on industries that pollute the water, in proportion to the amount of waste they discharge. Imposing these charges will provide industry with an economic incentive to cut down on the waste that discharges into the water.

The proposal, therefore, cuts two ways. First, it will place the burden of cleanup on those responsible, which was clearly and emphatically enunciated by the President just a few minutes ago. The polluter will be held accountable for cleaning up his mess. Second, huge governmental expenditures will not be required. This will enable us to attack pollution while permitting us to avoid undue pressures on the budget.

Those of us who advocate the user charge as a method of controlling pollution have been greatly encouraged today to receive President Nixon's support and endorsement for the principle behind this proposal.

PRESIDENT NIXON'S ADDRESS ON THE STATE OF THE UNION

Mr. MANSFIELD. Mr. President, I wish to make a few remarks on the speech just made by the President of the United States. I consider it a hopeful speech and an impressive speech.

I appreciated the emphasis he placed on welfare reform. I hope we can get to specifics in our Senate committees on these reforms which, in my opinion, are long overdue. Something must be done about that area of our economy and our social life—as the President said, as I recall—to give dignity, to give substance, and to give hope to the people who all too often become degraded and lose their dignity and their well-being as a result.

Mr. SCOTT. Mr. President, before the Senator proceeds will he yield to me briefly?

Mr. MANSFIELD. Surely. Perhaps I should ask that my remarks follow those of the distinguished Senator from Pennsylvania.

Mr. SCOTT. I shall speak more at length in a moment. However, I want to note that I have introduced the President's Family Assistance Act, as has Representative BYRNES of Wisconsin in the House of Representatives. I am sure the majority leader knows the President is referring to that measure, among other matters, in reference to welfare reform.

Mr. MANSFIELD. Yes. When was that measure introduced?

Mr. SCOTT. That was introduced immediately following the message of the President on welfare assistance. I believe that was last August.

Mr. MANSFIELD. What action has been taken by the committee since that time?

Mr. SCOTT. The Senate is not in a position to take action, as the majority leader knows, because it being a fiscal matter it must be brought up first in the Ways and Means Committee of the other body. Requests have been made for action over there and we are waiting for the chairman of that committee to schedule hearings. I understand something will move on that matter this year and I hope it will be as soon as possible.

Mr. MANSFIELD. To make the RECORD clear, as far as the Senate is concerned we are powerless to act on this piece of legislation until and unless the the Ways and Means Committee of the House and the House itself act. But as every American knows the Ways and Means Committee of the House and the Finance Committee of the Senate were extraordinarily busy and productive last session producing the most mammoth tax reform—tax relief bill in decades. I am sure that this session those committees will produce an equally impressive record.

Then, I was interested in what the President had to say about inflation. I would hope that something would be forthcoming in the way of specific legislation in addition to the Congress reducing the President's request for appropriations and the President's reducing expenditures, because while both of those elements play a very important part in curbing inflation, they are not the total answer.

I would hazard the assumption that something which I have been talking about for the past 3 years might be worth considering—wage, price, and profit controls, and legislation on restoration of regulation W, which would put a curb on consumer credit buying, which I understand today is far in excess of $130 billion. It has become so easy to get credit that I shudder to think what would happen to the economy as a whole if we had even a minor recession and payments could not be made to banks, merchants, and so forth.

So these are matters which I think ought to be given consideration in addition to the President's sponsorship of a balanced budget, which I am sure we all join in hoping for.

Then he mentions, of course, crime, and especially in the Nation's Capital. Fortuitously, the organized crime bill is now before the Senate. I would hope we would consider unorganized crime as well. There is a great deal to be done in the area of crime. It is with a great sense of accomplishment that the Senate can point with pride to the passage in the Senate of legislation dealing with every area recommended by the President to deal with crime in the Nation's Capital—and that in the first session of this Congress.

I hope the bill which has been introduced in the Senate by the Senator from Arkansas (Mr. MCCLELLAN) and other Senators, on which a good deal of time has been spent, will be tough enough and harsh enough to bring about an end to the escalating crime wave which is engulfing not only the Nation's Capital, but the Nation as well.

And I would like to see something done soon on the question of drug control. That matter is on the calendar and will be taken up before too many days have passed.

Then there is the question of pornography, which I think is the hidden issue in all of this. Coming from a small State as I do, I must assess what I receive from my constituents with respect to the growing menace of pornography in the mails. It must be a more serious problem in the metropolitan areas and the industrial States. I think that this particular problem is getting entirely out of control. It has gone way beyond the bounds of human decency. I hope, either in this bill or shortly, legislation will be considered to cope with the problem of pornography and to see to it that those who are responsible for it—the pushers of pornographic literature and the like—are given punishments which I believe are their due.

I was delighted with the President's emphasis on clean air, clean water, open spaces, and the fact that he intends to ask for $10 billion to face up to these

particular situations. It will take at least $10 billion—in my opinion, more, but at least $10 billion will give us a start to do something about the smog, about the pollution caused by jet planes and automobiles, about the use of beer cans and beer bottles, on a throwaway basis, which are today seen along all our highways, along the estuaries, along the gulfs, and along the ocean shores. This is something which should be considered, not on the basis of beautifying the countryside, because legislation designed to solve the pollution problem is not a beautifying measure, but an effort to do something about the cleansing of the air, the cleaning of our water, and the clearing of the countryside as a whole.

I would hope that the partnership which is now evident between Congress and the Executive will proceed posthaste.

I would hope also, on the basis of the remarks made by the President of the United States, which I found impressive and which I found hopeful, that very shortly—and I mean in a matter of days, not weeks or months—messages and specific proposals in the form of legislation will be sent from the executive branch implementing what the President said today. As soon as these specific recommendations are received they will be placed before the appropriate committees so that we can do our share to bring into being our full support of the President of the United States in the most worthwhile objectives which he has outlined.

We would like to join him in making the 1970's a decade of hope, a decade of understanding, a decade of purification, so to speak, and a decade in which we can once again restore some of the ideals which made this Republic great in the beginning, and which we can make great again in the years ahead.

Mr. SCOTT. Mr. President, the distinguished majority leader has been very generous and very fair, as he always is, in his analysis of the President's speech. I shall have more to say, at some other time, about certain features of it. I think it is useful for us to note again that the President has stressed the importance of control of inflation, control of crime and of the criminal element, and control of our environment.

First of all, there is evidence, on the control of inflation, that the President is continually moving in that field and in that area. His expected veto of the HEW-Labor bill will be accompanied, I am sure, by some further exposition of his views on how to put the brakes on inflation.

The crime bills are here, and have been since May, and I am glad to see that we are now considering one of the most important of those bills. They do not lack for reports from the Department.

As regards environmental quality legislation, on which the distinguished Senator from Wisconsin (Mr. PROXMIRE) has been speaking, I think I ought to say I do not think I understand it to be exactly in line with any present proposal before the Senate. I believe there will be some interesting and innovative approaches as to the means of financing this decade-long program, during our anniversary decade, the decade of the 1970's, when we celebrate our bicentennial.

I would expect that the necessary specific recommendations will soon follow. I intend personally to introduce that legislation along with, in all probability, the distinguished assistant Republican leader, the Senator from Michigan (Mr. GRIFFIN), and other Senators. I believe the means of financing being contemplated will prove to be no burden on the economy, but, on the contrary, means by which there will be a return to the economy—State, local, and Federal—of more than is taken from the economy in this approach; and certainly what is returned to the environment in cleanliness and in the improvement of the quality of life will be the kind of dividend on which you cannot perhaps make a fiscal estimate.

I think the distinguished majority leader is quite right. We are entitled to reports. We are entitled to specifics. We are going to get them as soon as that can be done; and I think that needs to be done in the very near future. That is the way to get action.

Then it would go to the appropriate committee, and I would hope the committee would meet promptly and act promptly and come in with its recommendations.

ORGANIZED CRIME CONTROL ACT OF 1969

The Senate resumed the consideration of the bill (S. 30) relating to the control of organized crime in the United States.

Mr. SCOTT. Mr. President, if the distinguished chairman of the subcommittee, the Senator from Arkansas (Mr. MCCLELLAN), will permit, I now should like to say something on organized crime and on the pending bill.

Organized crime, as I have stated, is a national problem. It must be given the highest priority by Congress because the total elimination of organized crime is a problem of utmost importance and concern to every American citizen. The corrosive effects of organized crime are beginning to attack the foundations of our society. The Organized Crime Control Act, S. 30, is designed as a first giant step in meeting this problem head on. Its purpose is to eradicate organized crime in the United States. It strengthens the legal tools available to prosecutors. It establishes new penal sanctions and it provides new remedies to deal with the unlawful activities of those engaged in syndicated crime.

S. 30 is a long-needed systematic counterattack upon the organized society of criminals who have "institutionalized" crime in our society and who have taken billions of dollars from the American public each year through their activities. Only a nationally directed campaign against organized crime—including legislation such as S. 30—can contain this national menace.

Because organized crime presently poses one of the most dangerous threats to the American way of life, S. 30 must be acted upon by this body. President Nixon has committed himself to eliminating the menace of organized crime from America.

Effective enforcement of existing laws by the Justice Department attorneys is helping somewhat to curtail the spread of organized crime, but if organized crime is to be eliminated entirely, significant new legal weapons are needed in the crime fighters' arsenal. S. 30 will provide those essential tools and will be a dramatic step toward preventing crime in America. It will correct several defects in the evidence-gathering process and will close the gaps in existing law which presently prevent successful prosecution of all members of organized crime.

The bill has been carefully and thoroughly studied and has received strong bipartisan support. Its provisions will help all citizens, and will especially help the poor who are the primary victims of organized crime. It will help eliminate illegitimate gambling which saps billions of dollars from ghetto residents each year. It will help get rid of the narcotics pushers who thrive on the misery of ghetto life. And, it will help to prosecute loan sharks who prey on the desperate poor.

Too few Americans appreciate the dimensions of this problem. Syndicated crime operates outside legitimate government. It involves thousands of criminals in structures as complex and large as any corporation with laws rigidly enforced through terror. Its operations are national and international. Its aims are to monopolize whole fields of activity—legal and illegal—in order to amass huge profits, currently estimated at several billion dollars each year.

Investigation discloses that the organized crime fraternity has a national membership of over 5,000. The crime syndicate exerts influence over countless nonsyndicate gangsters throughout the Nation who must secure consent to continue their local criminal activities. Thus, petty criminals in the ghettos fall within the control of organized crime.

The core of organized crime depends on the illegal supply goods and services—gambling, loan sharking, narcotics, prostitution, and other forms of vice—to countless numbers of citizens. But syndicates are also involved in legitimate business, employing illegitimate techniques—bankruptcy frauds, tax evasion, extortion, terrorism, arson, and monopolization.

To maintain its exclusive markets for such illegal goods and services and to insulate its activities from governmental interference, organized crime corrupts public officials and wields extensive political influence. These are problems which are acutely felt in the ghettos.

As I pointed out in the Judiciary Committee report on S. 30, the President's Crime Commission has found corruption common in areas marked by organized crime. It is a means of protecting organized crime's profitable operations and must be recognized as a distinct evil, one which is especially abhorrent to our national values. However, the overwhelming majority of our law enforcement personnel are dedicated and hard working. For this we should all be extremely thankful.

A society in which organized crime and corruption openly flourish cannot foster morality or order among its members. A pattern of successful organized rack-

ets, with the lesson it teaches slum children who see hardworking and honest adults fail economically in the face of racial and educational barriers, is not uncommon in urban areas.

Among the most threatening implications of the failure to rebut that cynicism is the suggestion of the Riot Commission that—

> The high ghetto crime rate . . . not only creates an atmosphere of insecurity and fear throughout Negro neighborhoods but also causes continuing attrition of the relationship between the Negro residents and police. This bears a direct relationship to civil disorder.

We must hear that warning. We must try to relieve the unfair burden on slum residents, and the intolerable strain on the fabric of our society, imposed by organized crime and corruption.

Of course, to agree upon that goal is not the same as to achieve it. In view of our imperfect knowledge of causation and prevention of crime and our complex procedures for identifying and dealing with criminals, it is difficult to formulate laws which will be effective against organized crime.

But S. 30 accomplishes its objectives without unduly infringing on or limiting anyone's constitutional rights. The Constitution requires that we consider individual liberties as well as the common good of society. S. 30 strikes the appropriate balance.

S. 30 would help clear America of organized crime. It is an extraordinarily constructive piece of legislation. An example of its constructive nature is title IX dealing with racketeer influenced and corrupt organizations. That title would help the poor through its adaptation of forfeiture and equitable remedies long used for economic ends in the antitrust laws. In urban ghettos where black capitalism offers hope for local self advancement, title IX may be a means to excise syndicate-infiltrated businesses which use force to eliminate local competition and then charge extortion prices for staple commodities and services.

While the other titles of S. 30 approach the organized crime problem in a variety of ways, each of them is the product of a long, painstaking process of bipartisan development by the Subcommittee on Criminal Laws and Procedures and Judiciary Committee, with the help and support of the Justice Department.

Areas for improvement may exist; but the bill as a whole is a careful attempt to accommodate the public interest with individual rights in a specific and complex area of criminal law.

I believe that S. 30 is a thoughtful and sound vehicle for such action and urge that it be given prompt and constructive consideration. The people of our Nation deserve no less.

Perhaps the most insidious feature of organized crime is its ability to victimize many millions of citizens who are largely unaware of its effects. The housewife, for example, has no way of knowing that price increases for meat, bread, vegetables, or dairy products, may be the result of an organized crime conspiracy. The wage earner may be unaware of misuses of his union pension fund. The investor may be unaware of stock market manipulations resulting from massive purchases and/or sales of securities by organized crime syndicates. The taxpayer is unaware of the revenue losses from organized criminal activity which his taxes must make up. The ghetto resident who looks upon the numbers game as an opportunity to escape poverty fails to realize that organized crime drains millions of dollars each year from the poor through this operation.

Organized crime cannot be tolerated. Effective action can curtail its activities and minimize its impact. Ultimately, we must eradicate organized crime. I believe the responsibility for sustained efforts against organized crime rests on all government—local, State, and Federal. All levels of government must coordinate their efforts to deal with this problem.

As President Nixon said in his message on organized crime last April—I stated earlier that the message came up in May, but actually it was last April:

> Organized crime's victims range all across the social spectrum—the middle-class businessman enticed into paying usurious loan rates; the small merchant required to pay protection money; the white suburbanite and the black city dweller destroying themselves with drugs, the elderly pensioner and the young married couple forced to pay higher prices for goods.

The President continued, and I want to especially emphasize this sentence for I think it illustrates one of the most pressing reasons for supporting S. 30:

> The most tragic victims of course, are the poor whose lack of financial resources, education, and acceptable living standards frequently breed the kind of resentment and hopelessness that make illegal gambling and drugs an attractive escape from the bleakness of ghetto life.

Because of the drastic effects of syndicated crime, let us give this legislation the attention it deserves.

Mr. President, I suggest, with some reason, the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR ADJOURNMENT TO 11 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 o'clock tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATOR MANSFIELD TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I be recognized tomorrow morning, at the conclusion of the prayer, for not to exceed 20 minutes.

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

RECOGNITION OF SENATOR HANSEN ORDERED FOR TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the conclusion of my remarks tomorrow morning, the distinguished Senator from Wyoming (Mr. HANSEN) be recognized for not to exceed one-half hour.

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

TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of the remarks of the distinguished Senator from Wyoming (Mr. HANSEN) tomorrow, there be a period for the transaction of routine morning business, with a limitation of 3 minutes on statements made therein.

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORGANIZED CRIME CONTROL ACT OF 1969

The Senate resumed the consideration of the bill (S. 30) relating to the control of organized crime in the United States.

AMENDMENT NO. 443

Mr. TYDINGS. Mr. President, I call up my amendment No. 443 to S. 30 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 99, strike all printed matter on lines 15 through 20, insert in lieu thereof the following:

"TITLE XI—ASSISTANT ATTORNEY GENERAL FOR ORGANIZED CRIME"

SEC. 1101. Section 506 of title 28, United States Code, is amended by—

(a) striking the word "nine" and inserting in lieu thereof the word "ten" and

(b) adding at the end thereof the following new paragraph:

"One of the Assistant Attorneys General shall be designated Assistant Attorney General for Organized Crime Control and shall be appointed from among persons who are especially qualified to assist the Attorney General in the supervision and conduct of investigations, prosecutions, and other activities relating to organized crime activities."

SEC. 1102. Section 5315(19) of title 5, United States Code, is amended to read as follows:

"(19) Assistant Attorneys General (10)."

"TITLE XII—GENERAL PROVISIONS

"SEC. 1201. If the provisions of any part of this Act or the application thereof to any persons or circumstances be held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby."

ADDITIONAL COSPONSORS

Mr. TYDINGS. Mr. President, I ask unanimous consent that the names of the Senator from North Dakota (Mr. BURDICK), the Senator from Missouri (Mr. EAGLETON), the Senator from Oklahoma (Mr. HARRIS), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Texas (Mr. YARBOROUGH), be added as cosponsors of amendment No. 443.

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

Mr. TYDINGS. Mr. President, at this time I wish to register my support for the general thrust of S. 30, because I believe it represents a significant advancement in our law enforcement efforts against organized crime.

However, I want to reiterate my firm belief that an additional measure is necessary in order to give effective leadership and proper organization to the war against organized crime and to make the effort a visible, ongoing commitment. My amendment is designed to do just this. It creates an Assistant Attorney General to head the Organized Crime Division in the Justice Department.

If the Federal Government is to mount a serious full-scale effort against organized crime with the aid of the anticrime weapons made available by S. 30, it is essential that this effort be institutionalized and placed under the direction of one prestigious law enforcement officer who may command the manpower and resources which are equal to the complexity and importance of the task and which will not be diluted by other responsibilities.

It is important to remember that the President's Crime Commission has suggested that the Justice Department's antiorganized crime efforts be made a division level operation directed by an Assistant Attorney General. That recommendation was made close to 3 years ago, but no heed has been paid to it. As Congress launches a new effort against organized crime with S. 30, it is time to implement the crime commission's recommendation. As a matter of fact, it should have been implemented several years ago.

An Assistant Attorney General heading an orgainzed crime division is essential to our Federal effort for a number of reasons.

First, an Assistant Attorney General in charge of an organized crime division will have the clear responsibility of directing an intensive and comprehensive effort, undiluted by other responsibilities, to control organized crime. Presently, the Justice Department's organized crime activities are charted in the Organized Crime Section of the Criminal Division. Administratively, the section stands on the same level as a number of other sections in the Criminal Division, such as Administrative Regulations, Fraud, Appellate, General Crime, Legislation and Special Projects and Administrative. As a result, the Assistant Attorney General for the Criminal Division is placed in a situation where he is forced either to concentrate his efforts on orgainzed crime or the general crime fighting activities or to dilute his efforts by trying to concentrate on both.

Second, the creation of a new Assistant Attorney General and an Organized Crime Section can assure an ongoing, institutionalized commitment to a war on organized crime. History has shown that the interest and intensity of effort in combating organized crime has not remained constant through the changes in top echelon personnel. Indeed, at times the effort has waned. Since 1966 and the Presidential directive of that year, the Organized Crime Section has again been spurred into action. However, the recent momentum does not detract from the history of ebb and flow of the section's activities.

Mr. President, another decline in interest and activity should not be risked. The legislative creation of a permanent Assistant Attorney General whose paramount responsibility will be to fight organized crime would obviate this risk.

Third, the present size and anticipated growth of the Organized Crime Section calls for its elevation to division status. The section, at the present time, is larger in manpower than the Internal Security Division of the Department of Justice, and comparable to the Civil Rights Division and the Lands Division.

Mr. President, I ask unanimous consent to have printed in the RECORD, a table outlining the divisions of the Department of Justice and the sections of the Criminal Division.

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

Organized crime section attorneys as compared with other divisions and sections in criminal division

DIVISIONS

Antitrust	319
Tax	240
Civil	200
Criminal (100 minus organized crime section)	189
Civil rights	119
Land and natural resources	109
Organized crime section	89
Internal security	54
Consumer (projected)	25

SECTIONS

(Authorized fiscal year 1970)

Organized crime	112
General Crime	22
Apellate	20
Fraud	15
Legislative and special projects	15
Government operations	12
Administrative regulations	13
Narcotic drugs	10

Mr. TYDINGS. Mr. President, presently, the authorized strength of the Organized Crime Section is 89 attorneys. For fiscal year 1970, this is scheduled to increase to 112 attorneys. In contrast, the Internal Security Division has 54 attorneys. The Land Division has 109 attorneys. The Civil Rights Division has 119 attorneys. Moreover, the administration is now seeking to establish a Consumer Protection Division, which, according to Assistant Attorney General Richard McLaren in his testimony before the Senate Subcommittee on the Consumer, will have a staff of only from 25 to 30 lawyers and economists.

It is also significant to note the contrast in the number of attorneys expected for fiscal 1970 in the Organized Crime Section, 112; with the number expected to be in the Criminal Division's next largest section, 22. That is in the general crime section.

Good management alone suggests that law enforcement activities which necessitate 112 lawyers demand at least the same administrative stature, level of leadership and concentrated effort as activities employing 25 or 50 lawyers, and clearly should not be on the same administrative level as activities which require 22 and less attorneys.

Finally, and perhaps most important, an Assistant Attorney General in charge of an Organized Crime Division will appreciably enhance the accountability and visibility of the organized crime effort. The Assistant Attorney General for Organized Crime would be a Presidential appointee subject to Senate confirmation. In addition, the Organized Crime Division would have a separate, definable budget.

I am aware that some months ago the Attorney General asked that congressional action be deferred until the completion of a study by the President's Council on Executive Reorganization. On the other hand, however, the Attorney General is currently calling for legislation to create a Consumer Division in the Justice Department headed by an Assistant Attorney General. In this light, I take it that he no longer considers the pending study to be a major obstacle to the creation of an Organized Crime Division if Congress determines it is so warranted. If such an opposition is still voiced and I understand it will be—it is clearly inconsistent with the Attorney General's request for the creation of an Assistant Attorney General for consumer matters.

The Attorney General has also stated that the creation of an Organized Crime Division would produce "complex problems of determining which division, either the Criminal Division or the Organized Crime Division should have jurisdiction". This is, indeed, a poor reason to deny the Federal struggle against organized crime with leadership, stature and continuity. Granted such problems may occur, but they occur in the Criminal Division itself as the sections vie for control of a particular prosecution. Yet, those problems are worked out regularly and without undue difficulty. They occur within the Department of Justice itself on a daily basis.

The real opposition, I believe, to creating an Organized Crime Division led by an Assistant Attorney General is bureaucratic inertia and an attempt within the Department to preserve parochial interests.

Let me add that this problem is not peculiar to the present administration. This problem was also present within the last administration. They, too, refused to heed the mandate of the Crime Com-

mission report to set up a separate division within the Department of Justice for organized crime.

I am aware that the Attorney General presently has the authority to redesignate a vacant post of Assistant Attorney General. If he were to designate such a vacancy as the Assistant Attorney General for Organized Crime, congressional action would obviously not be necessary. In the absence of such initiative on his part, it is incumbent upon Congress to provide the leadership and organization so necessary to win the struggle against organized crime.

Mr. President, organized crime in this Nation is pervasive. It has an annual income of untold billions of tax-free dollars; it has an impact at every level of our society.

An effective effort against organized crime requires clear Federal leadership. Yet, the fight against organized crime has waxed and waned over the years. This is because it has depended upon the individual interest of the particular Attorney General who headed the Department of Justice.

The present Organized Crime Section in the Criminal Division of the Department of Justice has outgrown "section" status long since. With the addition of new anti-organized crime weapons made available by S. 30, the need for strong direction of leadership is magnified.

An Assistant Attorney General and a Division for Organized Crime Control in the Department of Justice can provide the necessary Federal focus.

An Assistant Attorney General and a Division for Organized Crime Control has been supported by the President's Crime Commission, the ABA, and many individuals thoroughly familiar with both the needs for an effective effort against organized crime and the internal organization of the Department of Justice.

I might say that I am one of those individuals.

During my tenure as U.S. attorney for the district of Maryland, I was involved in the prosecution of organized crime. On the basis of this experience, I concluded that an Organized Crime Division under an Assistant Attorney General would appreciately enhance the Government's chances of controlling organized crime. I repeatedly asked why the administration resisted the creation of an Assistant Attorney General for organized crime in the Department of Justice when the Crime Commission requested it, and when the top law enforcement officials knew it was needed.

I discovered that the real impediment to the needed action was the bureaucracy within the Criminal Division itself. Much needed administrative changes were being blocked by administrative inertia and jealousy. That was true under a Democratic administration, and it is still true today under a Republican administration.

The Department of Justice, although recognizing persuasive arguments in favor of the creation of an Organized Crime Division under an Assistant Attorney General, wishes to defer action pending further studies.

Mr. President, I think we have had enough studies and hearings.

What we need today is action.

Mr. President, in 1954, the Department of Justice first created the organized crime and racketeering section in the Criminal Division. However, by 1960, that organized crime section still had only 17 attorneys on its staff, for the fair and obvious reason that there was no real pressure, no force of leadership, to direct the activities of that section during those years.

However, in 1961, under a new Attorney General, Robert Kennedy, the Federal effort in the field of organized crime took a new direction. The Department of Justice, under the direct and personal leadership of the Attorney General of the United States, began to develop a staff and the resources which were needed then, and which must be marshaled now, if we are to cope with the syndicates of organized crime.

By 1963, there were 60 attorneys in the organized crime section, and the investigative prosecutorial activities of the section reached unprecedented heights.

However, when Attorney General Kennedy left the Department of Justice, there was a marked decrease in the active indictments and convictions involving organized criminal activities. We still had the section on organized crime within the criminal division trying its best, but without the leadership of an Attorney General interested in organized crime or an Assistant Attorney General leading an organized crime division the Federal effort suffered.

Fortunately, the Organized Crime Section was spurred into action in 1966 as a result of a Presidential directive.

Mr. William George Hundley, a former chief of the organized crime section, has voiced his support for my proposal.

Mr. President, I ask unanimous consent that a dialog between the Senator from Arkansas (Mr. McCLELLAN) and Mr. Hundley at the Senator's hearings on S. 30, be printed at this point in the RECORD.

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

STATEMENT OF WILLIAM G. HUNDLEY, FORMERLY CHIEF OF THE ORGANIZED CRIME AND RACKETEERING SECTION, DEPARTMENT OF JUSTICE

Mr. HUNDLEY. My name is William George Hundley, and I am in private practice now. I was the chief of the Organized Crime Section from 1958 until 1966, wtih a 1-year break in 1960.

After I left the Organized Crime Section, I worked for the National Football League, and one of my jobs as an assistant to Mr. Rozelle was to set up a protective system up there that would protect professional football from the influence of gambling.

Senator McCLELLAN. How long were you in the Department?

Mr. HUNDLEY. I was in the Department of Justice for 17 years, from 1951 to 1966.

Senator McCLELLAN. How long were you the head of the Organized Crime Section?

Mr. HUNDLEY. Seven years.

Senator McCLELLAN. Very well.

We welcome you and appreciate your cooperation with this committee in our efforts to determine what legislation if any, is needed to aid in the war on crime at this critical period in society.

Mr. HUNDLEY. Thank you, Senator.

Senator, I would like to comment briefly on two bills that are before the committee for consideration. One is S. 1624 and the other is S. 2022.

Senator McCLELLAN. S. 1624?

Mr. HUNDLEY. Yes, sir.

Senator McCLELLAN. And the other?

Mr. HUNDLEY. S. 2022.

With reference to the first bill, S. 1624, I have strong feelings, as most of the other people in law enforcement, that this is a very effective bill and that it has, in my judgment, remedied the Supreme Court decision in *Marchetti-Grosso* by adding these very tight nondisclosure provisions. It even has sanctions for anybody who would violate the disclosure provisions for the new bill.

As the Senator knows, this wagering tax was very effective for years, and since it was struck down by the Supreme Court I think it is really incumbent upon the Congress to enact this bill, with the tight disclosure provisions, because then the very effective agents of the Intelligence Division of IRS can pick up where they left off and make very good use of this bill.

I would have one comment. I notice on page 11 of this bill that although you repeal the posting requirement of the tax stamps, you still have a requirement in the proposed bill, that the person engaged in the business of gambling, still has to keep conspicuously in his establishment or place of business, the stamps.

Now, I would think that the requirement that he keep those stamps conspicously in his place of business—I would think that the court, in line with their reasoning in *Marchetti*[1] and *Grosso*,[2] could hold that that could still possibly incriminate the taxpayer here under those opinions. This is just a suggestion. I think you are buying a problem with that. I don't think it is really essential. I think it will be better if you just indicated, that the taxpayer would be required to keep the stamps in a safe place, something like that.

The idea that he would have to keep them conspicuously, is also subject to the argument, that a local law enforcement officer would come in, he could see the stamps; that would give him the lead the fellow was a gambler and he could go out and make his case.

I think there is a very good possibility if that isn't changed, that the court, in line with the *Marchetti-Grosso*, could hold that provision still was incriminating.

The only other thought I have on that bill is that I notice that the proposed bill grants exemption to parimutuel betting, and I was reading in the Washington Post that we now have 29 States that have parimutuel betting. It gives an exemption to State lotteries such as New York and New Hampshire. It gives an exemption to casino wagering in Las Vegas. It gives an exemption to charitable drawings. It gives an exemption to social gambling.

Now, I think what the proposed bill is trying to do, which I agree with, is that whenever a State or political subdivision decides that their people want some type of regulated and taxed gambling that the Congress should defer to the wishes of that State or political subdivision and grant an exception.

Now, the only already taxed gambling I can think of that you haven't given an exception to—and it might be an oversight—are the legalized bookmaking parlours out in Las Vegas—I don't know why they have been left out.

But I think that the Congress, in a bill like this, would recognize the wishes of the people who were closest to State government. If the State governments decide they want some

[1] *Marchetti* v. *United States*, 390 U.S. 39 (1968).

[2] *Grosso* v. *United States*, 390 U.S. 62 (1968).

type of legal gambling, then there should be an exception.

I think that rather than delineating the different types of legalized gambling that you want to exempt, that you just ought to put in an overall provisions, that would exempt from the overall statute, any type of gambling that has been authorized or sanctioned or legalized, by the State or political subdivision and subjected to a tax, and then that will take care of any future situation, let's say 2 or 3 years from now, if some other State says they want to legalize and tax a different type of gambling, and you wouldn't have to come in and get a different type of amendment.

They were the only points on that bill. I think it is a very valuable and salutary bill.

Senator McCLELLAN. Before you go to the other bill, let me say that I think you made at least one very constructive suggestion. I think the committee will certainly consider it.

Senator Bible has suggested in a statement he filed with the committee yesterday, that this bill should be amended, to give relief to approximately 11 licensed bookmakers in the State of Nevada. That is what you were trying to——

Mr. HUNDLEY. Yes.

Senator McCLELLAN. You suggest that any bookmaker licensed in the State and there subjected to a State tax, should be exempt from the special wagering occupation tax, or that the tax should not be increased for licensed operators. You have already commented, and that is the same position he has taken. I assume you endorse his position?

Mr. HUNDLEY. Yes. I agree with him. If you are going to exempt all other types of State legalized gambling, you know—I have to use this word—"discriminate" against the legal bookmaking, what happens out there is you don't really get at the operator of the place anyway. If you go into one of those legal bookmaking parlors in Las Vegas and you want to bet $5 on a horse, you pay the 10-percent tax, you see. In other words, you pay $5.50. To me it just doesn't make much sense.

I think the policy of the Congress in the field of gambling has been wise. I think it is a recognition of the fact that some people like some type of legalized gambling and are willing on the State level to tax it, and that this type of legislation should not reach it. If the State of Nevada favors this, then I think the Congress should, in fairness go along with them.

Senator McCLELLAN. Thank you very much.

Now, if you wish to pass on to the next one, 2022 is it?

Mr. HUNDLEY. It is S. 2022, Illegal Gambling Business Control Act of 1969. I find at least title I somewhat troublesome. Title I, of course, is the part of the bill that would strike at police corruption.

Now, I think that if this bill is enacted, even with the jurisdictional limitations in the bill in title I, that we have got to recognize that this puts the Federal Government rather squarely into the business of policing local corruption, which is quite a task. I would hope, and I am confident from my experience in the Department of Justice, that this statute, if enacted by the Congress, would be used on a highly selective basis by the Justice Department. I am sure that the gentlemen from the Justice Department can cite chapter and verse of situations where their legitimate operations were hampered by police corruption. Now, if it is used in that fashion it is useful and helpful. But I think there has to be a recognition on the part of Congress that if you pass title I, which is very broad and literally gives the Federal Government jurisdiction to move into situation where you might have a policeman and five other gamblers in a 30-day business—if we were ever unfortunate enough to have an unwise Attorney General or an unwise Assistant Attorney General who decided he wanted to apply this thing across the board, he could almost throw darts at the map of the United States and start checking on this police department and that police department and the other.

It is very broad. It is an area that the Federal Government has not had direct jurisdiction on before, I think it is necessary, but I think that it has got to be very selectively used.

We had no success in the Department of Justice when I was down there trying to reach corrupt local officials by income tax investigation. We just couldn't make the case. I am sure that is why they want this. They want a direct approach. You have got a lot of ancillary problems here. You are going to have the Federal Bureau of Investigation moving into areas where you have got local police departments. I would think that you would want to very carefully solicit the views of the FBI on this and see how they feel about it. I would think you would want to see how prominent police chiefs and perhaps prominent local prosecutors feel about it. I think that would be useful.

I tend, of course, to look at this from the angle of when I was Chief of the Organized Crime Section, and I would have liked to have had a bill like this to reach certain situations. But there are some problems here.

Senator McCLELLAN. How could you write into the statute a provision that would compel this sort of selective use?

Mr. HUNDLEY. That is the problem, Senator. I have talked with your able counsel up here, and they said why don't you try to write something in. I said I just don't know how to do it. I don't think there is any way. I think you are going to have to rely on the Justice Department.

Senator McCLELLAN. The Justice Department.

Mr. HUNDLEY. And I think they are reliable. I don't want to create the inference at all that they will use it in other than selective situations where you have an overriding situation.

Mr. BLAKEY. Mr. Hundley, do you think it would be feasible to write into this bill some sort of disclosure provisions comparable to those appearing in the Omnibus Crime Act which deal with wiretapping that would require periodic public accounting to the Congress of how this particular statute is administered? It wouldn't prevent an abuse directly, but it might give us the information on which we could judge whether or not an Attorney General is using this in an improper fashion?

Senator McCLELLAN. It might serve as a deterrent.

Mr. HUNDLEY. I think so. I think that is a good idea. I think that the Justice Department would realize that they are going to have to account for their actions in this regard, and that is a good way to insure it. I am satisfied that, you know, just about any State in the United States where you have illegal gambling, that there probably are violations of this proposed statute.

There is no doubt in my mind. I know that there is no intention on the part of the Justice Department to enforce this provision, if it is enacted, across the board. They just wouldn't have the manpower to do it.

I think there is always the possibility that this could be used unwisely, and that is the thing you have to guard against. I suppose you have that problem whenever you trust prosecutors with added responsibilities.

As far as title II of S. 2202 is concerned, I would think that probably the only area where that would be helpful would be in getting at big numbers rackets, because in my experience in the Justice Department any gambling operation that was worth Federal concern had an interstate aspect, and that you could proceed under 1953 and the other bills. But some of the really big numbers operations, particularly in a place like New York, can be, by the nature of the operation, self-contained, and you wouldn't have the interstate aspect and you could use this new title II against those. I don't see that it would be really of much use otherwise in the gambling area.

I would think, again to repeat myself, in most gambling situations where the Federal Government ought to get involved, there is an interstate aspect, and with the new wiretapping bills and things like that, if you can't prove the interstate aspect you ought not get involved in it. Numbers is the one exception.

The immunity provision, of course, is fine, although I understand you have before this committee now an across-the-board immunity bill.

Those are the only initial comments I have. I would be glad to answer any questions, Senator.

Senator McCLELLAN. Do you have any questions, counsel?

Mr. BLAKEY. I have one or two.

Mr. Hundley, Senator Tydings introduced a bill, S. 974, which would raise the organized crime and racketeering section in the Department of Justice to a division. Do you feel that there are inherent organization difficulties in separating organized crime investigations from the other activities of the Criminal Division?

Mr. HUNDLEY. I, of course, favor elevating the section to a division status. I favored it when I was down there. When I left as Chief of the section we had about 60 attorneys in the section and it was becoming unmanageable as a section then. I understand they have over 70 now, and that, if they receive supplemental appropriation they will have 89 and if they receive the requested appropriation for next year, they will have 140 attorneys.

Now, it just doesn't make any sense to me to ask for $65 million for an organized crime drive, which I agree with, by the way—ask for 140 attorneys, and then seem to quibble on whether or not it ought to be a division. It just seems to me that it just flows naturally that it ought to be a division. I agree with Senator Tydings' bill on that.

Senator McCLELLAN. The question is, How can you separate organized crime activities from ordinary criminal law activities?

Mr. HUNDLEY. Right.

Senator McCLELLAN. Will there be overlapping? It is an administrative problem?

Mr. HUNDLEY. Senator, when I was down there—with the question as big as it is today or as it is going to be—there were difficulties, but I would say it worked in practice that any case in the Criminal Division that had racketeer overtones was transferred to the organized crime section, and thereafter the organized crime section whether it be a fraud case or what, had jurisdiction over the case.

I would think it would be pretty much the same proposition if you make them both divisions.

Now, I know the argument that you really don't have anything left in the Criminal Division. That was the argument that was always put forth. I don't subscribe to that. I think there would be abundant work for the Criminal Division.

Senator McCLELLAN. If you create a criminal division and a division on organized crime, who would you have over them?

Mr. HUNDLEY. Excuse me?

Senator McCLELLAN. Who would you have over each division, the Deputy Attorney General?

Mr. HUNDLEY. Yes, sir.

Senator McCLELLAN. What would be the next link in command.

Mr. HUNDLEY. Well, I would think the next link in command would be the Attorney General.

Now, I did read something——

Senator McCLELLAN. You would have each of these Assistant Attorneys General reporting to the Deputy and on up to the Attorney General. That seems to me the only way it could be done.

Mr. HUNDLEY. Yes. I read somewhere where somebody had proposed a separate Deputy Attorney General for the administration of justice.

Senator McCLELLAN. You cannot completely divorce them. I think they have got to be kept under one source of authority.

Mr. HUNDLEY. You see, there are a lot of things—I don't think I have to explain to the Senator—sometimes you get involved in bureaucratic infighting in agencies. Now, I remember one of the first things I did when I became Chief. I wrote a memo saying I thought it would be a good idea if all tax cases involving racketeers would be transferred from the Tax Division to the Organized Crime Section. Well, nobody in the Tax Division would talk to me for about the next 6 months. You know, they just didn't want to give it up.

Senator McCLELLAN. I thought you folks who were appointed in office never had any political problems.

Mr. HUNDLEY. It seems to me that there has always been some reluctance down there to take this step, but it seems to me that now the step just has to be taken, because what you have in the section now—bear in mind you are going to have over 100 attorneys in a short period of time, you have got one section chief and he has two deputies——

Senator McCLELLAN. I am inclined to favor it. Nevertheless, if you give the Department something it doesn't want then you have a problem, too.

Mr. HUNDLEY. Yes.

Senator McCLELLAN. I would not want to elevate the Organized Crime Section to a Division that would, in any sense, outrank the regular Crime Division. Certainly it has to be kept, in my judgment, on a level.

Mr. HUNDLEY. I agree with that. I will take it one step further. I would think that the Attorney General, if he agreed that it was a wise thing to do to set it up as a division—it is a highly specialized field of work, anyway—I would think the Attorney General would take one of those top career fellows down there who really knows something about this and put him in charge of the division. There is precedent for that in the Department.

When they created the Internal Security Division they had a man, Walter Yeagley, as head of that division, and he served under three administrations. Why not take this out of the political arena? It takes a couple of years before the attorneys down there really know how to run an organized crime program, anyway.

Take a good career guy, make him the Assistant Attorney General.

Senator McCLELLAN. I think that is an excellent idea, because law enforcement is a very serious and difficult task, and I can't see where there should be any partisanship. I think partisanship will detract from the success of any program designed to strengthen law enforcement.

Mr. HUNDLEY. I would feel more comfortable if title I of S. 2022—if you had a nonpartisan career Assistant Attorney General deciding which police departments were liable to be investigated.

Mr. BLAKEY. Mr. Hundley, that covers my questions.

Senator McCLELLAN. I thank you. I appreciate your being with us and coming up here. You have had the experience and the knowledge and you have made a contribution in our work.

Again, this is an effort to meet our responsibility here as Members of the Senate to deal with a very grave problem in our country today.

Mr. HUNDLEY. Thank you very much, Senator. It was a pleasure to be here again.

Senator McCLELLAN. Thank you. I have always had great respect for you in your work down there, and I am glad to find that you have remained interested in government and law enforcement even after you left office.

Thank you.

Mr. HUNDLEY. Thank you very much, Senator.

Mr. TYDINGS. Mr. President, I would like to emphasize part of his remarks:

Mr. HUNDLEY. I, of course, favor elevating the section to division status. I favored it when I was down there. When I left as Chief of the section we had about 60 attorneys in the section and it was becoming unmanageable as a section then. I understand they have over 70 now, and that, if they receive supplemental appropriation they will have 89 and if they receive the requested appropriation for next year, they will have 140 attorneys.

At the present time, today, there are 89 attorneys in the organized crime section. It is my understanding that under the new budgetary proposal, the number will reach 112 attorneys for fiscal year 1970.

I continue with Mr. Hundley's testimony before the committee:

Now, it just doesn't make any sense to me to ask for $65 million for an organized crime drive, which I agree with, by the way—ask for 140 attorneys, and then seem to quibble on whether or not it ought to be a division. It just seems to me that it just flows naturally that it ought to be a division. I agree with Senator Tydings' bill on that.

By the provisions of S. 30, a number of new weapons will be given to the Department of Justice to fight organized crime. These new weapons will need high level impetus, direction, and control from the Department, if they are to be properly utilized against organized crime. Some of these weapons include: First, title I—convening special grand juries in a judicial district with fewer than 4 million inhabitants; second, title II—grant authority for a testimonial immunity order; title V—protective housing facilities; fourth, title IX—civil investigative demands almost identical to those used in antitrust matters under the supervision of the Assistant Attorney General for Antitrust; fifth, title IX—forfeiture proceedings against one convicted of a designated racketeering offense.

In other words, we are providing in title IX almost the same investigative powers, as those used in antitrust matters. It is noteworthy that effective utilization of these powers has required the supervision of an Assistant Attorney General in the Antitrust Division.

Title IX is one of the more ingenious provisions of Senator McCLELLAN'S committee. It is a very important provision. It will be most effective if it has to direct its use an Assistant Attorney General rather than section chief.

Mr. President, an Assistant Attorney General and an Organized Crime Division can assure a commitment to a "war on organized crime." The ebb and flow of effort need not be continued. If, however, the organized crime fight is left within the Division charged with general criminal problems, the present subservient status of the section will be perpetuated and there would be no administrative manifestation of a drive against organized crime.

An Assistant Attorney General for Organized Crime would make the Federal commitment firm and visible. He would be required to go before the Committee on the Judiciary of the Senate. He would be required to receive Senate confirmation. The Division would have a separate and definable budget.

Mr. President, I am not the only person speaking in this regard. My voice is not an isolated voice requesting permanent status, direction, and authority in the drive against organized crime.

I would like to refer the President's attention to page 206 of the President's Crime Commission report in 1967, "The Challenge of Crime in a Free Society."

I would like the President to consider the words of Rufus King that the creation of a division for organized crime would be a good change within the Department of Justice. I might add that Mr. King was the chairman of the Criminal Law Section of the American Bar Association for many years. He is the author of many books on this subject. He is a distinguished criminologist in his own right, as well as an able lawyer.

Mr. President, during the hearings held by the Senator from Arkansas (Mr. McCLELLAN) he left no stone unturned in his effort to get able witnesses to testify on the organized crime proposals. He had among his witnesses Prof. Henry S. Ruth of the University of Pennsylvania School of Law.

Take note of the question of the distinguished Senator from Arkansas (Mr. McCLELLAN) and Professor Ruth's response:

Senator McCLELLAN. Senator Tydings has proposed in S. 974, which is now before this committee, that there be created in the Department of Justice a position known as Assistant Attorney General for Organized Crime. Based on your personal experience and the studies of the Crime Commission, do you think this suggestion is a good one?

Mr. RUTH. Yes, sir; I do. I think, as the Organized Crime Section expands, it is going to swallow the Criminal Division, so I think there should be two separate entities, and I think the head of the organized crime endeavor should have direct access to the Deputy Attorney General and the Attorney General and have his own budget.

I have already quoted from the testimony of William G. Hundley. I shall now read from the testimony of John P. Diuguid, General Counsel of the Association of Federal Investigators. His testimony is found at page 277 of the hearings:

Other bills which, we believe, deserve the careful consideration of this subcommittee are S. 974, S. 975, and S. 976 introduced on February 1, 1969, by the honorable Senator Joseph Tydings. The first of these measures, S. 974, would elevate the organized crime and racketeering section of the Department of Justice to division level by creating the position of Assistant Attorney General for Organized Crime, S. 975, which would compel testimony in certain cases, and S. 976, which would provide increased sentences in certain cases where a felony is committed as part of a continuing criminal activity in concert with one or more other persons are also, in the association's view, deserving of this subcommittee's careful consideration.

Others testified at the hearings in support of an Assistant Attorney General and a division for organized crime and

control. On page 531 of the hearings will be found a letter from Edwyn Silberling. He was one of those persons entrusted with the authority for directing the organized crime drive within the Department. His letter states:

NEW YORK, N.Y.,
June 17, 1969.

HON. JOHN L. MCCLELLAN,
Committee on the Judiciary,
U.S. Senate
Washington, D.C.

DEAR SENATOR MCCLELLAN: Thank you so much for requesting my views on the legislation introduced by Senator Tydings to improve the combat against organized crime. I have read Senator Tydings' bill with great interest and I am strongly in favor of it. Based upon my experience in the Department of Justice, I would say that it is essential for the man charged with the responsibility of directing the prosecutorial attack against organized crime to have the flexibility and power which is provided for in Senate 974.

Because of the peculiar nature of racketeering activities normal categories which can be neatly pigeonholed in particular divisions such as the Criminal Division do not apply. Experience has shown the need for utilizing the vast range of powers vested in Federal government in what are ordinarily non-criminal fields, such as the Federal Housing Regulations or Small Business Administration Regulations. By creating an Assistant Attorney General for Organized Crime it would be much easier for the man in that position to deal with other branches of the executive department. Further, he would command greater respect from other executive branches of the government all to the benefit of an effective antiracketeering program. It would also enhance the opportunities for closer relationships with the United States Attorneys. In addition, since there will be an increasing partnership between the Federal and State governments in this field, it would be of value to clothe Department of Justice representatives with enhanced status. For example it would be much more meaningful if the man in charge of the Justice Department's program in the field of Organized Crime to correspond directly in his own name to the local District Attorney rather than go through another Justice Department official. I believe, too, that having the status of Assistant Attorney General, would subject the Department of Justice official to the approval of the Senate prior to his appointment. This would tend to increase Senate interest in the activities of his Division and also lead to closer ties between the Legislature and the Department of Justice in this field.

Sections 4 and 5 of subdivision (a) are meaningful, necessary, and carry the promise of bearing fruit on a longterm basis.

Very truly yours,

EDWYN SILBERLING.

Ed Silberling was one of those men on the firing line in the fight on organized crime.

I would like to read the letter of Milton R. Wessel, special assistant to the Attorney General. The letter appears on page 533 of the hearings of the McClelland committee:

DEAR SENATOR MCCLELLAN: This is in reply to your June 6, 1969 letter, asking for my comments with regard to S. 974.

Enclosed is a copy of the Report submitted by the Attorney General's Special Group on Organized Crime on February 10, 1959. The Report was based upon a special eleven-month nation-wide study of problems related to syndicated crime enforcement. It concluded that significant benefits could be achieved by creating a separate Office on Syndicated Crime within the Department of Justice. S. 974 would have similar effect.

Although I have not served actively as a prosecutor since early 1960, the problems of syndicated crime enforcement seem no less serious today than they were in 1959; the causes of ineffective law enforcement also seem much the same. I would accordingly favor the passage of S. 974 for all the reasons set forth in our 1959 Report.

One of the reasons why the Department of Justice refuses to give the Organized Crime Section division status is that they say they would have to have another study. That is bureaucratic nonsense. In 1959, under Attorney General Rogers, now Secretary of State of the United States, they had such an investigation. They had such a bureaucratic effort. Their own man, in 1959, made the recommendation that they needed to give organized crime full division status. That is over a decade ago. His letter, which is in the hearing record of the McClellan committee, says he supports my proposal for the same reason he recommended it in the Department of Justice.

At the same time, the Department of Justice says, "We cannot give organized crime division status now because we are having a total reorganization plan." However, at the same time they have asked for legislation creating an Assistant Attorney General to head a consumer division, with 25 attorneys. Yet, they turn their back on an organized crime division with 112 attorneys and say they have to have a study.

There is the same bureaucratic inertia in the Department of Justice that there was in prior administrations. They just do not want it because they want to keep the power within the Criminal Division in the Department of Justice. I ran into it when I was U.S. attorney for 3 years. U.S. attorneys today run into it.

I say it is time for the Congress, if it really means what it says about having an organized attack on organized crime, to give it an institutionalized effective focus. If we do not, and the issue of organized crime drops from the headlines and we do not have an Attorney General who is concerned with it, we will see happen what happened when Attorney General Kennedy left the Department of Justice. We will have a new Attorney General, with new ideas, new imperatives, new directions, new focuses, new concerns, and we will see the emphasis within the organized crime section fall back to where it had stood before. We cannot tolerate that.

I stood with the Senator from Arkansas (Mr. MCCLELLAN) last year and supported him and helped put through legislation providing in certain instances for court-ordered electronic wire taps because the problem of organized crime had gotten so far out of hand in this Nation that we had to give our law enforcement officials the necessary prosecutorial tools to combat it.

I support S. 30 on the Senate floor today, and will tomorrow, for the same reasons—because we need those tools. At the same time we must not turn our back on the recommendation of the President's Crime Commission, on the American Bar Association section on criminal law, on the recommendation of every director and former assistant director on organized crime, and listen instead to the bureaucrats in the Department of Justice.

Mr. MURPHY. Mr. President, will the Senator yield for a question?

Mr. TYDINGS. I yield.

Mr. MURPHY. Has the Senator found that there has been any objection to his suggested amendment? Has any objection been voiced? Is there any objection that some of us may not have heard of? The amendment seems to make good sense to me. I wondered what the opposition was.

Mr. TYDINGS. I may say to the Senator from California that there is objection from the Department of Justice, and its objection will be outlined—to my dismay—by my friend and colleague the Senator from Nebraska (Mr. HRUSKA). There will be opposiiton and it will be expressed by my distinguised colleague from Nebraska.

I think perhaps at this time I will yield the floor and permit the Senator from Nebraska to give the Department's position in opposition.

Mr. HRUSKA. Mr. President, we have under consideraiton in the Senate today an excellent piece of proposed legislation. It has been carefully thought out, and it has been very deliberately composed and drawn. I join the chairman of the subcommittee in the hope that we will have an end product which will receive the unanimous approval of the Members of the Senate.

This is not saying we should not consider amendments that are proposed from time to time. The amendment the Senator from Maryland proposes today is one we are gong to debate and decide upon.

The proponents and the opponents of the amendment have one thing in common, and that is a desire and a goal of vigorous and effective implementation of an anti-organized-crime program. The question is, "How can we best achieve it?"

I shall begin by stating that the Subcommittee on Criminal Laws and Procedures considered a bill proposed and introduced by the Senator from Maryland, the essence of which is contained in the amendment now before us. It was rejected. It has some good arguments in its favor. Those were recited in a letter sent to the committee on August 5 of this year from the Attorney General.

It was pointed out in testimony by the Attorney General that to create an organized crime division with an assistant attorney general in charge would have some advantages. It would lend emphasis to the program against organized crime. It would result in an institutionalization of that particular activity with its own structure, and it would add stature to the effort against organized crime.

It is contended—and I think it can be reasonably assumed—that with an independent budget for use against organized crime, there would also be some increase in stature.

It might also give some protection

against a possible future deemphasis in Federal efforts in this area.

From a management point of view, it is asserted that the anticipated size and present growth of the Organized Crime Section would warrant establishing a division.

I think a reasonable argument can be made for creating a Division on Organized Crime.

The Senator from Maryland has related some of the arguments in favor of it.

Notwithstanding these arguments, the subcommittee and later the full committee turned this proposal down. Here are four reasons, in capsule form, why it did so; and there are many details that support each of these reasons.

First. The Department of Justice is opposed to it. The Department of Justice, under the administration of Mr. Mitchell's predecessor, was also opposed to it. Mr. Ramsey Clark's predecessor, Mr. Katzenbach, was opposed to it.

Second. There is currently under consideration the matter of creating a separate Organized Crime Division. That study is being conducted by the President's Advisory Council on Executive Organization, and is also a matter under constant review by the Attorney General and his staff.

Third. There is inherent in this amendment an unwarranted intrusion into the area of the internal policies of the Department of Justice.

Fourth. The amendment would introduce an element of inflexibility and difficulties in administration of the affairs of the Department of Justice. There would be an unnecessary and even harmful limitation of administrative flexibility.

Fifth. Finally, it is contrary to current policy and thinking in the field of public administration, in view particularly of the 1966 amendments that are contained in chapter 5 of title 28 of the United States Code, concerning the Department of Justice.

Now I should like to return to and discuss the Department of Justice's opposition to this kind of proposal.

First of all, it is pointed out that a decisive factor in the organizational problems of the Department of Justice would result. It is pointed out that a Federal crime is a Federal crime, regardless of whether it is committed in the field of organized crime or in the field of any of the other criminal statutes. If a separate division were created, there would be a furthering of the complex problems of determining which division, the Criminal Division or the Organized Crime Division or the Tax Division should have jurisdiction.

It should also be noted that the creation of divisions such as those that I have just mentioned would result in losing the existing advantages of having a single Assistant Attorney General supervising the criminal work of the U.S. attorney. If there is to be a competition between the Organized Crime Division and the Criminal Division for the efforts, the staffs, and the talent of these 93 district attorneys in the 50 States, we will readily find ourselves in a state of confusion and chaos. It would certainly impair the effectiveness of an organized crime drive, rather than help it.

As to the matter of flexibility, all of us are aware that in a department, particularly one of the nature which we find in the Department of Justice, there must be flexibility. There has to be flexibility, and there are times when one phase of crime or one phase of law enforcement will supersede, and be accorded much greater emphasis than at other times. There has to be an ability of the department to shift its forces and its strength one way or the other.

These arguments are set forth, Mr. President, in a letter of August 5, 1969, written to the chairman of the subcommittee by Attorney General Mitchell. That letter was reconfirmed, and the position of the Department of Justice was reaffirmed in a letter dated January 20, just the day before yesterday, over the signature of the Attorney General, Mr. Mitchell. Again he points out the arguments that he made last summer. These arguments were reiterated by Mr. Will Wilson, the head of the Criminal Division, in the testimony that he gave on June 3, 1969.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks the letters of the Attorney General dated August 5, 1969, and January 20, 1970, and excerpts from the testimony of Will Wilson regarding S. 974, which is the bill introduced by the Senator from Maryland, the essence of which is now contained in the amendment under consideration, being an excerpt of the testimony given on June 3, 1969, on that particular bill by the head of the Criminal Division.

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

(See exhibits 1, 2, and 3.)

Mr. HRUSKA. In that statement, Mr. Wilson says:

> While it is good to emphasize the organized crime work by dignifying this work in the Organizational scheme of the Department of Justice, it is thought that the danger of competing offices having jurisdiction of the same subject matter will more than offset the advantages. This is particularly true with increases in the Strike Forces or field offices devoted to organized crime work, and great care must be taken that these do not become competing prosecutorial offices to those of the United States Attorneys.

He goes on to point out that there should be a close connection and a close working together of all these component parts, that can be achieved best under the leadership and the supervision of only one man, rather than to have it divided among others.

In June of this year, pursuant to request by the chairman of the subcommittee, Mr. Ramsey Clark, formerly the Attorney General of the United States, gave his opinion that such a division should not be created.

He says, in a letter of June 25:

> The proposal has been discussed within the Department for many years. In my opinion, it is unwise. Criminal conduct does not fall into tidy compartments. To separate organized crime prosecution from the rich experience and resourceful manpower of the Criminal Division would injure both.

He goes on to say:

> Creation of new divisions limits flexibility in enforcement priorities and manpower allocation. It often demoralizes the staff, which is removed from the more exciting activity of the moment, and results in stagnation in special areas of high interest when that interest passes.

I ask unanimous consent that that letter also be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 4.)

Mr. HRUSKA. Then there was a request sent to the former Attorney General of the United States, Nicholas Katzenbach, and on July 10 of last year he also addressed a letter to the chairman of our subcommittee. I ask unanimous consent that that letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 5.)

Mr. HRUSKA. He said, among other things, after saying that there are both virtues and vices to the bill (S. 974) that:

> On the other side of the scales is the fact that responsibility for Federal prosecution of crime would, with a new division, be split four ways: The Criminal Division, the Organized Crime Division, the Internal Security Division, and the Tax Division. I think this would make the Attorney General's job of supervision somewhat more difficult than it is now. In addition, I think with organized crime removed, it would be much more difficult to get the high quality person to head the Criminal Division which it is important to have. During the Kennedy and Johnson Administrations, the Attorney General himself spent much of his time dealing with organized crime, and the Assistant Attorney General in charge of the Criminal Division probably spent in the neighborhood of 80 percent of his time dealing wtih it.

Mr. President, that makes sense. It is the tone at the top that is going to determine the effectiveness of any program, whether it is an antitrust program, a tax prosecution program, a civil rights program, or any other program.

To the extent that the demands of the day will require, we can reasonably expect that the Attorney General sitting in that office, will be receptive to demands for prosecution on a vigorous basis of organized crime as of the moment. It may be something else 2 years from now or 4 years from now. There may be hills and valleys even in the organized crime business. He should have the opportunity to deal with it in a flexible fashion, without being tied up by the particulars that are going to be foisted upon him in the event of the adoption of this amendment.

Herbert J. Miller is the former Assistant Attorney General in charge of the Criminal Division. He wrote a letter to the chairman of our subcommittee, under the date of June 19, which appears on page 530 of the hearings. He said, among other things:

I have long felt criminal law enforcement activities in the Department of Justice should be centralized rather than decentralized.

He goes on to say, in a later paragraph:

Experience dictates that one of the reasons for the strength of the organized criminal element has been the "splintered" law enforcement jurisdiction of the federal government.

Mr. President, the formation and the functioning of the strike forces which we have working today is an attempt to get away from that splintering. We gather under the hearing of one attorney, all the legal and investigative activities of the Federal Government concerning organized crime. We put them under the special ad hoc control of a special counsel and they go to work with all the law enforcement resources. They round all investigative functions in one package and really lower the boom. That is what will be necessary in order to get away from the splintering to which Herbert J. Miller, Jr., referred in his letter of June 19.

I ask unanimous consent that the text of that letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 6.)

Mr. TYDINGS. Mr. President, will the Senator yield.

Mr. HRUSKA. I am happy to yield.

Mr. TYDINGS. I like the "splintering" argument. Indeed, that is one of my arguments. To whom does the Senator feel the Federal Bureau of Investigation, the postal inspectors, the agents of the Fish and Wildlife Service, or the Treasury agents of the IRS would be most responsive in an effort to stop the splintering of, say, multiple investigations in the district of Nebraska or the district of Maryland, if a directive were passed out ordering them to combine and meet regularly each week and coordinate their investigative efforts? Does the Senator think they would be more responsive to a letter from a section chief in the Criminal Division who could not even sign the letter in his own right. Does not the Senator recognize that they would be more responsive to a letter which came from the Assistant Attorney General of the United States, who was nominated by the President and whose nomination was confirmed by the Senate?

Mr. HRUSKA. No, they would not be less responsive. They would respond just as readily to a section chief as they would to a division chief or anyone else so long as he has the support of the Attorney General.

But that misses the point. It is what is done with the results of their responses. Under the Organized Crime Division amendment, that division would be deprived of the manpower experience, the allocation of manpower, and all the other things pointed to by former Attorney General Katzenbach, former Attorney General Ramsey Clark, and former Assistant Attorney General Miller.

The point is, what do you do with this information, with all this evidence, after the responses are made by these various law enforcement agencies out in the field? And how do you use it most effectively? These people, who have headed the department, not out in the field, not on a bureaucratic level, say that is not the way to do it, that we ought to have it under one man, who would be in charge of the Criminal Division.

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

Mr. HRUSKA. I yield.

Mr. TYDINGS. The Senator responded to my question with regard to splintering, that a letter from the section chief would be just as effective as a letter from the assistant Attorney General or the Director. How does the Senator account, therefore, for the historic refusal or failure of the Federal investigative agencies to coordinate efforts in the organized crime section before the Attorney General of the United States himself got involved in 1961.

The period of time about which the Senator is talking was when we had as head of the section on organized crime Milton R. Wessel, appointed by Attorney General Rogers, a distinguished attorney in his own right, a great prosecutor, who developed the charge in the Appalachia case. What did he tell the Senate committee? He told them that they ought to adopt our amendment and give it division status. He was on the firing line. He was the one trying to get cooperation back in early 1969.

What about Bill Hundley? Bill Hundley worked there under Milton Wessel, under Attorney General Rogers. As a matter of fact, he worked under Attorney General Brownell when the whole section began. He later worked under Attorneys General Kennedy and Clark. What was his testimony? His testimony was, that you needed division status if you really wanted to have muscle, direction, and continuity to fight organized crime within the Department of Justice.

The Attorney General, Mr. Mitchell, with all respect to him, is merely giving the testimony which the bureaucracy within the Department of Justice has prepared for him. Mr. Mitchell has never tried an organized crime case. He has never directed an organized crime investigation. Does the Senator think he is as knowledgeable as Milton Wessel, who put together the Appalachia trials? Does the Senator think he is as knowledgeable as Ed Silberling, the chief of the Organized Crime Division under Attorney General Kennedy? Does the Senator think he is as knowledgeable as Prof. Henry Ruth, of the University of Pennsylvania Law School, Deputy Director of the President's Crime Commission and a member of the Organized Crime Section under Attorney General Rogers?

Does the Senator think the President's Crime Commission was just groping in the air when they recommended division status? No, they were not. Henry Ruth knew of the bureaucratic opposition when he was in the organized crime section. The Senator from Nebraska put his finger on it when he said it might be difficult to get a good Assistant Attorney General for the Criminal Division.

Mr. President, if the Assistant Attorney General in charge of the Criminal Division did not want the job for himself, he would not be opposing it now. It is the same bureaucratic jealousy which has bogged down the anti-organized crime effort in the Department of Justice under three preceding Presidents. It has caused the opposition message to be sent up today to the floor of the Senate.

I think it is time for Congress to follow the recommendations of the men on the firing line, the men who directed the organized crime section in the field under Republican and Democratic Attorneys General alike. I think it is time for the Senate to follow the recommendation of the President's Crime Commission report, of the criminologists who testified before Senator MCCLELLAN, and not listen to the bureaucracy within the Department of Justice, who have their own petty, selfish jealousies which are concerning them and which are motivating their opposition today.

Mr. HRUSKA. Mr. President, the Senator from Maryland is a very able debater, and he has lived the cause of this amendment a long, long time. He knows all the arguments. But they do not ring true when he asks for a comparison between men in the field—Hundley and all these other people. Great credit should be given to them, and they did an excellent job. But they were not in charge of the Department. Ramsey Clark was. Katzenbach was. John Mitchell is.

There is no magic in saying there will be a man in charge of this department by statute and that from there on we are going to have happy and forceful and most effective prosecution. There is no magic in that. That man could be just as indifferent to it as anyone else who might be in charge of the work, and could well be so. There is no magic in that at all.

Mr. President, nine Assistant Attorneys General are now authorized by statute. Section 28 U.S.C. 506 says there shall be nine.

It does not say one will be in charge of land, another of tax, another of legal counsel, another on civil rights, an another on antitrust. It is left to the Attorney General to do. The Attorney General will separate the work of the Department into such categories as the occasion of the time requires, in his best judgment. Congress should not invade that area of internal policy and say, "You must put a man in here."

As a matter of fact, it would not be necessary for the Attorney General to fill that post even if we passed this amendment.

There is a vacancy there now. There is a place there. There is a slot for an Assistant Attorney General which is not being used for anything. It was formerly occupied by an Assistant Attorney General, Custodian of the Alien Property Division. That spot has not been filled for a long time. There is no way to force the Attorney General to go one way or the other in that respect if, in his best judgment, the administration of his department will be more to the public interest by doing it the way he is doing it now. That is the way it should be.

Reference was made to the last paragraph of Mr. Katzenbach's letter and I will read an excerpt from it for the record:

> Frankly, I think on organizational matters of this kind the views and preference of the incumbent Attorney General should be given great weight. I believe that if I were now Attorney General I would not request this authorization from Congress. But if the present Attorney General desires it, I would, were I a member of Congress, support him.

Mr. President, that carries in it the implication from Congress that if the Attorney General does not want him, then I, as a Member of Congress, would oppose that kind of post. I think that is a very good point for those who oppose the amendment.

I should like to suggest that there was a reference made to the 1959 commission report, appointed by Attorney General Rogers, now Secretary of State, which was considered, and which was considered by Congress, and which was considered together with many other things in 1966 when the Reorganization Act was passed, on chapter 5 of title 28 of the Code. An Assistant Attorney General for Organized Crime was disregarded. They did not buy it.

I believe that the amendment is unwise. The Department of Justice is opposed to it. Study and consideration are in progress. We should await determination of that. If the Attorney General wants it, let us give it to him, and if he does not want it, let us not give it to him. It is an unwarranted interference in the area of the internal policy of the Department of Justice. It introduces an element of inflexibility in Congress and in the administration of the Department of Justice. It would actually be harmful and finally, contrary to the current policy thinking in the field of administration of Department of Justice affairs, particularly in view of the 1966 amendment.

Mr. TYDINGS. Mr. President, the President in his state of the Union message today stated that he looked to the Congress to help fight the war against crime. Organized crime is one particular version of crime. The Senator from Arkansas (Mr. McCLELLAN) set forth properly and put the entire recources of his committee to work last year in perfecting Senate 30, a bill which works out the prosecutorial techniques, the investigative techniques, and the resources to fight organized crime. I know that the reason the Senator from Arkansas did that was the same reason he and I fought shoulder to shoulder on the floor of the Senate for the titles in the Omnibus Crime and Safe Streets Act which related to the war against organized crime.

Congress today has a mandate from the people to do what is necessary to protect them against the perils of organized crime. We must not fail in this important responsibility.

Mr. President, I should like to yield at this time to the Senator from Arkansas, then I would like to ask for the yeas and nays, and would be prepared to vote at any time convenient to the Senator from Nebraska (Mr. HRUSKA).

Mr. HRUSKA. Mr. President, if the Senator will permit me to make a brief observation about the suggestion that our President just an hour or so ago advanced; namely, the proposition that the people should fight crime. I fully agree we should help fight crime; but I submit that is not the same as the proposition which is advanced whether the people should interfere in the internal affairs of the Department of Justice. That is for the Attorney General to decide. The fight of the people against organized crime is in another arena and in another respect altogether.

Mr. McCLELLAN. Mr. President, I shall be rather brief. I regret to announce my opposition to the amendment because, in the first place, I do not regard it as a debilitating amendment. I do not regard it as a destructive amendment. I do not regard it as an amendment that will cripple the bill as such. I am going to oppose the amendment, however, for reasons which I shall now state.

Mr. President, first, I wish to compliment and congratulate the Senator from Maryland (Mr. TYDINGS). He has made reference to the fact that on this floor, 2 years ago, in the Congress of 1968, we battled together, shoulder to shoulder, to give to the Department of Justice and to the law enforcement arm of our Government a weapon, a vital tool, badly needed in the war against organized crime.

That was title III of the Omnibus Crime Control Act, which was enacted into law and which the new administration has used—although, I regret to say, the preceding Attorney General did not, during the remainder of his term of office.

I have already made reference in my speech yesterday to the effectiveness of that title here in the District of Columbia, where its use has broken up and exposed and caused the arrest of persons involved in an apparently well organized and functioning dope ring, which included two Mafia leaders out of New York.

Now, that is a tool we gave the Department of Justice which is being used effectively.

A number of us voted for that here, and helped to develop legislation and fought for its enactment, not because the Attorney General wanted it—he did not want it, and indicated that he would not use it, and he did not—but because it was made manifest that organized crime organizations within this country—the Cosa Nostra and others—have acquired such tremendous power and such tremendous influence. Their tentacles reach out into so many communities around the country, that their power and force had to be dealt with, so that we had to resort to this method. It was advisable to do so, and we did it. It is effective. It is getting results.

Mr. President, we find now that we need some more tools with which to combat this devastating force in our society. The committee has worked hard to bring out a bill. It has a number of provisions in it giving vitality and force to the will of the people that want to stamp out crime, and particularly organized crime, the parasitic crime by which people live off profits as professional criminals, organized crime which milks the life substance and force of humanity.

Mr. President, the pending amendment has an appeal. It has a legislative appeal. To me, it has a rather strong appeal, because of the importance that the menace of organized crime represents today.

Nevertheless, if we set up another division on organized crime, and then we have ordinary crime—if that is the proper title—does that include organized crime?

Now, where are we going to draw the line? How are we going to differentiate?

Surely, we know that we have this organized effort, and we are going to try to deal with it more effectively. And that is one of the prime purposes of the pending bill.

But, in organizing the administration of the law, in setting up the administration of the law and effectively to enforce it and make use of it, I do not know whether there should be a separate division for organized crime and another division for ordinary crime. And, if so, I do not know which should have priority over the other or which should have the highest status.

If they have equal status, who is going to determine when conflict arises, as it certainly will, whether this particular crime to be investigated comes under the heading of organized crime or ordinary crime?

I do not know. However, I can see that confusion might arise and conflict could arise.

The present Attorney General says as of now that he does not want it.

What are we going to do?

I have a policy with respect to some appointments in my State, not at the present time under this administration, but under past administrations. I have had a little influence in making recommendations as to who would be the U.S. Attorney. And I can say that when I was instrumental in getting someone appointed as U.S. Attorney, I did not later send him a bunch of sorry lawyers and tell him that he had to take them as assistants to do his job.

Anyone who applied to me for an asasistant U.S. Attorney's job was told by me to go and convince the U.S. Attorney that he needs him and then I would give him my endorsement.

I did not believe it was fair to give him the responsibility and then say, "Do it with the tools I have furnished you."

That same rule applies here.

I am reluctant to say to the Attorney General that he has to set up his organization, that he has to divide his responsibility, and do such and such in this way, and then hold him accountable if he cannot do the job as it is now or does not want to do it. After a fair opportunity and trial, and it is pointed out—it may well be, but I do not know—that this is what we should do, whether he wants it or not. Until that has been determined to our satisfaction I am not certain what we should do.

There is a conflict of evidence in the

hearing. One can take a position for the amendment. We have strong testimony for it. But we have strong testimony against it, and the difference is in the weight that comes from the man who has the responsibility to do this job now.

We can pass a law, but we cannot execute the law. We can pass a law, but we cannot administer it. We can pass a law, but we cannot by law insure that we will get better results by imposing on an Attorney General a certain kind of organization than if we let the Attorney General say how he will organize his own effort, how he will administer it, and how he will direct it, and what assistants he needs to the job.

At the moment, I would leave it with the Attorney General. But I commend the author of the amendment for the great contribution he has already made in this fight against organized crime.

The bill before us today is going to make a further contribution to the expediting of that necessary effort in this country.

I shall not be unhappy personally if the amendment is agreed to. I personally do not care except that I do feel that there can be complications, and I can see that there might be complications. When the man in charge says, "Do not impose it on me, because I will have those complications," I think we should let them do it this way a while longer while we study the matter further.

I feel constrained under the circumstances to go along with that. The general idea has an appeal to me. Organized crime is of such magnitude and is such a danger and a menace of great proportions in this country today, there ought to be an Assistant Attorney General at the head of the division.

Whether we can separate the Department's crime efforts into two divisions is the issue. There is some doubt about it, and in view of the Attorney General's present position, I shall not vote to make that separation.

Mr. HRUSKA. Mr. President, I commend the Senator from Arkansas for his splendid analysis of this. I agree with him fully.

This is not a debilitating or harmful amendment in and of itself.

I want to join the Senator from Arkansas in his praise of the work and the effort and the great assistance rendered by the distinguished Senator from Maryland in this field.

He has been of tremendous help. Certainly, his experience as a U.S. attorney in the district of Maryland has been called on for guidance as we have gone along. However, the ultimate position reached by the Senator from Arkansas is that the Attorney General is the head of the criminal division.

The Attorney General in his letter of August 5, said:

> Upon completion of that study appropriate recommendations will be made to the President on how to accomplish lasting improvements in executive operations, including the fight against organized criminal activity.

He also said:

> Let the action on this proposal be deferred until the Attorney General has completed his plans for reorganization of all work of the Department of Justice, including that now performed by the tax and antitrust division.

I am happy to hear the suggestion of the Senator from Arkansas that it should be turned down at this time to await the further guidance and recommendation of the Attorney General.

I yield the floor.

EXHIBIT 1

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Your Subcommittee on Criminal Laws and Procedures is presently considering S. 974, a bill which would create a position of Assistant Attorney General for Organized Crime. As you will recall, I discussed the proposal briefly during my testimony before your subcommittee on March 18 of this year. Assistant Attorney General Wilson, during his appearance before the Subcommittee on June 3, 1969, presented additional department views on the measure.

There are some very persuasive arguments in favor of the creation of an Organized Crime Division under an Assistant Attorney General. Such action would give emphasis, institutionalization, and added stature to the effort against organized crime. It would provide for an independent budget for the organized crime program of the Department. It would give some protection against a possible future de-emphasis of Federal effort in this area of unique Federal concern. From a management view, the present size and anticipated growth of the Organized Crime Section would warrant elevating it to division status.

There are, however, also persuasive practical reasons for not creating a separate Organized Crime Division at this time. A decisive factor is the organizational problem which would result. A Federal crime is, in short, a Federal crime, regardless of whether or not it is committed as a part of organized criminal activity.

If a separate division were created, there would be complex problems of determining which division, either the Criminal Division or the Organized Crime Division, should have jurisdiction. To resolve such problems it has been suggested that there also be created a new Deputy Attorney General for Criminal Justice. While this seems like a possible answer, the creation of such a position raises additional problems of the role of this new Deputy vis-a-vis the existing operation of the Deputy's office.

It must also be noted that the creation of two divisions with similar and related jurisdiction would result in losing the existing advantages of having a single Assistant Attorney General supervising the criminal work of the United States Attorneys. This unity in supervision permits the Assistant Attorney General to achieve a priority for the organized crime work which might be more difficult if two assistant attorneys general were, in effect, competing to have the United States Attorneys expedite their criminal prosecutions. Finally, I must question the wisdom of creating a division through detailed legislation which would unnecessarily limit the administrative flexibility of such a unit in meeting contingencies that cannot be anticipated at this time. Legislation, in fact, is unnecessary to create an Organized Crime Division. The Attorney General presently has the authority to re-designate a vacant post of Assistant Attorney General (which formerly was designated for the Alien Property Division) as head of such a new division.

It is because of these competing advantages and disadvantages that I hope that the Committee on the Judiciary will defer action on S. 974. The questions raised by S. 974 and the entire question of improving the effectiveness of the Executive Branch in combating crime are presently under active review by the President's Advisory Council on Effective Organization. The Deputy Attorney General and myself are personally working with this Advisory Council on these matters. Upon completion of that study appropriate recommendations will be made to the President on how to accomplish lasting improvements in executive operations, including the fight against organized criminal activity.

With warmest regards, I am,
Sincerely,

JOHN MITCHELL,
Attorney General.

EXHIBIT 2

JANUARY 20, 1970.

Hon. ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I understand that during consideration by the Senate of S. 30, the Organized Crime Control Act of 1969, the question of whether to create in the Department of Justice a division headed by an Assistant Attorney General for Organized Crime may be brought up. As you know, I have set forth the issues both favorable and unfavorable in this regard in a letter dated August 5, 1969, which appears at page 391 of the printed hearings before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary, United States Senate. At that time I asked that action be deferred on the question pending review by the President's Advisory Council on Executive Organization, and stated that upon completion of that study appropriate recommendations would be made to the President on "how to accomplish lasting impovements in executive operations, including the fight against organized criminal activity".

I would like to reiterate the principal difficulties which would result from the creation of an Organized Crime Division. As I stated in the aforementioned letter, an organizational problem would result. A Federal crime is, in short, a Federal crime, regardless of whether or not it is committed as a part of organized criminal activity. If a separate division were created, there would be complex problems of determining which division, either the Criminal Division or the Organized Crime Divison, should have jurisdiction. To resolve such problems it has been suggested that there also be created a new Deputy Attorney General for Criminal Justice. While this seems like a possible answer, the creation of such a position raises additional problems of the role of this new Deputy vis-a-vis the existing operation of the Deputy's office.

A further objection is that creation of two divisions with similar and related jurisdiction would result in the loss of the existing advantages of having a single Assistant Attorney General supervising the over-all criminal work of the Department of Justice, including that of the 93 United States Attorneys and their more than 800 assistants. This unity in supervision permits the Assistant Attorney General to achieve a priority for the organized crime work which might be more difficult if two Assistant Attorneys General were, in effect, competing to have the United States Attorneys expedite their criminal prosecutions.

Let me assure you, however, that we have been and are continuing to inquire into methods to improve the efficiency of the operations of the Federal effort to combat organized crime. I, therefore, urge that the Senate not adopt any amendment to S. 30 which will create an Organized Crime Division in the Department of Justice.

Sincerely,

JOHN MITCHELL,
Attorney General.

EXHIBIT 3

EXCERPT FROM TESTIMONY OF ASSISTANT ATTORNEY GENERAL WILSON ON S. 30 AND OTHER RELATED BILLS (INCLUDING S. 974) CONCERNING THE CONTROL OF ORGANIZED CRIME, JUNE 3, 1969

S. 974

I would next like to discuss S. 974, a bill to create a position of Assistant Attorney General for Organized Crime, which was introduced on February 7, 1969, by Senator Tydings. In his testimony before this Subcommittee on March 18, Attorney General Mitchell stated that we have been studying the merits of various proposals involving an effectively structured organization dealing with organized crime, including the creation of a separate organized crime division, or the consolidation of all of the criminal activities of the Department of Justice, including the Tax and Antitrust Divisions, in one new division whatever it might be called. This same general subject is also being considered by the newly appointed Advisory Council on Executive Organization which the President in his special message to the Congress on organized crime of April 23, 1969, directed to examine the effectiveness of the Executive Branch in combatting crime—in particular, organized crime. Pending the results of this study, therefore, we request that consideration of S. 974 be delayed.

It should be pointed out that there are inherent organizational difficulties in any plan of organization which takes the organized crime intelligence, cases, defendants and materials out of the functional sections to which they would normally be assigned and sets up a special organizational unit to handle the particular defendants, irrespective of the particular crime under investigation. The immediate effect of this is to create two separate units having jurisdiction of the same subject matter; for instance, most mail fraud cases go to the Fraud Section but those involving organized crime go to the Organized Crime Section. Someone has to make a decision, and in order to keep the Fraud Section and the Organized Crime Section working in smooth harmony, this work has to be closely correlated. It is the present feeling of the Department that this correlation and coordination can best be done by leaving the organized criminal work in the present Criminal Division. The effect of creating a special division will be to transfer the coordination of all criminal work to the level of the Deputy's office and will make necessary the creation of an additional staff section in the Deputy's office.

While it is good to emphasize the organized crime work by dignifying this work in the Organizational scheme of the Department of Justice, it is thought that the danger of competing offices having jurisdiction of the same subject matter will more than offset the advantages. This is particularly true with increases in the Strike Forces or field offices devoted to organized crime work, and great care must be taken that these do not become competing prosecutorial offices to those of the United States Attorneys.

It is the determined purpose of this Administration to have the Organized Crime Section of the Criminal Division work in closer harmony with the Criminal Division than it has in the past and to have the Strike Forces or field offices of the Organized Crime Section work in close connection and close harmony with the United States Attorneys. For these and other reasons, it is respectfully requested that consideration of S. 974 be deferred until the Attorney General has completed his plans for the reorganization of all of the criminal work of the Justice Department, including that now performed by the Tax and Antitrust Divisions.

EXHIBIT 4

FALLS CHURCH, VA.,
June 25, 1969.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: By letter of June 10, 1969, you have asked my views on S. 974, a bill which would create the position of Assistant Attorney General for Organized Crime, in effect, raising the Organized Crime and Racketeering Section of the Criminal Division to divisional level.

The proposal has been discussed within the Department of Justice for many years. In my opinion, it is unwise. Criminal conduct does not fall into tidy compartments. To separate organized crime prosecution from the rich experience and resourceful manpower of the Criminal Division would injure both.

Inter-divisional coordination has always been difficult. Inter-divisional jealousies and rivalries must be anticipated where different divisions are enforcing the same statutes. The Criminal Division will retain narcotics, fraud and general crime responsibilities. Organized Crime figures are frequently prosecuted under such statutes.

Common issues of law, both substantive and procedural, would necessarily arise in two divisions. Uniformity in interpretation at both the trial and appellate levels would be difficult to insure.

Liaison with investigative agencies, critically important to any prosecutorial effort, is more easily effected when one Assistant Attorney General is responsible for all prosecutions.

Creation of new divisions limits flexibility in enforcement priorities and manpower allocations. It often demoralizes the staff which is removed from the more exciting activity of the moment and results in stagnation in special areas of high interest when that interest passes.

The need is more manpower for the Criminal Division and the United States Attorneys' offices to enable them to fulfill all of their important duties.

Sincerely,

RAMSEY CLARK.

EXHIBIT 5

ARMONK, N.Y.
July 10, 1969.

Hon. JOHN L. MCCLELLAN,
Committee on the Judiciary, Subcommittee on Criminal Laws and Procedures, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: You have asked me to comment on S. 974, a bill introduced by Senator Joseph Tydings which would raise the Organized Crime and Racketeering Section of the Criminal Division to divisional level. You have asked for my views as a former Attorney General.

In my judgment there are both virtues and vices to the bill. There is a great deal of merit to taking any step which would concentrate attention upon, and make more efficient, the drive of the Federal Government against organized crime. Raising the Section to divisional level would have this effect. It would underline the importance which is attached to the drive against organized crime; it would also make it easier, in terms of prestige, titles, and salary, to attract and keep able personnel. All of this would be helpful.

On the other side of the scales is the fact that responsibility for federal prosecution of crime would, with a new division, be split four ways; the Criminal Division, the Organized Crime Division, the Internal Security Division, and the Tax Division. I think this would make the Attorney General's job of supervision somewhat more difficult than it now is. In addition, I think with organized crime removed it would be much more difficult to get the high quality person to head the Criminal Division which it is important to have. During the Kennedy and Johnson Administrations the Attorney General himself spent much of his time dealing with organized crime, and the Assistant Attorney General in charge of the Criminal Division probably spent in the neighborhood of 80 per cent of his time dealing with it.

Frankly, I think on organizational matters of this kind the views and preference of the incumbent Attorney General should be given great weight. I believe that if I were now Attorney General I would not request this authorization from Congress. But if the present Attorney General desires it, I would, were I a member of Congress, support him.

With personal best wishes, I am

Sincerely,

NICHOLAS DEB. KATZENBACH.

EXHIBIT 6

WASHINGTON, D.C.,
June 19, 1969.

Hon. JOHN A. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: In response to your inquiry with respect to S. 974, which would raise the Organized Crime and Racketeering Section of the Criminal Division to a divisional level, this concept has been considered for some time. I can recall such suggestions as early as 1963.

I was then, and still am, opposed to making the Organized Crime Section a separate division. To the contrary, I have long felt criminal law enforcement activities in the Department of Justice should be centralized rather than decentralized. Specifically, I am referring to the criminal enforcement jurisdiction which is currently lodged in the Tax, Civil Rights, Internal Security, and Antitrust Divisions.

I know of no field in which close coordination is more important than the organized crime field. Experience dictates that one of the reasons for the strength of the organized criminal element has been the "splintered" law enforcement jurisdiction of the federal government. This includes the fact that there are over 26 federal investigative agencies with as many jurisdictions and the fact that on one division in the Department of Justice has authority to prosecute for all types of federal crimes. Organized crime—while it may deal to a large extent with specific types of unlawful activity—nevertheless involves individuals and syndicates engaging in conduct which runs the gamut of activities prohibited by the Criminal Code of the United States. Obvious examples are the SEC frauds and so-called SCAM situations where organized crime figures participate in planned bankruptcies.

It has been my experience that in order to establish overall policies permitting all types of prosecutorial activities to have the benefit of experience gleaned from one type of crime and to ensure a close working relationship among those various sections assigned the responsibility of dealing with particular crimes, it is absolutely necessary to have all of the criminal functions coordinated under one official at the working level.

In the past, unfortunately, as the various crime problems have achieved an increased significance, the tendency has been to break out that type of prosecution from the Criminal Division and to place it in a separate division, thus moving coordination of the attorneys working on the prosecutions from a sectional level to the office of the Deputy Attorney General or the office of the Attorney General. Two recent examples are, of course, the Civil Rights Division and the Internal Security Division.

Consequently, it would be my strong recommendation that this practice be discontinued and that the Organized Crime Section remain a part of the law enforcement functions of the Criminal Division. As stated before, I would further recommend that the criminal functions of the other divisions be incorporated into the Criminal Division.

I trust that the foregoing is of some help in the deliberations of your subcommittee. If further expansion on the above is desired, I stand ready to give whatever aid I can.

Sincerely yours,

HERBERT J. MILLER, Jr.

Mr. HARRIS. Mr. President, I support the amendment of the distinguished Senator from Maryland to the Organized Crime Control Act of 1969 which calls for the creation of a new Assistant Attorney General to head an Organized Crime Division in the Justice Department. I think the adoption of this amendment is essential if we are to fight in the most effective manner organized crime.

In the past, the Civil Rights Section in the Justice Department was made into a divisional level activity headed by an Assistant Attorney General. The administration is currently asking Congress to create a Division of Consumer Affairs in the Justice Department handled by an Assistant Attorney General. I think the facts justify giving the anti-organized crime program divisional status in the Justice Department.

The distinguished senior Senator from Maryland (Mr. TYDINGS) has in his remarks most ably set forth the need to provide top-level leadership and proper organizational structure for the program to control organized crime. The fact that organized crime is working, as Senator TYDINGS stated, "within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legislative government," demands that our efforts to fight these activities be highly organized and led by top-echelon personnel.

The seriousness of organized crime can perhaps best be highlighted by the profits made by the society comprising organized crime. It has been estimated that from gambling activities alone organized crime makes profits in excess of $50 billion and that from loan-sharking activities the profits may even be higher. Profits from the importation and wholesale distribution of drugs produce over $21 million a year in profits and it is estimated that imported opium costing $350 is valued at $225,000 on the streets in the United States. From illegal betting in the United States, it is estimated that untaxed profits of $600,000 an hour are being made by organized crime.

The impact of organized crime on this country is indeed serious. Our commitment to control organized crime must include a commitment to fight it in the most effective manner. Senator TYDINGS' amendment would provide the best administrative structure for the war against organized crime; I therefore urge its adoption.

Mr. TYDINGS. Mr. President, it is my intention to ask for the yeas and nays on my amendment as soon as a sufficient number of Senators are present in the Chamber.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BOGGS in the chair). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. TYDINGS. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland (Mr. TYDINGS). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MANSFIELD (after having voted in the affirmative). Mr. President, I have aready voted in the affirmative, but on this vote I have a pair with the distinguished Senator from Tennessee (Mr. GORE), who, if he were present and voting, woud vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. MCCARTHY), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Utah (Mr. Moss) are necessarily absent.

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from Kentucky (Mr. COOK).

If present and voting the Senator from Alaska would vote "yea" and the Senator from Kentucky would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is necessarily absent to attend the funeral of a friend.

The Senator from Florida (Mr. GURNEY), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS) and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Kentucky (Mr. COOK), the Senator from New York (Mr. GOODELL), the Senator from Ohio (Mr. SAXBE), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER), are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kentucky (Mr. COOPER), is detained on official business, and, if present and voting, would vote "nay."

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from Kentucky (Mr. COOK). If present and voting, the Senator from Alaska would vote "yea" and the Senator from Kentucky would vote "nay."

On this vote, the Senator from New York (Mr. GOODELL) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from New York would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from Florida (Mr. GURNEY) is paired with the Senator from Illinois (Mr. PERCY). If present and voting, the Senator from Florida would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from Ohio (Mr. SAXBE) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from Ohio would vote "yea" and the Senator from Texas would vote "nay."

Also the Senator from Oregon (Mr. HATFIELD) and the Senator from Kansas (Mr. PEARSON) are necessarily absent, and if present and voting would each vote "nay."

The result was announced—yeas 29, nays 45, as follows:

[No. 5 Leg.]

YEAS—29

Bayh	Kennedy	Pell
Burdick	Magnuson	Proxmire
Byrd, W. Va.	McGee	Randolph
Case	McIntyre	Ribicoff
Cranston	Mondale	Spong
Eagleton	Montoya	Symington
Harris	Muskie	Tydings
Hughes	Nelson	Williams, N.J.
Inouye	Packwood	Yarborough
Jackson	Pastore	

NAYS—45

Allen	Eastland	Metcalf
Allott	Ellender	Miller
Anderson	Ervin	Murphy
Baker	Fannin	Russell
Bellmon	Fong	Schweiker
Bible	Fulbright	Scott
Boggs	Griffin	Smith, Maine
Brooke	Hansen	Sparkman
Byrd, Va.	Hart	Stennis
Cannon	Holland	Stevens
Cotton	Hruska	Talmadge
Curtis	Jordan, N.C.	Thurmond
Dodd	Jordan, Idaho	Williams, Del.
Dole	Long	Young, N. Dak.
Dominick	McClellan	Young, Ohio

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against.

NOT VOTING—25

Aiken	Gurney	Mundt
Bennett	Hartke	Pearson
Church	Hatfield	Percy
Cook	Hollings	Prouty
Cooper	Javits	Saxbe
Goldwater	Mathias	Smith, Ill.
Goodell	McCarthy	Tower
Gore	McGovern	
Gravel	Moss	

So Mr. TYDINGS' amendment was rejected.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 439

Mr. CASE. Mr. President, I call up my amendment No. 439, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from New Jersey (Mr. CASE) proposes amendment No. 439, as follows:

On page 52, line 13, following the word "avoid", insert "service of, or".

On page 52, line 14, after the word "of", insert a comma and strike the word "any".

On page 52, line 22, after the word "which" insert "and avoidance of service of process or".

Mr. CASE. Mr. President, I modify the last line of my amendment, line 6, by changing the word "and" to "an". That merely corrects a typographical error.

The PRESIDING OFFICER. The amendment will be so modified.

Mr. CASE. Mr. President, I ask unanimous consent that these three amendments, if they are technically three, be considered en bloc.

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

Mr. CASE. Mr. President, the language in the bill as it now stands would make it a criminal offense to flee across a State line to avoid presenting testimony, or if one has been subpenaed by a duly authorized State crime investigating agency.

My amendment would strengthen that language by also making it a crime to flee across State lines to avoid the service, or contempt proceedings brought by such an agency.

Mr. President, in this connection, I ask unanimous consent to have printed in the RECORD the following items:

A letter from the U.S. attorney for the district of New Jersey dated December 18, 1969.

A letter from the chairman of the New Jersey State Commission of Investigation, dated October 13, 1969, addressed to me, enclosing a copy of a letter of the same date to the Attorney General of the United States.

An article entitled "Two in Jersey Flee Inquiry on Mafia," written by Walter H. Waggoner and published in the New York Times of July 30, 1969.

An article entitled "Mafia Fugitive Due To Surrender Here," published in the New York Times of August 9, 1969.

All of these items show the need for this amendment.

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

U.S. DEPARTMENT OF JUSTICE, U.S. ATTORNEY FOR THE DISTRICT OF NEW JERSEY,
Newark, N.J., December 18, 1969.

Hon. CLIFFORD P. CASE,
U.S. Senator,
U.S. Senate, Washington, D.C.

DEAR SENATOR CASE: My apologies for the delay in answering your letter of November 7, 1969.

I have reviewed your proposed amendment to Section 1073 of Title 18 of the United States Code. I have also reviewed the legal decisions respecting this Section. I wholeheartedly endorse your proposal to include a subsection (3) in this law. As you know, this criminal act was originally enacted "to assist the enforcement of state laws particularly in imposing penalties upon roving criminals who would be subject to extradition." *United States v. Brandenburg,* 144 F.2d 656 (3rd Cir. 1944). Your proposal obviously is in the spirit in which the Congress initially enacted this legislation.

The experience that the State Investigation Commission had this past July and August proves that your proposal will assist such a duly constituted body in enforcing their subpoena power and in allowing them to conduct legitimate and proper investigations into statewide criminal activities.

Since I consider the problems faced by the State Investigation Commission similar to those which the Special Statewide Grand Jury has faced and will face in the future, I believe that we should similarly assist them in enforcing their subpoena power. Recent disclosures of the far-flung interest of numerous individuals currently under investigation, establish conclusively their facile ability to establish themselves in other states with easy access to their assets, while mocking the subpoena power of properly constituted state investigative agencies.

Certainly any witness called before either the State Investigation Commission or a state grand jury need only to realize that all he has to do to avoid testifying or to be immune from a contempt citation is to flee the state's jurisdiction. Then at best, the state authorities would face a stiff legal fight in order to extradite him.

I believe your proposed legislation to be invaluable in light of the problems faced by state investigatory panels and I strongly endorse it.

Sincerely,

FREDERICK B. LACEY,
U.S. Attorney.

STATE OF NEW JERSEY,
STATE COMMISSION OF INVESTIGATIONS,
Cherry Hill, N.J., October 13, 1969.

Hon. CLIFFORD P. CASE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: Enclosed you will find a copy of a letter to Attorney General Mitchell in which we propose that statutes be amended to make it a federal violation to flee across state lines to avoid questioning by agencies such as ours.

Sincerely,

WILLIAM F. HYLAND,
Chairman.

Enclosure.

STATE OF NEW JERSEY,
STATE COMMISSION OF INVESTIGATION,
Cherry Hill, N.J., October 13, 1970.

Hon. JOHN N. MITCHELL,
The Attorney General,
Department of Justice,
Washington, D.C.

MY DEAR MR. ATTORNEY GENERAL: The New Jersey State Commission of Investigation is hereby urging consideration of amendatory legislation relating to the provisions of Title 18, United States Code, Section 1073. It is submitted that this section, which has proven so instrumental in the apprehension of felons and witnesses fleeing single state jurisdiction to avoid prosecution or the giving of testimony in that state, would be of invaluable aid to a body such as ours, which is charged with, *inter alia,* the investigation of organized crime and its relationship to any unit of government within a particular state.

The New Jersey Commission was the first body to be formed in direct response to the recommendations of the President's Commission on Law Enforcement and Administration of Justice. Pursuant to the authority granted in New Jersey Statutes Annotated 52: 9M–1, et. seq., the Commission commenced an investigation in April, 1969. Subsequently numerous individuals were subpoenaed to testify before that Commission in July, 1969. Included among those subpoenaed to testify were one Frank Cocchiaro (also known as Frank Condi) and one Robert Occhipinti (also known as Bobby Basile), who have both been identified by various law enforcement officials as both being closely associated with organized crime. In due course both Cocchiaro and Occhipinti appeared and asserted their Fifth Amendment privileges, were offered immunity under the appropriate provisions of the New Jersey Act, refused again to testify and, prior to being brought before the New Jersey Superior Court and charged with contempt, fled the jurisdiction of New Jersey.

New Jersey's remedies relating to contumacious acts before a governmental authority are statutorily limited to the misdemeanor category (as opposed to New Jersey's high misdemeanor or "felony" provision) with a maximum punishment of three (3) years imprisonment and/or a $1,000.00 fine. This limitation, of course, prevents any application by the appropriate authorities for "unlawful flight" assistance under the aforementioned provisions of the United States Code.

Therefore, in light of circumstances which permit witnesses to avoid appearing or testifying before an investigation commission by simply stepping over state lines into a different jurisdiction, it would appear that the requested legislation is absolutely essential if the purposes of such a commission are to be effected.

We have taken the liberty of submitting language which we believe would be in accord with the objectives herein sought. (See attached enclosure) It should be noted that the suggested phraseology makes no reference to the usual felony-misdemeanor dichotomy, inasmuch as the suggested statute should provide for interstate flight to avoid testifying before a state-wide commission regardless of the label afforded that act by each of the several states.

Very truly yours,

WILLIAM F. HYLAND,
Chairman.

[From the New York Times, July 30, 1969]

TWO IN JERSEY FLEE INQUIRY ON MAFIA—ALLEGED UNDERWORLD FIGURES FACED CONTEMPT CHARGES

(By Walter H. Waggoner)

TRENTON, July 29.—Two reputed Mafia leaders walked out of a state building today and disappeared after they were threatened with contempt charges for refusing to answer questions in an inquiry into organized crime in New Jersey.

In defiance of commission orders to remain at the scene, Robert (Bobby Basile) Ochipinti left a waiting room with his lawyer, Marvin Preminger of New York, and drove across a nearby bridge spanning the Delaware River into Pennsylvania. He was followed by a New Jersey state policeman.

Frank Cocchiaro, also known as Frank Condi, disappeared from the State House Annex, where the State Commission of Investigation was questioning alleged Mafia members and associates. Cocchiaro had received permission to take a brief coffee break.

Andrew Phelan, executive director of the commission, said that "it would not seem unlikely" that Cocchiaro also had left the state.

Both men were under subpoena for questioning by the commission for the duration of the investigation, and it was the second appearance so far for both of them.

Superior Court Judge George Barlow ordered the immediate issuance of arrest warrants, charging the two men with contempt, after a brief but rapid-fire summary of events by Mr. Phelan in the fourth-floor courtroom of the Mercer County Court House Annex.

Mr. Phelan related how the two men, in separate sessions this morning with William

F. Hyland, commission chairman, and Glen B. Miller Jr., a member, had refused to answer "certain questions." They refused again after the commission, in accordance with state law, had granted them immunity from prosecution on the basis of information they might divulge in their testimony.

At that point the commission said it would seek an immediate court order requiring the two to show why they should not be cited for contempt. It was while this motion was being conveyed to Judge Barlow several blocks away that the two witnesses were ordered to remain on the premises. Presumably the motion would then be argued before the judge by the lawyers for the two. Instead, they disappeared.

It was the first time that the commission, which began its questioning of Mafia figures on July 8, had restored to a showcause order charging contempt, although in its several sessions it has heard from both cooperative and uncooperative witnesses.

Andrew M. Andaloro, a state police detective assigned to the investigation, testified before Judge Barlow that he had seen Ochipinti, Mr. Preminger and an unidentified lawyer from New Jersey leave the building and head for the visitors' parking lot.

The unidentified lawyer then left, and the two others drove away in a blue 1969 Chevrolet, with New Jersey license number PLG 412, according to Mr. Andaloro. With the trooper trailing it, the car crossed the bridge into Morrisville, Pa.

[From the New York Times, Aug. 9, 1969]

MAFIA FUGITIVE DUE TO SURRENDER HERE

TRENTON, August 7.—Robert Occhipinti, the reputed Mafia figure who fled New Jersey while under subpoena to testify before a state crime investigation, agreed today to surrender to New York authorities tomorrow.

His lawyer, Marvin Preminger of Brooklyn, said he would fight attempts to extradite Occhipinti to New Jersey, where he faces trial for criminal contempt for leaving a State Investigation Commission hearing in Trenton.

Gov. Richard J. Hughes is scheduled to sign the request for Occhipinti's extradition at 2 P.M., four hours after the time set by Mr. Preminger for surrender of his client in the Brooklyn District Attorney's office.

However, Jersey officials were taking a wait-and-see attitude toward Mr. Preminger's promise to surrender Occhipinti. A commission spokesman pointed out that the lawyer had made a number of statements and had failed to follow through.

Meanwhile a second fugitive wanted for alleged contempt of the commission is believed to be in Florida. A commission source said there were indications that Frank Cocchiaro, a reputed lieutenant in the Simone Rizzo (Sam the Plumber) DeCavalcante Mafia family, had gone to the Miami area after fleeing the commission hearings on July 29.

Mr. CASE. Mr. President, I have discussed this matter with the chairman of the subcommittee. I believe he finds it appropriate to the general purpose of the bill, and in line with it, and is pleasantly disposed toward it. Am I correct in that understanding?

Mr. McCLELLAN. Yes.

Mr. CASE. Then, Mr. President, there being as far as I know no objection to the amendment, I am happy to grant the floor to the chairman of the subcommittee.

Mr. McCLELLAN. Had the Senator finished?

Mr. CASE. Yes, I have finished.

Mr. McCLELLAN. Mr. President, I have no objection to this amendment. My interpretation of it is that it is a strengthening amendment. It reaches further than the bill now reaches in dealing with these people who undertake to avoid meeting their responsibilities to their country by trying to evade the process of the law and to try to keep from testifying.

This amendment carries the provisions a little further than we have them in the bill. I have no objection to it. I said earlier in the course of our discussion of this measure that I would support any suggestions which improve and strengthen this bill. I regard this amendment as a strengthening amendment.

I am particularly pleased that it is the Senator from New Jersey who is offering the amendment, especially in view of some problems that he has had in his State, with which we are all familiar. I feel that this particular amendment will enable law enforcement officials in his State to meet the challenge that confronts them in dealing with some problems that they now have.

But it will not only help meet the problem there, Mr. President, it will help in other places to deal with this practice—and they often get away with it—of avoiding process or evading subpena, and getting away so their testimony cannot be produced to support law enforcement or to bring out the facts. Often those who take flight are the only ones who know the facts and can testify, and they try to escape and evade that responsibility. I favor strengthening our statutes in any way we can to get citizens to meet their duties and responsibilities as citizens and to give that cooperation to law enforcement agencies that is required and necessary for us to have effective law enforcement in this country.

Mr. President, I have a number of newspaper clippings describing some of the conditions that have prevailed in New Jersey, and I ask unanimous consent that they be printed in the RECORD at this point.

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

[From the New York Times, Oct. 15, 1969]

SINATRA'S ARREST SOUGHT IN JERSEY—WARRANT ISSUED AS HE FAILS TO APPEAR AT INQUIRY

(By Ronald Sullivan)

TRENTON, October 14.—A warrant for the arrest of Frank Sinatra was issued here today, after he failed to appear before the State Commission of Investigation to answer questions about organized crime.

The warrant, thought to have no legal power outside New Jersey, directed that the singer be brought here "to answer the charge of contempt," which carries a maximum penalty of six months in jail.

Mr. Sinatra could not be reached for comment on the charge, and a secretary in his lawyer's office in Los Angeles said, "We have no information to give out."

Andrew Phelan, executive director of the state commission, declined to disclose what his staff wanted to question Mr. Sinatra about.

GIVEN SUBPOENA IN JUNE

According to a petition filed by the commission in Superior Court, Mr. Sinatra was handed a subpoena on the night of June 25 aboard the 80-foot power yacht Roma, berthed at Bahr's Landing Restaurant in Atlantic Highlands.

The singer was offered a $2 subpoena fee and $2 as a travel allowance for the trip here, both of which he refused.

Originally, Mr. Sinatra was ordered to appear here Aug. 19. But Milton A. Rudin, his lawyer in Los Angeles and the owner of record of the Roma, successfully got a one-month postponement because "of certain business commitments."

However, Mr. Phelan told Superior Court Judge Frank J. Kingfield that neither Mr. Rudin nor Mr. Sinatra had ever called back. Mr. Phelan produced a letter to Mr. Rudin that he said had been mailed Sept. 8.

It said: "Should your client fail to meet the agreed-upon conditions, then this commission would have no alternative but to go forward and petition for a warrant of arrest for contempt."

Judge Kingfield granted the petition this morning and signed an order for Mr. Sinatra's arrest.

Mr. Phelan conceded this evening that the warrant probably had no legal power outside of New Jersey, but he said his petition was "no grandstand play."

The petition said the state investigation was seeking to determine "whether the laws of New Jersey are being faithfully executed and effectively enforced with particular reference to organized crime and racketeering; whether public officers and public employes have been properly discharging their duties with particular references to law enforcement and relations with criminal elements; and whether and to what extent criminal elements have infiltrated the political, economic and business life of New Jersey."

The commission was created by the Governor and the Legislature in the wake of charges that New Jersey was the most corrupt state in the nation. It opened its investigation with an inquiry on alleged racketeering in the Monmouth County community of Long Branch, which is south of Atlantic Highlands.

Mr. Sinatra is a native of Hoboken and has frequently visited the state. He was in Jersey City last January for the funeral of his father, a former Hoboken fire captain, who had died of a heart attack. His mother is living in Fort Lee.

[From the New York Times, Dec. 18, 1969]

SINATRA'S SUBPOENA IS ARGUED IN JERSEY

(By Richard J. H. Johnson)

NEWARK, December 17.—Lawyers for Frank Sinatra and the State Investigation Commission argued for nearly two hours this morning about whether the singer should be forced to appear before the commission to tell what, if anything, he knows about organized crime in his home state.

The lawyers appeared here before Federal District Judge James A. Coolahan.

Last June 24 the commission subpoenaed Mr. Sinatra—the son of a Hoboken fire captain—to appear before it, serving the paper on him while he was a guest aboard a yacht moored at Atlantic Highlands. The singer and actor not only ignored the subpoena but denounced the commission's action as an effort to stage a "circus," featuring him in the center ring.

Subsequently Superior Court Judge Frank J. Kingfield issued an order for Mr. Sinatra's arrest for contempt of the commission should he set foot in New Jersey again.

Last Dec. 1, at the request of Mr. Sinatra's lawyers, the United States Third Circuit Court of Appeals in Philadelphia reversed an order that had been issued by Judge Coolahan; the order refused to restrain the commission from taking action against the performer.

Bruce W. Kauffman, a lawyer from Philadelphia who is representing Mr. Sinatra in this action, asked today that a three-judge panel of Federal judges be convened to rule on whether the State Investigation Commission is a constitutionally valid body.

Mr. Kauffman said the commission was merely an "accusatory" body without "legislative purpose," before which Mr. Sinatra would be bereft of the advice of counsel and of the right to cross-examine accusers or accusatory material.

Andrew Phelan, executive director of the commission, argued that constitutionality of the commission was in fact unchallengeable.

Mr. Phelan told the court that Mr. Sinatra was "thumbing his nose" at the laws of his native state.

Mr. Kauffman retorted that Mr. Sinatra was merely seeking equal protection and justice under the law.

"If anybody," declared Mr. Phelan, "can come before the court with more filthy hands and less clean hands than this individual it is beyond me. It is beyond belief. No court beyond should sanction such conduct."

He said he referred to the "procedural tactics," Mr. Sinatra appeared to be using to avoid an appearance before the commission.

"Frank Sinatra is saying, 'I am above the law,'" Mr. Phelan told Judge Coolahan.

Mr. Kauffman argued that Mr. Sinatra "has yet to be told" why he was subpoenaed in the first place. He charged that Mr. Sinatra was merely the subject of the commission's fishing expedition."

The lawyers and Judge Coolahan reached agreement that no action will be taken by the commission concerning Mr. Sinatra until Judge Coolahan had arrived at a decision on the motion to set up the three-man court.

Judge Coolahan did not indicate how long he would take to reach a decision.

Mr. Phelan said outside the courtroom that the warrant for Mr. Sinatra's arrest on the contempt charges remained in force as did the original subpoena.

Mr. Sinatra was reported tonight to be staying in New York at the Waldorf Towers and planning to attend the Broadway premiere tomorrow night of "Coco" at the Mark Hellinger Theater.

[From the New York Times, Jan. 13, 1970]

JERSEY INQUIRY CONSIDERS MOVE TO INDICT SINATRA FOR CONTEMPT

(By Lesley Oelsner)

NEWARK, January 12—The State Commission of Investigation, which for seven months has tried in vain to question Frank Sinatra about organized crime, is debating whether to seek the singer's indictment for criminal contempt.

Bolstered by a Federal judge's decision last Friday that rejected Mr. Sinatra's legal objections to the inquiry, commission members are planning to meet Wednesday in Trenton.

They are waiting to see if Mr. Sinatra changes his position because of the court ruling. But even if he decides to testify before them voluntarily, they say, they still may ask a grand jury to indict him.

"What we're primarily interested in is getting his testimony," the commission's chairman, William F. Hyland, said in an interview today. "But aside from that, the commission will have to decide whether to seek indictment so that he will be appropriately punished for having defied us in the past."

COULD FACE EXTRADITION

If indicted, Mr. Sinatra would face extradition to New Jersey. Once here, said the commission's lawyer, Kenneth Zauber, he could be brought before the commission "in handcuffs, if need be." He could also be arrested under a state warrant issued for contempt under a statute different from the one under which the grand jury could now indict him.

And if convicted under the indictment that the commission is contemplating, he could be sentenced to three years in prison.

The entertainer's troubles with the four-member investigating group began on a sunny day last June when a process server boarded a yacht docked at Highlands on which Mr. Sinatra was a guest. The server presented the singer with a subpoena to appear before the commission on Aug. 19; Mr. Sinatra ignored it.

"I am not willing to be part of any three-ring circus," he asserted later. "Notwithstanding the fact that I am of Italian descent, I do not have any knowledge of the extent or manner in which organized crime functions in New Jersey or whether there is such a thing as organized crime."

In October a warrant was issued for his arrest under a state statute that says failure to answer a subpoena is a "petit offense" subject to a six-month jail term. But Mr. Sinatra was out of the state at the time, and his offense was not sufficient ground for extradition.

Then, when it seemed that the commission might seek his indictment under a separate statute under which contempt is a crime—and thus sufficient grounds for extradition under the extradition agreement between New Jersey and other states—Mr. Sinatra brought suit in Federal Court here to have the commission's inquiry ruled unconstitutional.

He also sought to restrain the commission's investigation until its constitutionality could be adjudicated.

The lower court judge, James A. Coolahan of the Newark District Court, denied the request, but the Court of Appeals for the Third Circuit reversed this decison.

The appellate court ordered the commission to halt its inquiry until Mr. Sinatra had gone back to Judge Coolahan and asked him to convene a three-judge panel to consider the question of the commission's constitutionality.

It was this request that Judge Coolahan decided last Friday. In a six-page opinion, the judge said that no substantial constitutional questions had been raised and that, thus, a three-judge panel need not be summoned. The practical effect of the decision was to nullify the restraining order previously issued against the commission.

Mr. Sinatra's lawyers declined today to comment on the decision. The commission's lawyer, Mr. Zauber, remarked, "Any block to our going forward has been removed."

[From the Newark (N.J.) Evening News, July 30, 1969]

MAFIA CLIENT DIDN'T FLEE, SAYS LAWYER

(By Peter Carter)

TRENTON.—The attorney for reputed Mafia leader Robert "Bobby Basile" Occhipinti denied today that his client "fled" from a State Investigation Commission hearing yesterday.

Expressing anger at reports that arrest warrants have been issued for his client, attorney Marvin Preminger of Brooklyn said that both he and his client had every right to leave yesterday's hearing.

Preminger, a 41-year-old former Brooklyn assistant district attorney, said that Occhipinti had appeared voluntarily. "He wasn't subpoenaed."

The attorney said that although he could not state what happened at the hearing preceding Occhipinti's departure because it was not a public hearing, it was common knowledge that his client had pleaded the Fifth Amendment in refusing to answer questions.

The SIC yesterday obtained arrest warrants for Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch, after they left a commission hearing although allegedly ordered to remain by Andrew Phelan, SIC executive director.

LEAVES IN AUTO

Occhipinti left in an auto with his attorney while Cocchiaro went into the State House Annex cafeteria for coffee and did not return. The warrants signed by Superior Court Judge George H. Barlow charged the two men with contempt of court for failing to obey commission orders while under subpoena.

Preminger insisted that at no time did he or Occhipinti flee the hearings. He pointed out that after Occhipinti made his appearance, Phelan asked Occhipinti to remain. He contended Phelan gave no reason for insisting Occhipinti remain.

The attorney, who was reached at his Brooklyn office, said he then advised his client to leave and both departed from the State House Annex accompanied by a state trooper.

Preminger said the trooper told him he had orders to follow them, but made no attempt to stop them as they drove across the Delaware River bridge into Pennsylvania.

The attorney said he drove to Philadelphia to meet another client involved in a federal court case heard this morning in New York.

Preminger said that the SIC is "so anxious to make a name for itself that it is oblivious of the nature of laws and oblivious of the fact that all men have equal rights. If Mr. Occhipinti has done so many bad things, why is it he was never arrested or charged with any crime?"

"This trial by investigation is as dangerous as we saw with the late Sen. (Joseph) McCarthy hearings," Preminger said.

He argued his client appeared several weeks ago before the commission under subpoena, was given a routine fee for showing up and later was instructed to return yesterday. Occhipinti did so voluntarily and without subpoena, the attorney insisted.

"However, even if he had been subpoenaed, we would not have remained because Phelan refused to indicate why he wanted us to wait," Preminger said.

PLANS MOTION

Preminger said he will move in association with New Jersey counsel for Occhipinti to vacate any bench warrant or contempt orders that were signed as a result of the "lawful departure of my client."

Preminger declined to state where Occhipinti is, but said he can reach him at any time.

He said if papers are served on him to produce his client, he will appear with Occhipinti "any place we are legally required to appear."

Preminger said: "My client has done nothing wrong and has committed no crime. It would be stupid for him to become a criminal because of an investigation."

Occhipinti and Cocchiaro yesterday left the State House Annex, scene of the commission's hearings, after the panel let it be known it was going to court to attempt to get an order compelling each of them to answer questions or face the prospect of being jailed for contempt of court.

After their departure, Phelan immediately obtained bench warrants for the arrest from Superior Court Judge George H. Barlow. The warrants charge contempt of court for failing, while under subpoena, to obey the commission's order to remain in the annex pending further proceedings.

Cocchiaro, after his appearance before the commission, asked through his lawyer, Anthony C. Blasi, who has offices in Newark, for permission to take a coffee break in the cafeteria on the first floor of the annex.

Blasi about a half-hour later went back into the hearing room to tell the commission that while he was in a men's room, Cocchiaro had disappeared.

Blasi told Phelan that he did not advise Cocchiaro's unauthorized departure and did not approve of it. His apology was well taken, Phelan said later.

This morning, Blasi said he still had not heard from his client.

Occhipinti, a cousin of Simone "Sam the

Plumber" De Cavalcante of Princeton, is said to be a Mafia enforcer. He lives in the same Long Branch apartment house as Anthony "Little Pussy" Russo, said to have formerly run Mafia-controlled rackets in the Long Branch area.

Cocchiaro is said to have taken over as rackets boss for the Mafia in the Long Branch area after Russo decided to spend most of his time in Florida.

Both De Cavalcante and Russo have appeared before the commission. De Cavalcante is head of a Mafia family operating in New Jersey.

Occhipinti and Cocchiaro were told in the closed-door hearing yesterday that the commission was granting them immunity from prosecution for any responsive answers made to the panel's questions and any evidence flowing from those questions.

The conferring of immunity denies witnesses the right to remain silent on grounds of possible self-incrimination. When the two men refused to answer after they were granted immunity, William F. Hyland, commission chairman, told newsmen the panel would go to court to get an order directing them to answer.

The motion for that order was filed with Judge Barlow yesterday, along with the request for arrest warrants. If Judge Barlow had ordered them to answer questions and they continued to balk, the commission was prepared to ask that they be held in contempt of court and sent to jail.

The two men, therefore, were faced by what was, for them, the nasty dilemma of talking about the mob or going to jail. Their unauthorized exits from the annex appeared to be at least their temporary answer to that dilemma.

But now Phelan is asking police to return the two men, if and when they are found, to Judge Barlow's court to face possible prosecution for contempt of the commission's subpoena powers by their unauthorized departure from the annex.

STUDYING EXTRADITION

Phelan said the commission's staff is doing research on whether the two men can be extradited if they are apprehended in another state and refuse to return voluntarily to New Jersey.

He said the commission itself has no authority to prosecute, but noted that the bench warrants represent the authority of a New Jersey State court before which the commission can ask for prosecution.

Yesterday was the first time the commission has used its power to grant witness immunity to the 14 Mafia leaders and their associates, who are being subpoenaed to appear and re-appear in closed sessions before the panel. The probe into organized crime's influence in Long Branch and of Monmouth was begun last May.

Federal Judge James Coolahan yesterday in Newark upheld the basic constitutionality of the commission and also its power to grant witness immunity. He said the grant of immunity offers a total shield from prosecution for answers given.

Hyland said the commission, despite the threat of appeals of Judge Coolahan's opinion all the way to the U.S. Supreme Court, intended to continue to use its full power until such time as it is enjoined by a court from so doing.

Phelan said the alleged flight yesterday by Occhipinti and Cocchiaro would in no way slow the pace of the commission's probe.

The commission is going to ask a doctor of its own choosing to examine the medical records of Thomas "Tommy Ryan" Eboli of Fort Lee, who entered New York University Hospital in New York after suffering another in a series of heart attacks. Eboli was said to be in line to inherit the Mafia empire headed by the late Vito Genovese before he suffered so much coronary trouble.

Eboli was scheduled to appear before the commission yesterday, but was granted a continuance because the hospital listed him in serious condition.

[From the Newark (N.J.) Evening News, July 30, 1969]

TO APPEAL RULE ON CRIME UNIT

(By Michael J. Hayes)

The attorney for two reputed Mafia leaders said yesterday he will appeal a decision by a U.S. district judge in Newark which upheld the constitutionality of the State Investigation Commission.

As the commission was continuing its investigation yesterday into organized crime in New Jersey, Federal Judge James A. Coolahan denied a challenge against the statute creating the SIC. Judge Coolahan said it was not proved in court that the commission violated the rights of witnesses who might be called to testify.

However, Daniel Isles of Orange, attorney for Joseph "Joe Bayonne" Zicarelli and Angelo "Gyp" De Carlo, said he will appeal the ruling in the Third Circuit Court of Appeals in Philadelphia. He said he will go up to the Supreme Court, if necessary, to overturn the powers of the year-old commission.

De Carlo and Zicarelli are among 14 persons recently called before the SIC to answer questions about criminal activities in the state, especially in Monmouth County. The investigation blossomed as a result of the release in June of transcripts of electronic surveillance made by the Federal Bureau of Investigation, including conversations in the office of Simone "Sam the Plumber" De Cavalcante in Kenilworth.

Joining De Carlo and Zicarelli in the motion to test the legality of the commission's statutes was William Pollack, attorney for Anthony "Little Pussy" Russo, also one of those subpoenaed by the SIC. Pollack said he would take it under advisement whether to appeal Judge Coolahan's ruling.

In a two-hour hearing yesterday, Isles argued that the statute creating the commission was unconstitutional, mostly because the provisions in it for witness immunity were not broad enough.

BLANKET IMMUNITY

He contended that "blanket immunity" should be granted to witnesses who are compelled to testify before the four-man commission. Isles said that if someone is forced to testify under the threat of contempt of court he should not be liable to prosecution for the entire scope of the questions.

At one point, the Orange attorney took strong issue with an opinion by Chief Judge William H. Hastie of the Third Circuit Court of Appeals, which stated that "present formal challenges to the constitutionality (of the SIC) have no substantiality as would warrant convening a statutory court."

Last week Isles asked that a three-judge tribunal be established to rule on the existence of the SIC.

"Judge Hastie is 100 per cent wrong" Isles said. "He is dead wrong."

Besides the immunity question, Isles also argued the statute was illegal because it provided for penalties if a witness gave a "non-responsible" answer; it does not give the witness "unfettered" right to counsel, and it provides that anyone disclosing questions or answers made before the commission could be charged as a "disorderly person."

CITES CONSTITUTION

Isles said the statute essentially violates the First (right to freedom of speech), Fifth (right against self-incrimination), Sixth (right to public trial with counsel) and 14th (right to due process of law) Amendments to the Constitution.

Both Isles and Pollack also argued that the commission was an "accusatory" body with no powers of indictment, prosecution or punishment. Isles said the SIC was "out to smear" individuals.

Kenneth P. Zauber, attorney for the commission, argued that the agency's statute with regard to immunity is "coexistent" with the privileges provided in the Fifth Amendment. He said the testimonial immunity which the commission provides is sufficient.

"They (Isles' clients) not only want to hide in the testimony, they want to bathe in it," Zauber said. "This is what has become known as a total bath."

In announcing his decision, Judge Coolahan said he felt that the immunity provided by the SIC was equivalent to that of the Fifth Amendment. "I feel the statute gives the full protection the Constitution calls for," he said.

Isles said he will file his appeal shortly after a written order by Judge Coolahan is delivered. He said it should be within a week.

[From the Newark (N.J.) Evening News, July 31, 1969]

CRIME PROBERS TO ANSWER CHALLENGE IN COURT

(By Peter Carter)

TRENTON—The State Investigation Commission today promised "to do our talking in court" in response to a challenge to its authority from an attorney representing one of two Mafia figures accused of running away from the panel.

Andrew F. Phelan, executive director of the commission, said the panel intends "to move in proper legal channels" against the two men. But he declined to specify what further legal steps the Commission has in mind.

Marvin Preminger, Brooklyn lawyer representing Robert "Bobby Basile" Occhipinti of Long Branch, one of the two missing men, said he intended to move to vacate a bench warrant for the arrest of Occhipinti.

The warrants for the arrest of Occhipinti and Frank "Condi" Cocchiaro, also of Long Branch, were issued Tuesday by Superior Court Judge George H. Barlow.

The commission asked for the warrants when Occhipinti and Gocchiaro left the State House Annex, scene of the commission's closed-door hearings, after they had been directed to remain in the building "pending further proceedings."

The proceedings were a move by the commission to get a court order from Judge Barlow to compel the two to answer questions, since the panel had granted them immunity from prosecution for their answers.

The bench warrants charge the two men are in contempt of court for violating a directive of the commission while under the panel's subpoena power.

Preminger, reached in Brooklyn where he has his law office, denied his client had fled from the commission. Preminger claimed his client had been under subpoena when he first appeared before the panel July 8 but that Occhipinti's second appearance Tuesday was voluntary and not subject to subpoena.

REFUSED REASON

He said that when Phelan was asked specifically why Occhipinti should remain in the building, Phelan refused to give a reason.

After leaving the hearing, Preminger said he and Occhipinti, followed by a state trooper, walked to Occhipinti's car. He said Cocchiaro was not with them and he had no knowledge of or interest in what became of him.

"We invited the trooper to join us when he said he was under orders to follow us, but the trooper declined," the attorney said. "There was no attempt to stop us."

Preminger said Occhipinti drove him to Philadelphia where the lawyer had an appointment with a client in a federal court case hearing which was held yesterday morning in New York. The attorney said Occhipinti had no connection with the court case and drove him there because Preminger's car was in New York. Afterward, the lawyer said, Occhipinti drove back through New Jersey to New York, leaving him by his auto.

"I intend to move with New Jersey counsel for my client to vacate any bench warrant or contempt orders signed as a result of the lawful departure of my client," Preminger said.

Edward Wacks, Morristown lawyer who is the New Jersey lawyer of record, said he did not know exactly when the motion would be made to vacate the arrest warrant, since Preminger is directing legal affairs for Occhipinti. New Jersey law requires that New Jersey counsel appear in cases where clients are represented by out-of-state lawyers. Wacks was with Preminger and Occhipinti when they left the building Tuesday. But he did not drive across a bridge over the Delaware River into Pennsylvania as Preminger did with Occhipinti.

Asked, that if like Preminger, he had advised Occhipinti to leave the annex when Phelan allegedly did not specify a reason for staying, Wacks said, "I have no comment on that."

The search for the two men, meanwhile, extended into New York City as well as New Jersey and Philadelphia.

Police believe Cocchiaro may have headed for New York so that he, like Occhipinti, would be out of state and out of the jurisdiction of the bench warrants. Police familiar with the ways of organized crime said they suspected the two men might be conferring with higher-ups in the Mafia about what their next steps should be.

Occhipinti is a cousin of Simone "Sam the Plumber" DeCavalcante of Princeton, who is the reputed head of a Mafia family that is extending its influence into the Long Branch area of Monmouth County, focus of the commission's probe of organized crime.

Cocchiaro is said to have taken over operation of Mafia-controlled rackets in "the Long Branch area after Anthony "Little Pussy" Russo of Long Branch stepped down from that role to spend most of his time in Florida.

Phelan rejected Preminger's contention that Occhipinti was a voluntary witness before the commission Tuesday. The executive director said the subpoena reads Occhipinti must appear not only on the first date specified but also on "any adjourned date thereof."

Tuesday's hearing was such an adjourned date and Occhipinti was under direction by subpoena to appear and answer questions, Phelan said.

He added that when Occhipinti returns to New Jersey, it is the commission's intent to arrest him. That goes for Cocchiaro, too, he said.

Police are keeping a check on the homes and known New Jersey haunts of the two men. So far they have not been sighted in New Jersey.

Phelan said that since the contempt charge is only a misdemeanor, he doubts the two men can be extradited should they be found out of state and refuse to return to New Jersey. But he said attempts are still being made to locate them out of state, as well as in New Jersey.

Phelan declined to answer much of Preminger's attack on the commission on the grounds that the courtroom was the place the commission likes to talk

Preminger, a 41-year-old former Brooklyn assistant district attorney, charged that the commission was "so anxious to make a name for itself that it is oblivious to the nature of the laws and oblivious to the fact that all men have equal rights."

RAPS PROCEDURES

He called, the commission's procedures "trial by investigation" and said that is dangerous "as we saw in the hearings by the late Sen. McCarthy." He said the commission members should stop "acting like vigilantes."

Preminger contended the commission only has powers of subpeona and questioning and added that when the panel acts beyond the scope of that authority, "we will have objections."

The Brooklyn lawyer said he knows where Occhipinti is and could produce him any time. Phelan said he would be happy if Occhipinti was produced in New Jersey soon.

Cocchiaro's lawyer, Anthony C. Blasi, who has offices in Newark, told the commission he did not counsel or advise his client to leave the building. He said Cocchiaro left while Blasi was in men's room in the annex. He told newsmen yesterday he has not since heard from Cocchiaro.

[From the Newark (N.J.) Evening News, July 31, 1969]

GANG FIGURE IS INDICTED

NEW YORK.—Anthony Di Lorenzo, reputed heir apparent to the Vito Genovese Cosa Nostra family, was indicted by a federal grand jury today on charges of conspiracy and transporting of 2,600 shares of stolen International Business Machines stock worth over $1 million.

Di Lorenzo, 41, of 230 Durie Ave., Closter, N.J., was arrested by FBI agents last night while driving a 1969 Cadillac at 12th Street and 1st Avenue, Manhattan.

He is president of Anthony J. Di Lorenzo Associates, which had a $25,000-a-year trucking subcontract with the Metropolitan Import Truckmen's Association, of which he was a director.

KENNEDY MONOPOLY

MITA is an association of trucking companies which have a virtual monopoly on all air freight activities at Kennedy Airport, including gasoline and catering supplies for airlines.

Di Lorenzo has not been involved in any federal crime prior to this indictment but has been convicted on three state charges of grand larceny and for aggravated assault with a baseball bat as well as a violation of parole.

He is the third person to be indicted for illegal transportation of stock. In this instance the shares were stolen from the New York office of Hayden Stone & Co., a brokerage firm, in the summer of 1966.

TWO CONVICTED

Two others, Rudolph Izzi, 36, of Brooklyn, was given an eight-year jail sentence and is out on bail pending appeal of his conviction.

The other was Martin Von Zamft, 51, an attorney of Manhattan, who is out on bail of $25,000 awaiting sentence following his conviction in June.

The stolen stock allegedly was used as collateral for loans on an assurance company—Bankers and Telephone Employes of Gettysburg, Pa., which is now in receivership.

The stolen securities were recovered by FBI agents from a safe deposit box in Harrisburg, Pa., in February 1967.

PLEADS INNOCENT

Di Lorenzo pleaded innocent to the indictment when he appeared before Federal Judge John M. Cannella, who had issued a bench warrant for his arrest.

Di Lorenzo sought in vain to have the $200,000 bail reduced on the grounds that he was not running away from anybody and would appear whenever he was wanted.

If convicted, Di Lorenzo faces a maximum penalty of 10 years in jail and a $10,000 fine or both.

[From the Newark (N.J.) Evening News, July 31, 1969]

EBOLI TAKEN OFF HOSPITAL CRITICAL LIST

NEW YORK.—Reputed acting Cosa Nostra boss Thomas Eboli was taken off the serious list today at New York University Medical Center where he is recovering from his third apparent heart attack this year.

Eboli, 59, of Fort Lee, N.J. was moved from the medical center's intensive care section to another wing of the hospital and is now listed in fair condition, according to a hospital spokesman.

Eboli suffered the attack immediately after returning home Saturday from a Teaneck, N.J., hospital where he was recovering from a July 17 heart seizure.

The latest attack came three days before Eboli was scheduled to appear before New Jersey's state investigation commission.

[From the Newark (N.J.) Evening News, Aug. 1, 1969]

MOVE TO TRY MAFIA PAIR

(By Peter Carter)

TRENTON.—The State Investigation Commission today moved to set the stage for trial of two reputed Mafia figures, should they return to New Jersey.

The commission obtained an order from Superior Court Judge George H. Barlow appointing two of the panel's attorneys as special prosecutors in contempt of court charges against Robert "Bobby Basile" Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch.

The appointment of Kenneth Zauber and Wilbur Mathesius as special prosecutors was a preliminary step toward an attempt next Wednesday to get an indictment from the statewide grand jury charging criminal contempt of court against the two men.

VANISHED TUESDAY

The two men varnished from New Jersey Tuesday after the commission announced it was going to court to get an order compelling them to answer questions since they had been granted immunity from prosecution for any responsive answers they might give.

Bench warrants charging that they left the building where the commission was holding its hearings in violation of an order to remain in the building have been issued for their arrest.

Meanwhile, Marvin Preminger, Brooklyn-based attorney for Occhipinti said yesterday he will have a motion filed with the U.S. District Court calling for a prompt hearing of a suit already filed.

That suit asks for a permanent restraint against the use by the State Investigation Commission of any parts of the more than 2,000 pages of transcripts of electronically "bugged" conversations of Simone "Sam the Plumber" DeCavalcante of Princeton, head of a Mafia family operating in New Jersey.

Preminger said today that Occhipinti is still in New York and that he has spoken to him frequently by phone. Police believe Cocchiaro may be in Philadelphia.

The SIC does not believe it can get a serious enough charge lodged against the two men to extradite them to New Jersey, should they be located out of state and refuse to return voluntarily.

Zauber said the SIC does not fear Preminger's motion for an immediate hearing in federal court on an injunction against the use of the De Cavalcante transcripts.

Zauber said the commission advanced arguments successfully against that challenge and others aimed at its authority during the first week of July, when District Court Judge James Coolahan denied a temporary injunction request by Preminger and lawyers for some of the 14 Mafia leaders and their associates subpoenaed by the commission.

Preminger also said he would have a New Jersey attorney for Occhipinti move before Judge Barlow in Trenton next week to have the bench warrant for Occhipinti vacated. Preminger contends his client was not under subpoena Tuesday and that the commission is exceeding its powers in charging him with contempt and trying to have him arrested.

The commission, with wording of the subpoenas to back it up, contends Occhipinti and Cocchiaro are both under continuing subpoena.

Preminger said yesterday that be believes the commission, as well as any grand jury or court action, is "not only tainted but obliterated" by use of the illegally obtained De Cavalcante transcripts. Electronic eavesdropping was illegal when the conversations were taped from 1961 to 1965.

He said he will take the position that the U.S. attorney's office in Newark erred in making all of the transcripts public record in court when DeCavalcante's lawyer, S. M. Chris Franzblau, asked for release of the transcripts in the hope they would taint a federal extortion charge pending against his client.

Preminger said only those portions dealing with DeCavalcante should have been released. He said U.S. Supreme Court decisions have held that illegal wiretap information must be guarded closely and kept secret.

Occhipinti and Cocchiaro, both said to be members of DeCavalcante's underworld family, are mentioned in those transcripts.

Preminger said he felt the commission was entirely wrong in continuing to barge ahead with its investigation before the question of the legality of using the transcripts is settled.

"They should be the first ones to want a legal test, because it will be a great waste of time and money if they get knocked down in court at some later date," Preminger said.

[From The Evening News, Newark, N.J., Aug. 2, 1969]

MOVE TO INDICT MAFIA PAIR

(By Peter Carter)

TRENTON.—The State Investigation Commission intends to seek indictments next week charging two Mafia figures with criminal contempt of court.

That intent was made clear yesterday when the commission got an order from Superior Court Judge George H. Barlow designating two of the panel's attorneys as special prosecutors in the cases against Robert "Bobby Basile" Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch.

The attorneys, Kenneth Zauber and Wilbur Mathesius, are expected to seek the indictments from the new statewide grand jury Wednesday.

Judge Barlow already has issued bench warrants for the arrest of the two men on a charge of contempt of the commission's subpoena power.

The two vanished from the State House Annex scene of hearings by the commission, after they had been ordered to stay in the building pending further proceedings.

They also vanished from the state. Occhipinti has been staying in New York. Cocchiaro is suspected of being somewhere in Pennsylvania.

LEFT ANNEX

They left the annex after the commission announced it was going to court to get an order to compel them to answer questions.

But the commission believes that, despite the bench warrants, indictments for criminal contempt, will give them a stronger hand in dealing with the two men, if and when they return to New Jersey.

The panel believes that going through the indictment process and a jury trial would, if the two are convicted, permit the two special prosecutors to ask for jail sentences of up to three years for the two men.

The commission does not believe even the criminal contempt charge will be sufficient basis to extradite the two men back to New Jersey, should they be located out of state and refuse to return voluntarily.

But the panel is known to believe that the two are so deeply involved in the operations of the Mafia family headed by Simone "Sam the Plumber" De Cavalcante of Princeton that they cannot afford to stay out of the state indefinitely.

Occhipinti is said to be a lieutenant in the Mafia family and an enforcer of some of the mob's decisions. Cocchiaro is said to have taken over operation of Mafia rackets in the Long Branch area, focus of the commission's probe into organized crime.

[From the Newark (N.J.) Evening News, Aug. 5, 1969]

OCCHIPINTI STALLED

(By Audrey A. Fecht)

Alleged Mafia figure Robert "Bobby Basile" Occhipinti of Long Branch ran into a procedural snag yesterday in seeking a trial date for a federal court suit challenging the use of FBI tapes containing his electronically "bugged" conversations.

Occhipinti's Brooklyn lawyer, Marvin Preminger, failed to have a New Jersey attorney sign motion papers for the trial date as required by the rules of the U.S. District Courts for New Jersey. The purpose of the rule is to facilitate speedy communication between litigants and the court and to avoid the necessity to reach out-of-state for a lawyer involved in a proceeding.

The clerk of the U.S. District Court returned the papers for signature to the Morristown law firm of Vogel, Chait and Wacks, which is serving as local counsel.

Occhipinti and another reputed Mafia figure, Frank "Condi" Cocchiaro of Oakhurst, left the state last Tuesday after the State Investigation Commission announced it would seek a court order to compel them to answer questions. The SIC is using FBI tapes involving several alleged Mafia figures in its probe of organized crime.

Preminger has said that Occhipinti is in New York. Cocchiaro is believed to be in Philadelphia.

[From the Newark (N.J.) Evening News, Aug. 4, 1969]

OCCHIPINTI SUFFERS SETBACK ON SUIT

A Brooklyn lawyer for reputed Mafia figure Robert "Bobby Basile" Occhipinti of Long Branch today encountered procedural problems in his attempt to file a federal court motion calling for a trial date on a suit already filed.

The aim of the suit is to obtain a permanent restraint against the use by the State Investigation Commission of transcripts containing the electronically bugged conversations of Simone "Sam the Plumber" De Cavalcante of Princeton, alleged Mafia leader for Union and Middlesex Counties. Occhipinti is mentioned in the conversations.

The motion papers sent to the Federal District Court in Newark by Marvin Preminger of Brooklyn were returned for signature to his New Jersey counsel, the Morristown law firm of Vogel, Chait and Wacks.

REQUIRED

Rules for the Federal District Court in New Jersey require signature by local counsel to facilitate speedy communication between litigants and the court and to avoid the necessity to reach out-of-state for an attorney involved in a proceeding.

Occhipinti and another reputed Mafia figure, Frank "Condi" Cocchiaro of Oakhurst, left the state last Tuesday after the SIC announced it was going to seek a court order to compel the two men to answer questions after they were granted immunity from prosecution. Preminger has said that Occhipinti is in New York. Cocchiaro is believed to be in Philadelphia.

[From the Newark (N.J.) Evening News, Aug. 6, 1969]

CRIME UNIT WITNESSES INDICTED

TRENTON.—The statewide grand jury today indicted two reputed Mafia figures on charges of criminal contempt for "wilfully" refusing to comply with the subpoena powers of the State Investigation Commission.

The two are Robert "Bobby Basile" Occhipinti of Long Branch and Frank "Condi" Cocchiaro of Oakhurst. They left the State House Annex, scene of closed-door hearings of the investigation commission, last week after being ordered to remain in the building "pending further proceedings."

Those proceedings turned out to be a move by the commission to get a Superior Court order compelling the two to answer questions. They had been granted immunity from prosecution for any responsive answers.

Occhipinti, according to his lawyer, Marvin Preminger, is in New York City. Police believe Pennsylvania may be out-of-state refuge for Cocchiaro.

A criminal contempt charge is not considered serious enough to support a move to extradite the two men back to New Jersey, should they be found out of state and refuse to return voluntarily.

COULD BE JAILED

But the commission, through the state Organized Crime Unit, obtained the indictments so that if the two are ever apprehended in New Jersey, they could be brought to trial before a jury. The commission believes jail sentences of up to three years could be requested, if the two were convicted of criminal contempt.

Announcement of the indictments was made by Peter R. Richards and Edwin H. Steir, co-directors of the Organized Crime Unit.

They said staff members of the commission testified before the grand jury earlier today.

The indictments are the first obtained from the proceedings of the commission which is not a prosecutive agency but which by statute is required to refer to law enforcement officials any evidence that appears to be prone to prosecution.

Richards and Stier said they were pleased by the prompt action of the grand jury today and added they hoped cooperation between their unit and the commission will "continue to be productive."

Richards and Stier noted that Cocchiaro, 48, and Occhipinti, 49, left the State House Annex when they were faced with the ultimate prospect of going to jail if they continued to refuse to answer the commission's questions, once the panel got a court order compelling them to respond.

They said Occhipinti is a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton whose name dominated the FBI "bugged" transcripts which were filed in Federal Court in Newark in connection with an extortion charge against De Cavalcante. They said Coc-

chiaro also is reputed to be a close associate of De Cavalcante.

[From the Newark (N.J.) Evening News, Aug. 7, 1969]

OCCHIPINTI SURRENDERS

(By Peter Carter)

NEW YORK.—Robert "Bobby Basile" Occhipinti of Long Branch, N.J., one of two reputed Mafia figures accused of fleeing from the New Jersey State Investigation Commission, today surrendered voluntarily to law enforcement authorities in the Kings County (Brooklyn) district attorney's office.

He was immediately arraigned before Judge Julius Hellenbrand and, as his lawyer, Marvin Preminger, had announced previously, refused to return to New Jersey.

The judge set bail of $75,000 pending an extradition hearing. That hearing will be held Monday before the judge, unless Occhipinti can raise the $75,000.

Wilbur Mathesius, an attorney for the New Jersey commission, who has been named a special prosecutor, urged that no bail be allowed for Occhipinti since he had allegedly defied the commission's subpoena power and vanished from the State House Annex in Trenton and the state July 29.

The commission that day was holding a closed-door hearing in the annex. The panel directed Occhipinti and Frank "Condi" Cocchiaro of Oakhurst, N.J., another reputed Mafia figure, to remain in the building "pending further proceedings." The two, however, left the building and the state.

Kenneth Zauber, another New Jersey investigation commission attorney also named a special prosecutor, said the papers requesting extradition of Occhipinti to New Jersey would be signed later today by Gov. Hughes and hand carried to Lt. Gov. Malcolm Wilson in New York State.

Occhipinti and Cocchiaro were indicted earlier this week on charges of criminal contempt of the commission's subpoena powers.

They were faced with the prospect of either answering the commission's questions or going to jail. The commission had granted them immunity from prosecution for their answers and was going to court on the day they disappeared to get an order directing them to testify. They could have been found guilty of contempt if they had defied such a court order.

The New Jersey Commission also has subpoenaed 12 other alleged Mafia figures and their associates in its probe into organized crime's influence in the Long Branch area of Monmouth County.

Preminger contended again yesterday that the commission was exceeding its powers and that Occhipinti had not been handed a subpoena directing him to remain in the State House annex July 29.

Preminger, who has his office in Brooklyn, said he prefers to fight his legal battles in New York because "we won't feel so much political pressure here."

Mathesius and Zauber will argue the case for extraditing Occhipinti. They were named special prosecutors by order of Superior Court Judge George H. Barlow who sits in Trenton.

[From the Newark (N.J.) Evening News, Aug. 7, 1969]

WILL OPPOSE EXTRADITION

(By Ladley K. Pearson)

NEW YORK.—Robert "Bobby Basile" Occhipinti of Long Branch, N.J., one of two reputed Mafia leaders sought by New Jersey authorities on criminal contempt charges plans to surrender to police here, probably tomorrow, but will fight extradition to New Jersey.

Occhipinti's attorney, Marvin Preminger, said today his client will surrender as soon as police receive a warrant for his arrest from New Jersey authorities. He said he expects the warrant tomorrow.

Preminger, however, added that his client has "absolutely no intention" of waiving extradition and return to New Jersey voluntarily.

"We, of course, will fight extradition," Preminger said in his cluttered office at 66 Court St.

INDICTED BY JURY

Occhipinti and Frank "Condi" Cocchiaro of Oakhurst, N.J., were indicted yesterday by New Jersey's statewide Grand Jury on charges of contempt for "willfully" refusing to comply with the subpoena powers of the State Investigation Commission. Cocchiaro's whereabouts also are not known.

The indictments occurred after the pair vanished from the State House Annex, scene of closed-door hearings of the commission after they were told they faced the prospects of answering the panel's questions or going to jail for contempt.

The two special prosecutors appointed by the court to try the men on contempt charges decided last night the indictments were sufficient grounds to ask for extradition proceedings, should the two not volunteer to return to New Jersey.

Preminger has contended that Occhipinti was not under the subpoena powers of the commission last week and, therefore, was free to walk away from the panel.

Preminger, however, said he has made arrangements with the New York City police department to surrender Occhipinti when the warrant is received by the police. He declined to say where he would surrender his client.

The attorney said he was somewhat bewildered by the indictment. He said the tone of the indictment indicated that his client had ignored a subpoena. "He was never handed a subpoena ordering him to stay in the building," Preminger said.

He said if there are any legal battles to be fought, he preferred fighting them in New York rather than in New Jersey because "we won't feel so much political pressure here."

PLANS NO RETURN

Preminger said that his client had not been in New Jersey for some time and does not plan to return. If he should return and is tried for criminal contempt he could receive a jail sentence of up to three years.

Occhipinti, 49, is a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, whose name dominated the FBI "bugged" transcripts filed in Federal Court in Newark.

The commission, backed up by the indictments returned yesterday, contends that the two men and 12 others subpoenaed by the panel are under continuing directive to obey its orders.

DA NOTIFIED

Kenneth Zauber and Wilbur Mathesius, the commissions lawyers, have notified the district attorney's office in Brooklyn to arrest Occhipinti, if he is not produced today by his lawyer.

They have also notified police in the Miami area of Florida to arrest Cocchiaro on the contempt charges. Zauber and Mathesius last week were designated by Superior Court Judge George H. Barlow as special prosecutors to handle the cases against the two men.

The commission has been investigating organized crime's influence in the Long Branch area of Monmouth County.

ANNOUNCEMENT MADE

Cocchiaro, 48, is said to have strong connection with De Calvacante and to have taken over operation of rackets in the Long Branch area.

The announcement of the indictments of Occhipinti and Cocchiaro was made yesterday by the Organized Crime Unit of the State attorney general's office. The co-directors, Peter Richards and Edward Stier, said staff members of the commission had testified before the statewide grand jury earlier in the day.

The indictments are the first obtained from the proceedings of the commission, which is not a prosecutive agency but which by statute is required to refer to law enforcement officials any evidence that might be used in prosecution. Richards and Stier said they were pleased by the prompt action of the grand jury today and added they hoped cooperation between their unit and the commission will "continue to be productive."

[From the Trenton (N.J.) Evening Times, Aug. 8, 1969]

OCCHIPINTI DUE TO SURRENDER

NEW YORK.—Robert Occhipinti, the runaway witness wanted for contempt of New Jersey's State Investigation Commission (SIC), was to surrender to authorities here today.

SIC officials said they might take legal action against Occhipinti's lawyer, Marvin Preminger, if he doesn't keep his pledge to bring the reputed underworld figure to the Kings County Brooklyn District Attorney's office today.

Preminger promised the commission yesterday that he would surrender Occhipinti, but added he would fight attempts to extradite his client to New Jersey.

However, SIC Chairman William F. Hyland said he was skeptical about Preminger's promises, and claimed that the lawyer has failed to follow through on several statements.

Gov. Richard J. Hughes was to sign Occhipinti's extradition papers today and forward them immediately to New York Gov. Nelson A. Rockefeller for approval.

Occhipinti, alias Bobby Basile, and Frank Cocchiaro, alias Frank Condi, were indicted in Trenton Wednesday for contempt of the SIC. The charge stems from the pair's unauthorized departure 10 days ago from commission hearings on organized crime.

They were to be taken to Mercer County Court July 29 and charged with contempt because they refused to answer questions after being granted immunity in return for testimony.

SIC officials believe Cocchiaro, a reputed lieutenant in the Simone R. (Sam) DeCavalcante Cosa Nostra family, is hiding in the Miami, Fla., area.

Cocchiaro, a resident of Ocean Township is a frequent visitor to Miami.

Occhipinti, who has homes in Long Branch, and Brooklyn, is a cousin of DeCavalcante, alleged boss of one of the nation's 24 Cosa Nostra families.

Meanwhile, it has been learned that the SIC has been conducting secret hearings at a motel in Monmouth County. Monmouth is the focal point of the commission's probe.

Police say Cocchiaro oversees DeCavalcante's gambling and loansharking activities in the Jersey shore area. Anthony Russo, a SIC witness two weeks ago, reputedly is the Monmouth County underworld boss for the Cosa Nostra family of the late Vito Genovese.

More than a half dozen secret SIC hearings are believed to have taken place at the Monmouth County Motel. Names of witnesses could not be learned.

The commission's next announced crime hearing is in Trenton Tuesday.

[From the Newark (N.J.) Evening News, Aug. 9, 1969]

OCCHIPINTI BEHIND BARS

(By Peter Carter)

NEW YORK.—Robert "Bobby Basile" Occhipinti, accused of fleeing from the New Jersey State Investigation Commission, had his bail reduced yesterday from $75,000 to $50,000 but couldn't raise the lower amount immediately.

Unless he does raise the money, he will spend the weekend in a Brooklyn jail. He is due to face extradition proceedings Monday in Kings County Criminal Court.

At that time, Kenneth Zauber and Wilbur

Mathesius, commission attorneys who have been named special prosecutors, will argue that Occhipinti should be forced back to New Jersey to face trial on an indictment for criminal contempt of the commission's subpoena powers.

The papers requesting extradition of Occhipinti were signed yesterday by Gov. Hughes and hand carried to New York State Lt. Gov. Malcolm Wilson. He is expected to approve them and pass them on to the Brooklyn Court.

Occhipinti surrendered voluntarily yesterday in the Kings County district attorney's office to the warrant charging him with being wanted in New Jersey on a criminal contempt indictment.

Judge Julius Hellenbrand of Kings County Court set bail at $75,000 when Occhipinti was arraigned before him.

Occhipinti's lawyer, Marvin Preminger, argued unsuccessfully that the bail was excessive for a man who had surrendered voluntarily. But Mathesius argued that Occhipinti should not even be granted bail since he had proved his unreliability by walking out on the commission and leaving New Jersey.

Preminger, however, moved later in the day before the next highest court, the New York State Supreme Court to have the bail reduced. Preminger has promised a court fight against extradition of his client to New Jersey.

INDICTED LAST WEEK

Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch and both said to be in the crime family headed by Simone "Sam the Plumber" De Cavalcante of Princeton, were indicted last week by the statewide grand jury.

They left the State House Annex and the state July 29, when they were faced with either answering the commission's questions or going to jail. The commission had granted them witness immunity and was going to court to get an order compelling them to testify or face contempt charges.

The commission contends the two were under continuing subpoena and should have stayed in the annex as ordered "pending further proceedings."

Cocchiaro is believed to be in Florida where police are searching for him.

[From the Newark (N.J.) Evening News, Aug. 10, 1969]

LEGAL TANGLE ON OCCHIPINTI

(By Peter Carter)

TRENTON.—New Jersey will be venturing in the law when it moves tomorrow in Kings County Court in Brooklyn to force the return to this state of Robert "Bobby Basile" Occhipinti of Long Branch.

Occhipinti, a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, head of a Mafia family, is under indictment in New Jersey for criminal contempt of the subpoena powers of the State Investigation Commission.

Criminal contempt is in New Jersey a misdemeanor. Forcible extradition of a person from one state to another usually is allowed only in the more major crime classification of felonies.

However, lawyers for the commission are expected to argue that certain misdemeanors in New Jersey, including an indictable criminal contempt offense, carry jail sentences of up to three years.

EXPECTED ARGUMENT

In most other states, the lawyers are likely to argue, any offense carrying more than a year in jail is normally a felony and subject to extradition proceedings. Therefore, the criminal contempt charge should be considered serious enough to warrant extradition.

Whether this argument can be sustained will be determined by the hearing in the Brooklyn court. Occhipinti's lawyer, Marvin Preminger, has promised a vigorous fight against extradition of his client back to New Jersey.

A hearing on extradition does not involve the merits of the criminal case against Occhipinti or his guilt or innocence.

The state, however, must prove that Occhipinti is indeed the accused, which should cause no difficulty, and that the charge against him is actually a serious crime in New Jersey, which is where the arguments are expected to center.

Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch left the State House Annex and New Jersey after they were faced with the prospect of either answering the commission's question or going to jail for contempt of court.

IMMUNITY GRANTED

The commission had granted them immunity from prosecution and was going to court to get an order compelling them to testify or face contempt charges. The commission in closed-door hearings in the annex has been questioning 14 Mafia leaders and their associates about the influence of organized crime in the Long Branch area of Monmouth County.

Occhipinti and Cocchiaro both left the annex when they had been instructed that they were to remain in the building pending further proceedings. The commission contends that the men were under continuing subpoena and, therefore, were contemptuous when they did not obey the order to stay in the annex.

Cocchiaro is thought to be hiding out in Florida. Police there are searching for him.

Occhipinti, accompanied by Preminger, surrendered voluntarily in the Kings County district attorney's office in Brooklyn Friday. His bail pending tomorrow's hearing was set at $50,000.

If Occhipinti is extradited to New Jersey, he could be tried before a jury in a court in Mercer County on the criminal contempt charge.

[From the Newark (N.J.) Evening News, Aug. 11, 1969]

OCCHIPINTI GETS HEARING DELAY

(By Peter Carter)

NEW YORK.—Extradition proceedings against Robert "Bobby Basile" Occhipinti, a Mafia figure accused of running away from the New Jersey State Investigation Commission, were postponed today in Kings County Criminal Court in Brooklyn.

The postponement came when the extradition papers could not be forwarded from the New York State governor's office in Albany in time to hold the hearing as scheduled.

Wilbur Mathesius, commission attorney acting as special prosecutor, said he was trying to work out an acceptable date for holding the hearing either late this week or early next week.

Occhipinti, of Long Branch, N.J., and a cousin of Simone "Sam the Plumber" De Cavalcante, head of a New Jersey Mafia family, surrendered voluntarily to law enforcement authorities in Brooklyn Friday. Bail of $50,000 was set for his appearance for the extradition proceedings.

MAKES BAIL

He raised that bail over the weekend, and he appeared at court today briefly with his lawyer Marvin Preminger. They left once it became clear a postponement would be arranged.

Occhipinti and Frank "Condi" Cocchiaro of Oakhurst, N.J., walked out of the State House Annex in Trenton July 29 when they faced the prospect of going to jail or answering, with immunity from prosecution, the questions of the commission in its probe into organized crime.

The commission charges that the walkout from the building and the disappearance from New Jersey flaunted the subpoena powers of the panel. Both men have been indicted in New Jersey for criminal contempt of those powers.

Cocchiaro is believed to be in Florida where police have been asked to search for him.

[From the Newark (N.J.) Evening News, Aug. 12, 1969]

EXTRADITION WARRANT ISSUED FOR OCCHIPINTI

TRENTON.—New York City police have been asked to arrest Robert "Bobby Basile" Occhipinti of Long Branch on an extradition warrant issued yesterday by the New York State governor's office.

The request was made by two special New Jersey prosecutors through the Kings County district attorney's office in Brooklyn after issuance of the papers calling for Occhipinti's extradition to New Jersey to face a criminal contempt charge.

The extradition warrant did not arrive in time yesterday for a scheduled hearing for Occhipinti in Kings County Criminal Court on a previous warrant charging him with being a fugitive from the New Jersey criminal contempt indictment.

Occhipinti, cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, head of a Mafia family, had been freed in $50,000 bail on the fugitive warrant after surrendering voluntarily in New York on that charge last Friday.

TAKES PRECEDENCE

But attorneys for the State Investigation Commission, who are acting as special prosecutors, said the extradition warrant takes precedence and they want Occhipinti arrested. They said an extradition warrant is not subject to bail, so Occhipinti will have to go to jail if arrested on it.

However his lawyer, Marvin Preminger could have him freed on bail for a few more days, if he institutes a habeas corpus proceeding attacking the validity of the extradition warrant. The bail would be allowed for the few days needed to prepare arguments on the habeas corpus proceeding.

The swift move to have Occhipinti arrested on the extradition warrant was seen as a step to try to forestall any further flight by the Mafia figure.

Occhipinti and Frank "Condi" Cocchiaro, also of Long Branch, were indicted by the statewide grand jury for criminal contempt after they left the State House Annex and New Jersey July 29, when faced with either going to jail or answering the commission's questions.

IMMUNITY GRANTED

The commission, probing organized crime in the Long Branch area of Monmouth County, had given the two men immunity from prosecution for any answers they gave and was going to court to get an order compelling them to testify.

Preminger later produced Occhipinti at the district attorney's office in Brooklyn. But Cocchiaro is believed to be hiding in Florida where police have been asked to look for him.

Occhipinti, though he surrendered voluntarily last week, has vowed through Preminger to go to court to fight the extradition move to force his return to New Jersey.

The fugitive warrant hearing scheduled for yesterday was postponed until Monday. But Kenneth Zauber, one of the special prosecutors, said any habeas corpus move by Occhipinti would now supercede that hearing.

Occhipinti accompanied by Preminger, went to the Kings County courtroom yesterday and lingered outside for a few minutes. The two men left when it became apparent the hearing would be delayed.

GROUNDS FOR FIGHT

The only three grounds for fighting the extradition warrant signed and issued by Gov.

Rockefeller's office are that the offense charged is not an actual and serious crime in New Jersey, that Occhipinti's identity has been mistaken, or that he was not in New Jersey at the time of the offense.

Meanwhile, the commission has surrounded what it has said is the necessarily private phase of its probe with even more mystery.

The panel cancelled a scheduled appearance behind closed doors today for Louis "Killer Louie" Ferrari of Long Branch said to be a Mafia underling and bodyguard. A panel spokesman said no firm date has been established for what will be Ferrari's second appearance before the commission.

The commission has promised that sometime later this year it will go into the second of public phase of the investigation and will issue public reports, or hold public hearings, or do both.

[From the Trenton (N.J.) Evening Times, Aug. 12, 1969]

THREE WITNESSES TO RETURN AT NEXT WEEK'S SIC HEARINGS

The State Investigations Commission (SIC) will resume hearings here next week when three high-ranking reputed Cosa Nostra figures are scheduled to make second appearances concerning alleged underworld infiltration in Long Branch.

The SIC postponed a session slated for today in the State House Annex, where Louis (Killer Louie) Ferrari, the reputed bodyguard of Anthony (Little Pussy) Russo of Long Branch, was to have made his second appearance.

Russo, who allegedly runs shore-area rackets for the Cosa Nostra family of the late Vito Genovese, will be joined by Angelo (the Gyp) DeCarlo of Mountainside and Joseph (Bayonne Joe) Ziccarelli at the Aug. 20 hearing in the State House Annex, a commission spokesman said.

They are among 14 Cosa Nostra members and associates originally subpoened by the SIC.

EXTRADITION

At the same time, the commission is still trying to extradite from New York a reputed Mafia enforcer who fled SIC hearings last month after being cited for contempt for failing to answer questions.

Attorneys for Robert (Bobby Basile) Occhipinti, who surrendered to the Brooklyn District Attorney's office Friday, are preparing to fight extradition at a court hearing set for Monday.

Frank (Frank Condi) Cocchiaro, who left the SIC hearings along with Occhipinti, is still at large. Unconfirmed reports have placed him in the Miami, Fla., area.

Both Occhipinti and Cocchiaro are associated with the Cosa Nostra family of Simone R. (Sam the Plumber) DeCavalcante of Princeton Township.

An SIC spokesman said he expected the inquiry to continue another "couple of months" before a final report is isued.

[From the Trenton (N.J.) Evening Times, Aug. 13, 1969]

BROOKLYN HUNT ON: NO SIGN OF OCCHIPINTI

(By Peter Carter)

TRENTON.—The whereabouts of Robert "Bobby Basile" Occhipinti of Long Branch, a Mafia figure accused of fleeing from the State Investigation Commission, was a mystery today.

Commission attorneys acting as special prosecutors said an effort by the Kings County district attorney's office in Brooklyn to locate Occhipinti in that borough has been unsuccessful.

They reported the district attorney's office as saying Occhipinti was not at the house he had been staying at in Brooklyn when a law enforcement official called there.

They also said the district attorney had asked Occhipinti's lawyer, Marvin Preminger, to find his client. Preminger was quoted as saying he would try but if he was unsuccessful, as he apparently was, the police would have to locate Occhipinti and arrest him on a New York State governor's warrant calling for his forcible extradition back to New Jersey.

Commission officials were known to believe that Occhipinti may stay in hiding at least until Monday, when his postponed hearing on a previous warrant charging him with being a fugitive from a New Jersey criminal contempt indictment is due for a hearing in Kings County Criminal Court.

Occhipinti is still under $50,000 bond for that scheduled appearance and probably would not like to have it forfeited by failing to show up.

Wilbur Mathesius and Kenneth Zauber, the special prosecutors, have requested the Kings County district attorney's office to apprehend Occhipinti on the extradition warrant.

Mathesius said he was "disappointed" that Occhipinti had not been apprehended Monday night when the request was first made to the district attorney.

DISLIKED CHOICE

Occhipinti and Frank "Condi" Cocchiaro, also of Long Branch, left the State House Annex in New Jersey July 29 when they were faced with the prospect of answering the commission's questions or going to jail for contempt.

The commission had granted them immunity from prosecution for answers and was going to court to get a court order compelling them to testify. The panel is probing organized crime in the Long Branch area of Monmouth County.

The two were subsequently indicted by the statewide grand jury for criminal contempt of the commission's subpoena powers. Preminger surrendered Occhipinti in Brooklyn last Friday on the fugitive warrant.

But the later extradition warrant is not subject to bail, probably a reason why there is no surrender this time by Occhipinti.

Cocchiaro is believed to be hiding out in Florida where police have been asked to look for him.

Occhipinti is a cousin of Simone "Sam the Plumber" De Cavalcante of Princeton, head of the Mafia family operating in New Jersey. Cocchiaro is said to be an official in that same crime family.

[From the Newark (N.J.), Evening News, August 15, 1969]

OCCHIPINTI SURRENDERS AT PRINCETON

(By Joseph Sullivan)

PRINCETON.—Robert "Bobby Basile" Occhipinti surrendered to State Police here today rather than sit in a New York jail while fighting extradition to New Jersey.

Occhipinti walked into State Police headquarters on Route 1 at 11:40 a.m. accompanied by his attorney, Samuel Bozza of Newark, and two bail bondsmen. He is scheduled to be arraigned later today in the Mercer County courtroom of Judge George Barlow.

Occhipinti and another reputed Mafia figure, Frank "Condi" Cocchiaro, are under indictment by the Statewide Grand Jury for allegedly being in contempt of the subpoena powers of the State Investigation Commission.

Both men ducked out on a commission hearing last month. Cocchiaro is still at large and believed to be in Florida.

Occhipinti, cousin of reported Mafia leader Simone "Sam the Plumber" De Cavalcante of Princeton, had been freed in $50,000 bail on a fugitive warrant after surrendering voluntarily in New York last Friday.

Two special New Jersey prosecutors had requested the Kings County district attorney's office in Brooklyn to arrest Occhipinti on an extradition warrant signed by Gov. Hughes. This move apparently led to Occhipinti's decision to surrender today.

Attorneys for the investigation commission said an extradition warrant is not subject to bail, and Occhipinti would have to go to jail if he were picked up on it.

Marvin Preminger, Occhipinti's New York attorney, had said his client would surrender on the extradition warrant Monday in Brooklyn.

[From the Trenton (N.J.) Evening Times, Aug. 15, 1969]

BASILE ARRANGES TO GIVE SELF UP

PRINCETON.—Robert (Bobby Basile) Occhipinti, one of the two runaway witnesses of the State Investigations Commission, (SIC) was set to come back today.

Basile, who has been identified as a member of the Simone R. (Sam) DeCavalcante family of the Cosa Nostra, fled from the State House Annex during an SIC hearing July 29.

The SIC had been seeking to extradite Basile from Brooklyn, where he went after fleeing New Jersey. But he notified authorities he would surrender today at the Princeton State Police Station.

No explanation of Basile's voluntary surrender was given, but it was suspected that it might be an attempt to assure his release on bail.

CONTESTING BAIL

The SIC had anounced it would seek to have Basile held without bail upon extradition to New Jersey. SIC attorneys Kenneth Zauber and Wilbur Mathesius said they still would ask that Basile be held without bail when he is arraigned, probably this afternoon before Superior Court Judge Arthur Salvatore.

Had the state been forced to present a full case for extradition from New York, it might have strengthened an attempt to have him held without bail.

But a voluntary surrender carries with it a certain implication of cooperation, and assuredly would weaken the SIC's case for no bail.

The Princeton Station of the New Jersey State Police was selected as the site for Basile's surrender because the State Police detective handling the search for Basile is stationed there, it was explained.

FORMAL PROCEDURE

After being booked, he would be taken to the Mercer County Court House for formal court proceedings and argument on the issue of bail.

The actual charge against Basile is contempt of the State Investigations Commission's power of subpoena. Basile's attorney, Marvin Preminger of Brooklyn, claims there was no subpoena outstanding at the time Basile "left" the SIC waiting room. But the SIC contends its original subpoena for Basile, issued before the initial SIC hearing several weeks ago, still stands.

This presumably will be the main point at issue if Basile's contempt charge reaches trial.

The SIC wants it to be a jury trial and that now is possible, since he was indicted by the Statewide Grand Jury.

The extradition proceeding, which now will be dropped, was to have taken place Monday in a Brooklyn courtroom.

SECOND WITNESS

The other witness who fled the SIC hearing on the same day as Basile is Frank (Big Frank Condi) Cocchiaro, reputed lieutenant in the DeCavalcante family.

Cocchiaro, who lives in Ocean Township, Monmouth County, but originally came from Brooklyn, has not been seen since his flight. He is believed to be in Florida.

Like Basile, he has been indicted for contempt.

[From the Newark (N.J.) Evening News, Aug. 16, 1969]

OCCHIPINTI FREED ON BAIL

(By Joseph F. Sullivan)

TRENTON.—Robert "Bobby Basile" Occhipinti was freed in $25,000 bail yesterday only to learn moments later he will be back in court Monday.

Agents of the State Investigation Commission tagged the Mafia figure with an order directing him to show cause why he shouldn't be held in civil contempt for refusing to answer the commission's questions about organized crime in New Jersey.

Occhipinti and another underworld figure, Frank "Condi" Cocchiaro, walked out on a commission hearing July 29 and set in motion the chain of legal moves that led to his surrender yesterday at the Princeton state police barracks.

Cocchiaro is still at large, presumably in Florida where police have been alerted to look for him.

The two men left the hearing last month during a recess called because they refused to answer questions. During the recess, commission attorneys petitioned Superior Court Judge George H. Barlow for a court order directing the men to testify.

At this point, Occhipinti and Cocchiaro, both of Long Branch, decided they had more pressing business elsewhere and walked out of the state house annex.

RIGHT QUESTIONED

During this time, Occhipinti, who also has a home at 1060 81st st., Brooklyn, was represented by New York attorney Marvin Preminger, who publicly doubted the commission's right to hold Occhipinti under continuing subpoena and the weight of the subsequent statewide grand jury indictment for criminal contempt.

Preminger said his client would surrender in Kings County Court Monday to fight extradition to New Jersey, but Occhipinti arranged to surrender to SIC prosecutors Kenneth Zauber and Wilbur Mathesius at the Princeton barracks yesterday and hired a new lawyer in the process.

Samuel Bozza of Newark, who accompanied Occhipinti when he surrendered, and also at his arraignment later before Judge Barlow, told the court he disagreed with Preminger concerning the strength of the SIC subpoena powers. He said part of Occhipinti's present troubles stem from the fact he was "ill advised."

Barlow set $25,000 bail at Mathesius' request and a tentative date for a jury trial on the criminal contempt charge of Sept. 9. If convicted, Occhipinti could be fined $1,000 and sentenced to three years in jail.

As he left the courtroom, SIC agents James Lacey and Edward O'Neill served him with papers concerning the civil contempt action, including a bill of particulars on what the commission wants him to talk about.

Bozza was not at his side and Occhipinti was nonplussed by the sudden service at the courtroom door. He accepted the papers with a wry smile and said, "are you sure you guys don't have any more of these things."

Zauber said if Occhipinti is convicted on the civil contempt charge he could be jailed until he decides to purge himself of the contempt citation by answering the commission's questions.

This move could set the stage for the awaited court test of the commission's power to confer immunity from prosecution on a witness in order to force him to testify.

COMMISSION AVAILABLE

Zauber said the commission will be available Monday to listen to Occhipinti if he decides to cooperate. The next scheduled commission hearing is Wednesday, when Joseph "Bayonne Joe" Zicarelli, Angelo "Gyp" DeCarlo of Mountainside, and Anthony "Little Pussy" Russo of Long Branch are scheduled to appear.

Occhipinti paid a $5,000 preminum on a $50,000 bond to remain free in New York after he surrendered on a fugitive warrant, and he paid $2,500 yesterday for the $25,000 bail money to stay out of jail.

Since he walked out of the hearing 18 days ago it has cost Occhipinti $7,500 to remain on the street and he faces an entirely new challenge to his freedom Monday.

[From the Trenton (N.J.) Evening Times, Aug. 18, 1969]

CONDI PLANS SURRENDER TO NEW JERSEY COPS

(By Paul Nini)

Frank Cocchiaro, alias Frank Condi, was expected to surrender to state police at Princeton today.

Cocchiaro and Robert "Bobby Basile" Occhipinti fled from the State House Annex where the State Investigations Commission (SIC) was conducting hearings into organized crime almost three weeks ago.

Although the surrender was scheduled to take place at 11 a.m., neither Cocchiaro nor SIC attorneys appeared at the appointed hour.

Cocchiaro, 48, was to be processed at Princeton before being arraigned later today on contempt charges at the Mercer County Court House. SIC attorneys Wilber Mathesius and Ken Zauber were expected to ask for "no bail".

The expected surrender was to come three days after Cocchiaro's business associate, Occhipinti, gave himself up at the Princeton station.

PLEADED INNOCENT

Occhipinti, 49, of Brooklyn, pleaded innocent to the criminal contempt charges and was released on $25,000 bail pending a trial September 9. The cousin of reputed Mafia figure Simone R. (Sam) DeCalvalcante, Basile was to appear before Judge Arthur A. Salvatore today on a motion to show cause why he should not be held in contempt for not answering the SIC questions.

Mathesius said that if Basile refuses to answer questions about his alleged relationship with suspected Mafia members in the state, the judge can imprison him "until he does."

The maximum penalty for criminal contempt is three years in prison and a $1,000 fine. SIC attorneys said both men could purge themselves of civil contempt if they answer the SIC's questions.

CONTEMPT INDICTMENTS

The statewide grand jury returned contempt indictments against both men, August 6. Basile and Cocchiaro were granted immunity from prosecution during the SIC hearings which are scheduled to resume Wednesday.

Cocchiaro was believed to have been in Florida since fleeing from the State House Annex July 29. Basile has been in Brooklyn.

Cocchiaro and Basile are partners in a Long Branch air conditioning firm, which authorities say is a front for DeCalvalcante's rackets at the shore.

The FBI has identified Cocchiaro as a lieutenant in the DeCalvalcante Cosa Nostra family.

[From the Newark, N.J. Evening News, Aug. 19, 1969]

PROBERS' SHOWDOWN IN OCCHIPINTI CASE

(By Joseph F. Sullivan)

TRENTON.—The State Investigation Commission's power to force witnesses to testify is on the line today.

Superior Court Judge Arthur A. Salvatore is hearing arguments on a commission move to have Robert "Bobby Basile" Occhipinti held in civil contempt for refusing to answer questions about Cosa Nostra operations in Long Branch.

The court hearing marked the first revelation of the questions posed by the SIC at its closed door hearings. The questions were revealed as the commission sought to bolster its case before Judge Salvatore.

While a portion of the interrogation that was read into the record produced no surprises, it provided the first glimpse into the commission's line of questioning, which up until now has been cloaked in secrecy.

Judge Salvatore ordered the questions read because he said it was pertinent to the determination of Occhipinti's guilt or innocence on the civil contempt charges.

Andrew Phelan, SIC director, told Judge Salvatore yesterday Occhipinti should be jailed until he decides to purge himself of civil contempt by answering questions under the umbrella of witness immunity conferred upon him prior to a closed hearing July 29.

At that time, SIC Chairman William Hyland notified Occhipinti the commission had granted him immunity from prosecution based on any information he might give in the hearings.

In the face of this, Occhipinti steadfastly refused to answer Hyland's questions as to whether he is a Cosa Nostra member, whether he was sent to Long Branch by his Cosa Nostra boss and whether it is the policy of Cosa Nostra members to corrupt officials and "insinuate themselves into the functions of labor groups in Monmouth County."

Occhipinti also was asked if he had been a member of the Carlo Gambino Cosa Nostra family and whether he knew or had met a number of reputed underworld figures such as Gerardo "Gerry" Catena, Thomas "Tommy Ryan" Eboli, Vito Genovese, Simone "Sam the Plumber" De Cavalcante and Anthony "Little Pussy" Russo.

He also refused to tell, citing his lawyer's advice and his constitutional right against self-incrimination, whether he had ever talked to Long Branch Police Chief Joseph D. Purcell, either on the telephone or in person.

The commission chairman also asked Occhipinti how many Cosa Nostra families operate in Monmouth County and whether he had ever witnessed the payment of any "ice" to any official in Long Branch. The term "ice" was not defined but investigators indicated referred to protection payoff money.

Occhipinti sat stony-faced as his new attorney, Samuel Bozza of Newark, argued unsuccessfully for a postponement of yesterday's hearing. New York attorney Marvin Preminger represented Occhipinti at the July 29 hearing and Bozza said he wanted time to catch up with his client's problems.

Salvatore turned down Bozza's request but recessed the hearing until later today after permitting Phelan time to get the 76 questions put to Occhipinti on the record.

Occhipinti and Frank "Condi" Cocchiaro, both of Long Branch, left the State House Annex during a recess in the July 29 hearing and were later indicted by the statewide grand jury for being in criminal contempt of SIC subpoena powers.

Occhipinti surrendered Friday at the Princeton state police barracks and is free in $25,000 bail for a Sept. 9 trial on this charge.

SIC attorneys Kenneth Zauber and Wilbur Mathesius waited at the Princeton barracks for an hour yesterday on a tip Cocchiaro was ready to surrender in the same manner as Occhipinti. Instead Bozza showed up alone to say Cocchiaro would not keep his appointment.

Cocchiaro and Occhipinti are partners in a Long Branch air conditioning company. Both men also have been identified by SIC spokesmen as members of the Cosa Nostra family headed by De Cavalcante.

The court move that began yesterday attracted the attention of attorneys representing other alleged Cosa Nostra members called by the SIC.

[From the Newark (N.J.) Evening News, Aug. 19, 1969]

SILENCE TODAY MAY BRING JAIL TERM: BASILE FACES CONTEMPT CLUB

(By Thomas H. Greer)

Robert (Bobby Basile) Occhipinti, reputed member of the Cosa Nostra family of Simone R. (Sam the Plumber) DeCavalcante, was scheduled to return to Mercer County Court today to answer civil contempt charges for his refusal to answer questions before the State Investigation Commission (SIC).

If Occhipinti continues his silence, SIC attorneys say the Mafia enforcer can be jailed until he agrees to answer.

The questions which Occhipinti refused to answer in the closed SIC session on July 29 were made public for the first time in court yesterday. There was no real surprises, but Occhipinti remained silent. He pleaded his rights under the fifth Amendment and an argument (not disclosed) presented by his lawyer. He refused to answer 73 questions in all.

COCCHIARO MYSTERY

Meanwhile, the whereabouts of Frank (Frank Condi) Cocchiaro, who fled from the State House Annex and the SIC hearing on July 29 with Occhipinti, remains a mystery.

Cocchiaro, 48, was expected to surrender to state police at Princeton yesterday. However, he failed to appear.

Occhipinti, 49, of Brooklyn, surrendered Friday. He pleaded innocent to criminal contempt charge for leaving the SIC hearings and was released under $25,000 bail. His trial on the charges is set for September 9.

Occhipinti and Cocchiaro are partners in a Long Branch air conditioning firm which the SIC contends is a front for the underworld activities of DeCavalcante's family.

The SIC yesterday asked Mercer Judge Arthur A. Salvatore to find Occhipinti guilty of civil contempt.

Salvatore adjourned the hearing until today to permit Occhipinti's lawyer, Samuel Bozza of Newark, more time to prepare a legal brief in his client's defense.

Bozza said there is a fine line between civil and criminal contempt and he is not sure that his client should not be charged with criminal contempt for defying a public body (SIC). He said many "intricate and complex legal problems" are anticipated.

The outcome of the court hearing may have an important bearing on the SIC's investigation of organized crime and official corruption. It will provide a test of the commission's powers in seeking jail terms for alleged Cosa Nostra figures who decline to answer the SIC's questions.

"We are not interested in prosecuting this man," said Andrew Phelan, SIC special prosecutor. "We are only interested in answers. We are seeking that he answer the questions—and if he fails that he be incarcerated."

Judge Salvatore ordered the questions from the closed session read. He said this information is pertinent to his determination of Occhipinti's guilt or innocence on the civil contempt charges.

Many of the questions involved alleged Mafia activities in Monmouth County and in the City of Long Branch. Both Monmouth and Long Branch have been focal points of the commission's investigation.

Occhipinti, a cousin of Mafiia overlord DeCavalcante, now lives in the Long Branch area.

[From the Newark (N.J.) Evening News, Aug. 20, 1969]

OCCHIPINTI HEARING TO RECESS 3D TIME?

(By Thomas H. Greer)

Mercer County Judge Arthur A. Salvatore today was expected to recess the civil contempt hearing of Robert (Bobby Basile) Occhipinti for the third consecutive day.

Judge Salvatore revealed his plans yesterday and said this third delay would be for him to review legal briefs before returning a decision on the reputed Cosa Nostra enforcer's refusal to answer questions before the State Investigation Commission (SIC).

The judge adjourned the hearing each of the past two days, first to permit Occhipinti's attorney, Samuel Bozza of Newark, to prepare legal briefs and yesterday to permit SIC lawyers to prepare similar briefs.

The SIC has asked Salvatore to find Occhipinti guilty of civil contempt for his refusal to answer questions at the July 29 SIC session. SIC says if Occhipinti continues his silence, he can be jailed until he agrees to answer.

Meanwhile Frank (Frank Condi) Cocchiaro, who fled the SIC hearing on July 29 with Occhipinti, remains at large.

Cocchiaro, a Long Branch business partner of Occhipinti and an alleged underworld figure himself, was expected to surrender to state police at Princeton two days ago. However, he failed to appear.

Occhipinti, who surrendered last Friday, also is charged with criminal contempt for leaving the SIC hearing. He is under $25,000 bail and faces a jury trial on the charge Sept. 9.

Yesterday, Salvatore requested legal briefs from Andrew Phelan, SIC executive director. He said they would be necessary because Bozza had filed similar briefs earlier in the day.

Bozza said he would have no witnesses in the hearing. There was some indication Occhipinti might take the witness stand.

UNANSWERED QUESTIONS

The SIC's only witness was Leo Meile, the SIC court reporter, who read from the transcript of the hearing the questions Occhipinti refused to answer.

Bozza's brief, although not made public, is believed to challenge the SIC's power to grant to all underworld figures who testify immunity from prosecution as a result of their testimony.

He also is expected to question why his client is charged with civil contempt and not criminal contempt.

SIC's brief is expected to attempt to justify the commission's actions under the law.

Occhipinti is a cousin and reputed enforcer of Simone R. (Sam the Plumber) DeCavalcante's Cosa Nostra family.

[From the Newark (N.J.) Evening News, Aug. 21, 1969]

JAIL FOR SILENT WITNESSES? SIC HALTS HEARINGS, AWAITS COURT RULING

The State Investigation Commission (SIC) hearings into organized crime in New Jersey have been halted until the courts rule on the Commission's contention that it can throw reluctant witnesses in jail.

William F. Hyland, the SIC's chairman, said yesterday that the hearings will be postponed until after September 10, when three reputed Mafia figures will appear in court. They are charged with contempt for failing to answer the Commission's questions after being granted immunity from prosecution.

"No important purpose would be served by hearings between now and the tenth," Hyland said. "We want the courts to clear up the matter."

Andrew Phelan, the SIC's executive director, said he had expected an even earlier court test of the Commission's immunity power, under which a witness who doesn't answer can be charged with civil contempt and thrown into jail unless he decides to talk.

"I'm surprised it wasn't' taken to court two months ago," Phelan told newsmen.

The halt in hearings came after the Commission had heard three witnesses—Anthony ("Little Pussy") Russo, Joseph Arthur ("Joe Bayonne") Zicarelli and Ruggierio ("Richie the Boot") Boiardo.

Russo and Zicarelli, who hearings, were charged with contempt and their cases were set for September 10, along with that of a third reputed Mafioso, Robert ("Bobby Basile") Occhipinti.

Boiardo, who law enforcement officials consider one of North Jersey's top crime figures, was appearing for the first time and left after a short hearing. His appearance had not been advertised by the SIC, which has held several sessions without publicity.

Meanwhile, Mercer County Judge Arthur A. Salvatore adjourned the contempt hearing of Occhipinti at Judge Kingfield's request so that a decision on his case would not proceed the Zicarelli-Russo hearing.

In announcing suspension of the hearings, Hyland said he did not anticipate any long delay.

Later, SIC officials discounted any permanent crimp in the hearings, although they conceded that whatever court decision came out of the September 10 hearings would be appealed. Some appeals, particularly those that go to the U.S. Supreme Court, can take several years.

The Commission's hearings began July 8, prompted by tapes released in federal court of conversations held by Simone Rizzo ("Sam The Plumber") DeCavalcante, reputed Mafia boss of Central Jersey. Since then, more than a dozen alleged mob figures have appeared, along with several other persons mentioned in the DeCavalcante tapes.

Hyland said after yesterday's proceeding that he believes the Commission's activities so far have put a crimp in mob activity in the state.

"I have a very firm conviction that the activities of many governmental agencies have had a disquieting effect on those in our state who are part of organized crime," he said. "It has had results all the way down the line, although some may be difficult to measure."

[From the Newark (N.J.) Evening News, Aug. 21, 1969]

INVESTIGATION AGENCY'S POWERS HINGE ON SEPTEMBER 10 COURT TEST

(By Joseph F. Sullivan)

TRENTON.—The State Investigation Commission has gone as far as it can in the probe of organized crime in New Jersey until the court test of its powers Sept. 10.

The commission has extended its controversial immunity protection to three reputed Mafia members and, when they still refused to testify, petitioned the courts to find the witnesses in civil contempt.

If the moves are successful the witnesses Joseph "Bayonne Joe" Zicarelli and Robert "Bobby Basile" Occhipinti and Anthony "Little Pussy" Russo, both of Long Branch, could be sent to jail until they cooperate with commission interrogators.

If the court decision goes against the commission it would effectively lessen the agency's value as an investigative force since no one could be compelled to testify.

Commission Chairman William F. Hyland said yesterday that whatever the outcome of the court test the commission's activities in its first months of existence "have had a disquieting effect on the operations of organized crime in New Jersey from the top to bottom."

PREPARING LEGAL CHALLENGES

Hyland said all of the commission's energies in the coming weeks would be aimed at preparing for the legal attacks expected to be launched by attorneys for the uncooperative witnesses.

Michael Querques of Orange, attorney for Zicarelli, has promised a broad-based attack on the commission and its statutory ability to proceed as it has against the witnesses. Querques yesterday said he would raise "nine or 10 points" in his attack and predicted the court battle would last "a long time."

Andrew Phelan, SIC executive director welcomed the opportunity to dispose of all the untested legal questions surrounding the young state agency.

Phelan said, "I'm confident we're on good ground," and said he believed the appeals would be processed quickly.

Superior Court Judge Frank J. Kingfield yesterday set the date for the court hearing after SIC attorneys asked him to hold Zicarelli and Russo in civil contempt. Both men had been granted immunity from self-incrimination by the Commission and directed to answer questions about Costa Nostra infiltration of legitimate businesses and corruption of public officials.

REFUSED TO TESTIFY

When they still refused to testify the men were escorted to Kingfield courtroom on the same third floor of the State House Annex and processed for the coming hearing.

The swiftness of the procedure prompted Querques to tell Kingfield "You caught us with our pants down."

William Pollack, attorney for Russo, also assured Kingfield his client would be available for the Sept. 10 hearing. He said Russo "is not going to run away like some others did." He was referring to Occhipinti and Frank "Condi" Cocchiaro, also of Long Branch, who left the State House Annex July 29 while under orders to stay and await further questioning.

Occhipinti turned himself in last Friday but Cocchiaro is still at large and Hyland declined to comment yesterday when asked if he knew of Cocchiaro's whereabouts.

The unauthorized leave of the two men prompted the assignment of extra state police at yesterday's hearings. Troopers in uniform and plainclothes were in the third floor corridor and at all building exits in case a witness tried to leave before he was excused.

The appearance of Kingfield, who is technically on vacation, surprised Querques, and the arrival of Ruggerio "Richie the Boot" Boiardo of Livingston as a witness caught newsmen covering the hearings off guard. He was not among those scheduled to appear before the commission.

WITHOUT COMMENT

The 80-year-old Boiardo was accompanied by Washington attorneys Thomas Wadden and Thomas Dyson with Querques sitting in as New Jersey counsel.

Hyland refused to comment on Boiardo's testimony or lack of it following a pattern set with other witnesses. Since this was Boiardo's first visit, no attempt was made to give him immunity or force him to testify.

The witness immunity protection offered by the commission will be one target of legal attack Sept. 10. Hyland noted the state cannot grant immunity from federal prosecution but said that because of federal immunity statutes similar statutes in other states have been upheld.

He also said the commission will have some anti-crime recommendations for the New Jersey Legislature and possibly for Congress, in the months ahead.

Mercer County Court Judge Arthur A. Salvatore was prepared yesterday to rule on the commission's move to cite Occhipinti for contempt but he adjourned until Sept. 10 "for practical reasons." Although Salvatore retains jurisdiction in the Occhipinti case it is expected that Kingfield will deliver the opinion on the validity of the commission's strategy when he decides the cases of Zicarelli and Russo.

Hyland said the next scheduled commission hearing is Sept. 17 when Angelo "Gyp" De Carlo is the only scheduled witness. De Carlo underwent surgery Tuesday for internal complications.

[From the Newark (N.J.) Evening News, Aug. 21, 1969]

"BAYONNE JOE" IS CAMERA SHY

TRENTON.—Joseph "Bayonne Joe" Zicarelli has an aversion for news photographers and he found a way to duck them when his appearance before the State Investigation Commission ended yesterday.

Zicarelli gave an elevator operator a $10 bill and said, "Get me out of here." He was brought to a basement level and left, while the photographers waited elsewhere.

Anthony "Little Pussy" Russo of Long Branch, another witness found more trouble awaiting him when he was excused by the commission. His car was ticketed for overtime parking at a meter while he was questioned about organized crime in a State House Annex hearing room.

[From the Newark (N.J.) Evening News, Oct. 16, 1969]

SINATRA IGNORES JERSEY WARRANT, GOES YACHTING

FREEPORT, BAHAMAS.—Frank Sinatra has arrived in the Bahamas for a stay, apparently not heeding an arrest warrant issued for him in an investigation of organized crime in New Jersey.

The warrant, enforceable only in New Jersey, was issued Tuesday at the request of the New Jersey State Investigation Commission.

Sinatra and his retinue arrived Tuesday night and took up residence in an 8-room suite at the Lucayan Beach Hotel. He went yachting yesterday abroad a chartered boat, then gambled at several casinos.

[From the Newark (N.J.) Evening News, Oct. 22, 1969]

SINATRA WON'T STAR IN NEW JERSEY "CIRCUS"

LOS ANGELES.—Singer Frank Sinatra, subpoenaed by New Jersey investigators of organized crime, said yesterday he won't appear voluntarily because "I am not willing to become part of any three-ring circus."

Sinatra, 53, said he would answer "any and all appropriate questions" by deposition or personal interview—but that investigators would have to force him to appear before any hearing, open or closed.

He explained that he is "tired of being considered an authority on organized crime," saying the implication that he knows about the underworld is baseless.

A warrant was issued last week for Sinatra's arrest after he failed to answer the subpoena from the New Jersey State Investigation Commission which is probing organized crime in Monmouth County. The subpoena said Sinatra was being called to talk about organized crime in the entire state. It did not elaborate.

PREPARED STATEMENT

In a prepared statement on the warrant—which is not enforceable outside New Jersey—Sinatra said: "Notwithstanding the fact that I am of Italian descent, I do not have any knowledge of the extent or the manner in which organized crime functions in the state of New Jersey or whether there is such a thing as organized crime.

"In short," he said, "I could not and cannot now understand how or in what manner I could qualify as a witness with respect to the subject the commission claims it is investigating."

Sinatra was served with the subpoena last June 25 while he was aboard his yacht, the Roma, off Bahr's Landing Restaurant in Highlands, N.J. He said his attorney telephoned the commission to ask the reason for the subpoena.

"The commission's attorney refused to give any information which could lead any reasonable person to believe that the commission could gain anything other than publicity by requiring me to attend its hearing," Sinatra said. "While protesting that they are not seeking publicity, the commission has insisted that I make an appearance before the commission, which appearance would result in extensive publicity.

LEGAL ACTION

"I have instructed my attorney that I would not voluntarily appear before the New Jersey State Commission of Investigation. If the commission seeks to enforce my appearance, all proper and lawful means will be ulitized to determine whether or not, under the present circumstances, my appearance can be compelled.

"I have been, and still am, willing to answer any and all appropriate questions by deposition or personal interview, but I am not willing to become part of any three-ring circus which will necessarily take place if I appear before the State Commission of Investigation in New Jersey, whether the hearings be public or private."

Sinatra was ordered to appear at a private hearing last Aug. 19 but was granted a month's delay, after which the commission said it heard nothing more from him.

"I am tired of being forced to interrupt my professional and personal life to appear and testify about matters which have the same strange blend of fiction and partial facts as are related in some of the current works of fiction," he said in the statement.

"Authors and their publishers appear to be of the opinion that they can publicize and increase the sales of a book if a fictional character having some relationship to organized or unorganized crime is portrayed in such manner as to suggest that my life is being depicted.

"Similarly, if an investigatory body has not achieved any results and desires some publicity to show they are accomplishing something, I am subpoenaed, with the knowledge that my appearance or nonappearance will result in extensive publicity."

[From the Newark (N.J.) Evening News, Oct. 22, 1969]

CLAIMS AIDE WAS PAID FOR INFLUENCE

WASHINGTON.—A longtime friend of House speaker John W. McCormack was paid between $45,000 and $52,000 to try to win favored treatment for a convicted embezzler, it was reported today.

The latest report on the alleged activities of lawyer Nathan Voloshen was carried by both the Washington Star and the Washington Post. Both newspapers said a federal grand jury in New York will be told Voloshen tried to intervene on behalf of Edward M. Gilbert, a one-time Wall Street wonder who was convicted on charges involving the embezzling of almost $2 million.

INVOLVED IN CONTRACTS

The reports also said McCormack's recently suspended administrative assistant, Martin Sweig, was involved in the contacts with prison officials involved in Gilbert's case.

McCormack suspended Sweig last weekend after the Securities and Exchange Commission alleged Sweig arranged for Voloshen to meet with the SEC to plead for an end to a ban on trading of Parvin Dohrmann Co. stock. The SEC has accused some Parvin Dohrmann stockholders of fraudulent activities.

McCormack said he knew nothing of any attempt by Sweig or Voloshen to intervene in the Gilbert case.

The newspapers said Voloshen and Sweig tried to talk New York parole officials into granting Gilbert an earlier parole. One of the telephone calls, the report said, was made in a voice that was intended to sound like McCormack's. The Star said Sweig in the past has imitated McCormack in telephone conversations.

Mr. McCLELLAN. I am glad to accept the amendment. If the senior minority member of the subcommittee would like to make a comment, I yield the floor to him.

Mr. HRUSKA. Mr. President, the amendment proposed here is a good one. I hope it will be adopted. It covers an area that, frankly, we had not quite thought about and had not considered to a point where we were prepared to include it.

As the paragraph, section 302, is now written, it applies to witnesses who flee to avoid testimony before a State investigating commission after they have been served with process. That provision is good. It does not cover, however, the situation where individuals flee before they are served with process, and where they flee in order to avoid the service of process upon them, in order that they will be required to appear to testify.

As I understand it, it is a very salutary amendment, and I would urge its adoption.

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

Mr. HRUSKA. I yield.

Mr. McCLELLAN. Mr. President, let me add this comment: To secure a conviction under this amendment, it would have to be shown that the party left the jurisdiction with the intent to evade process. I do not know whether such intent can always be proved, but when it can be proved, there ought to be a penalty for it.

I commend the Senator for having offered the amendment, and I trust that it will be adopted.

Mr. CASE. I thank the Senator from Arkansas and the Senator from Nebraska.

I do not intend to ask for a rollcall vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment was agreed to.

Mr. CASE. I move to reconsider the vote by which the amendment was agreed to.

Mr. HRUSKA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MAGNUSON. Mr. President, I want to address an inquiry to the distinguished chairman and the Senator from Nebraska. I do this at the behest of the members of the Committee on Commerce. We have a special interest in the provisions of title 9 of the Organized Crime Control Act of 1969.

Title IX creates a new chapter in title 18 of the code to deal with racketeering activity to acquire an interest in or establish an enterprise engaged in interstate commerce.

The impact of organized crime on interstate commerce is an issue about which the Committee on Commerce has been concerned in specific ways, particularly as it might relate to getting into any form of the transportation business.

The Senator from Nebraska will recall that we had a problem last year in which a group of gambling interests were trying to achieve control of Pan American Airways. We have done some preliminary work in trying to establish the volume of this activity and its impact on our system of commerce.

As my colleagues are probably aware, pursuant to Senate Resolution 202 of the 81st Congress the hearings of the Special Committee To Investigate Organized Crime—the so-called Kefauver Crime Committee of the 81st and 82d Congresses—were transferred to the Senate Commerce Committee upon dissolution of the special committee.

All the papers and all the files have been sent to the Archives, and they are still there. We have some problems once in a while with respect to people who want to look at them. They are not people who are simply curious. They are mainly researchers and writers who want to write about this matter.

The committee has authorized me to say that we recognize the responsibility and jurisdiction of our committee to protect the channels of commerce from the influence of organized crime. I am hopeful that as our scheduling and time permit, we will be able to go into this matter in some depth. I would state, however, that the preliminary data we have at our disposal at this time indicates that organized crime does indeed have a substantial impact upon interstate commerce. In short, organized crime is big business today.

Mr. HRUSKA. It is a big industry.

Mr. MAGNUSON. I can understand the Committee on the Judiciary going into the matter. I am wondering whether title IX is directed mainly at a situation in which money from criminal activities is tranferred into some kind of business that may be legitimate, in interstate commerce, but the proceeds from crime would be used to get into the business.

I wanted it clear that we would have some jurisdiction, hopefully, in a situation in which gambling interests, where they are illegitimate, went into interstate commerce, that we would have to take a look at it. I am wondering whether the Senator from Nebraska and the Senator from Arkansas would interpret title IX to try to stop what should be stopped, where the proceeds of organized crime are used to get into a business. Much of that is not so much interstate commerce as it is a local business. It might be, as we used to see in the gangster movies, a florist shop or a gravel pit, or something of that kind.

But when it gets into the field of transportation, we feel that we should take a look at it. I refer to a situation in which the proceeds can be traced to some illegal action. Robbery would be the extreme example.

If the Senators could clarify that, I would be glad to inform my committee. There is a fine line.

Mr. McCLELLAN. There is a fine line. It is certainly not the purpose or intent of the Committee on the Judiciary or the subcommittee to encroach upon the jurisdiction of other committees. However, organized crime does generally involve interstate commerce.

One purpose of title IX is directed to funds which are received from illicit activities, funds that ought play no role in interstate commerce. For example, if it is organized gambling——

Mr. MAGNUSON. If it is illegal gambling.

Mr. McCLELLAN. Yes; if it is illegal gambling, engaged in by syndicates or shylocking or whatever, and those funds are used for investment in legitimate business in interstate commerce that would constitute a crime under title IX. That kind of activity is what we are trying to prevent.

Mr. MAGNUSON. I think that clears up the matter. Also, I suppose the proceeds from illegal activities in one State that are transported to another State, to be used in further illegal activities would be included?

Mr. HRUSKA. They might be involved in title IX. I agree with the comments of the Senator from Arkansas.

Mr. McCLELLAN. We hope that the Committee on Commerce, of which the distinguished Senator from Washington is the chairman, will go further into the subject.

Mr. MAGNUSON. Mainly in the field of transportation—small airlines and trucklines, and operations of that kind. There are many instances of illegal operations in those fields.

I hope the amendment will be a deterrent, that the effects of the bill will be salutary, and that our committee will not have too much to do in this field.

Mr. KENNEDY. Mr. President, organized crime is a blight on our Nation. It has tainted our politics, our business, our unions. It has promoted our drug traffic, which is perhaps the single factor most responsible for the frightening increase in street crime.

Organized crime affects all Americans, black and white, rich and poor. But its impact falls most heavily on the urban poor. They are usually the special target of illicit gambling and narcotic activities, and they are the most frequent victims of crime in the streets.

All of us are deeply committed to the fight against organized crime. And despite some recent campaign rhetoric, that fight did not begin just yesterday. The Federal organized crime drive began and reached its presently accelerated pace from 1961 to 1968.

In 1961, Attorney General Robert Kennedy told the Senate that—

> Because many rackets are conducted by highly organized syndicates whose influence extends over State and National borders, the Federal Government should come to the aid of local law enforcement authorities in an effort to stem such activity.

The Attorney General requested and secured passage of legislation which prohibited interstate travel and the use of interstate facilities for the purpose of engaging in gambling operations, narcotic operations, extortion, bribery or arson. This legislation provided an important new arsenal for Federal officials in their war against organized crime.

Attorney General Kennedy also vastly increased the number of lawyers in the

Organized Crime Section of the Criminal Division of the Department of Justice. And he established the first intelligence unit on organized crime capable of monitoring and coordinating information from the over 20 Federal agencies whose operations touch on this crucial problem.

A few years later President Johnson established a National Crime Commission under the chairmanship of Attorney General Nicholas Katzenbach. I suggest that every Member of the Senate read the Commission's 1967 Report. They will find that the Commission recommended special grand juries to investigate organized crime, a general immunity statute to assure compulsion of testimony, the abolition of rigid evidentiary rules in perjury prosecutions, protective facilities for witnesses in organized crime trials and extended sentences for organized crime leaders. In short, the Crime Commission dealt with nearly all of the problems which S. 30 is now trying to meet.

Urged on by the Crime Commission, the Johnson administration secured passage of the law enforcement assistance program, which in my view is one of the most important contributions the Federal Government has ever made to the fight against organized crime. As all of us know, organized crime has thrived in this Nation in large measure because our local law enforcement agencies have been undermanned, undertrained and underpaid. An undermanned and undertrained police force is simply not capable of combating the sophisticated operations of the crime syndicate. And an underpaid police force is tragically susceptible to the kind of corruption which makes widespread gambling and narcotics operations possible. The law enforcement assistance program began to meet this problem. If authorized grants for "the organization, education, and training of special law enforcement units to combat organized crime, including the establishment and development of State organized crime prevention councils, the recruiting and training of special investigative and prosecutive personnel, and the development of systems for collecting, storing, and disseminating information relating to the control of organized crime." Twenty-six States have already submitted comprehensive plans for dealing with organized crime under the law enforcement assistance program.

Finally, the special strike forces established by Ramsey Clark in several major cities have proved a particularly potent weapon against organized crime. They are at the core of the present administration's efforts to combat organized crime.

I recite this history in order to emphasize that we should not approach the present legislation, or any other crime legislation, in a partisan manner.

The fight against organized crime is not a fight only by those of one party or one philosophy. It is a fight in which all of us must continue to participate. At the same time it is vital that we not be misled into thinking there is a panacea, that we not accept uncritically any bill entitled "Organized Crime" and that we appraise the merits of each piece of legislation calmly and candidly. For my part I believe the legislation before us today may make some valuable contributions to the fight against organized crime. Title VI on depositions may help prevent the intimidation of witnesses and thus increase the number of successful criminal prosecutions. Title VIII, and particularly the proposed National Gambling Commission, may give us a new means of dealing with and understanding the gambling problem. And title IX, on racketeer-influenced and corrupt organizations, may provide us with new tools to prevent organized crime from taking over legitimate businesses and activities. The Senator from Arkansas (Mr. McCLELLAN) is certainly to be commended for his work in these areas.

But there are certain aspects of S. 30 which I find objectionable. As both the Senator from Michigan (Mr. HART) and I stated in the committee report the reach of this bill goes far beyond organized criminal activity. Many of its features propose substantial changes in the general body of criminal procedures. For example, the dangerous special offender provisions are a dramatic new departure for Federal law. Yet, they are not limited to the area which the Judiciary Committee studied for so long—organized crime. They can be applied to any major Federal crimes—from violations of our civil rights laws to violations of our selective service laws. Now perhaps the special sentencing procedures should apply to all major Federal crimes. But this is certainly not a question which has been thoroughly studied by the committee.

I also object to title VII of the bill which expressly overrules the recent decision of the Supreme Court in Alderman against United States. I think it is clear that Alderman is a constitutional decision, and I do not think we serve the cause of law and order by ignoring the mandate of the Nation's highest court.

Finally, I object to the section of title IX which authorizes judges to use even the most blatantly illegal evidence for sentencing purposes under the new dangerous special offender provisions. I think this section will encourage law enforcement officials to engage in illegal conduct.

I am offering three amendments which remove these objections. I hope that Senators will support them and will pass a bill which deals specifically with the problem of organized crime and which does not infringe on the basic constitutional rights of our citizens.

AMENDMENT NO. 447

Mr. President, I call up my amendment No. 447 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 92, it is proposed to strike out lines 10 and 11, and insert the following: "of a defendant in a court of the United States for a felony enumerated in title 18, United States Code, section 1961(1), as amended by title IX of this Act, and committed when the defendant was over the age of".

Mr. KENNEDY. Mr. President, the purpose of the amendment is to limit the sentencing provisions of title X to organized crime offenders. My amendment accomplishes this by making title X applicable only to those convicted of the crimes listed on pages 74 and 75 of S. 30.

The dangerous special offender of title X are a dramatic new departure for Federal law. Yet they are not limited to the area which the Judiciary Committee studied for so long—organized crime. They can be applied to any major Federal crimes—from violations of our civil rights laws to violations of our Selective Service laws. For example, there is soon going to be a trial in Detroit of four policemen accused of conspiring to deprive citizens of their civil rights during the Detroit riots. Under title X these defendants might be subjected to special sentencing. And the defendants in the well-publicized Chicago conspiracy trial might also be subjected to special sentencing. Now perhaps this is good. Perhaps the special sentencing procedure should apply to all major Federal crimes. But certainly this is not a question which has been studied by the committee. And I think it deserves thorough study before it becomes an integral part of Federal criminal law.

I would like, if I could, to get some reaction from the distinguished Senator from Arkansas on this provision and see if it might be acceptable.

As I mentioned, the scope and the purpose of the amendment is really to limit the special sentencing provisions to those crimes which have been included on pages 74 and 75 of the legislation. That is the thrust of my amendment, and if it were the opinion of the distinguished manager of the bill that there ought to be included additional crimes that relate to organized crime, I would certainly be most willing to see those crimes included.

The amendment I have offered would, I believe, be consistent with the scope of the legislation. I think it strengthens the bill.

Mr. McCLELLAN. Mr. President, I do not know, in dealing with criminals and organized crime, whether we should omit any felony. We might be able to identify some of the areas in which organized crime is active today, but what it might be doing tomorrow may be something else.

If we undertake to do that, we might very well leave another loophole from which no one benefits except the criminal.

Why do it? It is not necessary. Who would be protected in this? It is not the public. It is not the victims who are protected. No one is protected except the very men we seek to control.

I hope this title will not be weakened to that extent. It seems to me that it would be a grave mistake to restrict dangerous offender sentencing to any list of specified offenses supposedly typical of organized crime.

If we put down murder and leave out assault with intent to murder, the latter offense would not be covered.

Tomorrow we may have a new crime on pornography enacted. Perhaps they will find it a very fruitful field and engage in it. We would be able to do nothing

about it because we would not have specified it in the bill.

Nobody would benefit from such a limitation except the criminal.

I do not propose to support an amendment from which no one will benefit except the criminal.

We cannot specify everything. We cannot anticipate everything; we have to make a statute general.

If there is any group, any category that we ought to deal with from a broad standpoint, it is those engaged in organized crime.

If we name one crime, they will commit another. We run the risk of leaving a loophole and saying that it can be taken into account in imposing additional sentences.

I believe the statute is badly needed. I gave the illustrations in my opening remarks on the bill about the Mafia leaders, the Cosa Nostra leaders, who have been convicted time and time and time again. And they are not getting adequate sentences. The same judge that sentenced Corallo in New York to 2 years for a $40,000 or a $50,000 bribery charge, sentenced him later, when he again came before him for a kickback charge, and gave him only 3 years.

This bill is meant to put some starch in the judges who are doing the sentencing and to give the U.S. attorneys some leverage to secure sentences, to obtain sentences that are commensurate with the crime committed.

I cannot go along with the proposed amendment. It confers no benefit except upon the man we are trying to punish.

Mr. KENNEDY. Mr. President, I would like to respond to the comments made by the distinguished Senator. I do not think it does us any good to reiterate the purposes and the thrust of this legislation and even to suggest that anyone who is trying to provide any kind of an amendment is not interested in attacking the problem of organized crime.

That is not what is being suggested by the distinguished Senator from Arkansas, I am sure.

I would like to ask the Senator about the case of the four policemen who were involved in that incident in the course of the riot in Detroit. They are now being tried for engaging in a conspiracy in violation of civil rights. If they are convicted of a conspiracy to violate civil rights, then they can be sentenced for three times as long because of title X.

What about Dr. Spock, who was tried under a conspiracy charge for violation of the Selective Service Act? If he was convicted of violating the Selective Service Act on the basis of a conspiracy, then he was susceptible to a much higher sentence under the provisions of this act.

Does this country feel so strongly about Dr. Spock that it wants to have him included? If it did, it is very interesting. I think that everybody ought to know it before voting on the measure.

We will cover every kind of felon and provide additional sentences for them, whether it is Dr. Spock or Lester Maddox of Georgia, if he were to be found guilty of a conspiracy for failing to go ahead with the integration of the schools, or Governor McKeithen if he were found guilty of a conspiracy. We could sentence them for a much longer period?

Why not eliminate this possibility.

I did attend some of the hearings, although I did not have the opportunity to attend all of them that I should have liked to attend, but there was never any evidence introduced in the course of those hearings that such a broad sentencing statute was needed.

Mr. McCLELLAN. I am not after Dr. Spock. I do not know that he would come within this bill. Certainly, for only one offense neither Dr. Spock nor anyone else would normally come within this title X. I do not know why his name becomes so important or relevant to this debate. This measure refers to several categories. It would include anyone who is engaged in organized crime, anyone who is a professional criminal, and anyone who is a repeat felony offender.

I do not know why anyone should not count violations of the Civil Rights Act, the draft laws, or anything else that is a felony. However, I do not think we should enumerate in a statute every offense that might occur in an aggregate fashion.

Mr. KENNEDY. Mr. President, the Senator has expressed the matter well.

What I am saying is that if we do not want to include every conspiracy felony we should pass amendment No. 447.

Mr. McCLELLAN. Mr. President, I wish to read a part of the Judiciary Committee report on S. 30. I refer to the FBI's statistical analysis summarized in table 3, on page 43, which reveals that 68.4 percent of those arrested by Federal authorities after receiving two or more felony convictions went on after their Federal arrests to accumulate an average of 4.3 new arrests per offender. Since that analysis discloses also that nearly 60 percent of La Cosa Nostra members upon new convictions of Federal felonies would qualify as "recidivists" under title X, it would have a major impact upon both La Cosa Nostra and other hardcore repeaters. It is just not true, therefore, to say that we did not intend to have this bill operate beyond a narrow definition of organized crime.

Yesterday I read an article in my hometown newspaper about a fellow who had been convicted at least two and perhaps three times. He had been in the penitentiary once for murder, as I recall. He served 4 or 5 years. When he got out he committed another crime and he has now been sentenced to life in prison. The point is that in sentencing these people who are hardened criminals, who are engaged in this kind of activity, we ought to be able to give out appropriate sentences. Some judges will not sentence criminals as they should. The court should identify people who are incorrigible. Many times they are set free, further to endanger society; they are given an opportunity to commit other crimes.

In looking at the record, I do not know why any felony that has been committed should be excluded. I do not know why any felony should be excluded in considering the aggravation of his possible sentence.

I do not know Dr. Spock and I do not know that he ever received a conviction that was sustained. I understand that there was an appeal in connection with his conviction, and the conviction was set aside. He was not a man who had three or four felony convictions. Nor was he a person who engaged in crime as a profession.

What he is supposed to have done would not normally be considered organized crime. It is certainly different from what those people do who perpetrate heinous crimes and live on the fruits of crime.

Mr. KENNEDY. Directing the attention of the Senator from Arkansas to page 94 where we get into special offenders, it is stated:

> A defendant is a special offender for purposes of this section if—
>
> (3) such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct.

That is sufficiently broad to include the example I gave of either the policemen being tried in Detroit at the present time or Dr. Spock or Reverend Coffin.

The thrust and the purpose of this amendment is to insure that this law is not made so broad, so expensive and so all-encompassing as to catch people it was not intended to catch.

We have had the study by the Crime Commission. That study is one of the most exhaustive and expansive studies ever made on the subject of crime. We also have available the hearings held by the distinguished Senator from Arkansas who is the expert in this body on this subject. If we cannot enumerate the kinds of criminal activities that make up organized crime, then I do not think we further the cause of justice by enacting a statute so all-encompassing that we pick up groups we never intended to pick up. I think that runs contrary to the purpose, scope, and direction of this very worthwhile legislation.

Mr. HRUSKA. Mr. President, in title X, to which this amendment is directed, we have a brand new concept in Federal jurisprudence. It is a brand new concept, it is considered very important, and is a necessary tool to deal with the types of crime characteristic of the syndicate. This title deals with a dangerous special offender. That dangerous special offender has led such a life and has continued to live a life of illegal activity so as to qualify for treatment under title X. It is not everyone who can qualify for this treatment.

I am confident that Dr. Spock would not qualify for membership in the club that is known as title X. As far as I know from what I have read about him, he has never been convicted of any other crime in his life. He would not qualify.

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

Mr. HRUSKA. No, I do not yield until I have made my statement and my explanation. When I have done so I will be happy to yield.

If a man has engaged in the type of criminal activity to a point he is a dan-

gerous special offender as defined by this act, if he has found criminal conduct to be so profitable and attractive and so irresistible that there is no hope for his rehabilitation, immediately upon getting less than a maximum sentence for the crime, at the end he gets out and resumes his criminal career. It is that kind of man that title X is directed toward. He should be incapacitated. The purpose of title X is to put that kind of fellow behind the bars and keep him in custody for as long as is reasonable under the circumstances and keep him out of circulation. To that extent, the purposes of public interest will be subserved, and well subserved.

Who can qualify for membership, for being treated in this special way? Dangerous special offenders. Page 94 of the bill defines, in subsection (e), what a special offender is. Here is what it says. It says that for the purposes of this section a defendant is a special offender when "on two or more previous occasions the defendant has been convicted in a court of the United States, a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof for an offense punishable in such court by death or imprisonment in excess of 1 year, and for one or more of such convictions the defendant has been imprisoned prior to the commission of such felony."

That does not apply to many people. Not many people are convicted of serious crimes that will warrant imprisonment for more than a year on two or more occasions. That is a special brand of person, and he, therefore, should be treated specially. Title X tries to do that.

Here is another man coming under that definition: a person who "committed a felony as part of a pattern of conduct"—not an isolated example, not where he slipped or did something illadvisedly or precipitately, but where it was a part of a pattern of conduct—"which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise."

That is the special criminal. That is the kind who will never be rehabilitated. There is no hope for him, because he has participated in a life of illegal conduct and has developed a skill and expertise to come by his funds in an illegitimate and illegal way.

There is a third category: "Such felony was, or the defendant committed such felony in furtherance of, a conspiracy with three or more other persons to engage in a pattern of conduct criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or conduct, or give or receive a bribe or use force as all or part of such conduct."

That is the only way it can be described with sufficient particularity to warrant a court to say that if that man has been engaged in that kind of activity, he qualifies for the special treatment of additional punishment provided under title X.

What does the amendment propose to do? In the case of that type of special dangerous offender, the guy who is engaged in helping organized crime to run the mechanism or apparatus of organized crime, or who has been convicted two or more times of a felony which would result in a sentence of more than a year, we are going to say, "Oh, don't let us be hard on him; we must excuse him and limit the areas in which he would be guilty of committing a felony and give him a sort of loophole because, poor fellow, maybe he did not know what he was doing."

After he has been through the mill twice, after he has engaged, knowingly, and consistently, in a pattern of conduct in which he develops an expertise and an ability to come into income without honest labor, in which he would be capable, it seems to me at that point we should not be charitable to him; we should be charitable to the members of the public upon whom he will prey if he is turned loose at too early a time and if we give him the benefit of a loophole of this kind.

I say this amendment should be rejected, and resoundingly rejected, because it would impair the effectiveness of the dangerous special offender sentencing, provisions. The illustrations given on the floor by the chairman of the committee should convince anyone who was in sufficient possession of the facts to give the proposal proper consideration.

It has been suggested that the proposal has not been thoroughly considered in committee or subcommittee. Mr. President, it was debated extensively in the subcommittee—very extensively—and we weighed it very carefully. The minutes will so show. It is deserving of that kind of treatment because it is a new and novel approach which is badly needed in dealing with the problem of organized crime.

Now I yield to the distinguished Senator.

Mr. KENNEDY. I prefer to get the floor in my own right.

Mr. HRUSKA. Very well. The Senator asked me to yield.

Mr. KENNEDY. I intended to ask some questions at the time the points were being made.

My good friend and colleague read from subsection (e), which defines a defendant who is a special offender for the purposes of this section. The Senator reviewed subsection (1). He talked about two or more previous convictions.

The Senator read subsection (2), which refers to a defendant who committed such felony as part of a pattern of conduct in which he manifested special skill.

But, just before subsection (3) appears the word "or," and it states "such felony was, or the defendant committed such felony in furtherance of," and so forth.

One felony—the first felony. It is not, as the Senator from Nebraska suggested, that he has to be convicted of two or more felonies. This is the defendant who gets convicted for the first time. It says so right there.

I know the Senator from Nebraska did not intend to leave the RECORD with the impression that the only people we are trying to reach, even if they were guilty of a conspiracy, would be those who were guilty of a conspiracy two or three times. This gets at Dr. Spock or Sloan Coffin. Dr. Spock was tried for a violation of the Selective Service law. He was found guilty, although his conviction was overturned by the appellate court. Rev. Coffin may conceivably be tried again. If he is tried and convicted on a conspiracy charge, I ask the distinguished manager of the bill, or the Senator from Nebraska, why, under subsection (e) paragraph (3), he would not fall into the special offender class.

I do not think that was the purpose of this provision or this legislation. The amendment I have proposed would limit it to those who are described on pages 74 and 75 of the bill. If my friend will put other crimes of the organized crime variety in there, I will cosponsor the proposal.

But let us not just broaden this language out to include anybody who has been a part of a conspiracy, any conspiracy.

That is what we are doing. And I think it is important that every Member of this body understand that any person who is guilty of any kind of conspiracy may now face a much longer penalty.

Mr. President, this legislation was never meant for that purpose. As explained so well by my two distinguished colleagues, we are interested in organized crime, not whom we can pick up in this net. Therefore, Mr. President, having in mind the purpose for which this measure was introduced, with all due respect to my friend from Nebraska, I fail to see why someone who is in violation of conspiring to evade the Selective Service laws, or those police officials who are being tried out in Detroit now for violating civil rights—if they are found guilty—should be included together in this provision.

Mr. McCLELLAN. Mr. President, just briefly, I should like for the RECORD to be clear on this: that the provisions of the bill that the distinguished Senator from Massachusetts is objecting to are not just a brainstorm of this committee or members of this committee. They are not something we just thought up and threw into the bill. They have the support of very competent authority and very reliable sources.

The many bodies that have recommended adoption or use of special offender sentencing statutes have not found it wise to restrict them to lists of offenses. The first American special offender sentencing statutes, of course, were the State general recidivist laws. At the present time, such laws are found in some 45 States. There has been no movement away from the approval of those statutes, and they are not confined, in their operation, to lists of specified crimes.

In addition, it now has become generally accepted that the concept of special sentencing should be extended beyond recidivists to professional or organized crime offenders. And in the past

7 or 8 years, a number of qualified bodies have strongly recommended it.

First, in 1962, there was the Model Penal Code promulgated by the American Law Institute, whose council of some 42 leading lawyers and jurists was chaired by Harrison Tweed, and included Judge Henry J. Friendly and Prof. Samuel Williston.

In 1963, such a proposal was made in the Model Sentencing Act adopted by the Council of Judges of the National Council on Crime and Delinquency. Among the members of the Council of Judges were Justice William J. Brennan, Jr., Judge Irving R. Kaufman, Chief Justice Paul C. Reardon, and Justice Joe W. Sanders.

The President's Crime Commission, which, of course, was chaired by Attorney General Katzenbach, and included Judges Charles D. Breitel, William P. Rogers, and Herbert Wechsler, reached the same conclusion in 1967; and, in the same year, the American Bar Association approved such a proposal on the recommendation of committees chaired by Judges J. Edward Lumbard and Simon E. Sobeloff.

What is significant, it seems to me, at this point, is that none of the proposals made by those distinguished bodies recommended that special sentencing be limited to a list of offenses. On the contrary, each proposal was made to cover all felonies.

After thorough subcommittee hearings and study, the Committee on the Judiciary agreed, for good reasons. The inadequacies and defects which title 10 will correct in our existing laws and procedures for sentencing in aggravated cases are common to all Federal felonies. To correct them only for certain crimes would distort the basic concept of special sentencing. It would permit inconsistent, unequal, and unfair treatment of defendants who are similarly situated, and it would not get the job done of protecting honest citizens from all unusually dangerous felons.

Mr. President, that is the issue here, whether we are going to soften this up. Again I say, in all kindness, I do not know who on earth is going to benefit from this except perhaps the man who ought to be in the penitentiary. If anyone else on earth is going to benefit from it, I do not know who it is. The problem is that too many judges are not giving the sentence the law permits them to give for these heinous crimes. That is why the legislatures of the several States, and why this body today, are considering this kind of a statute: In order to try to protect society against these dangerous criminals.

That is what we are driving at, to try to prevent crime, to try to punish those who commit crime, to try to bring this thing under control, to where it will be safe in America again for our people to walk the streets without fear of violence, where legitimate businesses will be free from infiltration by the crooks, the extortionists, the racketeers, and the gamblers, and where we can improve our society and its quality and afford greater protection to our people from the ravages of organized crime.

I hope we will not weaken this proposal.

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

Mr. McCLELLAN. I yield.

Mr. HRUSKA. Mr. President, this being a new concept in penology, as it is, providing for additional sentencing for the especially dangerous offender, is it not true that the subcommittee and the committee paid special attention to placing in this title X those constitutional safeguards and those constitutional limitations which are necessary in order to give a man an effective and proper day in court on this issue of additional sentencing?

Mr. McCLELLAN. Yes, it is. I think we have taken due care. Here, in this bill, before these additional penalties can be imposed, the man is entitled to a hearing. He is even entitled to an appeal. Strict rules of evidence with respect to convictions are not enforced, but he has his day, he can be heard, and he can appeal from the judgment of that court on this sentence.

In other words, we try to protect him, Mr. President, against abuses. We try to preserve the rights of anyone caught in the meshes of the law, to give him his fair trial, and then to give him his fair sentencing hearing. We go further than what the law requires now, because we are going further than the present penalties go. We are imposing an additional penalty because he is dangerous, because he ought to be removed from society; but we are giving him his day to be heard.

I do not know how we can do better. If we are going to deal with organized crime, with these violent offenders, with these professionals, with those who live off crime, we had better use every legitimate weapon under the Constitution of the United States and invoke that power, because, as the President said today, and as has been said repeatedly on the floor of the Senate and in reams of newspaper comment, we have a war on our hands, a war on crime.

Are we going to soften up and say, "Let them commit one kind of felony and they will get off"? I do not know whether all the offenses can be named. If a law is passed to create a new crime somewhere the sentencing law would have to be amended. I am advised that no State of the 45 States which have passed recidivist laws has done that. Nobody recommended it, in a competent source, from the evidence we have. Why should the Senate retreat? I hope it will not.

Mr. KENNEDY. Mr. President, I am just about prepared to vote on this amendment.

I am further distressed that the manager of the bill and the ranking minority member of the committee are unable to meet what I think have been the legitimate challenges that have been presented by this amendment, and that is that those who are involved for the first time in any felony, involved in a conspiracy, fall within the general definition of the special offender.

I think it is important, since it has been made a part of the issue here this afternoon, what sort of offenders would not be affected by my amendment. My amendment has no effect on persons convicted under any of the provisions of title XVIII relating to bribery; relating to sports bribery; relating to counterfeiting; relating to theft from interstate shipment; relating to embezzlement from pension and welfare funds; relating to extortionate credit transactions; relating to the transmission of gambling information; relating to mail fraud; relating to wire fraud; relating to obstruction of justice; relating to obstruction of criminal investigations; relating to the obstruction of State or local law enforcement; relating to interference with commerce, robbery, or extortion; relating to racketeering; relating to interstate transportation of wagering paraphernalia; relating to unlawful welfare fund payments; relating to the prohibition of illegal gambling businesses; relating to interstate transportation of stolen property; relating to white slave traffic; restrictions on payments and loans to labor organizations; embezzlement from union funds; any offense involving bankruptcy fraud, fraud in the sale of securities, or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

No one convicted of a felony involving those crimes would be touched by this amendment.

If there are other kinds of relevant crimes which should be included, I would cosponsor an amendment including them.

Mr. HRUSKA. I ask for the yeas and nays.

Mr. KENNEDY. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Indiana (Mr. HARTKE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Minnesota (Mr. McCARTHY), the Senator from South Dakota (Mr. McGOVERN), the Senator from Utah (Mr. MOSS), and the Senator from New Hampshire (Mr. McINTYRE), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is necessarily absent to attend the funeral of a friend.

The Senator from Florida (Mr. GURNEY), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Illinois (Mr. PERCY) are absent on official business.

The Senators from Vermont (Mr. AIKEN and Mr. PROUTY), the Senator from Kentucky (Mr. COOK), the Senator from New York (Mr. GOODELL), the Senator

from Oregon (Mr. HATFIELD), the Senator from Kansas (Mr. PEARSON), the Senator from Ohio (Mr. SAXBE), the Senator from Illinois (Mr. SMITH), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from North Dakota (Mr. YOUNG) is detained on official business.

If present and voting, the Senator from Kentucky (Mr. COOK), the Senator from Florida (Mr. GURNEY), the Senator from Ohio (Mr. SAXBE), the Senator from Illinois (Mr. SMITH), the Senator from Kansas (Mr. PEARSON), and the Senator from Texas (Mr. TOWER) would each vote "nay."

The result was announced—yeas 11, nays 62, as follows:

[No. 6 Leg.]

YEAS—11

Cranston	Kennedy	Nelson
Harris	McGee	Ribicoff
Hart	Mondale	Young, Ohio
Hughes	Muskie	

NAYS—62

Allen	Ellender	Packwood
Allott	Ervin	Pastore
Anderson	Fannin	Pell
Baker	Fong	Proxmire
Bayh	Fulbright	Randolph
Bellmon	Griffin	Russell
Bible	Hansen	Schweiker
Boggs	Holland	Scott
Brooke	Hruska	Smith, Maine
Burdick	Inouye	Sparkman
Byrd, Va.	Jackson	Spong
Byrd, W. Va.	Jordan, N.C.	Stennis
Cannon	Jordan, Idaho	Stevens
Case	Long	Symington
Cooper	Magnuson	Talmadge
Cotton	Mansfield	Thurmond
Curtis	McClellan	Tydings
Dole	Metcalf	Williams, N.J.
Dominick	Miller	Williams, Del.
Eagleton	Montoya	Yarborough
Eastland	Murphy	

NOT VOTING—27

Aiken	Gurney	Moss
Bennett	Hartke	Mundt
Church	Hatfield	Pearson
Cook	Hollings	Percy
Dodd	Javits	Prouty
Goldwater	Mathias	Saxbe
Goodell	McCarthy	Smith, Ill.
Gore	McGovern	Tower
Gravel	McIntyre	Young, N. Dak.

So Mr. KENNEDY'S amendment was rejected.

Mr. HRUSKA. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. BYRD of West Virginia. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there any further amendments?

Mr. MANSFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The ASSISTANT LEGISLATIVE CLERK. The Senator from Montana (Mr. MANSFIELD) proposes an amendment: At the end of the bill add the following new section entitled, "Designation and Return of Obscene or Offensive Mail Matter."

Mr. MANSFIELD. Mr. President, I ask that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, reads as follows:

That (a) chapter 53 of title 39, United States Code, is amended by adding at the end thereof the following new section:

"§ 4061. Designation and return of obscene or offensive mail matter

"(a) (1) In order to protect a person's right of privacy, the envelope or cover of any mail matter that includes any obscene mail matter or any mail matter that may be obscene or offensive shall be marked by the sender with the words 'The Enclosed Material May Be Obscene or Offensive to the Addressee'.

"(2) For purposes of this subsection—

"(A) 'obscene mail matter' or 'mail matter that may be obscene or offensive' means any matter which—

"(i) is tangible, including any device, and used or adapted, or capable of being used or adapted, to depict or arouse (through readings, sound, touch, or observation) nudity, interest in nudity, sexual conduct, sexual excitement, or sadomasochistic abuse; or

"(ii) solicits or offers to send matter of the type described in clause (i) of this subparagraph.

"(B) 'nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, the female breast with less than a fully opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

"(C) 'sexual conduct' means acts of masturbation, homosexuality, sexual intercourse, physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks, or, in the case of a female, physical contact with her breast;

"(D) 'sexual excitement' means the condition of human male or female genitals in a state of sexual stimulation or arousal; and

"(E) 'sadomasochistic abuse' means flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

"(b) (1) In order further to protect a person's right of privacy, any mail matter received by an addressee, and determined by him in his sole discretion to be obscene, may be returned to the sender through the mails, without prepayment of postage by the addressee, by placing the words 'Obscene Mail Matter' in the upper right hand corner of the address area of the envelope or other cover used to return such matter.

"(2) The sender shall pay, for each piece of mail matter returned under this subsection as being obscene, postage at the rates of first-class mail plus an additional service charge.

"(3) The service charge, which shall not be less than 50 cents for each piece, shall be determined and adjusted at least once each year by the Postmaster General and shall approximate the cost incurred by the Department with respect to the delivery of such matter and the collection of postage and other expenses incurred. The service charge shall be in lieu of any other charges assessed under this title for unpaid or part paid mail.

"(c) A sender who fails to mark the envelope or other cover of mail matter as required by subsection (a) of this section, or who refuses to pay the postage or the service charge for any piece of mail matter, returned under subsection (b) of this section as obscene or offensive, shall be subject to a civil penalty of $5,000 for each piece of such matter which is not marked or refused. A civil action to collect any such civil penalty may be brought by the United States in the district court of the United States for any judicial district in which the sender resides, has his principal place of business, or is found, or in the district court for the judicial district to which mail matter, subsequently resulting in the civil action to collect the civil penalty, was sent. Process of any such court for any such district issued in any such action may be served in any other judicial district.

"(d) The Postmaster General may prescribe such rules and regulations as may be necessary to carry out the provisions of this section."

(b) The analysis of such chapter, immediately preceding section 4051, is amended by adding at the end thereof the following new item:

"4061. Designation and return of obscene or offensive mail matter."

Mr. MANSFIELD. Mr. President, I will be brief.

The amendment is in effect the bill, S. 3220 which I introduced on December 9 of last year and which was read twice and referred to the Committee on Post Office and Civil Service.

Mr. President, just as the "pushers" are the ones most responsible for and, therefore, the most guilty in the traffic of narcotics so is the "pusher" who distributes pornographic material through the mails the most responsible and the most guilty in that area.

It is not a question so much of being the recipient of narcotics or pornographic materials, although that is a vital question, but, rather, it is more a question of how we must deal with those who have the primary responsibility. In that respect, I am glad to note, very glad to note, that the Judiciary Committee has reported out a narcotics control bill which will be brought up on the floor of the Senate very shortly.

This pending amendment deals with pornography. It seeks to put the "fix" on those who are primarily responsible for the propagation and continuation of the distribution of unsolicited pornographic materials into the homes of our people.

This traffic in smut must cease and those who are responsible for it must be punished.

Mr. President, pornography, obscenity, filth, and perversion: that is the package that is sent to my constituents in Montana. That is what is being sent to citizens across the land. And its distributors reach into the privacy of one's home through an instrumentality of the Federal Government—the U.S. Post Office Department.

Much is said lately about our first amendment. Freedom of religion and of the press; the right to assemble peaceably and to speak out—these are fundamental guarantees under our Constitution. But what is also protected is our right of privacy and that right, though long recognized as equally fundamental, is perhaps the least enforced of all of our freedoms when it comes to the filth and dirt that is brought to our homes by the Post Office.

I do not criticize the Post Office Department. Its hands are tied. But we in the Congress could untie them if we act now—this year—to crack down on the peddlers of filth.

I note that the President of the United States in the state of the Union message today said:

Last year this Administration sent to the Congress 13 separate pieces of legislation

dealing with organized crime, pornography, street crime, narcotics and crime in the District of Columbia.

The latter have all passed the Senate already; the pending bill deals with organized crime—my proposal deals with pornography.

The President said further on:

My proposals to you have embodied my belief that the Federal Government should play a greater role in working in partnership with these agencies.

The sending of obscene materials through the mails is purely a Federal matter, as I see it.

My proposal would compel the filth peddler to mark the envelope he uses—the one that is now often blank—with a warning that the enclosure could be obscene or offensive. With such a warning there can be no mistake. The addressee is fully protected. He would be put on notice, as would his entire household. He would know and his family would know that what is inside may violate his standards of decency and those he wishes to impress upon his children. And that is his right.

May I say that such a warning is not new to the legislative field. It has already been imposed by the Congress in the case of cigarettes. Indeed, without even deciding that there is a danger involved in smoking, cigarette manufactuers are compelled to warn each purchaser of a possible hazard. By the same token, under my bill, it need not be decided that the material enclosed is obscene, per se. But if there is that possibility, then the envelope must say in plain and simple words, "The Enclosed Material May Be Obscene or Offensive to the Addressee."

A second feature of my proposal would permit the addressee of obscene mail to return the matter to the sender, without charge. And it is left up to the addressee himself to decide what violates his standard of decency. The return mail fee would be paid by the original sender—the pusher, in other words—with an additional handling charge.

Finally, violators of either of these provisions would be met with a penalty of $5,000.

Perhaps my proposal is not a perfect solution. It is one, however, that I believe brings into proper balance the right of privacy on the one hand and the right of the press to use the mails on the other. If enacted it will for the first time impose an effective check on the distribution of obscenity in our society and place the burden where it belongs—on the filth peddler.

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

Mr. MANSFIELD. Yes, indeed. I yield to the chairman of the Committee on Post Office and Civil Service, in whose committee S. 3220, the bill now in the form of an amendment, is resting.

Mr. McGEE. Mr. President, the Committee on Post Office and Civil Service is very deeply concerned with this matter to which the distinguished majority leader has addressed himself. We have received a good bit of voluntary advice in this area. It would be my first impression that if we were to label a matter obscene in advance without some kind of an agreement on tests we might have some difficulties in definition, as this simple illustration will make clear.

We receive a great deal of this so-called obscene mail from our constituents around the country. They want us to do something about. I received a very thick packet from a women's club in an unnamed city. It contained pages that had been torn from a magazine called Charm and another magazine called Harper's Bazaar, in which they showed perfume ads and ads for supporting clothing of one sort or another. The request was that we get my committee busy and ban this pornography from the mail. For someone it was offensive, but for most persons, I suppose it was salesmanship, advertising, or whatever one may call it.

To my mind there is a pretty clear line that one can draw beyond which things are pornographic, but I am not a dictator. This is the problem of the committee in responding to this situation.

I remember receiving in another envelope the colored pages from a prominent mail order house—well, it was Sears, Roebuck—that contained ads for all the unmentionables they refer to. To someone that was so pornographic that they wanted Sears, Roebuck to stop those ads.

What this means is that we must have a little more latitude there. I suggest to the Senator that to stamp an article that is being mailed for advertising purposes as obscene, and that it may be offensive, perhaps would require a very careful look so that one could say it is obscene.

In this way we would get at what the distinguished majority leader is talking about. I would like to say to him that the Committee on Post Office and Civil Service would be willing to look at the majority leader's proposed amendment, in order to come up with a recommendation to this body that might be approved by Members of this body to assist in what I think is a very meritorious curbing of the attitude of laxity and permissiveness that seems to be taking advantage of the householder, who has no name in many of these mailings, and most of all, the children in the household. However, we have psychiatrists who testify that none of this material is looked at by anyone except men over 50. I do not mean to attach any significance to that age, but was merely giving my age category as an example. Whatever the age, it is still an intrusion on privacy. I believe we would have to have a very careful weighing of the language that would be required in the circumstances.

My committee is willing to move right now to have a look at this matter. I do not think it would be next week or the following week. At the moment we are preparing to go to conference on a postal pay bill left over from last session and a postal pay matter which is a measure of some considerable urgency.

However, between those matters, I say to the Senator from Montana and I pledge, we will make every effort to take up the matter and make a constructive recommendation along the lines the majority leader has set out in the amendment.

Mr. MANSFIELD. I appreciate the position in which the chairman of the Committee on Post Office and Civil Service finds himself. I know that he will give this matter his prompt attention. I hope it would be possible to report out legislation dealing with obscenity through the mail—not the Sears, Roebuck type but the real type—within the next month or two. If the Senator could give me a definite assurance that something would be done within 1 or 2 months, I would be appreciative and I would withdraw my amendment.

Mr. McGEE. Within that 1- or 2-month time interval I am sure we can have adequate opportunity for the committee to consider this matter and report back to this body and make a recommendation. I will make every effort to move in that direction and encourage any action in that direction.

Mr. MANSFIELD. I appreciate the remarks of the Senator from Wyoming, who is chairman of the Committee on Post Office and Civil Service. His word is always his bond.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). The amendment is withdrawn.

The bill is open to further amendment.

Mr. MANSFIELD. Mr. President, I wish to inform the Senate, and I have discussed this matter with the acting minority leader, as well as the chairman of the committee and the ranking minority member of the committee, that it would be our intention to dispose of as many amendments as possible tonight. Senators who have amendments should be ready to offer them.

I thank the Senator from Michigan.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SPONG in the chair). Without objection, it is so ordered.

Mr. HART. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. On page 58, strike out all of title VII and insert in lieu thereof the following: Section 701.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Is there not included in the document I sent forward the addition of some language?

The PRESIDING OFFICER. Yes.

The ASSISTANT LEGISLATIVE CLERK. The Senator from Michigan proposes an amendment for himself and Mr. KENNEDY.

Mr. HART. Mr. President, I suggest we start over again. I send an amendment to the desk, for myself and the Senator from Massachusetts (Mr. KENNEDY), and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

Strike all of Title VII—Litigation Concerning Sources of Evidence—and substitute the following:

"Section 701. Chapter 223, title 18, United States Code, is amended by adding at the end, thereof, the following:

" '3504, Disclosure of Evidence. Any evidence or material disclosed to a party solely for the purpose of permitting a determination as to the admissability at trial of that or other evidence and material shall not be disclosed by any party or by the court except to the extent that the placing of such evidence or material in the court record is required for the purposes of court rulings.' "

The PRESIDING OFFICER. Does the Senator from Michigan offer the second amendment as a modification of the first?

Mr. HART. Mr. President, as far as the offerers are concerned, it makes no difference. I was under the impression that the document I sent forward the first time contained in full the language that was reported in the second document just read. The intention of the offerers is to strike title VII, but to add the language that is contained in the second document. I would appreciate a suggestion from the Chair as to which is the most convenient way to proceed.

The PRESIDING OFFICER. The initial amendment was reported. Therefore, it would have to be modified or withdrawn.

Mr. HART. Mr. President, I withdraw the first stated amendment, and offer the second instead.

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

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. We are now proceeding on an amendment offered to strike title VII and to add the language with respect to the limited disclosure. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HART. Mr. President, some of us feel that the amendment offered is of substantial importance. I shall not, unless it is desired, detain the Senate at this hour.

I would hope, however, that overnight, and as our colleagues read the RECORD, they will consider the desirability, as this amendment would do, of preserving the decision of the Supreme Court in *Alderman* v. *United States,* 394 U.S. 165. This case, the opinion in which was written by Mr. Justice Byron White, was handed down in 1968. The committee bill, by title VII, would overrule that decision, and that, in the judgment of those of us offering the amendment, would be both unconstitutional and undesirable.

I would suggest, Mr. President, that while the majority report of the committee argues that the Alderman decision was based on the supervisory power of the Supreme Court over other Federal courts, and hence an action which Congress can override, actually the Alderman case was based on constitutional requirements, and hence is something which Congress, absent a constitutional amendment, cannot act to override.

I suggest that the cause of law and order is really not advanced by ignoring the mandate of the highest Court in the Nation. I would hope that tomorrow we will be able to persuade a majority of our colleagues that this is a worthwhile approach and recommendation.

I yield now to the Senator from Massachusetts, actually the original drafter of the amendment, who has now permitted me to offer it as a cosponsor.

Mr. KENNEDY. Mr. President, I think the explanation of the Senator from Michigan is complete. The Supreme Court has stated a position, and I share the belief of my distinguished colleague from Michigan that it is inappropriate, if not actually unconstitutional, to retain the present provisions of title VII the organized crime bill.

I feel that the amendment he has offered for himself and for me brings this legislation into conformity with the Supreme Court decision, and I share his hope that it will be accepted.

Mr. HART. I thank the Senator.

Mr. McCLELLAN. Mr. President, let me add a few comments before we quit tonight. It is well within the affirmative power of the Congress to enact proposed section 3504(a)(2) of title VII. It is not, as suggested, unconstitutional. Paragraph (2) would overrule the Supreme Court's decision in *Alderman* v. *United States,* 394 U.S. 165 (1969), which held that Government records of any illegal electronic surveillance which a criminal defendant has standing to challenge must be given to him without a preliminary judicial determination that they have possible relevance to his case.

The reason why Congress can reverse the rule laid down by the Alderman case is that that decision was not an interpretation of the Constitution, but an exercise of the Court's power to supervise the administration of Federal criminal justice.

That power was described by Mr. Justice Frankfurter for the Court in *McNabb* v. *United States,* 318 U.S. 332, 340 (1943), in these terms:

[T]he scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence.

It is a basic rule of practice of the Supreme Court to place its decisions upon nonconstitutional grounds, such as statutory interpretation or the supervisory power, whenever doing so permits avoidance of a constitutional issue. See, for example, *Peters* v. *Hobby,* 349 U.S. 331 (1955). It must be presumed, therefore, that the Court followed this practice in the Alderman case unless the contrary can be affirmatively shown.

In its statement of the holding of the case, the Court declared:

We conclude that surveillance records as to which any petitioner has standing to object should be turned over to him without being screened *in camera* by the trial judge. *Alderman* v. *United States, supra* at 182.

Nowhere did the Court explicitly say that this practice was mandated by the fourth amendment. Instead, the Court merely ruled that this practice would "substantially reduce" the incidence of error by guarding against the "possibility that a trial judge acting in camera would be unable to provide the scrutiny which the fourth amendment exclusionary rule demands"—394 U.S. at 184. In short, the fourth amendment guarantees freedom from unreasonable searches and seizures, and this freedom must be enforced by the suppression sanction, but the disclosure rule implementing that sanction is not constitutional doctrine, as it is well settled that the details of implementation of constitutional guarantees often lie below the threshold of constitutional concern. (See *Ker* v. *California,* 374 U.S. 23, 34 (1963).) The significance of the use of the word "should" in the Alderman holding is emphasized by the Court's later concession that its decision "is a matter of judgment" on which "its view" was that in camera inspection by the trial court is inadequate—394 U.S. at 182. Indeed, the Court expressly based its decision in part upon its desire to "avoid an exorbitant expenditure of judicial time and energy," 394 U.S. at 184, a consideration most appropriate in the exercise of the supervisory jurisdiction. Thus, the Court's language indicates that the ruling was supervisory. Nothing in it may be used to make the necessary affirmative showing that the Court was reaching out needlessly to decide a constitutional issue.

A supervisory decision by the Supreme Court is subject to change or overruling by the Congress. Exactly such a course was followed when the Congress enacted the Jencks Act, 18 U.S.C. 3500 (1958), modifying the Supreme Court's decision in *Jencks* v. *United States,* 353 U.S. 657 (1957). Thus, the Congress is equally free to enact title VII of S. 30 despite the Supreme Court's supervisory decision in the Alderman case.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

Mr. McCLELLAN. No; it is to go over until tomorrow. I understood we wanted it to be the pending business tomorrow.

Mr. HART. We merely wanted this brief explanation in the RECORD.

Mr. McCLELLAN. We have nothing further on this matter at this time.

Mr. YOUNG of Ohio. Mr. President, the proposed Organized Crime Control Act of 1969 reported by the Committee on the Judiciary supposedly provides precedures necessary to abolish organized crime. However, in doing so the bill also presents one of the most serious attacks in our Nation's history against individual privacy and the concept of due process of law.

The bill proposes substantial changes in the general body of criminal procedures. It establishes new rules of evidence and procedures applicable to all criminal jurisprudence. Unfortunately,

these provisions do not restrict themselves solely to organized criminal activities. They also seriously threaten the civil liberties of all Americans. While this proposal does contain some meritorious features, I would prefer to see no legislation at all rather than to vote for the bill as reported by the Judiciary Committee.

As a former chief criminal prosecuting attorney, I believe now as I believed then that certain punishment, like a shadow, should follow the commission of a crime. However, I also believe that in determining whether or not an individual is guilty of a crime he be afforded every protection assured him in the first 10 amendments to our Constitution.

Very definitely, I think all Americans would do well to reread the first 10 amendments to the Constitution of the United States, which we affectionately term the Bill of Rights. These amendments were adopted on demand of those patriots who won our War of Independence. Except for the fact that these demands were adopted by the Congress and by the legislatures of the Thirteen Original States, that Constitution adopted by the members of the Constitutional Convention sitting in Philadelphia, presided over by George Washington, would not have been adopted and ratified by the several States at the time it was.

An example of the flagrant flouting of constitutional guarantees is contained in title II which establishes a general immunity statute applicable to any Federal court, grand jury, or administrative proceeding, as well as congressional proceeding. It replaces a host of carefully drawn and limited specific immunity provisions and makes inroads on the fifth amendment protection against self-incrimination which are both undesirable and unconstitutional. Being a blanket provision, title II obviously is not limited to organized crime. Furthermore, the bill restricts immunity to protection of an individual against use of compelled testimony or documents but not against prosecution for matters as to which a person was compelled to testify or produce documents.

In 1892, the Supreme Court held a similar immunity statute unconstitutional because it protected against use of evidence but not against prosecution. Since that time Federal immunity statutes have typically provided immunity against prosecution as well as use. This provision of the bill is a serious erosion of the rights guaranteed all Americans in the fifth amendment to the Constitution of the United States.

As another example, title VII creates a drastically altered procedure for considering any claim—in any Federal, State, or local court or agency—that evidence is inadmissible because it is the direct or indirect product of a violation by anyone of the Constitution, or any Federal law or regulation. These novel provisions, which are not limited to organized crime cases, are clearly an overreaction to recent Supreme Court decisions concerning the unique problem of unlawful electronic eavesdropping or wiretapping.

Rather than to encourage greater invasion of individual privacy, I would favor enactment of legislation to prevent law-enforcement or other officials of our Government from engaging in or authorizing so-called bugging of conversations between any persons whatever. We should outlaw all wiretapping, public and private. I am opposed to any legislation permitting wiretapping, even if such wiretapping were authorized by a U.S. district judge, except only when clear and convincing proof is offered and it is determined by the U.S. district judge that the security of the Nation itself would be jeopardized and endangered unless such action were taken.

Supreme Court decisions since 1914 have established the so-called exclusionary rule under which physical or oral evidence obtained directly by, or as the fruit of, activity that violates the Constitution is inadmissible in Federal and State proceedings. In addition, with respect to the peculiar problem of unlawful electronic eavesdropping or wiretapping the Supreme Court held last year in Alderman against United States that once illegal surveillance is established the Government must disclose all records thereof to a defendant so that defendant may determine what other evidence may be inadmissible as being the fruit of such illegal surveillance.

Title VII seeks to change both of these principles which were adopted by the Supreme Court to protect constitutional rights.

Mr. President, these are just two examples of the possibilities in this bill for flagrant violation of the constitutional rights of each and every American citizen. There are many more.

While the bill does contain some features which would assist law-enforcement officials in controlling crime, it is, as reported from the Judiciary Committee, in essence, an assault on liberty in the disguise of crime control.

Those sections which would restrict and seriously endanger the civil liberties of Americans should be rejected unless the bill is amended to restrict their scope solely to organized criminal activities.

Mr. President, the Washington office of the American Civil Liberties Union recently prepared a detailed analysis of the manner in which the provisions of the proposed bill run counter to the law and spirit of the Constitution and contain manifold possibilities for abuse. I ask unanimous consent that this analysis be printed in the RECORD.

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

ORGANIZED CRIME CONTROL ACT—S. 30

TITLE I—SPECIAL GRAND JURIES

Section 101 of Title I seeks in a variety of ways to increase the autonomy and expand the powers of federal grand juries. However, like most provisions of S. 30, § 101 is in no way limited to the needs of the fight against organized crime. The ACLU objects to the grant of power under Title I for federal grand juries to issue reports and presentments critical of public employees when there is insufficient evidence to support indictments. Any individual, group or organization made the subject of a grand jury report has no adequate means of defending himself against criticism issued by this official body which has secured its information by using subpoena power and compulsory testimony, and whose proceedings are secret. Such a procedure is fundamentally unfair and inherently abusive. The attempts to provide safeguards in § 101 are simply not adequate to protect against unfairness and abuse.

Particularly objectionable is the authority in proposed § 3333 of 18 U.S. Code for submitting reports concerning "noncriminal misconduct, malfeasance or misfeasance in office by a public officer or employee" (defined to include any Federal, state, territorial, or local government officer or employee). There is no limitation on the nature of the "misconduct"; there is only a requirement that the facts have been revealed in the course of an investigation into offenses of any sort against the federal criminal laws. Thus, a jury investigating alleged bribery of police officers could apparently report on whether particular policemen may have breached some non-criminal regulation, such as being improperly uniformed. The breadth of this new power is intolerably great.

Though a person named in a report of "noncriminal misconduct" is given an opportunity to testify, the value of that right is critically undercut by the fact that he does not know the identity of his accusers, and has no right to cross-examine or present witnesses or to obtain and present documentary evidence.

A further principle defect to be noted is that the provision for judicial review of such reports is largely illusory. A report may be made public if it is supported by "a preponderance of the evidence." However suitable that standard is in an adversarial civil proceeding, it is a plainly inadequate safeguard where, by and large, only one side may present evidence. For the same reason the provision for an appeal by a person named is also an illusory safeguard.

Finally, though a criticized public employee is given an opportunity to answer before a report is made public, it is doubtful in the extreme that 20 days will be sufficient where the grand jury may have had over three years to investigate and need not reveal the basis for its allegations.

Two other "report" provisions deserve brief comment. The provision for proposing recommendations for legislative, executive or administrative action is inconsistent with the doctrine of separation of powers. *See, e.g., United Public Workers* v. *Mitchell,* 330 U.S. 75 (1947); *Application of United Elec. Workers,* 111 F. Supp. 858, 864 (S.D.N.Y. 1953). A grand jury is an arm of the court, and its members, like members of the judiciary, are not accountable to an electorate and are ill-equipped to render political decisions, particularly since their secret proceedings prevent the public from evaluating the bases of their recommendations. Since the grand jury has no power to act upon its recommendations, the risk of "exposure for the sake of exposure" is even greater, *see, e.g., Watkins* v. *United States,* 354 U.S. 178, 200 (1957), even if identified persons are not specifically criticized.

The provision for reports "regarding organized crime conditions in the district" has the unusual virtue of being related to the stated purpose of S. 30, but is vague and undefined. The lack of any clear meaning creates a serious possibility of abuse.

Section 102 of Title I, which purports to make "minor language changes" and clarifications in the so-called Jencks Act (18 U.S.C. § 3500) concerning production of statements by government witnesses, actually appears to make profound and retrogressive changes in the law relating to grand jury transcripts and Rules 6 and 16 of the Federal Rules of Criminal Procedure.

Under the Jencks Act, "statements" by a government witness to a government agent and in the possession of the government are

not producible prior to trial and may be produced only after the witness has testified. Under § 102, this restriction on pretrial discovery would be extended in two ways. First, it would apply to "statements" made by a witness to anyone, if they happen to be in the possession of the government. Second, "statement" is redefined to include grand jury testimony.

Under present law either type of "statement" is in some circumstances producible before trial pursuant to Federal Rules 6(e) and 16 (a) and (b). *See, e.g., United States* v. *Hughes,* 413 F. 2d 1244 (5th Cir.), *cert. granted, sub nom. United States* v. *Gifford-Hill-American, Inc.,* 38 U.S.L.W. 3222 (U.S. Dec. 15, 1969) (No. 515, O.T. 1969); *United States* v. *American Oil Co.,* 386 F. Supp. 742, 751–53 (D.N.J. 1968). The amendments of the Federal Rules in 1966 and the recent court decisions, *see, e.g., Dennis* v. *United States,* 384 U.S. 855, 870 (1967), have reflected and furthered a widespread recognition that the proper trend should be toward "disclosure, rather than suppression" and more, rather than less, pretrial criminal discovery. In running counter to that salutary and enlightened trend, § 102 does not even have the benefit of a stated rationale or demonstration of supposed need. It was added to S. 30 in Committee and was not the subject of comments at the hearings. The Committee Report mentions an intention to substitute "a uniform statutory procedure" for the "varying practices" of the courts. But § 102 establishes that uniform procedure on perhaps the very lowest level of pretrial discovery, requiring little discovery that would not be permitted in any event under *Dennis* and amended Rule 16, and curtailing substantial discovery now routinely available. As drafted, the provision is ill-considered and unjustified.

TITLE II—GENERAL IMMUNITY

Title II establishes a general immunity statute applicable to any federal court, grand jury or administrative proceeding, as well as Congressional proceeding. It replaces a host of carefully drawn and limited specific immunity provisions and makes inroads on the Fifth Amendment protection against self-incrimination which are both undesirable and unconstitutional.

Being a blanket provision, Title II obviously is not limited to organized crime. But there are defects more striking than its unselective breadth, particularly the restriction of immunity to protection against *use* of compelled testimony or documents (or the "fruits" thereof) against a person in a criminal case, rather than protection against *prosecution* for matters as to which a person was compelled to testify or produce documents.

In 1892 the Supreme Court held a similar immunity statute unconstitutional because it protected only against *use* of evidence but not against *prosecution. Counselman* v. *Hitchcock,* 142 U.S. 547 (1892). Since then federal immunity statutes have typically provided immunity as to prosecution, not only use. *Counselman* is still the law. *See Stevens* v. *Marks,* 383 U.S. 236, 244–45 (1966). Only a few years ago the Judiciary Committee reported an anti-racketeering bill (S. 2190) with immunity against prosecution rather than just use because of doubts that otherwise the law would be unconstitutional. *See S. Rept. No. 1498,* 89th Cong., 2d Sess. 19–20 (1966). Nothing has happened since then to lessen those doubts.

Title II may be of doubtful constitutionality on another ground. It only gives protection against the use of compelled testimony against the witness "in any criminal case." Although the Fifth Amendment is also framed in terms of "any criminal case" it has long been the law that the Fifth Amendment offers protection as to a variety of penalty or forfeiture proceedings. *Boyd* v. *United States,* 116 U.S. 616 (1886); *cf. One 1958 Plymouth Sedan* v. *Pennsylvania,* 380 U.S. 693 (1965). If Title II is intended to apply to anything less than what is covered by the Fifth Amendment it is unconstitutional, for the scope of the immunity must at least equal the scope of protection of the Fifth Amendment. *E.g., Brown* v. *Walker,* 161 U.S. 591 (1896).

Title II has other defects. Although a court order must be obtained in order to require a witness to testify in court proceedings, the requirement is a sham since the court "shall" issue the order if requested by the district attorney, and therefore it has no discretion. If he has the approval of the Attorney General, the Deputy Attorney General or an Assistant Attorney General, a district attorney may request such an order anytime *he* thinks a person has refused *or is likely to refuse* to testify on self-incrimination grounds and if *he* thinks the testimony *may be necessary* to the public interest. Such elastic standards leave enormous uncontrollable leeway and possibility for abuse.

In addition, the power of the district attorney to compel a witness to testify is not even limited to cases in which the government is a party. It is apparently available in any case in a federal court, including civil actions between private parties. The need for or propriety of such power in any civil proceeding, and particularly in a non-governmental proceeding, is highly questionable. This unjustifiable breadth—coupled with the lack of any effective court review or control, and the power granted under Title III to incarcerate a witness who refuses to testify—compounds the potential for abuse.

Finally, in requiring that a witness must refuse to testify and specifically claim his Fifth Amendment privilege, Title II creates unnecessary pitfalls for the unwary or unsophisticated, particularly where the district attorney, agency or committee has already obtained or issued an order compelling testimony. A naive or ill-advised witness may well feel that there is no point in claiming his privilege because he can be ordered to testify, and for even the fullest, most incriminating testimony he would receive no immunity whatsoever.

TITLE III—RECALCITRANT WITNESSES

Section 301 of Title III provides that any witness in any court or grand jury proceeding who refuses to testify after being ordered to pursuant to Title II may be summarily confined by the court, without a jury trial, until he is willing to testify. Again, § 301 is not limited to proceedings relating to organized crime nor even, due to the breadth of Title II, to criminal proceedings initiated by the government.

Moreover, since Title I extends the life of a grand jury to up to 36 months—and at times more—and since § 301 does not require that the investigation in question still be in process, such a provision seems punitive, rather than merely an attempt to get a witness to talk.

Section 301 also seems to alter the usual rule on bail. Under Rule 46(a)(2) of the Federal Rules of Criminal Procedure, bail pending appeal may be allowed "unless it appears that the appeal is frivolous or taken for delay." Under present practice the standards of Rule 46 are currently applied in appeals from civil confinement of the sort authorized by § 301. *See, e.g., United States* v. *Coplon,* 339 F. 2d 192 (6th Cir. 1964) (denying bail where appeal is "clearly frivolous").

Section 301 contains a provision which, according to the Committee Report (p. 149), is merely "designed to make mandatory what is now present practice" as to bail pending appeal. In fact, however, § 301 institutes a novel standard: a person shall not be admitted to bail pending appeal "unless there is a substantial possibility of reversal." If that provision is intended to mean no more than Rule 46, it is unnecessary and confusing. If it does mean more it is unjustified and objectionable, as it imposes an unduly great burden on an incarcerated appellant and unnecessarily circumscribes a court's discretion.

TITLE IV—FALSE DECLARATIONS

Title IV contains provisions plainly designed to make it easier to convict people for perjury, with a corresponding erosion of the present protections against unwarranted perjury convictions.

Although Title IV does not appear to cover any false statements not already covered by the existing perjury laws (18 U.S.C. §§ 1621–22), it does abrogate three long-established, time-tested rules designed to protect against unwarranted perjury proceedings. It does away with the historic two-witness rule. See *Weiler* v. *United States,* 323 U.S. 607 (1944). It permits convictions to be based solely on circumstantial evidence rather than direct evidence of falsity. It relieves the government of the obligation to prove that a statement was in fact "knowingly false," by permitting a conviction to be based on nothing more than allegedly "contradictory declarations." Such a procedure is inconsistent with the presumption of innocence.

Finally, although Title IV properly bars prosecution if a witness admits in a continuous proceeding the falsity of a contradictory statement in that proceeding, it limits that bar to situations where at the time of the admission the false statement "has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed." These conditions are too vague and subjective to provide sufficient notice and guidance to a person as to whether he is committing a crime. Indeed, if contradictory statements standing alone are sufficient for a conviction beyond a reasonable doubt, then it is difficult to see how the same contradictory statements, once made, have not made manifest that the falsity has been or will be exposed. As a result no admission would be soon enough to bar prosecution.

As usual, Title IV is not limited to proceedings involving organized crime.

TITLE V—PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

Title V, which authorizes the Attorney General to provide facilities for the safety and security of government witnesses concerning organized criminal activity, appears to be a useful tool for securing needed testimony. However, in light of the concern felt recently about detention facilities under the Emergency Detention Act of 1950, it would be desirable to make it perfectly clear that no witness can be unwillingly confined or detained in such facilities.

TITLE VI—DEPOSITIONS

Title VI provides for the taking of pretrial depositions from witnesses when "due to exceptional circumstances it is in the interest of justice." Although many of the provisions of Title VI are identical to the existing provisions of Rule 15 of the Federal Rules of Criminal Procedure, which authorize a defendant to take a prospective witness' deposition in certain circumstances, there are important differences which make Title VI objectionable.

While Rule 15 permits depositions to be taken only in limited specified circumstances (*e.g.,* where testimony is "material" and the witness may be unable to attend trial), Title VI adopts a vague standard which tends to carry us unduly close to a "paper record trial." This risk is heightened by the absence of any provision in Title VI governing the *use* of a deposition. (Rule 15 specifies carefully how and when a deposition can be used at trial.)

There are even more fundamental objections. Title VI does not substantially ex-

pand a defendant's right to pretrial discovery. However, it does force defense counsel to cross-examine government witnesses long before trial, and hence long before it has been possible to learn the full scope of the evidence. As a result, unlike in a civil case, such pretrial depositions will tend to impair a defendant's constitutional right to cross-examine witnesses. This impairment exists even though Title VI requires the government to produce at the deposition any statement of the witness which it would be required to produce if the witness testified at trial. Title VI is premature until a defendant is given substantially greater rights to pretrial discovery.

Finally, though it is largely justified in the Committee Report (pp. 60–61) by problems in cases concerning organized crime, Title VI is not limited to cases involving organized crime.

TITLE VII—LITIGATION CONCERNING SOURCES OF EVIDENCE

Title VII creates a drastically altered procedure for considering *any* claim—in *any* federal, state or local court or agency—that evidence is inadmissible because it is the direct or indirect product of a violation *by anyone* of the Constitution, or *any* federal law or regulation. These novel provisions, which are not limited to organized crime cases, are clearly a reaction to recent Supreme Court decisions concerning the unique problem of unlawful electronic eavesdropping or wiretapping, but in applying to all unlawfully obtained evidence they are equally clearly an overreaction. Even the Justice Department concedes that constitutional problems may exist under Title VII and urges that it be limited to claims involving electronic eavesdropping and wiretapping.

Supreme Court decisions since 1914 have established the so-called exclusionary rule under which physical or oral evidence obtained directly by, or as the fruit of, activity that violates the Constitution (*e.g.*, an unlawful search or coerced confession) is inadmissible in federal and state proceedings. *See, e.g., Weeks* v. *United States*, 232 U.S. 383 (1914); *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385 (1920); *Mapp* v. *Ohio*, 367 U.S. 643 (1961); *Wong Sun* v. *United States*, 371 U.S. 471 (1963); *Katz* v. *United States*, 389 U.S. 347 (1969). In addition, with respect to the peculiar problem of unlawful electronic eavesdropping or wiretapping, the Supreme Court held last year in *Alderman* v. *United States*, 394 U.S. 165 (1969), that once illegal surveillance is established the government must disclose all records thereof to a defendant with standing to complain so that the defendant may determine what other evidence may be inadmissible as being the fruit of such illegal surveillance.

Title VII seeks to change both of these principles which were adopted by the Supreme Court to protect Constitutional rights. As to the fruits of illegal action, Title VI arbitrarily bars any claim of inadmissibility if five years have elapsed between the unlawful act (or unlawful compulsion of testimony and grant of immunity) and the event as to which the evidence is sought to be admitted. In other words, Title VII seeks to make the extraordinary—and plainly unconstitutional—determination that, in *all* types of cases and in *all* types of federal, state and local courts or agencies, after five years a person no longer has a Constitutional right to exclusion of the fruits of illegal action as evidence of subsequent events.

Title VII also explicitly seeks to overrule *Alderman*. Under Title VII no disclosure of illegally obtained evidence or the fruits thereof may be required unless the information "may be relevant" to a pending claim of inadmissibility *and* such disclosure is in the interest of justice. Although a stated purpose of Title VII is to reduce the burden of suppression motions on the courts, the reinstitution of an "any relevancy" requirement inevitably returns to the judiciary the screening burden which *Alderman* sought to remove. Moreover as *Alderman* recognized, disclosure is often needed in order to show even "arguable relevance."

The requirement that disclosure be in the interests of justice may be thought to place a burden on the aggrieved party rather than the opponent of disclosure. Any such standard should require disclosure unless it is shown by the opponent of disclosure that, even with the use of protective provisions, it would not be in the interest of justice. *Compare* Fed. R. Civ. P. 16(e).

The exclusionary rule has been a favorite target of those critics of court decisions who cry in dismay, "the criminal goes free because the constable blunders." But in the case of illegal electronic eavesdropping or wiretapping, the government engages in a deliberate violation of the rules which under the Constitution law enforcement officers are bound to obey. Furthermore, of all the methods by which we attempt to insure that law enforcement officers act in accordance with the Constitution, only the exclusionary rule has been at all effective. Its withdrawal would greatly diminish the protection from this type of government activity which the Constitution guarantees to all.

Underlying Title VII is a disturbing disregard for constitutional rights—covering privacy, unlawful searches, self-incrimination, among others—and an equally disturbing assumption that the people who will be affected by Title VII are all guilty criminals seeking only delay and "technicalities" to avoid conviction. Such an assumption is not only inaccurate but totally inconsistent with our traditional presumption of innocence.

TITLE VIII—SYNDICATED GAMBLING

Title VIII makes it a Federal offense to engage in "an illegal gambling business" or to participate in a "scheme to obstruct" state criminal laws with the intent to facilitate such business, without regard to any connection with interstate commerce. In addition, Title VIII provides for a Commission on the Review of the National Policy Toward Gambling, which is not to be established until two years after the effective date of the bill.

Because Title VIII is aimed at a single type of crime, one commonly associated with organized crime, its defects are not as glaring as are those in other Titles. But its provisions are needlessly broad and encompass far more than the "large-scale illegal gambling enterprises" at which Title VIII is ostensibly aimed.

As the Committee Report (p. 155) makes clear, the provision making it a crime to "participate in a scheme to obstruct" state criminal laws with the intent to facilitate an illegal gambling business deliberately uses the vague term "scheme" in order to reach a wider range of activity than would be encompassed in the more traditional concept of a "conspiracy." The bill thus disregards the constitutional mandate that a criminal law must be sufficiently specific to give notice of the prohibited conduct and goes beyond even the dragnet concept of conspiracy, which Supreme Court Justice Jackson (a former Attorney General) characterized as an "elastic, sprawling and pervasive offense . . . so vague that it almost defies definition." *Krulewitch* v. *United States*, 336 U.S. 440, 445–6 (1949) (concurring).

The breadth and vagueness of the "scheme to obstruct" provision are matched by the lack of precision in defining "illegal gambling business." Although the Report states that the law is not intended to cover sporadic or small-scale gambling or to apply to "players" in illegal games (pp. 73, 115), the staute itself easily encompasses such petty crimes and criminals and by its terms could apply to two men who park illegally on their way to an all-night poker game. Also, because an "illegal gambling business" need only be in violation of the law of "a State or political subdivision thereof," Title VIII might be read as affecting gambling operations which are lawful in one place but would violate the law elsewhere. The New York State lottery is an example.

In addition, Title VIII creates a conclusive legislative presumption that any "gambling business" which is operated for two or more successive days by five or more persons has a gross business revenue in excess of $2000 in a day, which brings it within the coverage of Title VIII. Here too, the Report claims that the provision is intended only to facilitate a showing of probable cause for obtaining a search or arrest warrant (p. 156). However, Title VIII itself includes no such limitation and on its face is equally applicable to creating a presumption of a statutory violation in the context of a finding of guilt or innocence at trial. In any event, the determination of probable cause is a matter of Constitutional dimension and cannot be conclusively determined for all cases by legislative fiat.

There is another disturbing feature of Title VIII, at least as viewed in the Committee Report. In the Report (pp. 74–75) it is frankly suggested that Title VIII will permit cases to be won that are now lost for want of proof of the required "interstate" element (which is the only basis for federal intervention in matters otherwise subject to state or local control) and will permit warrants to be obtained and raids made which may produce sufficient evidence of the interstate element to support prosecution under existing laws. Such jurisdictional bootstrapping and obvious willingness to play fast-and-loose with Constitutional requirements strike a dire warning as to the future of our civil liberties. As Justice Brandeis said, "the greatest dangers to liberty lurk in insidious encroachment by men of zeal . . ." *Olmstead* v. *United States*, 277 U.S. 438, 485, 1928). Here the Report's approach sanctions and encourages open encroachment. Such tendencies accelerate if unchecked and should be unequivocally rejected.

TITLE IX—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Title IX of the bill attempts to use civil and criminal substantive and procedural provisions developed in the anti-trust field to attack the infiltration of legitimtate business by organized crime. Persons found guilty of a "pattern of racketeering activity" may be fined, imprisoned and required to forfeit all property acquired through the prohibited activity. In addition, courts may impose civil remedies on the business enterprises of such individuals by ordering divestiture, prohibition of business activities, or dissolution, and reorganization. Although Title IX represents an imaginative and novel approach to a most serious problem, it is not without its flaws.

The substantive prohibitions of Title IX have been substantially revised so as to eliminate most of the previously objectionable features. However, there are still some unintended problems of undue breadth or lack of clarity. Thus, Title IX creates various prohibitions on what a person may do through, or with income derived directly or indirectly from, "a pattern of racketeering activity" or "collection of an unlawful debt." The breadth problems arise from the definitions of those terms.

"Pattern of racketeering activity" is defined as two or more acts of "racketeering activity," *i.e.*, any of various specified federal or state offenses. Although it is necessary that one of the acts occur after enactment of the Act, here is no limitation on how far in the past the other may have occurred. This is particularly troublesome because Title IX does not seem to require that income be drived from both acts in a "pattern of racketeering activity," nor *does it* clearly require

that a person have "participated as a principal" in each of the two or more "racketeering activities" which make up the "pattern of racketeering activities." Thus, Title IX might be read as applying to an individual who in the 1930's "participated," but not as a principal, in an offense "involving" some sort of "bankruptcy fraud," and, entirely on his own, thirty-five years later, participated as a principal in a minor mail fraud. Title IX would appear to subject such a person to a possible 20 year sentence, $25,000 fine, and forfeiture of any interstate business interest he may have acquired to any degree, even "indirectly," with the proceeds of the mail—all of this in addition to the penalties provided by law for the underlying offenses. While such a case may not necessarily arise, it is the duty of the draftsman to provide limitations in the law itself, and not leave the matter to the possible benevolence or abuse of a prosecutor.

A further problem of undue breadth is the inclusion of acts or offenses "involving" "dealing in narcotics or other dangerous drugs" in the definition of "racketeering activity." Surely the law is not aimed at offenses involving mere possession or purchase of drugs for one's own use, but the words "dealing in" are not words of fixed meaning and could be read as covering mere possession or purchase of drugs for one's own use.

The final problem caused by the breadth of coverage relates to the definition of "unlawful debt," which is defined as (among other things) a debt "which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to gambling . . . and was incurred in connection with the business of gambling. . . ." Due to the variation in gambling laws from state to state, Title IX might be read as covering gambling debts which some states would regard as lawful and others as unlawful. Under such circumstances a person has inadequate notice of the possible criminal nature of his actions.

A number of other serious questions are raised by the procedural provisions because of the virtually unrestricted powers of investigation and exposure they bestow on law enforcement agents.

Under proposed § 1968, the Attorney General may issue a "civil investigative demand" requiring the production of documentary material whenever he "has reason to believe" that any person or enterprise has possession or custody of material relevant to "a racketeering investigation." Although the section is adapted from similar provisions in the antitrust laws, its scope has been considerably extended in the process of adaptation. Thus the proposed provisions apply to natural persons as well as corporations, and they are not limited to individuals or entities "under investigation" as are the comparable antitrust laws.

Although Title IX clearly contemplates that the records obtained in this dragnet fashion may be used in subsequent criminal as well as civil proceedings, no provision in the statute safeguards the individual's Fifth Amendment privilege against self-incrimination in a later proceeding. If material acquired in connection with a civil investigation can be used in a subsequent criminal case, any Fifth Amendment privilege would thereby be destroyed. Unless this privilege covers all prosecutions which result from the gathering of this information, broad civil investigative powers in an area involving criminal activity would clearly be unconstitutional. The question of availability of the privilege in such a case is currently pending in the Supreme Court, *United States* v. *Kordel*, 407 F. 2d 570 (6th Cir. 1968), *cert. granted*, 395 U.S. 932 (1969) (O.T. 1969, No. 87). Because the inquiries may be directed at a group "inherently suspect of criminal activities" they create a significantly greater danger of encroachment on the Fifth Amendment privilege than do those in "an essentially non-criminal and regulatory area of inquiry" like the antitrust laws. *Marchetti* v. *United States*, 390 U.S. 39, 57 (1968).

Title IX requires that all civil proceedings thereunder be open. However justifiable as to the antitrust laws, such a requirement seems particularly inappropriate in an area where there are likely to be threats to the safety of the persons involved and widespread publicity.

Moreover, "exposure for exposure's sake" as a means of punishing individuals not under indictment has been condemned by the Supreme Court. See *Watkins* v. *United States*, 354 U.S. 178 (1957). Where the exposure provision is combined with unlimited civil investigative powers, the resulting opportunity for government harassment of individuals is boundless. Such a system of informal and unsafeguarded punishment not only violates due process but also undermines the Fifth Amendment privilege against self-incrimination, a privilege which reflects, in the words of Justice Stewart, "the concern of our society for the right of each individual to be let alone," *Tehan* v. *Shott*, 382 U.S. 406, 415–16 (1966), and a privilege which may be exercised by *every* individual.

Despite the constitutional uncertainties created by the broad scope of the civil investigative demand, no court order is required for its issuance. An individual wishing to protest the scope or manner of the demand must himself initiate court proceedings and then bear the burden of justifying his non-compliance with the demand. Protection of individual rights in the sensitive Fifth Amendment area is therefore, left to the discretion of prosecuting authorities, who will understandably be more interested in a successful attack on organized crime than in protecting the targets of that attack. As the Supreme Court has made amply clear in another context, preservation of constitutional rights should not be left to the self-restraint of law enforcement agents, no matter how commendable their actual behavior. *See Katz v. United States*, 389 U.S. 347 (1967).

While Title IX represents a potentially fruitful approach to the problem of organized crime, its grant of virtually unlimited investigative powers to the government creates a serious danger that the government's understandable zeal in the pursuit of organized crime may result in a pervasive undermining of important civil liberties, an erosion that would inure to the detriment of us all.

TITLE X—DANGEROUS SPECIAL OFFENDER SENTENCING

Title X permits punishment of up to 30 years imprisonment for so-called "dangerous special offenders". A "special offender" includes a person previously convicted two or more times in any court (and imprisoned one or more times) of offenses punishable by imprisonment for more than one year—regardless of how long ago the convictions occurred or for what crimes, or whether the person was over or under juvenile court age.

A "special offender" is also defined as including a person whose present felony was "part of a pattern of conduct which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise . . . ," with the government being permitted to show "that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such conduct." Even the Justice Department opposed a similar proposal in the original bill as being so vague as to create due process problems and, being unable to suggest constitutionally acceptable language, called for its deletion. *See, e.g., Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939). The present version is not materially better. For example, it is unclear whether a "criminal" pattern of conduct includes misdemeanors as well as felonies. Moreover, the criminal conduct need not have been previously established beyond a reasonable doubt, but can be established in the sentencing hearing (or the trial itself) by a mere preponderance of the evidence, on the basis of *any* type of evidence, even if obtained in violation of the defendant's constitutional rights. Finally, to permit an *adverse* inference to be drawn from *any* unexplained income or property is a plain violation of the Fifth Amendment privilege against self-incrimination. See generally, *Marchetti* v. *United States*, 390 U.S. 39 (1968); *Grosso* v. *United States*, 390 U.S. 62 (1968).

Some of the same objections may be made to treating a person who commits a felony as part of a conspiracy with three or more persons "to engage in a criminal pattern of conduct" as a "special offender" if he agreed to or did (1) "initiate, organize, plan, finance, direct, manage or supervise" part of the conduct or (b) use force or give or receive a bribe as part of the conduct. Again there is a problem of undue breadth. In addition to organized crime cases, this provision might be read as applying to civil rights activists or political demonstrators (where a pattern of "criminal" conduct might be a series of technical trespasses). The Dr. Spock case and the pending case of the Chicago 7 come to mind.

A defendant is defined as "dangerous" if a longer period of confinement "is required for the protection of the public from further criminal conduct by the defendant." That provision gives a judge no standards by which to assess whether a thirty year sentence may be thus "required" instead of a five or ten year sentence. Such breadth and discretion create grave risks of abuse. *See Minnesota ex rel. Pearson* v. *District Court*, 309 U.S. 270, 276–77 (1940).

Title X also provides for appellate review of sentencing under the "dangerous special offender" provisions. Such review, while particularly apt in that context, should not be so limited and should be extended to all cases.

However, though the general principle of appellate review is sound, the particular provisions of Title X are not. Specifically, authorizing the appellate court to *increase* the sentence on the government's appeal raises serious Constitutional problems under both the due process clause and the double jeopardy clause of the Fifth Amendment. *See Trono* v. *United States*, 199 U.S. 521 (1905); *Kepner* v. *United States*, 195 U.S. 100 (1904). The Supreme Court has never upheld such an increase in sentence. In the recent case of *North Carolina* v. *Pearce*, 37 L.W. 4605 (June 23, 1969), the Supreme Court held that due process barred a judge from increasing a sentence *after a new trial* unless the defendant's identifiable conduct subsequent to the original sentencing supports the more severe sentence and is made part of the record. These same due process considerations should limit the government's right to have a sentence reviewed on appeal. The defendant would be deterred from appealing if he knew the government could then appeal as well and have his sentence increased.

The constitutional problems are heightened because of the apparently broad scope of review given to the appellate court. The appellate court is not limited to considering the appropriateness of the sentence in light of the fact that the defendant *is* a "dangerous special offender." Rather, in an appeal by the government the appellate court could review a district court's determination that

a defendant is in fact *not* a "dangerous special offender." Since that determination is in effect the equivalent of a determination that the defendant is not guilty of a crime, appellate review provisions in effect authorize the government to appeal an acquittal by the district court. Such appeals are plainly unconstitutional. *Kepner* v. *United States, supra.*

Finally, Title X would permit a court to receive and consider in connection with sentencing information of any sort from any source about a defendant's "conduct," subject to "no limitation." This provision covers sentencing of all defendants, not just "dangerous special offenders." More importantly, it would purportedly permit a court to consider—without regard to relevance—a coerced confession, evidence seized in violation of the Fourth Amendment, or the rankest hearsay, all of which would be plainly inadmissible in a trial to determine guilt or innocence. Yet due to the scope of the "dangerous special offender" provisions, the sentencing proceeding will often be tantamount to, and far more important in terms of possible consequences, than such a trial. Thus, the sentencing judge will have to determine whether there has been a "pattern" of criminal conduct or a "conspiracy" to engage in such a pattern of conduct, and he will be able to impose a sentence that may be five or ten times as long as would follow a conviction for the underlying felony alone.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

SENATE RESOLUTION 319—SUBMISSION OF A RESOLUTION TO ESTABLISH A SELECT COMMITTEE TO INVESTIGATE IMPROPER ACTIVITIES IN LABOR-MANAGEMENT RELATIONS

Mr. GRIFFIN. Mr. President, the controversy surrounding the recent United Mine Workers' election and related events have focused attention on the need for congressional investigation in the field of labor-management relations, as well as the need for a reexamination of the laws in this field to determine whether existing laws are adequate.

Last week I wrote to the distinguished chairman of the Permanent Subcommittee on Investigations, the Senator from Arkansas (Mr. MCCLELLAN), urging that his subcommittee investigate the charges growing out of the recent election, as well as other charges of improper activities in the labor-management field.

The special investigative talents necessary for such a task, as well as the outstanding contribution in this field made by the Senior Senator from Arkansas, indicate that his subcommittee would be uniquely qualified to delve into current problems facing some rank and file union members.

Of course, I recognize that the Committee on Labor and Public Welfare of the Senate has legislative jurisdiction in this area. The request I directed to the distinguished Senator from Arkansas was not intended to overlook the interest of the Committee on Labor and Public Welfare in this field. However, I sought to recognize that the legislative committee has many legislative items on its agenda and lacks the investigative manpower necessary to undertake such an inquiry.

Mr. President, back in 1957, Congress was faced with reports of improper activities in the field of labor-management relations. Then, as now, there was a conflict or a question of jurisdiction as between the permanent investigating subcommittee and the Labor and Public Welfare Committee. It was obvious at that time that many rank and file workers were being shortchanged by some union leaders and by some practices in the labor-management relations field.

The select committee established in 1957, was a bipartisan committee made up of four Democratic and four Republican Members of the Senate. It was headed, of course, by the distinguished Senator from Arkansas (Mr. MCCLELLAN).

I am introducing today, Mr. President, a resolution calling again for the establishment of a similar select committee to investigate improper activities in labor-management relations. The resolution follows the pattern of the 1957 resolution that created the select committee which was headed by Senator MCCLELLAN. It will be recalled that the work of that select committee culminated in the enactment of the Labor-Management Reporting and Disclosures Act of 1959, sometimes referred to as the Landrum-Griffin Act.

Of course, when the work of that select committee was completed, it went out of existence. My resolution would provide that this select committee would operate until February 1971, and that it would make legislative recommendations for strengthening the laws in this field.

I am aware of the fact that the Labor Subcommittee of the Committee on Labor and Public Welfare may choose to proceed with its own investigation of the mine workers election. In that event, of course, the junior Senator from Michigan could not prevent it. But I believe that the interests of rank-and-file union members and the interests of the public could be better served by again establishing a select committee as proposed in my resolution, following along the lines of the select McClellan committee established in 1957.

I believe experience has demonstrated that this would be the way to proceed in order to provide for the kind of an investigation which rank-and-file union members as well as the American public expects and will demand of Congress.

Mr. President, I ask unanimous consent that the text of the resolution be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. The resolution will be received and appropriately referred; and, without objection, the resolution will be printed in the RECORD.

The resolution (S. Res. 319), establishing a Select Committee to Investigate Improper Activities in Labor-Management Relations, was referred to the Committee on Labor and Public Welfare, and is printed in the RECORD as follows:

S. RES. 319

Resolved, That there is hereby established a select committee which is authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

SEC. 2(a) The select committee shall consist of 8 members to be appointed by the Vice President, 4 each from the majority and minority Members of the Senate, and shall, at its first meeting, to be called by the Vice President, select a chairman and vice chairman, and adopt rules of procedure not inconsistent with the rules of the Senate governing standing committees of the Senate.

(b) Any vacancy shall be filled in the same manner as the original appointments.

SEC. 3 (a) The select committee shall report to the Senate by February 15, 1971, with such interim reports as may be appropriate, and shall, if deemed appropriate, include in its report specific legislative recommendations.

(b) Upon filing of its final report the select committee shall cease to exist.

SEC. 4. For the purposes of this resolution the select committee is authorized as it may deem necessary and appropriate to:

(1) make such expenditures from the contingent fund of the Senate;

(2) hold such hearings;

(3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate;

(4) require by subpena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents;

(5) administer such oaths;

(6) take such testimony, either orally or by deposition;

(7) employ on a temporary basis such technical, clerical, and other assistants and consultants; and

(8) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and further, with the consent of other committees or subcommittees, to work in conjunction with and utilize their staffs, as it shall be deemed necessary and appropriate in the judgment of the chairman of the select committee.

SEC. 5. The expenditure authorized by this resolution shall not exceed $750,000, and shall be paid upon vouchers signed by the chairman of the select committee.

ADJOURNMENT TO 11 A.M. TOMORROW

Mr. KENNEDY. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 o'clock tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 50 minutes p.m.) the Senate adjourned until tomorrow, Friday, January 23, 1970, at 11 a.m.