Radio, telegraph, and telephone lines are now efficient and dangerous channels through which criminal conspiracies can operate with impunity. Our present laws make the wires a sanctuary for criminal elements while blocking their use to those who are trying to protect the public.

Giving Federal and State agents the power to tap wires, under trustworthy surveillance, would shut off this legalistic no-man's land for criminality. It would allow tried and true Federal agencies to act swiftly where great need was demonstrated. It is one of the most effective means by which Congress can implement the Justice Department's full-scale war on bigtime crime.

Congress has dallied long enough in modernizing our communications laws. Now, while the iron is hot and the Government is about to make an all-out drive on the big-shot crooks, is the time to give them the tools to do it. I hope Congress will respond with the action so sorely needed.

Texts of the two bills follow:

A bill to amend chapter 223 of title 18 of the United States Code to permit the introduction into evidence of certain communications intercepted by State law-enforcement officers, and for other purposes

Be it enacted, etc., That chapter 223 of title 18 of the United States Code is amended by adding at the end thereof the following:

"§ 3501. Evidence of intercepted communications.

"(a) There may be introduced in any court of the United States evidence relating to the existence, contents, substance, purport, effect, or meaning of any communication by wire or radio which has been intercepted by any law-enforcement officer or agency of any State or political subdivision thereof, where the interception of such communication was authorized by the laws of such State and was carried out in conformity with such laws.

"(b) No law of the United States shall be held to prohibit the interception of any communication by any law-enforcement officer or agency of any State or political subdivision thereof, or the introduction in any State court of evidence relating to such communication, where the interception of such communication is authorized by the laws of such State and is carried out in conformity with such laws.

"SEC. 2. The analysis of chapter 223 of title 18 of the United States Code is amended by inserting immediately below

"3500. Demands for production of statements and reports of witnesses."

the following:

"3501. Evidence of intercepted communications."

A bill to authorize the interception of communications by certain investigatorial agencies of the Government, to establish a procedure for the admission into evidence of information so obtained, and for other purposes

Be it enacted, etc., That no person shall intercept or attempt to intercept any communication by wire or radio, not being authorized in advance by the sender or recipient thereof, except (1) authorized agents of the Federal Bureau of Investigation of the Department of Justice upon the express written approval of the Attorney General of the United States, and (2) authorized agents of the Internal Revenue Service, the Bureau of Narcotics, and the United States Secret Service of the Department of the Treasury upon the express written approval of the Secretary of the Treasury of the United States, in the course of any investigation to detect or prevent any felony as defined in the United States Code, as amended, and conspiracies to commit any such felony.

SEC. 2. Information lawfully obtained after the effective date of this act through the interception of any communication by wire or radio in accordance with the provisions of Section 1 of this act shall, notwithstanding the provisions of section 605 of the Communications Act of 1934 (48 Stat. 1103), be deemed admissible, if not otherwise inadmissible, in evidence in any criminal proceedings in any court established by Act of Congress in criminal cases covered by Section 1 of this act: *Provided*, That prior to intercepting the communications from which the information is obtained, an authorized agent of any one of said investigatorial agencies shall have been issued an ex parte order by a judge of any United States Court of Appeals or a United States district court, authorizing the agent to intercept such communications. Upon application by any authorized agent of any one of said investigatorial agencies to intercept communications in the conduct of investigations pursuant to this section, a judge of any United States Court of Appeals or a United States district court may issue an ex parte order, signed by the judge with his title of office, authorizing the applicant to intercept such communications, if the judge is satisfied that there is reasonable cause to believe that such crime or crimes have been or are about to be committed and that the communications may contain information which would assist in the conduct of such investigations.

SEC. 3. No person shall divulge, publish, or use the existence, contents, substance, purport, or meaning of any information contained in any aforesaid ex parte order or obtained pursuant to the provisions of this act otherwise than for the purpose hereinbefore enumerated.

SEC. 4. Any person who willfully and knowingly violates any provisions of this act shall be fined not more than $5,000 or imprisoned not more than 1 year and a day, or both.

SEC. 5. All carriers subject to the Communications Act of 1934 (48 Stat. 1103) are authorized to permit such interception and disclosure of any such communications by wire or radio.

SEC. 6. If any provision of this section or the application of such provision to any circumstance shall be held invalid, the validity of the remainder of this section and the applicability of such provision to other circumstances shall not be affected thereby.

SENATE

THURSDAY, APRIL 24, 1958

The Senate met at 10:30 o'clock a. m.

The Chaplain, Rev. Frederick Brown Harris, D. D., offered the following prayer:

Our God and Father, from whom all holy desires, all good counsels do proceed, rise mercifully with the morning upon our darkened hearts. We are conscious of our woeful inadequacy to sit in the seats of judgment, to balance the scales of justice, and to respond with equity to the myriad calls of human need. Wilt Thou crown the deliberations of Thy servants here with Thy wisdom and with spacious thinking. Redeem our failures, we beseech Thee; pardon our transgressions, transform every task into a throne of service, and crown this day of labor with the benediction of Thy "well done" and of Thy peace. We ask it in the dear Redeemer's name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The legislative clerk read the following letter:

UNITED STATES SENATE,
PRESIDENT PRO TEMPORE,
Washington, D. C., April 24, 1958.

To the Senate:

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

CARL HAYDEN,
President pro tempore.

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

THE JOURNAL

On request of Mr. JOHNSON of Texas, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, April 23, 1958, was dispensed with.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had passed a bill (H. R. 11378) to amend Public Laws 815 and 874, 81st Congress, to make permanent the programs providing financial assistance in the construction and operation of schools in areas affected by Federal activities, insofar as such programs relate to children of persons who reside and work on Federal property, to extend such programs until June 30, 1961, insofar as such programs relate to other children, and to make certain other changes in such laws, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H. R. 11378) to amend Public Laws 815 and 874, 81st Congress, to make permanent the programs providing financial assistance in the construction and operation of schools in areas affected by Federal activities, insofar as such programs related to children of persons who reside and work on Federal property, to extend such programs until June 30, 1961, insofar as such programs relate to other children, and to make certain other changes in such

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laws, was read twice by its title and referred to the Committee on Labor and Public Welfare.

COMMITTEE MEETINGS DURING SENATE SESSION

On request of Mr. JOHNSON of Texas, and by unanimous consent, the Committee on Armed Services and the Subcommittee on Small Business of the Committee on Banking and Currency were authorized to meet during the session of the Senate today.

LIMITATION OF DEBATE DURING MORNING HOUR

Mr. JOHNSON of Texas. Mr. President, under the rule there will be the usual morning hour for the introduction of bills and the transaction of other routine business. I ask unanimous consent that statements made in that connection be limited to 3 minutes.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GREEN, from the Committee on Foreign Relations, with amendments:

S. Con. Res. 62. Concurrent resolution to request the President to use his best efforts to bring about a meeting of representative citizens from all the North Atlantic Treaty Organization nations to examine ways to promote greater cooperation among those nations (Rept. No. 1470).

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

S. 1225. A bill to authorize the award posthumously of Congressional Medals of Honor to Chaplain George L. Fox, Chaplain Alexander D. Goode, Chaplain Clark V. Poling, and Chaplain John P. Washington (Rept. No. 1471).

EXECUTIVE REPORTS OF COMMITTEE ON ARMED SERVICES

Mr. BARRETT. Mr. President, as in executive session, from the Committee on Armed Services I report favorably the nomination of Lt. Gen. Lemuel Mathewson to be placed on the retired list in the grade of lieutenant general and the nomination of Maj. Gen. Thomas L. Harrold for special assignment as Commandant of the National War College in the rank of lieutenant general.

There are two nominations involving General Van Fleet, who has been on the temporary disability retired list since March of 1953. In March of this year, he was reexamined and determined to be physically fit for active duty. Although General Van Fleet is beyond the statutory retirement age, a legal opinion by the Judge Advocate General holds that an officer who has been on the temporary disability retired list and who is found physically fit to perform active duty may not be voluntarily retired without first being recalled to active duty and reappointed to the active list of the Regular Army. General Van Fleet has been recalled to active duty with his consent and one of the nominations reappoints him as a major general on the active list. Since it is contemplated that he will be immediately retired, the other nomination authorizes his advancement on the retired list to the grade of general.

The ACTING PRESIDENT pro tempore. The nominations will be placed on the Executive Calendar, as requested by the Senator from Wyoming.

The nominations placed on the Executive Calendar are as follows:

James Alward Van Fleet, for reappointment to the active list of the Regular Army of the United States, in the grade of major general; and

James Alward Van Fleet, for advancement on the retired list, in the grade of general;

Lieut. Gen. Lemuel Mathewson, Army of the United States (major general, United States Army), to be placed on the retired list, in the grade of lieutenant general; and

Maj. Gen. Thomas Leonard Harrold, United States Army, to be assigned to a position of importance and responsibility designated by the President, in the rank of lieutenant general.

Mr. BARRETT. Mr. President, in addition, from the Committee on Armed Services, I report favorably a total of 3,037 nominations in the Army, Navy, and Marine Corps, in the grade of colonel and below. All of these names have already appeared in the CONGRESSIONAL RECORD so to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Vice President's desk for the information of any Senator.

The ACTING PRESIDENT pro tempore. Without objection, the nominations will lie on the desk, as requested by the Senator from Wyoming.

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

Frank O. Alexander, and sundry other officers, for promotion in the Regular Army of the United States; and

Byron R. Adams, and sundry other members of the Naval Reserve Officers Training Corps, and sundry other persons, for appointment in the Navy.

BILLS AND JOINT RESOLUTION INTRODUCED

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

By Mr. IVES:

S. 3684. A bill for the relief of Lt. Col. John A. Ryan, Jr.; to the Committee on the Judiciary.

By Mr. YARBOROUGH:

S. 3685. A bill to provide for increased Federal financial participation in the State programs of public assistance established pursuant to titles I, IV, X, and XIV of the Social Security Act; to the Committee on Finance.

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

By Mr. KNOWLAND (for himself, Mr. KUCHEL, Mr. HRUSKA, Mr. IVES, Mr. ALLOTT, Mr. BEALL, Mr. BENNETT, Mr. BRICKER, Mr. BUSH, Mr. BUTLER, Mr. CAPEHART, Mr. CARLSON, Mr. CURTIS, Mr. HICKENLOOPER, Mr. HOBLITZELL, Mr. JENNER, Mr. LANGER, Mr. MARTIN of Iowa, Mr. MARTIN of Pennsylvania, Mr. PAYNE, Mr. POTTER, Mr. PURTELL, Mr. REVERCOMB, Mr. SALTONSTALL, Mr. SCHOEPPEL, Mrs. SMITH of Maine, Mr. WATKINS, and Mr. WILEY):

S. 3686. A bill authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes; to the Committee on Public Works.

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

By Mr. PROXMIRE:

S. 3687. A bill to provide financial assistance to the States for educational purposes by returning to the States a portion of the Federal income taxes collected therein; to the Committee on Labor and Public Welfare.

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

By Mr. LANGER:

S. 3688. A bill for the relief of Christos H. Christodoulou; to the Committee on the Judiciary.

S. 3689. A bill directing the Secretary of the Interior to convey certain property in the State of North Dakota to John Cavanaugh; to the Committee on Interior and Insular Affairs.

By Mr. ANDERSON (for himself and Mr. LANGER):

S. 3690. A bill to amend the Public Health Service Act, as amended, so as to authorize the making of grants to assist public and private agencies to carry out programs for the detection and control of diabetes; to the Committee on Labor and Public Welfare.

By Mr. MALONE:

S. 3691. A bill to provide relief for producers of certain critical minerals, metals, and materials indispensable in the construction of jet engines; to the Committee on Interior and Insular Affairs.

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

By Mr. HOLLAND (for himself and Mr. ROBERTSON):

S. 3692. A bill to amend the National Labor Relations Act so as to provide that nothing therein shall invalidate the provisions of State laws prohibiting strikes in public utilities; to the Committee on Labor and Public Welfare.

By Mr. MANSFIELD (for Mr. CHAVEZ):

S. 3693. A bill to provide for the disposition of Fort Stanton reservation, in Lincoln County, N. Mex.; to the Committee on Interior and Insular Affairs.

By Mr. WATKINS (for himself, Mr. NEUBERGER, Mr. BARRETT, Mr. ANDERSON, Mr. MALONE, Mr. BIBLE, Mr. GOLDWATER, and Mr. MURRAY):

S. 3694. A bill to amend the act of August 5, 1954 (68 Stat. 674), and for other purposes; to the Committee on Labor and Public Welfare.

By Mr. NEUBERGER:

S. J. Res. 165. Joint resolution proposing an amendment to the Constitution of the United States relating to recall of Senators and Representatives in Congress; to the Committee on the Judiciary.

(See the remarks of Mr. NEUBERGER when he introduced the above joint resolution, which appear under a separate heading.)

INCREASED FEDERAL FINANCIAL PARTICIPATION IN STATE PROGRAMS OF PUBLIC ASSISTANCE

Mr. YARBOROUGH. Mr. President, I introduce, for appropriate reference, a bill to provide for increased Federal financial participation in the State programs of public assistance established pursuant to titles I, IV, X, and XIV of the Social Security Act. I ask unanimous consent that the bill be printed in the Record.

The ACTING PRESIDENT pro tempore. The bill will be received and ap-

propriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 3685) to provide for increased Federal financial participation in the State programs of public assistance established pursuant to titles I, IV, X, and XIV of the Social Security Act, introduced by Mr. YARBOROUGH, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

Be it enacted, etc., That section 3 (a) of the Social Security Act is amended to read as follows:

"SEC. 3. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for old-age assistance, for each quarter, beginning with the quarter commencing October 1, 1958, (1) in the case of any State other than Puerto Rico and the Virgin Islands, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as old-age assistance in the form of money payments under the State plan, not counting so much of such expenditure with respect to any individual for any month as exceeds $65—

"(A) Six-sevenths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $35 multiplied by the total number of such individuals who received old-age assistance in the form of money payments for such month; plus

"(B) One-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A);

and (2) in the case of Puerto Rico and the Virgin Islands, an amount, which shall be used exclusively as old-age assistance, equal to one-half of the total of the sums expended during such quarter as old-age assistance in the form of money payments under the State plan, not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and (3) in the case of any State, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan, including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of old-age assistance to help them attain self-care, and (4) in the case of any State, an amount equal to two-thirds of the total of the sums expended during such quarter as old-age assistance under the State plan in the form of medical or any other type of remedial care (including expenditures for insurance premiums for such care or the cost thereof), not counting so much of such expenditure for any month as exceeds the product of $8 multiplied by the total number of individuals who received old-age assistance under the State plan for such month."

SEC. 2. Section 403 (a) of the Social Security Act is amended to read as follows:

"SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing October 1, 1958, (1) in the case of any State other than Puerto Rico and the Virgin Islands, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to dependent children in the form of money payments under the State plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds $36, or if there is more than one dependent child in the same home, as exceeds $36 with respect to one such dependent child and $27 with respect to each of the other dependent children, and not counting so much of such expenditure for any month with respect to a relative with whom any dependent child is living as exceeds $36—

"(A) Six-sevenths of such expenditures, not counting so much of the expenditure with respect to any month as exceeds the product of $21 multiplied by the total number of dependent children and other individuals with respect to whom aid to dependent children in the form of money payments is paid for such month; plus

"(B) One-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A); and (2) in the case of Puerto Rico and the Virgin Islands, an amount equal to one-half of the total of the sums expended during such quarter as aid to dependent children in the form of money payments under the State plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds $18, or if there is more than one dependent child in the same home, as exceeds $18 with respect to one such dependent child and $12 with respect to each of the other dependent children, and not counting so much of such expenditure for any month with respect to a relative with whom any dependent child is living as exceeds $18; and (3) in the case of any State, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan, including services which are provided by the Staff of the State agency (or of the local agency administering the State plan in the political subdivision) to relatives with whom such children (applying for or receiving such aid) are living, in order to help such relatives attain self-support or self-care, or which are provided to maintain and strengthen family life for such children; and (4) in the case of any State, an amount equal to two-thirds of the total of the sums expended during such quarter as aid to dependent children under the State plan in the form of medical or any other type of remedial care (including expenditures for insurance premiums for such care or the cost thereof), not counting so much of such expenditure for any month as exceeds (A) the product of $4 multiplied by the total number of dependent children who received aid to dependent children under the State plan for such month plus (B) the product of $3 multiplied by the total number of other individuals who received aid to dependent children under the State plan for such month."

SEC. 3. Section 1003 (a) of the Social Security Act is amended to read as follows:

"SEC. 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind for each quarter, beginning with the quarter commencing October 1, 1958, (1) in the case of any State other than Puerto Rico and the Virgin Islands, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the blind in the form of money payments under the State plan, not counting so much of such expenditure with respect to any individual for any month as exceeds $65—

"(A) Six-sevenths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $35 multiplied by the total number of such individuals who received aid to the blind in the form of money payments for such month; plus.

"(B) One-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A); and (2) in the case of Puerto Rico and the Virgin Islands, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind in the form of money payments under the State plan, not counting so much of such expenditure with respect to any individual for any month as exceeds $30; and (3) in the case of any State, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan, including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care; and (4) in the case of any State, an amount equal to two-thirds of the total of the sums expended during such quarter as aid to the blind under the State plan in the form of medical or any other type of remedial care (including expenditures for insurance premiums for such care or the cost thereof), not counting so much of such expenditure for any month as exceeds the product of $8 multiplied by the total number of individuals who received aid to the blind under the State plan for such month."

SEC. 4. Section 1403 (a) of the Social Security Act is amended to read as follows:

"SEC. 1403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958, (1) in the case of any State other than Puerto Rico and the Virgin Islands, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the permanently and totally disabled in the form of money payments under the State plan, not counting so much of such expenditure with respect to any individual for any month as exceeds $65—

"(A) Six-sevenths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $35 multiplied by the total number of such individuals who received aid to the permanently and totally disabled in the form of money payments for such month; plus

"(B) One-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A);

and (2) in the case of Puerto Rico and the Virgin Islands, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled in the form of money payments under the State plan, not counting so much of such expenditure with respect to any individual for any month as exceeds $30; and (3) in the case of any State, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan, including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care; and (4) in the case of any State, an amount equal to two-thirds of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan in the form of medical or any other type of remedial care

(including expenditures for insurance premiums for such care or the cost thereof), not counting so much of such expenditure for any month as exceeds the product of $8 multiplied by the total number of individuals who received aid to the permanently and totally disabled under the State plan for such month."

SEC. 5. The amendments made by the preceding provisions of this act shall be effective for the period beginning October 1, 1958, and ending with the close of June 30, 1961, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this act had not been enacted.

Mr. YARBOROUGH. Mr. President, relief to the old people of America is long overdue. The amounts paid to them monthly are, in many States, so low as to constitute starvation payments, not subsistence payments. States have a duty in this regard, as well as the Federal Government. The average for the Nation is about $60, and in some States the old age payments are as low as $30 a month, which amounts to $1 a day for food and clothing and shelter and medicine. We talk about people starving to death in foreign countries. People are starving to death in America, and their death certificates show that they died from malnutrition. They are among the 2½ million old-age pensioners who are starving on these miserly allowances.

The bill which I am introducing today would add an additional $5 of Federal money per month for each elderly person receiving assistance grants, by providing that the Federal Government pay six-sevenths of the first $35 on the payment, or $30 out of every $35, with equal matching by the Federal and State Governments of the next $30, up to a total of $65 per person per month.

That would raise the level of old age assistance on which the Federal Government participates from $60 to $65, and would allow $5 per month more to each person on the old age assistance rolls. The same increase would be granted to the blind and to the totally and permanently disabled.

The cost of living has gone up and up in the present spiral of inflation, but the old people, whose earning years have gone forever, have been trapped by the inflationary spiral, and the meager number of dollars paid them every month has shrunk and shrunk in buying power.

It has become harder and harder for them to buy the needed medicines. The amount of food that they can buy with their checks can be carried home in a smaller basket month by month.

The bill I am introducing would raise the old age assistance of every senior citizen of America, and will cause the fires of hope to burn again in the eyes of the aged, where hope is almost gone. The bill is a bill out of the humanitarian heart of America for the older people who tilled the soil in their youth, but who have been shunted aside by the mechanization of our lives. The $5 a month increase is too little to be turned down.

AID TO EDUCATION THROUGH RETURN OF INCOME TAXES

Mr. PROXMIRE. Mr. President, on April 3, I delivered my first major speech on the floor of the Senate in support of Senate bill 3606, which provides for aid to education by returning to each State a portion of the Federal income taxes collected within the State. The portion each State would be permitted to keep from the income taxes paid by its residents would be 1½ percent for fiscal 1958, 3 percent for fiscal 1959, and 5 percent for fiscal 1960 and each year thereafter. No Federal interference with State and local control of education would be involved. The only requirement is that the money be spent exclusively for educational purposes.

That day I had the benefit of the generous and helpful comments of the senior Senator from Illinois [Mr. DOUGLAS], and the junior Senator from Idaho [Mr. CHURCH], who pointed out the importance of coupling a provision for equalization of educational benefits with my proposal that the source of the benefits be the income taxes paid by the individuals and businesses within the States. I agreed with them. I said that day I would introduce a bill after the Easter recess to provide for equalization of the tax-sharing benefits of my bill.

Today, Mr. President, I introduce for appropriate reference a bill which retains the figures of 1½ percent, 3 percent, and 5 percent found in S. 3606. But each State will have returned an amount which bears the same ratio to the percent of the income taxes collected in all the States as the school-age population of such State bears to the school-age population of all the States.

This is another way of saying each State will get the same amount per school-age child as every other State. A child in Wisconsin will get the same assistance in education as a child in Mississippi or New York. This is accomplished, plainly speaking, by allowing a State with relatively low Federal income-tax collections to spend for education a higher percentage of those collections than a State can keep which has relatively high income-tax collections.

Mr. President, the question might be asked why I employ the principle of returning income taxes rather than that of a direct grant-in-aid. The answer is the income tax is dynamic. It expands as the economy expands. It inflates if the economy inflates. Thus it avoids the rigidity of a grant-in-aid of a specified amount. It also—and this is most important—avoids the rigidity and regressiveness of the property tax, which has been the traditional source of local support of education.

There is a second reason, one I regard as profoundly important, for employing the principle of returning income taxes. It is that no Federal control can possibly be involved. Each State simply gets a part of the income taxes paid by its own residents to use as it sees fit in its own educational program. This means that we can get on with the job of aiding education—of building schoolhouses and recruiting and paying good teachers—without having first to settle all the philosophical problems that beset any plan which involves a hint of Federal supervision.

We do not have to wait for integration to be accomplished. We do not have to agree on the goals of education, nor how they will be reached. These are important questions, and I am not suggesting that they should be avoided. What I am saying is that they need not be solved before we build schoolhouses and recruit teachers. And what I am saying is that the best place to solve them is at the local level, where most Americans would agree that control of our schools should be retained.

We Americans like diversity in our lives. We probably would not want single solutions to any of these problems. By eliminating any possibility of Federal interference, we allow people, close to home, to work out various solutions that suit them.

While these problems are being worked out, Mr. President, real sums of money will be available to the States for getting ahead with the jobs we agree need to be done—building schools, manning classrooms with competent teachers, sending children and young people to schools and colleges.

Mr. President, the amounts each State would get if 5 percent of the Federal income taxes collected in fiscal 1957 were returned to the States, employing the principle of allocation provided by my bill, are set forth in a table prepared for me by the Education and Public Welfare Division of the Legislative Reference Service, Library of Congress.

I ask unanimous consent that the table be printed in the RECORD at this point in my remarks.

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

Allocation of 5 percent of Federal income-tax collections to States according to school-age population

State	Allocation to each State	School-age population (5 to 17) July 1956	State percentage of total allocation
	Millions	*Thousands*	
Alabama	$64.52	850	2.19
Arizona	21.21	279	.72
Arkansas	35.35	468	1.20
California	219.48	2,894	7.45
Colorado	28.58	379	.97
Connecticut	35.66	471	1.21
Delaware	6.78	91	.23
District of Columbia	10.31	135	.35
Florida	63.63	838	2.16
Georgia	74.83	986	2.54
Idaho	12.37	165	.42
Illinois	154.08	2,031	5.23
Indiana	78.36	1,032	2.66
Iowa	48.02	635	1.63
Kansas	35.94	474	1.22
Kentucky	59.80	787	2.03
Louisiana	60.39	795	2.05
Maine	16.50	218	.56
Maryland	49.49	651	1.68
Massachusetts	76.30	1,007	2.59
Michigan	135.22	1,784	4.59
Minnesota	58.63	774	1.99
Mississippi	45.66	603	1.55
Missouri	68.64	907	2.33
Montana	12.08	161	.41
Nebraska	24.45	320	.83
Nevada	4.12	56	.14
New Hampshire	9.13	125	.31
New Jersey	87.50	1,153	2.97
New Mexico	17.38	230	.59
New York	247.76	3,267	8.41
North Carolina	88.97	1,172	3.02
North Dakota	12.37	164	.42
Ohio	155.25	2,049	5.27

Allocation of 5 percent of Federal income-tax collections to States according to school-age population—Continued

State	Allocation to each State	School-age population (5 to 17) July 1956	State percentage of total allocation
	Millions	*Thousands*	
Oklahoma	$40.95	541	1.39
Oregon	30.34	400	1.03
Pennsylvania	180.88	2,384	6.14
Rhode Island	13.26	174	.45
South Carolina	50.67	667	1.72
South Dakota	12.96	169	.44
Tennessee	65.99	869	2.24
Texas	168.22	2,218	5.71
Utah	17.09	224	.58
Vermont	6.78	89	.23
Virginia	68.35	900	2.32
Washington	46.55	615	1.58
West Virginia	39.77	525	1.35
Wisconsin	66.58	879	2.26
Wyoming	5.89	77	.20
Alaska	1.77	[1] 23	.06
Hawaii	11.19	143	.38
Total	2,946.00	38,848	99.86

[1] 1950 data, latest available.

Mr. PROXMIRE. In introducing this bill, Mr. President, I am offering my colleagues one more chance to vote for a bill to aid education. I repeat what I said on April 3: I will stand with any man in support of any reasonable Federal-aid-to-education bill which does not carry with it Federal interference with the local control of education. I think the bill I introduced on April 3 is a good bill. I think the bill I introduce today is a better bill. But I do not insist on my bills, either of them. I insist that we pass some bill.

Mr. President, the life of a child waits for no man. An opportunity missed today—an opportunity to help him to grow, to learn, to achieve moral stature—is an opportunity lost forever. We must not let the lives of our children run, like quicksilver, through our fingers. Let us conduct ourselves today so that we shall have no cause to reproach ourselves tomorrow.

I ask unanimous consent that the bill lie on the table until Tuesday next so that any Senator who wishes to cosponsor it may do so.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will lie on the desk, as requested by the Senator from Wisconsin.

The bill (S. 3687) to provide financial assistance to the States for educational purposes by returning to the States a portion of the Federal income taxes collected therein, introduced by Mr. PROXMIRE, was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

AMENDMENT OF CONSTITUTION, RELATING TO RECALL OF SENATORS AND REPRESENTATIVES

Mr. NEUBERGER. Mr. President, a proposal is now before the Senate to require that officials of labor unions be by Federal law subject to recall from such offices by their membership.

A provision for recall of union officers in a union constitution seems quite reasonable. Should not men and women in positions of trust be removable by those who originally elected them?

Yet, we of the Congress might appear guilty of hyprocrisy if we required labor unions to practice a higher degree of democracy than that which prevails in the Government of the United States of America itself.

Therefore, I am introducing today a a joint resolution proposing an amendment to the Constitution of the United States, authorizing each of the 48 States to provide appropriate legislation for the recall of United States Senators and Represenatatives. I ask that the joint resolution be printed in the RECORD at this point, and appropriately referred.

The ACTING PRESIDENT pro tempore. The joint resolution will be received and appropriately referred; and, without objection, the joint resolution will be printed in the RECORD.

The joint resolution (S. J. Res. 165) proposing an amendment to the Constitution of the United States relating to recall of Senators and Representatives in Congress, introduced by Mr. NEUBERGER, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"Article —

"SECTION 1. The legislature of any State may prescribe rules for the recall of Senators and Representatives in Congress from that State.

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

Mr. NEUBERGER. Mr. President, in many of the States of the Union, governors and other public officials are subject to recall from office. My own State of Oregon was first to adopt such a measure. Yet no such provision applies to Members of either branch of Congress.

I believe very strongly that an officeholder should be susceptible to recall by substantially the same process which put him or her into office. We of the Senate, furthermore, could be in a highly inconsistent position if we proclaimed, as a matter of public policy and Federal law, that a business agent of a garment workers union, for example, ought to be subject to recall from office, but a United States Senator ought not to be subject to such a process.

A Member of the Senate, after all, can vote this whole Nation into war, he can draft Americans from their homes for military service, he can enact taxes which tap the incomes of citizens and corporations, he can enact sweeping regulations over business, industry, agriculture, and private individuals. This power is greater than that possessed by any labor official.

Because I believe in more, rather than less, democracy in our national life, I think we of the Senate can set a useful example. We can subject ourselves to recall from office. I am sure such a precedent would set a national standard that would encourage similar practices in the operation of trade unions, business corporations, chambers of commerce, trade associations, and other bodies and organizations where officers wield authority.

I hope that, in taking up legislative proposals which have been made by some Senators for having the Federal Government control the election procedures and other democratic processes of private organizations such as trade unions, the Senate will keep in mind the danger of preaching more than we practice—lest we demand of others greater adherence to ideals of democratic responsibility than we are willing to abide by ourselves. I think this is a good principle to guide our deliberations on labor legislation; and I also believe my proposed constitutional amendment has true merit, which I hope will have the attention of the Committee on the Judiciary.

REGISTRATION, REPORTING, AND DISCLOSURE OF EMPLOYEE WELFARE AND PENSION BENEFIT PLANS—AMENDMENTS

Mr. GOLDWATER submitted amendments, intended to be proposed by him, to the bill (S. 2888) to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans, which were ordered to lie on the table, and to be printed.

DEPARTMENTS OF LABOR, AND HEALTH, EDUCATION, AND WELFARE APPROPRIATION BILL—AMENDMENT

Mr. ANDERSON (for himself and Mr. LANGER) submitted an amendment, intended to be proposed by them, jointly, to the bill (H. R. 11645) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1959, and for other purposes, which was referred to the Committee on Appropriations and ordered to be printed.

TECHNICAL CHANGES IN FEDERAL EXCISE TAX LAWS—ADDITIONAL COSPONSOR OF AMENDMENT

Mr. MALONE. Mr. President, I ask unanimous consent that my name may be added as a cosponsor of the amendment submitted by the Senator from Washington [Mr. MAGNUSON], for himself and other Senators, on February 24, 1958, to the bill (H. R. 7125) to make technical changes in the Federal excise tax laws, and for other purposes.

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

POSTAL RATE AND PAY BILL

Mr. MONRONEY. Mr. President, I was amazed and astounded to read the following in this morning's Washington Post:

> Postmaster General Arthur E. Summerfield issued a statement complaining the rejection of the 5-cent stamp would scuttle President Eisenhower's proposed $2 billion postal modernization program that would provide jobs for thousands of workers.
>
> He said the action was a temporary victory for the large business users of the mails who have benefited from low postal rates. However, he said, the fight to stop this unconscionable raid on the Treasury will continue.

I call attention to the fact that, for the first time since 1932, the Congress has moved to increase postal rates all along the line. With the exception of some very small charitable items, there is not an item that has not been increased, generally by 33⅓ percent or more.

Mr. Summerfield, who terms this an "unconscionable raid on the Treasury," either deliberately misrepresented the facts, or he does not know the difference between income and outgo.

The bill will provide over $500 million in additional revenue to the Treasury of the United States. Those provisions of the bill already agreed to under the great leadership of the chairman of the Senate Committee on Post Office and Civil Service, the distinguished Senator from South Carolina [Mr. JOHNSTON], is the very best compromise that could be worked out. We have sought to protect the revenue of the Post Office Department, and to increase it by nearly $500 million; and yet we hear, from a member of the Cabinet, a man who is given the responsibility of operating the great postal establishment, that this represents an unconscionable raid on the Treasury.

If he knows his figures, if he knows the realities connected with the operation of the Post Office Department, if he has analyzed the bill as it passed the Senate and as it has been agreed to thus far in conference, he will realize that the bill will come within about $50 million, net, of the revenue which would have been produced by the Senate bill with a 5-cent postage stamp. With the 4-cent postage stamp, with the increases in other rates which will be retained, such as airmail rates, and the conference decision to reduce by $63 million a year the pay cost of the bill as it passed the Senate, we come within about $50 million of the Senate bill.

I resent the slurs and implications with respect to the conferees, who have been sitting together for many, many days to try to hammer out a bill.

Furthermore, I resent the implication that, unless President Eisenhower can get exactly what he wants, page, chapter, and verse, he will scuttle the opportunity for jobs in connection with rehabilitating our post-office buildings and the postal plant generally throughout the country.

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

Mr. MONRONEY. I shall be happy to yield, if I may have additional time.

Mr. JOHNSON of Texas. Mr. President, I ask that the Senator from Oklahoma may have an additional 3 minutes.

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

Mr. KNOWLAND. The ranking member of the Committee on Post Office and Civil Service, the Senator from Kansas [Mr. CARLSON], is not present. He is one of the conferees. In view of the fact that the Senate Committee on Post Office and Civil Service had recommended a 5-cent rate, and the Senate itself sustained that recommendation, I ask if the distinguished Senator from Oklahoma will indicate how long the Senate conferees held out in the effort to sustain the 5-cent postage rate.

Mr. MONRONEY. The bill has been before the conferees since late in February. The conferees went into session about a week ago. We have had four meetings. We have discussed the 5-cent rate and the 4-cent rate at almost every meeting, although the question was never brought to a vote until yesterday.

There have been repeated announcements by the Speaker of the House and the leaders in the House to the effect that they will never agree to a 5-cent postage stamp. Such statements have been repeatedly relayed to the conferees by members of the conference committee from the House. Before we voted yesterday we received an announcement by a leading member of the conference that he would insist on the 4-cent stamp. The Senate conferees then moved to recede from our 5-cent position.

Furthermore, we announced at that time—and we discussed the question at some length—that we would insist on the position of the Senate with respect to the 8-cent airmail stamp, and on other increases which the Senate made in the House version so as to bring the revenue up, as nearly as possible, to that which would have been provided by the 5-cent stamp. With the reduction in pay increases, we expect to arrive at a difference of about $50 million between the cost of the bill as it passed the Senate, with the 5-cent rate, and the cost of the bill as it now stands.

Mr. KNOWLAND. I thank the Senator. He was in the conference and I was not. My information may not be accurate, but in view of the position taken by the Senate Committee on Post Office and Civil Service, and in view of the vote by the Senate itself, I had received indications that the Senate conferees, in a period of less than 10 minutes, had receded from the Senate position. Even though individual conferees may disagree with the position of the Senate, it has been customary for the Senate conferees to uphold the position of the Senate. Many times I myself have been in the position of a conferee in connection with matters with respect to which I personally disagreed with the position of the Senate. Nevertheless, as a member of the conference, I have fought—sometimes for a rather prolonged period of time—to uphold the position of the Senate, as indicated by the Senate votes. I was somewhat disturbed by the fact—if it were a fact—that the Senate conferees had receded in less than 10 minutes from the position of one of the standing committees of the Senate, and also the Senate itself.

Mr. MONRONEY. This subject has been discussed at each meeting. It was discussed for many weeks, all over the Capitol, among members of the Post Office Committees, and among the conferees. Further, it was discussed daily when we went into session.

There is no mystery involved. We know what a 5-cent stamp is. We know what a 4-cent stamp is. We are fully advised. We might have been sitting for 3 more weeks on the pay proposal. We yielded from the $240 cost-of-living bonus for the lower grades, and we did so in less time, when the question came to a vote yesterday, than we did with respect to the 4-cent stamp.

However, the Senate yielded to the House on that point, to establish a lower figure. I am sure the man who calls this an unconscionable raid on the Treasury, the Postmaster General, approves of the action of the conferees on the pay provisions of the bill to a much greater degree than he does their action in losing his prized 5-cent nonlocal postage stamp, for which he fought so hard, even against his own testimony of a year ago.

RIVERS, HARBORS, AND FLOOD-CONTROL PROJECTS

Mr. KNOWLAND. Mr. President, on April 15, the President returned to the Senate, without his approval, S. 497, the omnibus bill to provide $1,500 million in authorizations for rivers, harbors, and flood-control projects. The bill proposed the future construction of 150 separate projects for improvements in navigation, beach erosion, flood control, and power throughout the Nation.

At the request of the majority leader, the President's veto message was referred to the Committee on Public Works for study and action. In his message, the President pointed out that the measure contained 28 projects costing about $350 million which he could not approve without destroying some of the most important governmental policies in the field of water resources development.

In addition, the President took exception to other items on the basis that some would constitute a waste of public funds, some were proposed against advice based on careful study and considered judgments of the professional services and other executive agencies concerned; and others were not acceptable for alternative reasons which he felt were equally valid.

At the same time, the President made the firm declaration that many of the proposed projects were sound projects which will make important contributions to our national wealth, and pledged himself to approve those favorably reported by the Chief of Engineers and by the executive agencies involved. He suggested that the bill be reconsidered by Congress, and he specifically recommended that Congress act quickly to provide increased monetary authorization for the river basins where 1958

and 1959 fund requirements for projects now under construction will exceed present statutory limits.

I said at the time of the veto of the bill that Congress should immediately take action leading to the passage of a new bill eliminating the features not in accord with the standards set by Congress itself.

In accord with that announcement, I am today, together with my colleague, the distinguished junior Senator from California [Mr. KUCHEL], the Senator from Nebraska [Mr. HRUSKA], the Senator from New York [Mr. IVES], the Senator from Colorado [Mr. ALLOTT], the Senator from Maryland [Mr. BEALL], the Senator from Utah [Mr. BENNETT], the Senator from Ohio [Mr. BRICKER], the Senator from Connecticut [Mr. BUSH], the Senator from Maryland [Mr. BUTLER], the Senator from Indiana [Mr. CAPEHART], the Senator from Kansas [Mr. CARLSON], the Senator from Nebraska [Mr. CURTIS], the Senator from Iowa [Mr. HICKENLOOPER], the Senator from West Virginia [Mr. HOBLITZELL], the Senator from Indiana [Mr. JENNER], the Senator from North Dakota [Mr. LANGER], the Senator from Iowa [Mr. MARTIN], the Senator from Pennsylvania [Mr. MARTIN], the Senator from Maine [Mr. PAYNE], the Senator from Michigan [Mr. POTTER], the Senator from Connecticut [Mr. PURTELL], the Senator from West Virginia [Mr. REVERCOMB], the Senator from Massachusetts [Mr. SALTONSTALL], the Senator from Kansas [Mr. SCHOEPPEL], the Senator from Maine [Mrs. SMITH], the Senator from Utah [Mr. WATKINS], and the Senator from Wisconsin [Mr. WILEY], introducing an omnibus bill from which have been deleted all such projects. These include such projects which are in my own State of California. We invite all other Senators, Republicans and Democrats, to join in the sponsorship of the bill. For that purpose, I ask unanimous consent that the bill may lie at the desk until 8 o'clock tonight for sponsorship by any Senator who desires to cosponsor the bill.

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

Mr. KNOWLAND. Mr. President, I believe it is to the interest of all Senators to support the new measure, which is designed for prompt passage. The projects contained in the bill are needed in the States throughout the Nation.

The committee has held extensive hearings on the matter. Senators are generally informed concerning the proposed legislation. I believe that this proposal will afford an opportunity to pass a sound rivers and harbors bill at this session of Congress and to have it approved. This should be the objective of all Senators, Republicans and Democrats.

We who have projects in the bill which was vetoed, projects which we may feel are meritorious, will still have the opportunity, where the necessary standards or criteria have not been reached, to seek to have the additional standards met, and to argue the projects on their merits, without jeopardizing the many excellent projects which are in the rivers and harbors bill and are not subject to controversy.

Mr. President, I now introduce for appropriate reference a bill for the authorization, construction, repair, and preservation of certain public works on rivers and harbors, for navigation, flood control, and for other purposes, which is a so-called clean bill, the bill as reported by the committee and passed by the two Houses, minus those items which did not meet the criteria previously mentioned.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 3686) authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes, introduced by Mr. KNOWLAND (for himself, Mr. KUCHEL, Mr. HRUSKA, Mr. IVES, Mr. ALLOTT, Mr. BEALL, Mr. BENNETT, Mr. BRICKER, Mr. BUSH, Mr. BUTLER, Mr. CAPEHART, Mr. CARLSON, Mr. CURTIS, Mr. HICKENLOOPER, Mr. HOBLITZELL, Mr. JENNER, Mr. LANGER, Mr. MARTIN of Iowa, Mr. MARTIN of Pennsylvania, Mr. PAYNE, Mr. POTTER, Mr. PURTELL, Mr. REVERCOMB, Mr. SALTONSTALL, Mr. SCHOEPPEL, Mrs. SMITH of Maine, Mr. WATKINS, and Mr. WILEY), was received, read twice by its title, and referred to the Committee on Public Works.

Mr. JOHNSON of Texas. Mr. President, will the Senator yield?

Mr. KNOWLAND. I yield.

Mr. JOHNSON of Texas. I have followed with great interest the Senator's statement. Is this the bill on which the Senator said he would keep an open mind until the Committee on Public Works could scan, study and analyze the President's veto message, and make recommendations to the Senate?

Mr. KNOWLAND. I have given additional consideration to the matter, after hearing that the Committee on Public Works intended to delay until mid-May before even holding hearings on the vetoed bill.

It seemed to me that if we were interested in a constructive accomplishment rather than in delaying the matter, and raising, perhaps, a great deal of controversy, and ending with no rivers and harbors bill at all, this proposal furnished a way to get prompt action on the bill and to get started a substantial and overwhelming majority of the projects on which Senators on both sides of the aisle agree. Then we can carry into the field of controversy and debate the additional items which are not included in the bill I am introducing today.

Mr. JOHNSON of Texas. The procedure followed in connection with the President's veto message—incidentally, the second veto of proposed legislation of this type—was a procedure I discussed with the distinguished minority leader. I thought he was agreeable to the procedure.

The committee acted promptly after the bill was referred to it and sent notices to all persons interested, both in the administration and throughout the States of the Union, asking them to be prepared to attend the hearing and present their viewpoints on the merits of the veto. I am informed that the committee intends to hold hearings and to act as promptly as it can to take testimony.

I thought the distinguished minority leader had indicated he would withhold judgment on the wisdom of the veto, and whether it should be overridden, until the committee could take such action. I deeply regret that he has retreated from his position as I understood it.

I think the country and the Senate should know that it is very unlikely that the Committee on Public Works and the Senate, joined by the appropriate committee in the House and by the House itself, will allow a political Budget Director to tell Congress what project is meritorious and what project is not. We have had that experience before. I do not know of many legislators who are so optimistic as to think that we will buckle under to some Budget Director and yield to him the authority and the judgment Congress has in matters of this kind. I still favor having Congress act on its own initiative. I hope the minority leader and the other Members of the Senate and House feel the same way.

So far as the majority leader is concerned, he does not intend to let the Budget Director pick out, pick out, and pick out, and finally tell us, "If you will knuckle under and get down on your knees and agree to take exactly what I tell you, I will let you have a bill. If you do not, I will send you a veto."

That is what happened to us once; that is what happened to us twice. I do not care how many times it happens. The United States Senate, so long as I have anything to do with it and I am a Member of it, will make the determination on these projects.

When I have passed my judgment on a bill and have voted for it, the simple fact that someone in the Bureau of the Budget objects to it will not change my conviction and make me turn tail and abandon the position I took when I voted for the bill originally.

I thought the bill which was vetoed was a good one when the roll was called and I put my name on it. I still think it is a good bill. The Budget Director has not changed my view.

If the testimony at the forthcoming hearing indicates that we have made some mistake, then I am willing to compromise and to adjust my position. But until then I shall not abandon my position for political reasons.

Mr. MONRONEY. Mr. President, will the Senator from Texas yield that I may ask the Senator from California a question?

Mr. JOHNSON of Texas. I yield.

Mr. MONRONEY. Did not the distinguished minority leader vote for the bill which the President vetoed?

Mr. KNOWLAND. I voted on the conference report to send the bill to the White House.

Mr. MONRONEY. Let me also ask the majority leader whether there is any representation of the State of Texas or the State of California or the State of Oklahoma or the State of Alabama in the Bureau of the Budget?

Mr. JOHNSON of Texas. Not that I am aware of.

Mr. MONRONEY. Have these programs not been studied by the Corps of Army Engineers? Have they not been investigated for many years? The roadblock is within the Bureau of the Budget.

No citizen in any of the 48 States can be represented before the Bureau of the Budget. If we accept and pass a Bureau of the Budget rivers and harbors bill, we shall be denying to the 180 million people of America an opportunity to have a single thing to say about the public-works program so desperately needed now to relieve unemployment.

Mr. JOHNSON of Texas. I hope we shall never reach the point, I say to my colleague from Oklahoma, when we hold extensive hearings and take lengthy testimony, and arrive at conclusions and form judgment, and vote and approve proposed legislation, and then, because some budget clerk in the executive agency downtown says, "I do not approve of this project which the Congress has approved," abandon our position and run for cover. The Senator from Texas is not going to do it.

Mr. KUCHEL. Mr. President, I am unable to overestimate the urgent and growing necessity for the passage of a bill which will become law in the field of rivers, harbors, and flood control. I need not indicate to the Senate the tremendous need in various parts of the country for a continuation of the historic part the Government has played in protecting homes and businesses and, indeed, human life itself, from the ravages of floods.

As a member of the Public Works Committee, I tried to contribute my part to the drafting, a year ago, of a sound bill in this field. I voted for it. It went to the House of Representatives. The House saw fit to change it. It was returned to the Senate in the conference report. I supported the conference report. The bill went to the President. I regret that the President vetoed it, but that was his prerogative. The unhappy fact is that the Congress is controlled by the Democratic Party, and the executive branch of the Government is controlled by the Republican Party.

I wish to say in all frankness that if I had the responsibility of drafting a public-works bill, omnibus in character, it would be considerably different from the one for which I voted on the floor. But I do not have that responsibility. I am one of 96 Senators; and the legislative decision depends, in the last analysis, on what a majority of the Members of this body and a majority of the Members of the House of Representatives choose to do.

The bill before us is not, in my judgment, legislative perfection. But I am inclined to think that if I were to withhold my approval until my own personal concept of legislative perfection were reached, I probably would never, or at least rarely, cast my vote in the affirmative for very much or any proposed legislation in this field.

Let me say—I have said it before, and I repeat it now—that I am prepared to vote a third time for the bill which I regret was vetoed. But I need not apologize, and my colleague from California [Mr. KNOWLAND] need not apologize, for joining in the introduction at this time of a bill which could be considered in the alternative; and I do not apologize for putting my name upon a bill, which now will be referred to the Senate Public Works Committee, in an attempt to give to the Congress such an alternative.

Mr. President, it is not my responsibility to schedule in the Senate the taking of action on whether the President's veto shall be overridden. That is the responsibility of the majority party and the majority leader. If it is scheduled for action here, then, I repeat, I will vote for the bill a third time.

But suppose the Senate refuses to override the President's veto. Then what will happen? Are we then to sit idly by and do nothing? Are we then to say to the country, "We will not make an additional attempt to legislate in this critically and crucially important field"? I do not think so. At any rate, I know that we should not. The bill introduced today constitutes an alternative, and one which I am proud to sponsor, along with my colleague from California [Mr. KNOWLAND].

Mr. President, I am a Republican. I have tried to help the Eisenhower administration make a success of its administration of the welfare of 170 million people. When statistics are prepared, I believe the name of the junior Senator from California will be high on the list of those who have cast their votes for legislation recommended by the Eisenhower administration.

But the people of California do not want a rubber stamp in the Senate of the United States. Neither does our great Republican President want a rubber stamp in this body.

So I state on my own responsibility that I will vote to override the President's veto, if I am given an opportunity to do so.

But if the Senate fails to put its stamp of approval, by a two-thirds vote, on this vetoed legislation, then it will be a shameful thing for the Senate and the House of Representatives to walk away from a problem that is of such desperate importance to the people of the country.

Mr. JOHNSON of Texas. Mr. President, will the Senator from California yield to me?

The PRESIDING OFFICER (Mr. NEUBERGER in the chair). Does the Senator from California yield to the Senator from Texas?

Mr. KUCHEL. I yield.

Mr. JOHNSON of Texas. First I wish to commend the Senator from California for the statement he has just made. I have great respect for his judgment, and I have great admiration for his courage. I am delighted that he feels so strongly about his position on this measure that he is ready to reiterate it. I wish to assure him that, so far as the majority leader is concerned, the majority leader will give him an opportunity at the earliest possible date to vote to override the President's veto.

Second, let me say that I know of no one who would ask the Senator from California to apologize for anything I have ever seen him do. Not only is he within his rights in introducing or joining in the introduction of proposed legislation, but certainly he is carrying out his duty to the great, sovereign State he represents.

Mr. KUCHEL. I thank the Senator from Texas.

Mr. JOHNSON of Texas. So I commend the Senator from California for carrying out his duty in that respect, as has his colleague, the distinguished minority leader [Mr. KNOWLAND].

But I think the Senator from California is a realist, and I believe he has during this session, spent as much time in this field as has perhaps any other Member.

The Senator from California saw what happened to the bill before, when it was vetoed, and when the Congress did not override the veto. I do not wish to mislead the people or be a party to misleading them. I believe that as thorough hearings as possible should be held, in order to obtain the views of the people in regard to the bill and the veto message, and to give the citizens of the country an opportunity to state their position. Then the Senate should take action.

As I recall, the Senate agreed to the conference report by a vote of almost 5 to 1. I have reviewed the veto message, and I know of nothing that the Director of the Bureau of the Budget has pointed out that would keep me from supporting the position the Senate took by a vote of almost 5 to 1. If we can now obtain a vote of only 2 to 1, that will be sufficient to override the veto.

Of course, if the veto is not overridden, then, as the Senator from California has said, we shall have to explore other means.

Mr. KUCHEL. The Senator from Texas is correct.

Mr. JOHNSON of Texas. But I do not want to hold out the hope that we are going to abandon projects in various States just because the Director of the Bureau of the Budget does not approve them and just because he says they have not received proper study, when the Senate and the House say they have. I do not intend to vote to have the bill tailored solely to meet the judgment of the Director of the Bureau of the Budget. I am enough of a realist to believe that that would be holding out false hopes to the people concerned.

Although I believe the matter must be fully explored, I do not want to be a party to a plan which will, in effect, cause the people to be told, "If the President's veto is sustained, we will pass another bill, and will get it signed."

If this bill does not become law, in my judgment every project provided for in it will be endangered. So far as I am concerned, I will not have the blood on my hands.

Mr. KUCHEL. Mr. President——

The PRESIDING OFFICER (Mr. TALMADGE in the chair). The Senator from California has the floor.

Mr. KUCHEL. Mr. President, I hope my friend, the able majority leader, is wrong when he suggests that each project provided for in the omnibus bill will be in danger if the veto is not overridden.

I have made clear my position regarding what my vote will be if the question of sustaining or overriding the President's veto is scheduled by the leadership for consideration and vote here.

But, Mr. President, if the pending bill does not become law, the Congress will have the responsibility of doing whatever is necessary to be done in order during the 1958 session of Congress, after a lapse of 4 years, when our action in this field has thus far been zero, to formulate and pass proposed legislation, which will become law, which will permit the Government to continue highly indispensable public labors in the field of protecting the American people.

The sad fact is that Congress last year appropriated money for flood-control projects in my State. It appropriated money for the construction of dams in my State contingent, however, on authorizing legislation being enacted. The money cannot be spent and those dams cannot be built because we do not have any authorizing legislation.

I can only say that I hope we come to grips with this problem as soon as possible and, depending upon the results of the vote in this Chamber on the vetoed bill, then take such alternative action as will be in the interest of all the people.

Mr. JOHNSON of Texas. Mr. President, will the Senator yield?

Mr. KUCHEL. I yield.

Mr. JOHNSON of Texas. I join the Senator and heartily concur in the last statement he made. I hope we will override the veto. If we cannot, we shall want to take such alternative action as possible. I do want to sound a warning, however. In my opinion, the record of the Congress on both sides of the aisle is such, in the light of the action we took on the last veto and in the light of the projects involved in the bill, that I do not think Members are going to sit idly by and pass bills for other work when their own projects are not included. I think the time has come when we are going to stop appropriating for projects that are not authorized.

I think the Senator's course is a wise course. I am going to join with him, unless the testimony changes my mind. I think hearings should be concluded and action taken on the veto. I am an optimist. I hope enough Members on both sides will stand up for a 2-to-1 vote, instead of the 5-to-1 vote we had on the conference report.

Mr. KUCHEL. I thank the Senator. I do hope that with reasonable speed the United States Senate will come to grips with this problem.

Mr. PROXMIRE subsequently said: Mr. President, I am happy I was on the floor when the colloquy took place between the majority leader, the minority leader, and other Senators. I should like to say I was elected by the people of Wisconsin. So far as I know, the Budget Bureau Director was not elected by anyone. The people of Wisconsin will suffer from this flood control veto just as they will from the farm veto. I think the position taken by the senior Senator from Texas and the junior Senator from California is 100 percent correct. I stand ready right now to vote to override both the flood control and the farm vetoes.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE RECORD

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the RECORD, as follows:

By Mr. HUMPHREY:

Letter received by him from the Citizens Committee for the Hoover Report, and text of address entitled "The Citizen's Responsibility for Good Government."

THE NATIONAL GUARD

Mr. HRUSKA. Mr. President, again this year, we find the National Guard on the defensive. It has been proposed that the strength of the guard be reduced from 400,000 men to 360,000 men.

On a nationwide scale, this proposed cut would be about 10 percent; that is, from 400,000 to 360,000. It would be even more severe when we consider the fact that as of a year ago, April 1957, the guard numbered 434,000 officers and men.

It is estimated by the National Guard Association of the United States that this cut, together with the proposed new troop basis, would eliminate at least five or six divisions and approximately 1,200 supporting units.

I cannot buy the concept that when the Regular Army forces are reduced, the National Guard, traditionally the first line of reserve strength, should be reduced also. It costs the taxpayer less than one-seventh as much to support a soldier in the guard as in the Regular Establishment, which in these days is a considerable factor.

Nor can I subscribe to deactivating six guard divisions. These divisions are well trained, going organizations, housed and equipped, with facilities for maintenance of equipment and with the additional advantage of State support.

At the same time, Mr. President, the Department of the Army has directed that all National Guard units be engaged in unit training by next fall. I have been informed that the proposed cut in strength would make it impossible for many guard units to effectively meet this requirement. And it will further hamper young men in fulfilling their military obligation to the Nation by enlisting in military reserve activities.

The quotas imposed on young men enlisting for 6 months' training and subsequent service in the guard would make it impossible for the guard to reach the minimum of 48,000 new enlistees required to keep its enrolled strength at 400,000 officers and men.

Mr. President, these threats are repugnant to the current readiness of the guard and to its illustrious military history.

The most recent inspection of guard units by officers of the Active Army show that 75 percent of the 5,454 Army Guard units were rated "very satisfactory" or better and that almost one-third of the units received "excellent" ratings. The guard's officer candidate program is flourishing and a total of almost 42,000 guardsmen are enrolled in Army service school extension courses.

For the first time in history, Mr. President, military reservists are fulfilling an active defense mission. The guard is maintaining, on an around-the-clock basis, strategic antiaircraft installations guarding our major centers of population. And, as fast as they are being trained, these units are manning the Nike-Ajax batteries assuming the burden of our municipal antiaircraft defenses.

Each of the 27 divisions of the National Guard—21 infantry divisions and 6 armored divisions—has been an effective, functioning unit since the reorganization at the end of World War II. As recently as 1952, in Korea, only guard divisions functioned as divisions in our active forces. Guardsmen, from the top brass down to the newest recruit, are eager for reorganization into the Pentomic division—the streamlined troop structure designed by the Pentagon to meet the requirements of modern, atomic warfare.

After extensive hearings on this subject, Mr. President, Subcommittee No. 1 of the House Armed Services Committee adopted a resolution on March 4, 1958, deploring the proposed reduction in National Guard manpower. The subcommittee urged that the strength of the guard for fiscal year 1959 be maintained at 400,000 with assurance that enough enlistees be permitted to take the 6 months' training program during that year to supply the 48,000 trainees to maintain that level of manpower.

Mr. President, I commend the subcommittee for this action. It reflects, in my opinion, the overwhelming sentiment of the citizens of those communities in Nebraska which have been so enthusiastic in support of the guard units in their towns. The States alone, and with Federal assistance, have spent millions of dollars constructing guard armories in their communities.

Guardsmen are good citizens. They are good citizens of their local communities because they recognize that one requirement for good citizenship, for all those who are able, is service in the defense of their country.

It is my hope, Mr. President, and it is my belief, that the Congress will not permit any additional reduction in the level of forces assigned to the National Guard. Our citizen-soldiers have proven themselves time and again as our first line of defense. We cannot gamble with depleting their forces when the need for the services again may become one of extreme emergency.

Mr. President, I ask unanimous consent that there be printed in the CONGRESSIONAL RECORD at this point Brief Notes on National Guard, which are pertinent in this general connection.

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

BRIEF NOTES ON NATIONAL GUARD

The National Guard is a very important and necessary part of our national defense. It constitutes a first line of defense and a

force for stability and order in its home States. It stands ready for quick effective use in times of national emergency or disaster.

Its standing is achieved by a direct and active citizen and local community participation. It enjoys enthusiastic and loyal support of the citizenry of the localities in which its units are based.

It provides an effective, trained, and equipped organization of men at a high level of readiness at a relatively low cost to our Government.

CURRENT ROLE OF NATIONAL GUARD

Hampered as it is by criticism from some of our military planners, continued cutbacks in funds for armory construction, reductions in manpower, and by regulations which hamper recruitment, the National Guard remains a vigorous, vital part of this Nation's Military Establishment.

Its mission, as stated in the Armed Forces Reserve Act of 1952, remains unchanged:

"The Congress further declares, in accordance with our traditional military policy as expressed in the National Defense Act of 1916, as amended, that it is essential that the strength and organization of the National Guard, and the Air National Guard, as an integral part of the first line defense of the Nation be, at all times, maintained and assured."

This is the role of the National Guard in our modern life. It is a role and a mission which has developed by trial and error over more than 300 years as a self-governing people attempted to find the best way possible to protect themselves in emergency without a militaristic, professional standing army so repugnant to the early ideals of our Nation.

NATIONAL GUARD IS NOT OBSOLETE

There has been a great deal of talk to the effect that the National Guard is obsolete—that the foot soldier has had his day. Because both the Free World and its potential enemies now possess fantastic weapons of war, it is said that any future war will be fought in a matter of hours with push buttons.

Such arguments are attractive, but they are not true.

Soviet Russia does not recognize these claims. She maintains a standing army numbering some 175 divisions and these divisions are completely equipped with the latest in modern infantry weapons, including atomic cannon, rockets, and vehicles to assure fast mobility.

Thus, Soviet Russia is equipped to fight any kind of war which it may decide to launch—full-scale atomic warfare or small, isolated actions in which conventional forces and arms would provide the margin of victory.

Opposed to this massive array, our ground forces at the ready number 15 Regular Army divisions, 27 National Guard divisions, and 10 Army Reserve divisions. And some of these units, Mr. President, are understaffed and are supplied with weapons obsolete for the requirements of modern warfare.

SOME NATIONAL GUARD HISTORY

The National Guard has the longest continuous history of any military organization in the United States. Rooted in the English militia system, the first militia regiment was organized in Massachusetts in 1636.

Men who joined these colonial regiments fought the War of Independence. Their leader, George Washington, later formulated the philosophy of America's Defense Establishment in a Treatise on Military Policy written in 1783. He envisioned a peacetime Military Establishment consisting of a standing army charged with certain specific missions strongly supported by a State militia with similar organization, maneuvers, and arms.

Although the name National Guard gradually became common beginning in 1824 in New York, it remained for the National Defense Act of 1916 to establish the guard as an integral part of the Nation's military defenses.

In World War I, guardsmen made up two-fifths of the divisions of the American Expeditionary Forces in Europe and received the strong commendation of Gen. John J. Pershing.

More than 300,000 guardsmen fought in World War II. Guard units took part in 34 separate campaigns and 7 assault landings. They were awarded 148 Presidential citations for valor and heroism.

When the guard was ordered out of Federal service in 1946, it accomplished one of the most striking reorganizations in military history. Because of expired enlistments, only skeleton forces of officers were officially returned to the States.

In July 1946, the States were authorized to proceed with reorganization and by early 1950, the guard had returned to a strength of federally recognized units that was approximately 100 percent of the strength authorized by Congress.

NATIONAL GUARD HISTORY IN NEBRASKA

The State militia and the National Guard have played vital roles in the history of Nebraska.

The need for military protection from Indian raids prompted a resolution by Territorial Governor Cumming in December 1854, "urging the citizens of the Territory of Nebraska to organize in their respective neighborhoods into volunteer companies, constituting in all 2 regiments, 1 north and 1 south of the Platte River."

This organization was officially recognized on January 23, 1856, when the Territorial Legislature passed an act to organize the Nebraska Volunteer Militia.

When the Civil War broke out, the Territory had a population of but 30,000 people, yet it contributed 3,307 officers and men to the Union Armies despite the continued threat of Indian raids.

For the Spanish-American War, 4,016 officers and men were mobilized into 3 infantry regiments. In command of the Third Nebraska Volunteer Infantry Regiment was Col. William Jennings Bryan.

By 1898, annual summer encampments had brought these regiments to a state of excellent training. Serving as an instructor at these encampments from 1891 to 1895 was 1st Lt. John J. Pershing, who was commandant of the cadet battalion at the University of Nebraska.

When the Second Infantry Regiment was mustered out of United States service in 1899, it was reorganized into the Nebraska National Guard. In 1908, the first encampment was held at Ashland and a permanent camp was organized.

After the disastrous Omaha tornado of 1913, guardsmen performed heroic rescue and relief work.

During World War I, Nebraska guardsmen participated in almost every phase of military service. Distinct Nebraska units were the 355th Infantry called the Fighting Farmers, the 314th Ammunition Train, and Nebraska Field Hospital No. 1, part of the 42d "Rainbow" Division. In all, more than 57,000 Nebraskans saw service during World War I.

Nebraska's National Guard regiment—the 134th Infantry—went on active duty with the Army 2 days before Christmas in 1940. After participation in the Louisiana maneuvers, the 134th was ordered to the west coast 7 days after Pearl Harbor.

In 1944, the 134th was among the guard units which hit Omaha Beach and wrote a glorious story of victory from Normandy to Saint Lo and "Bloody Sunday," in the race across France to the Saar River and Christmas in Metz, and in the crossing of the Roer River, the push to the Rhine and finally to the Elbe.

In 1952, guardsmen again performed valiantly in time of disaster. When parts of Omaha and most of Council Bluffs, Iowa, were evacuated in the face of the greatest Missouri River flood in history, guardsmen stood sentinel in deserted streets or toiled on dikes to beat back the river.

Today there are 42 Army National Guard units in Nebraska forming part of the 34th "Red Bull" Division with their brother guardsmen in Iowa. The rolls number 412 officers and some 3,900 enlisted personnel.

CITIZENSHIP CLEARING HOUSE AND CAREERS IN AMERICAN GOVERNMENT

Mr. NEUBERGER. Mr. President, for many years, I have been very concerned about the need for encouraging young people to take a more active interest in politics. As both an Oregon State and a United States Senator, I have considered the opportunity to awaken an active political interest in young people, one of the more coveted privileges of my positions.

Consequently, I have been more than willing to sacrifice patronage in order to appoint additional Senate pages. The unforgettable experience which they gain from their unique vantage point cannot be duplicated. Since coming to the Senate I have also tried to further interest in government among young people through a student intern program in my office. My intern for the 1958–59 Congressional year, Mr. Charles Mitchelmore, of the University of Oregon, has just been chosen by a selection committee who interviewed more than a dozen candidates for the position on my staff.

Yet my concern, and that of others, with the need for more capable young people to enter into the arena of practical politics would be much less effective if it were not for the leadership given us by the Citizenship Clearing House of New York City, a national organization which was founded for this exact task. Their capable associate director is Dr. John M. Swarthout, who, until this year when his duties demanded that he be in New York City, served as chairman of my Intern Selection Committee.

I can personally attest to the effectiveness of the Citizenship Clearing House. On many college campuses I have addressed their chapters, and both my wife and I have been favorably impressed with the quality and caliber of students who have thus been motivated to take a genuine interest in government at State, municipal, county, and Federal levels.

Mr. President, this year my intern is Tom Murdock, a 1957 graduate of Willamette University whose home is in Klamath Falls, Oreg., and who will begin his formal graduate work in September of this year at Northwestern University. From my observation of Mr. Murdock, I feel confident that his experience in my office has given root to a real interest and understanding of national politics—one which will not only serve the academic world, but also the far too thin ranks of qualified citizens who are willing to participate in political life. I an-

ticipate for Tom Murdock a brilliant career in government or teaching.

Mr. President, an excellent summary of my intern's life was written by Mr. Tom Murdock for the Citizenship Clearing House Bulletin, volume VI, No. 2, which is being reprinted in the National Municipal Review, and I ask unanimous consent that it be printed in the body of the RECORD following my remarks. It will demonstrate to my colleagues the high quality of the applicants selected under my student intern program.

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

LEARNING POLITICS ON THE JOB: A SENATOR'S INTERNSHIP PROGRAM

(By Thomas Murdock, research assistant to United States Senator NEUBERGER)

Each spring a graduate of an Oregon college wins the privilege of spending a year in the Nation's Capital working for a man who says he is a politician "and proud of it." This year the privilege is mine.

Like many other Members of Congress, Senator RICHARD L. NEUBERGER, the politician for whom I work, does not think of politics as the underhanded business which almost half of the people in a recent national poll indicated they thought it was. Neither does he agree with the 69 percent who said they preferred that their children not enter political life. Like Elihu Root, he insists that "Politics is the practical exercise of self-government, and somebody must attend to it if we are to have self-government."

When Senator NEUBERGER was elected to the Senate in 1954, he set out on a program to try to improve public understanding of politics as a career. The staff job I hold this year, as the fourth intern in the post, is part of that program designed to interest and train young people in the necessary business of politics.

Toward the end of the 1st session of the 85th Congress, I arrived in Washington to begin my on-the-job training. Washington was in the midst of its August heat wave, and the civil-rights debate was boiling. At once I learned that heat or no heat, the United States Senate does not believe in the 40-hour week. From 8:30 a. m. to 8 p. m. daily I was initiated into the inner workings of a Senate office.

Just as a Senator's work is varied, so are the tasks of the intern. Officially I work under the title of Research Assistant, and much of my time goes to finding hard-to-get facts. Vivid in my memory is a search for a 1939 letter from Albert Einstein to Franklin Roosevelt. The Senator needed it almost at once, but not until midafternoon did I find it, set aside for the cornerstone of the new AEC building. Through a prompt Capitol messenger, a copy of the nearly entombed letter was handed the Senator minutes before he left to give the speech for which it was required.

Attending properly to constituents' mail is one of the larger jobs a Congressman faces, requiring many of his staff's working hours. It surprised me to discover that all mail is answered, not just important letters. The people who write cover a huge variety of subjects, requiring a Senator and his staff to be informed on virtually all contemporary topics—and on where to look for information on all others. In my 5 months on the staff I have sought for constituents information varying from data on the pathology of penguins to detailed maps of the Oregon Territory.

But factfinding and letterwriting do not keep the intern bound to his desk, for his work is geared so that he may observe the legislative process. Every other week I attend the Oregon delegation breakfast, where I sit side by side with two Senators and three Representatives in a closed-door discussion of legislative questions. It is hard to believe that a year ago I was a college student 3,000 miles away, reading of these same questions and these same people.

No study of Congress would be complete without including the third house—the lobby. Representing a Senator at a luncheon hosted by a leading road building firm or by a humane society cannot be duplicated as a public relations seminar.

My internship is less than half over, but already it has brought to life my 4 years of formal study in political science at Willamette University. I've been in politics. Yet I do not feel "dirty" or as though I've given up ideals. Instead, I have witnessed the complicated process which goes into a Senator's decisions. He must be realistic, yet to live with himself he must not lose sight of the basic philosophy he believes makes good government. I have been convinced that very many of our dedicated politicians succeed in this task.

Some new knowledge I never could have found in the classroom. The part a Congressman plays in the making of administrative decisions which affect his State was a revelation to me. I have also seen, I believe, a real need for a nonpartisan administrative officer from the State government to coordinate a Congressional delegation's efforts on behalf of the State. New observations have given me a genuine reason to begin formal graduate work.

The reactions of my predecessors have all been equally enthusiastic. Dick Judd, former Lewis and Clark College student and the first intern, is now on the staff of Senator WAYNE MORSE. Eric Voorsanger, a Reed College graduate, now works for Oregon's Bureau of Municipal Research. Larry Hobart, from the University of Oregon, is a graduate student at the University of Michigan. "The program has succeded in counteracting, in a small way, the assumption that politics is a dirty business, fit only for hacks," wrote Hobart after his year here.

Although the intern becomes an integral part of Senator NEUBERGER'S staff, he is not selected by the Senator. He is chosen by a committee consisting of Miss May Darling, member of the Oregon State Board of Education; J. W. Forrester, editor of the Pendleton East-Oregonian and a member of the Oregon State Board of Higher Education; Father David H. Fossleman, of the University of Portland faculty; and Dr. John M. Swarthout, head of the political science department of Oregon State College (and this year's CCH associate director). The committee has consulted Senator NEUBERGER only once, in regard to the eligibility of an Oregon nonresident who was attending an Oregon college. (The Senator's decision was that anyone who had the interest to go to college in Oregon certainly is eligible to work in his office.) Graduates in any field are eligible if they have informed interest in problems of government and public policy. Political affiliation is not a factor. Last year's intern, Larry Hobart, is a Republican.

Senator NEUBERGER augments his intern's finances by allowing him to live in the Neuberger apartment during the Congressional recess, while the Senator is in Oregon. Yet I find it ridiculous to speak of augmenting the salary for a position which, in itself, repays its holder many times over.

FUTURE SCIENTISTS

Mr. YARBOROUGH. Mr. President, I ask unanimous consent to have printed at this point in the RECORD Senate bill 3642, introduced by me on Monday, April 21, 1958, without a statement. I also ask unanimous consent to have a statement on the bill printed in the RECORD at this point.

The PRESIDING OFFICER (Mr. NEUBERGER in the chair). Is there objection?

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

Be it enacted, etc., That, for the purposes of providing for the accelerated development of secondary school education in the natural sciences in the several States and Territories, there is hereby authorized to be appropriated beginning July 1, 1958, and annually thereafter, the sum of $75 million, such sum to be made available to the several State education agencies or legally constituted State boards of education, prorated on a basis of secondary school age population: *Provided*, That the several States and Territories shall be required to match by State or local funds, or both, 100 per centum of the appropriations authorized under the provisions of this act.

SEC. 2. The United States Commissioner of Education (hereinafter referred to as "the Commissioner"), in the Department of Health, Education, and Welfare, shall be responsible for such prorated distribution and for all other administrative obligations specified hereinunder.

SEC. 3. In pursuance of the purposes of this act the Commissioner shall work with and assist the several State boards or education agencies in the establishment of State plans applicable to the peculiarities of the individual States. Details of such State plans may be permitted to vary one from another and their final rejection or approval shall be left to the technical discretion of the Commissioner with the following exceptions: Each plan must—

(1) provide, in the estimate of the Commissioner, a comprehensive program for the stimulation of thought and basic instruction in one or all of these fields of scientific learning: mathematics, chemistry, biology, astronomy, meteorology, physics, geology;

(2) provide that moneys going to any individual school may be expended for instructional costs or laboratory and library equipment or both;

(3) provide that recipient schools shall not expend any funds authorized under this act for salaries where the instructor holds less than a master's degree from an accredited college or university in at least one of the following fields: mathematics, chemistry, biology, astronomy, meteorology, physics, geology;

(4) provide that recipient schools under any approved plan must be on the secondary level of junior or senior high schools.

SEC. 4. Appropriations made under authority of this act may be expended in beneficent or industrial type training programs: *Provided*, That (1) the industry or private association involved is contributing a minimum of 50 percent of the total costs of such program, and (2) in the judgment of the Commissioner, the program shall be in the interests of bona fide scientific training and not a device to utilize the services of scientific trainees for private profit.

SEC. 5. Funds authorized for appropriation under the terms of this act may, in addition to other specified purposes, be expended for scientifically orientated organizational activity. The Future Farmers of America clubs, operating partially through funds appropriated for the vocational agriculture program, may be used by the Commissioner as a criterion for the possible establishment of "Future Scientists of America" clubs. Such organizational activity will in all cases be under the sponsorship of the duly delegated instructor of science.

SEC. 6. In administering this act the Commissioner shall seek the technical assistance of the National Science Foundation and shall

closely coordinate his activities with that agency's already operative four-point program aimed at full development of the Nation's actual and potential scientific talent.

SEC. 7. Public Law 597 (84th Cong.) is amended to authorize the additional appropriation of $1 million for the specific purpose of adding scientific journals, books, and other papers to rural libraries where, in the judgment of the Commissioner, adequate factual sources are not now available to high school science students.

SEC. 8. The Secretary of the Treasury, through the Fiscal Service of the Treasury Department, shall, upon the certification of the United States Commissioner of Education, pay, in equal semiannual payments, on the 1st day of July and January each year, to the appropriately designated State education agency or State board the moneys to which each participating State or Territory is entitled under the provisions of this act.

SEC. 9. For the purpose of administering the provisions of this act there is hereby authorized to be appropriated to the Office of Education, Department of Health, Education, and Welfare, for scientific education, for the fiscal year beginning July 1, 1958, and annually thereafter, the sum of $350,000.

SEC. 10. Nothing contained in this act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direct supervision or control over the curriculum or program of instruction of any educational institution or over its administration or personnel.

STATEMENT BY SENATOR YARBOROUGH

I have not seen a program more productive of results than the FFA organization. There seems to me absolutely no reason why this same type of activity couldn't do for science education what it has done for agriculture education.

Our problem in America is clear cut. In short, it is the need for additional emphasis on science and technology without abandoning our traditional concepts of freedom of choice, individual initiative, due regard for the humanities, and educational opportunities for all youth.

Most of us who have had the advantage of coming from the rural communities have seen the FFA at work and have seen the boys working in inspired competition to raise livestock and other farm products. We have seen the boys and girls proudly exhibit their handiwork at fairs and special shows. Can't you visualize what a wonderful program could be built where youngsters interested in science could make their own studies and display their work and findings in a similar fair or science show? Nothing would stimulate the interest in science more.

The bill calls for appropriation of $75 million to be spent on a matching basis with States and schools for purchasing training equipment, employing teachers, and financing a future scientists of America organization.

Among those also appearing before the House committee to testify in support of the bill was Dr. John Mayor, executive secretary of the American Association for the Advancement of Science.

Mr. YARBOROUGH. Mr. President, the bill creates a Future Scientists of America program, somewhat similar to the Future Farmers of America program. It is patterned on the bill introduced by Representative WRIGHT, of Texas, in the House of Representatives.

Hearings have already been held by the House committee. Among those who appeared to sponsor the bill was Dr. John Mayor, executive secretary of the American Association for the Advancement of Science.

The bill provides for the purchasing of training equipment, employing teachers, and financing the Future Scientists of America organization.

The bill does not conflict with any scholarship or fellowship measure, because the organization will function wholly among the junior and senior high schools of the United States.

REORGANIZATION OF THE DEFENSE DEPARTMENT

Mr. SYMINGTON. Mr. President, a week ago, President Eisenhower sent his defense reorganization bill to the Congress.

One of the principal points he made in his covering message at that time was that the bill was essential because, as he said:

> The unprecedented costs of maintaining in peacetime a massive defense establishment demand the utmost economy and efficiency in all of its operations. Our goal must be maximum strength at minimum cost.

Today, however, the press reports that Secretary McElroy testified before the House Armed Services Committee as follows:

> Mr. McElroy abandoned the administration argument that an important reason for the program was to effect economies in the Pentagon. This was not a principal cause, he said.
>
> In fact, he said he was not sure whether any major economies would insue, except possibly through the creation of a director of research and engineering to oversee the military's various new-weapons programs.

I most certainly do not agree with Mr. McElroy's position, and do agree with that of the President.

If any bill is to be passed, it would seem advisable that the President and Mr. McElroy get their ducks in a row.

If the Secretary of Defense, either directly or indirectly, leaves any impression that a reorganization of the present obsolete structure of the Pentagon will not save the American taxpayer a great deal of money, he is wrong.

In addition, he is reducing the chances of passage of any significant reorganization bill, and that could not be more unfortunate—because reorganization is essential, not only to our prosperity, but also to our security.

SCHOOL CONSTRUCTION

Mr. PROXMIRE. Mr. President, one of the best articles on the crisis in school construction to appear in recent times was written by Mr. Roy E. Larsen, president of Time, Inc., for publication in the May 1955 issue of State Government. Mr. Larsen was chairman of the National Citizens Commission for the Public Schools.

In his article Mr. Larsen makes it plain that the property tax, the traditional mainstay of local school districts, is no longer adequate to meet the enormous needs for schools and teachers.

Mr. President, I ask unanimous consent that Mr. Larsen's article, entitled "What Is Being Done About the School Building Crisis?" be printed in the RECORD at this point in my remarks.

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

WHAT IS BEING DONE ABOUT THE SCHOOL BUILDING CRISIS?

(By Roy E. Larsen)

(Roy E. Larsen, chairman of the National Citizens Commission for the Public Schools and president of Time, Inc., deals in this article with one of America's most compelling problems—the state of our schools, particularly our school buildings, and the financial task of bringing them up to adequate standards. He recognizes the complexity of the problem and emphasizes its magnitude, but he is optimistic about its solution. The national economy, Mr. Larsen is certain, easily can afford the schools we need. He finds current grounds for encouragement in actions which numerous States and localities are taking to facilitate school construction. But our sights for education must be set high, he underlines, if our schools are to match the crucial requirements of the decade ahead.)

The proposals for aid to school construction pending before the 84th Congress are but the latest in a series of measures proposed as remedies for the classroom crisis.

The problem's complexity is indicated by the number and range of these proposals and the variety of opinion concerning them. Opinions differ not only on solutions to the problem, but indeed on the scope of the problem itself. That an accurate appraisal is difficult is shown by the March 29 testimony of Secretary Hobby and Commissioner Brownell (before the House Committee on Education and Labor), in which they concluded that new data from the States give a different picture of the needs from what was anticipated in earlier estimates.

Recommended approaches to the financing of needed school construction also embrace a wide range of possibilities and are supported by sharply differing bodies of opinion. On the one hand, advocates of direct Federal aid agree with the Senate report on S. 2601, 83d Congress, "that Federal aid of an emergency nature is essential to assist the States and localities to meet the emergency need for construction of school facilities."

At the opposite pole is a report by a subcommittee of the Commission on Intergovernmental Relations which stated, according to the New York Times (February 25): "We have been unable to find a State * * * which is economically unable to support an adequate school system."

Obviously, an accurate appraisal of the problem is the necessary preliminary to sound solutions. With this end in view, the school facilities survey was authorized by the 81st Congress and participated in by most of the States. Since no overall study had been made, such a step was essential. However, the various estimates of classroom needs that followed the survey have been subject to differing interpretations. This is true partly because the basic data could be variously interpreted within the different States: there are no absolute, universally accepted standards for judging school building needs.

Another difficulty lies in the definition of obsolescence. The age of today's schools figures largely in estimates of construction needs—almost a fourth are over 50 years old—but it is not easy to draw a sharp line between renovation and replacement.

All these considerations point to the need for more facts. A beginning has been made, not only by the Office of Education school facilities survey, but also by many of the States individually, in studies conducted by laymen and educators at the request of legislatures, governors, State education departments and other agencies. These developments and the high pitch of interest in the problem all around the country are

extremely encouraging. But many more facts must be uncovered and fitted together before the problem will be capable of sharp definition and sound long-range remedy. No aggregate figures can give a true indication of the need in a particular State or district.

Everyone agrees, however, that there will be not letup in the need for larger scale construction in many areas in the coming decade: enrollments have already reached the highest point in the Nation's history; over a million children will be added to the rolls every fall between now and 1960.

For all these reasons, the National Citizens Commission for the Public Schools has published a series of "working guide" booklets to help citizens assess and attack school problems in their own districts and States, and is working closely with the Committee for the White House Conference on Education. Called by President Eisenhower for November 28–December 1, this Conference is to be preceded by others in the States and Territories; a movement to give the national and State conferences a firm grassroots base through "town meeting" conferences in every community has gained momentum recently.

Subcommittees of the White House Conference Committee will consider six major areas, including educational goals, organization of school systems, school building and teacher needs, school finance, and continuing public interest in education.

It is expected that the recommendations and comments of these Subcommittees will help to guide the National Conference, which will report to the President after December 1. The Committee on Building Needs is headed by former Gov. William Preston Lane, Jr., of Maryland, with Prof. W. D. McClurkin, of George Peabody College for Teachers, and the National Council on Schoolhouse Construction, serving as consultant.

Also especially significant to the question of getting enough school buildings will be the reports of the Subcommittee on School System Organization, headed by State Commissioner H. Grant Vest, of Colorado, and Finance, chaired by Frank C. Moore, former Lieutenant Governor of New York, now president of the Government Affairs Foundation. Consultant for Mr. Moore's subcommittee is Dr. Edgar L. Morphet, of the University of California.

Within 6 months, then, some new answers to the questions involved in keeping pace with our classroom needs will undoubtedly begin to take shape from this pooling of expert and firsthand knowledge in the communities and States and in Washington. There is very reason to hope that sound long-range recommendations will emerge as a result. And through these conferences, as well as the increased interest in school problems developing on many fronts, the greatest obstacle to school improvement—public apathy—is being steadily overcome.

This augurs well for the future. Some time must elapse, presumably, before long-range plans can be set in motion. But recent reports give encouraging evidence of the progress already being made in many places. The deficit of school facilities, accumulated through nearly 20 years of depression and war, and aggravated by soaring enrollments, is being dented. Aware that a continuing deficit of classrooms could render all other educational questions hypothetical, the districts and States have stepped up their building programs and are finding new dollars to support them.

Overall capital outlay for schools in the United States has shown a steady rise from less than half a billion dollars in 1947–48 to $2 billion in 1954. According to Commissioner Brownell's latest estimates, classrooms are being built at the rate of 60,000 a year—enough to keep up with new needs created by newly enrolled pupils, but not enough to meet all the backlog needs caused by obsolescence.

Experts in school finance point out, however, that the tax structure and the uneven distribution of wealth in the United States pose major problems for State and local governments, presenting obstacles in some cases to much-needed school construction programs. They point out, too, that our methods of paying the educational bill have not kept pace with our demands on the schools, or with rising costs.

The property tax, for example, has in the past been our main source of all school revenue. It is still the basis for bond issues which pay the cost of most school construction. The experts point out, however, that two inherent weaknesses in this method are making it increasingly difficult for communities to get the money for needed school construction. Not only may taxes based on unrealistic assessments create many inequities, but legal limitations on bonded indebtedness tie the hands of some districts even when the people are willing to pay higher taxes for schools.

Moreover, the experts say, the logic of relying on property taxes to pay school costs has all but disappeared. In the last 50 years, the economy has changed from one largely based on the value of property to one which measures its wealth in terms of income created by manufacturing.

Taking 1939 values as 100, for instance, Cyril Sargent of the Harvard School of Education points out that the tax base of real property rose only to 110 by 1953, but that the nationwide value of new construction of all kinds had risen by 1949 to 385, personal income by 1953 to 380, and corporation income after taxes in one State (New York to 450.

To look at it another way, since 1929 our localities have increased their tax take, primarily from real estate, 65 percent—1.6 times the local taxes of 1929. Meanwhile, the States have increased their taxes 511 percent—6 times States taxes of 1929, and Federal taxes have increased 1,581 percent—16.8 times. Real estate is the last area to reflect a dynamic period of expansion.

On the other hand, public resistance to taxation at all levels is stiffening. This is not surprising in view of the way costs for governmental services of all kinds have skyrocketed. During the first half of the 20th century, annual municipal expenditures in the United States rose from $830 million to $12.4 billion, State costs went from $179 million to $11.8 billion, and services through Federal agencies jumped from $470 million to $73.9 billion.

Many government officials and other citizens believe we should not only draw the line at further taxes, but find ways to lower them all along the line. School taxes, where voters usually exercise direct control, are a special target.

A typical dilemma facing school boards and legislatures was encountered recently by a newly elected board member in Colorado. He was approached by a solid citizen who said, "Now, Joe, there are two things I want you to do, in this order. First, I think you should see that our teachers get more money—and then, I want you to lower taxes."

Yet school costs are certain to rise. Not only will there be more children in school during the next decade than ever before, but they will represent a steadily rising proportion of the population. (Present birth figures and Bureau of the Census projections indicate that most likely the number of school-age children in 1965 will exceed 48 million—25 percent of the expected total population of 190 million.)

Looking at all these factors, some people have begun to believe that we can't afford to pay the bill. But leading economists say that, despite all seeming evidence to the contrary, this is far from the case. Our wealth is growing even faster than the population. Disposable income and discretionary spending power, in constant dollars, are far greater for the average American than they have ever been before. There is, in fact, a tremendous margin of luxury in our Nation today.

A recent report of the National Citizens Commission for the Public Schools (Financing Public Education in the Decade Ahead, December 1954) concludes that the question is not one of means but of policy and method—of determining how to channel a small part of our increasing resources into education.

As against the current annual budget of some $10 billion for all school systems, the commission's study finds that the projected cost for the same standard of education in 1965 would be some $14 billion. But assuming that present standards, including teachers' salaries, were to be raised across the Nation in the next 10 years, at least to the present level of our best State school systems, the annual cost would be closer to $20 billion, or double today's cost.

According to our leading economists' projections of the national economy, the gross national product may be expected to go well over $500 billion by 1965. The commission's report assumes a minimum figure of $525 billion, as against $365 billion in 1953. An additional school bill of $5 billion to $10 billion would be but 3 to 6 percent of this increase in our national wealth. The highest in the projected range of probable school costs—$20 billion for 1965—would require but 3.6 percent of the gross national product as against 2.4 percent in 1954.

These estimates provide a yardstick for measuring our ability to pay increased educational costs. We do, in short, have the money to pay for more facilities and services, but under existing methods not enough of it is available to school boards. The commission's report on the decade ahead suggests that there is need for forthright reexamination of our traditional policies of financing public education.

Moreover, the recommendations of the Commission on Intergovernmental Relations, scheduled to be submitted to President Eisenhower on June 30, may be expected to suggest some departures from traditional ways of finding school dollars.

Programs already under way in some States illustrate the kinds of questions that must be considered in attempting to channel new money toward school construction.

At least 25 States give some form of financial help for school construction to local districts. (The average percentage breakdown of the total school dollar last year was: 2 percent from the Federal Government, 61 percent local, and 37 percent from the States. Individual State support ranged from 5 percent or less in 2 States to 89 percent in 1.) Some State aid programs for school construction have long been in operation. Some have been devised recently to find new and relatively painless dollars. Several offer interesting possibilities for adaptation by other States.

Florida is one example. In 1953 the State decided to channel money from motor vehicle licenses to new school buildings. (Grants-in-aid are distributed to the counties on a population basis.) Since the tax was not a new one and the license fee did not go up, the plan brought none of the pain usually associated with finding new sources of revenue.

Four States are using school building authorities. Pennsylvania uses the proceeds from authority bonds to build schools for local districts on lease-purchase agreements. With the help of appropriations from the State's general fund, districts pay rent to repay the cost in full within a period not to exceed 40 years. The districts also assume the costs of operation, maintenance and insurance.

Georgia's authority uses sales tax proceeds to finance schools approved by the State department of education on land deeded to the authority by the local system. The authority then pays each local board enough money to pay the rent. (The local district takes title to the school at the end of 20 years.)

Indiana and Maine also have State school building authorities. South Carolina has a slightly different plan: A 3 percent State sales tax is earmarked for school construction, with the State contributing 75 percent of the cost and the local community the rest.

Proponents of the authority idea point out that the establishment of an authority in each State would enable thousands of schools to be built as needed, where otherwise they might not be constructed for many years. They say that by being able to develop far better credit ratings than most local districts, authorities could obtain favorable interest rates, and that they could allow the reduction of total budget charges by extending amortization over the useful life of school buildings.

Opponents raise various objections. They say that authorities are an undesirable device to circumvent legal debt limitations—that they may encourage irresponsible and, in some cases, expensive borrowing. Some opponents point out that independent authorities may cause jurisdictional difficulties; some say that, as noneducational agencies, they may have too much control over educational facilities. Others suggest that poorer districts would have to depend on State aid to pay rent to the authorities.

Some opponents of State authorities suggest the greater use of consolidated school bond issues. They point, for example, to the Florida plan, which in effect guarantees that part of the amortization of school district bonds will be available from State funds. (Consolidated issues are also opposed by some, on the ground that they use up a part of the State's debt-incurring ability.)

The Massachusetts School Building Commission uses money from the State's general-tax fund to help local boards pay off their bonded indebtedness. The amount paid to each district varies according to the general income in that area and ranges from 30 to 60 percent of the total amortization and interest costs.

Maryland enables its counties to cut construction costs by taking advantage of the State's better credit rating. The State lends money from single-appropriation bond issue revenue to each county at the bargain interest rate of 1½ percent.

(More and more, economy-minded people are pointing out the savings that can accrue to any State or district which takes the time and trouble to assure a favorable interest rate on its school bond issues. Boards of education in political subdivisions with unknown credit ratings need technical assistance in publicizing their economic assets when they put a bond issue up for bids. To this end, the State Taxpayers Association of Wyoming is enlisting the aid of investment firms in the preparation of a brochure to help school boards provide adequate information to bond houses.)

Very recent legislation in several States is making more dollars available for the schools. In Wyoming, for example, following the recommendations of a legislative interim committee which enlisted citizen help in a 2-year study, the 1955 legislature enacted a new system of State aid which will guarantee $5,500 to every classroom unit. The legislature also made available a large portion of government royalties which formerly went into the permanent school funds, and made it possible for school districts to exceed statutory millage limits by approval of the taxpayers. A constitutional amendment, increasing local bond debt limits from 6 to 10 percent, was approved by the people of Wyoming last November and becomes effective this month.

In Idaho, too, the last legislature provided for the increase of reorganized school districts' bonding capacity.

Montana school districts currently have a substantial reservoir of unused bonding capacity. However, in anticipation of future needs, the 1955 legislature authorized an extensive program for the reclassification and reappraisal of all taxable real property and improvements in the State. This program, designed to secure uniformity in assessments, must be completed by the county commissioners not more than 5 years after the effective date of the act.

In Colorado, an interim committee of the legislative council is scheduled to complete a study of Colorado's public education financing problem for review by the general assembly in 1956.

All these developments at the State and local level indicate that we can, when it is necessary, find new and better ways to pay for our schools.

However, State leaders point to the fact that other major services provided by State governments, in the fields of health, hospitals, highways, and welfare, are in the same financial position as the schools. (Within the past 8 years the States have practically doubled their expenditures, to an estimated $15 billion in 1954, and still have not caught up with the needs.) They urge the thoughtful reexamination of current practices in raising and distributing money for all State services.

Governor Stevenson once suggested that if we had committed fewer States' wrongs we'd have less occasion to talk about the problem of States' rights. Certainly there can be no State or local right without responsibility. The reminder came recently from Herbert Emmerich, director of Public Administration Clearing House, that the basis to any solution of the problems of the schools is public confidence in the schools and the school systems. He urged the encouragement of a new attitude to remove the separatism and antagonism that sometimes exist between schools and other municipal services, and recommended the evolvement of orderly long-term plans for school support.

It is tremendously encouraging that so many States are moving in this direction. The many fresh approaches to matters too long determined by old policies indicate that we can now hope to catch up with the deficit imposed by neglect and unprecedented expansion. This is the first step that must be taken if we are ultimately to meet the higher standards the times so urgently require.

Thomas Jefferson's words, "If a nation expects to be ignorant and free in a state of civilization, it expects what never was and never will be," were never more true than they are in the totally new age of thermonuclear weapons.

The times require what Walter Lippmann calls a breakthrough to an entirely new level of educational support. We have to make a breakthrough to a radically higher and broader conception of what is needed, if our schools are to be adequate for the crucial decade ahead. But with the kind of wider, more daring leadership and citizen responsibility now making itself felt at all levels of government, there is every reason to hope and believe the job can be done.

ERNEST NORRIS

Mr. HILL. Mr. President, the Nation lost one of its foremost industrial statesmen yesterday in the death of Ernest E. Norris, who for many years was president of the Southern Railway. Mr. Norris was not only a great railroad executive, but he was a master builder. He contributed mightily to the remarkable industrial development of the South we have witnessed in recent years, and he served the entire Nation with fine courage, vision, and patriotism. He was truly a great American.

I ask unanimous consent to have printed at this point in the RECORD an article concerning Mr. Norris which appeared in the Washington Post and Times Herald of this morning.

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

ERNEST NORRIS, INDUSTRIALIST

(By Andrew D. Kopkind)

Ernest Eden Norris, 76, a self-made American industrial giant who once headed the Southern Railway, was found dead yesterday in his apartment at the Metropolitan Club, 17th and H Streets NW.

Death was apparently caused by a heart attack. Mr. Norris' body was found in his bed by a club valet.

Acknowledged to be one of the foremost industrialists in the Nation, Mr. Norris worked his way up to the presidency of the Southern Railway in 1937, nearly 40 years after his first job as railroad telegrapher.

Born in Hoopeston, Ill., Mr. Norris used to watch the "iron horse" steaming through his town. He quickly mastered the Morse code, joined the telegraph agency, and then went to Chicago as a dispatcher. He joined Southern in 1904 as trainmaster at Norfolk, Va., and served in several operative and executive positions in the system. He retired in 1951.

WARTIME RAIL CZAR

Mr. Norris, under an Army colonel's commission during World War II, commanded the railroads in Mid-Atlantic States after President Roosevelt seized all carriers to aid the war effort.

Again in 1948 and 1950 he assumed military control of the railroads following Federal seizures in labor disputes.

As Southern's president, Mr. Norris became increasingly involved in national policy-making. President Roosevelt appointed him to a six-man committee in 1938 to frame legislative recommendations for the transportation system, at a time when railroads were buckling under economic pressures.

When war production sent railroad receipts soaring, Mr. Norris still maintained his renowned conservative business sense by building up Southern stock. He determined to accumulate a backlog of funds to carry us through the next depression, as he said in 1942. At the time, Southern had not declared a dividend in 12 years.

NO. 1 SALESMAN

Known as the South's number one salesman, he was honored by two southern universities with honorary degrees: Davidson College, in North Carolina, and the University of Tennessee. In 1947 he was selected one of the "Fifty Foremost Business Leaders" in the United States in a business magazine poll.

In the great tradition, Mr. Norris was, alternately, a hardboiled and sentimental tycoon. He often toured Southern's 8,000 miles of track in his private car, stopping along the line to chat with road workers. Although he spent most of his time office-bound, he once said he'd rather be out on the road, meeting people.

In December 1940, Mr. Norris was injured severely in a train wreck on his own railway, near Atlanta. He was trapped underneath an overturned car, but rejected efforts to rescue him, saying: "Get the passengers out, I'm not hurt badly."

PRAISED BY GROSVENOR

Mr. Norris was a life trustee of the National Geographic Society, whose president and edi-

tor, Melville Bell Grosvenor, yesterday called his death "a personal sorrow to me and to the other officers and trustees."

He was also a director of Southern, a director of the Metropolitan Life Insurance Co., and an honorary director of the Riggs National Bank of Washington.

He is survived by his wife, Kathryn C. Norris, of 2204 Wyoming Avenue NW.; 2 sons, Frank C. Norris of Verbank, N. Y., and Ernest E. Norris Jr., of New York City; 2 sisters, Mrs. Walter Rodman, of Hoopeston, and Mrs. Herbert Lakin, of Chicago; and 4 grandchildren.

Funeral services will be held at 2:30 p. m. today at Gawler's funeral home, 1756 Pennsylvania Avenue NW., with interment Saturday in Hoopeston. The family requests that, in lieu of flowers, contributions be sent to the Boys Club of Greater Washington, 3265 S Street NW.

OREGON WITHDRAWS LEGAL ACTION FOR FOREST HIGHWAY FUNDS

Mr. NEUBERGER. Mr. President, when the Department of Commerce late last year announced a new formula for the allocation of forest highway funds to be expended in the different States—a formula based 75 percent on area and 25 percent on value of Federal forest lands in the State instead of the 50–50 basis of these factors which had prevailed uninterruptedly throughout the 35-year history of the forest highway program—the State of Oregon initiated a legal action in the United States district court here in Washington to preserve its interests under the old formula. Because of the great increase in the value of the national forests that has taken place in modern times, and which was reported to the Secretary of Commerce by the Secretary of Agriculture, Oregon stood to have a greater share of Federal forest highway construction under the historic 50–50 formula than under the Department's new substitute formula, which reduced the weight given to forest values to one-third of the weight given to area. Oregon is, of course, the State with the most valuable commercial timber production in our country.

Oregon's legal claim was presented by the State's able and experienced attorney general, Mr. Robert Y. Thornton, with the assistance of local counsel. The Representative of Oregon's Fourth Congressional District—the citadel of our great lumber industry—Representative CHARLES O. PORTER, who is himself an experienced lawyer, also took an active and continuing interest in preserving Oregon's take in the preexisting formula.

Oregon's claim was based on the longstanding Congressional acquiescence in and reaffirmance of the original 50–50 formula of area and value, in expending funds for Federal forest highways, and also on the failure of the Department of Commerce to afford the State and other interested parties any notice or opportunity for submitting views before changing that formula.

While Oregon was preparing this claim, of course, it was known that the Congress was working on highway legislation which would also include provisions on forest highways. That legislation passed the Congress on April 3. It was signed into law by President Eisenhower on April 16.

I have been informed that yesterday, April 23, Oregon and the defending Federal agencies have stipulated the dismissal of the legal action, without prejudice or costs. The new Federal-Aid Highway Act of 1958—on which I was privileged to work as a member of the Subcommittee on Roads—provides substantial increases in overall forest highway authorizations as well as for the very important timber access roads. I participated in those increases. It also determines the formula for forest highway allocation during the coming fiscal years, while a study is to be made to arrive at a new, up-to-date formula based on current conditions. Assuming that appropriations are made in accordance with the authorizations, Oregon's forest highway needs will be fairly provided for.

The function of the legal action, to preserve Oregon's legal interests during the pendency of this legislation, has been served. I believe the State's representatives are justified in the belief that they have now faithfully discharged their obligation to protect those legal interests and that the suit could and should now be withdrawn without prejudice. We trust that the appropriations corresponding to the great new authorizations will also be fully voted by Congress in due course.

In conclusion, Mr. President, I ask unanimous consent to have printed in the RECORD at this point the section of the conference report on the Federal-Aid Highway Act of 1958 that deals with the new forest highway authorizations.

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

FEDERAL-AID HIGHWAY BILL OF 1958

SECTION 3. FOREST HIGHWAYS AND FOREST DEVELOPMENT ROADS AND TRAILS

(a) Authorizations of appropriations

Subsection (a) of section 3 of the Senate amendment authorizes appropriations for forest highways and for forest development roads and trails. It differs from the House bill in that it provides for the fiscal year ending June 30, 1959, an additional $10 million for forest highways. The House bill does not provide such an authorization. The proposed conference substitute would authorize an additional $5 million for forest highways for the fiscal year ending June 30, 1959. The Senate amendment provides $36 million for such highways for each of the fiscal years ending June 30, 1960, and June 30, 1961. The equivalent provision in the House bill is an authorization of $30 million for such highways for such fiscal years. The proposed conference substitute authorizes $33 million for such highways for such fiscal years. The Senate amendment provides for the fiscal year ending June 30, 1959, an additional authorization of $13 million for forest development roads and trails. The House bill does not provide such an authorization. The proposed conference substitute would authorize an additional $5 million for the fiscal year ending June 30, 1959, for forest development roads and trails. The Senate amendment authorized $34 million for such roads and trails for each of the fiscal years ending June 30, 1960, and June 30, 1961. In connection with the Senate amendment for forest development roads and trails, the Forest Service is requested to give due cognizance to the need to provide all-weather roads to recreational areas under Federal jurisdiction. The House bill provides $28,500,000 for such roads and trails for such fiscal years. The proposed conference substitute provides $30 million. The Senate amendment provides that with respect to any proposed construction or reconstruction of a timber-access road advisory public hearings "may" be held. The House bill with respect to such proposed timber-access roads provides that advisory hearings "shall" be held. The proposed conference substitute adopts the language of the Senate amendment.

Section 3 of the Senate amendment also provides that in apportioning the funds for forest highways authorized under this section for fiscal years ending June 30, 1959, 1960, and 1961, the same percentage shall be apportioned to each State, Alaska, and Puerto Rico as was apportioned from the funds authorized for forest highways for the fiscal year ending June 30, 1958. The House bill provides that the apportionment for forest highways for fiscal years ending June 3, 1960, and June 30, 1961, shall be in accordance with the provisions of section 3 of the Federal-Aid Highway Act of 1950.

The proposed conference substitute, except for technical changes, is the same as the Senate amendment.

* * * * *

(b) Forest highways

Subsection (b) of section 3 of the Senate amendment requires the Secretary of Commerce to make a study in cooperation with the appropriate officers of each State containing a national forest, the Commonwealth of Puerto Rico, and the Territory of Alaska, to determine forest roads of primary importance, including those within, adjoining, or adjacent to national forests, which have not been designated as forest highways, together with the amounts necessary for survey, construction, reconstruction, and maintenance for 10 fiscal years beginning with the fiscal year commencing July 1, 1961, and the method by which such amounts should be apportioned for expenditure and requires a report to be made to the President and Congress on or before January 1, 1960. The House bill contains no comparable provision.

The conference substitute is the same as the Senate amendment, except for certain technical amendments, the principal one being to include the Secretary of Agriculture in the group to cooperate with the Secretary of Commerce in making the study, recommendations, and report.

FEDERAL-STATE COOPERATION IN PROTECTING WELFARE AND PENSION FUNDS

Mr. WILEY. Mr. President, as we further consider the proposed legislation before us, I express my strong support of its meritorious objectives of protecting the welfare and pension funds of our Nation's workers.

Our workers, and the country, I believe, will benefit from the enactment of more effective laws in this field.

The proposed legislation itself, of course, needs to be carefully analyzed—as we are now doing—to see how and where it may be modified to make it more effective and to eliminate any unsatisfactory provisions.

In our discussions, analysis, and possible amendment of the bill, however, I hope that we will not go too far afield from the basic objectives of the measure. In other words, we must not become entangled in considerations which would jeopardize the ultimate approval of the bill.

Mr. President, I am pleased to point out that my own State of Wisconsin has already made a splendid pioneering effort to protect workers' funds through the enactment of "watchdog" laws. These statutes—now being put into action—have received strong support both from employers and the labor unions.

I am happy to report that the Wisconsin unions have, by and large, a fine, clean record. I do not want them, or any other honest labor group, tarnished with a smear brush. But neither do I want any dishonest minority, however small, to escape the spotlight.

The Wisconsin AFL–CIO is to be applauded for its support of the State legislation which would protect against any chance situation that might develop, which, of course, would be quickly and appropriately dealt with.

Under our State law, employer or employee groups who have 25 or more employees residing in the State of Wisconsin, or who contribute a minimum of $2,000 per year to a fund, must register with the Wisconsin Insurance Department. The number of funds registered under this act already exceeds 2,200. The Wisconsin law, similar to the basic proposed legislation we are considering today, requires an annual report of the funds. The purpose, of course, is to maintain surveillance of the handling of the funds so as to protect against embezzlement or other misuse.

As we consider the bill, and possible amendments, before us I believe that we should be extremely careful not to preempt the rights of States to carry on essential regulatory functions. By Federal-State cooperation, rather than Federal interference or the superseding of State laws, we will provide the best possible protection.

As an illustration of the comprehensiveness of the Wisconsin statute in its reporting procedures, I submit a sample of an annual report which will be required of each welfare and pension plan.

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

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

EMPLOYEE WELFARE FUNDS—ANNUAL REPORT OF THE

_____

Name of fund

_____

Address: Number Street Zone City State

Filed with the commissioner of insurance pursuant to S. 211.10 of the laws of Wisconsin.

For fiscal year ended _____, 1957.
month day

ASSETS

1. Cash _____ $_____
2. Investments _____ _____
3. Contributions due from employers and employee-members _____ _____
4. Other assets:
5. _____ _____
6. _____ _____
7. Total _____ _____

LIABILITIES AND UNASSIGNED FUNDS

8. Reserves for benefits _____ $_____
9. Other amounts set aside for payment of benefits _____ _____
10. Participants' equity _____ _____

LIABILITIES AND UNASSIGNED FUNDS—continued

11. Other liabilities:
12. _____ $_____
13. _____ _____
14. Unassigned funds _____ _____
15. Total _____ _____

SUMMARY OF OPERATIONS

Increases in assets:

1. Contributions from employers and employee-members _____ _____
2. Dividends, interest, and real estate net income _____ _____
3. Profit on disposal of investments _____ _____
4. Other increases _____ _____
5. Total _____ _____

Decreases in assets:

6. Premiums and annuity considerations for insured benefits _____ _____
7. Benefits directly provided to members _____ _____
8. General expenses _____ _____
9. Loss on disposal of investments _____ _____
10. Other decreases _____ _____
11. Total _____ _____
12. Net increase or decrease (line 5 less line 11 above) _____ _____
13. Add book value of assets at beginning of year _____ _____
14. Book value of assets at end of year (per line 7 of page 1) _____ _____

UNASSIGNED FUNDS ACCOUNT

15. Unassigned funds at beginning of year _____ _____
16. Net increase or decrease (per line 12 above) _____ _____
17. Net increase or decrease in reserves _____ _____
18. Other charges or credits to unassigned funds:
19. _____ _____
20. Unassigned funds at end of year (per line 14 of page 1) _____ _____

State of _____ } ss
County of _____ }
State of _____ } ss
County of _____ }

_____ and _____

Trustees of the fund, being duly sworn, each for himself deposes and says that this annual report is true to the best of his information, knowledge and belief.

_____,
Administrative trustee.

Subscribed and sworn to before me this _____ day of _____, 1958.

_____,
Notary Public.

_____,
Fiscal trustee.

Subscribed and sworn to before me this _____ day of _____, 1958.

_____,
Notary Public.

WISCONSIN EMPLOYEE WELFARE FUNDS

Instructions for completing annual report for calendar year 1957 or fiscal year ending in 1957. (NOTE.—Fiscal year is recommended for convenience in reconciling with the annual statement, which is required to be on that basis.)

GENERAL

Form: This is designed to provide spaces for the uninsured, the insured, the partially insured, and the self-insured funds. Spaces for which no figures are available must be marked "O," "none," or "not applicable."

Filing: An annual report must be filed by every fund which was required to register. Two copies of the report are to be executed; one to be returned to Commissioner of Insurance, Capitol, Madison 2, Wis., and one to be retained by the trustee. The latest filing date permitted by section 211.10 of the law is March 1, 1958.

Legibility: The form may be completed by hand in ink or by typewriter.

Signatures: The law requires a report verified by the oath of its trustee or at least 2 of them if there is more than 1 trustee. The definition of "trustee" is "who or which has overall management" of the fund. Where such overall management is vested in one individual, his signature as both administrative trustee and fiscal trustee will be acceptable. Where there is division of operational functions (even though the fiscal trustee merely acts as a custodian), the report must be signed by both the administrative trustee and the fiscal trustee.

ASSETS

Book values of assets may be used in the report if determined in accordance with recognized accounting principles. It is contemplated that the reported assets will reflect sound values. Assets should be reported net of encumbrances, reserves for depreciation, or special contingency reserves applicable to specific items.

Cash: This includes cash in office and on deposit, as shown on the books of the fund, less any uncollectible amounts due to shortages, deposits in closed banks, uncollectible checks included in the book account, or other comparable items.

Investments: This item is intended to include all assets such as real estate, mortgage loans, bonds, and stocks. A schedule giving a breakdown by general classifications may be attached, if desired.

Contributions due from employers and employee members: This figure should include only such items as have been determined in amount and are reasonably certain to be collected.

Other assets: Items entered under this heading should be listed separately and may include such accounts as premiums paid in advance to insurance companies, dividends or experience rating credits due from insurance companies, interest due and accrued, and personal property such as automobiles, office equipment, etc. A fund which maintains an asset account for the equity developed by payment of premiums to an insurance company may include the amount of this account under this heading. Where no such account is maintained for this equity, the amount recoverable from the insurance company on termination of the insurance contract as of the statement date may be entered.

LIABILITIES AND UNASSIGNED FUNDS

Reserves for benefits: Any mathematically calculated (actuarial) valuation of the cost of future death or retirement benefits should be entered under this heading. If not fully funded, only the funded amount is required to be shown. Self-insured funds will necessarily enter a figure here if a valuation is made. A fund which insures its liability for future benefits may elect to enter the calculated value of such benefits at this point and carry an offsetting item under "Other assets." A fund which insures only a part of the liability for benefits may follow the foregoing procedure as to the insured benefits and also have an entry under one or both of the two headings next following.

Other amounts set aside for payment of benefits: This heading provides for entry of a common pool from which benefits are payable, and in which there has been no assignment of specific amounts to the credit of the individual employee-members.

Participants' equity: This heading provides for situations wherein the entire amount is held for the individual accounts of the respective employee-members.

SUMMARY OF OPERATIONS

Contributions from employers and employee-members: If the accrual basis is used in completing this report, the amount of

contributions should be determined as follows:

Contributions actually received during the year	$-----
Add contributions due and unpaid as of end of current year (as reported at line 3, p. 1)	------
Less contributions due and unpaid as of end of previous year	------
Add contributions received in advance as of end of previous year	------
Less contributions received in advance as of end of current year (as reported at line 12 or 13, p. 1)	------
Net amount to be entered at line 1, page 2	------

Interest, dividends, and real estate net income: The amount paid for accrued interest on securities acquired during the year should be offset against the amount of interest otherwise reportable.

Profit or loss on disposal of investments: Enter gains and losses separately without offsetting one against the other except where they apply to the same bond issue, stock, property, etc. The profit or loss is the difference between the book value at date of sale and the consideration received.

Premiums and annuity considerations for insured benefits: If the accrual basis is used in completing this report, the amount of the payments should be determined as follows:

Amount actually paid during the year	$-----
Less amount paid in advance as of end of current year (as reported at line 5 or 6, p. 1)	------
Add amount paid in advance as of end of previous year	------
Add amount due and unpaid as of end of current year (as reported at line 12 or 13, p. 1)	------
Less amount due and unpaid as of end of previous year	------
Net amount entered at line 6, page 2	------

UNASSIGNED FUNDS ACCOUNT

Many uninsured employee welfare funds will not show any figures in this account as their surplus, if any, will be absorbed in the account "other amounts set aside for payment of benefits," or the account "participants' equity." An employee welfare fund which has a mathematical calculation of the cost of future benefits will normally develop a difference between total assets and total liabilities and therefore be expected to reflect the changes in the unassigned funds in this account.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

Mr. MALONE obtained the floor.

Mr. JOHNSON of Texas and Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. NEUBERGER in the chair). Does the Senator yield; and, if so, to whom?

Mr. MALONE. I yield to the Senator from Texas.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that the Senate resume the consideration of the pending business.

There being no objection, the Senate resumed the consideration of the bill (S. 2888) to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.

Mr. ALLOTT and Mr. KENNEDY addressed the Chair.

Mr. MALONE. I promised to yield to the distinguished Senator from Colorado.

The PRESIDING OFFICER. Does the Senator from Nevada yield; and, if so, to whom?

Mr. MALONE. I yield to the Senator from Colorado.

Mr. ALLOTT. The Senator from Nevada was going to yield to me for the purpose of taking action on certain committee amendments. I ask the Senator from Nevada if he will show the distinguished chairman of the subcommittee the same courtesy as to the disposing of the amendments. I think we can do that in a moment.

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

Mr. MALONE. I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Nevada yields to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent, without the Senator from Nevada losing his right to the floor, that the committee amendments be agreed to en bloc.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Massachusetts?

Mr. KNOWLAND. Mr. President, reserving the right to object—and I shall not object—may the unanimous consent be obtained under the customary order that the committee bill will then be considered a clean bill and can be treated de novo, so that we will not run into the problem of amendments in the second and third degrees.

Mr. KENNEDY. Mr. President, I ask unanimous consent that that be done.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Massachusetts? The Chair hears none, and it is so ordered.

The committee amendments agreed to en bloc are as follows:

On page 15, after line 3, to insert:

"The trustee of such trust shall certify to the person or persons charged with or having responsibility for the overall management of the plan, within 90 days after the end of each calendar year (or, if the records of the plan are kept on a fiscal year basis, within 90 days after the end of each such fiscal year), the information necessary to enable such person or persons to comply with the requirements of this paragraph, and a copy of such certificate shall accompany such report. Except where such trustee is a bank or other institution the books or records of which are subject to examination by any agency of the Federal Government or the government of any State, such information shall also be certified to by an independent certified or licensed public accountant, based upon a comprehensive audit made on behalf of the participants and conducted in accordance with accepted standards of auditing."

On page 16, after line 17, to insert:

"(f) If the Secretary determines that any of the information required by this section to be included in reports filed hereunder, or in the registration statements required by the previous section, is uninformative or duplicative and could be eliminated without interfering with the carrying out of the objectives of this act, he may by regulation authorize the omission of such information from such reports or registration statements thereunder filed."

And, on page 30, at the beginning of line 6, to strike out "(d)" and insert "(b)."

DEPRESSED AREAS IN NEVADA

MINERALS, TITANIUM, BEEF, WOOL

Mr. MALONE. Mr. President, during the Easter recess the senior Senator from Nevada visited most of the depressed areas in his State.

These areas included Hawthorne, which is a munitions storage base for the Navy; Winnemucca in Humboldt County, where the mining has been closed down through imports of tungsten and manganese from cheap labor nations; Ely in White Pine County, one of the large copper-producing areas in the United States; Henderson, 10 miles south of Las Vegas, where about half of the titanium output for this Nation has been produced in recent years, the other half being produced in New Jersey by the Du Pont Co.; the Pioche and Caliente area, in Lincoln County, which was a large producer of lead, zinc, tungsten, and manganese, but now almost completely shut down on account of imports from cheap labor nations.

DEPRESSED AREAS OF OUR OWN MAKING

These areas, Mr. President, are depressed. Some of the industries are entirely closed down. Others, like Ely, Nev., have about 1,200 to 1,400 unemployed out of the 3,500 normal employment.

A recent further 20-percent cut has further aggravated the unemployment problem.

In Winnemucca, about 800 to 1,000 men are unemployed due to the closing of the tungsten mines generally, and as a result we are now importing tungsten from foreign nations, paying more per unit than the Malone-Aspinall Act of 1953, extended in 1956, paid the miners for the tungsten per unit mined in the United States.

HUNDREDS OF DEPRESSED AREAS

Mr. President, hundreds of areas in the United States are depressed at the present time due to the imports of cheap labor goods including textiles, crockery, machine tools, minerals, wool, beef, and hundreds of other products.

LET THE COPPER ACT AND THE TRADE AGREEMENTS ACT EXPIRE

Mr. President, we have been living under a free trade copper act, which expires on June 30, along with the 1934 Trade Agreements Act as extended to June 30, 1958. If these acts are not extended, then upon 6 months' notice to the nations with which bilateral trade agreements were negotiated by the State Department and upon 2 months' notice to the nations with which the multilateral trade agreements were negotiated by the 36 competitive foreign nations at Geneva, these trade agreements would expire. Then the American workingmen and investors are back in business. The American workingmen will then regain their jobs and the investors' property will regain its value.

MAJOR CAUSE OF PRESENT ECONOMIC DISTRESS IGNORED BY ADMINISTRATION AND CONGRESS

In this connection, Mr. President, the chief factor of unemployment and the

destruction of the value of investments in the United States has not been discussed either by the administration or by the Congress.

As a matter of fact, the Chief Executive has recommended a 5-year extension of the 1934 Trade Agreements Act with permission for the further reduction of duties or tariffs by 25 percent. The act has already been extended 10 times since 1934. The act was first passed for 3 years as an emergency measure. Mr. President, since 1933 we have lived on emergencies; two wars, and the preparations for war. We have never let the water settle. We have never let the Congress of the United States regain its constitutional responsibility to regulate foreign trade and the national economy as set down in the Constitution of the United States.

PRESENT POLICIES SUBJECT UNITED STATES TO ECONOMIC COLONIALISM

Mr. President, the United States is a greater economic colonial nation under the capitals of Europe today than it was before the Declaration of Independence in 1776, when we were actually in fact a colonial possession of Great Britain.

We were the first to break away from the system, Mr. President. There was a certain responsibility of those nations for their colonials, which was a system of controlling the trade of the subject provinces. However, we are now a volunteer economic colonial of the nations of old Europe—and they have no responsibility for our welfare at all.

FOR 145 YEARS CONGRESS USED POWERS TO GIVE AMERICANS WORLD'S HIGHEST LIVING STANDARD

Starting in 1789 with the first Tariff Act, and from that time forward until 1934, the Congress of the United States utilized article I, section 8 of the Constitution, under which it is specifically charged with the regulation of foreign trade through the adjustment of the duties, imposts, and excises which we now call tariffs.

Powers under this article and section were used for almost a century and a half to equalize the wages, taxes, and costs of doing business in this Nation and such costs in the chief competing nation on each product. Through that method we built the highest standard of living the world has ever known. Congress abdicated its constitutional powers over trade and tariffs in 1934 when it passed the Trade Agreements Act.

STUDY OF RECENT TRADE ACT HEARINGS URGED

The proposal to extend the act is now before the Ways and Means Committee of the House. That committee has closed its hearings. I appeared before the committee. The record of the hearings will be published in due time and will be available to Members of the Senate. I hope they will have an opportunity to study it. I hope that the proposed extension of the act will be killed in the House; and I think there is every likelihood that it may be. If it does come to the Senate, I urge Senators to study the effect of it, because all the legislation we may pass providing for special projects and artificial work will be of little avail if we continue that policy established by Congress under extreme emergency conditions in 1934.

MANY LAID-OFF NEVADA MINERS "GOING HUNGRY" WARNS UNION OFFICIAL

I have received a telegram from Thomas E. Jones, recording secretary of Local No. 233 of the International United Mine, Mill, and Smelter Workers, at Ely, Nev. The telegram is dated April 18th, and reads as follows:

ELY, NEV., *April 19, 1958.*

Senator GEORGE MALONE,
Washington, D. C.:

Kennecott Copper announced here yesterday that they are going to cut production 20 percent, thereby laying off 200 men in this locality alone. This is the fifth cut in manpower here in the past 5 months. More than 1,200 men here alone. This creates a serious problem of unemployment here. There is good possibility that Kennecott may close its operations here and elsewhere, thereby increasing the hardships that already exist. The purpose of this letter is to urge you to use all of the power at your command to get the Tariff Commission to get a higher tariff and import quotas on copper, lead, and zinc. Many people are going hungry while the Tariff Commission sits and argues what kind of a report to make.

Most sincerely yours,
THOMAS E. JONES,
Local 233, Recording Secretary, I. U. M. M. & S. W.

DRASTIC CUTBACKS IN WESTERN MINING INDUSTRY REPORTED

I have also received a telegram from President Mike Mariluch, of local 124, at Ruth, Nev. The mines are located near Ruth, Nev., and the smelter at McGill, Nev., about 10 miles distant; Ely being the business district between the two. Mr. Mariluch, in the telegram dated April 18, says:

ELY, NEV., *April 18, 1958.*

Senator GEORGE MALONE,
Senate Office Building,
Washington, D. C.:

For the 14th time in five months Kennecott is putting into effect a drastic curtailment in their western United States properties. At the same time their Chile operations have had no curtailments. We urge you to intensify your efforts to correct the situation.

President MIKE MARILUCH,
Local 124, Ruth, Nev.

UTAH LABOR OFFICIAL PROTESTS MASS LAY-OFFS

The following telegram was sent to the Senator from Montana [Mr. MURRAY], the Senator from Virginia [Mr. BYRD], the Senator from Texas [Mr. JOHNSON], and Representatives WILBUR MILLS, and SAM RAYBURN, by Verne Curtis, regional director of the Mine-Mill Workers Union, at Magna, Utah:

MAGNA, UTAH,
April 18, 1958.

Senator JAMES E. MURRAY.
Senator HARRY F. BYRD.
Senator LYNDON JOHNSON.
Congressman WILBUR MILLS.
Congressman SAM RAYBURN.

Kennecott Copper Corp. announced this morning another 20 percent reduction in production and manpower. This makes 4th major layoff in past 5 months affecting over 5,000 employees in company's western mining division. Kennecott continues full production in Chile without layoffs while laying off American workers.

The Utah unity council composed of mine-mill and 15 other AFL-CIO bargaining units representing 7,000 employees of Kennecott, Anaconda, and A. S. & R. mining companies unitedly urge and request you to intensify your efforts to pass legislation that will alleviate the nonferrous crisis.

VERNE CURTIS,
Regional Director, Mine-Mill.

The company's western mining division, to which reference is made, includes Utah and other areas where the Kennecott Co. is operating.

If the Senate will only sit still and not extend the 1934 Trade Agreements Act, it will expire on June 30; and then, with 2 months' notice to nations that are parties to multilateral trade agreements entered into at Geneva, and 6 months' notice to nations parties to bilateral trade agreements negotiated by our own State Department, regulation of flexible duties or tariffs will revert to the Tariff Commission, an agent of Congress, under statutory rates to be continually adjusted on the basis of fair and reasonable competition—and the American workingmen and investors are back in business competing for the American market.

The Tariff Act of 1930, in section 336, specifically provides that—

The Commission is authorized to adopt such reasonable procedure and rules and regulations as it deems necessary to execute its functions under this section. The Commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the Commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the Commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences.

The only limit on such equalization is that "in no case shall the total increase or decrease of such rates of duty exceed 50 percent of the rates expressly fixed by statute."

It is possible that because of interim inflation that such adjustment might not afford sufficient latitude. Chairman Martin of the Federal Reserve Board testified that the 1947 dollar is worth 47 cents. The 1934 dollar is probably worth about 35 cents. Because of inflation, the effective tariff rate might be lower.

If, for example, duty on a product were 5 cents a pound when the cost of production was 20 cents a pound the duty or tariff would be 25 percent—but if, through inflation, the price rose to 40 cents a pound, the duty, in terms of percentage, would be reduced by half, or 12½ percent.

In that event a simple amendment to the 1930 Tariff Act would provide the necessary latitude.

Mr. President, I ask unanimous consent to insert in the RECORD at this point two letters from the Tariff Commission Chairman dated January 29 and March 4, respectively, setting out exactly how the adjustment of the flexible duties or tariffs would revert to the Tariff Com-

mission, an agent of Congress, in the event the 1934 Trade Agreements Act was not renewed by this Congress.

There being no objection, the letters were ordered to be printed in the RECORD at this point:

UNITED STATES TARIFF COMMISSION.

The Honorable GEORGE W. MALONE,
United States Senate.

DEAR SENATOR MALONE: Reference is made to your telephone request to Mr. McCauley, of our legal staff, on January 28, 1958, for a statement of the provisions of the several trade agreements to which the United States is a contracting party governing termination of such agreements. You are particularly interested in the procedures available for terminating our outstanding trade-agreement concessions on petroleum and petroleum products so as to accomplish the reinstatement of the statutory rates of duty on such articles.

Subsection (b) of section 2 of the Trade Agreement Act of 1934, as amended, provides:

"Every foreign trade agreement concluded pursuant to this act shall be subject to termination, upon due notice to the foreign government concerned, at the end of not more than 3 years from the date on which the agreement comes into force, and, if not then terminated, shall be subject to termination thereafter upon not more than 6 months' notice."

All existing bilateral trade agreements to which the United States is a contracting party are now subject, in accordance with the terms thereof, to termination upon the expiration of 6 months after either the United States or the respective foreign country gives notice to the other party of its intention to terminate the agreement.

Any contracting party to the General Agreement on Tariffs and Trade (GATT) (including the United States), in accordance with the terms of the protocol of provisional application of the General Agreement on Tariffs and Trade, is free to withdraw from the agreement upon the expiration of 60 days after notice of such withdrawal is received by the Secretary-General of the United Nations.

The United States could, under the abovementioned procedures, eliminate all trade-agreement obligations. In these circumstances, the statutory rates of duty (or in certain instances, the rates established pursuant to section 336 of the Tariff Act of 1930) for the articles currently covered by trade-agreement concessions would become effective. With respect to those articles covered in the GATT and not previously or presently covered in a bilateral agreement, the reinstatement of the effectiveness of the statutory rates of duty thereon could be accomplished solely by withdrawal from the GATT. With respect to those articles covered in the GATT, which are also covered in a bilateral agreement between the United States and a foreign country that is now a contracting party to the GATT, and the bilateral agreement has not been terminated, termination of the bilateral agreement in question, in addition to withdrawal from GATT, would be necessary to bring about the effectiveness of the statutory rates. Finally, with respect to those articles covered only in a currently effective bilateral agreement, termination of the said agreement would be necessary for the reinstatement of the statutory rates of duty.

Petroleum, crude, fuel or refined, and all distillates obtained from petroleum, including kerosene, benzine, naphtha, gasoline, paraffin, and paraffin oil, not specially provided for, are free of duty under paragraph 1733 of the Tariff Act of 1930. However, under the Internal Revenue Code of 1932, as amended, the following import taxes (duties) were provided for: Crude petroleum, one-half cent per gallon; fuel oil derived from petroleum, gas oil derived from petroleum, and all liquid derivatives of crude petroleum, except lubricating oil and gasoline and other motor fuel, one-half cent per gallon; gasoline or other motor fuel 2½ cents per gallon; lubricating oil, 4 cents per gallon; paraffin and other petroleum wax products, 1 cent per pound. These taxes were continued in the Internal Revenue Code of 1939.

In 1939, pursuant to concessions granted by the United States in the bilateral trade agreement with Venezuela, the rate of tax on crude petroleum and fuel oil derived from petroleum was reduced to one-quarter cent per gallon, applicable to imports of such products which were not in excess of 5 percent of the total quantity of crude petroleum processed in continental United States refineries during the preceding calendar year. All imports in excess of this amount remained subject to the one-half cent per gallon tax.

In 1943, in a bilateral trade agreement with Mexico, the 5-percent-tariff-rate quota was superseded by a concession tax rate of one-fourth cent per gallon on an unlimited quantity of imports of such articles. In addition, the tax on kerosene and liquid petroleum asphaltum, including cutbacks, and road oil was reduced to one-fourth cent per gallon pursuant to the Mexican agreement.

In the GATT (Geneva 1957), a concession was made as follows:

"Topped crude petroleum, fuel oil derived from petroleum including fuel oil known as gas oil, and all-liquid derivatives of crude petroleum (except lubricating oil and such derivatives specified hereinafter in any item 3422 [of the Internal Revenue Code]) * * * one-fourth cent per gallon."

This GATT concession contains a proviso to the effect that in no event shall the import tax applicable to topped crude petroleum be less than the rate of tax applicable to crude petroleum.

The following rates of duty are also provided for in GATT: Mineral oil of medicinal grade, derived from petroleum, one-half cent per gallon, gasoline and other motor fuel, 1¼ cents per gallon; lubricating oil, 2 cents per gallon; and paraffin and other petroleum wax products, one-half cent per pound.

Effective January 1, 1951, the bilateral trade agreement with Mexico was terminated. This resulted in (a) the reinstatement of the concessions granted in the bilateral trade agreement with Venezuela, with particular emphasis on the reestablishment of the 5 percent of domestic refinery output tariff-rate quota, supra, and (b) the tariff-rate quota becoming applicable to topped crude petroleum, in accordance with the proviso to the GATT concession, supra. This joint Venezuela-GATT arrangement remained in effect until late 1952.

In 1952, the President entered into a trade agreement supplementary to the 1939 agreement with Venezuela. Pursuant to this agreement (effective October 1952), the tariff-rate quota on crude petroleum, fuel oil, gas oil, and topped crude petroleum was removed. In addition, the tax on these products testing under 25 degrees (American Petroleum Institute) was further reduced to one-eighth cent per gallon. Also, the following GATT rates were granted to Venezuela: Gasoline or other motor fuel, 1¼ cents per gallon; lubricating oil, 2 cents per gallon; and paraffin and other petroleum wax products, one-half cent per pound.

The Internal Revenue Code of 1954 reenacted the taxes originally established by the 1932 code, as amended, and continued in the 1939 code, but such reenactment specifically preserved existing trade agreement rates.

In order to accomplish the reinstatement of the statutory rates of duty on these petroleum products by the termination process (as distinguished from elimination of the particular concession by such negotiating procedures as may be available), it would be necessary for the United States to withdraw from the GATT and to terminate the bilateral agreement with Venezuela. It should be noted that the termination of trade agreements would not, in all instances, result in higher duties. The higher-than-statutory rates of duty which have been established pursuant to the trade agreements legislation (including those established under the escape-clause procedure), would be superseded by the lower statutory rates.

Sincerely yours,

EDGAR B. BROSSARD,
Chairman.

UNITED STATES TARIFF COMMISSION,
Washington, D. C., March 4, 1958.

The Honorable GEORGE W. MALONE,
United States Senate.

DEAR SENATOR MALONE: This is in response to your request this morning for an explanation of how the protocol of provisional application of the General Agreement on Tariffs and Trade permits the United States to withdraw from that agreement upon 60 days' notice.

The basic general agreement was signed at Geneva on October 30, 1947. Article XXXI of the general agreement provided that any contracting party may withdraw from the agreement on or after January 1, 1951, upon 6 months' notice. Article XXVI of the agreement provides for the definitive entry into force thereof under specified conditions. The agreement, however, has never entered definitely into force. However, it has been applied by the United States since January 1, 1948, pursuant to the protocol of provisional application of the General Agreement on Tariffs and Trade signed at Geneva, Switzerland, on October 30, 1947, the same date on which the general agreement itself was signed.

Paragraph 5 of the protocol of provisional application provides that "Any government applying this protocol shall be free to withdraw such application, and such withdrawal shall take effect upon expiration of 60 days from the day on which written notice of such withdrawal is received by the Secretary-General of the United Nations." Since the United States is one of the governments applying the protocol of provisional application, and since the general agreement is being applied by the United States in pursuance of the protocol, it follows that the United States, under paragraph 5 of the protocol, may withdraw the provisional application of the agreement upon the expiration of 60 days from the day on which written notice of such withdrawal is received by the Secretary-General of the United Nations. If the United States should withdraw the provisional application of the agreement pursuant to the protocol, it would automatically cease to apply the provisions of the general agreement because the agreement will not have entered into force pursuant to article XXXI of the general agreement.

Sincerely yours,

EDGAR B. BROSSARD,
Chairman.

SO-CALLED PERIL POINT OPERATION A FARCE

Mr. MALONE. Mr. President, in the Special Free Trade Copper Act the peril point was established at 24 cents. If the price went below 24 cents on the market the remaining tariff would apply. However, the 4-cent excise tax on tariff which had been established on copper in 1934, was cut through a negotiated bilateral trade agreement by our State Department to 2 cents. Then in 1955 they allowed the 5 percent per year cut. Now the tariff would be about 1.8 cents if the

price dropped below 24 cents per pound, which would have no effect whatever. Of course with the inflation the 4 cents would have no effect.

The matter of establishing the peril point on any product and allowing the tariff to go on and off in accordance with such peril point is a farce to start with, as the senior Senator from Nevada has stated on the floor many times over a period of 10 years. A competitive nation nullifies the so-called peril point by manipulating the price of its money in terms of the dollar, and the peril point disappears. Inflation takes care of it within a very short time in any case.

"PERIL POINT" A HOAX TO FOOL THE VICTIMS OF FREE IMPORTS

Everyone talks about inflation but there is really no intention of doing anything about it. A return to the gold standard is the only cure for inflation. The so-called peril point and escape clause are simply a method of deceiving the workingmen and investors affected by the free-trade method of importing unemployment.

Congress has played the string out fooling the people. There have been great increases in radio and television audiences and the people are more and more keeping their eyes on Congress. For a long time they could not believe that Congress would through its own action, undermine the economy of the Nation.

UNITED STATES CONSTITUTION HAD NO TRICK CLAUSES

Mr. President, let us return to the Constitution of the United States. There are no trick peril points or escape clauses in that document. Article I, section 8, provides that Congress shall regulate foreign trade through the adjustment of duties, imposts and excises that we call tariffs. The Tariff Commission was set up as an agent of Congress in the Tariff Act of 1930 from which I have just read the important excerpt showing the method of adjusting the flexible tariff to which we would revert.

TARIFF COMMISSION STRIPPED OF AUTHORITY BY 1934 TRADE ACT

The Tariff Commission now is just about as important as a second wheel on a wheelbarrow, since they have nothing whatever to do with the regulation of tariffs as an agent of Congress, since the passage of the 1934 Trade Agreements Act.

Mr. Dulles, in his testimony before the Senate Committee on Finance in 1955, when the act was extended for 3 years, said that the law is clear, and that under the 1934 Trade Agreements Act, as extended, the President of the United States has full authority to trade a part or all of any industry in the United States to foreign nations to further his foreign policy.

SINCE CREATION OF GATT UNITED STATES ONLY FREE IMPORT NATION

In 1948 the President set up GATT, the General Agreement on Tariffs and Trade, and in that founding document it is specified that as long as a foreign nation can show a shortage of dollar balance payments it need not live up to its part of any such trade agreement. Not one nation has lived up to the multilateral trade agreements with the United States. We are the only free trade nation on earth, and the only country needing duties or tariffs to protect our standard of living.

FREE IMPORT POLICY WRECKING NATION'S INDUSTRIES WHILE BILLIONS SPENT TO BUILD UP FOREIGN COMPETITORS

Copper was the chief subject of discussion because it is the latest industry to suffer in my State of Nevada and in Utah, Arizona, and Montana, the chief western copper States of the Nation. I shall insert in the RECORD a list of copper-producing States. However, this issue does not apply only to copper. It applies also to every mineral, every textile, every piece of crockery, every machine tool, and several hundred other products produced in the United States of America.

As a matter of fact, it is impossible to manufacture even monkey wrenches in the United States in competition with American capital, low-wage labor, our machinery and our know-how in foreign countries. More than $50 billion has been spent in foreign nations by American corporations and individuals for these competitive plants since World War II. Yet we hear a great deal of talk about our being able to compete with any foreign nation because of our know-how and our machinery. The foreign nations have our know-how and our machinery. Besides the $50 billion of private capital the taxpayers of America have advanced $70 billion since World War II to those nations and to those people to build the best plants in the world, to compete with our own labor and our own American investors.

LET TRADE ACT DIE JUNE 30 AND GATT, STATE DEPARTMENT POWERLESS TO DESTROY INDUSTRIES, JOBS

Therefore I say again that if the 1934 Trade Agreements Act and the Free Trade Copper Act be not renewed by Americans, workingmen and investors are back in business.

On the expiration of the present act, the Secretary of State will no longer be able to negotiate with a foreign nation for bilateral trade agreements and the 36 foreign competitive nations at Geneva will no longer be able to enter into any further multilateral trade agreements. Then when the formal 6 months' and 2 months' notice respectively has been served on those nations that are a party to such agreements the regulation of the tariff on those products will be adjusted by the Tariff Commission on the basis of fair and reasonable competition; the tariff representing the difference in cost between this Nation and the chief competitive nation on each product.

WORKINGMEN, INVESTORS BACK IN BUSINESS WHEN TRADE ACT ENDS

The whole subject will revert to the Tariff Commission, an agent of Congress, and the American workingmen and investors will be back in business and the chief factor in the so-called recession will have disappeared.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a record of imports, domestic production, exports, and net imports of copper from 1953 to 1957.

COPPER IMPORTS AND EXPORTS 1953–57

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

Copper—Imports, domestic production, exports and net imports, 1953–57

[1,000 tons, metal content]

	Crude imports (1)	Blister imports (2)	Refined imports (3)	Total imports (4)	Domestic mine production (5)	Domestic secondary production (6)	Exports refined (7)	Net imports (4 minus 7) (8)
1953	120.9	273.6	274.8	669.3	926.4	212.7	109.5	559.8
1954	118.6	251.9	215.0	585.5	835.5	206.0	215.9	369.6
1955	125.7	253.7	201.6	581.0	998.6	240.6	199.8	381.2
1956	122.1	276.1	191.7	589.9	1,106.2	262.7	223.1	366.8
1957	124.8	301.2	161.9	587.9	1,076.9	237.2	346.0	241.9

NOTE.—Imports include ores, concentrates, matte, blister and refined copper.
Source: U. S. Bureau of Mines.

Mr. MALONE. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a table showing United States copper mine production.

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

United States copper mine production—Total imports and net imports (1,000 tons copper content) 1953–57

	Domestic mine production	Total imports	Net imports (imports minus refined exports)	Total imports as a percent of domestic mine production	Net imports as a percent of domestic mine production
1953	926.4	669.3	559.8	72.2	60.4
1954	835.5	585.5	369.6	70.1	44.2
1955	998.6	581.0	381.2	58.2	38.2
1956	1,106.2	589.9	366.8	53.3	33.2
1957	1,076.9	587.9	241.9	54.6	22.5
January	93.2	58.3	28.2	62.6	30.3
February	90.3	42.8	13.0	47.4	14.4
March	95.2	55.1	13.7	57.9	14.4
April	94.4	57.9	25.6	61.3	27.1
May	93.4	48.0	19.5	51.4	20.9

United States copper mine production—Total imports and net imports (1,000 tons copper content) 1953–57—Continued

	Domestic mine production	Total imports	Net imports (imports minus refined exports)	Total imports as a percent of domestic mine production	Net imports as a percent of domestic mine production
1957—Continued					
June	90.3	40.1	8.1	44.4	9.0
July	84.8	52.1	37.7	61.4	44.4
August	87.0	47.2	22.8	54.3	26.2
September	85.6	41.5	14.4	48.5	16.8
October	87.8	53.4	33.3	60.8	37.9
November	88.0	45.6	14.7	51.8	16.7
December	88.1	46.2	20.1	52.4	22.8

STATE AND REGIONAL BREAKDOWN OF UNITED STATES COPPER PRODUCTION

Mr. MALONE. Mr. President, I ask unanimous consent to have printed in the RECORD at this point in my remarks a table showing the total mine production of recoverable copper in the United States in 1957 and in January 1958, by regions and States, in short tons.

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

TABLE 3.—*Mine production of recoverable copper in 1957 and in January 1958, by regions and States, in short tons*

Region and State	January–December 1957 [1]	January 1958
States east of the Mississippi:		
Michigan	58,750	5,600
Pennsylvania and North Carolina	7,291	814
Tennessee	9,940	876
Vermont	3,388	325
Total	79,369	7,615
Missouri	1,800	164
Western States:		
Arizona	512,600	46,100
California	830	60
Colorado	5,200	360
Idaho	7,555	650
Montana	90,896	7,530
Nevada	77,700	6,000
New Mexico	65,500	4,300
Oregon	8	----------
Utah	233,800	18,000
Washington	1,660	3
Wyoming	4	----------
	995,753	83,003
Alaska [2]	----------	----------
Total, United States	1,076,922	90,782
Daily average [3]	2,950	2,928

[1] Compiled from monthly copper mine production reports.
[2] Alaska monthly totals based on smelter receipts.
[3] Based on number of days in the month without adjustment for Sundays or holidays.

THE VANISHING COPPER TARIFF; THE RECORD SINCE 1932

Mr. MALONE. Mr. President, I ask unanimous consent to have printed in the RECORD at this point in my remarks a statement showing the tariff on copper from 1932 to the present time.

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

TARIFF ON COPPER

1932: 4 cents imposed originally.

1932–40: 4 cents.

1940–47: Suspended.

April 1947–March 1949: Suspended by Congress.

March 16, 1949: Reduced to 2 cents under GATT.

April 1949–June 30, 1950: Suspended.

July 1950–July 1951: 2 cents, suspended.

April 1, 1951: Peril point of 24 cents imposed for first time.

April 1, 1951–February 15, 1953: Suspended.

June 1956: Sliding scale, a total of 15 percent—5 percent per year—under GATT reduced but not used since did not drop to 24 cents. 1958, 1.8 cents would be imposed when below 24 cents for 30 days.

On May 30, 1942, the President suspended the duty on copper by Executive Order 9177. (The duty at that time was 4 cents per pound.)

On April 29, 1947, Public Law 42 of the 80th Congress suspended the duty on copper to March 31, 1949.

But, GATT, meeting at Geneva reduced the statutory tariff on copper from 4 cents to 2 cents under the agreement which became effective January 1, 1948, in effect only reducing the tariff suspended first by Presidential Executive Order and second by the Congress.

Further GATT reductions have reduced the rate to 1.8 at present and the rate under GATT decree will drop to 1.7 June 30, 1958, if the Trade Agreements Act is extended.

IMPORTS OF COPPER FROM EACH FOREIGN COUNTRY LISTED

Mr. MALONE. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a table showing the countries from which copper imported into the United States originates.

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

Countries in which copper imported into the United States originates

[Figures include copper content of ore, matte, regulus, blister copper, refined cathodes and shapes, for 1956 and 1957—From data compiled by American Bureau of Metal Statistics]

[In tons]

	1956	1957
From—		
Canada	119,293	116,613
Mexico	52,390	47,644
Cuba	15,394	16,849
Bolivia	4,500	4,463
Chile	236,515	236,019
Peru	42,841	41,628
Cyprus	6,945	8,937
Philippines	10,911	13,065
Union of South Africa	21,291	18,823
Australia	18,459	15,075
Belgian Congo	12,764	10,221
Rhodesia	27,318	44,782
Turkey	5,586	3,495
West Germany	2,738	2,545
Norway	5,969	----------
United Kingdom	3,348	2,413
All other countries	6,308	6,388
Total imports	590,004	587,863

Following is a list of the countries from which the United States imports copper in various forms. They are given in order of quantities and include all countries from which the United States gets over 10,000 tons annually:

1. Chile.
2. Canada.
3. Mexico.
4. Rhodesia.
5. Peru.
6. Union of South Africa.
7. Cuba.
8. Australia.
9. Philippines.
10. Belgian Congo.

Following is a list of the countries to which the United States exports processed and refined copper. They are given in order of quantities taken and include all countries to which the United States sends over 10,000 tons annually:

1. United Kingdom.
2. France.
3. Germany.
4. Japan.
5. Italy.
6. Switzerland.

Note that there are no countries that are on both the import and export list.

The data on pages 34a, 34b, and 35a show clearly that the bulk of the imports of copper sent to the United States for smelting and refining does not go back primarily as exports to the same country.

The excess of crude and refined copper imports into the United States over copper exports from the United States amounted to an annual average of 381,000 tons over the last 7 years (1951–57).

AFRICAN COPPER PRODUCERS

Mr. MALONE. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a memorandum showing information on African copper producers.

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

Memorandum—Information on African Copper Producers—July 12, 1957

	Reserves (short tons)	Grade, percent Cu	Total cost (cents)
N'Changa	150,693,000	4.72	18.0
Mulfulira	133,102,200	3.35	20.0
Rhokana	122,853,200	3.14	22.0
Roan Antelope	89,287,000	3.14	21.0
Chibuluma (new mine)	7,300,000	5.23	20.0
Tsumeb (proven only) (also large producers of cobalt)	1,988,000	5.31	--------
O'Okiep (also large producers of lead and zinc)	19,070,000	2.46	--------

The costs given are total costs for 1958. It is not possible to segregate labor only.

All mineral production in the Belgian Congo is controlled by Union Miniere du Haut Katanga. No information on reserves or grade of ores is available.

Metal Statistics 1957 gives 259,158 short tons copper production for 1955. This would be the company production and not from a single mine. The company is also the world's largest cobalt producer.

Metal Statistics gives 18,886,808 pounds for 1955. In addition the company produces a wide range of metals including silver, zinc, cadmium, uranium, and manganese.

COPPER PRICE FLUCTUATION SINCE 1949

Mr. MALONE. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a table showing the price range on copper from 1949 to 1958.

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

Copper—price range

	Cents
June 1949	16.34
March 1956	46.72
December 1957	26.32
April 1958	24.87

TARIFF

1930: Rate-free.

January 1, 1945: Free, plus 4-cent Internal Revenue Code tax.

1948: Duty reduced to 2.0 cents.

January 1, 1958: 1.8 cents (now suspended).

If Trade Agreement Act is extended in June 1958, the rate would be 1.7 cents.

WORLD COPPER RESERVES AND AMERICAN OWNERSHIP GIVEN

Mr. MALONE. Mr. President, I ask unanimous consent to have printed in the RECORD at this point in my remarks tables showing the ownership of world reserves, American ownership abroad, and other pertinent information.

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

UNITED STATES CORPORATE INTERESTS IN THE WORLD INDUSTRY

An approximation of the extent of control of the world copper industry of United States interests may be drawn from the following partial tabulation of world reserve ownership:

TABLE VI-21.—*Ownership of world reserves* [1]

[In percent]

Location of reserves	World reserves
Controlled by American interest only:	
United States	26.37
Mexico	.27
Bolivia	.01
Peru	1.81
Chile	21.33
Total	49.79
Controlled by British and American interests:	
Canada	6.98
Africa	19.12
Total	26.10
Grand total	75.89

[1] Source: Federal Trade Commission, Report on the Copper Industry: 1947, p. 37.

The copper reserves of South America and Mexico are almost entirely under United States corporate direction.

The most important Canadian producers, the International Nickel Company of Canada, Ltd.; Noranda Mines, Ltd.; Hudson Bay Mining & Smelting Co., Ltd.; and Granby Consolidated Mining, Smelting & Power Co., have interlocking directorates with firms in the United States. Granby and Noranda have common directorships with Phelps Dodge Corp., and Hudson Bay has interconnecting relationships with the Newmont Mining Corp., and International Nickel with a number of United States firms, including United States Steel Corp., the Chase National Bank, and the American Metal Co., Ltd.

Newmont Mining Corp. and American Metal Co., Ltd., are the connecting link between the United States industry and the Rhodesian producers. Newmont, through Rhodesian Anglo-American, Ltd., and American Metals, through Mufulira Copper Mines, Ltd., Rhodesian Selection Trust, Ltd., Roan Antelope Copper Mines, Ltd., and Rhokana Corp., Ltd., are closely related to the entire Rhodesian group.

TABLE VI-22.—*American ownership abroad*

Country	Company	Control
		Percent
American Metal Co., Ltd.:		
Mexico	American Metal Company of Mexico, S. A.	100
	Compania Minera de Penoles, S. A.	98.32
	Compania Metalurgia de Torreon, S. A.	98.05
	Compania Metalurgica de Penoles	75
Northern Rhodesia	Rhodesian Selection Trust, Ltd	50.61
	Mufulira Copper Mines, Ltd	32.43
	Roan Antelope Copper Mines, Ltd	32.65
Union of South Africa	O'Okiep Copper Co., Ltd	19.72
Southwest Africa	Tsumeb Corp., Ltd	28.50
	(Plus indirect O'Okiep)	1.87
American Smelt. & Ref. Co.:		
Newfoundland	Buchans Mining Co., Ltd	97
Mexico	Cia Metalurgica Mexicana; Santa Barbara Mine; Charcas Unit; Parral Mines; San Luis, Potosi Smelter.	60
Peru	Northern Peru Mining & Smelting Co	100
Bolivia	Cia American Smelting Boliviana, Ltd., S. A. (Corocoro mines).	100
Anaconda Copper Mining Co.:		
Mexico	Greene Cananea Copper Co	98.5
Chile	Chile Copper Co. (Chuquicamata mine).	99.2
	Andes Copper Co. (Potrerillos mine)	98
Kennecott Copper Corp.:		
Chile	Braden Copper Co	100
Phelps Dodge Corp.: Mexico	Moctezuma Copper Co. of Mexico, S. A.	100
Cerro de Pasco Corp.: Peru	Mines, mills, smelters, and refineries	
Newmont Mining Corp.:		
Cyprus	Cyprus Mines Corp	13.7
		Shares common stock
Canada	Hudson Bay Mining & Smelting Co., Ltd.	100,246
Northern Rhodesia	Rhodesian Anglo-American, Ltd	136,501
Union of South Africa	O'Okiep Copper Co., Ltd	575,103
		Percent
Southwest Africa	Tsumeb Corp., Ltd	28.5
Howe Sound Co.:		
Canada	Britannia Mining & Smelting Co., Ltd.	100
Mexico	Compania Industrial "El Potosi", S. A.	100
	Minerales de Chibuahua	95.33

Not all of the copper produced abroad under American direction is assured to the United States supply. Profit considerations, government policies in the producing countries, contract relationships between producers and foreign buyers, taxes, and duties combine to limit the share available to the United States.

Some of the more important copper property holdings of United States corporations are indicated below. Whereas this list is by no means complete, it does afford some indication of the scope of American ownership abroad.

COPPER CARTELS

The international character of the trade in copper has encouraged the adoption of many control plans under which production and distribution have been organized on an international scale. The primary purpose of such control schemes has been to stabilize prices, and to stabilize markets and employment against the violent fluctuations likely to occur under free-market conditions. The common methods used to accomplish these results have been restriction and proration of primary production, and research to discover new market outlets.

There have been numerous organized efforts at price control in the copper industry since the 1880's, most of them unsuccessful. An early and spectacular attempt known as the Secretan corner was organized and financed in Europe in the autumn of 1887 and temporarily succeeded in boosting the price of copper more than 100 percent. However, the syndicate in charge was unable to maintain this level in the face of bitter consumer resistance and in competition with the flood of new and scrap copper that poured into the market, and in the spring of 1889 the enterprise came to a disastrous end.

Ten years later, the Amalgamated Pool—organized by American mining and financial interests and supported by most foreign producers—for a time was able to raise the price of copper and hold it well above its former level. But again, a high price resulted in decreased consumption, increased offerings of scrap, and an unexpected increase in output from the independents. There was a severe price decline in 1901, but this time a crash was avoided by the intervention of financial aid from London. By 1906, the Amalgamated group again felt in a position to force up the price of copper. Once more, however, the success was short-lived, coming to an end during the financial panic of 1907.

One concerted effort at copper-price control has been generally judged a success. This was the Copper Export Association, a combination including practically all United States producers. It was organized in December 1918 under the authority of the Webb-Pomerene Act, with three large companies acting as the leaders to deal with the problems which confronted the industry after World War I. Large stocks of new metal had piled up, and millions of tons of recoverable scrap-littered the battlefields of Europe. An additional deterrent to profitable operations was the existence of surplus production capacity developed during the war in an effort to meet total requirements; after the war the surplus capacity threatened to become an important factor in price cutting. Suspension of Government price control and Government buying shifted attention from the problem of production to one of markets.

Under the control of the newly organized association, production was curtailed, particularly during the depression of 1921, the war surplus of new and scrap metal was liquidated and—in line with the provisions of the Webb-Pomerene Act—foreign orders were prorated among the members of the organization. But when it had accomplished the purpose for which it had been organized, the association was unable to extend its harmonious existence. Companies that were purely domestic in character and those with important foreign holdings were unable to agree regarding the future policy of the organization. Accordingly, the association was disbanded in 1923, following the withdrawal of the Guggenheim interests and their affiliates which represented at that time 45 percent of the United States output.

Organizations of the Copper Exporters, Inc., in October, 1926, marked the beginning of another unsuccessful attempt at price con-

trol. This group, under the leadership of the big American companies, accounted for 95 percent of world production. At this time, the copper industry was in a very favorable position and United States interests were by far the most important factors in the industry. Stocks were at reasonably low levels, and demand was rising sharply. However, producers charged that there was harmful speculation that caused wide fluctuations in price. Therefore, when the cartel was formed it announced that it planned to bypass these brokers and to sell directly to consumers at prices to be fixed from day to day in accordance with general business conditions.

For a year and a half the cartel operated to the apparent satisfaction of consumers, and with an actual small decline in price. Thereafter, it launched upon a different policy—one that eventually lost to American producers the practical control over the industry they had previously enjoyed.

In late 1928 and early 1929, European consumers, principally copper fabricators, were rationed on almost a day-to-day basis. In their efforts to obtain the metal required to meet their own commitments, these buyers bid up the price—a cent a day in March, 1929—until, at 24 cents a pound, a buyers' strike began. The detailed story of subsequent events is a long one, involving the antagonism of European consumers, the efforts made to protect the fabricators' interests, the struggle to withstand the inevitable price decline, the expansion of competitive capacity in Northern Rhodesia, Belgian Congo, and Canada, the substitution of aluminum for copper in substantial amounts, the usual increase in offerings of scrap, and eventually drastic reductions in domestic output in 1931 and 1932. Finally, after the United States raised a tariff wall against copper imports in June 1932, four of the most important foreign producers withdrew from the cartel.

In 1935 a new cartel was formed, its membership representing about 50 percent of the copper then being mined in countries outside the United States, Canada, Russia, and Japan. Producers in the United States entered into a gentlemen's agreement with the cartel, under which they were to limit their own exports of domestic copper to a certain maximum tonnage per month. The principal Canadian companies also unofficially arranged to cooperate.

During its relatively short life, this cartel alternately tightened and relaxed its restriction on the industry. During the first year, for example, the output of the group was cut to roughly 70 percent of theoretical capacity. Expanding consumption in 1935 brought a corresponding increase in quotas, and some expansion in output. In 1937, restrictions were again tightened. Thereafter, production pressed hard against the limits imposed by the cartel, until the outbreak of the war in September 1939 brought to an end the whole cooperative arrangement. Subsequent to World War II, there has been no concentrated effort on the part of producers to control the copper market.

Although most of the copper comes from relatively few producers and is concentrated in relatively few areas, there does not seem to be sufficient concentration either in a geographic, political, or financial way to ensure the success of an organized effort at market control. Domestic companies are prohibited by law from cooperating in international cartels insofar as the output from domestic mines is concerned. Price increases engineered by producer associations have always met effective consumer resistance. This was accomplished largely by the increased production of new copper by the independents, and by large offerings of scrap and the competition of substitute materials.

The most important foreign property which is being developed by American capital is Tocapala, Peru. This is jointly owned by American Smelting & Refining Co., which owns approximately 50 percent, the remainder being held in approximately equal amounts by Cerro de Pasco, Newmont and Phelps Dodge. The total investment is on the order of $200 million, half of which was supplied by one of the United States Government agencies.

TEXT OF MALONE COPPER BILL

Mr. MALONE. Mr. President, I ask unanimous consent to have printed at this point in the RECORD the full text of the bill on copper that I am introducing.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 3691) to provide relief for producers of copper was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

Be it enacted, etc.—

DECLARATION OF POLICY

SECTION 1. It is declared to be the policy of the Congress—

(a) to facilitate and encourage trade with foreign nations on the basis of fair and reasonable competition;

(b) to maintain an investment climate through the principle applying equally to the whole country;

(c) to provide necessary flexibility of the import duty on copper, thereby making possible appropriate adjustments in response to changing economic conditions;

(d) to assure the accomplishment of these objectives by returning to the provisions of the Constitution (art. 1, sec. 8) in the control over American import duties on copper.

RESTATEMENT OF EXISTING IMPORT DUTIES

SEC. 2. Title I, paragraphs 1 to 1559, inclusive, of the Tariff Act of 1930 are hereby amended by repealing the classifications and rates therein contained on copper and substituting therefor the classifications and rates obtaining and in effect on the expiration of 90 days after the date of enactment of this act, by reason of proclamations of the President under section 350 of the Tariff Act of 1930 or otherwise; and all other acts and parts of acts inconsistent with any of the provisions of this act are hereby repealed.

ADMINISTRATION OF TRADE AGREEMENTS

SEC. 3. Title III, part II, of the Tariff Act of 1930 is amended by adding after section 331 the following new section:

"SEC. 331A. Administration of trade agreements.

"(a) All powers vested in, delegated to, or otherwise properly exercisable by the President or any other officer or agency of the United States in respect to the foreign-trade agreements on critical minerals, metals, and materials, entered into pursuant to section 350 of this act, are hereby transferred to and shall be exercisable by the Commission, including, but not limited to, the right to invoke the various escape clauses, reservations, and options therein contained, and to exercise on behalf of the United States any rights or privileges therein provided for the protection of the interests of the United States.

"(b) The Commission is hereby authorized and directed—

"(1) to terminate as of the next earliest date therein provided, and in accordance with the terms thereof, all the foreign-trade agreements on critical minerals entered into by the United States pursuant to section 350 of this act;

"(2) to prescribe, upon termination of any foreign-trade agreement, that the import duties established therein shall remain the same as existed prior to such termination, and such import duties shall not thereafter be increased or reduced except in accordance with this act."

PERIODIC ADJUSTMENT OF IMPORT DUTIES

SEC. 4. Title III, part II, section 336, of the Tariff Act of 1930 is hereby amended to read as follows:

"SEC. 336. Periodic adjustment of import duties.

"(a) The Commission is authorized and directed from time to time, and subject to the limitations hereinafter provided, to prescribe and establish import duties on critical minerals, metals, and materials, which will, within equitable limits, provide for fair and reasonable competition between domestic articles and like or similar foreign articles in the principal market or markets of the United States. A foreign article shall be considered as providing fair and reasonable competition to United States producers of a like or similar article if the Commission finds as a fact that the landed duty-paid price of the foreign article in the principal market or markets in the United States is a fair price, including a reasonable profit to the importers, and is not substantially below the price, including a reasonable profit for the domestic producers, at which the like or similar domestic articles can be offered to consumers of the same class by the domestic industry in the principal market or markets in the United States.

"(b) In determining whether the landed duty-paid price of a foreign article, including a fair profit for the importers, is, and may continue to be, a fair price under subdivision (a) of this section, the Commission shall take into consideration, insofar as it finds it practicable—

"(1) the lowest, highest, average, and median landed duty-paid price of the article from foreign countries offering substantial competition;

"(2) any change that may occur or may reasonably be expected in the exchange rates of foreign countries either by reason of devaluation or because of a serious unbalance of international payments;

"(3) the policy of foreign countries designed substantially to increase exports to the United States by selling at unreasonably low and uneconomic prices to secure additional dollar credits.

"(4) increases or decreases of domestic production and of imports on the basis of both unit volume of articles produced and articles imported, and the respective percentages of each;

"(5) the actual and potential future ratio of volume and value of imports to volume and value of production, respectively;

"(6) the probable extent and duration of changes in production costs and practices;

"(7) the degree to which normal cost relationships may be affected by grants subsidies (effected through multiple rates of export exchange, or otherwise), excises, export taxes, or other taxes, or otherwise, in the country of origin; and any other factors either in the United States or in other countries which appear likely to affect production costs and competitive relationships.

"(c) Decreases or increases in import duties on critical minerals, metals, and materials, designed to provide for fair and reasonable competition between foreign and domestic articles may be made by the Commission either upon its own motion or upon application of any person or group showing adequate and proper interest in the import duties in question: *Provided, however*, That no change in any import duty shall be ordered by the Commission until after it

shall have first conducted a full investigation and presented tentative proposals followed by a public hearing at which interested parties have an opportunity to be heard.

"(d) The Commission, in setting import duties so as to establish fair and reasonable competition as herein provided, may, in order to effectuate the purposes of this act, prescribe specific duties or ad valorem rates of duty upon the foreign value or export value as defined in sections 402 (c) and 402 (d) of this act or upon the United States value as defined in section 402 (e) of this act.

"(e) In order to carry out the purposes of this act, the Commission is authorized to transfer any article from the dutiable list to the free list, or from the free list to the dutiable list.

"(f) Any increase or decrease in import duties ordered by the Commission shall become effective 90 days after such order is announced: *Provided*, That any such order is first submitted to Congress by the Commission and is not disapproved, in whole or in part, by concurrent resolution of Congress within 60 days thereafter.

"(g) No order shall be announced by the Commission under this section which increases existing import duties on foreign articles if the Commission finds as a fact that the domestic industry operates, or the domestic article is produced, in a wasteful, inefficient, or extravagant manner.

"(h) The Commission, in the manner provided for in subdivisions (c) and (f) in this section, may impose quantitative limits on the importation of critical minerals, metals, and materials, in such amounts, and for such periods, as it finds necessary in order to effectuate the purposes of this act: *Provided, however*, That no such quantitative limit shall be imposed contrary to the provisions of any foreign trade agreement in effect pursuant to section 350 of this act.

"(i) For the purpose of this section—

"(1) the term 'domestic article' means an article wholly or in part the growth or product of the United States; and the term 'foreign article' means an article wholly or in part the growth or product of a foreign country;

"(2) the term 'United States' includes the several States and Territories and the District of Columbia;

"(3) the term 'foreign country' means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions);

"(4) the term 'landed duty paid price' means the price of any foreign critical mineral, metal, and material, after payment of the applicable customs or import duties and other necessary charges, as represented by the acquisition cost to an importing consumer, dealer, retailer, or manufacturer, or the offering price to a consumer, dealer, retailer, or manufacturer, if imported by an agent.

"(j) The Commission is authorized to make all needful rules and regulations for carrying out its functions under the provisions of this section.

"(k) The Secretary of the Treasury is authorized to make such rules and regulations as he may deem necessary for the entry and declaration of foreign articles with respect to which a change in basis of value has been made under the provisions of subdivision (d) of this section, and for the form of invoice required at time of entry."

AMENDMENT OF SECTION 337

SEC. 5. Title III, part II, section 337, of the Tariff Act of 1930 is hereby amended as follows:

(a) Subdivision (a) thereof by striking out the word "President" and substituting therefor the words "Tariff Commission."

(b) Subdivision (b) thereof is hereby repealed.

(c) Subdivision (d) thereof is hereby repealed.

(d) Subdivision (e) thereof is hereby amended to read as follows:

"(e) Exclusion of articles from entry: Whenever the existence of any such unfair method or act shall be established to the satisfaction of the Commission, it shall direct that the articles concerned in such unfair methods or acts, imported by any person violating the provisions of this act, shall be excluded from entry into the United States, and upon information of such action by the Commission, the Secretary of the Treasury shall, through the proper officers, refuse such entry."

(e) Subdivision (f) thereof is hereby amended to read as follows:

"(f) Entry under bond: Whenever the Commission has reason to believe that any strategic and critical mineral, metal and material is offered or sought to be offered for entry into the United States in violation of this section, but has no information sufficient to satisfy it thereof, the Secretary of the Treasury shall, upon its request in writing, forbid entry thereof until such investigation as the Commission may deem necessary shall be completed; except that such articles shall be entitled to entry under bond prescribed by the Secretary of the Treasury."

(f) Subdivision (g) thereof is hereby amended to read as follows:

"(g) Continuance of exclusion: Any refusal of entry under this section shall continue in effect until the Commission shall find and advise the Secretary of the Treasury that the conditions which led to such refusal of entry no longer exist."

STATISTICAL ENUMERATION

SEC. 6. Title IV, part III, section 484 (e), of the Tariff Act of 1930 is hereby amended to read as follows:

"(e) Statistical enumeration: The Chairman of the Tariff Commission is authorized and directed to establish from time to time, after consultation with the Secretary of the Treasury and the Secretary of Commerce, a statistical enumeration of imported articles in such detail as he may consider necessary and desirable to effectuate the purposes of this act. As a part of each entry there shall be attached thereto or included therein an accurate statement giving details required for such statistical enumeration. The Secretary of Commerce is hereby authorized and directed to make such reasonable and proper digests from, and compilations of, such statistical data as the Chairman requests. In the event of a disagreement between the Chairman and the Secretary of Commerce as to the reasonable and proper nature of any request the matter shall be referred to the President whose decision shall be final."

REVISED TEXT OF TARIFF ACT

SEC. 7. The Tariff Commission, as soon as practicable, shall prepare and cause to be printed as a public document available for public distribution a complete revised text of the Tariff Act of 1930, as amended: *Provided*, That all acts or parts of acts conflicting herewith are hereby repealed.

EFFECTIVE DATE

SEC. 8. This act shall take effect upon the expiration of 90 days after the date of its enactment, but no foreign trade agreement shall be entered into under section 350 of the Tariff Act of 1930, as amended, after the date of enactment of this act.

FLEXIBLE TARIFF PRINCIPLE EMBODIED IN NEW BILL

Mr. MALONE. Mr. President, the effect of the peril point or escape clause or some other trick, technical phrase which may be concocted is simply a method of continuing in effect the free trade on copper. Copper is indispensible in peace or war. The record of United States consumption is from 900,000 to 1 million tons of copper annually, Copper consumption now is down about 30 percent, to 600,000 or 700,000 tons annually.

With the advent of a flexible duty or tariff, adjusted to equal the difference between the cost of production in this Nation and in the chief competing nation the domestic needs will be met. A duty or tariff equalling this difference is not a subsidy.

MALONE BILL WOULD PERMIT TARIFF ADJUSTMENTS TO MEET SHIFTS IN ECONOMY

The tariff on copper, under this legislation could be readjusted on the Tariff Commission's own motion, at the request of any committee of Congress or of Congress itself, or at the request of any producer or consumer. It can be adjusted daily, if necessary, or every 6 months, every year, or every 5 years—whenever it may be necessary—so that the American workingmen and investors will be competing for their own United States market, and any necessary imports will not be retarded but will come in when needed on the basis of our standard of living cost.

UNITED STATES COPPER RESOURCES AMPLE TO SUPPLY NATION'S ENTIRE NEEDS

With copper consumption at the rate of 900,000 tons annually, that amount could easily be produced in the United States—and certainly 600,000 or 700,000 tons could be produced in the United States—without depriving the American workingmen of their jobs, or the stockholders in those companies of the income on their investments.

To show how intolerable and unimportant a peril-point is, when Congress passed this act the peril-point price of copper was fixed at 24 cents. It was provided that if the price went below that point, the existing tariff would be imposed. That tariff would have been an ineffective 1.8 cents per pound.

However the price of copper the following year went to 56 cents per pound in the world market, and 46 cents per pound in the United States.

There was much to do about how much 2 cents per pound tariff meant on a ton of copper. The difference between 24 and 46 cents per pound—22 cents per pound on a ton of copper would be $440.

A simple duty or tariff as provided in the 1930 Tariff Act would be a reasonable price to pay to stabilize the employment and investments in that important industry.

Further inflation and manipulation of the copper market would be very difficult if we simply reverted to the method set down in the Constitution.

METAL PRICES FOR LAST 60 YEARS SHOWN

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the first 4 columns of a table entitled "E. & M. J. Annual Average Metal Prices, 1897 to 1956." The columns are entitled "Copper," "Electrolytic Refinery," "Export or Foreign Refinery," "Lead, Common, New York," "Zinc, Prime, Western (b), East St. Louis."

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

E. and M. J. Annual Average Metal Prices—1897 to 1956

Year	Copper		Lead, Common, New York	Zinc, Prime Western,[2] East St. Louis
	Electrolytic refinery [1]	Export or foreign refinery		
1897	11.29		3.580	4.120
1898	12.03		3.780	4.570
1899	16.67		4.470	5.750
1900	16.19		4.370	4.390
1901	16.11		4.330	4.070
1902	11.026		4.069	4.840
1903	13.235		4.237	5.191
1904	12.823		4.309	4.931
1905	15.590		4.707	5.730
1906	19.278		5.657	6.048
1907	20.004		5.325	5.812
1908	13.208		4.200	4.578
1909	12.982		4.273	5.352
1910	12.738		4.446	5.370
1911	12.376		4.420	5.608
1912	16.341		4.471	6.799
1913	15.269		4.370	5.504
1914	13.602		3.862	5.061
1915	17.275		4.673	13.054
1916	27.202		6.858	12.634
1917	27.180		8.787	8.813
1918	24.628		7.413	7.890
1919	18.691		5.759	6.988
1920	17.456		7.957	7.671
1921	12.502		4.545	4.655
1922	13.382		5.734	5.716
1923	14.421		7.267	6.607
1924	13.024		8.097	6.344
1925	14.042		9.020	7.622
1926	13.795		8.417	7.337
1927	12.920		6.755	6.242
1928	14.570		6.305	6.027
1929	18.107		6.833	6.512
1930	12.982		5.517	4.556
1931	8.116		4.243	3.640
1932	5.555		3.180	2.876
1933	7.025	6.713	3.869	4.029
1934	8.428	7.271	3.860	4.158
1935	8.649	7.538	4.065	4.328
1936	9.474	9.230	4.710	4.901
1937	13.167	13.018	6.009	6.519
1938	10.000	9.695	4.739	4.610
1939	10.965	10.727	5.053	5.110
1940	11.296	10.770	5.179	6.335
1941	11.797	10.901	5.793	7.474
1942	11.775	11.684	6.481	8.250
1943	11.775	11.700	6.500	8.250
1944	11.775	11.700	6.500	8.250
1945	11.775	11.700	6.500	8.250
1946	13.820	14.791	8.109	8.726
1947	20.958	21.624	14.673	10.500
1948	22.038	22.348	18.043	13.589
1949	19.202	19.421	15.364	12.144
1950	21.235	21.549	13.296	13.866
1951	24.200	26.258	17.500	18.000
1952	24.200	31.746	16.467	16.215
1953	28.798	30.845	13.489	10.855
1954	29.694	29.889	14.054	10.681
1955	37.491	39.115	15.138	12.229
1956 [3]	41.818	40.434	16.013	13.494
1957	25.000			
1958	24.800			

[1] Lake copper 1897–98; domestic market since 1932.
[2] New York delivery 1898–1902.
[3] 56 cents per pound abroad; 46 cents per pound here.

COPPER TARIFF MANIPULATION

Mr. MALONE. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a statement I have prepared on the manipulation of the excise tax on copper.

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

STATEMENT BY MR. MALONE

In 1955 suspension of the 2-cent excise tax on copper was extended to June 30, 1958, and in 1956 suspension of the 2-cent excise tax on the recoverable copper content of imported scrap was extended 1 year to June 30, 1957. At the June (1956) meetings in Geneva on General Agreements on Tariffs and Trade (GATT), the United States agreed to lower the duties 15 percent on copper and other metals and minerals in exchange for reductions of tariffs by other countries on United States exports. Excises will drop 15 percent on copper metal, ores, and concentrates—5 percent for each of 3 years—provided the tariff is reimposed. (In the case of copper, the suspension is effective until June 30, 1958, unless the average price for a calendar month drops below 24 cents.) Accordingly, the excises for fiscal 1957, 1958, and 1959 will be 1.9, 1.8, and 1.7 cents, respectively, and shall assume the specified rate of that year when reimposed.

In 1948 the duty on copper was reduced from 4 cents to 2 cents.

Mr. MALONE. Mr. President, both the special copper legislation and the 1934 Trade Agreements Act must be allowed to expire on June 30, 1958, if the American workingmen and investors are to be allowed to compete on an equal basis for the American market.

EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

The Senate resumed the consideration of the bill (S. 2888) to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.

Mr. IVES obtained the floor.

Mr. JOHNSON of Texas. Mr. President, will the Senator from New York yield, that I may suggest the absence of a quorum, with the understanding that he will not lose the floor?

Mr. IVES. I yield for that purpose.

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

Mr. JOHNSON of Texas. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief 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.

THE DANGERS OF NUCLEAR FALLOUT

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the body of the RECORD a very interesting and worthwhile article on the dangers of fallout, and also a letter, which I have received from Mr. Stewart W. Hurlbut, of Butte, Mont.

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

BUTTE, MONT., *April 1958.*

DEAR SIR: My first small effort to help prevent our civilization from being destroyed was sent to 190 statesmen, editors, scientists, and prominent civilians all over the world. The tangible results were a handful of letters, mostly from those who already perceive the danger and are fighting in their respective capacities for the same goal—positive action. There were some brief notes from editors to the effect that the matter of continued existence of the human race did not fit their editorial policy.

My approach is too unconventional, perhaps, but it has to be. It is the only way open for a private citizen of small means to speak up in the interest of continued human life on earth. I want a world for my children to grow up in. I want the spiral of human progress to continue upward. I want to play my small part in that spiral, and, above all, do not want to see it sent smashing to the ground. I am not a bemused being on Mars observing the suicidal antics of his neighbors on earth, and I will not sit by, chin in hand, watching my fellow human beings race toward disaster. I am and will continue to be in that race, trying with the meager few to stop the headlong course toward oblivion.

A small man trying to affect destiny is like Don Quixote tilting at windmills, perhaps, but this attempt may be symptomatic of exactly what the situation now calls for. Unless the small people of the world awaken to the danger and react to it with the intention to fight it, to do something about it, the authority and power that reside in the united voices of all humanity can never be brought to bear upon the problem, and by now it may be that is the only authority and power that can be of any avail.

I appeal to you—statesmen, editors, journalists, writers—for man's sake, act now. The very existence of the human race is in jeopardy. Who knows how much time we have when a spark, an accident, can set off the conflagration?

Sincerely yours,

STEWART W. HURLBUT.

THE WORLD OF ILLUSION

In this nuclear age, what are the basic facts that all people should know? Fact No. 1 is that both Russia and the United States possess nuclear weapons in sufficient quantity and deadliness, used in total nuclear war, to destroy both countries as industrial and political entities along with a majority of their populations. Other countries of the Northern Hemisphere would be involved in the war and destruction. The vast quantities of radioactive particles sent into the stratosphere would constitute a lethal hazard to all life. Thus, the human race possesses the means to destroy itself.

Fact No. 2 is that this threat of extinction hangs over our heads now and will continue to do so in the future with an increasing degree of peril, since the means and accuracy of warhead delivery will be constantly improved. The arms race preserves a superficial appearance of peace for the time being. But are we to continue arming into eternity? Ironically, that may be just what we are doing, for the arms race logically can end only in war. Who can conceive of another end if we pursue this reckless, headlong course?

There are leaders who say that we will have "clean" bombs which will enable us to conduct limited nuclear wars. Who will enforce the use of "clean" bombs by our opponents? And the idea that limited nuclear wars can be fought without spreading into a general conflict and the destruction of civilization is almost criminally foolish. Is this a case of "Whom the gods would destroy, they first make mad"?

Given the situation of the world's people divided into groups with national interests, given nuclear weapons in the hands of growing numbers of these groups, given the ability to deliver warheads even faster and more accurately, given the ever-increasing chance of a minor conflagration turning into total nuclear war, given the possibility of an erroneous decision by a field commander, given the chance that a megalomaniac with his power threatened will release the nuclear holocaust on humanity, given the ingredient of time and all these chances against survival—then sooner or later humanity will be propelled into war and extinction. Unless the human race becomes conscious of its collective peril and comes unanimously to the decision to not let it happen. But that is impossible unless the people know exactly what kind of danger

they are facing. What is the danger? Death. It may be instant death in the blinding, searing, tearing inferno of a nuclear blast. Or it may be death in agony and pain during the ensuing 60 days after a short but widespread nuclear war. Or it may be slow poisoning by radioactive particles falling out of the stratosphere in a lethal, unseen rain.

Why is it that the truth about this great crisis in the affairs of man has not been given to the people in a convincing form? Is it because of the fear that hysteria would result throughout the world? Let us have our hysteria, then, and get it over with. Then we can face reality and determine what to do about it. How can the world react intelligently to this crisis when the majority of the people have no true understanding of what it means?

One great difficulty is involved in informing the people—the danger is not tangible. It cannot be seen, it cannot be touched, it cannot be heard. It requires knowledge of the basic facts and then an effort of imagination to perceive the vast, threatening terror that hangs over the heads of humanity. Not all people are capable of perceiving that for themselves. They have to be helped to recognize their danger. This burden falls squarely on the great men of the world, particularly the statesmen, the scientists, editors, journalists, and writers. If they speak out, the people will believe them, will realize that a matter of life and death on unprecedented scale is involved.

The possibility of nuclear death exists for the over 2½ billion humans on earth. That possibility must be described for the inhabitants of the world on our newspapers, magazines, and over radio and television. It must be described in simple, compelling terms. The danger is so great that it is difficult to conceive in its terrible immensity. But see it they must. Business as usual can't continue on the planet if we are to survive. The responsibility for showing the people their danger and then leading them out of it rests in the hands of those who, if they speak, will be heard.

All over the earth the majority of the people are going about their daily affairs as if there were no terror unleashed in the world. They are doing business at the same old stall in the same old way—in a world of illusion. That world doesn't exist. It ceased to exist with the first atomic bomb exploded in anger at Hiroshima.

Now, speaking of the human race as a whole, what single aspect of existence is of the greatest importance? It is life itself. Without life all the other concerns of humanity cannot exist. What of our ideas of justice, of freedom, of the dignity of man, of truth, of honor, of honesty? If we commit racial suicide, those ideas will die with us as far as the planet earth is concerned.

With life threatened, then, isn't it common sense to devote all of our thinking and effort toward removing this terrible threat from the human scene? We must recognize that the threat is there. We must remove it, or this Frankenstein that we have created with our own hands will remove us.

So it is vital that we human beings should devote all of our powers to the great problem. What can we do here in the United States? First things first. Here we must face the reality squarely ourselves, and then turn our attention toward informing the rest of the world about every detail concerned in this terrible crisis in human affairs. And there is no time to lose. Every minute we draw closer to the brink, for always the possibility exists that some unforeseen incident will trigger the horrors of total nuclear war.

When the people of the world understand their great danger, it is inconceivable that they will not be able to rise above myopic self-interest. It is inconceivable that the collective intelligence that brought us to the brink of disaster will not be able to find a way back to safety.

Only an informed and understanding world public opinion can prevent human self-destruction now. And the time is short.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Ratchford, one of his secretaries, and he announced that on April 23, 1958, the President had approved and signed the following acts:

S. 1708. An act to amend the act entitled "An act relating to children born out of wedlock," approved January 11, 1951;

S. 1843. An act to amend the act entitled "An act to create a Recreation Board for the District of Columbia, to define its duties, and for other purposes," approved April 29, 1942;

S. 2230. An act to authorize the Secretary of the Interior to convey certain lands to the Charlotte Rudland Dansie Association;

S. 2725. An act to exempt from taxation certain property of the National Council of Negro Women, Inc., in the District of Columbia; and

S. 3243. An act to permit certain foreign students to attend the District of Columbia Teachers College on the same basis as a resident of the District of Columbia.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER (Mr. MORTON in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

REPORT OF OFFICE OF ALIEN PROPERTY—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on the Judiciary:

To the Congress of the United States:

I transmit herewith, for the information of the Congress, the annual report of the Office of Alien Property, Department of Justice, for the fiscal year ended June 30, 1957.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *April 24, 1958.*

REPORT OF OPERATIONS UNDER INTERNATIONAL CULTURAL EXCHANGE AND TRADE FAIR PARTICIPATION ACT OF 1956—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States which, with the accompanying report, was referred to the Committee on Foreign Relations:

To the Congress of the United States:

In accordance with the provisions of section 9 of Public Law 860 of the 84th Congress, I transmit herewith for the information of the Congress the third semiannual report of operations under the International Cultural Exchange and Trade Fair Participation Act of 1956.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *April 24, 1958.*

REPORT ON ACTIVITIES UNDER FEDERAL DISASTER ACT—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 376)

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States which, with the accompanying report, was referred to the Committee on Public Works:

To the Congress of the United States:

I have the honor to transmit herewith a report of activity under authority of Public Law 875, 81st Congress, as amended, and required by section 8 of such law.

Funds which have been appropriated to accomplish the Federal assistance determined eligible under this authority are specifically appropriated to the President for purposes of disaster relief.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *April 24, 1958.*

APPELLATE JURISDICTION OF THE SUPREME COURT

Mr. JENNER. Mr. President, on April 9, 1958, the Washington Post carried in its editorial columns another attack on the Senate Internal Security Subcommittee. Coupled with this was an attack on S. 2646, the so-called Jenner bill, designed to withdraw appellate jurisdiction from the United States Supreme Court in certain areas where decisions of the Court have adversely affected this Nation's fight against communism.

In this editorial, the Washington Post takes the Internal Security Subcommittee to task for putting into its hearing record a statement entitled "The Supreme Court as an Instrument of Global Conquest." The fact is, of course, as the Washington Post well knows, that all testimony and all statements offered, both for and against the bill, were put into the hearing record. But the Post says this is a flimsy excuse for what the Post calls the circulation of an outrageous smear.

The Post's position appears to be that the committee has no right to include in its hearing record any statement expressing an opinion which differs from the views of the Post. The constitutional right of petition would have little validity if the committees of Congress were to adopt any such standard.

In its editorial, the Post singles out for special attack a particular passage in the statement in question. This passage the Post quotes as follows:

> In the paralytic effect of its pro-Communist decisions, on State and Federal agencies of internal security, the United States Supreme Court is the most powerful, and potentially determinative instrument of the Communist global conquest by paralysis.

The Post asserts that this charge that the Supreme Court is an ignorant tool of Communist conspiracy is unique, and the Post declares:

Such nonsense would go into the wastebasket without notice except for the fact that it carries the imprimatur of the Committee on the Judiciary of the United States Senate.

The word "imprimatur" is defined by Webster as:

A license to print or publish a book, paper, etc.; also, where censorship of the press exists, approval of that which is published. Hence, sanction, approval.

The Washington Post must know, or should know, that in printing the transcript of an open public hearing, a committee of the Congress does not give sanction or approval to anything contained therein. A hearing record usually reflects many points of view, and this is especially true of the record of hearings on S. 2646, which contains many statements on both sides of the issues raised by the bill.

As for the quoted statement being unique, the fact that the Post made this statement would appear to indicate that the Post has a very small acquaintance indeed with the hearing record on S. 2646. So that the record may show the facts, I shall quote some of the things along the same line which found their way into the hearing record in other testimony or statements. I shall quote these chronologically as they appear in the hearing record, giving the page number of the printed record in each case, so that anyone who cares to do so may readily check the accuracy with which I quote.

On page 84, from the testimony of Homer Brett, Jr., of Chevy Chase, Md.:

The investigative activities of Congress are in my opinion being attacked today by the Supreme Court because of the latter's inability to recognize the fact that the opposition to Congressional investigations is mainly concerned with the determination of pro-Soviet elements, as well as others, to protect the liberty of operation of their coreligionaires.

On page 86, from the testimony of Harold Malin, of Cumberland, Md.:

First of all, I would like to say that I, among a lot of people, I know, am worried, extremely upset about what we feel to be the danger to our American way of life posed by the Communist Party. We feel that the Supreme Court in recent decisions has been very, very lenient to communism. We feel that, if that continues, it will accelerate the progress of Communist subversion and the collapse of our American way of life.

Page 98, from the testimony of Ira H. Latimer, of Chicago, Ill.:

Our Constitution does not repose trust and power in any man, but the modern pagans, today used as catspaws by the Communist conspirators, are turning our courts over to passionately sincere liberals who are believers in the social gospel or social morality or social welfare state wherein mere men, supposedly good men will promise to eliminate the evils of the world if they are given the power.

On page 99, from the further testimony of Mr. Latimer:

The philosophical theory behind these Supreme Court decisions, in my opinion, is that communism and socialism should have the freedom to overthrow the evils of the status quo and create a manmade utopia. This is the tacit assumption that what is, is wrong, and that may or might be, is right, or at least better.

Farther down on page 99, still from the testimony of Mr. Latimer:

The majority of Justices in each case appear to be believers in men—believers in inevitability of progress following the teaching of John Dewey—believers in exactly what Chief Justice Warren said—the inevitable logic of which is to believe in the Marxist doctrine that socialism is the next and higher stage of economic development of mankind.

On page 132, from the testimony of Francis J. McNamara, who appeared representing the Veterans of Foreign Wars:

Under the present Supreme Court, however, United States law is not serving the ends and desires of the American people. They have shown what their desires are, as far as communism is concerned, by the support they have given the Smith Act since it was passed 18 years ago. They have shown their desires by the support they have given the Communist Control Act, the Internal Security Act of 1950, by the support they have given 42 State sedition laws and numerous other measures adopted on all levels of government to curb communism.

Page 152, from the statement of Mrs. Madalen D. Leech, representing the American Coalition of Patriotic Societies:

In short, these decision (sic)—and others—are the subject of much displeasure and discomforture to all patriotic Americans who are shocked that the Court has seen fit to so apparently serve the Communist conspiracy and criminal element in this country at the expense of loyal citizens.

Page 174, from the statement of Edgar C. Bundy, representing the Abraham Lincoln National Republican Club:

I and countless numbers of my fellow Americans continue to view with great alarm the recent series of decisions of the United States Supreme Court which have dealt with cases involving subversives and subversive activities within the borders of the United States.

We believe that the decisions of the Supreme Court in regard to these matters have weakened the internal security of the United States immeasurably and have given aid and comfort to the enemies of the American Republic; namely, the agents of the Kremlin apparatus who are working in our midst.

Many of us never believed that we would see the day when one of the three major branches of the United States Government would give aid and comfort and protection to individuals who seek to destroy one of the grandest and noblest forms of human government ever devised in the history of this world.

Page 177, also from the statement of Edgar C. Bundy:

When the Communist Party of the United States of America, which is not a political party at all but an arm of the worldwide Kremlin conspiracy to destroy the last vestige of free nations, can cite the Supreme Court of the United States against the executive and Congressional branches of the Government, then it is time for the Congress of the United States to rise up and assert the power given to it in the Constitution of the United States to restrict the Supreme Court in this particular appellate field.

Page 180, also from the statement of Mr. Bundy:

Following some of the recent Supreme Court decisions, Communist Party functionaries came out into the open and proclaimed themselves to be respectable citizens under the authority of the Supreme Court of the United States. They called brazen press conferences and quoted the Supreme Court decisions to prove that the Communists were law-abiding and respectable citizens, while the investigative committees of the Congress were nothing but Fascist-reactionary forces which are in business to take away the civil liberties and civil rights of American citizens.

Page 192, from the statement of the Reverend Robert G. Forbes:

These decisions have been greeted enthusiastically by the Communist Party, U. S. A. and by the mother party in the Kremlin. If I remember the now dormant Daily Worker correctly, several Communist Party bigwigs have publicly praised these decisions as a great victory for the Communists.

Page 196, also from the statement of the Reverend Robert G. Forbes:

I believe that the recent decisions of the Supreme Court, * * * and other decisions are aiding and abetting the Communist Party, USA, and, consequently, the Communist Party of the Soviet Union.

Page 203, from the statement of Miss Kitty L. Reynolds of Arlington, Va.:

Most of us are not well versed in Communist tactics, but this is not true of the Supreme Court. Yet in decision after decision, our security laws have been weakened or made inoperative, and the investigating committees of both the Senate and House have been hampered. Why is the Supreme Court overzealous in protecting the Communists' so-called rights under the Constitution?

Page 230, from the statement of George J. Thomas, representing the Congress of Freedom, Inc.:

The record of the decisions that have been handed down during the past 4 years having to do with communism and Communists by the majority of our United States Supreme Court reads like what one might expect to read in a tale of the Fall of an Empire. That record of something that has occurred in this land of freedom is unbelievable.

Page 231, also from the statement of Mr. Thomas:

Already the Supreme Court has dealt a succession of blows at key points of the legislative structure erected by Congress for the protection of our internal security against this Communist conspiracy. Time after time Congress has moved to restore legislative bulwarks, and time after time the Supreme Court has knocked out the props from under these laws.

Page 233, also from the statement of Mr. Thomas:

The Supreme Court of today, bypassing judicial precedent, has undertaken a campaign to level every existing barrier against Communist penetration into our Government.

Page 235, also from the statement of Mr. Thomas:

As one reads the record of the decisions of our Supreme Court, he is astounded at their evident determination, not only to arouse and instigate confusion and ill will among our people, but to erase every barrier against the destruction of our Nation in favor of the

Communists and their fellow travelers. This Court should be circumscribed in every way possible, if it cannot be impeached. Even should that happen, the Nation would undoubtedly be faced again with a court of similarly minded men. The interests that have secured the appointment of this Court could force the selection of another.

Page 261, from the statement of Thomas F. Cadwalader of Baltimore, Md.:

But more recently the Court has been, I think, more of an active agent in trying to remold our institutions in a totalitarian sense, and incidentally protecting all individual agents and devotees of totalitarian dogma, whether in public employ or as schoolteachers or members of the bar, so as to foster the infiltration of those enemies of our entire system of government and culture.

Page 290, from an editorial published in the Albuquerque, N. Mex., Tribune:

Fundamental to the point of view which produced these Supreme Court decisions is the refusal—or legal inability—of the Court to consider communism a criminal conspiracy to advance the interests of an unfriendly foreign power—a clear and present threat to national security.

Page 290, from an editorial published by the New York Daily News:

In decision after decision, the Warren Supreme Court has befriended the Communists and their Kremlin masters, and has weakened the defenses of the American people against this enemy.

Page 291, from a column written by Mr. George Sokolsky:

When, in a court, the United States is consistently the loser, the subject requires very profound consideration. Maybe the United States needs an American Supreme Court.

Page 291, from an editorial published in the New York Mirror:

The law is so loosely interpreted that decisions are handed down by the nine old men of the Supreme Court which give to Communists every opportunity to work for the destruction of the United States as they have destroyed the government of some 15 nations and deprived the peoples of those countries of their liberties and human rights.

All the Communist decisions of the Supreme Court need to be read together to appreciate their enormity.

Page 291, from an editorial published in the New York Daily News:

If Congress and the White House continue to take this stuff lying down, they will roll out the red carpet for dictatorship by the Supreme Court, which, judging from its present policies, will then open the country to Communist conquest, from within or from without.

Page 292, from the statement by Kent H. Courtney, publisher of the Independent American, New Orleans, La.:

What are we to think concerning the recent action by members of the High Court? Are they ignorant of the ultimate aims of the international Communist conspiracy to destroy this Republic? Have they no knowledge of what communism is? Or—? Well, I prefer to give the august members of the Supreme Court the benefit of the doubt, and believe that their recent decisions are based on their terrifying ignorance of world communism, and also on their ignorance of the United States Constitution, its stated words, and the spirit in which it was written by our forefathers who pledged their "lives, liberty, and sacred honor" in another fight against tyranny.

Page 292, also from the statement of Mr. Courtney:

Both political parties are in favor of billions of dollars for defense against communism. Why, then, I ask—should we spend billions of the taxpayers dollars to defend America from communism abroad—and, at the same time, befriend Communists at home via Supreme Court decisions?

Page 293, also from the statement of Mr. Courtney:

The Communist Party members and their fellow travelers are not worried about the fact that this committee may rewrite the law as to the appellate jurisdiction of the Supreme Court. These Communists are counting on their friends in high places. (The Communist-befriending decisions of the Supreme Court in the past years are tragically ample proof of this.) But, I sincerely believe that both the Communists and the Supreme Court, in their mutual arrogance, have overlooked the ultimate controlling factor.

Page 305, from the statement of Andrew Wilson Green of Harrisburg, Pa.:

It is apparent that the Supreme Court of the United States has gone hog wild on a few of the most vital conceptions of our form of constitutional government. Unless the ravages of their destruction are stopped, we shall be faced with but an empty shell of a Constitution, and we shall be left defenseless before the most insidious and diabolical enemy which this country, or any other, or civilization has ever face (sic)—I mean the enemy communism.

Page 310, also from the statement of Mr. Green:

Our Supreme Court liberals do not believe in liberty: The truth of the matter is that the so-called defenders of our liberty, the so-called liberals, do not believe in liberty. What they believe in is license, the absence of discipline, and the governance of the laws of chance. They are uncertain in their own mind that liberty is better than tyranny. They want someone else, preferably some impersonal social or historical process, to decide for them whether the future should be free or not. They are not quite certain whether communism is, or is not, the wave of the future. They are fearful or apprehensive lest they should commit a sin against history by using their own preferences to frustrate its processes.

Page 312, also from the statement of Mr. Green:

It would seem that in this field the Supreme Court could not have been following the strategy laid down by Communist planners any better than if they had been on the general staff of the Red Army, or on the planning committee of the Soviet Foreign Ministry.

Page 312, also from the statement of Mr. Green:

Loyalty of several Supreme Court Justices suspected: Can the logical and orderly sequence of these cases be but an accident? There are not a few—and I want to add for the record I think it is perhaps not discreet that I should commit myself as to whether or not I am one of those few at this time—who suspect one member of the United States Supreme Court as being under Communist discipline, and another as being subject to their blackmail, and another as knowingly following their desires out of political ambition, and another as being sympathetic with communism because of his association with so many of them as personal friends, and including members of his family, and a fifth being motivated by a resentment of a religious nature.

Page 329, from the statement of George B. Stallings, Jr., of Jacksonville, Fla.:

The events of our day certainly alarm us. The encroachments upon our constitutional guaranties and upon the Constitution itself, cause us grave concern. But, when we see the Supreme Court of the United States in a veritable parade of decisions handed down over the past 5 years in particular, pave the way for foreign ideologies that militate against us, then we cannot hold back our protest.

Page 378, from a letter submitted by Mr. Julius Applebaum, an attorney of Miami, Fla.:

It is my belief that many of the judges have not an adequate understanding of the menance (sic) of communism, its tactics, and its resultant problems.

Page 458, from the statement of Frank B. Ober, of Baltimore, Md., one of the leading constitutional lawyers of this country:

Underlying these decisions of the new majority of the Court, there is, I submit, a lack of recognition on the part of some of the Justices of the facts so eloquently explained by the Vinson court, that the Communist Party is not merely another political party, but is an internal conspiratorial movement directed by Russia in which she has been notably successful in subverting other governments.

Page 522, from the statement of George S. Montgomery, Jr., an attorney, of New York City:

Now, if a majority of the Supreme Court of the United States were not aware of the Communist conspiracy, at least you would expect that an American might win once out of twice or once out of 6 times or once out of 20 times. At least sometime he might be expected to win.

Page 527, from the statement of Eugene S. Bibb, of Baltimore, Md.:

When the Court deliberately provides safe and secure havens of refuge in the United States for all traitorous Communist conspirators in our midst and bars their lawful conviction and punishment under the law, and when the Court, in its revolutionary frenzy, shows utter contempt for ancient legal doctrine of stare decisis, and wantonly strikes down our precedents, traditions, and institutions, built on reason and logic, then I proclaim that that Court is guilty of malfeasance in office, if not high treason.

Page 528, also from the statement of Mr. Bibb:

To say that the Court majority, voting against all internal defenses against the onrushing Communist conspiracy seeking to engulf us, is pro-Communist would be the understatement of the year.

Page 531, from the statement of Mrs. Enid Griswold, representing the Montclair, N. J., Women's Patriotic Conference:

But the long series of decisions of our present Supreme Court has freed these traitors to continue their dastardly work of destruction, and how appalling it is to compare these findings with the stated objectives, the program of the Communists, and to realize how perfectly they fit into the current Communist line.

Page 532, also from the statement of Mrs. Griswold:

It does not require a profound understanding of constitutional law to ask why America's young men must be drafted into

the armed services and sent to many parts of the globe to help others shore up the defenses against Communist aggression while within our own country we have permitted to be torn down the walls which had been so painstakingly erected.

Page 540, from the statement of J. Nicholas Shriver, Jr., of Baltimore, Md.:

Unless Congress reasserts its authority, the Supreme Court will have succeeded in destroying America without requiring Soviet Russia to fire a single missile.

Page 543, from the statement of Loren D. Stark, of Houston, Tex.:

As I meet with practical business and professional people, respected citizens of this community, I observe that they are appalled and deeply disturbed over the socialistic pronouncements of the United States Supreme Court as evidenced by its decisions in recent years.

Page 557, from the statement of Edward J. Anderson, Golden, Colo.:

Nothing is so painful for a loyal American to witness as a Supreme Court befriending the enemies of his country. Every pronouncement of the Warren court dealing with Communist issues must fill the sinister hearts of the men in the Kremlin with the deepest satisfaction.

We have a Supreme Court which is wholly uninterested in those of my rights as a citizen that are gravely menaced by international communism, but which is enormously interested in the rights of traitors.

Page 585, from the statement of Clarence Manion, of South Bend, Ind., former dean of the Law School of Notre Dame University:

The proponents of the Communist conspiracy are seldom, if ever, wrong when they appeal to the Supreme Court asking protection for Communist agents and punishment for the enemies of communism. When these enemies of the Communist conspiracy appeal to the Supreme Court for protection, a different construction of civil liberties is in order.

Page 585, also from Dean Manion's statement:

The best summation of the broad Communist coverage afforded by some of the listed decisions came in a touching tribute to the Supreme Court from the Communist Daily Worker. Said this official organ of the Communist Party:

"The Court delivered a triple-barrelled attack on (1) the Department of Justice and its Smith Act; (2) the free-wheeling Congressional inquisitions; and (3) the hateful loyalty-security program of the Executive. Monday, June 17, is already a historic landmark * * * the curtain is closing on one of our worst periods (editorial, Daily Worker, June 19, 1957)."

Page 587, also from Dean Manion's statement:

In none of the enumerated 15 cases involving communism do the majority members of the Court give any indication that they are informed on the subject of communism, or that they have in any way studied either the writings of the Communist leaders, the numerous exposures of the Communist conspiracy from the inside which began with Ben Gitlow's I Confess, or the authoritative reports on Communist espionage and subversion written by congressional committees and by the head of the FBI, and including the reports of this committee, the subcommittee before whom we are this morning.

Page 589, also from Dean Manion's statement:

We know that every country that has been captured by communism since the end of World War II has been taken by its fifth column. They took China with Chinese. They took Czechoslovakia with Czechs. They took Hungary with Hungarians. And they propose to take America with Americans. These decisions in cumulative effect gives them the right to do that without interference.

Page 589, farther down the page, and still from the statement by Dean Manion:

The Supreme Court, in my judgment, makes the same mistake that so many commentators and editorial writers make on the subject of communism. They recognize there is a Communist menace in the Middle East, and that there is something about East Germany which is wrong. They fail to recognize that the Communist who operates in Washington operates under the same directives that the Communist operates under in Moscow, and that there is no difference between the line of authority between Khrushchev and his Moscow minions who carry out his will over there.

Page 629, from the statement of John K. Crippen, of Park Ridge, Ill.:

We are being taxed—almost beyond our ability to pay—to fight or contain communism, both here and abroad. What an irony, what a mockery if we continue to spend up to the very moon if we do not take the simple and elementary step of protecting ourselves against the decisions of our own Supreme Court—decisions which have, under "One-World Warren"—been more helpful to the Communist Party than any other single series of acts within our generation.

Page 640, from the statement of L. Brent Bozell, of Chevy Chase, Md.:

The Supreme Court has immobilized our national defenses against the international Communist conspiracy. The result is a national crisis. The necessary rebuilding of these defenses cannot go forward under the current line of Court decisions.

Page 644, also from the statement of Mr. Bozell:

Chief Justice Warren's opinion in the Nelson case is, in my judgment, an open-go-shut indictment of the Supreme Court. And I maintain that the case is characteristic of the Court; it reflects the Court's practice in this field of deciding in advance, on political grounds, how it would like the case to turn out, then looking around for precedents and arguments—however spurious or distorted or irrelevant—to support its preconceived conclusion. It is a classic example, but there are others.

Page 657, also from the statement of Mr. Bozell:

Why these strained and perverse interpretations of the Constitution and the laws every time a Communist case is placed on the Supreme Court docket? I say it is because the Supreme Court is living in a dream world of its own; because it sees, or thinks it sees, a different kind of society from the one the rest of us actually live in and want to live in; because its values are different from those the rest of us embrace. The only other explanation is that the Supreme Court Justices are partisans of communism, and I do not believe that.

Page 658, also from the statement of Mr. Bozell:

I submit that 99 percent of the people of the United States know that the Communist Party is a subversive organization—know it with the same certainty with which they know the sun will rise in the east tomorrow. But the judicial system of the United States does not know it. It cannot take cognizance of it. And I say this judicial system is not going to be long, or any other kind of influence in our society, if it pursues that kind of activity and makes that kind of performance.

Page 663, from an article by Forrest Davis, published in the National Review of July 6, 1957:

It has been said that the Warren Court could not more faithfully be advancing the Communist desire to conquer the United States from within if each week the Justices met to con and effectuate the latest instructions from the American branch of Agitprop in Moscow. The intimation is insupportable and shameful, but the Court has laid itself open to it.

Page 663, also from Mr. Davis' article in the National Review:

I doubt that the opportunistic Warren and Black and the faintly absurd, mountain-climbing Douglas would deliberately deliver their society and culture to the wolves of Moscow. I think it very likely that they would do so inadvertently, striving to make time with, for example, the intellectuals of the Washington Post, which, from condemning McCarthyism at the top of its lungs, went on to pillory something it called committee-ism.

Page 940, from the letter of H. L. Rouse, Colorado Springs, Colo.:

I don't know who the Supreme Court is serving completely, but, feel it is not the Republic of the United States nor its people.

Page 944, from the letter of C. V. Stinchecum of Duncan, Okla.:

As to the Smith Act and FBI decisions, the Court has played directly into the hands of the Communists, and the ability of our country to defend itself has been practically destroyed.

Page 946, from the letter of Dr. A. F. Blazey, Washington, Ind.:

I would like to have the time and money to request a hearing before your committee to testify to the long list of un-American decisions that have made our Supreme Court a tool for socialist subversives, and the great need for measures to curb its usurpation of power.

Page 951, from the letter of Mary Lavinia Silvia, of Holbrook, Mass.:

We have also requested, before, and again insist on the impeachment of the six members of the Supreme Court who have proven by their actions that they are subversives.

Page 953, from the letter of J. Helen Viely, of Pontiac, Ill.:

The Jenner bill provides a way to wrest unwarranted power from a supreme court which, in decision after decision, has shown its contempt for our Constitution, has shown its determination to aid and abet communism in this Nation.

Page 954, also from the letter of this Pontiac lady:

If you fail to protect us from this anti-American pro-Communist court, you will have betrayed your trust as Members of the United States Congress.

Page 961, from the letter of Albert A. Beres, VFW, South Norwalk, Conn.:

The United States Supreme Court has a great tendency to have an open back door policy for all cases involving Communists or subversive cases. How they manage to let

so many no-good un-Americans get away with so much is beyond a good American's sense of justice.

Page 963, from the letter of Mrs. Marjorie McHale, American Legion Auxiliary, DeWitt, N. Y.:

Recent decisions of the Supreme Court have shown that it does not believe in the rights or authority of sovereign States, does not think communism is bad or a threat to America, and has rendered ineffective State sedition laws.

Page 965, from the letter of Larry Hamilton, Denton, Tex.:

It is the general public belief that Justices like Douglas and Earl Warren either have a personality disorder or they are genuinely influenced by leftist and Communist-front movements in the United States, which at a time like this is pure treason.

Page 967, from the letter of Florence L. Hoover, Pittsburgh, Pa.:

It is my firm conviction that the Supreme Court has been deliberately rendering decisions inimical to our best interest, greatly favoring and encouraging sworn enemies of the United States, and that the Supreme Court, if not curbed by Congressional legal means, will continue usurping power that does not belong to them.

To the Washington Post, and to any who may share its views, I say there is nothing unique in the view that a whole line of recent decisions by the Supreme Court of the United States, affecting the field of subversive activities and this Nation's fight against such activities, have served the purposes of the world Communist conspiracy. In the face of this fact, the most charitable view that can be expressed is that the Court is ignorant and, therefore, incompetent in this field. This is why the Jenner bill proposes to withdraw the appellate jurisdiction of the Supreme Court in certain important segments of this field, and why I propose to continue the fight to secure enactment of this bill.

MESSAGES FROM THE PRESIDENT

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had passed the bill (S. 1031) to authorize the Secretary of the Interior to construct, operate, and maintain four units of the Greater Wenatchee project, Washington, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House insisted upon its amendments to the joint resolution (S. J. Res. 12) to provide for transfer of right-of-way for Yellowtail Dam and Reservoir, Hardin Unit, Missouri River Basin project and payment to Crow Indian Tribe in connection therewith, and for other purposes, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. HALEY, Mr. ASPINALL, Mr. ENGLE, Mr. RHODES of Arizona, and Mr. COLLIER were appointed managers on the part of the House at the conference.

COMMEMORATION OF THE 10TH ANNIVERSARY OF ISRAEL

Mr. IVES obtained the floor.

Mr. ALLOTT. Mr. President, will the Senator from New York yield to me, in order that I may make a brief statement.

Mr. IVES. I am glad to yield to the distinguished Senator from Colorado.

Mr. ALLOTT. Mr. President, I should like to join the Senators who on yesterday expressed, here on the floor, their admiration for the astounding progress exemplified on this 10th anniversary of Israel. It is, to my way of thinking, an example of the same pioneer spirit and determination which marked the settlement of our American frontier.

In the field of agriculture alone, the people of this striving young nation have reached the point where 60 to 65 percent of local food consumption is produced within Israeli borders. This has been done despite the fact that only one out of every five settlers coming to the new land could be considered a farmer or someone versed in even the basic rudiments of agriculture.

Moreover, under the stimulus of a vigorous governmental program, 470 agricultural villages have been established. Indeed, in the Negev area, 75 new settlements were created where none existed before. Visitors returning to this most ancient area of the world are astounded by a desert which has virtually bloomed under the determined hands of these people. If statistics are any sign of progress, I point to these: The cultivated area has been doubled in 10 years; production is nearly tripled; irrigated lands, a paramount factor in this arid land, have nearly quadrupled; and water usage for agriculture has likewise quadrupled.

At the time of Israel's establishment, organized industry was practically nonexistent there. Today, their industrial output includes steel, copper, electrical appliances, diesel engines, and light tools, among others. Thirty-five merchant vessels, with 12 more to be added by the end of this year, have helped exports bound upward threefold. At the same time, imports have nearly doubled, making Israel a steady market for world trade.

Much like our own, Israel's population is a polyglot of many nationalities fused into a tight band of determination.

I am pleased to salute the Israeli nation on this, their 10th anniversary; and I wish them every new success as they proceed on a course which is an astounding parallel to that which brought this Nation into being, a course based upon individual initiative and national integrity.

Mr. President, I wish to thank the distinguished senior Senator from New York for having been so kind as to yield to me, in order that I might submit this matter.

Mr. IVES. I have been very glad to yield to the Senator from Colorado. I am in full sympathy with the statement he has made.

EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

The Senate resumed the consideration of the bill (S. 2888) to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.

Mr. IVES. Mr. President, first of all, I wish to pay tribute to the Senators who, in one way or another, have aided in the formulation and development of the pending bill. I pay particular tribute to the members of the subcommittee—which previously was a special committee; they are the Senator from Massachusetts [Mr. KENNEDY], the Senator from Montana [Mr. MURRAY], the Senator from Michigan [Mr. MCNAMARA], the Senator from Oregon [Mr. MORSE], the Senator from Connecticut [Mr. PURTELL], and the Senator from Colorado [Mr. ALLOTT], in addition to myself.

Mr. President, this is the fifth year we have been considering this matter. It is high time that we got busy and did something about it. If this were not the fifth year—for example, if it were only the second year—then I think we might have time to fool around a bit. But now time is pressing, and we must take action.

While I pay this tribute to the members of the subcommittee, I also wish to pay my tribute to others who have helped in connection with this matter. I do not have time to mention all of them by name, inasmuch as I desire to make my remarks rather brief. However, I certainly wish to pay tribute not only to the chairman of the subcommittee, the junior Senator from Massachusetts [Mr. KENNEDY], but also, and especially, to the Senator from Colorado [Mr. ALLOTT]. He has been diligent, loyal, and true to his convictions. I regret sincerely that I cannot agree with him. However, I believe I am just as sincere in my convictions as he is in his. I take this opportunity to congratulate him on the diligence with which he has labored in this field.

Mr. President, I am delighted that the United States Senate finally is able to consider Senate bill 2888. The pending bill is vitally needed to protect the billions of dollars invested in pension and welfare plans for the benefit of approximately 84 million Americans. Action by the Senate at this time—without amendments, other than committee amendments—should give to the House of Representatives ample time before adjournment of the 85th Congress to act on the bill. This, in turn, would enable the administration to carry out its provisions without further delay.

This matter has been under consideration, as I have stated, for almost 4 years. Three successive subcommittees of the Senate Committee on Labor and Public Welfare have gone into this subject. They began their deliberations in the 83d Congress, in July of 1954, pursuant to a recommendation by President Eisenhower in his State of the Union Message of that year. The first

subcommittee, of which I had the honor to be chairman, was created in May of that year, and got underway in May. These subcommittees have investigated and studied extensively the need for Federal legislation in this field. The purpose is to protect more adequately the equities of the millions of persons who rely ever-increasingly on the benefits derived from pension and welfare plans for their future economic security.

As I have said, it has been my honor to have served on all three of these subcommittees. I have been proud of the nonpartisan attitude which has existed throughout the extensive work carried on by the members and staffs of the subcommittees.

Mr. JOHNSON of Texas. Mr. President, will the Senator from New York yield to me?

Mr. IVES. I certainly do, on this point.

Mr. JOHNSON of Texas. I would assume that the Senator from New York does not necessarliy agree with the statement reported by the United Press to have been issued by the minority leader; namely, that there is a coalition of Democrats and AFL-CIO leaders who are attempting to have this proposed legislation passed. I assume that the Senator from New York feels as do a great many other Members on both sides; namely, that this is a nonpartisan matter.

Mr. KNOWLAND. Mr. President, will the Senator from New York yield to me?

Mr. IVES. I certainly do; I should like to have the Senator from California comment on that point.

Mr. KNOWLAND. Mr. President, the minority leader made no such statement as has been attributed to him. It so happens that the minority leader is supporting the position of the committee and the position of the Senator from New York in regard to the health and welfare fund phase of this problem.

Mr. JOHNSON of Texas. Mr. President, did the Senator from California hear the statement the Senator from New York made just a moment ago?

Mr. KNOWLAND. I did.

Mr. JOHNSON of Texas. The Senator from New York said he was in favor of the bill without amendments, other than committee amendments.

Mr. KNOWLAND. The Senator was talking about the Allot amendment to the bill.

Mr. IVES. No, Mr. President. I have the floor, and I was talking about the bill as it stands.

Mr. JOHNSON of Texas. Certainly. The minority leader did not hear that statement by the Senator from New York.

Mr. KNOWLAND. But I have stated that I am supporting the committee on the bill, with the committee amendments. In addition, I am supporting some amendments in the interest of the giving the members of these unions control over their union affairs. I think those amendments also should be added to the bill.

Mr. JOHNSON of Texas. Mr. President, will the Senator yield?

Mr. IVES. I yield.

Mr. JOHNSON of Texas. I thought I understood the Senator from New York to say he favored the passage of this proposed legislation without any crippling amendments.

Mr. IVES. Without any amendments whatever. The committee amendments have already been adopted. I object to any further amendments of any kind.

Mr. JOHNSON of Texas. I just wanted the RECORD to show that the forthright minority leader had included in that position, I assume, every member of his party, and that the record did not support that fact in the light of the statement of the Senator from New York.

Mr. IVES. I want to speak on that myself. There are differences among Republicans, exactly as I have noticed that there are sometimes differences among our good friends the Democrats.

Mr. JOHNSON of Texas. We admit that, and that is all I want to point out—that there are differences. When the minority leader referred to a coalition of Democrats and A. F. of L.-CIO leaders, it would have been more accurate, and it would have been more appropriate, to have said Members from both sides of the aisle do not agree with the minority leader. As a matter of fact, when I urged the Committee on Labor and Public Welfare to bring the bill to the floor, to expedite action on it, and asked the chairman of the subcommittee to get it before the Senate, it was my understanding that the distinguished Secretary of Labor, Mr. Mitchell, had recommended generally what the bill embodied.

Mr. IVES. His recommendation is in the bill.

Mr. JOHNSON of Texas. Furthermore, it is my understanding the President of the United States had said the Secretary of Labor spoke for him in labor matters. I was never as shocked and amazed as I was, when I sought to have the bill considered by the Senate, to find that the Republican leader of the Senate was going to attempt to legislate in the broad field of labor relations by having his amendments considered by the Senate, and to harass and bring about a roadblock of the bill recommended by his own administration.

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

Mr. IVES. I yield.

Mr. KNOWLAND. I am a little amused by the remarks of my friend from Texas, because, as I put into the RECORD yesterday, the administration, on January 23, had recommended some 7 or 8 points on labor legislation. This is one of them——

Mr. JOHNSON of Texas. That was 90 days ago.

Mr. KNOWLAND. A little while ago the distinguished Senator from Texas, in discussing the rivers and harbors bill, talked about the independence of the legislative arm of the Government in proceeding with legislation. As a legislator, I happen to believe my proposal is desirable for the protection of the rank and file. I do not consider it, as apparently the Senator from Texas does, to be antilabor legislation to give rank and file members the right of election of their officers by secret ballot, an opportunity to recall their officers by secret ballot, or to have protection of their funds, other than health and welfare funds. There is nothing in my amendments which in the slightest improves the position of employers as against employees. They are limited solely to giving rank and file members control over their organizations and freedom from the coercion and corruption which have been disclosed by the McClellan committee hearings.

Mr. JOHNSON of Texas. I do not desire to take the time of the Senator from New York further. I am not prepared to discuss the merits of the Senator's amendments. I do not intend to do so now. I express the hope that the independence which the Senator has expressed on labor legislation will be exercised on public-works legislation when it comes before the Senate.

I wish to point out, as the Senator from New York has indicated, there are members of the minority who feel that this legislation is desirable. The Secretary of Labor feels it is desirable. The President feels it is desirable. At least the Senator from New York, if not a number of other Senators on the other side of the aisle, feel it is the better part of procedure at least to pass the bill without crippling amendments, and have the committee consider all proposals in this field before the Senate acts on them.

Mr. IVES. I should like to comment on that statement, and then get back on the subject matter. I think we ought to bear in mind that the bill before the Senate is a bill on pension and welfare funds, S. 2888. We have gone far afield in this discussion.

I wish to say, in defense of my friends on the other side of the aisle, that I know of no coalition existing on this matter between the Democrats and the labor people.

Mr. President, as a matter of fact, as has already been pointed out in this particular discussion, and before that, the idea came originally from the President of the United States. Congress has merely followed out the idea he has expressed in the creation of several subcommittees. This is not a partisan matter. This is not a labor matter in any way, shape, or manner. Labor may have its ideas regarding it. Labor has every right to have ideas regarding it. But this is not a labor matter. This is a matter regarding the welfare of the people of the United States, and particularly the laboring people whose funds are concerned.

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

Mr. IVES. I yield.

Mr. HILL. The Senator from New York was the author of the original resolution which was agreed to by the Senate which set up the subcommittee to study the matter, to study the President's recommendations, and to bring before the Senate recommended legislation. The Senator from New York has been a most diligent, devoted, and faithful member of that subcommittee and in the work which has been done by the committee. Certainly no man has contributed more to the work of the committee or has been more devoted in his

efforts to bring forth the bill now before the Senate than has the Senator from New York.

Mr. IVES. I appreciate the remarks of the Senator from Alabama. I do not deserve them. He is very kind. So far as this particular bill is concerned, perhaps I have contributed as much as anyone except the chairman of the subcommittee. However, so far as the overall procedure is concerned, there are two members on the subcommittee who have done more than I have. One is the distinguished Senator from Colorado [Mr. ALLOTT]. I have already paid tribute to the vast work he has done in this connection. The other is the distinguished Senator from Illinois [Mr. DOUGLAS]. I pay tribute to him at this time. I do not claim to be the one who has done the most work on the bill, but I have been intensely interested, and I have done all I could.

Mr. President, I was talking about the nonpartisan approach to the bill when I was interrupted. The provisions contained in S. 2888 reflect this nonpartisan approach by the members of these subcommittees. The Senator from Illinois [Mr. DOUGLAS], the chairman of the subcommittee during the 84th Congress, introduced the bill. That is the bill before the Senate. The Senator from Massachusetts [Mr. KENNEDY], the present chairman, is a cosponsor. I myself, who served as chairman during the 83d Congress, am also a cosponsor. There are many other cosponsors. Furthermore, the provisions of S. 2888 have been endorsed by the present Secretary of Labor.

There have been honest differences of opinion on the part of some members of the Senate Committee on Labor and Public Welfare with respect to the extent of coverage under S. 2888. My able colleague, the senior Senator from Colorado, is expected to offer an amendment or amendments. These amendments would exempt from coverage pension and welfare plans which have been termed "level of benefit" plans. Such plans differ from those supported by fixed contributions on the part of the employees and employers, either jointly or unilaterally. For many reasons, including those contained in the majority report, I regret that I cannot support such proposed amendments. I have already stated that in my preliminary remarks. I strongly urge my fellow Senators to reject them—every last one of them.

It is true that the investigations by the successive Subcommittees on Pension and Welfare Plans have dealt primarily with plans jointly administered by employers and labor organizations, subject to the provisions of the Taft-Hartley Act. But some evidence of improper practices and mismanagement has also been found to exist in plans administered solely by employers.

If the proposed amendment is adopted, approximately 90 percent of the existing pension and welfare plans would be exempt from coverage. The mere fact that the various investigations did not encompass such plans to any great extent does not automatically imply that no mismanagement or abuses occur in their administration. Just because most of the meaningful cases of abuse and diversion of funds to the detriment of beneficiaries were found in jointly administered plans, one cannot say that all so-called level-of-benefit plans are therefore properly managed. I am confident that the vast majority of level-of-benefit plans are honestly and intelligently administered. I am sure the same is true of what others term "fixed cost" plans.

However, legislation such as this is drawn for the benefit and protection of the small minority of beneficiaries under pension and welfare plans which are mismanaged and abused. Accordingly, to exclude the beneficiaries of any particular type of plan from the provisions of this legislation seems to me to defeat the purpose of S. 2888. In fact, I would call it rank discrimination.

It is contended that the disclosure of an employer's cost under a level of benefit plan, either contributory or noncontributory, is a violation of the employer's collective bargaining rights. It is held in this connection that the representatives of the beneficiaries bargain for an end product, namely, the particular benefits to be furnished by the employer. With respect to this argument, it is interesting to note that the National Labor Relations Board and the courts have held that labor organizations have a right to examine the books of a corporation for the purposes of collective bargaining. Therefore, such information is already obtainable on an individual basis. The coverage under this act would merely make such information more accessible.

It has further been stated that benefits derived from pension and welfare funds are not deferred wages or supplemental payments in lieu of wages, but are merely conditions of employment. But the Wage Stabilization Board, during the Korean conflict, and the courts since then, have held that the employer's share of the cost of such plans or the benefits the employer provides are a form of compensation, regardless of what form the plans take. As stated in the report, whatever an employer contributes or whatever his costs may be in financing a pension and welfare plan, such costs or contributions are solely for the benefit of the employees and bear a direct relation to the wages paid to them. So I strongly believe that whether a plan is contributory or noncontributory, or whether a plan is labeled a "level of benefit" plan or a so-called fixed-cost plan, the beneficiaries are entitled to an accounting.

I know that some of my colleagues are most concerned about the additional costs and paperwork which will result from the provisions of S. 2888. I certainly subscribe to the view that small companies are already heavily burdened with a multitude of reports and forms that are required by Federal and State Governments. For this reason, I strongly support a provision which would exempt from the reporting requirements of the act those plans which cover fewer than 100 employees, until the expiration of 2 years following the date of enactment of the act. Such a provision is in the bill and by its terms the administering agency would be granted discretion to exempt plans of small concerns from either registration or reporting, or both, if it is determined that compliance would be unduly burdensome to either the plans or the agency. It has been estimated that, with such plans exempt, between 40,000 and 50,000 plans would be required to comply with the provisions of S. 2888. Although I do not believe that anyone can determine the actual cost to the Federal Government, estimates presented to the committee by the Department of Labor and the Securities and Exchange Commission have ranged from $1,700,000 to $2,600,000 per annum. That is far from what has been estimated on the floor in debate, which is that anything of the kind would cost about $50 million. Nobody really knows, as I have stated, what the cost would be.

The fortunate thing about all of this is that the effective term of the bill is only 4 years. At the end of 2 years we could reexamine the matter, to ascertain what the costs are. If we found it essential to revise, we could do so at that time. Nobody is going to be wrecked in the interim. Certainly the Federal Government will be able to stand the expense during that time. I think the idea of being disturbed about the cost of the operation of the plan, or any plan which may be adopted, is grossly exaggerated. There is no occasion for such disturbance whatever.

I personally suspect that the cost will be somewhat higher during the first few years, but such an expenditure is more than warranted if millions of dollars can be saved for the beneficiaries of mismanaged pension and welfare plans.

Particular attention should be paid to the contention that insurance companies, because they are already regulated by the laws of the several States, should not be subject to the provisions of S. 2888. Despite such existing State laws, some of the most outrageous abuses were indulged in by certain insurance brokers and officials of a few insurance companies. In fact, the first case investigated by the original subcommittee during the 83d Congress involved a misappropriation or outright larceny of hundreds of thousands of dollars by a notorious former insurance broker and a corrupt former official of an insurance company in my own State. I believe that case was pointed out by name on the floor yesterday by the distinguished Senator from Illinois [Mr. DOUGLAS]. It happened to occur somewhere near where I live, and I know something about it.

At that time the existing State laws apparently did not govern the excessive fees acquired by the broker in question. Subsequently the plan involved was transferred to a different insurance company in another State, but the improper practices still continued. When one considers the thirty or more billions of dollars vested in pension and welfare plans and the important part played by insurance companies in this field, it is difficult to understand how one can feel that Federal disclosure is unnecessary.

Six States already have enacted legislation on the general subject of pen-

sion and welfare plans. Other States are considering such legislation.

In that connection I point out that my own State of New York has legislation in this field, and I think it is contemplating enacting something further along the line. I believe Massachusetts has gone further, so far, than any other State.

One final argument which I wish to touch upon holds that it might be wise, in view of these State-level developments, to leave this entire subject to the several States. But it is my understanding that the information required in the six States varies greatly under the legislation already enacted. Large corporations doing business in several States are therefore required to file separate reports in each State having such a law. Such duplication can easily be eliminated. S. 2888 provides in part that corporations doing business in more than one State shall be required to file only with the Federal Government and the State in which its home office is located, in the event that such State has enacted legislation in this field.

I think this is something we can well consider in connection with this matter. Much has been said—and I have mentioned it myself with a great deal of emphasis—about small businesses and how they should be protected. They should not be bedeviled on matters of this kind. The bill does take care of them. But let us not forget there are some big businesses in this country which are perfectly legitimate businesses, and it might cause them a great deal of trouble if they had to file in every State in the Union, practically, where they were doing business.

Although it is true that a uniform insurance code has been adopted by the States, this took many years to accomplish. Assuming that all 48 States adopted legislation in the field of welfare and pension funds, the duplication of filing requirements might stagger the imagination.

For all of the foregoing reasons, I strongly urge the passage of S. 2888, as reported to the Senate by a large majority of the Senate Committee on Labor and Public Welfare.

I yield the floor, Mr. President.

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

Mr. IVES. I yield.

Mr. COOPER. As the Senator knows, while I am a member of the Senate Committee on Labor and Public Welfare, I did not serve on the subcommittee which considered the bill. However, in the general discussion of the bill in full committee, the suggestion was made that section 12 of the bill, dealing with investigation by the Secretary and injunctions, and section 10, dealing with further powers of the Secretary, might be used, in connection with the so-called level-of-benefit plans administered by the employers, to make sweeping investigations of employers' businesses to determine profits, with a view to obtaining information for use in collective bargaining. I know that the Senator dealt with that subject briefly in his statement, but I am sure that he will agree that that is not the purpose of those sections.

Mr. IVES. It is not the purpose.

Mr. COOPER. If they were used for that purpose, it would be against the purpose and spirit of the sections and the bill itself—which are to assure the protection of welfare funds for the benefit of employees.

Mr. IVES. I think that is very far from the purpose of those sections, and far from the purpose of the bill itself. As I stated in my prepared statement, at the present time, under collective bargaining agreements, unions can obtain full information regarding the financial standing and financial condition of the companies with which they are negotiating.

Mr. COOPER. I know that. However, the Senator is aware that such an objection has been registered.

Mr. IVES. I do not believe that the objection is in any way justified.

Mr. COOPER. I agree with the Senator.

Mr. IVES. If anyone is determined to do such a thing, he will do it through the collective bargaining approach.

Mr. COOPER. I have appreciated very much the statement of the Senator. This subject has been under consideration for several years. The proposal was initiated by the President of the United States. It has been supported by the Secretary of Labor. It is supported by public opinion in the country. It has been delayed about 3 years. I intend to vote for it. I believe that the level-of-benefit plans ought to be included. The purpose of the bill relates to the protection of the employees. I cannot see how any distinction can be made as between the various types of plans, whether union, employer, or jointly managed funds, when we consider the ultimate purpose of the bill is to protect beneficiaries, employees when managers of funds of all types have the responsibility of fiduciary character.

Mr. IVES. I thank the distinguished Senator from Kentucky for his contribution.

Mr. ALLOTT obtained the floor.

Mr. KNOWLAND. Mr. President, will the Senator from Colorado yield in order that I may suggest the absence of a quorum, with the understanding that he will not lose the floor?

Mr. ALLOTT. I yield with that understanding.

Mr. KNOWLAND. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KNOWLAND. 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. ALLOTT. Mr. President, I call up for consideration at this time my amendment, identified as "4-22-58-C."

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 7, line 15, it is proposed to strike out "or."

On page 7, line 21, strike out the period, and insert in lieu thereof "; or."

On page 7, between lines 21 and 22, insert the following:

(4) such plan is an employee welfare benefit plan established by an employer or by an employee organization, or both, on a "level of benefits" basis. A plan shall be deemed to be established on a "level of benefits" basis if (A) it provides for a specified predetermined level or levels of benefits for its participants or beneficiaries, (B) the rate of employees' contributions, if any, toward the cost of the benefits is predetermined, and (C) the employer or employee organization, or both, are obligated to make contributions over and above such employee contributions, if any, to provide the agreed benefits: *Provided*, That no employee welfare or pension benefit plan shall be deemed to be established on a "level of benefits" basis, if the employer or employee organization contributions are specified in the plan in terms other than the amount of such benefits such as, but not limited to, number of participants, number of hours worked, units of production or percentage of compensation.

Mr. ALLOTT. Mr. President, yesterday afternoon I discussed at some length some of the phases of the proposed legislation pending before us, and I discussed them in somewhat general terms. At the conclusion of my discussion yesterday, I told the Senate it would be my purpose today to proceed with a discussion in more detail of certain other phases of the proposed legislation.

First of all, I should like to clear up one of at least a thousand misconceptions which seem to exist. The effect of the amendment now pending before the Senate would be to make S. 2888 the same bill as S. 3443, the bill I introduced, with two exceptions.

The first exception is that the bill under consideration, S. 2888, provides that the agency designated shall be the Department of Labor, and S. 3443 provides that it shall be the Securities and Exchange Commission. The second difference is that S. 3443 rewrites certain portions and certain paragraphs of S. 2888, to make it clearer and better and a more workable piece of legislation, for whatever it is worth, and in my opinion it is worth very little.

It is my intention to examine the factual history of pension and welfare development in this country, which has brought us to the consideration of S. 2888 and the several amendments which have been offered to it.

I may say here, because I did not have an opportunity to do so before, that I appreciate the very generous, I am sure, and kind words which the Senator from New York [Mr. IVES] said about the senior Senator from Colorado with respect to his work on the committee. I regret very much that there would be any attempt to make a partisan issue out of this matter, because as a member of the committee I can say that until the last few months, until it was in its very terminal stages, I felt that partisanship was completely and wholly absent. I think it developed then, not in the conclusions which were drawn, but perhaps in finalizing the legislation. So in a real sense it can be said that the bill was primarily drawn upon the basis of nonpartisanship.

First, I shall review the history of the development of pension and welfare benefit plans, including the Federal legislative history; second, I shall summarize the abuses turned up by the investigations of the governmental groups other than the Senate committees; third, the legislative recommendations of those groups; fourth, a description of some of the situations turned up by the Senate committees of the 83d and 84th Congresses, those being the committees led, respectively, by the Senator from Illinois [Mr. DOUGLAS] and the Senator from New York [Mr. IVES]; fifth, the recommendations of those committees; and last, an analysis of the legislative proposal now before the Senate.

HISTORY OF PENSION AND WELFARE DEVELOPMENT

Private benefit plans to meet the economic hazards arising out of death, old age, and sickness are more extensive in the United States than in any other country in the world. Originally, the protection was purchased by individuals, but within recent years there has been an extensive development of group protection. Employer and union plans were part of the development of group protection, and collectively bargained plans were but a further evolution of the growing emphasis on such plans. Approximately two-thirds of the sickness and accident and 80 percent of the voluntary health insurance coverage is obtained through group enrollment, and most of the group enrollment is connected with employment of the individual.

No exact information is available concerning the total employee coverage under benefit plans which are collectively bargained.

I think I pointed out adequately yesterday afternoon that even though this subject has been purportedly under investigation for 5 years, still there is no adequate statistical information upon which the Senate can intelligently legislate at this session of Congress.

Most of the collectively bargained plans are financed by the employers who completely underwrite more than 62 percent of the welfare plans and almost 85 percent of the pension plans.

There is evidence that some collectively bargained benefit plans existed prior to 1930. In 1923, for instance, the Amalgamated Clothing Workers and the Men's Clothing Manufacturers of Chicago negotiated an unemployment insurance plan. In 1926, the Amalgamated Association of Street and Electric Railroad Employees, A. F. of L., negotiated welfare plans with the Chicago Rapid Transit Co., and the Newburgh, N. Y., Public Service Corp.

It was 1942 and the years that followed, however, which saw the most rapid growth in the establishment of collectively bargained employee benefit plans. The occasion for this growth cannot be attributed solely to any one factor but rather to a combination of circumstances. Among the more important was the provision of the Revenue Act of 1942 which liberalized the conditions under which employers could deduct from gross income certain contributions to qualified employee benefit plans.

Some point has been made upon the floor to the effect that employers are entitled, under the law, to treat these payments as expenses and to deduct them as business expenses. It should be pointed out also, as a corollary, if we desire to keep a true perspective, that during World War II the decisions were uniformly that the payments were not wages and could not be treated as wages. The reason why they were utilized was that they were not wages. The benefits could be increased, but wages could not be increased.

At the same time, the high excess profits taxes of the war economy, together with wartime restrictions on wage increases, provided an added impetus to the establishment of benefit plans. Shortly after the war, the Krug-Lewis agreement in 1946, while the mines were under Government control, provided for the establishment of a welfare and pension plan for workers in the bituminous coal industry. This was followed in 1949 with the case of *Inland Steel* v. *NLRB* (176 F. 2d 247) and the case of *W. W. Cross & Company, Inc.*, v. *NLRB* (174 F. 2d 875), in which the courts upheld the decision of the National Labor Relations Board that it was an unfair labor practice for an employer to refuse to bargain with a union on welfare or pension benefits for employees. Finally, the report of the steel industry board in 1949, recommending the incorporation of welfare and pension benefits within collective bargaining agreements in the steel industry, was a further important factor in stimulating collective bargaining in this field.

Following the outbreak of the Korean conflict in June 1950 certain price and wage controls were instituted. This meant that from that date forward any new or increased employer contributions to welfare or pension plans could be made only under certain standards to be set by the Wage Stabilization Board. Some idea of the size of the employee benefit program at that time is suggested by the fact that the Wage Stabilization Board acted upon approximately 40,000 petitions covering about 11 million workers during the period that it functioned in this area from 1950 to 1953.

The evolution of employee benefit plans has resulted in a wide range of benefits and just as wide a range of financing, underwriting, and administrative practices, as I pointed out yesterday. While some of the larger industrywide and collectively bargained plans follow a certain pattern, a study of a number of plans, both large and small, indicates that no standard pattern is necessarily followed.

TYPES OF BENEFITS

Recent studies indicated that 14 different types of benefits were provided under the usual employee welfare and pension plan.

I emphasize the word "usual" because, as I explained yesterday, the kind and nature of these plans is such that an almost infinitesimal number of types of plans and combinations of plans can be used.

These benefits included, in the order of preference, life insurance, profit sharing, and subsidized saving plans, as well as catastrophic medical care coverage. The study indicated that this was true of plans where employers paid all or most of the cost of such benefits. There are plans, however, under which the employee pays all or most of the costs and in such cases it was found that the major emphasis in terms of coverage was given to such items as hospitalization insurance, surgical benefits, life insurance, pensions, and other medical benefits.

The Labor Management Relations Act of 1947, title 29, United States Code, section 141, is the principal statutory source of Federal regulation of private employee-welfare trust funds.

Section 302 of the act makes it unlawful for an employer to pay or agree to pay money to any representative of any of his employees, or for any representative to accept or agree to accept such payment. Section 302 (c) (5) exempts employer payments to a trust fund established by such representative, if certain conditions are met as follows:

First. Payments from the trust fund must be for—

(a) The benefit of employees, their families and dependents;

(b) Medical and hospital care;

(c) Pensions on retirement or death;

(d) Compensation for occupational injuries or illness;

(e) Insurance to provide any of the foregoing benefits;

(f) Unemployment benefits;

(g) Life insurance;

(h) Disability and sickness insurance;

(i) Accident insurance.

Second. There must be a written agreement between the employer and the employee representative providing—

(a) The detailed basis on which such payments are to be made;

(b) Equal representation of employers and employees in the administration of the fund, with provision for the selection of an impartial trustee to act in the event of a deadlock;

(c) An annual audit of the trust fund, the results of which shall be available for inspection by any interested person at the principal office of the trust fund;

(d) A separate trust fund for pensions or annuities from which no payments, except for such pensions or annuities, may be made.

Mr. President, I shall summarize briefly the effect of section 302 with respect to the entire area: It is simply that the employer is forbidden to agree to pay, or to pay, money to any representative of his employees—and the section makes it illegal for the representative to accept it—unless these conditions are met: That the payments be made to a trust fund for the purposes I have enumerated, and, second, that the trust agreement be drawn in the form provided by the statute, as I have just read from it.

Section 302 (d) provides that any person who willfully violates any of the provisions of the section shall be subject to a fine of $10,000, or imprisonment for 1 year, or both.

LEGISLATIVE HISTORY

The legislative history of the Labor-Management Relations Act of 1947 clearly indicates that it was the intent of the Congress to prevent the making of payments by an employer to the union representing his employees for such welfare benefits as the union might see fit to provide. And the making of such payments is made illegal, where the payments are to be made for such benefits as the union might decide to provide.

The Hartley bill, H. R. 3020, as reported by the House Education and Labor Committee, made it an unfair labor practice for an employer to make payments—

of any kind to any fund or trust—established by a labor organization, or to any fund or trust in respect to the management of which, or the disbursements from which such organization can, either alone or in conjunction with any other person, exercise any control directly or indirectly (sec. 8 (a) (2) (C) (ii) of H. R. 3020, 80th Cong., 1st sess.)

The language of the report accompanying H. R. 3020 is illustrative of the intent of the committee at that time. I may say that when we hear the arguments which are made on the floor of the Senate, it is very difficult to understand what has become of the intent of the Congress, as set forth in that legislation.

I read now from the report to which I have just referred:

By clause (C) (ii) of the same section (i. e., sec. 8) the bill forbids employers to pay to or for unions, or to any funds or trusts established, maintained, or controlled by them, in whole or in part, directly or indirectly, royalties, taxes, and other exactions, instead of paying the money directly to workers in the form of wages. * * * Certainly it is not in the national interest for union leaders to control these great, unregulated, untaxed funds derived from exactions upon employers (H. Rept. No. 245, 80th Cong., 1st sess., p. 29).

During the ensuing floor debate on House bill 3020, an attempt to amend the bill, so as to permit employer contributions to be made to certain types of trust funds, was made. I refer here to the debate on the Landis amendment in the CONGRESSIONAL RECORD, volume 93, part 3, page 3562 and following. The amendment was defeated; and the bill, as passed by the House of Representatives, contained the language originally reported by the committee, and as just read by me.

Senate bill 1126, as reported by the Committee on Labor and Public Welfare—Report No. 105, 80th Congress, 1st session—contained no provision for the regulation of private employee welfare funds, other than a directive to the Joint Committee on Labor-Management Relations to undertake a study and investigation of the desirability of welfare funds for the benefit of employees and their relation to the Social Security System, title IV, section 402, S. 1126, as reported.

However, in the supplemental views on Senate bill 1126 filed by Senators Taft, Ball, Donnell, and Jenner, an amendment adding the present section 302, entitled "Restrictions on Payments to Employee Representatives," was proposed; and the subsequent debate on this amendment further substantiates the theory that Congress intended to prevent the unrestricted use of employer-financed employee welfare funds by unions. The following appears in the aforesaid supplemental views:

The amendment proceeds on the theory that union leaders should not be permitted, without reference to the employees, to divert funds paid by the company, in consideration of the services of employees, to the union treasury or the union officers, except under the process of strict accountability.

And, further:

The necessity for the amendment was made clear by the demand, made last year on the part of the United Mine Workers, that a tax of 10 cents a ton on coal be paid to the mine workers union for indiscriminate use for so-called welfare purposes (S. Rept. No. 105, on S. 1126, Supplemental Views, p. 52).

Subsequently, the House conferees agreed to the language of the Senate amendment, and receded from the position that all contributions by an employer to an employee welfare fund should be barred. Nevertheless, it is clear that the Congress, in approving the language of the present section 302, felt it necessary to legislate against unilateral union control and management of employee welfare and pension funds.

PRACTICAL EFFECTIVENESS OF SECTION 302

The question of how well section 302 has worked in practice is one to which the subcommittee has given attention. In fact, I may say that it is to this question that the subcommittee has given most of its attention. During the 7 years that have elapsed since the passage of the Labor-Management Relations Act, there has been a phenomenal growth in the number and size of employee welfare and pension funds. Investments and reserves have mounted into billions of dollars. Many millions of workers and their families have been covered by plans of one type or another, and the number of persons eligible for coverage is increasing daily. In terms of the public interest, it is now clear that the problem of proper administration and control of these huge funds is one of sufficient importance to demand a careful evaluation of the effectiveness of the controls written by the Congress into the act.

The subcommittee's investigation reveals that the intent of Congress to provide joint control and administration through a board of trustees composed equally of representatives of the employer and the union is, in many cases, being circumvented. There seems to be a widespread feeling on the part of employer trustees—and I say that this is an unfortunate feeling—that the trust fund is a union fund; that the employer's responsibility ends with the termination of collective bargaining over welfare benefits; that the function of a trustee representing the employer in the fund's administration is a nominal one only. In a number of cases there was evidence of complete failure by employer trustees to exercise even the most elementary duties and responsibilities of a trustee. I feel compelled to point out that those funds are fixed cost funds where we found a great number of abuses which I shall discuss at some length later.

In one case, for example, the union and the employer association agreed to set up an insured welfare fund providing life-insurance benefits to employees. The union was granted the exclusive right to select the insurance carrier. The resulting trust agreement met all the formal requirements of section 302 of the Labor-Management Relations Act, 1947. The fund was to be jointly administered by a board of trustees composed of 2 representing the union and 2 representing the employer. One of the union trustees was to serve as chairman and one of the employer trustees was to be treasurer of the board. The chairman was given full and exclusive power to appoint all committees and to hire and discharge all fund personnel. The treasurer was authorized to approve all disbursements and to keep accurate and complete records and accounts.

The union appointed its president and its secretary-treasurer to serve as the union trustees; the employer named its counsel and an official of the association to serve as employer trustees. Subsequently, the union trustee who had been secretary-treasurer of the local union died, and the employer trustee who had been counsel to the association resigned. They were never replaced.

Thus, administration of the fund was left entirely in the hands of the two remaining trustees, (a) the president of the union, who also served as chairman of the board of trustees, and (b) an official of the employers association, who also served as treasurer of the board of trustees.

It is noteworthy that the formal requirements of section 302 were fully met in this case. Yet, in actual practice, the intent of Congress that these funds be the subject of joint employer-union control was clearly frustrated, as will be seen from the following description of a staff interview with the employer-trustee and treasurer of the board of the fund.

He frankly admitted that, in his opinion, his sole function as a trustee was to approve disbursements. He acknowledged that he had never seen a copy of the trust agreement, that he had attended only one meeting of the trustees—which occurred in 1951, at the inception of the new welfare program—and that, to the best of his information and belief, there had been no meetings of the trustees since that time. When questioned about the financial condition of the trust fund—and I ask Senators to recall he was the treasurer—he stated he had never seen a financial statement of the fund's operations, nor was he aware that there had never been an independent audit of the fund. He said he had no knowledge of whether or not the trust had complied with the tax requirements of the Internal Revenue Service. Apparently, this trustee was not too concerned about either his responsibilities as a trustee or as treasurer of the fund. When asked about monthly salary payments to a certain employee of the fund, the trustee admitted that he did not

know the employee and had made no effort to determine what services, if any, this employee was being compensated for because the amount of salary being paid was only nominal and of no great consequence. He said: "I guess I've been a bad trustee." Keep in mind again we are talking about fixed costs or Taft-Hartley plans.

The other employer trustee, who had been counsel to the employer association, and who had resigned as a member of the board of trustees was also interviewed concerning his experience with the fund. He stated that inasmuch as the collective-bargaining agreement and the trust indenture, which gave the union and the union trustee almost complete control over the operation of the welfare fund, had been forced upon the employers, many members of the employer association felt that, in fact, this was a union fund and that the employers should not be held responsible for irregularities. He added that some employers believed that the union might eventually be discredited if permitted to exercise full control. Nevertheless, he said that, in his opinion, the interests of the employers would be protected by reason of the authority of the employer trustee-treasurer to approve disbursements.

To sum up, here is a Taft-Hartley case which demonstrates the need to stop abuses. Here is a case that demonstrates the underlying fallacy of the theory that compliance with the formal requirements of the regulatory statute will insure adequate financing. It will not, nor will it insure efficiency.

It points up the fact that a trusteed plan can be made the instrument of one of the parties in interest if there is a failure on the part of the trustees representing the other party to understand and exercise their duties and responsibilities as fiduciaries. Nonfeasance, as demonstrated here, could be as damaging to the rights and interests of the beneficiaries as malfeasance.

Some unions and employers have gone to considerable trouble in seeking to avoid compliance with the provisions of section 302. For example—and I am still talking about fixed-cost funds—one of the investigations by the subcommittee concerned the operation of a pension fund. This investigation revealed an interesting, but rather complicated, method of circumventing the act.

I might say that if the hearings have demonstrated anything, they have demonstrated the ingenuity of the American people to get around the laws of the United States. If some of those persons had exercised one one-hundredth of the initiative and dexterity in private business that they exercised to get around the law and loot these funds, they would certainly have been among the business geniuses of America.

Negotiations in 1951 between the local union and the employer association resulted in a pension plan to become effective in April of that year. The plan is still in full force and effect. It is administered by union officials exclusively; employers have no representation or voice in the administration of the program. It is financed by employer contributions in the guise of a "wage increase" of $2.50 a week for each employee member of the union, as provided by the collective-bargaining agreement. Keep in mind that this is a case which comes strictly under the provisions of the Taft-Hartley law, and is a fixed-cost type of plan. That agreement requires the employer to draw 2 checks to the order of each of his employees; 1 for $2.50 and the other for the balance of the employees' weekly earnings. The employers further agreed to forward and pay over the $2.50 check in accordance with a written assignment from each employee-payee. It is noteworthy that this procedure was agreed to by the employer association against the advice of counsel who questioned the legality of the assignment under both the Labor Management Relations Act, 1947, and the applicable State law.

The local union then obtained from its members written assignments designated "pension fund assignment cards" which were presented to the employers who were thereby directed to forward and pay over the $2.50 wage increase to the trustees of the pension fund. The final step in the procedure was the obtaining from each member of a power of attorney authorizing the trustee-assignees to endorse the name of the member on the check and to deposit it to the account of the pension fund.

That is unquestionably illegal, unquestionably unlawful, unquestionably in contravention of the Taft-Hartley Act, but nevertheless it is done.

This case demonstrates the lengths to which some employers and unions will go to avoid compliance with the letter and spirit of the Federal law. The modus operandi utilized indicates how the clear intent of the Congress to prevent unilateral union control of these funds may be frustrated, and in this case was frustrated.

THE PROBLEM OF ENFORCEMENT

Section 302 of the Labor Management Relations Act of 1947—29th United States Code, page 186, 1952 edition—is the only Federal statute directly applicable to the establishment and operation of collectively bargained private employee welfare trust funds. The pertinent provisions of the statute read as follows:

(a) It shall be unlawful for any employer to pay or * * * agree to pay * * * any money or other thing of value to any representative of any of his employees * * *

(b) It shall be unlawful for any representative of any employees * * * to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable * * *

(5) With respect to money or other thing of value paid to a trust fund established by such representative.

Subsection (c) (5) also prescribes the purposes for which the trust fund may be used and contains other detailed requirements relating to the administration and operation of the fund.

I have already talked about section 302 (d), which provides criminal penalties for willful violations. Is it not significant that at this point under what is commonly called the Taft-Hartley Act, passed in 1947, which has within its own terms criminal provisions for violations of the act, yet the violations in regard to Taft-Hartley funds, or the fixed-cost type of funds, have been going on for at least 8 years of which we in the committee have actual knowledge and perhaps longer than that? These violations are not numbered simply in the tens, or even numbered in the hundreds, but I believe the reports of the committee and the studies of the committee show they are numbered in the thousands, all in the face of an express Federal criminal statute to the contrary. Despite this fact, there is talk about regulating or controlling and cleaning up union funds with the "lollipop" legislation which is before the Senate.

Subsections (a) and (b) are the only proscriptions of the statute.

Experience has shown that the statute is an ineffective instrument for the regulation and control of welfare and pension trusts arising out of collective-bargaining contracts. To date there have been no successful prosecutions under this statute for failure to comply with the prescriptions of section 302 (c) (5). The difficulty of enforcement arises, in part, from the fact that a bona fide trust is not a representative as that term is used in the statute. Consequently, payments by an employer to a trust may be made without regard to the restrictive provisions of subsection (c) (5). Thus, the United States Court of Appeals for the Third Circuit has held that an oral agreement by an employer to make a payment to six trustees of the International Longshoremen's welfare fund was not within the purview of section 302 because the trustees were not "representatives"—*Marine Division, I. L. A.* v. *Essex Trans. Co.* (35 LRRM 2049). A similar conclusion was reached by a Federal district court in the case of *Rice-Stix Dry Goods Company* v. *St. Louis Labor Health Institute* (22 LRRM 2528; U. S. Dist. Ct., E. D. Mo. 1948). In this case it was held that payments by an employer to a health and welfare plan set up as a charitable corporation, where the officers of the corporation were also officers of the union which had organized the corporation, was not a violation of section 302 inasmuch as the charitable corporation was not a "representative" of any employees of the employer.

While the result of these decisions is that virtually all pension and welfare trust funds are free from Federal control, if they are collectively bargained, the conclusions reached are unquestionably based upon sound legal principles and do no injustice to the wording of the statute.

Yet we have gone along with these thousands of abuses which are flagrant abuses—flaunting crime, looting and thievery, in the faces of Americans all over this country for 10 years, and Congress has taken not the first step to correct the language of the Taft-Hartley Act, which would stop the abuses.

For other cases in which the courts have emphasized the legally independent nature of welfare and pension trusts see *Application of Townsend* (130 N. Y. S.

2d 327); *Upholsterers International Union of North America* v. *Leathercraft Furniture Company et al.* (82 F. Supp. 570); and *Van Horn* v. *Lewis et al.* (79 F. Supp. 541).

While the defects of the statutory language render effective enforcement difficult if not impossible, serious problems also are created by other provisions of the law. For example, subsections (a) and (b) make the guilt of the employer the sine qua non for the guilt of the representative. In other words, if one violates the statute, so must the other. Consequently, it is difficult to obtain evidence necessary for conviction. Prosecutors are constantly met with the problem of obtaining proof.

It is perfectly obvious at this time that we must have a separation of this proof of guilt.

Furthermore, it is doubtful that the language is sufficiently clear and unambiguous so as to enable those affected by it to know their duties thereunder. If the language of a penal statute is so uncertain and vague as to make it impossible to ascertain the legislative intent, then it is ineffective to prescribe a crime because a criminal offense cannot be created by inference or implication. The present language of section 302 does permit the raising of this constitutional question. Even if the section is constitutional, the courts are bound to construe a penal statute most favorably to those charged with having violated its provisions—*Application of Feller* (82 N. Y. S. 2d 852).

In view of the foregoing the subcommittee suggests that if the Congress desires strict enforcement of the provisions of section 302, then it must clarify and redefine the meaning of the present statutory language.

I use the words "the subcommittee suggests." It is probably the suggestion of the Senator from Colorado, and partly the suggestion of the committee, although the committee has not suggested this in its report. It is high time that it did.

It is our view that, in its present form, the provisions of section 302 cannot be adequately enforced.

I say to Members of the Senate again that we have stood by and seen thousands of flagrant violations of the law in this field, and for almost 10 years we have sat here and failed or refused to amend the Taft-Hartley Act to stop the looting and thievery in connection with the Taft-Hartley fixed-cost type of plans.

THE PROBLEM OF DISCLOSURE

It seems clear that the draftsmen of section 302 (c) (5) of the Labor Management Relations Act of 1947 believed that through the application of the principle of full disclosure the beneficiaries of employee welfare and pension trust funds would be afforded adequate protection against the arbitrary and capricious acts of those administering these funds and, at the same time, would provide them with the information they would have to have in order to protect their rights in the courts. See Senate debate on Ball amendment, CONGRESSIONAL RECORD, volume 93, part 4, page 4677 and subsequently. The act provides, therefore, that the specific purposes of the fund and the benefits to which employees are to be entitled must be set forth in a written agreement; that the trust fund must be audited at least once each year and the results made available to interested persons at the principal office of the trust fund.

It will be noted, however, that there is no requirement in the law that the audit report be made available to the employees or contributing employers at any place other than the principal office of the trust fund. Obviously, this is of little value to the beneficiaries or the employers who are located at places remote from fund headquarters, as is quite often the case.

I believe at one point in the hearings the Senator from Illinois [Mr. DOUGLAS] pointed out that the mere fact that an employee had to request such information in such manner placed him in a position which was absolutely untenable, with respect to the other members of his union and the managers and operators of the fund.

It is true that some plans go to considerable trouble and expense to make the results of the audit available to both the employees and employers. This has been done in some cases through publication in the local newspapers; some plans mail out copies of the audit report directly to the beneficiaries and employers; others post the report on the bulletin board at union headquarters. These practices are to be commended, but the law itself merely requires that a copy of the report be available at the fund headquarters. The subcommittee's experience to date indicates that this is the usual practice, and that it is absolutely ineffective.

Even in those cases where efforts have been made to keep the interested parties completely advised, it was found that the audit reports consisted of little more than a statement of income and disbursements. The statement as to disbursements, in the usual case, sets out the expenses of the fund in terms of salaries, travel expense, expense for professional services, and other expenses of a fund of this type. I am reminded of the traveling expenses of one gentleman whom I shall discuss later at some length. He managed to spend an average of $500 a day for 10 days on a trip to Cuba.

It is worth noting, however, that there is no definitive breakdown of such expense sufficient to provide interested persons with detailed information concerning the actual operation of the trust fund. I do not quarrel with the fact that these are standard accounting procedures, but do wish to point out that information of this type is of little, if any, value to the beneficiary or employer for whom such information is intended.

As an indication of the complete inadequacy of the statutory requirement of an audit, reference is made to one case which was brought to the subcommittee's attention, in which the auditor admitted that he had not checked employer contributions to the fund against amounts reported to have been received and deposited to the credit of the fund. By what process of accounting legerdemain the auditor was able accurately to assess the fund's financial condition under these circumstances remains a mystery. I cannot help recalling with very painful awareness the so-called audit that was made of the International Laundry Workers Union. The auditor came out and spent a day in company with union representatives, auditing the books. He could not find a single error or discrepancy. In the course of less than an hour and a half the staff of the subcommittee was able to uncover more than 50 discrepancies in the operation of the fund. Notwithstanding the efforts of the committee, to this day no member of the committee, including the distinguished Senator from Illinois, and no one else, so far as I know, except those operating the fund, is aware how these discrepancies were covered up when the auditor went out to examine the books.

Thus, in the course of its studies of a number of welfare and pension funds, the subcommittee has found that the statutory audit requirement is inadequate for two principal reasons: (a) The usual report fails to disclose, in sufficient detail, the purpose for which disbursements are made; (b) the report is not given such distribution as to completely inform all interested persons.

PENSION AND WELFARE ABUSES INVESTIGATED BY HOUSE LABOR COMMITTEE AND NEW YORK STATE INSURANCE DEPARTMENT INVESTIGATIONS, SECTION 302

The Taft-Hartley Act intended to prevent payments from employers to union agents and to make it illegal for both parties to give or accept money or gifts.

With the tremendous increase in group insurance brought about through favorable tax laws, wage stabilization, and collective bargaining, many union officials engaged in collective bargaining saw the advantage of placing insurance business with certain agents. In some cases the insurance agent turned out to be the union leader's own wife or son, and many close relatives of union leaders turned up in the insurance business.

While I am on this subject, lest I forget it later in my discourse, I point out that after the abuses and looting of the Distillery Workers' Union were disclosed, and the fund was turned into a completely union-operated fund, the relatives of the previously deposed union leaders went in to operate the fund, and they immediately raised salaries to 2 or 3 times their original level.

In 1953 and 1954 the New York State Insurance Department conducted investigations of the pension and welfare area. During the 83d Congress a special subcommittee of the House Labor Committee also looked into this matter. At this point I should like to illustrate some of the abuses those groups uncovered.

Mr. Allen Dorfman, son of the waste material handlers' union president, became an agent for the Union Casualty & Life Insurance Co., of Mt. Vernon, N. Y., headed by Leo Perlman. Mr. Dorfman had had no previous experience in the insurance field. In a 4-year period of time, Mr. Dorfman received $1,442,000 in commissions and expenses on three principal accounts. The three

main accounts on which the Dorfman agency received commissions from the Union Casualty Co. were the Central States, southeast, and the southwest areas health and welfare fund, covering more than 60,000 AFL teamsters in 22 States, the Michigan Conference of Teamsters welfare fund, covering more than 30,000 union members, and the 15,000-member welfare plan of local 1031 of the AFL electrical workers, headed by Frank Darling of Chicago. The records show that Mr. Dorfman received $250,000 in commissions on premiums of $2½ million in a 4-year period in one case. In relation to the Central States fund, the Union Casualty Co. bid, though not the lowest, was accepted by union and management trustees. One management trustee vigorously protested the awarding of the policy and asked that it be shifted to another carrier. The employer trustee did not know a brcker would be designated to receive commission on the insurance sale. The insurance company's retention rate of 17½ percent of the premium was the highest proposed by any bidder.

The Michigan teamster's welfare fund, through Dorfman, paid $2½ million annual premium at 17½ percent retention rate for the insurance company. This teamsters welfare fund made an investment of $250,000 in preferred stock of the Union Casualty Co., the very company with which it was placing this insurance. The investment paid no dividends of interest for a number of years. The trustees were unsuccessful in trying to sell the stock back to the insurance company. When one of the employers' trustees of the Central States fund sought an investigation of the Union Casualty's financial fitness, they were resisted by Mr. James Hoffa, the teamster's official.

Employers paid a premium of $5.60 per month for each employee insured through the Union Casualty Co., with Mr. Dorfman as the agent, in the case of local 1031's fund. Annual premiums were $2½ million and commissions to Dorfman were $250,000 in a 4-year period. The insurance company—Union Casualty Co.—was selected on recommendation of Mr. Darling, IBEW local president, during collective bargaining negotiations with affected employers. Local 1031 became the policy holder. The Union Casualty Co. paid local 1031 2½ percent of the premiums for services and administration. When the New York State Insurance Commissioner stopped this service payment, the local union received a retroactive rate credit of 1 percent of the premium. According to the House committee report, this money was part of that paid by the employers.

Mr. Dorfman paid $42,000, on behalf of the Union Casualty Illinois agency for advertising on uniforms of baseball teams sponsored by Mr. Darling.

Insurance executives of the Union Casualty Co. wined and dined union officials and even went into a number of joint business ventures with them that proved profitable.

In Minneapolis, Eugene Williams, a business agent for Local 544 of the Teamsters Union, was made administrator of two transfer and warehouse employees pension funds and received 7 percent of the money to cover their administration. Mr. Williams, as administrator, pays administrative costs and his own salary from this 7 percent. No amount was fixed for his salary or other costs, and was accountable to no one for his use of this money.

There was considerable testimony on the subject of what should be reasonable administration costs. There is no question, from the reports and the testimony, that 2 to 3 percent is the maximum necessary under any except the most extreme circumstances. He used the fund as a springboard for launching his private business enterprise—Williams' Bar and Cafe, in Minneapolis. He also borrowed $1,800 in cash from the union office safe to help finance his bar. Williams says he repaid these sums to the union. He says this. There is also evidence that the Great Western Life Assurance Co. paid the union for some work and administering the welfare program. One such payment check for about $2,500 was cashed.

Another similar operation developed in a New York case where an insurance agency was involved in a double-dealing arrangement by which the agency was paid by both the insurers and the welfare funds for substantially the same services. I call attention again to the fact that I am still talking about the Taft-Hartley funds and the fixed-cost funds, where we found abuses to exist. Neither group knew that the other was paying for the services. Under one contract with the Mutual Benefit Health and Accident Association of Omaha, the agent received service fees of $33,476 for an 18-month period.

Under another contract with the same company, he received another sum of $43,070 for a period of 16 months. The services included so-called investigation, adjudication, and payment of claims. At the same time the agent had agreements with welfare funds for comparable services. These agreements provided that the agents would receive fees of 15 percent of premiums, for the same services for which the company was paying. Union officials received gifts or were lent money by the agency. According to a New York State report on one occasion, an official of local 32 E borrowed $4,000 from the insurance agency and also borrowed $15,000 from the mother of the insurance company agent and $10,000 from the agent himself. Gifts given by the agency to union officials included a $480 television set and $642 worth of carpeting. According to the New York State report, there was evidence that led to the "irresistible conclusion that checks from the agency made out to cash represent payments made to union welfare funds officials who favored the Alcor Agency or its successors with their insurance business." Union officials denied receiving proceeds of the check. The amounts of the monthly checks ranged from $45 to $1,319. The accounts charged for these checks were entertainment, postage, or publicity.

In August 1953, Thomas E. Lewis, president of local 32 E, Building Service Employees' Union, was murdered. Investigation showed that the welfare funds of the union were being mishandled. Lewis, his relatives and friends had received more than $400,000 of the $1,479,000 contributed by employees to the health and welfare insurance in a 5-year period. This is so disgraceful and shocking that I shall repeat the statement. In a 5-year period, of the $1,479,000 which the employees had paid in, the agents had received more than $400,000. The insurance was handled through the Alcar Agency, in which Lewis' wife and friends were officials. Salaries were drawn for functions never performed. The agency, as middleman, paid the insurance company and the fund took pay from both ends. It took a fee from the funds for handling its interest while it was pocketing a commission for placing the funds' business with it. The union officials and friends milked the welfare fund of $275,000 in excessive fees and commissions. The employer trustee of the welfare fund said he had not paid much attention to overseeing the fund and took the view that it was the union men's money.

In New York, the Cardinal Agency in 3 years was grossing $295,000 in commissions from 20 small union accounts. The agency was organized in 1950 by a 25-year-old man who had no previous experience in insurance. The agent was unable to remember how he spent the paltry sum of $107,000, 60 percent of the agency's receipts in 1952, for travel, entertainment, and promotion.

In one case the Seafarers' International Union welfare fund was used to underwrite regular union expenses when dues began to fall as employment declined. This was done with the consent of the industry trustees, but since it was a technical violation of Taft-Hartley, it was done by a bookkeeping disguise, namely, by charging the welfare fund large rent for space in the union hall, putting officers on the fund's payroll, and so forth.

In the Greater St. Louis area one teamsters' local placed its contract for life and accident insurance for city cabdrivers with a tiny local firm whose president was later fined for selling worthless insurance. The firm's agent who signed up the union's insurance was the son of the top teamster official. The contract was eventually canceled when a local newspaper reporter began to raise questions.

Also, the Teamsters' Labor Health Institute in St. Louis, long held out as a model for other union health clinics, has attracted the attention of a Federal grand jury. Its president, Harold J. Gibbons, reluctantly agreed to produce the books for examination, after being jailed for an earlier refusal. Although receiving nearly a million dollars a year from employers, the first audit by a national accounting firm took place in 1954. Even so, it will cover that fiscal year only. The institute was set up in 1945.

At the end of an investigation a St. Louis Federal grand jury in a report said that the size of welfare funds makes them a fertile field for possible mismanagement. The example given was the

Greater St. Louis Construction Laborers' Welfare Fund, which contained over $240,000. The chairman of the union's local was questioned by the grand jury after the murder of two men. Prior to this one of the brothers had been in the linoleum business and had not been a member of the local for 12 years, and then for only a year or two. The grand jury report said that he is a man of no apparent education; and when the grand jury asked him whether he had finished the eighth grade or knew anything about bookkeeping, finance, or administering, he refused to answer on the ground that he might incriminate himself.

Nevertheless, this man is presently attempting to become administrator of this $240,000 fund, and has, he says, the backing of the union trustees.

Of course, whether Mr. Sarkis is qualified or not, or is a proper person to administer such a fund, or whether he is the tool of others, is beyond the province of the grand jury to inquire.

This is also true in the case of Thomas F. Callanan, welfare director of the Pipefitters Local No. 562 welfare fund. Mr. Callanan, who is the brother of Lawrence Callanan, business manager, of local No. 562, received a salary of $175 per week, plus expenses as welfare director, although, according to his testimony, he had no previous experience, and his duties are negligible.

In Kansas City, Mr. Orville Ring, president and business agent of a 5,000-member teamsters local, picked out a local doctor, without consulting his executive committee, to provide medical benefits for his union members. Not long afterward, expensive gifts were made to Mr. Ring by the doctor, whose fees began to total $4,000 a month from the union's business.

Joseph DiBucci, president and business agent of Hotel and Restaurant Employees Union, local 178, AFL, testified that he had taken $10,300 out of his union's welfare fund to buy himself a home in Yonkers. The money was put back by the insurance brokers who handled the fund's account.

Harry Davidoff, president of the Doll and Toy Workers Union, local 130, AFL, got weekly compensation of $300, plus a $4,600 Cadillac, from the fund covering his union's 800 members. The fund's total income was $58,340 a year. After he had been called to testify, Mr. Davidoff decided to give up his expense account of $75 a week and get along on his weekly salary of $225.

The welfare fund of local 759 of the International Hod Carriers and Common Laborers Union, AFL, put $204,000 into a holding corporation which built and operated a bar for use by the union members. The project lost $29,000 between 1951 and 1953, and the bar was shut down by litigation. The bartender lost his job for asking why the union president, Joseph Gentile, kept drawing checks on the welfare fund and using them for ordinary union business.

The welfare fund maintained by the Atlantic and gulf district of the Seafarers International Union, AFL, spent $4,583 in 1953 to buy membership in four golf and luncheon clubs for its administrator. Testimony disclosed that the union had bought land adjacent to its Brooklyn headquarters for $125,416 and sold it to the welfare fund at a profit of $59,584. The property is to serve as the site of a hotel for seamen on the beach.

Let us consider that for a moment. Here were men who were supposed to be operating a fund for the benefit of the working people. Here was a union, or I should say rather the officials of a union, because I do not want to pin this activity on the union as such, who bought property for the union and then deliberately depleted the welfare fund which provides help to the members in times of illness and accident. The officials sold the property to the fund itself at a profit of $59,000, and took out a profit of $59,000 for the union, which the officials of the union used themselves.

The welfare fund paid a union-owned corporation $3,000 a week to underwrite losses in the union restaurant, and $1,500 a week to maintain a television, card, and poolroom next door to the union hiring hall.

If any public official in the United States intermixed his funds in the way these funds were intermixed, he would be summoned before a grand jury within 24 hours.

The welfare fund of local 923, United Culinary, Bar, and Grill Employees, paid out 34.8 percent of its income—$166,242 out of $477,404—for administrative expenses during the period May 1, 1950, to February 28, 1954. Just think of that: 34.8 percent of the moneys coming into that fund were paid out for administrative expenses instead of for health and welfare benefit payments to the employees.

The administrator of the welfare fund, who is also president of the local, received $79,235 from the welfare fund during that 4-year period. His assistant received $30,031, making a total of $109,266 paid the two administrators. The fund spent $126,000 for insurance coverage for fund beneficiaries during that time. The local has 1,200 members employed in luncheonettes and hamburger stands. Three-hundred and fifty employers contribute to the fund, which has collected $750,000 since it was set up in 1945.

The fund of local 394, United Auto Parts and Accessory Workers, bought an annuity policy for the local president and secretary-treasurer in 1947, its first year of operation, and bought $9,617 of insurance for the local's 400 members. A union official is reported to have estimated that the fund spent $36,000 for annuity protection for the two officials.

The same two officials of local 394 were elected comanagers of the welfare fund of a newly chartered local, United Service Employees, local 377, and shared in $22,090 of annuities bought by that fund for themselves and local 377's president, Ernest J. Dumas.

The fund of local 1115, Restaurant, Luncheonette and Soft Drink Employees, has spent $221,314 or more than one-third of its income, on administrative expenses in the last 3 years. It provided the local president, Michael Werner, and the secretary-treasurer, Michael Sackman, with two Cadillacs, a Packard, and gasoline credit cards to visit Florida and the Catskills, and paid them $315 a week apiece. The two officials were entrenched in their welfare-fund jobs, under a resolution, passed by their local executive board, which gave them 10-year tenure with automatic renewal every 10 years thereafter, unless two-thirds of the union members signed notarized petitions giving a good and sufficient reason why they should not be reappointed.

In another case the impartial chairman of the board of trustees administering the fund of the Retail Wine and Liquor Clerks' Union, Local No. 122, AFL, admitted it was his custom to draw $100 every week or 10 days to buy luncheons, cigars, and liquor for himself and his two fellow trustees. The fund also paid the full $7,200 a year rent on the offices occupied by the chairman, even though the trustees had voted to impose a rent ceiling of $4,200.

Mr. COOPER. Mr. President, will the Senator from Colorado yield to me?

The PRESIDING OFFICER (Mr. HOBLITZELL in the chair). Does the Senator from Colorado yield to the Senator from Kentucky?

Mr. ALLOTT. I am very happy to yield to the distinguished Senator from Kentucky.

Mr. COOPER. Mr. President, the Senator from Colorado has been stating examples of the illegal, unlawful and, I may say, reprehensible misuse by certain union officials of employee-welfare funds. Let me ask him whether there is any record of the total number of such funds which have been administered; and can the Senator from Colorado also state the percentage of the funds which, according to the testimony taken, has been misused in the ways he has indicated?

Mr. ALLOTT. I shall try to answer the questions the Senator from Kentucky has asked.

Mr. COOPER. Let me say that I do not mean to imply that even if the percentage is small, we condone the misuse of any funds. But I think it proper to present the example of misuse in the full context of all funds administered.

Mr. ALLOTT. In the first place, nearly all, or perhaps all, of the abuses which the two Senate committees found to exist, occurred in the area of the fixed-cost plans. That is why I have shaped my amendment in such a way as to try to cure the ills where they do exist, namely, in the area of the fixed-cost plans. As nearly as we can determine, they comprise approximately 6, 8, or 10 percent of the total number of plans or funds. But I cannot answer my colleague's question accurately; and that is one of my chief objections to consideration of the proposed legislation at this time by the Senate, because no one in the United States has any detailed, accurate information either as to the number of funds or as to those which are funded or as to those which are not funded, or as to those which are welfare funds, or about anything else in regard to the funds. The best that we

have been able to obtain are estimates. So I shall have to answer the Senator's question on the basis of the estimates which have been made.

Let me say that I believe that even in the case of the fixed-cost funds, the large majority of them are well, diligently, and honestly managed. However, when we realize that $700 million or $800 million go into these funds annually it is easy to see that only a few bad apples in the barrel can spoil the remainder—which in this case amounts to a very considerable sum of money.

Mr. COOPER. Without condoning the misuse of any funds at all, for the purpose of the bill which I support is to prevent, to the maximum extent possible, the misuse of any welfare funds, my question is whether there is available information as to the percentage of the funds regarding which such misuse has been shown to have occurred.

Mr. ALLOTT. No; I do not believe such figures are available. I can only repeat what I said yesterday during the course of my preliminary remarks, namely, that there are so many bad apples in this barrel that our subcommittee, which investigated the welfare and pension funds, could have continued its investigation for 2 or 3 years without interruption, without running out of material to investigate.

Mr. COOPER. Regarding the cases the Senator from Colorado has cited as examples, was there any evidence adduced that any of the union members—beneficiaries of the welfare fund—were aware, or had any opportunity to be aware, of the defalcations or misuse of the funds of which they were the beneficiaries?

Mr. ALLOTT. In most instances, they were not given an opportunity to get such knowledge. If an audit was made, it was kept in the office of the fund; and any request by a member of the union or any request by a workman even to see those records was not looked upon with favor.

Mr. COOPER. Mr. President——

Mr. GOLDWATER. Mr. President, at this point will the Senator from Colorado yield to me? I believe I can supply some information in connection with the questions the Senator from Kentucky has asked.

Mr. COOPER. First, I should like to complete my questioning of the Senator from Colorado.

Mr. GOLDWATER. Very well.

Mr. COOPER. Mr. President, there is great public interest in this matter of protection of welfare funds which has been manifested by corrective legislation and has been urged by the President, the Secretary of Labor, Members of Congress, and by responsible labor officials. Let me inquire whether in the course of the hearings, any evidence of interest in this field was indicated by rank and file members of the unions who are the beneficiaries of these funds.

Mr. ALLOTT. I shall have to answer the question as follows: If there was any interest by the rank and file generally, it was brought to the attention of the committee staff, not to the attention of those of us who are the members of the committee. So far as I know, no interest was shown by them generally.

Mr. COOPER. The Senator from Colorado has shown, by his statement, the comprehensive study he has made of this subject.

Mr. ALLOTT. I thank the Senator from Kentucky.

Mr. GOLDWATER. Mr. President, at this point will the Senator from Colorado yield to me?

Mr. ALLOTT. I yield to the Senator from Arizona.

Mr. GOLDWATER. I should like to make an effort to partially answer the question of the distinguished Senator from Kentucky, if the Senator from Colorado will allow me to interrupt him.

Mr. ALLOTT. I am very happy to do so.

Mr. GOLDWATER. I can supply a partial answer to the Senator from a letter I received February 12 from the Treasury Department. I shall read one paragraph of that letter:

> Available records in this office indicate that from October 21, 1942, date of the Revenue Act of 1942, up to December 31, 1957, the Internal Revenue Service issued ruling letters on 43,706 pension, profit-sharing, stock bonus and annuity plans as to qualification under section 165 (a) of the 1939 code and section 401 (a) of the 1954 code. During the same period the Service was advised of 2,724 plans which have been terminated. This leaves a net of 40,982 rulings outstanding.

That is just a portion of the paragraph.

I may explain these are level-of-benefit plans which have already been reported to the Revenue Service over the years. There has never been a single instance, to my knowledge, of any wrongdoing in the operation of those funds. In fact, having one in my own business, I can tell the Senator I think it is impossible to embezzle or cheat on these funds.

That is only a partial answer to the question. As the Senator from Colorado has indicated to the Senator from Kentucky, when we get into the figures, the number of plans we are talking about, we have heard figures all the way from 50,000 to 350,000.

Mr. ALLOTT. I believe the top estimate made by a person who thought himself qualified was 500,000.

Mr. GOLDWATER. I believe I heard that figure. If the Senator will yield for that purpose, I should like to ask him a question, as long as this subject has been brought up.

Mr. ALLOTT. I am glad to yield for that purpose.

Mr. GOLDWATER. On page 2 of the majority report, referring to the activities of the committee which investigated welfare and pension funds, under the chairmanship of the Senator from New York [Mr. IVES], the following statement is made:

> Although it made studies of the overall characteristics and problems in private employee benefit plans this subcommittee confined its field investigations to collectively bargained, jointly administered welfare funds, and uncovered abuses, mismanagement, and waste in the administration of a number of plans of this type.

My first question is, Were any field investigations made by the subcommittee under the chairmanship of the Senator from Illinois [Mr. DOUGLAS], with respect to any other type of benefit plans, particularly true level-of-benefit plans?

Mr. ALLOTT. I believe there were. At least, it was reported to us by the staff that there were.

In the consideration of this subject, there has been an effort constantly, especially since my type of level-of-benefit amendment was offered, to make it appear that we investigated, and that the committee was directed only to investigate, these particular Taft-Hartley plans, or fixed cost plans, and union plans. That is not so. I believe I sat in all but a couple of sessions of the committee during the entire 4 years, and, to my knowledge, no directive was ever given to anyone to draw the line and to investigate just one type of fund. We investigated many more kinds, because we found pay dirt, and did not confine ourselves especially to level-of-benefit funds. That is the reason why we spent time on the fixed-cost funds.

Mr. GOLDWATER. I was going to ask the Senator one more question. Were there any complaints of any type of abuse or mismanagement or waste which had occurred under plans which qualified under section 401 of the Internal Revenue Code?

Mr. ALLOTT. Let us consider the definition of that section first. That is the section which provides means by which an employer may, by submitting certain information to the Bureau of Internal Revenue, secure a deduction for moneys paid out in behalf of a union welfare benefit or pension fund. Is that correct?

Mr. GOLDWATER. That is correct.

Mr. ALLOTT. We did not find any troubles in the administration of those funds. It happens that those particular funds are level-of-benefit funds, and are unilaterally managed.

Mr. GOLDWATER. I thank the Senator. I apologize for injecting that question at the present time, but I felt it would be proper inasmuch as I had attempted to answer partially the question posed by the Senator from Kentucky. I apologize for interrupting. Later I shall have some other questions to ask the Senator from Colorado.

Before I take my seat, I want to commend the senior Senator from Colorado for the excellent presentation he is making this afternoon. I am afraid not enough Senators are aware of the seriousness of the proposed legislation. I think too many Senators feel that it will satisfy labor leaders and satisfy the American people, who are clamoring for legislation to control the evils that have been disclosed. I compliment the senior Senator from Colorado for his strict attention to the details of the bill during its forming in committee and for his very fine presentation today.

I am hopeful absent Senators will avail themselves of the opportunity of reading the RECORD, because the effort is being made to obtain by legislation what it has never been possible to obtain at negotiations around the table—

secret, detailed costs of doing business, to which unions have no right. I prophesy that if this proposed legislation shall be enacted it will do more harm to the union movement than any legislative proposal which has come before this body.

Mr. ALLOTT. I thank the Senator for his kind remarks. I am sure I do not deserve them.

I should like to point out at this time, and I intend to discuss it later, that the real impact of such legislation, if it is enacted as the sponsors want it enacted, is that in the long run it is going to defeat the purposes of the individual worker, and the effect is going to be to convert funds of the level-of-benefit types which so many of them have bargained so hard to get. The effect will be to force all of the funds into the area of the fixed cost or Taft-Hartley type of fund.

I am not sure whether the Senator from Arizona heard the somewhat considerable discussion I had in the forepart of my remarks about the relationship of the Taft-Hartley Act to the matter, and the effect of it.

Mr. President, I shall continue with the long list of specific abuses which have been discovered, because I believe it is necessary to have them in mind to obtain any kind of an understanding as to how we have to attack the problem.

A vice president of the CIO Store Union and manager of the United Shoe Service Employees Local, No. 563, disclosed that he had a son and daughter on the union payroll and a second son serving as counsel for the local and its welfare fund. The welfare fund paid the union $300 a week to help meet the salaries of the president's children and 3 other union employees. The union executive and other members of the local's executive board admitted they had received $12,808 in medical benefits from the fund, usually without submitting the bills required of the 500 shoemakers for whom the fund was set up. The union executive received $6,068 in benefit payments from the fund in a 6-year period.

The benefit payments, of course, were what the 500 shoemakers wished to have when they were injured or got sick. The executive said he had used part of the money to "take a rest" in California while under treatment for heart trouble.

The business agent of the local received $1,417 for medical claims in 2 years. Of the 2 physicians he claimed treated him, 1 testified that he had charged $9 for 3 visits and the other said he did not recall ever having attended him.

An engineer for the IBM Corp. told how he had collected $36,276 in commissions on welfare insurance in 5 years without ever meeting the officials of the union he was representing or performing any services for them. He got an insurance agent's license at the suggestion of his brother, who was a union official. The brother was given several union contracts.

A paper salesman received $25,000 in 2½ years by splitting fees on fund business referred to him by his brother-in-law, a union official.

A $4,200-a-year subway signal man, his brother-in-law an A. F. of L. local union president, admitted that he made $38,000 in fees from the welfare fund of his relative's union without investing a dime. In one case $19,785 was handed to him as his share of commission for helping get welfare fund business.

The welfare fund of Teamsters Local 805, with an annual income of $250,000, was unable to pay premiums on insurance for union members for 6 months. The fund laid out $85,000 for a resort that had a maximum market value of $25,000. In addition, it spent $76,000 on improvements. The property was purchased from a cousin of the employee trustee who had paid $11,000 for the property in 1944. So from 1944 the cost went up to $85,000. The union official, as administrator of the fund, set his annual salary at 10 percent of employer's contributions, plus an additional 2 percent for expenses. Contributions run at the rate of about $250,000 a year. The administrator often charged his long-distance calls to the fund emanating from all parts of the country. In addition, the fund had paid $2,479 to cover an extended stay at a resort hotel.

I must say it is surprising to learn, in the examination of the various funds, how much welfare and pension business is transacted by these people at outstanding and expensive resort hotels, not only in this country, but all over the world.

In hearings conducted in Los Angeles by the House Committee on Labor and Education, witnesses stated that their welfare fund books were not audited by any public authority. They also said there would be no check if the trustees decided to raise benefits above the income or raise salaries.

Other witnesses said that, although employers contribute $690,000 a year to operate the sheet-metal workers' welfare fund, the union trustees dominated the joint labor-management board controling it. This only points up the statements I have made heretofore about the Taft-Hartley funds, which are for the most part the fixed-cost funds, which need regulation in this country.

Management trustees on the welfare fund board face strike threats if they fail to vote in accordance with union demands. One witness said, "There is absolutely no necessity to require management, under constant threat, to act as a trustee." Congressional investigators stated that the records of a sheet metal workers union local were so incomplete that it was impossible to make the proper examination. One check for over $8,000 was drawn in January 1953, and did not reach the Los Angeles welfare fund until 15 months later.

In a Washington hearing an insurance broker stated that he received $45,773 in commissions during a 5-year period, almost matching the total benefits paid to policyholders under two group health policies sold to unions in Atlantic City.

It is almost inconceivable in the United States of America—a country based upon law and order; a place where we pride ourselves on the ability, soundness, honesty, and integrity of our legal system—to imagine a situation where a man who is running a fund can take for himself, for his own personal services, $45,000 in commissions during a 5-year period, almost as much as he paid to all of the employees for their health, accident, and welfare benefits, for which the fund was started. The policyholders received $52,000 unclaimed. In addition to 17½ percent paid on all premiums, the broker received $17,267 by splitting with the insuring company money which normally is returned to policyholders in the form of dividends.

I may say at this point—although I shall discuss the subject later—that it is primarily this factor which determines what is called retention by the insurance companies.

GOVERNMENTAL RECOMMENDATIONS SUBSEQUENT TO HOUSE AND NEW YORK STATE RECOMMENDATIONS

The hearings by the House committee and the revelations in New York State caused an intensified investigation into the operation of union welfare funds.

I repeat that we are talking about Taft-Hartley fixed-cost funds. None of these abuses occurred in connection with the level-of-benefit type funds.

In January of 1954, the President recommended that the Congress initiate a study of welfare and pension funds covered by collective bargaining agreements with a view of enacting "such legislation as will protect these funds for the millions of working men and women who are the beneficiaries."

I cannot state the purpose of the effort which I am making upon the floor today, and the effort which I have made throughout the past 2 years, and particularly in the past 3 months, in any clearer or better words than the President's own words, when he said that such legislation, if it is good, will protect these funds for the millions of working men who are the beneficiaries. I, for one, will not be a party to giving them a lollipop when they are entitled to a law.

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

Mr. ALLOTT. I yield.

Mr. BUSH. I spent about 2½ hours last night studying the report which the Senator has ornamented with his own supplemental views, which I read with especial care. His argument convinced me of the necessity of his amendment, which I shall support.

Mr. ALLOTT. I appreciate the Senator's statement.

Mr. BUSH. In order to clarify my thinking a little further, I wish the Senator would point out just why it is that the fixed-cost plan seems to invite this type of malfeasance, theft, or whatever we may wish to call it, whereas the level-of-benefit plan, over the years, seems to have been virtually immune from tampering. Why does the one plan invite it, while the other seems to be immune from it?

Mr. ALLOTT. I shall be glad to answer the very intelligent question of the Senator from Connecticut. There are really many reasons—perhaps as many as 20 or 30 contributing reasons. The reason lies in the fundamental difference in the nature of the funds.

Under a fixed-cost fund, the parties—the employers and the employees, or perhaps only the employees—contribute a certain number of cents an hour, or a certain percentage of their salaries, or perhaps, as in the case of the coal miners' union, a certain amount per unit of production. Upon one of those three bases, they contribute a certain amount of money to a fund. When the employer and employee both contribute, and particularly when the employer contributes, it is necessary that the fund be administered in accordance with the provisions of the Taft-Hartley Act.

Mr. BUSH. That is, when both contribute?

Mr. ALLOTT. That is when the employer contributes, but not necessarily when only the employee contributes.

Mr. BUSH. Am I to understand that they both must contribute in order to bring the fund under the jurisdiction of the Taft-Hartley Act?

Mr. ALLOTT. No; when the employer contributes.

Mr. BUSH. Either the employer alone, or the employer and employee?

Mr. ALLOTT. Yes. However, it is rather rare—in fact, I know of no such case—when only the employee contributes to a union fund, that the employer has anything to do with the management of the fund.

I pointed out earlier this afternoon, before the Senator entered the Chamber, that the Taft-Hartley Act itself is so drawn that it is impossible to obtain convictions under the criminal provisions of the act. Therefore, when each year there is a total of $700 million or $800 million coming into these pools of money, as is true with respect to the fixed-cost funds, that fund attracts, as honey attracts flies, all those who are looking for what is called in the street a fast, easy buck. They are the people who are drawn to the $700 million or $800 million a year, and they find various ways of circumventing the law.

I suppose some people will interpret what I am saying this afternoon as an attempt to run down certain classes of people. Far from it. But I think we should go through not only 5, 10, 15, or 20 cases, but perhaps 100 cases—and I do not intend to go through 100 cases—in order to demonstrate where the abuses exist, why they exist, and how they can be accomplished, in order to understand how they may be corrected.

What we are being asked to do by the majority of the committee is to enact legislation which is supposed to cure this situation. We cannot cure it unless we understand what caused it; and the only way we can understand what caused it is to know how these malefactors operate. That is the reason why I have devoted so much attention to this particular subject this afternoon.

In reply to the second part of the Senator's question, the reason such abuses have not existed in connection with the level-of-benefit plans is that under the level-of-benefit plan a fixed amount of benefits to the workers is set. Perhaps I should read a portion of the minority and supplemental views, from the report.

Mr. BUSH. From what page?

Mr. ALLOTT. Page 34.

A major distinction must be drawn between level-of-benefits and fixed-cost plans. A fixed-cost plan, in contrast to a level-of-benefits plan, means any plan that has a limited cost to the employer. The predetermined fixed nature of the cost distinguishes such plans from the level-of-benefits plans where costs to the employer may vary. A fixed-cost plan sets a fixed amount of contribution by the employer whether it is adequate to provide the anticipated benefits or not. If for any reason the contributions are inadequate, benefits to the workers are reduced. A level-of-benefits plan sets a fixed amount of benefits to the workers. If the employer's anticipated contribution is inadequate, the employer pays out more money—his costs vary—and the benefits to the workers remain fixed; they are not reduced. If these conditions are not present, then regardless of what the plan is called, it is not a true level-of-benefits plan and would not be exempted by the amendment that the undersigned propose.

The chairman of the subcommittee fell into error in his preliminary statement yesterday, because he referred to certain level-of-benefit plans which are not level-of-benefit plans. Regardless of what the plan is called, it is not a true level-of-benefit plan, and would not be exempted by the amendment I have proposed, unless the employer himself bore the burden of any additional expenses incurred by the plan.

Why does not the level-of-benefit plan result in the abuses incident to the fixed-cost plan? First of all, there is no pool of money for people to get at.

Secondly, if the employer steals from the fund with one hand, he must put the money back with the other hand. Therefore, he has no incentive to steal. The fund contains a built-in self-policing provision. It is to his own interest to see that every last dollar of benefit is squeezed out of it for the benefit of the worker, for whom it was established.

Mr. BUSH. The Senator has made an excellent exposition of that point. May I ask him just one more question?

Mr. ALLOTT. I yield.

Mr. BUSH. Are level-of-benefits plans frequently contributory with respect to both employer and employee? They can be, can they not?

Mr. ALLOTT. Sometimes; yes.

Mr. BUSH. But the Senator's argument really applies, whether they are or not. Is that correct?

Mr. ALLOTT. Yes. However, if they are contributed to by both parties, it is the result of an agreement. Usually it is also the agreement of the parties that the employer shall administer the fund. The parties have a right to designate who shall administer it.

Mr. BUSH. I thank the Senator.

Mr. ALLOTT. I believe that in the case of United States Steel workers, who appeared before our committee, and gave a very fine statement, and who have a unilateral employer-managed level-of-benefit plan, we were told—I cannot just at the moment quote the statement exactly, but the sum and substance of the testimony was "We like our plan; leave us alone." That is about as high a tribute to the amendment which I have offered that I have ever heard. I thank the Senator for his questions.

A special subcommittee of the House of Representatives held extensive hearings in the fall of 1954.

The investigation in New York by the Insurance Department was concluded in the fall of 1954. One hundred and sixty-two welfare funds were examined.

The investigators uniformly reached the conclusion that there existed considerable abuse in the administration and operation of some health and welfare plans.

The interim report of the House special subcommittee seems to sum up the situation very well. It stated that—

Information obtained by the subcommittee indicates a wide range of questionable practices by union officials, employers, insurance companies, brokers, administrators, and trustees connected with health and welfare funds. Having devoted our major effort to date to the study of health and welfare funds, we found that the record points clearly to these notable abuses:

1. Employer lack of interest and fear to assert prerogatives evidenced by failure to actively assume the duties of trusteeship and in some instances abdicating responsibilities entirely;

2. Some contributions negotiated by threats and violence; union domination of trustees action by reprisals or threats of reprisals against individual employer trustees;

I might interpose here to say that a very prime example of the latter which came to the attention of our committee was the case of the tuck pointers in Chicago.

3. Irregular practices by some insurance companies including high operating or retention charges, high commission payments, loose and careless handling of funds to suit the whims of certain brokers and union officials who control the placement of insurance, collusive advance opening of bids to secure improper competitive advantage, and a tendency to charge whatever premium price it is possible to collect;

I might interpose again to say what one insurance representative said to us before our committee. It was to the effect that in the insurance business, as anywhere else, the squeaking wheel gets the grease.

4. Irregular conduct by insurance brokers and consultants, including collusive arrangements with insurance companies and union officials to obtain business; the charging of excessive fees and the payment of so-called commissions to union officials in connection with the placement of insurance;

5. Trustee conduct ranging from laxity to breach of faith, including a refusal to accept responsibility and a failure to disclose personal dealings for profit in matters directly relating to the trust fund;

6. Squandering of assets by administrators of so-called self-administered, or non-insured, funds, including payments to persons not eligible for benefits and "influence" payments to union officials.

7. Discrimination against nonunion employees through the requirement that eligibility for benefits is invariably conditioned on being a union member in good standing.

That concludes the recommendations and findings of the House. I say to my fellow Members of the Senate, if anyone can tell me how this lollypop, milksop legislation we have before us is going to

stop these insidious, violent evils which the House sets forth here, and which I have been discussing for the last 2 hours or so, I should like to have him come forth now and say how it will be done.

As is evident, this indictment represents abuse not only in the handling of money and the breach of relationships of trust, but also the abusive exercise of power on the part of some union officials.

There is no evidence to show that the type of abuse disclosed in the jointly administered Taft-Hartley or fixed-cost plans is present in those administered solely by employers, and which generally coincide in this field with the level-of-benefits plans. Of course, that is not to say employers are endowed with superior moral fiber. In fact, employers have been a party, willingly or unwillingly, knowingly or unknowingly, to some of the disclosed abuses in the jointly-administered plans.

I might add to what I said to the Senator from Connecticut [Mr. BUSH], who inquired on this point a few moments ago, because a thought has just occurred to me with relation to the question which he asked. I should say that there are also union plans, solely union plans, which are level-of-benefit plans. Therefore in this area, if someone seeks to say that we are attacking just one group or another, it is not so. This would apply to some union plans and not to others. For example, with relation to another area, as, for example, the United States Steel Corp., if any amendment were adopted the United States Steel Corp. would report on some of its plans and would not report on some of its plans. Therefore there is no attempt to discriminate for or against any particular group of people. Some union-administered plans would be exempted.

Mr. BUSH. Mr. President, will the Senator yield for one more question?

Mr. ALLOTT. I yield.

Mr. BUSH. Would the Senator clarify the point about the Taft-Hartley plan? Do I understand that the level-of-benefit plans are not contemplated in the Taft-Hartley law, but only fixed-cost plans? I do not quite get the reason why the Senator should use the Taft-Hartley law tag in connection only with the fixed-cost plans. I should, perhaps, know the answer, but I do not know it, and I would appreciate it if the Senator could tell me the distinction.

Mr. ALLOTT. The answer, I believe, is that they do coincide almost identically as they are set up. Section 302 of the Taft-Hartley law, with which we are dealing, forbids payments to unions or representatives of unions other than under certain circumstances, which the act defines in section 302 (c). Those circumstances are that——

Mr. BUSH. I do not wish to inconvenience the Senator, if he would rather defer the answer. It would be quite satisfactory to me.

Mr. ALLOTT. No; I have the reference right here; I simply turned two pages at once and missed it.

Those circumstances are, first, if one starts with the supposition of payments, that it is unlawful for an employer to pay or agree to pay money to any representative of any of his employees, or for any representative of the employees to accept or agree to accept such a payment, except under section 302 (c) (5), which exempts them from the criminal provisions relating to such payments, if those payments are made to a trust fund established by a written agreement and are (a) for the benefit of employees, their families, and dependents; (b) for medical and hospital care; (c) pensions on retirement or death; (d) compensation for occupational injuries or illness; (e) insurance to provide any of the foregoing benefits, such as unemployment benefits; (f) life insurance; (g) disability and sickness insurance; or (h) accident insurance.

In addition—and I know the Senator from Connecticut would like to have this information—the trust agreement must provide certain things. It must (a) contain the detailed basis on which such payments are to be made; (b) provide for equal representation of employers and employees in the administration of the fund; (c) provide for the selection of an impartial trustee to act in the event of a deadlock; (d) provide for an annual audit of the trust fund, the results of which shall be available for inspection by any interested person at the principal office of the trust fund; (e) provide for a separate trust fund for pensions or annuities, from which no payments, except for such pensions or annuities, may be made.

I believe that answers the Senator's question and puts the matter in its perspective, namely, that payments to representatives of the employees are forbidden, except under the specific circumstances provided for by the Taft-Hartley Act.

As thus far developed under the Taft-Hartley Act, the plans have developed under the fixed-cost type of situation, where the employer contributes a certain number of cents an hour, a certain percentage of the salary, or a certain amount of money based upon units of production.

Mr. BUSH. I thank the Senator from Colorado for this information. Although I have read the report quite carefully—I spent 2½ hours on it last night—there were some things about it that I did not fully understand.

Since I have been a Member of the Senate, I do not think I have come in contact with any more complicated issue than the one we are now debating. I do not think there is any wide degree of public understanding of the issue at all, in spite of the publicity in the newspapers about welfare funds and pension funds.

I congratulate the distinguished senior Senator from Colorado for having acquired a very broad, complete grasp of the situation. I think he is doing much today to alert and to educate the Senate on the issue. I, for one, am very grateful to him.

Mr. ALLOTT. I appreciate the very kind remarks of the Senator from Connecticut. He has hit the nail on the head. This is a most complicated question. I do not think it is possible to sit down and explain the subject to a person who is a lawyer or who has had wide experience in the business field in less than a 2- or 3-hour session. For that reason I, too, have been concerned lest Senators glance at the bill and say, "Well, we can take it under recommendations of the majority of the committee and pass it."

No one can study the bill diligently without becoming convinced, as he goes further and further into the question, that the complications and ramifications multiply themselves a thousandfold, until the opportunities for providing good legislation become more remote.

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

Mr. ALLOTT. I yield.

Mr. CURTIS. In my opinion, the Senator from Colorado has made an excellent statement. It indicates that he has a grasp of the many problems involved, and also that his approach to the matter is in the interest of the employees, the general public, the employers, and the Government of the United States. I commend the Senator from Colorado for his efforts concerning the measure.

Mr. ALLOTT. I thank the Senator from Nebraska.

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

Mr. ALLOTT. I yield.

Mr. GOLDWATER. The distinguished Senator from Connecticut [Mr. BUSH] has raised in my mind a very important question. I know the Senator from Colorado has already answered it, but I think the question needs to be repeated time and again, because I am afraid that the thoughts of our colleagues might be to the effect that the bill is intended to be an overall correction of the evils being disclosed. I asked the Senator from Colorado if the bill is the result of the investigations now being held by the so-called McClellan committee.

Mr. ALLOTT. No; it is not.

Mr. GOLDWATER. The bill would in no way correct any of the evils disclosed by the McClellan committee; would it?

Mr. ALLOTT. I cannot answer that question. I know that the McClellan committee, to call it by its common name, has gone somewhat into the area of abuse in the welfare and pension field. But, as I understand, the McClellan committee has devoted its attention more particularly to abuses in other areas of the union field, rather than to this particular field. At least, the bill before the Senate is not based upon the findings of the McClellan committee, but rather upon the findings of the Committee on Labor and Public Welfare, although the bill does a very poor job of interpreting those findings.

Mr. GOLDWATER. As a member of the McClellan committee, I may add, so that the Senator from Connecticut might understand the situation, that the bill in no way will correct any of the evils the McClellan committee has disclosed. Parts of the bill might be construed as dealing with some of the abuses we found; but overall, it does not do so.

I say this because, if the bill shall be passed—and I hope it will not be passed, at least in the form in which it is—we

will find that a person who administers a plan and who has been stealing in the past will merely lie in his reports.

I am sure the Senator from Colorado will discuss the fact that the United States Government will be faced with an almost impossible situation in policing the funds. If we simply consider the 41,000 funds which are registered with the Internal Revenue Service, it is simply impossible for me to understand how the majority members of the committee can suggest that for $1,500,000 a year it will be possible to police 41,000 retirement, pension, and welfare funds in the United States. I am sure the Senator from Colorado will touch on this question, if he has not already done so. I myself expect that the supervision of the funds will cost the taxpayers more than $100 million.

Mr. ALLOTT. I think the Senator from Arizona is exactly correct. I do not happen to have come to that particular point; I intend to come to it and discuss it quite fully later. But the Senator from Arizona is absolutely correct. This is one of the big weaknesses of the bill.

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

Mr. ALLOTT. I yield.

Mr. BUSH. Suppose the bill were amended in accordance with the amendment to be offered by the Senator from Colorado—which I believe is now the pending amendment—that would eliminate the level-of-benefits group from the bill, as I understand the amendment.

Mr. ALLOTT. That is correct.

Mr. BUSH. And it would require the reporting of the fixed-cost plans in accordance with regulations established in the bill.

Does the Senator from Colorado think the bill in that form would have sufficient corrective influence of a desirable nature to make it possible for the evils to which the Senator from Colorado has referred in the course of his remarks, and which to some extent are covered by the report, to be dealt with on an adequate basis? How far would the bill go toward meeting the necessities shown by the revelations which have been made before the committee and otherwise?

Mr. ALLOTT. I shall be very happy to answer the question: In my opinion the bill will go only a very, very little way.

Mr. MARTIN of Pennsylvania. Mr. President——

Mr. ALLOTT. Mr. President, I should like to finish my answer to the question the Senator from Connecticut has asked me.

Mr. MARTIN of Pennsylvania. Certainly; I did not mean to interrupt.

Mr. ALLOTT. Mr. President, it has been stated—and this is why I have been trying to point out the specific types of abuses we have encountered—that if the bill in its present form, without amendment, is enacted into law, the Congress will have placed a burden of at least $100 million a year—provided the job is done properly in the Department of Labor—upon the plans and funds, whereas that money should be devoted to the purchase of welfare and pension benefits for the workers concerned. This is one reason why I resent to the very core of my being this bill in its present form. Under it, all these persons will be required to register, report, and disclose. As a result, a great proportion—perhaps 90 percent—of the funds would, by this measure, be penalized to the extent of the requirement to report, disclose, and register, whereas all the testimony taken by the committee has shown that among the group which constitutes the 90 percent, no trouble at all has been found.

Mr. BUSH. Mr. President, will the Senator from Colorado yield again to me?

The PRESIDING OFFICER (Mr. CURTIS in the chair). Does the Senator from Colorado yield again to the Senator from Connecticut?

Mr. ALLOTT. I am happy to yield.

Mr. BUSH. Again, I should like to commend the Senator from Colorado very much for bringing out that point so forcibly.

I desire to point out that during the last 25 years these pension funds have been increasing and growing. Prior thereto, one heard little about them. But in recent years they have been growing, and have become an important factor in the lives of the working men and working women of the country. Theft, whether direct or indirect, from a pension fund or any other abuse of such a fund—and all such abuses amount to theft, in the long run, as indicated in the cases to which the Senator from Colorado has referred—is as bad as stealing the widow's mite.

Mr. ALLOTT. Exactly.

Mr. BUSH. Such theft is one of the cruelist types of theft I can think of. But I am afraid it is not recognized in that light by either the people of the country or the Members of Congress generally.

That is why I believe the bill is so important; and it is also why I hope the committee—inasmuch as the distinguished Senator from Colorado has gone into the matter this far, and has made these findings and the report, and has proposed this legislation—will go farther, and will do whatever is necessary or appropriate, let us say, to be done at the Federal legislative level, in order to prevent abuses of the type which the proposed law would require to be disclosed. I think that is essential. In other words, as the report of the Senator from Colorado states, this bill is a disclosure bill. We want such information produced, because we wish to know what is going on.

However, I believe something more is needed. Whether it should be done at the State level or at the Federal level, I do not know, inasmuch as I have not been a member of the Senator's committee. But I believe we need some sort of legislation which will tighten up the criminal laws and will apply them to this kind of highway robbery.

Mr. ALLOTT. Mr. President, the Senator from Connecticut is entirely correct. Even the most avid proponents of this bill will not contend, not even for a moment, that it attempts to regulate and to stop the ills and evils I have been mentioning.

One of the premises on which the bill is drawn—and it is a false premise—is that neither the workingmen nor the unions ever have any information about the level-of-benefit funds. However, I hold in my hand such a report from the United States Steel Corp.; and I have in my office files, I believe, several similar reports from other large industrial concerns.

The one I now hold in my hand is distributed to every stockholder of that company in the United States and, I suppose, to every insurance company and bank and financial firm and investment firm. So it cannot correctly be said to be a secret, by any means. The statement sets forth the details of the pension funds, on a comparative basis, in parallel columns, for the years 1955 and 1956. This information is shown on various pages of the report, which comprises a total of 42 pages.

On page 18 we find the following items, among others, all of them being under the heading "The 3-Year Labor Agreement":

Production and maintenance employees of steel-producing operations.

These items are shown in parallel columns for the years 1956 through 1959:

Wage increases.
Job classes.
Supplemental unemployment benefits.
Jury pay.
Sunday pay.
Improved insurance program.
Holiday pay.
Increased pension benefits.
Increased vacation pay.
Increased shift premiums.

On page 21, we find the following—and again the detailed figures are shown in parallel columns for the years 1955 and 1956:

Pension costs.
Noncontributory part of pension plan.
Funding of current service cost (including interest on past service cost).
Funding of portion of past service cost.
Contributory part of pension plan—current service cost.

There follows the "Total for pensions." Then we find:

Social security taxes.
Insurance costs.
Payments to industry welfare and retirement funds.
Other employee-benefit costs.
Total cost of employee benefits.

On this page the total for pensions for the year 1956 is shown as being $125,206,683; and the total cost of employee benefits is shown as being, for 1956, $225,352,981.

The gross is shown by the listing of the total cost of employee benefits, for 1956, as $225,352,981, whereas the total for 1955 was $199,874,025.

So this report gives a fairly good idea of how the pension plan was operating; and the employees who read the report have no trouble obtaining information as to how their pension trusts are progressing.

On page 39, 18 pages farther along in the report—I admit one must turn over all those pages, in order to reach it—we find a detailed, 2-page statement under the heading "United States Steel and Carnegie Pension Fund, Trustee—Combined Pension Trusts." In addition,

at the foot of page 39 there is a signed certificate by the public accounting firm which examined the combined statements of the pension trusts administered as trustee by the United States Steel and Carnegie pension fund; and, preceding the signature, we find the following:

In our opinion, the above statements, together with a summary of investments shown on page 40, present fairly the combined assets of these pension trusts at December 31, 1956, and the changes therein during the year.

That certificate is dated February 26, 1957.

I shall not read into the RECORD all the items appearing on these pages; I do not believe a useful purpose would be served by doing so. But this report is here, and is available for inspection by any Member of the Senate; and I have similar reports in my office files.

In the report which I hold in my hand, we find the following items, among others—all with detailed figures:

Statement of assets.
Investment at cost.
Cash.
Accrued interest and other receivables.
Contributions receivable from employing companies in subsequent period.
Payables.
Assets.
Reserves for investments.
Assets, less reserves.

Then there follow, under the heading "Statement of Changes During the Year," these items—and, for each one, as in the case of the ones to which I have just referred, the detailed figures are listed for both the year 1956 and the year 1955:

Balance at beginning of year.
Additions.
Receipts from employing companies.
Receipts from participating employees.
Income from investments.
Gain on disposition of investments.
Deductions.
Pension payments.
Refunds to withdrawing employees (including interest).
Administration expenses.
Transfers to reserves for investments.
Balance at end of year.

On the following page—and one has only to turn the page, in order to see it—we find the following headings; and, again, each one is accompanied by the detailed figures:

Summary of investments at December 31, 1956—
Securities of United States Steel Corp. and subsidiaries:
United States Steel Corp. serial debentures.
Elgin, Joliet & Eastern Railway Co. first mortgage series A.
Pittsburgh, Bessemer & Lake Erie Railroad Co., first mortgage series A.
Union Railroad Co. first and refunding mortgage series A.
Other bonds, notes, and debentures: United States Government; other.
Preferred stocks.
Common stocks (including bank and insurance-company stocks).
Mortgages.
Oil and gas payments and royalties.
Properties owned and leased.
Total investments at cost.

The last are shown to be $895,705,738.

Mr. BUSH. I thank the Senator for that information. I think that is one of the biggest and best known funds. It only emphasizes what I said a little while ago, that the number of people depending on the solvency of the funds is measured by the thousands.

The final question I should like to ask the Senator—and I am grateful for his patience with us this afternoon—if this disclosure bill does not, as the Senator has said, come to grips with the real trouble, will the committee or the Senator himself introduce additional proposed legislation this year which might prevent the abuses which exist?

Mr. ALLOTT. I do not have in mind the introduction of such proposed legislation this year, for the reason that the entire attention of the committee has been held toward the consideration of legislation along the lines of or similar to this particular bill. Amendment of the Taft-Hartley Act, for example, a tightening of the provisions of it, particularly with respect to the criminal provisions, the changing of the word "representative," particularly as used in section 302 (c) (5), would help a lot; but those matters have not at any time been considered by the committee. So I will have to say I think for the present, based upon the action of the committee, we shall have to pass upon the situation of whether the Senate will vote for or against the bill now before it, either amended or not amended. In my opinion, it does not come to grips with the problem which I have been discussing; and only by the remotest possibility could it do so. It could do so, possibly and conceivably, if it were converted into a regulatory type of legislation, which it is not, but that is the only way it could.

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

Mr. ALLOTT. I yield.

Mr. KENNEDY. By the terms of the bargaining agreement, is it compulsory that there be a report of the details of the United States Steel pension fund to employees?

Mr. ALLOTT. The stockholders' report, which the Senator has in his hand, and to which I referred, has figures in the latter portion of it.

Mr. KENNEDY. Is it a part of the collective bargaining agreement with the steelworkers that United States Steel shall give to its employees each year a detailed report of the management, administration, and general condition of the retirement fund, or the way the moneys are invested? Is that a part of the contract?

Mr. ALLOTT. I cannot answer that question. The chairman of the subcommittee undoubtedly has that contract in his files. I will say that each one of them gets it.

Mr. KENNEDY. Each one of the employees gets such a report?

Mr. ALLOTT. Yes.

Mr. KENNEDY. Each employee gets the same report a stockholder gets?

Mr. ALLOTT. No; the employees get a report upon their pension and welfare funds.

Mr. KENNEDY. The point I am making is, in the first place, I do not think the Senator is suggesting that by the terms of the bargaining agreement, it is compulsory that United States Steel shall make such reports. It may be compulsory in some cases, but it is not in every case compulsory that companies make a detailed report to their employees of the investment portfolio of their pension fund. In the second place, that being so, I personally feel the employees are entitled to that information. An additional argument is that if United States Steel does make the information available, what possible objection could it have to making the report available to the United States Government?

Mr. ALLOTT. Because it would expose detailed management of its funds and its portfolio to persons who have no interest in it.

Mr. KENNEDY. The Senator and I disagree as to a company's obligation to reveal the details of the funds to all employees who might be depending on those funds either for pension or welfare. The Senator from Colorado does not think employees should be so informed. I think they should be so informed, and I do not consider the report to which the Senator has referred adequate.

Mr. ALLOTT. I am not particularly concerned with whether the Senator considers this particular report adequate, but his own statement yesterday raised a question and led to the implication that the workers were going along in a completely uninformed fashion. That is not true. This particular report happens to be one that was in my files. I think in my office I have others from other companies. It is not true that employees have no idea as to how the funds are managed.

Let me point out to my good friend a question he has never considered. In this whole area the very persons who are screaming to get their hands and their fingers upon information about the funds are those who have more information about what is paid out of those funds, and what they are paid for, and have as much information as the companies themselves as to costs.

Before the Senator from Massachusetts was chairman of the subcommittee, the union people who testified, and who, I might say, at first were very cool about our proposals and investigation, admitted that they had the information available to them. They admitted in the hearings that they have very comprehensive, capable staffs. They know, within a very small fraction, what the various funds and plans cost them.

I say this with all respect to the chairman of my subcommittee. If we were to assume, and if it were a fact, that we were speaking of laboring men or unions as they were 30 years ago, I think the supposition of the chairman would be exactly right. I think employees would be dealing in and from an unfair position with the one who was controlling or managing the funds. But that is not so. As the chairman knows, persons who represented the various unions and who testified before the committee were as well equipped with long, comprehensive items of research, and long, documentary exhibits as were the representatives from

management who came into the committee.

Mr. KENNEDY. To get the issue clearly before the Senate, I feel that the report to which the Senator referred, which is put out at the discretion and judgment of the United States Steel Co., and which does not reveal any more than the company chooses to reveal, is not an adequate report on the pension fund. Secondly, if the Senator feels the information is being given to employees satisfactorily, what possible objection could there be to having the information registered with the United States Government?

Mr. ALLOTT. I am not going to have the Senator put in my mouth words that are different from the language I used, and different from words I want to have put in my mouth.

Mr. KENNEDY. I do not want to do that.

Mr. ALLOTT. I did not say all were getting this information, but I do say a great portion of them are. The implication raised upon the floor of the Senate yesterday that the employees are not getting the information simply does not jibe with the facts as the committee found them. Many of these companies do give reports of a similar nature.

Let me say that this is more complete than the report one picks up from a bank, such as the bank with which the Senator from Massachusetts probably does business.

I will say further that I believe there is an area in this country in which people have a right to bargain and contract for themselves. The United States Steel workers said that very plainly to our committee when they said, "We have bargained for a level-of-benefits unilaterally administered plan, and we would be just as pleased if you left us alone."

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

Mr. ALLOTT. I yield.

Mr. KENNEDY. Any time I do not like the way the bank is handling my money, or any time I do not think the information is full and complete, I can transfer my account. However, when a worker, who works in a factory and who is dependent for his retirement on the soundness of the retirement program, is placed in such a position, it is a denial to him of the necessary information, though he cannot shift his employment from one company to another at will.

I think, in view of that very unusual nature of the pension dependency upon the part of these workers, the information should be filed year by year, of a type which is comparable to what the United States Steel Corporation files, but in more detail. If United States Steel is ready to give out to its employees such information—and the Senator defends that—I do not see what objction the Senator has to the United States Government having the information, also, and making the submittal of the information compulsory rather than discretionary.

Mr. ALLOTT. I do not see any reason why some employee should not have the right to go to another company, exactly as the Senator has a right to go to another bank.

Here is an example of $762,251 paid out as refunds to withdrawing employees.

Mr. KENNEDY. But the Senator knows that the pension plans very rarely deal adequately with an employee who may have worked for 25 or 30 years. Usually, if he is 59 or 60 years of age, he has to wait until age 65, and he cannot move his employment at will, as I could move my bank deposit.

Mr. ALLOTT. That is another fallacy drawn from the hearings. It simply is not the fact. These people are protected in almost every case.

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

Mr. ALLOTT. I shall be happy to yield to the Senator from Arizona in just a moment.

I have had my attention directed to the law, a copy of which I have obtained. If the agreement is collectively bargained, along with other information and under the other items of collective bargaining they can require an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such agreement.

I might say, if the Senator will bear with me just a moment, with all respect and deference to the chairman of the subcommittee, that I believe if we are to say in the United States Senate what type of plans these people can or cannot have, we are usurping a prerogative and a function with which we have no right to deal. That is one of the main objections I have. People still have a right to bargain for themselves.

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

Mr. ALLOTT. And in bargaining for themselves, the people have a right to say who shall manage the fund and who shall contribute to it.

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

Mr. ALLOTT. I yield.

Mr. KENNEDY. I completely agree with the Senator. The only point as to which I disagree with the Senator is that I think they should disclose the details of the plans, whether collectively bargained or not, to the Federal Government. The plans should be registered. We would not prohibit the employers from entering into any kind of relationship with the employees on a collective bargaining basis. All we ask is that the information be registered with the Federal Government, and disclosed.

Mr. ALLOTT. Also, in bargaining, the people have a right to write into the agreement what methods of disclosure shall be used.

Mr. KENNEDY. I will say to the Senator the point is this: Does the Senator feel this matter is to be kept a secret? If the pension plans are a subject of collective bargaining, does the Senator feel that the union should be unable, because of the bargaining strength of the employer, to have the information disclosed to the employees, as suggested under the bill? Is it not in the national interest that the information should at least be put down for the Federal Government, so that all employees can see it?

Mr. ALLOTT. The answer to that, I will say to my friend, lies in this statement: If I should ask the chairman of the subcommittee how much money he made last year, he would tell me—I believe properly—that it was none of my business.

Mr. KENNEDY. The Senator is correct.

Mr. ALLOTT. That is exactly true. By the same token, we have not yet reached the place in this country where the management and operation of private companies, which are owned by stockholders, have become the property of everyone in the United States—and I hope to God that we never see the day.

Mr. KENNEDY. The Senator is talking about apples and bananas. We are not talking about what my personal compensation may be.

Mr. ALLOTT. It is the same principle, exactly.

Mr. KENNEDY. No. If I had some employees and I promised them pensions at the age of 65, in return for which they gave their services, so that the pension was one form of the compensation, as a definite benefit, it seems to me the employees would have every right to know what funds I had in the pension plan, and what were my capabilities, so far as meeting any obligation was concerned, when they reached 65 years of age. I am not talking about personal income; I am talking about pensions.

Mr. ALLOTT. Let us not get off the track. If 10 people own a corporation, or if 100 people own a corporation, and I am not one of those owners, I have no more right to information about that corporation than I have a right to information about the income of the Senator from Massachusetts or the Senator has to information about my income. That is the principle which is involved, and it involves a very, very deep principle that enactment of the bill into law would violate. The violating of that principle would turn the whole course of business in this country.

Mr. KENNEDY. May I ask the Senator to state what the principle is?

Mr. ALLOTT. The principle is that it violates the right to contract.

Mr. KENNEDY. What violates the right to contract? Is it the disclosure?

Mr. ALLOTT. No, it is the particular bill under consideration.

Mr. KENNEDY. Is it the necessity for disclosing the details of a pension or a welfare plan to which the Senator refers?

Mr. ALLOTT. The bill calls for the violation of the right to contract, not only as to how the fund will be managed, but as to what disclosure, if any, shall be made.

Mr. KENNEDY. No. We do not, by the provisions of the bill, interfere with the right to bargain.

Mr. ALLOTT. As a matter of fact, let me point out to the Senator that the trouble with disclosure, as our committee found, does not lie in the fact

that employees have not been able to find out how the business was run.

This is a thing which was promoted by the staff. It is fallacious in the extreme. There simply is not anything in the hearings to justify it, except the bald statements of the people who want primarily to accomplish another purpose with disclosure.

The real purpose of disclosure as it was started out in the discussions in the subcommittee under the direction of the Senator from Illinois [Mr. DOUGLAS], before the present chairman was a member of the particular subcommittee, was that disclosure was meant to be generally among the employer, the union, the employees, the insurance company, and the trustees. In that context the situation which occurred, for example, with reference to the distillery workers, and the situation which occurred with reference to the laundry workers, could not have occurred.

That is how the term "disclosure" arose in the committee, and that is how it was used for many, many months—in fact, for all of the time hearings were conducted by the Senator from Illinois [Mr. DOUGLAS] for whom I have the highest respect, even though I disagree with him, exactly as I have the highest respect for the Senator from Massachusetts. That is how the term was used. It was only in the latter part of the hearings held by the Senator from Illinois [Mr. DOUGLAS]—in fact, after the conclusion of those hearings—that disclosure went to the point of taking on a meaning of simply telling the employees what should happen. Before that time disclosure meant that all the five possible parties would tell each other what was going on, and in such context the things I am going to talk about later with respect to the laundry workers could not have happened.

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

Mr. ALLOTT. I am happy to yield.

Mr. GOLDWATER. I should like to invite the attention of the Senator from Massachusetts, the chairman of the subcommittee, to my few remarks relative to his.

First of all, Mr. President, we are losing sight of the fact that the bill under consideration, as it is now written, will include in its coverage about 90 percent of the pension plans now in effect, which are now adequately—in fact, more than adequately—reported to the Internal Revenue Service.

I may say to the distinguished chairman of our subcommittee that to qualify for one of these tax exempt funds requires about three years of work to satisfy the Internal Revenue Service that the fund is properly organized, and that there is a determination to see that it will be conducted according to law.

Once such a letter of authority has been issued to the company or the corporation, the company or corporation is required annually to fill out very extensive forms. One is called 990-P, and another is 990-T. They divulge the entire operation of the business. As a business man, I feel that they are just as holy as an income tax return. Already reports are filed with the Federal Government with respect to 90 percent of the plans in operation.

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

Mr. GOLDWATER. I shall be glad to yield in just a moment. If the Senator will read the regulations relating to employee pension, annuity, profit sharing, and stock bonus plans, he will find that a disclosure to the employee is called for. These funds must be reported to the employee. The Senator will find, if he reads the regulations, that the committees which operate these funds in the corporations are employee-dominated. In my particular firm there are five members on the committee, three from the employees and two from management. No investment can be made without the approval of the committee. No withdrawal can be made without the approval of the committee. No person can be denied his or her share in the fund unless it be done by the committee.

After having had experience with one of these funds for almost 14 years, I feel that there is nothing so well protected by the Government as the funds which come under the employee pension, annuity, profit sharing, and stock bonus plan regulations of the Internal Revenue Service.

Before I take my seat, I ask the Senator from Colorado if he would object to my inserting in the RECORD at the conclusion of his remarks the regulations of the Treasury relating to employee pension, annuity, profit sharing, and stock bonus plans.

Mr. ALLOTT. I shall be happy to have the Senator do so. The Senator's remarks have been most helpful.

Mr. GOLDWATER. Mr. President, I ask unanimous consent to have the document which I have described printed in the RECORD at the conclusion of the remarks of the Senator from Colorado.

The PRESIDING OFFICER. Without objection, the document may be printed in the RECORD, as requested.

(See exhibit No. 1.)

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

Mr. ALLOTT. I yield.

Mr. KENNEDY. The Senator from Arizona directed his remarks to me on the question as to whether or not the fact that the Internal Revenue Service permitted a tax deduction for such a plan was a sufficient guaranty and protection of the plan. As the Senator knows, this subject was quite fully discussed in a letter which is found on page 494 of the hearings. The Internal Revenue Service made it very clear that its responsibility did not extend to providng sufficient protection to the beneficiary. I read from page 494, near the bottom of the page:

> While this undoubtedly has a salutary effect on the operation of plans, it does not, however, afford complete protection to the beneficiaries.

Mr. GOLDWATER. If the Senator can draft a law which some lawyer or crooked individual cannot circumvent, I will take my hat off to him.

Mr. KENNEDY. As the Senator knows, information given to the Internal Revenue Service is confidential. Therefore, the Internal Revenue Service is not equipped to disclose to beneficiaries the details of the plans. Therefore, there would be no disclosure at all. It would be quite the reverse.

Mr. GOLDWATER. The Senator is missing one of the points of our objection. These funds are all required to be reported to an agency of the Federal Government. Those who operate these plans and those who are anticipating inaugurating plans do not want anything more to do with the Federal Government. That is just one more place to file a report. Not a single instance of mishandling of such funds has ever come to my attention. There are 40,000 or 41,000 such plans in existence.

I shall discuss this subject at greater length when I obtain the floor in due time. There is no loophole that I know of through which one could crawl to take advantage of these funds. Contrary to what the Internal Revenue Service may say to the effect that present laws and regulations may not completely protect, they do protect.

Mr. KENNEDY. I invite the attention of the Senator to the following language on page 495 of the hearings:

> Moreover, the Service obtains no information from these forms which would reveal excessive premiums, commissions, or fees paid to insurance companies, brokers, agents, or trustees, or which would reveal improper transactions between the trustees and officials of the employer or of a union or persons associated with them or the trustees.

I think it is very clear, if anyone will read the letter from the Internal Revenue Service, that it does not feel competent to exercise powers which would give sufficient protection to the beneficiaries.

Mr. GOLDWATER. Mr. President, the Senator misses another point. The States also regulate these funds. The trust companies which handle such funds are State-regulated bodies. The trust company is responsible to the State regulation, and it reports to the State.

Mr. BUSH. Mr. President, will the Senator yield to me at that point?

Mr. ALLOTT. I yield.

Mr. BUSH. That is exactly the question that has been going through my mind. I hope that during the course of the debate on the bill and the amendments, that question will be clarified.

We have State examiners for insurance companies, which maintain large accumulations of funds which are held in a fiduciary capacity by the insurance company for the benefit of the policyholders.

We have State supervision of savings banks and of commercial banks, all along the line. At the Federal level, in the case of Federal savings and loan associations, we have supervision by the Home Loan Bank Board and its agents.

Virtually every important accumulation of capital which is contributed to by individuals, or for the benefit of individuals—such as savings, whether they be in the form of insurance savings, bank savings, or any other type—enjoys the protection of some governmental inspection.

On the whole, I believe that the results of those systems in the various States have been very satisfactory. We do not often hear of insurance companies being mulcted. Very seldom do we read of such an instance. The same is true of savings banks. Occasionally a dishonest employee shows up, but he is fired and goes to jail, and the bond covers the loss to the institution. So those whose funds are in accounts in insurance companies and in savings banks are protected almost all the way along the line by the State government.

I hope the result of this debate will be some expression by the Senate, or at least by the committee, as to what we ought to do about real supervision of these pension and welfare funds, because I cannot see any difference between the purposes of a pension fund and the purposes of insurance such as a group life insurance plan.

Mr. ALLOTT. Mr. President, the Senator has brought up a point on which he is exactly correct. He has stated one of the reasons why I am opposed to the bill. It does not regulate. I am not sure that we have the power—certainly we do not have the information—to regulate these funds, other than at the State level. And yet the proponents imply that the abuses will be eliminated.

Mr. BUSH. As I say, I am not too familiar with the issue. But does not the Senator agree with me that, with respect to pension funds above a certain size, and which involve the savings of many thousands of people who are working for a living, some form of protection to the beneficiaries should be offered by the Government at one level or another, just as it is offered to the holders of life-insurance policies and the holders of savings certificates and savings bank accounts.

Mr. ALLOTT. I agree with the Senator on the growth of two things. One of them is that six States have passed laws in this area. The other is that the State insurance departments of every State in the Nation have shown a greatly increased interest in policing all of the insurance funds and in the adoption of an insurance code. All of these things make me believe that we are well on the way, perhaps, toward solving these problems. We have not solved them yet. One thing is certain, and that is, that the mamby-pamby piece of proposed legislation which we have before us, on which everyone is going to spend a great deal of money, which will either come out of the employer's pockets, in the case of the level-of-benefit funds, or out of the workers' pockets, in the other funds, which will involve probably $100 million a year, and perhaps more, and where merely a report will be filed, and which involves the sort of thing that I have been talking about for 3 hours, will not cure the situation; and anyone who believes it will is naive, indeed.

How anyone can possibly expect, when we are dealing with people like Saperstein or Nadeo or James, and the rest of them, that the mere filing of a report with the Secretary of Labor is going to stop that bunch of thieves and plunderers, I do not know. I do not believe it will.

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

Mr. ALLOTT. I yield.

Mr. BUSH. Did I understand the Senator to say that six States have already passed legislation which will require pension funds within those States to come under the supervision of the State insurance examiners?

Mr. ALLOTT. They regulate not only pension funds, but also welfare and benefit funds.

Mr. BUSH. They do?

Mr. ALLOTT. They do.

Mr. BUSH. In six States?

Mr. ALLOTT. That is correct.

Mr. BUSH. Are the names of those six States in the RECORD?

Mr. ALLOTT. I will put them in the RECORD later. New York is one of them.

Mr. BUSH. I presume they are in the record of the hearings.

Mr. ALLOTT. They are in the record of the hearings; yes. I cannot give them offhand.

Mr. BUSH. Of course not.

Mr. ALLOTT. I should like to say that I am a little shocked, as I have been for several months, to find a complete and total lack among some of my colleagues of what I believe to be a respect for the right of privacy. I do not believe that anyone, merely because he is working for someone else, has a right to go into all of that person's personal accounts and all of his personal affairs. I believe that the right of privacy, if it is invaded by the type of legislation we are considering today, will be one of the greatest blows against private enterprise that we have ever seen in this country.

The right of meeting the costs of these level-of-benefit pension and welfare plans carries with it a heavy burden and it carries privileges, among them, the privilege of deciding how to meet those costs without unnecessary interference. When we start breaking that right down, we are breaking down one of the fundamental backbones of America. One of the fallacies into which everyone seems to fall in talking about this subject is the assumption that we are talking merely about 6 companies in the United States, or perhaps 7: General Motors, Chrysler, General Electric, United States Steel, and all the other big steel companies; and that that is the end. It is not. Thousands of small businesses with 25, 250, 500 employees, are involved, and they will be hit harder than the big companies. The big companies will be able to get along all right. It is the small companies that will be hurt. Most of all, in driving everyone to the cost-fixed method, as the pending bill will do, if enacted, we will perpetrate upon the workers of America a heavy burden and one of the worst impositions that we can put on them.

Mr. GOLDWATER. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. The Senators who wish to confer will please retire to the cloakroom.

Mr. ALLOTT. Mr. President, turning now to specific recommendations, the House subcommittee recommended further investigation prior to defining corrective action. The Senate subcommittee recommended further investigation and that consideration be given to "full disclosure" of all employee welfare and pension plans. I particularly wish to call attention again to the fact that the meaning of the word "disclosure" has been changed considerably in the last year. This could be done, they stated, by requiring registration and filing or reports on all plans, available to interested persons, with a Federal agency.

The AFL-CIO recommended that there be "full disclosure" of all plans to the Department of Labor.

The fact is that all investigations to date have involved plans or funds set up in one particular way. They have all involved plans or funds which had been collectively bargained on a cents-per-hour or other fixed-cost basis. A survey of the investigations disclosed no plan in which bargaining had been on a "level of benefits" basis. That means that in those plans where abuse was found, employers had agreed to pay a fixed sum per hour or so much per unit to finance a plan or fund. In no case where abuse had been found was there indication that the employer had agreed to provide a specific benefit. This fact may be the key to the problem of abuse in the employee welfare fund area.

I may say that the proponents of the bill find themselves on the horns of a very difficult dilemma, because, on the one hand, they are trying to contend that the committee did not go into the level of benefits plans.

ORDER FOR ADJOURNMENT TO 10:30 A. M. TOMORROW, AND LIKELIHOOD OF A SATURDAY SESSION

Mr. JOHNSON of Texas. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. ALLOTT. I yield.

Mr. JOHNSON of Texas. Mr. President, I ask unanimous consent that when the Senate concludes its business today it stand adjourned until 10:30 tomorrow morning.

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

Mr. JOHNSON of Texas. I should like to announce for the benefit of all Senators that we hope to continue the consideration of the pending bill until late in the evening today and tomorrow, and to have a Saturday session if we have not concluded action on the amendments. I make that announcement so that Senators may make their plans accordingly.

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

Mr. JOHNSON of Texas. I yield.

Mr. HOLLAND. Did I understand the Senator to say that there would not be a Saturday session?

Mr. JOHNSON of Texas. I repeated the announcement I made yesterday,

that we would have a Saturday session unless we shall have concluded action on the pending bill.

Mr. HOLLAND. Was that announcement repeated in the last statement, which I could not hear?

Mr. JOHNSON of Texas. The Senator is correct.

Mr. HOLLAND. I thank the Senator.

EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

The Senate resumed the consideration of the bill (S. 2888) to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.

Mr. ALLOTT. Mr. President, I should like to insert in the RECORD at this point the names of the States which have passed legislation in the field covered by the pending bill. They are Massachusetts, Connecticut, New York, California, Washington, and Wisconsin. I should like particularly to call attention to the fact that every one of those States, except Massachusetts, exempts level of benefit plans.

As I started to say before, my friends who propose the pending bill find themselves on the horns of a very difficult dilemma. I do not know how they are going to get off without getting pricked by one or the other of the horns of the dilemma. On the one hand they contend—I do not believe it is true, but they contend it—that the committee never investigated any so-called level-of-benefits plans. I suppose we must take the word of the majority of the committee that they did not. At least that is what the majority report says.

However, what they are asking us to do on the floor of the Senate, and with reference to the proposed legislation, is that we pass legislation which affects 90 percent of the plans in this country with roughly a contribution of $6 billion each year, and with a total accumulated investment in the funds of at least $25 billion. They are asking the Senate to pass a bill which will primarily affect the funds which they say they have not investigated. If they have not investigated them, let us get down to facts and talk about the things we want to talk about. Let us talk about the funds which we have investigated.

I ask my colleagues—and I ask specifically the members of my committee—what is wrong with approaching the question upon the basis which has been suggested by my exemption? If we find that the area which they say they are going to cure in the fixed-cost plans is benefited, and abuses are stopped, and if we find in the course of 2 years from the advisory council that regulation of the level-of-benefit plans is needed, I say let us pass another law; and we can.

But every Senator within the sound of my voice knows that if we pass the bill, it will never be retracted at all. It will never be cut back. The burden of administration will fall heavier and heavier upon the Government of the United States, upon private employers, and, worst of all, upon the workers for whose benefit the funds are established.

PENSION WELFARE FUND ABUSES UNCOVERED BY SENATE COMMITTEE

My next point concerns the pension and welfare fund abuses uncovered by the Senate committee. In speaking of the committees, I refer to the Ives committee of the 83d Congress, the Douglas committee of the 84th Congress, and the Kennedy committee of the 85th Congress.

As a result of the situation already outlined and the Presidential message suggesting further Congressional inquiry, a Senate subcommittee in May 1954, pursuant to Senate Resolution 225, as amended, 83d Congress, 2d session, undertook studies and investigations under the chairmanship of the Senator from New York [Mr. IVES]. Although it made studies of the overall characteristics and problems in private employee benefit plans this subcommittee confined its field investigations to collectively bargained, jointly administered welfare funds, and uncovered abuses, mismanagement, and waste in the administration of a number of plans of this type. Its first report was submitted on January 10, 1955. This was prior to the time I became a member of the committee. The committee found that there was a need for corrective legislation to insure more adequate protection of employee beneficiary rights and interests and recommended that consideration be given to a Federal disclosure act embracing all types of plans. The committee also recommended a continuation and extension of the investigation.

By Senate Resolution 40, adopted February 5, 1955, the study and investigation begun in May 1954 was continued under the chairmanship of the Senator from Illinois [Mr. DOUGLAS]. In hearings held in March and April 1955, representatives of labor, management, insurance, and banking participated in roundtable discussions, reviewed the studies to that date, and outlined the problems involved and the areas yet to be covered.

I must pay my tribute to the Senator from New York [Mr. IVES] for what I believe was a very great contribution in this field.

Hearings were held with respect to gross abuses and mismanagement found in two plans—the Laundry Workers' International Union and the Painters, Cleaners, and Caulkers' Union, Local No. 52, Chicago, Ill.

A second interim report was issued July 20, 1955. It concerned itself primarily with reporting on the LWIU welfare fund case, characterized by embezzlement, exorbitant commissions, improper service fees, and other irregular insurance practices and collusion and complicity among insurance, union, and employer representatives; and the painters, cleaners, and caulkers fund case characterized by large diversions and an almost complete absence—in fact, I think, a complete absence—of financial accounting.

To give the clearest possible indication of the kind of stench we are talking about, I shall discuss in some detail one plan investigated by our committee, that of the Laundry Workers International Union, and what we discovered about it, because it best illustrates the varying kinds of wrongdoing we found in union welfare and pension funds.

The International Laundry Workers Union fund was organized in 1949. Mr. Samuel Byers was the president of the LWIU and president of the fund, and Mr. Matthew J. Dooley, trustee for the employers, was appointed secretary-treasurer. Mr. Dooley testified that 78 insurance companies were solicited for bids covering the welfare plan. However, our committee found and our report shows that there was no bidding and that prior to February of 1950, just after the formation of the fund, for some unaccountable and as yet unexplained reason, the trustees gave this business to Louis B. Saperstein, operating under the name of Harlew agencies, the "Har" coming from Harry, one of the partners, and the "lew" coming from Louis of Louis B. Saperstein.

Why this business was given to him and what forces he could exert to get the business, has never been satisfactorily explained.

The fact is that following the hearings before our committee, he was shot five times, but managed to live. It is a reasonably consistent supposition and belief of my own, from the facts which were adduced at the hearing, that the whole operation of the fund was closely connected with organized gangsterism and hoodlumism at the highest level.

Numerous indictments have stemmed from his activities in this and in a similar fund within the Distillery Workers of America.

Nevertheless, without ascertaining from other companies what insurance could be purchased and at what cost, Saperstein was made the agent of the LWIU fund, and according to the officials of Security Mutual, an insurance company, he "controlled the business." This is confirmed by the minutes of the welfare fund board itself.

Saperstein then took the business to the Security Mutual and made a deal with them whereby he received a 10-percent commission and a service fee of approximately one-half of 1 percent, which was a recurring commission; that is to say, he received it every year.

As a result, from April 1950 to September 1953, Security Mutual paid Saperstein $262,507.59 on premiums, or roughly $2½ million in premiums.

It is my sincere hope that in discussing the matter I shall not do harm to anyone. I must say, as I shall show, that these occurrences were in the early days of the development of group insurance. It was before the time when we had grown generally to accept the proposition of the decremental scale of commissions.

Whereas an insurance broker might receive in his ordinary business a commission of 20 to 25 percent on casualty insurance, the decremental scale on this type of business cuts the commission down to a very low amount. I shall discuss that at a later time. Nevertheless, the decremental commissions, which were reduced in subsequent years, were

not considered when this business was given to Mr. Saperstein.

When the policy was later transferred to California Life, he received premiums of $91,022.88 up to the time when California Life canceled his commission, which contract was on a basis of 8½ percent, plus 5 percent to the welfare fund.

Mr. President, no great stretch of the imagination is required in order to see that when a company is paying roughly $1 million a year in premiums, a commission of 10 percent, plus an override, would net a man a fairly reasonable living salary.

In addition to this, the social-security department of the LWIU deducted 5 percent from the premiums, before they were forwarded to Saperstein for welfare deputies appointed by the officers of the fund. Of course the officers of the fund were the officers of the union.

The welfare deputies were, in fact, union officials or agents who received this kickback for alleged services to the union members. A very extended examination of Mr. Naddeo, of local No. 10, disclosed that he had no idea, nor did anyone else, how much time was devoted to these services. The only reasonable conclusion that can be drawn from the testimony is that it was additional compensation paid to union agents, for purposes primarily other than any services to the fund. Despite a long attempt to obtain from Mr. Naddeo information about what services the payments were for, the committee was unable to obtain such information.

For example, the agreement of these welfare deputies provides that the money will be paid to them, and that they will perform services, such as helping union members make out claims. That was supposed to amount to 5 percent of the total costs. But the joker was that the agreement provided that any of the money left over would belong to the welfare deputy himself.

Now, let us take a look to see how some of the welfare deputies fared under this plan.

Walter East received $4,653.18 between July 1, 1951 and September 30, 1954. That was in addition to his salary as a union organizer.

Charles Naddeo, to whom I have just referred, and who apparently did not know where he had been during the last 2 years, and did not know where he was going, during the period from November 10, 1952 to September 30, 1954—a period less than 2 years—received $17,486.49. That was in addition to his salary as a union official.

Sidney Brennan, of St. Paul, whose connections are not with the LWIU but are with the Teamsters Union, received $11,831.47. The committee never did find out what services he was supposed to have performed.

The same man, Brennan, in a hearing before a committee of the House of Representatives, refused to answer any questions on these checks and sums received by him. His refusal was based upon the constitutional ground of self-incrimination.

Eugene C. James, of whom I have just spoken of local No. 46, Chicago received between October 1, 1950 and October 1, 1954, $73,556.66; and that does not include the other amounts he received, to which I shall refer later on.

These are just a few of the misuses, by these particular welfare deputies, of these trust funds. But even these misuses amount to 5 percent of the total premiums.

Saperstein, the agent, received as commissions from the distillers, in the 5-year period from 1949 to 1954, $782,024, and also $272,000 from the Laundry Workers' Union.

In discussing this matter, it is perhaps well to remember that the ordinary method of computing initial premiums in such matters as this one is based on the so-called standard decremental scale. The scale for first-year premiums is as follows:

	Percent
First $1,000	20
Next $4,000	20
Next $15,000	15
Next $10,000	12½
Next $10,000	10
Next $20,000	5
Next $50,000	2½
Next $50,000	1
Next $50,000	½
Next $500,000	¼
Above $1 million	7/10

When we compare the figures for the standard decremental scale with the level commission of 10 percent, plus one-half of 1 percent, that Saperstein was receiving on a $1 million item, we see that he was receiving a fairly good commission.

The figures for renewals, of course, are much less, for it was understood that the initial selling would demand and receive the highest rate of commission. In fact, the standard decremental scale provides commissions much lower than the ones I have just stated.

For comparative purposes, the actual commission paid to Saperstein on $1 million worth of business was $150,200. On the decremental scale, the commission would have been $9,750. On $2 million, the actual commissions were $210,400. On the decremental scale, they would have been $10,750. These were on the first year's business, not on a renewal. Note the difference, Mr. President, between $10,750 and $210,400.

However, this is just the beginning of the story.

On July 17, 1951, Eugene C. James, secretary-treasurer of the LWIU, wrote to the Security Mutual that the union would have to be reimbursed for all its time and travel, and for this purpose asked 10 percent of the premiums.

The peculiar thing about the letter was that, although Eugene C. James claimed to have no tieups with any other persons, the wording of the letter is absolutely identical with the wording of a letter which the insurance company received from the distillery workers at about the same time.

On October 10, 1951, the Security Mutual Insurance Co. started paying the international union $2,500 a month until October 1, 1954, when the California Life Insurance Co. entered the picture.

During this period, Security Mutual sent $85,000 to Eugene C. James for LWIU. One of these checks was endorsed by, and went to, the Illinois Harness Horsemen's Association; and perhaps it is sufficient to say that Eugene C. James has refused to answer any and all questions relative to this account.

In all that fantastic operation, upon which we can hit only the highest spots, during the time available, there were innumerable cases of breaches of trust and looting.

For example, Mr. Saperstein received from the trustees, for the purchase of insurance, $3,268,000. He transmitted to the insurance company $2,356,172.14; which means that he retained for himself, in commissions and for other purposes—in a period of approximately 2½ years, and as a result of thievery in connection with the fund—$912,390.95; and that does not include the $85,000 the insurance company paid back to Eugene James. Neither does it include the 5 percent which the trustees of the fund took out, to pay to their welfare deputies.

Mr. President, we should keep in mind that this fund—the laundry workers' fund—was for the purpose of protecting those who labor in one of the lowest paid fields of work in the United States. We have scarcely come to the beginning of this story. Keep in mind, Senators, that the laundry workers' fund was to protect one of the lowest paid group of workers in the United States. This is not even the beginning of the subject.

Anyone can see that even the excessive commissions allotted to him would not produce any such sum as $912,000, and it is interesting to note how this was accomplished, because in his methods lie the real significance of the necessity for regulation in this field, and also lie the real significance of how completely ineffectual the pending bill is.

There were 3 methods employed by him for looting these funds—that is, 3 methods in addition to the excessive commissions which he charged and received. I am not talking about what other persons did, but only about what he did.

The first was not reporting a local to the insurance company. For example, local No. 10 of Philadelphia entered the plan and started paying on December 24, 1952. As was the case with all the locals, their checks were paid by the employers to Saperstein. The trustees paid them to Saperstein. Saperstein paid them to the insurance company.

The first check received by Security Mutual from Mr. Saperstein was on July 9, 1953, or 6 to 7 months after local No. 10 entered the fund and had been paying on it. In other words, what Mr. Saperstein did during the first 6 months, and before the employees really had a need to file claims for benefits, was simply appropriate, not just his commissions, but the whole premiums which were forwarded to him. He had a similar operation with respect to the distilleries.

The second method was in reducing the number of employees reporting. His secretary testified that she was told to deduct 20 percent as an unemployment insurance fund, which I shall refer to later, but actually the reduction of em-

ployees was about one-third. For example:

On October 28, 1953, a check was sent on local No. 10 covering 4,820 employees, and Saperstein remitted to the insurance company for only 3,020 employees. In other words, he reduced the number of employees for which he had been paid by approximately 1,800 members.

A third method was retention of all late payments. It was only natural that some employers should from time to time be delinquent in their accounts. Therefore, a payment might come in March, April, or May which covered the month of January. As these were transmitted from the trustees of the fund to Saperstein, he simply omitted to forward them to the insurance company.

The amounts that he deducted by these methods are included in the $912,390 unaccounted for by Saperstein.

The testimony of Saperstein's secretary showed that they sent 20 percent of the premiums to Eugene C. James for the union.

That was the third little tap of the funds that Eugene C. James got, but the records of LWIU do not disclose that the union ever received this money.

There are numerous other practices open to serious question as far as good business practice is concerned. For example:

In one instance, the New Linen Supply Co. of San Diego was financed to the tune of $32,000 out of welfare funds. That was in competition with regular businessmen who were operating there and who had employees who were members of the union.

In another instance, a loan of $26,000 was made to one local union, Local No. 52 of Los Angeles. Charles Goldstein, one of the trustees, is quoted in the minutes as saying that the funds should be invested in "risk capital."

It was disclosed that his son, Ira Goldstein, an agent for California Life, was using an office rented by California Life from local No. 52 in Los Angeles at $175 per month.

It also appears that the same son, Ira Goldstein, was the agent of Harlew Agency, which was the trade name under which Saperstein operated. Thus, it turns out, in effect, that Saperstein also had an agent at Los Angeles who received his rent free from a local to whom the trustees made a loan of $26,000.

Another phase which should be commented on is that, despite the committee's efforts, it was never able, and has not yet been able, to get the president of the fund, Samuel J. Byers, before it for testimony. Nor was it ever able to get Mr. Haines B. Wickes before it for testimony.

I feel I must discuss, even though the man is deceased, the activities of Mr. Haines B. Wickes, because they are illustrative of the perfidy, the disloyalty, the dishonesty, and the lack of integrity which have characterized the operation of so many of the fixed-cost funds. Mr. Wickes was the vice president of Security Mutual Insurance Co., in charge of group insurance. It was he who made the original deal with Saperstein for excessive commissions. Perhaps something might be said for some of the excessive commissions, if that were the only instance of this kind of dealing, because at that stage in the growth of health and welfare funds, no one was too certain exactly what a fair commission was. I believe anyone would determine that 10 percent, plus 0.5 of 1 percent recurring, was a little excessive.

In May 1954, while he was still vice president of Mutual Security, he met in Chicago with the trustees of the welfare fund, and they there decided to move the insurance of the Laundry Workers from Security Mutual to the California Life. They also decided to acquire the ownership of California Life. California Life was a very small company with anything but a distinguished earning record. How small can be indicated by the fact that its president received $6,000 a year salary.

Individual union members, such as Charles Maddeo, among others, put up the money for its purchase and through various transactions the stock finally landed in the hands of the welfare fund and was owned by the fund.

Mr. Wickes, therefore, was in the position of being employed by Security Mutual while he met with a group of people to take business away from his firm and place it with another, so that the welfare fund ended up by purchasing, in effect, an insignificant name of an insurance company, owning an insurance company, and reinsuring all its fund with the company which it owned.

As a result, keeping in mind that Mr. Wickes met with the trustees while he was still vice president and an employee of Security Mutual, and made a deal to put the fund over into California Life, 3 months later, in the latter part of the summer, offering an entirely different excuse, Mr. Wickes resigned from Security Mutual and then proceeded to go with California Life with whom he now is an official and actuary.

Most of the ills which beset the LWIU would have been impossible if the various groups had received disclosure from the other groups; i. e., employer to trustee, to insurance company, to employees. It is hard to imagine, for example, how Saperstein could have escaped with his embezzlement if disclosure had been required between the insurance company and the employers or the employees. The juggling which occurred in the three cases as suggested would not have been possible if adequate information had been disclosed to the interested parties.

This suggests, and the committee found this to be true, that in too many places, the employer representatives had, for the most part, abandoned their responsibilities under the law.

This, in brief, is the story of the LWIU, and although I have greatly condensed it, it serves as a very outstanding case of nearly all the ills which may afflict a fund.

I ask again: How is this watered-down version of legislation going to stop the people like Saperstein, James, Wickes, and Byers?

I cannot help adding a postscript to this. About a year ago, when the laundry workers met in their annual convention, because of pressure, and I say commendable pressure, from the AFL-CIO, Mr. Byers was being forced out as president of the union and president of the welfare fund. I am sorry that I cannot tell the Members of the Senate what the final outcome of the action taken at that convention was, but I shall tell them about the result. After all of the things which I have described for the last half hour occurred in respect to the laundry workers' fund, Mr. Byers was elected president emeritus of the Laundry Workers International Union at an annual salary of $18,000. Whether that stuck or not, I am not in a position to tell, but I know that the man who was primarily responsible, as president of the union and president of the welfare fund, permitted all these things to happen. He connived to take business away from Security Mutual. His reward was being honorary president of his union for his life at an annual salary of $18,000.

Another very enlightening case investigated by the special Senate committee involved AFL Auto Workers, Local 286, in Chicago, and the president of the 3,500-member local, Angelo Inciso.

Inciso had been subpenaed to testify early in the hearings, but refused to come unless he was provided with bodyguards. The subcommittee cited him for contempt, or attempted to do so. When Inciso did come in later in the week, he was accompanied by two bodyguards secured from a private detective agency.

I might say that the city of Chicago had afforded him the same privilege, at public expense, for several years.

Witnesses before the subcommittee testified that Mr. Inciso's local union received $9.50 a month for each employee under contract, $3 for union dues, and $6.50 for insurance. Insurance benefits had been negotiated but were given to the employees in the form of a wage increase. However, the employer deducted this amount from the employees' pay and sent it to the union for the payment of insurance premiums. One employer observed that this was a method used by Inciso to circumvent the Taft-Hartley Act.

I underscore this particularly in view of the long discussion I had earlier in the afternoon with respect to the weaknesses of the Taft-Hartley Act and the funds which come under that act.

Mr. Inciso had persuaded employers to make out monthly premium checks to the union instead of to the insurance company, as had been the practice for a number of years. This change took place some time after associates of Inciso bought a small insurance company for $40,000 and made Inciso chairman of the board. The union then sought to withdraw the entire business of insurance from the control of the employer.

Senators should keep in mind that this was supposed to be a jointly administered fund under the Taft-Hartley Act.

One employer, when advised by his counsel that it might be illegal for him to send insurance checks to the union instead of the insurance company, said he continued to send the money to the union to maintain labor peace.

Of the $6.50 supposedly for insurance, the union retained $1 plus 4 percent of the $5.50 for administrative costs of the

insurance program. Committee investigators testified that in 1954 the union received $203,842 from employers for insurance and paid out $169,057 in insurance premiums. Added to the $33,885 difference was a dividend of $6,991 from the insurance company. Even with this nearly $40,000 from insurance, the local was $9,000 in debt in 1954. While it was not the function of the subcommittee to look into how unions spent their money, it did so in the case of local 286 because union funds were commingled with insurance funds. The subcommittee secured information on how money was spent from vouchers found in the local union's records and had them corroborated by witnesses.

I might say before I proceed further that Mr. Inciso was the man who had the very expensive traveling accounts and who was able to spend $5,000 in a period of 10 days on a little trip down to Cuba and Puerto Rico.

Another example of the extent to which a "Taft-Hartley fund" could be abused was the operation by Local 52 of the AFL Painters, Cleaners and Caulkers Union, investigated by the Senate committee.

This particular union was headed by a man named Gallagher. Mr. Gallagher, the president of a Chicago bricklayers union, told the committee he could not account for at least $55,000 in cash he drew out of the union's health and welfare fund between May 1952, and July 1953.

"It could have gone for anything." Those are his express words. "It could have gone for anything," Edward Gallagher, president of Local 53, Painters, Cleaners and Caulkers Union, said.

But Mr. Gallagher asserted that, wherever the money went, "it was used for the benefit of the members of our organization and not for myself." Pressed on this point by the subcommittee chairman, the Senator from Illinois [Mr. DOUGLAS], Mr. Gallagher said "none whatsoever" of the money went to him personally.

Testimony developed that the union bought and ordered a 1955 Cadillac—bought in 1955—for Mr. Gallagher and that he makes "no accounting" to the union for expenses on the car. The bookkeeping agent for the welfare fund and two business agents of the local also have cars on similar arrangements, Mr. Gallagher said, including a Chrysler, a Buick and another Cadillac.

The salary of all these men was $125 a week, plus expenses. Mr. Gallagher said he could not estimate "within $1,000" what his expenses were in 1954.

The local union president identified his signature for the subcommittee on checks drawn on a fund in which welfare money and other union money were "commingled." One of these checks, for $400, was paid to a Miami Beach motel, and the other went to a Chicago clothing and fur shop. "I didn't buy anyone any coat that I know of," Mr. Gallagher testified. He added "I haven't anybody to buy a fur for right now."

According to subcommittee staff investigations, local 52 had 2 main accounts, 1 a "nickel" account supported by payments of 5 cents an hour from its 900 members, and the other a welfare fund getting 7½ cents an hour from members. The members do special brickwork and average approximately $3.60 an hour.

A great variety of checks were written on the "nickel" fund, testimony showed, including payments for union banquets, payments to other unions and also actual welfare checks, totaling about $85,000, usually in amounts of $50 or $100. But the staff investigation showed that no welfare checks at all were drawn between October 1950 and November 1954 on the welfare fund, which during that time received $203,000 in deposits.

Mr. President, what happened with respect to Mr. Gallagher's fund and Mr. Inciso's funds with the teamsters' union was that they commingled their funds, and simply did not account for them.

With respect to the tuck pointers, I believe a couple of additional points should be made. In that instance the funds were commingled, and in a period of less than 3 years Mr. Gallagher spent $300,000, in checks of $1,000, $2,000, $3,000, $5,000, and $10,000.

I note the presence in the Chamber of the distinguished chairman of our subcommittee [Mr. DOUGLAS]. I am sure he will agree with me that it was impossible, even by a lengthy examination, to find out where any of the money went.

One of the most tragic situations which occurred was that in which a Mr. Thomas Ryan was treasurer of the fund. I do not seek to point the finger at people who have not had the same educational advantages I have had. Mr. Ryan had a 4th grade education, and yet, with that 4th grade education, he was the treasurer of his union, and treasurer of the fund and had been so for 16 years.

Upon examination and cross-examination he had to admit that there had not been an election in many years, although the bylaws provided that there should be one every 4 years. Although the signatures of two persons were required on the checks, Mr. Ryan would write his name on the checks, and he never saw them afterward. He never saw them when the amounts were filled in. He never saw them when the names of the persons to whom they were drawn were filled in. He did not know whether they went to cash or not. He did not know where they went.

What is more significant, as treasurer he never saw the checks after they were returned to the office. It was his testimony that he had never seen one of them. Furthermore, he could not testify as to a single fact contained in the so-called books of the welfare fund.

A Miss Sielski operated as private secretary to Mr. Gallagher, president of the union, and president of the fund. She apparently made out the checks to whomever he indicated, and in such amounts as he indicated. Nevertheless, Mr. Gallagher had to admit that there was almost $300,000, in the course of a 2-year period, for which there was not as much as the stroke of a pen in his office to account for checks or anything else. That was a pathetic situation.

One of the most pathetic features about it was that the testimony clearly showed that these funds, to which the employers were contributing for the benefit of the tuck pointers of Chicago, involved no written agreement. There was no trust agreement, as provided for by the Taft-Hartley Act. Neither in the office of the union nor of the welfare fund was there a single word in writing—and bear in mind that this fund was wholly administered by Mr. Gallagher—to show when an employee was eligible to receive benefits. So far as I know, the only picture which I or any other member of the committee could draw in our minds was that of a man who faced the possibility of big hospital and medical bills, having to come in and beg for welfare benefits which were rightly his.

It is such abuses as these that I hope will be cured by legislation passed by Congress.

I believe that Senate bill 2888, which has been reported from the committee, is completely unsatisfactory in its present form. I believe that the approach would subject all types of private employee benefit plans to disclosure. It is completely contrary to the weight of the evidence presented to our committee. It would be difficult for the administering agency to detect the evils which disclosure is intended to reveal. It would result in the creation of an unnecessary vast new Federal bureaucracy, the expense of which has been estimated as high as $100 million.

For the sake of the RECORD, let me document how that figure is arrived at.

There are between 100,000 and 500,000 funds in the United States. Secretary Mitchell testified he thought there were 250,000 funds which would come under the law.

I do not believe that anyone who would manage the smallest fund in the United States could possibly comply with the law without spending at least $100 to do so. In the case of a fixed-cost plan, this will come out of the benefits which the employee should get. In the case of a level-of-benefits plan, the employer will pay it. In addition to that, New York State has found that it requires about 1 employee for every 22 plans. I believe the estimates of the Securities and Exchange Commission, which, incidentally, does not wish to administer this law; the estimates of the Revenue Service, which does not want to administer these plans; and the estimates of the Labor Department, which does want to administer it, are far off from what is going to be required as the cost of administering this plan.

I believe that the estimates of the Secretary of Labor ran, perhaps, as high as $2 million. If it will require 1 employee for every 22 plans, and I do not see how the act could do any good unless there were at least that many employees, so that he could go out in the field and get the figures he needs on every phase of these plans. Then, the cost of administering the 250,000 plans is going to run close to $45 million.

The cost alone is not a criterion of what we need, and I would be the first to admit it. However, it does seem completely unreasonable to force employers into these costs and take away benefits from employees, and force the

United States Government into heavy expenses in the support of legislation which clearly will not do the job.

It is clear, I believe, from the discussion which I have had this afternoon, and the abuses of the Gallaghers and Ryans and Jameses, and the others, that we are not going to stop people of that type without legislation which is a little more specific and tougher than what is proposed here.

The bill would deprive management, unions, and labor of the right to contract with respect to placing upon one party or the other the full responsibility and the burden of expense for the management of the fund.

If we should face the situation where this unfortunate bill should become law, the net result will be, over the years, that the employers who are now assuming the responsibility and the expense of maintaining the level-of-benefit plans, will eventually say to their employees: "There is no reason why we should break our backs and put all this effort into the fund in trying to manage and operate it. As long as you want to know the details of our business, and all about it, you take it over. We will set up a fixed-cost plan, and we will pay in so much a year, and you can worry about whether there are adequate funds to meet the benefit costs."

The net result of the legislation, unfortunately, is going to be, over a period of years—not just now, and not just in the next 2 years, but in the next 10 years—to force many of these plans into the fixed-cost-type operation, and that will be irony indeed.

The bill, if enacted into law, will require employers to surrender to labor unions economic and bargaining power which should be negotiated through the normal channels of collective bargaining. I believe in unions. I believe in the right to bargain. I believe in the right to strike. However, we must get away from the attitude, which many people had in the 1930's, that the union man is bargaining from a position of inferiority at the bargaining table. Contrary to that, I say he is today bargaining from a superior position.

Moreover, the disclosure approach of S. 2888 will not, as the majority implies, in any way insure the adequacy of reserves for future pension benefits or change the rules governing employee entitlement to benefits of private welfare and pension plans. Disclosure is not regulation and should not be sold as such, particularly when, in another section of the report, the majority properly disclaims any "desire to get the Federal Government involved in the regulation of these plans."

This happens to be not only a two-horn dilemma. It puts the majority upon a three-horn dilemma.

There is a need to clarify the exact meaning of the language commonly used to describe the different types of plans. The majority report fails to recognize the basic differences between pension and welfare plans. Pension plans involve long-term commitments and almost always the accumulation of substantial sums of money for the purpose. Welfare plans—providing sickness and accident, hospital, surgical, and medical benefits, etc.—do not involve the accumulation of large reserves but merely the current collection and disbursement of moneys.

A major distinction must be drawn between level-of-benefits and fixed-cost plans. A fixed-cost plan, in contrast to a level-of-benefits plan, means any plan that has a limited cost to the employer. As long as we have fixed-cost plans and have a limited cost to the employer, we are going to have a pool of funds available for the depredations of those to whom honesty is no asset. The predetermined fixed nature of the cost distinguishes such plans from the level-of-benefits plans where costs to the employer may vary. A fixed-cost plan sets a fixed amount of contribution by the employer whether it is adequate to provide the anticipated benefits or not. If for any reason the contributions are inadequate, benefits to the workers are reduced. A level-of-benefits plan sets a fixed amount of benefits to the workers. If the employer's anticipated contribution is inadequate, the employer pays out more money—his costs vary—and the benefits to workers remain fixed: they are not reduced. If these conditions are not present, then regardless of what the plan is called, it is not a true level-of-benefits plan and would not be exempted by the amendment that I propose.

The essential difference when undue expenses occur is that in a fixed-cost plan such unanticipated expenses, lawful or otherwise, are met by reduction in worker benefits; in a level-of-benefits plan, they are met out of the employer's pocket. Thus, in a level-of-benefits plan the employer has a monetary incentive to use the moneys honestly and economically, for otherwise it would be the same as stealing or wasting his own money.

First. In the investigation made by the special subcommittee to consider welfare and pension plan legislation, and its predecessors, flagrant abuses were uncovered in the administration of a relatively few union-managed pension and welfare plans.

I might say that the areas which we investigated with respect to union-managed funds are very small indeed; in fact, they were so small that I hardly feel Congress should legislate upon the basis of that investigation. Many abuses were found in those plans set up pursuant to the Taft-Hartley Act for the purpose of paying death, sickness, accident, hospital-medical, and retirement benefits. These are of the fixed-cost type. They are characterized by (a) contributions from employers to a separate trust fund on a basis not directly related to benefits—rather, they required payment of a certain number of cents per hour worked, or as a function of production, or as a percentage of payroll—and (b) administration by a board of trustees composed of union and management representatives under section 302 (c) of the Taft-Hartley law.

Second. An examination of the abuses which were disclosed indicates that there are specific characteristics which make some plans vulnerable and some comparatively invulnerable to embezzlement and unfair dealing while other plans are inherently invulnerable to these same abuses. However, only 10 percent of all the private employee benefit plans in the United States have that combination of features which to a degree facilitate embezzlement and other abuses. The one characteristic common to all plans where abuses have been found was a fixed cost contribution by the employer to a fund from which benefits are paid. Thus the diversion of these funds in an improper manner, or for excessive administrative expenses or otherwise, reduces the benefits to employees.

The contention has been made that the failure to discover abuses in other areas of the pension and welfare field was due merely to the fact that the subcommittees which studied this question did not investigate in these areas. It is my view that the abuses discovered after 3 years of extensive investigations and hearings, were peculiar to the areas explored and could not possibly arise in these other areas. If the majority has any grounds for feeling that abuses are occurring or potentially could occur in other areas, they should recommit the bill to the full committee for further study of the situation.

An extensive investigation made by the State of New York on the same subject carefully pointed out the distinction between level-of-benefits plans and fixed-cost plans, and found that no abuses existed in connection with level-of-benefits plans and therefore excluded them from the recommended State law.

Where there have been dishonest administrators and those who engage in sharp practices, employee beneficiaries have suffered. There probably is sufficient law on our books to prosecute the dishonest. However, disclosure requirements applicable to these types of funds—fixed-cost plans—may help smoke out the dishonest and those who engage in unfair dealings. The scope of this remedial legislation should, therefore, be narrowed to the types of plans which lend themselves to abuses by their nature.

The reasoning followed by the proponents of S. 2888 in reaching their recommendation to include plans and funds of all types in the scope of the law is based upon several fundamental misconceptions and confusion of issues. Four of the most important areas of confusion are the following:

First. What is the basic purpose of the proposed legislation? The issue that gave rise to the hearings was the evidence of abuse and diversion of moneys to the detriment of beneficiaries. I feel that the basic purpose of the proposed legislation should be to help correct these abuses. This objective should not be confused with other objectives, mentioned hereafter, which have been considered and have apparently influenced the majority thinking.

The two other objectives which the proponents endeavor to include in the bill are, first, some method of assuring that the funds accumulated for future payment of pensions are adequate for the purpose, and, second, to give employees and their representatives the

knowledge of the financial operations of these funds that they would like to have for the purpose of collective bargaining.

The adequacy of funds accumulated under pension plans is a very important matter, but one which cannot be solved by mere disclosure. Whether there should be standards as to funding such plans is an entirely different question from that of whether there have been abuses in the handling of such funds. If there should be such standards, it would require investigation and consideration of that subject by the committee. In any event, mere disclosure of the amounts set aside does nothing to guarantee adequacy of reserves for future pension benefits. Accordingly, I feel that in the first place the objective of assuring fund adequacy has not been studied by the committee and is not a proper one for this particular bill. In the second place, even if it were, the proposal for disclosure will not contribute materially to accomplishing the objective.

Where the employer, either on his own initiative or as a result of collective bargaining, agrees to provide a level-of-benefits plan, the question of whether employees or their representatives should have further information is one to be bargained between them. How the employer intends to meet this financial obligation, or how the financial operation of the fund is set up to pay the benefits, is a matter to be settled by the parties concerned—not granted by operation of law. It does not seem proper or practical to require an employer by law to disclose financial information where his only commitment to employees is to provide benefits—no more than a requirement that the employer disclose his ability to continue the payment of his employees' wages.

Second. The majority report on S. 2888 fails to recognize the important distinctions between welfare and pension plans. The distinction between these two quite different types of plans has already been discussed. Portions of the bill that might be applicable to welfare plans are not applicable to pension plans, and vice versa.

Third. The report completely confuses the difference between level-of-benefits plans and fixed-cost plans. As has already been indicated, these two types are fundamentally different. Under a level-of-benefits plan, where an employer or employee organization agrees to provide sufficient money to pay for a certain level of benefits, with or without a fixed employee contribution, it is common for the employer or employee organization to cover its obligation of guaranteed benefits with an insurance contract or to turn over adequate amounts to a corporate trustee. Plans of this nature have operated successfully for many years without any of the abuses which have given rise to this committee's investigation.

Under the fixed-cost plan, where multiemployers are involved, one or more employers contribute a certain fixed amount of money, determined in cents per hour, percentage of payroll, or some such similar manner, to an intermediary fund, which in turn provides the welfare or pension benefits through an insurance company, corporate trustee, or otherwise. It is these fixed-cost plans that the subcommittee hearings have shown to be especially susceptible to embezzlement, looting, and other abuses. The former type is completely safeguarded, not only because of the normal incentive of the employer or employee organization to keep its costs to a minimum, but because there is no intermediate third party between the employer or employee organization and the insurance company, service organization, or corporate trustee, all of the latter being already adequately supervised by State or Federal authorities.

The report confuses the clear distinction between these two types of plans by stating that even under a level-of-benefits plan, cost is an important consideration. There is no doubt about this, but the majority uses "cost" here to mean an estimated cost used in the planning stage to set a reasonable level of benefits and not the actual ultimate cost of benefits. The essential difference concerns ultimate costs. Under the fixed cost type the commitment is to pay only a certain amount and no more so that if there is any abuse or diversion of funds or any increase in costs, there is less money available to pay benefits to the employees. On the other hand, under a level-of-benefits plan, once the level of benefits has been determined—even if cost was an important consideration in the initial decision as to the level of benefits—then any increase in the cost of the benefits due to abuse or diversion of funds, even if they should occur, increases the ultimate cost of the plan to the employer. The benefits to the employees are not reduced. Hence the employer has every incentive to avoid any such abuse or diversion, and, even if he fails to do so, there is no direct loss to the employee beneficiaries.

Fourth. The fourth major confusion on the part of the report is that it fails to distinguish between a contractual relationship and a fiduciary relationship. Where an employer agrees with a labor organization to create a trust and makes contributions thereto on behalf of his employees for welfare or pension benefits, the trustees of such fund are fiduciaries.

The Supreme Court has stated clearly the distinction between contractual and fiduciary relationships:

> A fiduciary relationship connotes a relation of trust as the basis of obligation of the one and of security for the protection of the right of the other, rather than a basis of contractual provisions. It requires an element of confidence reposed by one in another without that limitation upon authority or accountability that contract terms impose, or without those exact limitations that are applicable in determining the rights and responsibilities of a creditor and debtor. Fiduciary relationship cannot exist in those instances * * * where the contract is resorted to in order that the exact rights and responsibilities may be definitely defined. (*Railway & Express Co.* v. *United States* (56 F. 2d 687).)

Thus, by its very nature, the fiduciary relationship, namely, that of good faith as well as of legal obligation, is not properly applicable to the contractual relationship. How one party to a contract decides to finance the commitments he has undertaken under the contract is not subject to accounting to the other party or parties to the contract in the same way as is customary in fiduciary relationships.

Where an employer agrees to provide certain fixed level of benefits for his employees and, for example, purchases an insurance policy for this purpose, there is created a contractual relationship rather than a fiduciary one. Under such a contract if there is a failure to perform, the remedy lies in an action in the courts for breach of contract and the measure of the injury is money damages.

A few of the many examples to illustrate these confusions in the majority report, together with misstatements of fact and incorrect conclusions from actual facts, follow.

The majority report states that investigations and studies have found abuses and weaknesses in some level-of-benefits plans but cites only one case which involved a bankrupt company. Employees are harmed by the insolvency of their employer in many ways, but S. 2888 provides no protection against that and was not designed to do so in spite of the tendency of the majority's report to create a contrary impression. The majority report then goes on to conclude on this scant evidence that the weight of the evidence points to an urgent need for Federal disclosure statutes covering all types of plans. All meaningful cases of abuse and diversion of funds to the detriment of beneficiaries were found in the fixed-cost type of plan, not in the level-of-benefits type of plan.

The report, without a shred of supporting evidence, states that "the most serious single weakness" in providing employee benefit plans "is not in the abuses and failings" such as diversion of funds to the detriment of beneficiaries, but "Overshadowing these is the too frequent practice of withholding from * * * the employee beneficiaries, information * * *." This makes a fetish of disclosure for disclosure's sake and seems to mean that the majority believes it is a more serious weakness for an honestly run plan to fail to disclose facts to prove its honesty, than it is for a dishonestly run plan to divert funds from its intended beneficiaries. I cannot believe that the majority accepts such a point of view.

A final example of misleading presentation in the majority report is the table of termination of pension trusts during a 3 months' period of 1957. Even a cursory analysis of the majority's own table would indicate that in most cases these trusts were terminated merely to be replaced by other trusts with no loss to beneficiaries. Even in those cases where there might have been loss to beneficiaries, the majority fails to indicate how disclosure of the financial operation of the plans would have avoided the termination of the trust when a company went out of business. As a matter of fact, the majority report seems to imply that the provisions of S. 2888, had they been the law, would have prevented these terminations.

ARGUMENTS AGAINST SWEEPING DISCLOSURE

Leaving the area of the incorrect reasoning on the part of the report, and attacking the problem on its merits, the main fault I find in the majority's proposals is in their insistence that the provisions of the proposed bill be applied uniformly to all kinds of plans, programs, and funds regardless of the inherently different characteristics of the various types of plans. I feel that more can be accomplished in this field by using a rifle instead of a double-barreled shotgun. Accordingly, it is recommended that the legislation be confined to those areas where abuse is inherently possible and where investigation has shown that the abuses have in fact existed.

While the reasons already given show conclusively that there is no need to extend the scope of the proposed legislation to level-of-benefits plans because no abuses have been shown, the question has been asked as to what harm there is in including these plans in the scope of the bill. The answer is that a great deal of harm would result. A few of the reasons follow:

First. New Federal bureaucracy: It has been estimated that level-of-benefits plans cover more than 90 percent of all employees covered by all forms of benefit programs, so that application of the proposed legislation to such plans would inordinately increase the paperwork involved, and the additional burden on the Government agency would be tremendous without corresponding public benefit. Although costs should not be the controlling factor in determining the need for legislation, there is no point in spending 10 times the amount necessary to accomplish a given end. At a time when economy is even more important than usual in Government operations, why set up an agency many times larger than is really required to accomplish the objective of preventing abuses?

It has been stated before the Senate Subcommittee on Welfare and Pension Fund Legislation that there are possibly 500,000 programs of all types in existence. Secretary of Labor Mitchell gave before the subcommittee what he termed a conservative estimate of a total of 250,000 plans which would be required to register if no exemption for smaller plans was made. Using this as a base he estimated that 414 persons would have to be employed the first year and 285 in the succeeding years to handle the registration and analysis of the plans. Put in other words 1 person would be employed during the first year of operation for every 600 plans, and in succeeding years 1 person for every 850 plans.

By contrast, New York State during the first year of operation of its disclosure act has found it necessary to employ 1 person for every 22 plans. Applying this ratio to the number of plans envisaged as being required to register under S. 2888—S. 2888 would exempt plans covering fewer than 100 employees only from annual reports and not from registration, and then only for a 2-year period—the required number of Federal employees would jump in the first year to 11,364. Using an average annual salary of $4,000 per employee, derived from Secretary Mitchell's estimates, the annual cost of the first year would be close to $45 million, an amount many times Secretary Mitchell's estimate of $1.7 million, and also several times the SEC's first year cost estimate, based on 250,000 plans—with critical analysis and examination by financial analysts, accountants, and attorneys limited to a sample of not more than 1 in 10 or 20—of $2.6 million.

Even assuming that the much larger number of plans which would be filed under the Federal law would enable large economies of scale to occur, there is still likely to be a huge discrepancy between estimates and practice. Moreover, these figures cover only personnel costs and do not include the cost of providing space to house the employees and the cost of equipment and supplies needed to administer the law.

Even if the number of plans required to report were reduced to 40,000 by excluding cases under some minimum size, the administrative agency would be required to review the reports from the 90 percent whose financial structure is such as to make reporting unnecessary in order to search out the relatively few cases in the remaining 10 percent where abuses might exist. Such a dilution of the agency's work, entirely aside from the extra expenses involved, could seriously impair its ability to find and investigate cases of actual abuse. In order to keep within practical limits the number of employee welfare and pension programs subject to reporting, the soundest method is to exclude level-of-benefit plans where the beneficiaries' rights do not need whatever protection this type of legislation may afford.

Second. Increased administrative costs: The application of unnecessary reporting and disclosure requirements to level-of-benefits plans would result in an increase in the cost of operating such plans which is unwarranted by any benefit accruing to the employee beneficiaries.

John L. Lewis, for example, testified before the committee that the United Mine Workers unions located in New York spent more than $16,000 to comply initially with the New York State disclosure law. He further pointed out that "the burden of spending so much money for the preparation of these increasing paper reports in New York gives us grave concern as to whether we can maintain some of those local welfare funds because of the expense."

Third. Collective bargaining: Group insurance plans and employer pension plans have grown to their present important stature as a financial bulwark to millions of employees in time of need, primarily on the level-of-benefits approach. The concept of paying a certain number of cents per hour into an intermediary fund, to be administered by persons spending other people's money is relatively new, and is quite common in plans embracing the employees of a large number of employers bargaining together with one union. These are the Taft-Hartley plans where the abuses have occurred.

If disclosure legislation were to shift the bargaining emphasis away from the benefits to be provided for employees to the cost to the employer, it would seriously interfere with the bargaining relationships where a plan involves the employees of only one employer—as the vast majority of plans do.

In the first place, most employees are more interested, and properly so, in the benefits they are entitled to and what they must pay to get them than they are in what the employer pays. If the emphasis is switched from employee benefits to employer costs, the whole direction of the future development of employee benefits will undergo a radical change.

Consider, for example, the complications faced by both the employer and the unions in a case where all parties desire a uniform level-of-benefits program for all employees of the employer, but the cost for one group of the employer's employees turns out to be 5 cents per hour, while the identical program of benefits for another group of employees of the same employer costs 7 cents. This could arise because the second group had a higher average age, or was located in an area where hospital and medical costs were higher, or for many other reasons.

If the uniform plan were adopted, and the employer's cost were disclosed, would there not be understandable pressure on behalf of the first group of employees to have the employer provide them with benefits costing the same 7 cents as the employer is paying for the other group? And, if the employer did so, would not the second group of employees want the higher benefits thus provided for the first group, despite the fact that such benefits will cost more than 7 cents for the second group?

As another example, consider the problems involved where a pattern of benefits has been set in an industry or area, and an employer and union try to fit the same pattern of benefits into the the same number of cents per hour as is paid by the pattern setter.

Finally, it is important to remember that millions of employees are covered under plans that are not subject to collective bargaining, and in such cases the cents-per-hour type of fund is hardly likely to be appropriate.

Having in mind these and similar problems, is it not probable that, if the emphasis is changed from employee benefits to employer costs, it will undermine the very foundation of the successful operation of these employee-welfare plans, which is the principle of averaging costs over a large number of employees so as to provide uniform benefits? It would be unfortunate if efforts to eliminate abuses in one type of plan resulted in transferring the risks of higher costs due to unfavorable claim experience or high administrative expenses from employers to employees, and a slowing up of the rapid progress that has been made and is currently going on in this important field of employee benefits.

ENCOURAGES FINANCIAL UNSOUNDNESS

If an employer were to be required to disclose his costs of a level-of-benefits pension plan, he would be discouraged from financing it on a conservative basis. Large reserves are automatically

built up under a soundly financed pension plan, and there could be tremendous pressures to increase the benefits at no increase in current costs, merely by dipping into reserves for future benefits—especially the "accrued liability" portion. Yielding to such pressures could well undermine the future solvency of the plan and result in reduced benefits and serious disappointment and hardship to retired employees.

CREATES INVESTMENT PROBLEMS

If disclosure is to be made of the volume and distribution of investments of level-of-benefits pension plans, tremendous pressures would be inevitable for parties other than those responsible for providing the benefits to have a voice in the types of investments to be made, the rate of funding, and so forth. Those responsible for the investing of funds should have as their only objective the security of the funds and the maximum yield consistent with such security, in the interest of maximum protection to the employee beneficiaries. If the funds were to be invested in so-called socially desirable forms of investment, it would be axiomatic that, first, either costs would increase, or second, the protection of the beneficiaries would be impaired. If this were not the case, those presently responsible for investing the funds would be only too glad to invest in the so-called socially desirable forms of investment. In this regard, consider statements, for example, by David Dubinsky, of the International Ladies' Garment Workers' Union, to the effect that union welfare funds should be invested in socially desirable projects such as low-cost housing. In other words, such a proposal endeavors to use the funds set aside for the future protection of employees for contradictory purposes. Even if it should be considered desirable to place such additional power in the hands of parties not directly responsible for fulfilling the benefits promised, this should be done as a result of conscious legislative policy, after full debate on its merits, and not as an accidental result of disclosure legislation primarily designed for the entirely different purpose of preventing abuse or diversion of "funds" to the detriment of beneficiaries.

STATE LEGISLATION

Six States have already passed laws on this general subject of employee welfare and pension funds, and other States are actively considering legislation. Most of these States have restricted the scope of their laws to the areas of abuse.

The President has established a Cabinet Committee to work with a committee of governors in returning to the States those areas of government activity that are traditionally and properly the concern of the States. Regulation of banking and insurance certainly falls within the category of traditional State responsibility. I am, therefore, hesitant to further complicate the work of the President's Committee unnecessarily.

DISCLOSURE OF CONFIDENTIAL DATA UNDESIRABLE

Each insurance company makes reports covering the operations of the company to its own State insurance department. Unless there is a compelling reason to require disclosure on individual policies—as there may well be in the case of policies issued where there are intermediary funds established under fixed-cents-per-hour plans—there seems to be no good reason for requiring insurance companies to disclose the competitive details of their business. No other industries are asked to disclose their selling and distribution costs, reserves for depreciation, surplus, and so forth, on each individual sale to all their customers and competitors. This is not to be taken to mean that these costs should not be regulated—they should be, at the State level.

RECOMMENDATIONS

Accordingly, it seems to be incontrovertible that more harm than good would result from applying all the provisions of the proposed legislation indiscriminately to all types of plans. In order to exclude from the scope of the act the fixed level-of-benefit plans which should be excluded, I recommend adding a new subparagraph (4) to section 4 (b) of S. 2888 reading as follows:

(4) Such plan is an employee welfare or pension benefit plan established by an employer or by an employee organization or both on a "level of benefits" basis. A plan shall be deemed to be established on a "level of benefits" basis if (i) it provides for a specified predetermined level or levels of benefits for its participants or beneficiaries, (ii) the rate of employees' contributions, if any, toward the cost of the benefits is predetermined, and (iii) the employer or employee organization or both are obligated to make contributions over and above such employee contributions, if any, to provide the agreed benefits, provided, however, that no employee welfare or pension benefit plan shall be deemed to be established on a "level of benefits" basis, if the employer or employee organization contributions are specified in the plan in terms other than the amount of such benefits such as, but not limited to, number of participants, number of hours worked, units of production or percentage of compensation.

Mr. President, that concludes my remarks for this afternoon upon this matter. I can only say, in concluding, and with the deepest sincerity and conviction, that if we expect to stop the abuses in the area where the abuses exist, the pending bill will not do it.

While I do not pretend that my plan or my exemption is a cure-all, I do say that it will save millions of dollars—perhaps as much as $100 million—which belongs to the employers and which should go to the employees in benefits.

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

Mr. ALLOTT. I yield.

Mr. BARRETT. At the outset, I commend the Senator from Colorado for his very fine, splendid exposition. I have read his minority views in the committee report. I think he is on very sound ground. I believe the Senator has made abundantly clear the situation confronting the people of the country in this regard. I know that it is a matter of deep concern to millions of people. I intend to support the Senator's amendment.

Mr. ALLOTT. I appreciate the statement made by my very close friend, the distinguished Senator from Wyoming.

EXHIBIT 1

REGULATIONS RELATING TO EMPLOYEE PENSION, ANNUITY, PROFIT-SHARING, AND STOCK BONUS PLANS, TREASURY DECISION NO. 6203, PART 1 OF TITLE 26 (1954), CODE OF FEDERAL REGULATIONS

DEFERRED COMPENSATION, ETC.—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Section 1.401, statutory provisions; qualified pension, profit-sharing, and stock bonus plans:

"SEC. 401. Qualified pension, profit-sharing, and stock bonus plans.

"(a) Requirements for qualification: A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

"(1) If contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404 (a) (3) (B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

"(2) If under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

"(3) If the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this subsection which benefits either—

"(A) 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, employees whose customary employment is for not more than 20 hours in any one week, and employees whose customary employment is for not more than 5 months in any calendar year, or

"(B) Such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees;

and

"(4) If the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

"(5) A classification shall not be considered discriminatory within the meaning of paragraph (3) (B) or (4) merely because it excludes employees the whole of whose remuneration constitutes 'wages' under section 3121 (a) (1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from

'wages' by section 3121 (a) (1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law.

"(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

"(b) Certain retroactive changes in plan: A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which it was put into effect and ending with the 15th day of the 3d month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period.

"(c) Cross reference: For exemption from tax of a trust qualified under this section, see section 501 (a)."

SEC. 1.401-1. Qualified pension, profit-sharing and stock bonus plans: (a) Introduction: (1) Sections 401 through 404 relate to pension, profit-sharing, stock bonus, and annuity plans, and compensation paid under a deferred-payment plan. Section 401 (a) prescribes the requirements which must be met for qualification of a trust forming part of a pension, profit-sharing, or stock bonus plan.

(2) A qualified pension, profit-sharing, or stock bonus plan is a definite written program and arrangement which is communicated to the employees and which is established and maintained by an employer—

(i) In the case of a pension plan, to provide for the livelihood of the employees or their beneficiaries after the retirement of such employees through the payment of benefits determined without regard to profits (see sec. 1.401-1 (b) (1) (i));

(ii) In the case of a profit-sharing plan, to enable employees or their beneficiaries to participate in the profits of the employer's trade or business, or in the profits of an affiliated employer who is entitled to deduct his contributions to the plan under section 404 (a) (3) (B), pursuant to a definite formula for allocating the contributions and for distributing the funds accumulated under the plan (see sec. 1.401 (b) (1) (ii)); and

(iii) In the case of a stock bonus plan, to provide employees or their beneficiaries benefits similar to those of profit-sharing plans, except that such benefits are distributable in stock of the employer, and that the contributions by the employer are not necessarily dependent upon profits. If the employer's contributions are dependent upon profits, the plan may enable employees or their beneficiaries to participate not only in the profits of the employer, but also in the profits of an affiliated employer who is entitled to deduct his contributions to the plan under section 404 (a) (3) (B) (see sec. 1.401-1 (b) (1) (iii)).

(3) In order for a trust forming part of a pension, profit-sharing, or stock bonus plan to constitute a qualified trust under section 401 (a), the following tests must be met:

(i) It must be created or organized in the United States, as defined in section 7701 (a) (9), and it must be maintained at all times as a domestic trust in the United States;

(ii) It must be part of a pension, profit-sharing, or stock bonus plan established by an employer for the exclusive benefit of his employees or their beneficiaries (see sec. 1.401-1 (b) (2) through (5));

(iii) It must be formed or availed of for the purpose of distributing to the employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with the plan;

(iv) It must be impossible under the trust instrument at any time before the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the employees or their beneficiaries (see sec. 1.401-2);

(v) It must be part of a plan which benefits prescribed percentages of the employees, or which benefits such employees as qualify under a classification set up by the employer and found by the Commissioner not to be discriminatory in favor of certain specified classes of employees (see sec. 1.401-3); and

(vi) It must be part of a plan under which contributions or benefits do not discriminate in favor of certain specified classes of employees (see sec. 1.401-4).

(b) General rules: (1) (i) A pension plan within the meaning of section 401 (a) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement. Retirement benefits generally are measured by, and based on, such factors as years of service and compensation received by the employees. The determination of the amount of retirement benefits and the contributions to provide such benefits are not dependent upon profits. Benefits are not definitely determinable if funds arising from forfeitures on termination of service, or other reason, may be used to provide increased benefits for the remaining participants instead of being used to reduce the amount of contributions by the employer. A plan designed to provide benefits for employees or their beneficiaries to be paid upon retirement or over a period of years after retirement will, for the purposes of section 401 (a), be considered a pension plan if the employer contributions under the plan can be determined actuarially on the basis of definitely determinable benefits, or, as in the case of money purchase pension plans, such contributions are fixed without being geared to profits. A pension plan may provide for the payment of a pension due to disability and may also provide for the payment of incidental death benefits through insurance or otherwise. However, a plan is not a pension plan if it provides for the payment of benefits not customarily included in a pension plan such as layoff benefits or benefits for sickness, accident, hospitalization, or medical expenses.

(ii) A profit-sharing plan is a plan established and maintained by an employer to provide for the participation in his profits by his employees or their beneficiaries. The plan must provide a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as layoff, illness, disability, retirement, death, or severance of employment. A formula for allocating the contributions among the participants is definite if, for example, it provides for an allocation in proportion to the basic compensation of each participant. A plan (whether or not it contains a definite predetermined formula for determining the profits to be shared with the employees) does not qualify under section 401 (a) if the contributions to the plan are made at such times or in such amounts that the plan in operation discriminates in favor of officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. For the rules with respect to discrimination, see sections 1.401-3 and 1.401-4. A profit-sharing plan within the meaning of section 401 is primarily a plan of deferred compensation, but the amounts allocated to the account of a participant may be used to provide for him or his family incidental life or accident or health insurance.

(iii) A stock bonus plan is a plan established and maintained by an employer to provide benefits similar to those of a profit-sharing plan, except that the contributions by the employer are not necessarily dependent upon profits and the benefits are distributable in stock of the employer company. For the purpose of allocating and distributing the stock of the employer which is to be shared among his employees or their beneficiaries, such a plan is subject to the same requirements as a profit-sharing plan.

(iv) As to inclusion of full-time life-insurance salesmen within the class of persons considered to be employees, see section 7701 (a) (20).

(2) The term "plan" implies a permanent as distinguished from a temporary program. Thus, although the employer may reserve the right to change or terminate the plan, and to discontinue contributions thereunder, the abandonment of the plan for any reason other than business necessity within a few years after it has taken effect will be evidence that the plan from its inception was not a bona fide program for the exclusive benefit of employees in general. Especially will this be true, if, for example, a pension plan is abandoned soon after pensions have been fully funded for persons in favor of whom discrimination is prohibited under section 401 (a). The permanency of the plan will be indicated by all of the surrounding facts and circumstances, including the likelihood of the employer's ability to continue contributions as provided under the plan. In the event a plan is abandoned, the employer should promptly notify the district director, stating the circumstances which led to the discontinuance of the plan. In the case of a profit-sharing plan, it is not necessary that the employer contribute every year or that he contribute the same amount or contribute in accordance with the same ratio every year. However, merely making a single or occasional contribution out of profits for employees does not establish a plan of profit-sharing. To be a profit-sharing plan, there must be recurring and substantial contributions out of profits for the employees.

(3) If the plan is so designed as to amount to a subterfuge for the distribution of profits to shareholders, it will not qualify as a plan for the exclusive benefit of employees even though other employees who are not shareholders are also included under the plan. The plan must benefit the employees in general, although it need not provide benefits for all of the employees. Among the employees to be benefited may be persons who are officers and shareholders. However, a plan is not for the exclusive benefit of employees in general if, by any device whatever, it discriminates either in eligibility requirements, contributions, or benefits in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or the highly compensated employees. See section 401 (a) (3), (4), and (5). Similarly, a stock bonus or profit-sharing plan is not a plan for the exclusive benefit of employees in general if the funds therein may be used to relieve the employer from contributing to a pension plan operating concurrently and covering the same employees. All of the surrounding and attendant circumstances and the details of the plan will be indicative of whether it is a bona fide stock bonus, pension, or profit-sharing plan for the exclusive benefit of employees in general. The law is concerned not only with the form of a plan but also with

its effects in operation. For example, section 401 (a) (5) specifies certain provisions which of themselves are not discriminatory. However, this does not mean that a plan containing these provisions may not be discriminatory in actual operation.

(4) A plan is for the exclusive benefit of employees or their beneficiaries even though it may cover former employees as well as present employees and employees who are temporarily on leave, as for example, in the Armed Forces of the United States. A plan covering only former employees may qualify under section 401 (a) if it complies with the provisions of section 401 (a) (3) (B), with respect to coverage, and section 401 (a) (4) with respect to contributions and benefits, as applied to all of the former employees. The term "beneficiaries" of an employee within the meaning of section 401 includes the estate of the employee, dependents of the employee, persons who are the natural objects of the employee's bounty, and any persons designated by the employee to share in the benefits of the plan after the death of the employee.

(5) (i) No specific limitations are provided in section 401 (a) with respect to investments which may be made by the trustees of a trust qualifying under section 401 (a). Generally, the contributions may be used by the trustees to purchase any investments permitted by the trust agreement to the extent allowed by local law. However, such a trust will be subject to tax under section 511 with respect to any "unrelated business taxable income" (as defined in section 512) realized by it from its investments. Furthermore, the tax-exempt status of the trust will be forfeited if the investments made by the trustees constitute "prohibited transactions" within the meaning of section 503. See also the regulations under such sections.

(ii) Where the trust funds are invested in stock or securities of, or loaned to, the employer or other person described in section 503 (c), full disclosure must be made of the reasons for such arrangement and the conditions under which such investments are made in order that a determination may be made whether the trust serves any purpose other than constituting part of a plan for the exclusive benefit of employees. The trustee shall report any of such investments on the return which under section 6033 it is required to file and shall with respect to any such investment furnish the information required by such return. See section 1.6033-1.

(c) Portions of years: A qualified status must be maintained throughout the entire taxable year of the trust in order for the trust to obtain any exemption for such year. But see section 401 (a) (6) and section 1.401-3.

(d) Plan of several employers: A trust forming part of a plan of several employers for their employees will be qualified if all the requirements are otherwise satisfied.

(e) Returns: A trust which qualifies under section 401 (a) and which is exempt under section 501 (a) must file a return in accordance with section 6033 and the regulations thereunder. See section 1.6033-1. In case such a trust realizes any unrelated business taxable income, as defined in section 512, such trust is also required to file a return with respect to such income. See section 1.6012-2.

Section 1.401-2, impossibility of diversion under the trust instrument: (a) In general. (1) Under section 401 (a) (2) a trust is not qualified unless under the trust instrument it is impossible (in the taxable year and at any time thereafter before the satisfaction of all liabilities to employees or their beneficiaries covered by the trust) for any part of the trust corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of such employees or their beneficiaries.

(2) As used in section 401 (a) (2), the phrase "if under the trust instrument it is impossible" means that the trust instrument must definitely and affirmatively make it impossible for the nonexempt diversion or use to occur, whether by operation or natural termination of the trust, by power of revocation or amendment, by the happening of a contingency, by collateral arrangement, or by any other means. Although it is not essential that the employer relinquish all power to modify or terminate the rights of certain employees covered by the trust, it must be impossible for the trust funds to be used or diverted for purposes other than for the exclusive benefit of his employees or their beneficiaries.

(3) As used in section 401 (a) (2), the phrase "purposes other than for the exclusive benefit of his employees or their beneficiaries" includes all objects or aims not solely designed for the proper satisfaction of all liabilities to employees or their beneficiaries covered by the trust.

(b) Meaning of "liabilities": (1) The intent and purpose in section 401 (a) (2) of the phrase "prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust" is to permit the employer to reserve the right to recover at the termination of the trust, and only at such termination, any balance remaining in the trust which is due to erroneous actuarial computations during the previous life of the trust. A balance due to an "erroneous actuarial computation" is the surplus arising because actual requirements differ from the expected requirements even though the latter were based upon previous actuarial valuations of liabilities or determinations of costs of providing pension benefits under the plan and were made by a person competent to make such determinations in accordance with reasonable assumptions as to mortality, interest, etc., and correct procedures relating to the method of funding. For example, a trust has accumulated assets of $1 million at the time of liquidation, determined by acceptable actuarial procedures using reasonable assumptions as to interest, mortality, etc., as being necessary to provide the benefits in accordance with the provisions of the plan. Upon such liquidation it is found that $950,000 will satisfy all of the liabilities under the plan. The surplus of $50,000 arises, therefore, because of the difference between the amounts actuarially determined and the amounts actually required to satisfy the liabilities. This $50,000, therefore, is the amount which may be returned to the employer as the result of an erroneous actuarial computation. If, however, the surplus of $50,000 had been accumulated as a result of a change in the benefit provisions or in the eligibility requirements of the plan, the $50,000 could not revert to the employer because such surplus would not be the result of an erroneous actuarial computation.

(2) The term liabilities as used in section 401 (a) (2) includes both fixed and contingent obligations to employees. For example, if 1,000 employees are covered by a trust forming part of a pension plan, 300 of whom have satisfied all the requirements for a monthly pension, while the remaining 700 employees have not yet completed the required period of service, contingent obligations to such 700 employees have nevertheless arisen which constitute liabilities within the meaning of that term. It must be impossible for the employer (or other nonemployee) to recover any amounts other than such amounts as remain in the trust because of erroneous actuarial computations after the satisfaction of all fixed and contingent obligations. Furthermore, the trust instrument must contain a definite affirmative provision, to this effect, irrespective of whether the obligations to employees have their source in the trust instrument itself, in the plan of which the trust forms a part, or in some collateral instrument or arrangement forming a part of such plan, and regardless of whether such obligations are, technically speaking, liabilities of the employer, of the trust, or of some other person forming a part of the plan or connected with it.

Section 1. 401-3, requirements as to coverage: (a) (1) In order to insure that stock bonus, pension, and profit-sharing plans are utilized for the welfare of employees in general, and to prevent the trust device from being used for the principal benefit of shareholders, officers, persons whose principal duties consist in supervising the work of other employees, or highly paid employees, or as a means of tax avoidance, a trust will not be qualified unless it is part of a plan which satisfies the coverage requirements of section 401 (a) (3). The percentage requirements in section 401 (a) (3) (A) refer to a percentage of all the active employees, including employees temporarily on leave, such as those in the Armed Forces of the United States, if such employees are eligible under the plan.

(2) The application of section 401 (a) (3) (A) may be illustrated by the following example:

Example: An employer adopts a plan at a time when he has 1,000 employees. The plan provides that all full-time employees who have been employed by him for a period of 2 years and have reached the age of 30 shall be eligible to participate. The plan also requires participating employees to contribute 3 percent of their monthly pay. At the time the plan is made effective 100 of the 1,000 employees had not been employed for a period of 2 years. Fifty of the employees were seasonal employees whose customary employment did not exceed 5 months in any calendar year. Twenty-five of the employees were part-time employees whose customary employment did not exceed 20 hours in any one week. One hundred and fifty of the full-time employees who had been employed for 2 years or more had not yet reached age 30. The requirements of section 401 (a) (3) (A) will be met if 540 employees are covered by the plan, as shown by the following computation:

(i) Total employees with respect to whom the percentage requirements are applicable (1,000 minus 175 (100 plus 50 plus 25))	825
(ii) Employees not eligible to participate because of age requirements	150
(iii) Total employees eligible to participate	675
(iv) Percentage of employees in item (i) eligible to participate	81+%
(v) Minimum number of participating employees to qualify the plan (80 percent of 675)	540

If only 70 percent, or 578, of the 725 employees satisfied the age and service requirements, then 462 (80 percent of 578) participating employees would satisfy the percentage requirements.

(b) If a plan fails to qualify under the percentage requirements of section 401 (a) (3) (A), it may still qualify under section 401 (a) (3) (B) provided always that (as required by section 401 (a) (3) and (4)) the plan's eligibility conditions, benefits, and contributions do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or the highly compensated employees.

(c) Since, for the purpose of section 401, a profit-sharing plan is a plan which provides for distributing the funds accumulated under the plan after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as illness, disability, retirement, death, layoff, or severance of employment, employees who receive the amounts allocated to their accounts before the expiration of such a period

of time or the occurrence of such a contingency shall not be considered covered by a profit-sharing plan in determining whether the plan meets the coverage requirements of section 401 (a) (3) (A) and (B). Thus, in case a plan permits employees to receive immediately the amounts allocated to their accounts, or to have such amounts paid to a profit-sharing plan for them, the employees who receive the shares immediately shall not, for the purpose of section 401, be considered covered by a profit-sharing plan.

(d) Section 401 (a) (5) sets out certain classifications that will not in themselves be considered discriminatory. However, those so designated are not intended to be exclusive. Thus, plans may qualify under section 401 (a) (3) (B) even though coverage thereunder is limited to employees who have either reached a designated age or have been employed for a designated number of years, or who are employed in certain designated departments or are in other classifications, provided the effect of covering only such employees does not discriminate in favor of officers, shareholders, employees whose principal duties consist in supervising the work of other employees, or highly compensated employees. For example, if there are 1,000 employees, and the plan is written for only salaried employees, and consequently only 500 employees are covered, that fact alone will not justify the conclusion that the plan does not meet the coverage requirements of section 401 (a) (3) (B). Conversely, if a contributory plan is offered to all of the employees but the contributions required of the employee participants are so burdensome as to make the plan acceptable only to the highly paid employees, the classification will be considered discriminatory in favor of such highly paid employees.

(e) (1) Section 401 (a) (5) contains a provision to the effect that a classification shall not be considered discriminatory within the meaning of section 401 (a) (3) (B) merely because all employees whose entire annual remuneration constitutes wages under section 3121 (a) (1) (for purposes of the Federal Insurance Contributions Act) are excluded from the plan. A reference to section 3121 (a) (1) for years after 1954 shall be deemed a reference to section 1426 (a) (1) for years before 1955. This provision, in conjunction with section 401 (a) (3) (B), is intended to permit the qualification of plans which supplement the old-age and survivor insurance benefits under the Social Security Act. Thus, a classification which excludes all employees whose entire remuneration constitutes wages under section 3121 (a) (1), will not be considered discriminatory merely because of such exclusion. Similarly, a plan which includes all employees will not be considered discriminatory solely because the contributions or benefits based on that part of their remuneration which is excluded from wages under section 3121 (a) (1) differ from the contributions or benefits based on that part of their remuneration which is not so excluded. However, in making his determination with respect to discrimination in classification under section 401 (a) (3) (B), the Commissioner will consider whether the total benefits resulting to each employee under the plan and under the Social Security Act, or under the Social Security Act only, establish an integrated and correlated retirement system satisfying the tests of section 401 (a). If, therefore, a classification of employees under a plan results in relatively or proportionately greater benefits for employees earning above any specified salary amount or rate than for those below any such salary amount or rate, it may be found to be discriminatory within the meaning of section 401 (a) (3) (B). If, however, the relative or proportionate differences in benefits which result from such classification are approximately offset by the old-age and survivor insurance benefits which are provided by the Social Security Act and which are not attributable to employee contributions under the Federal Insurance Contributions Act, the plan will be considered to be properly integrated with the Social Security Act and will, therefore, not be considered discriminatory.

(2) In determining whether a plan is properly integrated with the Social Security Act, the total old-age and survivor insurance benefits with respect to an employee are considered to be 150 percent of the employee's old-age insurance benefits under such act, and the proportion of such total benefits which is attributable to employee contributions is considered to be approximately 20 percent of such total benefits. These assumptions take into consideration the changes made by the Social Security Amendments of 1954 and the Social Security Amendments of 1956. Thus, for example, a classification of employees under a noncontributory pension or annuity plan established in 1956 which is limited to employees earning in excess of $4,200 a year will not be considered discriminatory within the meaning of section 401 (a) (3) (B), if:

(i) Normal annual retirement benefits for any employee cannot exceed 37½ percent of his average annual compensation in excess of $4,200, where average annual compensation is defined to mean the average annual compensation over the highest 5 consecutive years.

(ii) There are no benefits payable in case of death before retirement.

(iii) The normal form of retirement benefit is a straight life annuity, and if there are optional forms, the benefit payments are adjusted so that the total value of the optional form is the same as the value of the normal form of retirement benefits.

(iv) Normal retirement benefits for employees who reach normal retirement age before completion of 15 years of service with the employer cannot exceed 2½ percent of average annual compensation in excess of $4,200, for each year of service.

(v) Normal retirement age is not lower than age 65 for men and not lower than age 60 for women.

(vi) Benefits payable in case of retirement or severance of employment before normal retirement age cannot exceed the actuarial equivalent of that proportion of the maximum normal retirement benefits, which might be provided in accordance with (i) through (v) of this subparagraph, earned to the date of actual retirement or severance, where such proportion is determined by the ratio that the actual number of years of service of the employee at retirement or severance bears to the total number of years of service he would have had if he had remained in service until normal retirement age. In the case of a plan limited to employees earning over $4,200 a year but providing different benefits, or providing benefits related to years of service, or providing benefits purchasable by stated employer contributions, or under which the employees contribute, or providing a combination of the foregoing variations, the plan will be considered to be properly integrated only if, as determined by the Commissioner, the benefits provided thereunder by employer contributions cannot exceed in value the benefits described in the example. Similar principles will govern in determining whether a plan is properly integrated if it is limited to employees whose compensation exceeds a stated level other than $4,200 a year, or if it bases benefits on contributions or compensation in excess of such a level, or if it provides for an offset of benefits otherwise payable under the plan on account of old-age and survivor insurance benefits. In the case of a profitsharing or stock bonus plan which is limited to employees whose compensation is in excess of a stated level, or which bases contributions on compensation in excess of a stated level, similar principles will govern in determining whether the plan is discriminatory, provided that the employer does not also have in existence a pension or annuity plan which is integrated with old-age and survivor insurance benefits and which provide for employer contributions or benefits based upon all or part of the same compensation considered under the profitsharing or stock bonus plan. In the case of a plan which is properly integrated with old-age and survivor insurance benefits as in effect before the Social Security Amendments of 1954, and which is limited to employees earning in excess of a stated level, no adjustment is required merely because of the changes made by such amendments.

(3) A plan supplementing the Social Security Act and excluding all employees whose entire annual remuneration constitutes "wages" under section 3121 (a) (1) will not, however, be deemed discriminatory merely because, for administrative convenience, it provides a reasonable minimum benefit not to exceed $20 a month.

(4) Similar considerations, to the extent applicable in any case, will govern classifications under a plan supplementing the benefits provided by other Federal or State laws. See section 401 (a) (5).

(f) An employer may designate several trusts or a trust or trusts and an annuity plan or plans as constituting one plan which is intended to qualify under section 401 (a) (3), in which case all of such trusts and plans taken as a whole may meet the requirements of such section. The fact that such combination of trusts and plans fails to qualify as one plan does not prevent such of the trusts and plans as qualify from meeting the requirements of section 401 (a).

(g) It is provided in section 401 (a) (6) that a plan will satisfy the requirements of section 401 (a) (3), if on at least one day in each quarter of the taxable year of the plan it satisfies such requirements. This makes it possible for a new plan requiring contributions from employees to qualify if by the end of the quarter-year in which the plan is adopted it secures sufficient contributing participants to meet the requirements of section 401 (a) (3). It also affords a period of time in which new participants may be secured to replace former participants, so as to meet the requirements of either subparagraph (A) or (B) of section 401 (a) (3).

Section 1.401-4, discrimination as to contributions or benefits. (a) (1) (i) In order to qualify under section 401 (a), a trust must not only meet the coverage requirements of section 401 (a) (3), but, as provided in section 401 (a) (4), it must also be part of a plan under which there is no discrimination in contributions or benefits in favor of officers, shareholders, employees whose principal duties consist in supervising the work of other employees, or highly compensated employees as against other employees whether within or without the plan.

(ii) Since, for the purpose of section 401, a profit-sharing plan is a plan which provides for distributing the funds accumulated under the plan after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as illness, disability, retirement, death, layoff, or severance of employment, any amount allocated to an employee which is withdrawn before the expiration of such a period of time or the occurrence of such a contingency shall not be considered in determining whether the contributions under the plan discriminate in favor of officers, shareholders, employees whose principal duties consist in supervising the work of other employees, or highly compensated employees. Thus, in case a plan permits employees to receive immediately the whole or any part of the amounts allocated to their accounts, or to

have the whole or any part of such amounts paid to a profit-sharing plan for them, any amounts which are received immediately shall not, for the purpose of section 401, be considered contributed to a profit-sharing plan.

(iii) Funds in a stock-bonus or profit-sharing plan arising from forfeitures on termination of service, or other reason, must not be allocated to the remaining participants in such a manner as will effect the prohibited discrimination. With respect to forfeitures in a pension plan, see section 1.401-1 (b) (1) (i).

(2) (i) Section 401 (a) (5) sets out certain provisions which will not in and of themselves be discriminatory within the meaning of section 401 (a) (3) or (4). See section 1.401-3. Thus, a plan will not be considered discriminatory merely because the contributions or benefits bear a uniform relationship to total compensation or to the basic or regular rate of compensation, or merely because the contributions or benefits based on that part of the annual compensation of employees which is subject to the Federal Insurance Contributions Act differ from the contributions or benefits based on any excess of such annual compensation over such part.

(i) The exceptions specified in section 401 (a) (5) are not an exclusive enumeration, but are merely recital of provisions frequently encountered which will not of themselves constitute forbidden discrimination in contributions or benefits.

(iii) Variations in contributions or benefits may be provided so long as the plan, viewed as a whole for the benefit of employees in general, with all its attendant circumstances, does not discriminate in favor of employees within the enumerations with respect to which discrimination is prohibited. Thus, benefits in a stock or bonus or profit-sharing plan which vary by reason of an allocation formula which takes into consideration years of service, or other factors, are not prohibited unless they discriminate in favor of such employees.

(b) A plan which excludes all employees whose entire remuneration constitutes wages under section 3121 (a) (1) (relating to the Federal Insurance Contributions Act), or a plan under which the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" under such act differs from the contributions or benefits based on that part of the employee's remuneration which is not so excluded, or a plan under which the contributions or benefits differ because of any retirement benefit created under State or Federal law, will not be discriminatory because of such exclusion or difference, provided the total benefits resulting under the plan and under such law establish an integrated and correlated retirement system satisfying the tests of section 401 (a).

(c) Although a plan may provide for termination at will by the employer, this will not of itself prevent a trust from being a qualified trust. However, in certain cases that fact may necessitate some provision in the plan which will preclude such termination from effecting the prohibited discrimination. This may occur where, for example, certain officers or highly compensated employees are at the inception of the plan within a few years of retirement age and the operation of the plan will fund and vest their benefits in a short period, thus resulting in such discrimination in favor of such officers or highly compensated employees.

Section 1.401-5, period for which requirements of section 401 (a) (3), (4), (5), and (6) are applicable: A pension, profit sharing, stock bonus, or annuity plan shall be considered as satisfying the requirements of section 401 (a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the 3d month following the close of the taxable year of the employer in which the plan was put into effect, if all the provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period. Thus, if an employer in 1954 adopts such a plan as of January 1, 1954, and makes a return on the basis of the calendar year, he will have until March 15, 1955, to amend his plan so as to make it satisfy the requirements of section 401 (a) (3), (4), (5), and (6) for the calendar year 1954 provided that by March 15, 1955, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to January 1, 1954, the effective date of the plan. If an employer is on a fiscal year basis, for example, April 1 to March 31, and in 1954 adopts such a plan effective as of April 1, 1954, he will have until June 15, 1955, to amend his plan so as to make it satisfy the requirements of section 401 (a) (3), (4), (5), and (6) for the fiscal year beginning April 1, 1954, provided that by June 15, 1955, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to April 1, 1954, the effective date of the plan. It should be noted that under section 401 (b) the period in which a plan may be amended to qualify under section 401 (a) ends before the date on which taxpayers other than corporations are required to file income tax returns. See section 6072.

Section 1.402 (a) Statutory provisions; Taxability of beneficiary of employees' trust; exempt trust:

"SEC. 402. Taxability of beneficiary of employees' trust.

"(a) Taxability of beneficiary of exempt trust—

"(1) General rule: Except as provided in paragraph (2), the amount actually distributed or made available to any distributee by any employees' trust described in section 401 (a) which is exempt from tax under section 501 (a) shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. The amount actually distributed or made available to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

"(2) Capital gains treatment for certain distributions: In the case of an employees' trust described in section 401 (a), which is exempt from tax under section 501 (a), if the total distributions payable with respect to any employee are paid to the distributee within 1 taxable year of the distributee on account of the employee's death or other separation from the service, or on account of the death of the employee after his separation from the service, the amount of such distribution, to the extent exceeding the amounts contributed by the employee (determined by applying section 72 (f), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. Where such total distributions include securities of the employer corporation, there shall be excluded from such excess the net unrealized appreciation attributable to that part of the total distributions which consists of the securities of the employer corporation so distributed. The amount of such net unrealized appreciation and the resulting adjustments to basis of the securities of the employer corporation so distributed shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

"(3) Definitions: For purposes of this subsection—

"(A) The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

"(B) The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in sec. 421 (d) (2) and (3)) of the employer corporation.

"(C) The term "total distributions payable" means the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death or other separation from the service, or on account of his death after separation from the service."

Section 1.402 (a)-1, taxability of beneficiary under a trust which meets the requirements of section 401 (a): (a) In general: (1) (i) Section 402 relates to the taxation of the beneficiary of an employees' trust. If an employer makes a contribution for the benefit of an employee to a trust described in section 401 (a) for the taxable year of the employer which ends within or with a taxable year of the trust for which the trust is exempt under section 501 (a), the employee is not required to include such contribution in his income except for the year or years in which such contribution is distributed or made available to him. It is immaterial in the case of contributions to an exempt trust whether the employee's rights in the contributions to the trust are forfeitable or nonforfeitable either at the time the contribution is made to the trust or thereafter.

(ii) The provisions of section 402 (a) relate only to a distribution by a trust described in section 401 (a) which is exempt under section 501 (a) for the taxable year of the trust in which the distribution is made. The distribution from such an exempt trust when received or made available is taxable to the distributee to the extent provided in section 72 (relating to annuities), except that section 72 (e) (3) (relating to the treatment of certain lump sums) shall not apply, and except that certain total distributions described in section 402 (a) (2) are taxable as long-term capital gains. For the treatment of such total distributions, see subparagraph (6) of this paragraph. Under certain circumstances, an amount representing the unrealized appreciation in the value of the securities of the employer is excludable from gross income for the year of distribution. For the rules relating to such exclusion, see paragraph (b) of this section. Furthermore, the exclusion provided by section 105 (d) is applicable to a distribution from a trust described in section 401 (a) and exempt under section 501 (a) if such distribution constitutes wages or payments in lieu of wages for a period during which an employee is absent from work on account of a personal injury or sickness (see sec. 105 and the regulations thereunder).

(iii) Except as provided in paragraph (b) of this section, a distribution of property by a trust described in section 401 (a) and exempt under section 501 (a) shall be taken into account by the distributee at its fair market value. For example, where a United States savings bond which was purchased by a trustee in its own name later is distributed by such trust, it shall be taken into account at its redemption value at the time of distribution and such redemption value shall be the distributee's basis for the bond for the purpose of determining the extent to which income is realized upon its ultimate redemption.

(iv) If a trust is exempt for the taxable year in which the distribution occurs, but

was not so exempt for one or more prior taxable years under section 501 (a) (or under section 165 (a) of the Internal Revenue Code of 1939 for years to which such section was applicable), the contributions of the employer which were includible in the gross income of the employee for the taxable year when made shall, in accordance with section 72 (f), also be treated as part of the consideration paid by the employee.

(v) If the trust is not exempt at the time the distribution is received by or made available to the employee, see section 402 (b) and section 1.402 (b)-1 (b).

(2) If a trust described in section 401 (a) and exempt under section 501 (a) purchases an annuity contract for an employee and distributes it to the employee in a year for which the trust is exempt, the contract containing a cash surrender value which may be available to an employee by surrendering the contract, such cash surrender value will not be considered income to the employee unless and until the contract is surrendered. If, however, the contract distributed by such an exempt trust is a retirement income, endowment, or other life insurance contract and is distributed after October 26, 1956, the entire cash value of such contract at the time of distribution must be included in the distributee's income in accordance with the provisions of section 402 (a), except to the extent that, within 60 days after the distribution of such contract, all or any portion of such value is irrevocably converted into a contract under which no part of any proceeds payable on death at any time would be excludable under section 101 (a) (relating to life insurance proceeds).

(3) (i) If a trust described in section 401 (a) and exempt under section 501 (a) purchases under the plan retirement income, endowment, or other contracts providing life insurance protection, payable upon the death of the employee participants, and either—

(a) The proceeds of such life insurance are payable to a beneficiary of the employee participant, other than the trust, or

(b) In case such proceeds are payable to the trust, by the terms of the plan the trustee is required to pay over all of such proceeds to a beneficiary of the employee participant,

then, the portion of the premiums paid for the life insurance protection provided under such contracts from either the contributions of the employer or earnings of the trust will constitute income to the employee for the year or years in which the contributions or earnings are applied toward the purchase of such life insurance. If the amount payable upon death at any time during the year exceeds the cash value of the insurance policy at the end of the year, the entire amount of such excess will be considered current life insurance protection. The cost of such insurance will be considered to be a reasonable net premium cost, as determined by the Commissioner, for such amount for the appropriate period. The amount thus to be included in the gross income of the employee under this subdivision shall be considered as premiums or other consideration paid or contributed by the employee only with respect to any benefits attributable to the contract providing the life insurance protection.

(ii) The determination of the cost of life insurance protection may be illustrated by the following example:

Example: A policy purchased under a qualified plan for an employee provides an annuity of $100 per month upon retirement at age 65, with a minimum death benefit of $10,000. The insurance payable if death occurred in the first year would be $10,000. The cash value at the end of the first year is 0. The net insurance is therefore $10,000 minus 0, for $10,000. Assuming that the Commissioner has determined that a reasonable net premium for the employee's age is $5.85 per $1,000, the premium for $10,000 of life insurance is therefore $58.50, and this is the amount to be reported as income by the employee for the year. The balance of the premium is the amount contributed for the annuity, which is not taxable to the employee under a plan meeting the requirements of section 401 (a), except as provided under section 402 (a). Assuming that the cash value at the end of the second year is $500, the net insurance would then be $9,500 for the second year. With a net 1-year term rate of $6.30 for the employee's age in the second year, the amount to be reported as income to the employee would be $59.85.

(iii) This subparagraph shall not apply if the trust has a right under any circumstances to retain any part of the proceeds of the life insurance contract. But see subparagraph (4) (iv) relating to the taxability of the distribution of such proceeds to a beneficiary.

(4) (i) In case a trust described in section 401 (a) and exempt under section 501 (a) either—

(a) Has purchased a retirement income, endowment, or other life insurance contract, and the employee either paid the cost of the insurance or was taxable on the cost of the insurance under subparagraph (3) of this paragraph, or

(b) Has purchased an annuity contract, the amounts payable under any such contract by reason of the death of the employee are taxable under the rules of subdivision (ii) of this subparagraph except in the case of a joint and survivor annuity.

(ii) (a) In the case of an annuity contract, the death benefit is the accumulation of the premiums (plus earnings thereon) which is intended to fund pension or other deferred benefits under a pension or profit-sharing plan. Such death benefits are not in the nature of life insurance and are not excludable from gross income under section 101 (a).

(b) In the case of a retirement income, endowment, or other life insurance contract under which there is a reserve accumulation which is intended to fund pension or other deferred benefits under a pension or profit-sharing plan, such reserve accumulation constitutes the source of the cash value of the contract and approximates the amount of such cash value. The portion of the proceeds paid upon the death of the insured employee which is equal to the cash value immediately before death is not excludable from gross income under section 101 (a). The remaining portion, if any, of the proceeds paid to the beneficiary by reason of the death of the insured employee—that is, the amount in excess of the cash value—constitutes current insurance protection and is excludable under section 101 (a).

(c) The death benefit under an annuity contract, or the portion of the death proceeds under a retirement income, endowment, or other life insurance contract which is equal to the cash value of the contract immediately before death, constitutes a distribution from the trust consisting in whole or in part of deferred compensation and is taxable to the beneficiary in accordance with section 402 (a) and the provisions of this paragraph, except to the extent that the limited exclusion from income provided in section 101 (b) is applicable.

(d) In the case of a retirement income, endowment, or other life insurance contract under which the benefits are paid at a date or dates later than the death of the employee, section 101 (d) is applicable only to the portion of the benefits which is attributable to the amount excludable under section 101 (a). The portion of such benefits which is attributable to the cash value of the contract immediately before death is taxable under section 72 (relating to annuities), and in such case, any amount excludable under section 101 (b) is treated as additional consideration paid by the employee in accordance with section 101 (b) (2) (D).

(iii) The application of the rules under subdivision (ii) with respect to the taxability of proceeds of a retirement income, endowment, or other life insurance contract paid by reason of the death of an insured employee who has paid no contributions under the plan is illustrated by the following examples:

Example (1):

Total face amount of the contract payable in a lump-sum at time of death	$25,000
Cash value of the contract immediately before death	11,000
Excess over cash value, excludable under section 101 (a)	14,000
Cash value subject to limited exclusion under section 101 (b)	11,000
Excludable under section 101 (b) (assuming that there is no other death benefit paid by or on behalf of any employer with respect to the employee)	5,000
Balance taxable in accordance with section 402 (a) (2) (assuming a total distribution in 1 taxable year of the distributee)	6,000
Portion of premiums taxed to employee under the provisions of subparagraph (3) of this paragraph and considered as contributions of the employee	940
Balance taxable as long-term capital gain	$5,060

Example (2): The facts are the same as in example (1), except that the contract provides that the beneficiary may elect within 60 days after the death of the employee either to take the $25,000 or to receive 10 annual installments of $3,000 each, and the beneficiary elects to receive the 10 installments. In addition, the employee's rights to the cash value immediately before his death were forfeitable at least to the extent of $5,000. Section 101 (d) is applicable to the amount excludable under section 101 (a), that is, $14,000. The portion of each annual installment of $3,000 which is attributable to this $14,000 is determined by allocating each installment in accordance with the ratio which this $14,000 bears to the total amount which was payable at death ($25,000). Accordingly, the portion of each annual installment which is subject to section 101 (d) is $1,680 (14/25 of $3,000), of which, $1,400 (1/10 of $14,000) is excludable under section 101 (a), and the remaining $280 is includible in the gross income of the beneficiary. However, if the beneficiary is a surviving spouse as defined in section 101 (d) (3), the exclusion provided by section 101 (d) (1) (B) is applicable to such $280. The remaining portion of each annual $3,000 installment, $1,320, is attributable to the cash value of the contract and is treated under section 72, as follows:

Amount actually contributed by the employee	00
Amount considered contributed by employee by reason of section 101 (b)	$5,000
Portion of premiums taxed to employee under the provisions of subparagraph (3) of this paragraph and considered as contributions of the employee	940
Investment in the contract	5,940
Expected return, 10×$1,320	13,200
Exclusion ratio, $5,940÷$13,200	.45
Annual exclusion, .45×$1,320	$594

Accordingly, $594 of the $1,320 portion of each annual installment is excludable each year under section 72, and the remaining $726 is includible. Thus, if the beneficiary is not a surviving spouse, a total of $1,006 ($280 plus $726) of each annual $3,000 installment is includible in income each year. If the beneficiary is a surviving spouse, and can exclude all of the $280 under section 101 (d) (1) (B), the amount includible in gross income each year is $726 of each annual $3,000 installment.

(iv) If an employee neither paid the total cost of the life insurance protection provided under a retirement income, endowment, or other life-insurance contract, nor was taxable under subparagraph (3) of this paragraph with respect thereto, no part of the proceeds of such a contract which are paid to the beneficiaries of the employee as a death benefit is excludable under section 101 (a). The entire distribution is taxable to the beneficiaries under section 402 (a) except to the extent that a limited exclusion may be allowable under section 101 (b).

(5) If pension or annuity payments or other benefits are paid or made available to the beneficiary of a deceased employee or a deceased retired employee by a trust described in section 401 (a) which is exempt under section 501 (a), such amounts are taxable in accordance with the rules of section 402 (a) and this section. In case such amounts are taxable under section 72, the "investment in the contract" shall be determined by reference to the amount contributed by the employee and by applying the rules of sections 72 (c), 72 (f), 101 (b) (2) (D), and subparagraph (3) of this paragraph. In case the amounts paid to, or includible in the gross income of, the beneficiaries of the deceased employee or deceased retired employee constitute a distribution to which subparagraph (6) of this paragraph is applicable, the extent to which the distribution is taxable is determined by reference to the contributions of the employee, by reference to any prior distributions which were excludable from gross income as a return of employee contributions, and by applying the rules of sections 72 (f), 101 (b), and subparagraph (3) of this paragraph.

(6) (i) If the total distributions payable with respect to any employee under a trust described in section 401 (a) which in the year of distribution is exempt under section 501 (a) are paid to, or includible in the gross income of, the distributee within 1 taxable year of the distributee on account of the employee's death or other separation from the service, or death after such separation from service, the amount of such distribution, to the extent it exceeds the net amount contributed by the employee, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. The total distributions payable are includible in the gross income of the distributee within 1 taxable year if they are made available to such distributee and the distributee fails to make a timely election under section 72 (h) to receive an annuity in lieu of such total distributions. For rules relating to the treatment of such total distributions in the case of a nonresident alien individual, see sections 871 and 1441 and the regulations thereunder. The "net amount contributed by the employee" is the amount actually contributed by the employee plus any amounts considered to be contributed by the employee under the rules of sections 72 (f), 101 (b), and subparagraph (3) of this paragraph, reduced by any amounts theretofore distributed to him which were excludable from gross income as a return of employee contributions. See, however, paragraph (b) of this section for rules relating to the exclusion of amounts representing net unrealized appreciation in the value of securities of the employer corporation.

(ii) The term "total distributions payable" means the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death or other separation from the service or on account of his death after separation from the service. Thus, distributions made before a total distribution (for example, annuity payments received by the employee after retirement) will not defeat application of the capital gains treatment with respect to the total distributions received by a beneficiary upon the death of the employee after retirement. However, a distribution on separation from service will not receive capital gains treatment unless it constitutes the total amount in the employee's account at the time of his separation from service. If the total amount in the employee's account at the time of his death or other separation from the service or death after separation from the service is paid or includible in the gross income of the distributee within 1 taxable year of the distributee, such amount is entitled to the capital gains treatment notwithstanding that in a later taxable year an additional amount, attributable to the last year of service, is credited to the account of the employee and distributed.

(iii) If an employee retires and commences to receive an annuity but subsequently, in some succeeding taxable year, is paid a lump sum in settlement of all future annuity payments, the capital gains treatment does not apply to such lump sum settlement paid during the lifetime of the employee since it is not a payment on account of separation from the service, or death after separation, but is on account of the settlement of future annuity payments.

(iv) If the "total distributions payable" are paid or includible in the gross income of several distributees within one taxable year on account of the employee's death or other separation from the service or on account of his death after separation from the service, the capital gains treatment is applicable. The total distributions payable are paid within 1 taxable year of the distributees when, for example, a portion of such total is distributed in cash to one distributee and the balance is used to purchase an annuity contract which is distributed to the other distributee. However, if the share of any distributee is not paid or includible in his gross income within the same taxable year in which the shares of the other distributees are paid or includible in their gross income, none of the distributees is entitled to the capital gains treatment, since the total distributions payable are not paid or includible in the distributees' gross income within 1 taxable year. For example, if the total distributions payable are made available to each of two distributees and one elects to receive his share in cash while the other makes a timely election under section 72 (h) to receive his share in installment payments from the trust, the capital gains treatment does not apply to either distributee.

(v) For regulations as to certain plan terminations, see § 1.402 (e)-1.

(b) Distributions including securities of the employer corporation—(1) In general: (i) If a trust described in section 401 (a) which is exempt under section 501 (a) makes a distribution to a distributee, and such distribution includes securities of the employer corporation, the amount of any net unrealized appreciation in such securities shall be excluded from the distributee's income in the year of such distribution to the following extent:

(a) If the distribution constitutes a total distribution to which the rules of paragraph (a) (6) of this section are applicable, the amount to be excluded is the entire net unrealized appreciation attributable to that part of the total distribution which consists of securities of the employer corporation; and

(b) If the distribution is other than a total distribution to which paragraph (a) (6) of this section is applicable, the amount to be excluded is that portion of the net unrealized appreciation in the securities of the employer corporation which is attributable to the amount considered to be contributed by the employee to the purchase of such securities.

The amount of net unrealized appreciation which is excludable under the rules of (a) and (b) of this subdivision shall not be included in the basis of the securities in the hands of the distributee at the time of distribution for purposes of determining gain or loss on their subsequent disposition. In the case of a total distribution the amount of net unrealized appreciation which is not included in the basis of the securities in the hands of the distributee at the time of distribution shall be considered as a gain from the sale or exchange of a capital asset held for more than 6 months to the extent that such appreciation is realized in a subsequent taxable transaction. However if the net gain realized by the distributee in a subsequent taxable transaction exceeds the amount of the net unrealized appreciation at the time of distribution, such excess shall constitute a long-term or short-term capital gain depending upon the holding period of the securities in the hands of the distributee.

(ii) For purposes of section 402 (a) and of this section, the term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form, and the term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in section 421 (d) (2) and (3), relating to employee stock options) of the employer corporation.

(2) Determination of net unrealized appreciation. (i) The amount of net unrealized appreciation in securities of the employer corporation which are distributed by the trust is the excess of the market value of such securities at the time of distribution over the cost or other basis of such securities to the trust. Thus, if a distribution consists in part of securities which have appreciated in value and in part of securities which have depreciated in value, the net unrealized appreciation shall be considered to consist of the net increase in value of all of the securities included in the distribution. For this purpose, two or more distributions made by a trust, to a distributee in a single taxable year of the distributee shall be treated as a single distribution.

(ii) For the purpose of determining the net unrealized appreciation on a distributed security of the employer corporation, the cost or other basis of such security to the trust shall be computed in accordance with whichever of the following rules is applicable:

(a) If a security was earmarked for the account of a particular employee at the time it was purchased by or contributed to the trust so that the cost or other basis of such security to the trust is reflected in the account of such employee, such cost or other basis shall be used.

(b) If as of the close of each taxable year of the trust (or other specified period of time not in excess of 12 consecutive calendar months) the trust allocates among the accounts of participating employees all securities acquired by the trust during the period (exclusive of securities unallocated under a plan providing for allocation in whole shares only), the cost or other basis to the trust of any securities allocated as of the close of a particular allocation period shall be the average cost or other basis to the trust of all securities of the same type

which were purchased or otherwise acquired by the trust during such allocation period. For purposes of determining the average cost to the trust of securities included in a subsequent allocation, the actual cost to the trust of the securities unallocated as of the close of a prior allocation period shall be deemed to be the average cost or other basis to the trust of securities of the same type allocated as of the close of such prior allocation period.

(c) In a case where neither (a) nor (b) is applicable, if the trust fund, or a specified portion thereof, is invested exclusively in one particular type of security of the employer corporation, and if during the period the distributee participated in the plan none of such securities has been sold except for the purpose of paying benefits under the trust or for the purpose of enabling the trustee to obtain funds with which to exercise rights which have accrued to the trust, the cost or other basis to the trust of all securities distributed to such distributee shall be the total amount credited to the account of such distributee (or such portion thereof as was available for investment in such securities) reduced by the amount available for investment but uninvested on the date of distribution. If at the time of distribution to a particular distributee a portion of the amount credited to his account is forfeited, appropriate adjustment shall be made with respect thereto in determining the cost or other basis to the trust of the securities distributed.

(d) (1) In all other cases, there shall be used the average cost (or other basis) to the trust of all securities of employer corporation of the type distributed to the distributee which the trust has on hand at the time of the distribution, or which the trust had on hand on a specified inventory date which date does not precede the date of distribution by more than 12 calendar months. If a distribution includes securities of the employer corporation of more than one type, the average cost (or other basis) to the trust of each type of security distributed shall be determined. The average cost to the trust of securities of the employer corporation on hand on a specified inventory date (or on hand at the time of distribution) shall be computed on the basis of their actual cost, considering the securities most recently purchased to be those on hand, or by means of a moving average calculated by subtracting the total cost of securities on hand immediately preceding a particular sale or distribution an amount computed by multiplying the number of securities sold or distributed by the average cost of all securities on hand preceding such sale or distribution.

(2) These methods of computing average cost may be illustrated by the following examples:

Example (1): A, a distributee who makes his income-tax returns on the basis of a calendar year, receives on August 1, 1954, in a total distribution, to which paragraph (a) (6) of this section is applicable, 10 shares of class D stock of the employer corporation. On July 1, 1954 (the specified inventory date of the trust) the trust had on hand 80 shares of class D stock. The average cost of the 10 shares distributed, on the basis of the actual method, is $100, computed as follows:

Purchase date	Shares	Cost per share	Total cost
June 24, 1954	20	$101	$2,020
Jan. 10, 1953	40	102	4,080
Oct. 20, 1952	20	95	1,900
Total	80		8,000

Example (2). B, a distributee who makes his income tax returns on the basis of a calendar year, receives on October 31, 1954, in a total distribution, to which paragraph (a) (6) of this section is applicable, 20 shares of class E stock of the employer corporation. The specified inventory date of the trust is the last day of each calendar year. The trust had on hand on December 31, 1952, 1,000 shares of class E stock of the employer corporation. During the calendar year 1953 the trust distributed to four distributees a total of 100 shares of such stock and acquired, through a number of purchases, a total of 120 shares. The average cost of the 20 shares distributed to B, on the basis of the moving average method, is $52 computed as follows:

	Shares	Total cost	Average cost
On hand Dec. 31, 1952	1,000	$50,000	$50
Distributed during 1953 at average cost of $50	100	5,000	
Total	900	45,000	
Purchased during 1953	120	8,040	
On hand Dec. 31, 1953	1,020	53,040	52

(3) Unrealized appreciation attributable to employee contributions.—In any case in which it is necessary to determine the amount of net unrealized appreciation in securities of the employer corporation which is attributable to contributions made by an employee:

(i) The cost or other basis of the securities to the trust and the amount of net unrealized appreciation shall first be determined in accordance with the rules in paragraph (b) (2) of this section;

(ii) The amount contributed by the employee to the purchase of the securities shall be solely the portion of his actual contributions to the trust properly allocable to such securities, and shall not include any part of the increment in the trust fund expended in the purchase of the securities;

(iii) The amount of net unrealized appreciation in the securities distributed which is attributable to the contributions of the employee shall be that proportion of the net unrealized appreciation determined under the rules of paragraph (b) (2) of this section which the contributions of the employee properly allocable to such securities bear to the cost or other basis to the trust of the securities;

(iv) If a distribution consists solely of securities of the employer corporation, the contributions of the employee expended in the purchase of such securities shall be allocated to the securities distributed in a manner consistent with the principles set forth in paragraph (b) (2) (ii) (a), (b), (c), or (d) of this section, whichever is applicable. Thus, the amount of the employee's contribution which can be identified as having been expended in the purchase of a particular security shall be allocated to such security, and the amount of such contribution which cannot be so identified shall be allocated ratably among the securities distributed. If a distribution consists in part of securities of the employer corporation and in part of cash or other property, appropriate allocation of a portion of the employee's contribution to such case or other property shall be made unless such allocation is inconsistent with the terms of the plan or trust.

(v) The application of this subparagraph may be illustrated by the following example:

Example: A trust distributes 10 shares of stock issued by the employer corporation each of which has an average cost to the trust of $100, consisting of employee contributions in the amount of $60 and employer contributions in the amount of $40, and on the date of distribution has a fair market value of $180. The portion of the net unrealized appreciation attributable to the contributions of the employee with respect to each of the shares of stock is $48 computed as follows:

(1) Value of one share of stock on distribution date	$180
(2) Employee contributions	60
(3) Employer contributions	40
(4) Total contributions	100
(5) Net unrealized appreciation	80
(6) Portion of net unrealized appreciation attributable to employee contributions, 60/100 (amount of employee contributions (item 2) over total contributions (item 4) of $80 (item 5))	48

(vi) For the purpose of determining gain or loss to the distributee in the year or years in which any share of stock referred to in the example in subdivision (v) of this subparagraph is sold or otherwise disposed of in a taxable transaction, the basis of each such share in the hands of the distributee at the time of the distribution by the trust will be $132 computed as follows:

(a) Employee contributions	$60
(b) Employer contributions (taxable as ordinary income in the year the securities were distributed)	40
(c) Portion of net unrealized appreciation attributable to employer contributions (item (5) minus item (6)) (taxable as ordinary income in the year the securities were distributed)	32
(d) Basis of stock	132

(4) Change in exempt status of trust. For principles applicable in making appropriate adjustments if the trust was not exempt for one or more years before the year of distribution, see paragraph (a) of this section.

Section 1.402(b), statutory provisions; taxability of beneficiency of employees' trust; nonexempt trust.

"SEC. 402. Taxability of beneficiary of employees' trust. * * *

"(b) Taxability of beneficiary of nonexempt trust: Contributions to an employees' trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made. The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities) except that section 72(e) (3) shall not apply."

Section 1.402 (b)-1, treatment of beneficiary of a trust not exempt under section 501 (a): (a) Taxation by reason of employer contributions: (1) Except as provided in section 402 (d), any contribution made by an employer on behalf of an employee to a trust during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt under section 501 (a), shall be included in income of the employee for his taxable year during which the contribution is made if the employee's beneficial interest in the contribution is nonforfeitable at the time the contribution is made. If the employee's beneficial interest in the contribution is forfeitable at the time the contribution is made even though his interest becomes nonforfeitable later, the amount of such contribution is not required to be included in the

income of the employee at the time his interest become nonforfeitable.

(2) (i) An employee's beneficial interest in the contribution is nonforfeitable within the meaning of sections 402 (b), 403 (b), and 404 (a) (5) at the time the contribution is made if there is no contingency under the plan which may cause the employee to lose his rights in the contribution. For example, if under the terms of a pension plan, an employee upon termination of his services before the retirement date, whether voluntarily or involuntarily, is entitled to a deferred annuity contract to be purchased with the employer's contributions made on his behalf, or is entitled to annuity payments which the trustee is obligated to make under the terms of the trust instrument based on the contributions made by the employer on his behalf, the employee's beneficial interest in such contributions is nonforfeitable.

(ii) On the other hand, if, under the terms of a pension plan, an employee will lose the right to any annuity purchased from, or to be provided by, contributions made by the employer if his services should be terminated before retirement, his beneficial interest in such contributions is forfeitable.

(iii) The mere fact that an employee may not live to the retirement date, or may live only a short period after the retirement date, and may not be able to enjoy the receipt of annuity or pension payments, does not make his beneficial interest in the contributions made by the employer on his behalf forfeitable. If the employer's contributions have been irrevocably applied to purchase an annuity contract for the employee, or if the trustee is obligated to use the employer's contributions to provide an annuity for the employee provided only that the employee is alive on the dates the annuity payments are due, the employee's rights in the employer's contributions are nonforfeitable.

(b) Taxation of distributions from trust not exempt under section 501 (a): Any amount actually distributed or made available to any distributee by an employees' trust which is not exempt under section 501 (a) for the taxable year of the trust in which the distribution is made shall be taxable in the year in which so distributed or made available, under section 72 (relating to annuities), except that section 72 (e) (3) shall not apply. If, for example, the distribution from such a trust consists of an annuity contract, the amount of the distribution shall be considered to be the entire value of the contract at the time of distribution, and such value is includible in the gross income of the distributee at the time of the distribution to the extent that such value exceeds the investment in the contract determined by applying sections 72 and 101 (b). The distributions by such an employees' trust shall be taxed as provided in section 72, whether or not the employee's rights to the contributions were nonforfeitable when the contributions were made or at any time thereafter. For rules relating to the treatment of employer contributions to a nonexempt trust as part of the consideration paid by the employee, see section 72 (f). For rules relating to the treatment of the limited exclusion allowable under section 101 (b) (2) (D) as additional consideration paid by the employee, see the regulations under that section.

Section 1.402 (c), statutory provisions; taxability of beneficiary of employees' trust; certain foreign situs trusts.

"SEC. 402. Taxability of beneficiary of employees' trust. * * *

"(c) Taxability of beneficiary of certain foreign situs trusts.—For purposes of subsections (a) and (b), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501 (a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501 (a)."

Section 1.402 (c)-1, taxability of beneficiary of certain foreign situs trusts: Section 402 (a) has the effect of treating, for purposes of section 402, the distributions from a trust which at the time of the distribution is located outside the United States in the same manner as distributions from a trust which is located in the United States. If the trust would qualify for exemption from tax under sectior 501 (a) except for the fact that it fails to comply with the provisions of section 1.401-1 (a) (3) (i), which restricts qualification to trusts created or organized in the United States and maintained here, section 402 (a) and section 1.402 (a)-1 are applicable to the distributions from such a trust. Thus, for example, a total distribution from such a trust is entitled to the long-term capital gains treatment of section 402 (a) (2), except in the case of a nonresident alien individual (see sections 871 and 1441 and the regulations thereunder). However, if the plan fails to meet any requirement of section 401 and the regulations thereunder in addition to section 1.401 (a) (3) (i), section 402 (b) and section 1.402 (b)-1 are applicable to the distributions from such a trust.

Section 1.402 (d), statutory provisions; taxability of beneficiary of employees' trust; annuities under agreements entered into prior to October 21, 1942.

"SEC. 402. Taxability of beneficiary of employees' trust. * * *

"(d) Certain employees' annuities: Notwithstanding subsection (b) or any other provision of this subtitle, a contribution to a trust by an employer shall not be included in the gross income of the employee in the year in which the contribution is made if—

"(1) Such contribution is to be applied by the trustee for the purchase of annuity contracts for the benefit of such employee;

"(2) Such contribution is made to the trustee pursuant to a written agreement into prior to October 21, 1942, between the employer and the trustee, or between the employer and the employee; and

"(3) Under the terms of the trust agreement the employee is not entitled during his lifetime, except with the consent of the trustee, to any payments under annuity contracts purchased by the trustee other than annuity payments.

The employee shall include in his gross income the amounts received under such contracts for the year received as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. This subsection shall have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on such date was exempt under section 165 (a) of the Internal Revenue Code of 1939. For purposes of this subsection, amounts paid by an employer for the purchase of annuity contracts which are transferred to the trustee shall be deemed to be contributions made to a trust or trustee and contributions applied by the trustee for the purchase of annuity contracts; the term 'annuity contracts purchased by the trustee' shall include annuity contracts so purchased by the employer and transferred to the trustee; and the term 'employee' shall include only a person who was in the employ of the employer, and was covered by the agreement referred to in paragraph (2), prior to October 21, 1942."

Section 1.402 (d)-1, effect of section 402 (d): (a) If the requirements of section 402 (d) are met, a contribution made by an employer on behalf of an employee to a trust which is not exempt under section 501 (a) shall not be included in the income of the employee in the year in which the contribution is made. Such contribution will be taxable to the employee, when received in later years, as provided in section 72 (relating to annuities), except that section 72 (e) (3) shall not apply. See section 1.403 (b)-1 (b). The intent and purpose of section 402 (d) is to give those employees, covered under certain nonexempt trusts to which such section applies, essentially the same tax treatment as those covered by trusts described in section 401 (a) and exempt under section 501 (a), except that the capital gains treatment referred to in section 402 (a) (2) does not apply.

(b) Every person claiming the benefit of section 402 (d) must be able to demonstrate to the satisfaction of the commissioner that all of the provisions of such section are met. The taxpayer must produce sufficient evidence to prove:

(1) That, before October 21, 1942, he was employed by the particular employer making the contribution in question and was at such time definitely covered by a written agreement, entered into before October 21, 1942, between himself and the employer, or between the employer and the trustee of a trust established by the employer before October 21, 1942, and that the contribution by the employer was made pursuant to such agreement. The fact that an employee may have been potentially covered is not sufficient. Evidence that the employment was entered into, or the agreement executed, as of a date before October 21, 1942, or that the agreement or trust instrument which did not theretofore meet the requirements of section 402 (d) was modified or amended after October 20, 1942, so as to come within the provisions of such section, will not satisfy the requirements of section 402 (d).

(2) That such contribution, pursuant to the terms of such agreement, was to be applied for the purchase of an annuity contract for the taxpayer. In the case of a contribution by the employer of an annuity contract purchased by such employer and transferred by him to the trustee of the trust, evidence should be presented to prove that such contract was purchased for the taxpayer by the employer pursuant to the terms of a written agreement between the employer and the employee or between the employer and the trustee, entered into before October 21, 1942.

(3) That under the written terms of the trust agreement the taxpayer is not entitled during his lifetime, except with the consent of the trustee, to any payments other than annuity payments under the annuity contract or contracts purchased by the trustee or by the employer and transferred to the trustee, and that the trustee may grant or withhold such consent free from control by the taxpayer, the employer, or any other person. However, such control will not be presumed from the fact that the trustee is himself an officer or employee of the employer. As used in section 402 (d) the phrase "if * * * under the terms of the trust agreement the employee is not entitled" means that the trust instrument must make it impossible for the prohibited distribution to occur, whether by operation or natural termination of the trust, whether by power of revocation or amendment, other than with the consent of the trustee, whether by the happening of a contingency, by collateral arrangement, or any other means. It is not essential that the employer relinquish all power to modify or terminate the trust but it must be impossible, except with the consent of the trustee, for any payments under annuity contracts purchased by the trustee, or by the employer and transferred to the trustee, to be received by the taxpayer, directly or indirectly, other than as annuity payments.

(4) The nature and amount of such contribution and the extent to which income taxes have been paid thereon before January 1, 1949, and not credited or refunded.

(5) If it is claimed that section 402 (d) applies to amounts contributed to a trust after June 1, 1949, the taxpayer must prove

to the satisfaction of the Commissioner that the trust did not, on June 1, 1949, qualify for exemption under section 165 (a) of the Internal Revenue Code of 1939. Where an employer buys an annuity contract which is transferred to the trustee, the date of the purchase of the annuity contract and not the date of the transfer to the trustee is the controlling date in determining whether or not the contribution was made to the trust after June 1, 1949.

Section 1.402 (e), statutory provisions: taxability of beneficiary of employees' trust; certain plan terminations.

"SEC. 402. Taxability of beneficiary of employees trust. * * *

"(e) Certain plan terminations: For purposes of subsection (a) (2), distributions made after December 31, 1953, and before January 1, 1955, as a result of the complete termination of a stock bonus, pension, or profit-sharing plan of an employer which is a corporation, if the termination of the plan is incident to the complete liquidation, occurring before the date of enactment of this title, of the corporation, whether or not such liquidation is incident to a reorganization as defined in section 368 (a), shall be considered to be distributions on account of separation from service."

Section 1.402 (e)-1, certain plan terminations: Distributions made after December 31, 1953, and before January 1, 1955, as a result of the complete termination of an employees' trust described in section 401 (a) which is exempt under section 501 (a) shall be considered distributions on account of separation from service for purposes of section 402 (a) (2) if the employer who established the trust is a corporation, and the termination of the plan is incident to the complete liquidation of the corporation before August 16, 1954, regardless of whether such liquidation is incident to a reorganization as defined in section 368.

Section 1.403 (a), statutory provisions; taxation of employee annuities; qualified annuity plan.

"SEC. 403. Taxation of employee annuities.

"(a) Taxability of beneficiary under a qualified annuity plan.

"(1) General rule: Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan with respect to which the employer's contribution is deductible under section 404 (a) (2), or if an annuity contract is purchased for an employee by an employer described in section 501 (c) (3) which is exempt from tax under section 501 (a), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply.

"(2) Capital gains treatment for certain distributions:

"(A) General rule: If—

"(i) An annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 401 (a) (3), (4), (5), and (6);

"(ii) Such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

"(iii) The total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within 1 taxable year of the payee, then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying sec. 72 (f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months.

"(B) Definition: For purposes of subparagraph (A), the term 'total amounts' means the balance to the credit of an employee which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service."

Section 1.403 (a)-1, taxability of beneficiary under a qualified annuity plan: (a) An employee or retired or former employee for whom an annuity contract is purchased by his employer is not required to include in his gross income the amount paid for the contract at the time such amount is paid, whether or not his rights to the contract are forfeitable, if—

(1) The annuity contract is purchased under a plan with respect to which the amounts paid by the employer are deductible under section 404 (a) (2), or

(2) The annuity contract is purchased under a plan which meets the requirements of section 404 (a) (2) although the employer does not deduct the amounts paid for the contract under such section, or

(3) The annuity contract is purchased by an employer which is an organization described in section 501 (c) (3) and exempt under section 501 (a) provided the purchase of the annuity is merely a supplement to past or current compensation. For the purpose of this subparagraph, whether the purchase of an annuity contract is merely a supplement to past or current compensation is to be determined by all the surrounding facts and circumstances. One of the pertinent facts to be taken into consideration is the ratio of the consideration paid by the employer for an employee's contract to the amount of his past or current compensation. For example, if the annual premium paid for an employee's contract is $1,000 and his annual salary is $10,000, the ratio indicates that the premium paid for the contract is merely a supplement to the employee's current compensation. If, however, an employee receives no current compensation, or the annual premiums paid for his annuity contract approximate his annual salary, the amount paid for his contract will be considered to be current compensation and taxable to the employee in the year in which it is paid by the employer. Other pertinent considerations are whether the annuity contract is purchased as a result of an agreement for a reduction of the employee's annual salary, or whether it is purchased at his request in lieu of an increase in current compensation to which he otherwise might be entitled. In such cases, the amount paid for the contract shall also be considered to be current compensation.

(b) The amounts received by or made available to any employee referred to in paragraph (a) of this section under such annuity contract shall be included in gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply, and except that certain total distributions described in section 403 (a) (2) are taxable as long-term capital gains. For the treatment of such total distributions, see § 1.403 (a)-2.

(c) If upon the death of an employee or of a retired employee, the widow or other beneficiary of such employee is paid, in accordance with the terms of the annuity contract relating to the deceased employee, an annuity or other death benefit, the extent to which the amounts received by or made available to the beneficiary must be included in the beneficiary's income under section 403 (a) shall be determined in accordance with rules presented in § 1.402 (a)-1 (a) (5).

(d) If under a qualified annuity plan a group contract providing group permanent life insurance protection is purchased for the employees, the same rules which are applicable when contracts providing life insurance protection are purchased by a trust described in section 401 (a) and exempt under section 501 (a), shall be applicable in the case of such a contract. For such rules, see § 1.402 (a)-1 (a) (2), (3), and (4). Section 403 (a) is not applicable to premiums paid after October 26, 1956, for individual contracts providing life insurance protection for employees.

(e) As to inclusion of full-time life insurance salesmen within the class of persons considered to be employees, see section 7701 (a) (20).

Section 1.403 (a)-2. Capital gains treatment or certain distributions: (a) If the total amounts payable with respect to any employee for whom an annuity contract has been purchased by an employer under a plan which—

(1) Meets the requirements of section 401 (a) (3), (4), (5), and (6), and

(2) Requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan,

are paid to, or includible in gross income of, the payee within one taxable year of the payee by reason of the employee's death or other separation from the service, or death after such separation from the service, such total payments, to the extent they exceed the next amount contributed by the employee, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. The "net amount contributed by the employee" is the amount actually contributed by the employee plus any amounts considered to be contributed by the employee under the rules of section 72 (f), 101 (b), and section 1.403 (a)-1 (d), reduced by any amounts theretofore distributed to him which were excludable from his gross income as a return of employee contributions. For example, if under an annuity contract purchased under a plan described in this section, the total distributions payable to the employee's widow are paid to her in the year in which the employee dies, in the amount of $8,000, and if $5,000 thereof is excludable under section 101 (b), and if the employee made contributions of $600 and had received no payments, the remaining amount of $2,400 will be considered a gain from the sale or exchange of a capital-asset held for more than six months.

(b) (1) The term "total amounts" means the balance to the credit of an employee with respect to all annuities under the annuity plan which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service. If an employee commences to receive annuity payments on retirement and then a lump sum payment is made to his widow upon his death, the capital gains treatment applies to the lump sum payment, but it does not apply to amounts received before the time the "total amounts" become payable. However, if the total amount to the credit of the employee at the time of his death or other separation from the service or death after separation from the service is paid or includible in the gross income of the payee within one taxable year of the payee, such amount is entitled to the capital gains treatment notwithstanding that in a later taxable year an additional amount is credited to the employee and paid to the payee.

(2) If more than one annuity contract is received under the plan, the capital gains treatment does not apply to any amount received on the surrender thereof unless all contracts under the plan with respect to a particular employee are surrendered either

at the time of the employee's death or other separation from the service or death after separation from the service. Thus, if an employee receives two contracts on separation from the service and surrenders one of them in the year of separation and receives payments under the other until his death, the capital gains treatment is applicable to the balance paid to his beneficiary on his death if paid within 1 taxable year of the beneficiary. The amount received by the employee on surrender of the contract in the year of his separation from the service, however, would not receive capital gains treatment since the balance to the credit of the employee with respect to all amounts under the plan did not become payable at that time.

(3) If an employee retires and commences to receive an annuity but subsequently in some succeeding taxable year he is paid a lump sum in settlement of all future annuity payments, the capital gains treatment does not apply to such lump-sum settlement paid during the lifetime of the employee since it is not a payment on account of separation from the service, or death after separation, but is on account of the settlement of future annuity payments.

(4) If the "total amounts" payable under all annuity contracts under the plan with respect to a particular employee are paid or includible in the gross income of several payees within one taxable year on account of the employee's death or other separation from the service or on account of his death after separation from the service, the capital gains treatment is applicable. Thus, if the balance to the credit of a deceased employee under all annuity contracts provided under an annuity plan becomes payable to two payees, the capital gains treatment is applicable provided the "total amounts" payable are received by or includible in the gross income of both payees within the same taxable year. However, if the "total amounts" payable are made available to each payee and one elects to receive his share in cash while the other makes a timely election under section 72 (h) to receive his share as an annuity, the capital gains treatment does not apply to either payee.

Section 1.403 (b), statutory provisions: Taxation of employee annuities; nonqualified annuity:

"SEC. 403. Taxation of employee annuities: * * * (b) Taxability of beneficiary under a nonqualified annuity: If an annuity contract purchased by an employer for an employee is not subject to subsection (a) and the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on or after such rights become nonforfeitable shall be included in the gross income of the employee in the year in which the amount is contributed. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply."

Section 1.403 (b)-1, taxability of beneficiary under a nonqualified annuity: (a) Except as provided in section 402 (d), if an employer purchase an annuity contract and if the amounts paid for the contract are not subject to section 1.403 (a)-1 (a), the amount of such contribution shall be included in the income of the employee for the taxable year during which such contribution is made if, at the time the contribution is made, the employee's rights under the annuity contract are nonforfeitable, except for failure to pay future premiums. If the employee's rights under the annuity contract in such a case were forfeitable at the time the employer's contribution was made for the annuity contract, even though they become nonforfeitable later, the amount of such contribution is not required to be included in the income of the employee at the time his rights under the contract become nonforfeitable. As to what constitutes nonforfeitable rights of an employee, see section 1.402 (b)-1. The amounts received by or made available to the employee under the annuity contract shall be included in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities) except that section 72 (e) (3) shall not apply. For rules relating to the treatment of employer contributions as part of the consideration paid by the employee, see section 72 (f). See also section 101 (b) (2) (D) for rules relating to the treatment of the limited exclusion provided thereunder as part of the consideration paid by the employee.

(b) If an employer has purchased annuity contracts and transferred the same to a trust or if an employer has made contributions to a trust for the purpose of providing annuity contracts for his employees as provided in section 402 (d) (see sec. 1.402 (d)-1(a)), the amount so paid or contributed is not required to be included in the income of the employee, but any amount received by or made available to the employee under the annuity contract shall be includible in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities), except that section 72 (e) (3) shall not apply. In such case the amount paid or contributed by the employer shall not constitute consideration paid by the employee for such annuity contract in determining the amount of annuity payments required to be included in his gross income under section 72 unless the employee has paid income tax for any taxable year beginning before January 1, 1949, with respect to such payment or contribution by the employer for such year and such tax is not credited or refunded to the employee. In the event such tax has been paid and not credited or refunded the amount paid or contributed by the employer for such year shall constitute consideration paid by the employee for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under section 72.

Section 1.404 (a), statutory provisions; deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan; general rule:

"SEC. 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan:

"(a) General rule: If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income) but if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

"(1) Pension trusts: In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501 (a), in an amount determined as follows:

"(A) An amount not in excess of 5 percent of the compensation otherwise paid or accrued during the taxable year to all the employees under the trust, but such amount may be reduced for future years if found by the Secretary or his delegate upon periodical examinations at not less than 5-year intervals to be more than the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan, plus

"(B) Any excess over the amount allowable under subparagraph (A) necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years, or

"(C) In lieu of the amounts allowable under subparagraphs (A) and (B) above, an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount not in excess of 10 percent of the cost which would be required to completely fund or purchase such pension or annuity credits as of the date when they are included in the plan, as determined under regulations prescribed by the Secretary or his delegate, except that in no case shall a deduction be allowed for any amount (other than the normal cost) paid in after such pension or annuity credits are completely funded or purchased.

"(D) Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year in accordance with the foregoing limitations.

"(2) Employees' annuities: In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities and such purchase is a part of a plan which meets the requirements of section 401 (a) (3), (4), (5), and (6), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities.

"(3) Stock bonus and profit-sharing trusts:

"(A) Limits on deductible contributions: In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501 (a), in an amount not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the stock bonus or profit-sharing plan. If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan. In addition, any amount paid into the trust in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in

order of time, but the amount so deductible under this sentence is any one such succeeding taxable year together with the amount allowable under the first sentence of this subparagraph shall not exceed 15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. The term "stock bonus or profit-sharing trust," as used in this subparagraph, shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarily as provided in paragraph (1). If the contributions are made to two or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

"(B) Profit-sharing plan of affiliated group: In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings of profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

"(4) Trusts created or organized outside the United States: If a stock bonus pension, or profit-making trust would qualify for exemption under section 501 (a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

"(5) Other plans: In the taxable year when paid, if the plan is not one included in paragraph (1), (2), or (3), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid.

"(6) Taxpayers on accrual basis: For purposes of paragraphs (1), (2), and (3), a taxpayer on the accrual basis shall be deemed to have made a payment on the last day of the year of accrual if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

"(7) Limit of deduction: If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with 2 or more trusts, or 1 or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans. In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 30 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust, or a trust and an annuity plan."

Section 1.404 (a)-1, contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan; general rule: (a) (1) section 404 (a) prescribes limitations upon deductions for amounts contributed by an employer under a pension, annuity, stock bonus, or profit-sharing plan, or under any plan of deferred compensation. It is immaterial whether the plan covers present employees only, or present and former employees, or only former employees. Section 404 (a) also governs the deductibility of unfunded pensions and death benefits paid directly to former employees or their beneficiaries (see sec. 1.404 (a)-12).

(2) Section 404 (a) does not apply to a plan which does not defer the receipt of compensation. Furthermore, section 404 (a) does not apply to deductions for contributions under a plan which is solely a dismissal wage or unemployment benefit plan, or a sickness, accident, hospitalization, medical expense, recreation, welfare, or similar benefit plan, or a combination thereof. For example, if under a plan an employer contributes 5 percent of each employee's compensation per month to a fund out of which employees who are laid off will be paid benefits for temporary periods, but employees who are not laid off have no rights to the funds, such a plan is an unemployment benefit plan, and the deductibility of the contributions to it is determined under section 162. As to the deductibility of such contributions, see section 1.162-9.

(3) If, however, the contributions to a pension, profit-sharing, stock bonus, or other plan of deferred compensation can be used to provide any of the benefits referred to in subparagraph (2) of this paragraph, then, except as provided in section 404 (c), section 404 (a) applies to the entire contribution to the plan. Thus, if in the example described in subparagraph (2) of this paragraph, the employer's contribution on behalf of each employee is set up as a separate account, and if any amount which remains in an employee's account at the time of retirement is paid to him at such time, the deductibility of the contributions to the plan is determined under section 404 (a). For the rules for determining whether the benefits referred to in subparagraph (2) of this paragraph can be included in a qualified pension or profit-sharing plan, see section 1.401-1 (b).

(4) As to inclusion of full-time life insurance salesmen within the class of persons considered to be employees, see section 7701 (a) (20).

(b) In order to be deductible under section 404 (a), contributions must be expenses which would be deductible under section 162 (relating to trade or business expenses) or 212 (relating to expenses for production of income) if it were not for the provision in section 404 (a) that they are deductible, if at all, only under section 404 (a). Contributions may therefore be deducted under section 404 (a) only to the extent that they are ordinary and necessary expenses during the taxable year in carrying on the trade or business or for the production of income and are compensation for personal services actually rendered. In no case is a deduction allowable under section 404 (a) for the amount of any contribution for the benefit of an employee in excess of the amount which, together with other deductions allowed for compensation for such employee's services, constitutes a reasonable allowance for compensation for the services actually rendered. What constitutes a reasonable allowance depends upon the facts in the particular case. Among the elements to be considered in determining this are the personal services actually rendered in prior years as well as the current year and all compensation and contributions paid to or for such employee in prior years as well as in the current year. Thus, a contribution which is in the nature of additional compensation for services performed in prior years may be deductible, even if the total of such contributions and other compensation for the current year would be in excess of reasonable compensation for services performed in the current year, provided that such total plus all compensation and contributions paid to or for such employee in piror years represents a reasonable allowance for all services rendered by the employee by the end of the current year. A contribution under a plan which is primarily for the benefit of shareholders of the employer is not deductible. Such a contribution may constitute a dividend within the meaning of section 316. See also sections 1.162-6 and 1.162-8. In addition to the limitations referred to above, deductions under section 404 (a) are also subject to further conditions and limitations particularly provided therein.

(c) Deductions under section 404 (a) are generally allowable only for the year in which the contribution or compensation is paid, regardless of the fact that the taxpayer may make his returns on the accrual method of accounting. Exceptions are made in the case of overpayments as provided in paragraphs (1), (3), and (7) of section 404 (a), and, as provided by section 404 (a) (6), in the case of payments made by a taxpayer on the accrual method of accounting not later than the time prescribed by law for filing the return for the taxable year of accrual (including extensions thereof). This latter provision is intended to permit a taxpayer on the accrual method to deduct such accrued contribution or compensation in the year of accrual, provided payment is actually made not later than the time prescribed by law for filing the return for the taxable year of accrual (including extensions thereof), but this provision is not applicable unless, during the taxable year on account of which the contribution is made, the taxpayer incurs a liability to make the contribution, the amount of which is accruable under section 461 for such taxable year. See section 461 and the regulations thereunder. There is another exception in the case of certain taxpayers who are required to make additional contributions as a result of Public Law 74 (84th Cong.) approved June 15, 1955, and the regulations thereunder.

Section 1.404 (a)-2, information to be furnished by employer claiming deductions. (a) For the first taxable year for which a deduction from gross income is claimed under section 404 (a) (1), (2), (3), or (7), the employer must file the following information (unless such information has been previously

filed in accordance with the regulations under section 28 (p) of the Internal Revenue Code of 1939) for each plan involved to establish that it meets the requirements of section 401 (a) or 404 (a) (2), and that deductions claimed do not exceed the amount allowable under paragraphs (1), (2), (3), and (7) of section 404 (a), as the case may be:

(1) Verified copies of all the instruments constituting or evidencing the plan, including trust indentures, group annuity contracts, specimen copy of each type of individual contract, and specimen copy of formal announcement and comprehensive detailed description to employees, with all amendments to any such instruments.

(2) A statement describing the plan which identifies it and which sets forth the name or names of the employers, the effective date of the plan and of any amendments thereto, and the method of distribution or of disbursing benefits (whether by trustee, insurance company, or otherwise), the dates when the instruments or amendments were executed, the date of formal announcement and the dates when comprehensive detailed description of the plan and of each amendment thereto were made available to employees generally, the dates when the plan and when the trust or the contract evidencing the plan and of any amendments thereto were put into effect so that contributions thereunder were irrevocable and a summary of the provisions and rules relating to—

(i) Employee eligibility requirements for participation in the plan.

(ii) Employee contributions.

(iii) Employer contributions.

(iv) The basis or formula for determining the amount of each type of benefit and the requirements for obtaining such benefits and the vesting conditions.

(v) The medium of funding (e. g., self-insured, unit purchase group annuity contract, individual level annual premium retirement endowment insurance contracts, etc.) and, if not wholly insured, the medium of contributions and the kind of investments.

(vi) The discontinuance or modification of the plan and distributions or benefit payments upon liquidation or termination.

(3) A tabulation in columnar form showing the information specified below with respect to each of the 25 highest paid employees covered by the plan in the taxable year, listed in order of their nondeferred compensation (where there are several plans of deferred compensation, the information for each of the plans may be shown on a single tabulation without repetition of the information common to the several plans):

(i) Name.

(ii) Whether an officer.

(iii) Percentage of each class of stock owned directly or indirectly by the employee or members of his family.

(iv) Whether the principal duties consist in supervising the work of other employees.

(v) Year of birth.

(vi) Length of service for employer to the close of the year.

(vii) Total nondeferred compensation paid or accrued during the taxable year with a breakdown of such compensation into the following components:

(a) Basic compensation and overtime pay.

(b) Other direct payments, such as bonuses and commissions.

(c) Compensation paid other than in cash, such as goods, services, insurance not directly related to the benefits or provided from funds under the plan, etc.

(viii) Amount allocated during the year for the benefit of the employee or his beneficiary (including any insurance provided thereby or directly related thereto), less the employee's contributions during the year, under each other plan of deferred compensation.

(ix) Amount allocated during the year for the benefit of the employee or his beneficiary (including any insurance provided thereby or directly related thereto), less the employee's contributions during the year, under the plan. If a profit-sharing or stock bonus plan, also a breakdown of such amounts into the following components:

(a) Amounts originally allocated in the year, and

(b) Amounts reallocated in the year.

(x) Amounts of employee contributions during the year under the plan,

(xi) If a pension or annuity plan—

(a) The retirement age and date and the form of the retirement benefit,

(b) The annual rate or amount of the retirement benefit, and

(c) The aggregate of all of the employee's contributions under the plan,

all based, in the case of an employee who is not on retirement benefit under the plan, upon the assumption of his continued employment at his current rate of compensation until his normal retirement age (or the end of the current year if later) and retirement on such date with the normal form of retirement benefit under the plan.

(4) The following totals:

(i) Total nondeferred compensation paid or accrued during the taxable year for all employees covered under the plan and also for all employees of the employer.

(ii) Total amount allocated during the year for the benefit of employees, former or retired employees, or their beneficiaries (including any insurance provided thereby or directly related thereto), less employee contributions during the year under the plan and, if a profit-sharing or stock bonus plan, also a breakdown of such total into the following components:

(a) Amount originally allocated in the year, and

(b) Amount reallocated in the year.

(5) A schedule showing the total number of employees as of the close of the year for each of the following groups, based on reasonable estimates:

(i) All employees ineligible for coverage under the plan because of requirements as to employment classification, specifying the reasons applicable to the group (as, for example, temporary, seasonal, part-time, hourly pay basis, etc.).

(ii) All employees ineligible for coverage under the plan because of requirements as to length of service and not included in subdivision (i) of this subparagraph.

(iii) All employees ineligible for coverage under the plan because of requirements as to minimum age and not included in subdivision (i) or (ii) of this subparagraph.

(iv) All employees ineligible for coverage under the plan solely because of requirements as to minimum rate of compensation.

(v) All employees ineligible for coverage under the plan other than those employees included in subdivision (i), (ii), (iii), or (iv) of this subparagraph, specifying the reason applicable to the group.

(vi) All employees ineligible for coverage under the plan for any reasons, which should be the sum of subdivision (i) to (v) inclusive, of this subparagraph.

(vii) All employees eligible for coverage but not covered under the plan.

(viii) All employees covered under the plan.

(ix) All employees of the employer, which should be the sum of subdivisions (vi), (vii), and (viii) of this subparagraph.

If it is claimed that the requirements of section 401 (a) (3) (A) are satisfied, also the data and computations necessary to show that such requirements are satisfied.

(6) In the case of a trust, a detailed balance sheet and a detailed statement of receipts and disbursements during the year; in the case of a nontrusteed annuity plan, a detailed statement of the names of the insurers, the contributions paid by the employer and by the employees, and a statement as to the amounts and kinds of premium refunds or similar credits made available and the disposition of such credits in the year.

(7) If a pension or annuity plan, a detailed description of all the methods, factors, and assumptions used in determining costs and in adjusting the costs for actual experience under the plan (including any loadings, contingency reserves, or special factors and the basis of any insured costs or liabilities involved therein) explaining their source and application in sufficient detail to permit ready analysis and verification thereof, and, in the case of a trust, a detailed description of the basis used in valuing the investments held. Also a summary of the resulting costs or liabilities and adjustments for the year under the pension or annuity plan in sufficient detail to permit ready verification of the reasonableness thereof.

(8) A statement of the applicable limitations under section 404 (a) (1), (2), (3), or (7) and an explanation of the method of determining such limitations and a summary of the data and computations necessary to determine the allowable deductions for the taxable year.

(9) A statement of the contributions paid in the taxable year, showing the date and amount of each payment. Also a summary of the deductions claimed for the taxable year for the plan with a breakdown of the deductions claimed into the following components:

(i) For contributions paid in the taxable year before giving effect to the provisions of paragraph (7) of section 404 (a).

(ii) For contributions paid in prior taxable years beginning after December 31, 1941, in accordance with the carryover provisions of paragraphs (1) and (3) of section 404 (a), before giving effect to the provisions of paragraph (7) thereof, and in accordance with the carryover provisions of section 404 (d).

(iii) Any reductions or increases in the deductions in accordance with the provisions of paragraph (7) of section 404 (a).

(b) For taxable years subsequent to the year for which all of the applicable information under paragraph (a) of this section (or corresponding provisions of prior regulations) has been filed, information is to be filed only to the following extent:

(1) If there is any change in the plan, instruments, methods, factors, or assumptions upon which the data and information specified in subparagraph (1), (2), or (7) of paragraph (a) of this section are based, a detailed statement explaining the change and its effect is to be filed only for the taxable year in which the change is put into effect. However, if there is no such change, unless otherwise requested by the district director, merely a statement that there is no such change is to be filed.

(2) The information specified in subparagraph (3) of paragraph (a) of this section which has been filed for a taxable year, unless otherwise requested by the district director and so long as the plan and the method and basis of allocations are not changed, is to be filed for subsequent years only to the extent of showing in the tabulation such information with respect to employees who, at any time in the taxable year, own, directly or indirectly, more than 5 percent of the voting stock, considering stock so owned by an individual's spouse or minor lineal descendant as owned by the individual for this purpose.

(3) The information specified in subparagraphs (4), (5), (6), (8), and (9) of paragraph (a) of this section.

(c) If a deduction is claimed under section 404 (a) (5) for the taxable year, the taxpayer shall furnish such information as is necessary to show that the deduction is not allowable under the other paragraphs of

section 404 (a), that the amount paid is an ordinary and necessary expense or an expense for the production of income, and that the employees' rights to, or derived from, such employer's contribution or such compensation were nonforfeitable at the time the contribution or compensation was paid.

(d) For the purpose of the information required by this section, contributions paid in a taxable year should include those deemed to be so paid in accordance with the provisions of section 404 (a) (6) and should exclude those deemed to be paid in the prior taxable year in accordance with such provisions. As used in this section, "taxable year" refers to the taxable year of the employer and, unless otherwise requested by the district director, a "year" which is not specified as a "taxable year" may be taken as the taxable year of the employer or as the plan, trust, valuation, or group contract year with respect to which deductions are being claimed provided the same rule is followed consistently so that there is no gap or overlap in the information furnished for each item. In any case the date or period to which each item of information furnished relates should be clearly shown. All the information required by this section should be filed with the tax return for the taxable year in which the deduction is claimed except that, unless sooner requested by the district director, such information, other than that specified in subparagraphs (4) (i) and (9) of paragraph (a) of this section, may be filed within 12 months after the close of the taxable year provided there is filed with the tax return a statement that the information cannot reasonably be filed therewith, setting forth the reasons therefor.

(e) In any case all the information and data required by this section must be filed in the office of the district director in which the employer files his tax returns and identified for association with the appropriate returns and must be filed independently of any information and data otherwise submitted in connection with a determination of the qualification of the trust or plan under section 401 (a). The district director may, in addition, require any further information that he considers necessary to determine allowable deductions under section 404 or qualifications under section 401 and may waive the filing of such information required herein which he finds unnecessary in a particular case.

(f) Records substantiating all data and information required by this section to be filed must be kept at all times available for inspection by internal revenue officers at the main office or place of business of the employer.

Section 1.404 (a)-3. Contributions of an employer to or under an employees' pension trust or annuity plan that meets the requirements of section 401 (a); application of section 404 (a) (1): (a) If contributions are paid by an employer to or under a pension trust or annuity plan for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see sec. 1.404 (a)-1), the contributions are deductible under section 404 (a) (1) or (2) if the further conditions provided therein are also satisfied. As used here, a "pension trust" means a trust forming part of a pension plan and an "annuity plan" means a pension plan under which retirement benefits are provided under annuity or insurance contracts without a trust. This section is also applicable to contributions to a foreign situs pension trust which could qualify for exemptions under section 501 (a) except that it is not created or organized and maintained in the United States. For the meaning of "pension plan" as used here, see section 1.401-1 (b) (1) (i). Where disability pensions, insurance, or survivorship benefits incidental and directly related to the retirement benefits under a pension or annuity plan are provided for the employees or their beneficiaries by contributions under the plan, deductions on account of such incidental benefits are also covered under section 404 (a) (1) or (2). See section 1.402 (a)-1 (a) (3) as to taxability to employees of cost of incidental insurance protection. In order to be deductible under section 404 (a) (1), contributions to a pension trust must be paid in a taxable year of the employer which ends with or within a year of the trust for which it is exempt under section 501 (a). In order that contributions carried over may be deducted in a succeeding taxable year of the employer in accordance with section 404 (a) (1) (D), the succeeding year also must end with or within a taxable year of the trust for which it is exempt under section 501 (a). See section 1.404 (a)-8 as to conditions for deductions under section 404 (a) (2) in the case of an annuity plan. In either case, the deductions are also subject to further limitations provided in section 404 (a) (1). The limitations provided in section 404 (a) (1) are, with an exception provided for certain years under subparagraph (A) thereof (see section 1.404 (a)-4), based on the actuarial costs of the plan.

(b) In determining costs for the purpose of limitations under section 404 (a) (1), the effects of expected mortality and interest must be discounted and the effects of expected withdrawals, change in compensation, retirements at various ages, and other pertinent factors may be discounted or otherwise reasonably recognized. A properly weighted retirement age based on adequate analyses of representative experience may be used as an assumed retirement age. Different basic assumptions or rates may be used for different classes of risks or different groups where justified by conditions or required by contract. In no event shall costs for the purpose of section 404 (a) (1) exceed costs based on assumptions and methods which are reasonable in view of the provisions and coverage of the plan, the funding medium, reasonable expectations as to the effects of mortality and interest, reasonable and adequate regard for other factors such as withdrawal and deferred retirement (whether or not discounted) which can be expected to reduce costs materially, reasonable expenses of operation, and all other relevant conditions and circumstances. In any case, in determining the costs and limitations, an adjustment shall be made on account of any experience more favorable than that assumed in the basis of limitations for prior years. Unless such adjustments are consistently made every year by reducing the limitations otherwise determined by any decrease in liability or cost arising from experience in the next preceding taxable year which was more favorable than the assumptions on which the costs and limitations were based, the adjustment shall be made by some other method approved by the Commissioner.

(c) The amount of a contribution to a pension or annuity plan that is deductible under section 404 (a) (1) or (2) depends upon the methods, factors, and assumptions which are used to compute the costs of the plan and the limitation of section 404 (a) (1) which is applied. Since the amount that is deductible for 1 taxable year may affect the amount that is deductible for other taxable years, the methods, factors, and assumptions used in determining costs and the method of determining the limitation which have been used for determining the deduction for a taxable year for which the return has been filed shall not be changed for such taxable year, except when the Commissioner determines that the methods, factors, assumptions, or limitations were not proper, or except when a change is necessitated by reason of the use of different methods, factors, assumptions, or limitations for another taxable year. However, different methods, factors, and assumptions, or a different method of determining the limitation, if they are proper, may be used in determining the deduction for a subsequent taxable year. In any case, see subparagraphs (7) and (8) of paragraph (a) and subparagraphs (1) and (3) of paragraph (b) of section 1.404 (a)-2 for the information which must be submitted regarding the methods, factors, assumptions, and limitations.

(d) Any expenses incurred by the employer in connection with the plan, such as trustee's and actuary's fees, which are not provided for by contributions under the plan are deductible by the employer under section 162 (relating to trade or business expenses), or 212 (relating to expenses for production of income) to the extent that they are ordinary and necessary.

(e) In case deductions are allowable under section 404 (a) (3) as well as under section 404 (a) (1) or (2), the limitations under section 404 (a) (1) and (3) are determined and applied without giving effect to the provisions of section 404 (a) (7) but the amounts allowable as deductions are subject to the further limitations provided in section 404 (a) (7). See section 1.404 (a)-13.

Section 1.404 (a)-4, pension and annuity plans; limitations under section 404 (a) (1) (A): (a) Subject to the applicable general conditions and limitations (see sec. 1.404 (a)-3) the initial limitation under section 404 (a) (1) (A) is 5 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the pension or annuity plan. This initial 5-percent limitation applies to the first taxable year for which a deduction is allowed for contribution to or under such a plan and also applies to any subsequent year for which the 5-percent figure is not reduced as provided in this section. For years to which the initial 5-percent limitation applies, no adjustment on account of prior experience is required. If the contributions do not exceed the initial 5-percent limitation in the first taxable year to which this limitation applies, the taxpayer need not submit actuarial data for such year.

(b) For the first taxable year following the first year to which the initial 5-percent limitation applies, and for every fifth year thereafter, or more frequently where preferable to the taxpayer, the taxpayer shall submit with his return an actuarial certification of the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan with a statement explaining all the methods, factors, and assumptions used in determining such amount. This amount may be determined as the sum of (1) the unfunded past service cost as of the beginning of the year, and (2) the normal cost for the year. Such costs shall be determined by methods, factors, and assumptions appropriate as a basis of limitations under section 404 (a) (1) (C). Whenever requested by the district director, a similar certification and statement shall be submitted for the year or years specified in such request. The district director will make periodical examinations of such data at not less than 5-year intervals. Based upon such examinations the Commissioner will reduce the limitation under section 404 (a) (1) (A) below the 5-percent limitation for the years with respect to which he finds that the 5-percent limitation exceeds the amount reasonably necessary to provide the remaining unfunded cost of past and current service credits of all employees under the plan. Where the limitation is so reduced, the reduced limitation shall apply until the Commissioner finds that a subsequent actuarial

valuation shows a change to be necessary. Such subsequent valuation may be made by the taxpayer at any time and submitted to the district director with a request for a change in the limitation.

(c) For the purpose of limitations under section 404 (a) (1) (A), "compensation otherwise paid or accrued" means all of the compensation paid or accrued except that for which a deduction is allowable under a plan that qualifies under section 401 (a), including a plan that qualifies under section 404 (a) (2). Where two or more pension or annuity plans cover the same employee, under section 404 (a) (1) (A) the deductions with respect to each such plan are subject to the limitations applicable to the particular plan and the total deductions for all such plans are also subject to the limitations which would be applicable thereto if they constituted a single plan. Where, because of the particular provisions applicable to a large class of employees under a plan, the costs with respect to such employees are nominal in comparison with their compensation, after the first year to which the initial 5-percent limitation applies, deductions under section 404 (a) (1) (A) are subject to limitations determined by considering the plan applicable to such class as if it were a separate plan. Deductions are allowable to the extent of the applicable limitations under section 404 (a) (1) (A) even where these are greater than the applicable limitations under section 404 (a) (1) (B) or section 404 (a) (1) (C).

Section 1.404 (a)-5, pension and annuity plans; limitations under section 404 (a) (1) (B): (a) Subject to the applicable general conditions and limitations (see sec. 1.404 (a)-3), under section 404 (a) (1) (B), deductions may be allowed to the extent of limitations based on costs determined by distributing the remaining unfunded cost of the past and current service credits with respect to all employees covered under the trust or plan as a level amount or level percentage of compensation over the remaining service of each such employee except that, as to any three individuals with respect to whom more than 50 percent of such remaining unfunded cost is attributable, the remaining unfunded cost attributable to such individuals shall be distributed evenly over a period of at least 5 taxable years.

(b) The statutory limitation for any taxable year under section 404 (a) (1) (B) is any excess of the amount of the costs described in paragraph (a) of this section for the year over the amount allowable as a deduction under section 404 (a) (1) (A).

(c) For this purpose, such excess, adjusted for prior experience, may be computed for each year as follows, all determinations being made as of the beginning of the year:

(1) Determine the value of all benefits expected to be paid after the beginning of the year for all employees, any former employees, and any other beneficiaries, then covered under the plan.

(2) If employees contribute under the plan, determine the value of all contributions expected to be made after the beginning of the year by employees then covered under the plan.

(3) Determine the value of all funds of the plan as of the beginning of the year.

(4) Determine the amount remaining to be distributed as a level amount or as a level percentage of compensation over the remaining future service of each employee by subtracting from subparagraph (1) of this paragraph the sum of subparagraphs (2) and (3) of this paragraph.

(5) Determine the value of all compensation expected to be paid after the beginning of the year to all employees then covered under the plan.

(6) Determine an accrual rate for each employee by dividing subparagraph (5) of this paragraph into subparagraph (4) of this paragraph.

(7) Compute the excess under section 404 (a) (1) (B) for the year by multiplying the compensation paid to all employees covered under the plan during the year by any excess of subparagraph (6) of this paragraph over 5 percent. In general, where this method is used, the limitation under section 404 (a) (1) (B) will be equal to the excess so computed without further adjustment on account of prior favorable experience, provided all the factors and assumptions used are reasonable in view of all applicable considerations (see sec. 1.404 (a)-3) and provided subparagraph (5) of this paragraph is not less than 5 times the annual rate of compensation in effect at the beginning of the year.

(d) Instead of determining the excess deductible under section 404 (a) (1) (B) by the method shown in paragraph (c) such excess may be based upon costs determined by some other method which is reasonable and appropriate under the circumstances. Thus, such excess may be based on the amounts necessary with respect to each individual covered employee to provide the remaining unfunded cost of all his benefits under the plan distributed as a level amount over the period remaining until the normal commencement of his retirement benefits, in accordance with other generally accepted actuarial methods which are reasonable and appropriate in view of the provisions of the plan, the funding medium, and other applicable considerations.

Section 1.404 (a)-6, pension and annuity plans; limitations under section 404 (a) (1) (C): (a) Subject to the applicable general conditions and limitations (see sec. 1.404 (a)-3), in lieu of amounts deductible under the limitations of section 404 (a) (1) (A) and section 404 (a) (1) (B), deductions may be allowed under section 404 (a) (1) (C) to the extent of limitations based on normal and past service or supplementary costs of providing benefits under the plan. Normal cost for any year is the amount actuarially determined which would be required as a contribution by the employer in such year to maintain the plan if the plan had been in effect from the beginning of service of each then included employee and if such costs for prior years had been paid and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled. Past service or supplementary cost at any time is the amount actuarially determined which would be required at such time to meet all the future benefits provided under the plan which would not be met by future normal costs and employee contributions with respect to the employees covered under the plan at such time.

(b) The limitation under section 404 (a) (1) (C) for any taxable year is the sum of normal cost for the year plus an amount not in excess of one-tenth of the past service or supplementary cost as of the date the past service or supplementary credits are provided under the plan. For this purpose the normal costs may be determined by any generally accepted actuarial method and may be expressed either as (1) the aggregate of level amounts with respect to each employee covered under the plan, (2) a level percentage of payroll with respect to each employee covered under the plan, or (3) the aggregate of the single premium or unit costs for the unit credits accruing during the year with respect to each employee covered under the plan, provided, in any case, that the method is reasonable in view of the provisions and coverage of the plan, the funding medium, and other applicable considerations. The limitation may include one-tenth of the past service or supplementary cost as of the date the provisions resulting in such cost were put into effect, but it is subject to adjustments for prior favorable experience. See section 1.404 (a)-3. In any case, past service or supplementary costs shall not be included in the limitation for any year in which the amount required to fund fully or to purchase such past service or supplementary credits has been deducted, since no deduction is allowable for any amount (other than the normal cost) which is paid in after such credits are fully funded or purchased.

Section 1.404 (a)-7, pension and annuity plans; contributions in excess of limitations under section 404 (a) (1); application of section 404 (a) (1) (D): Where contributions paid by an employer in a taxable year to or under a pension or annuity plan exceed the limitations applicable under section 404 (a) (1) but otherwise satisfy the conditions for deduction under section 404 (a) (1) or (2), then in accordance with section 404 (a) (1) (D), the excess contributions are carried over and are deductible in succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the limitation applicable to such year under section 404 (a) (1) (A), (B), or (C). The provisions of section 404 (a) (1) (D) are to be applied before giving effect to the provisions of section 404 (a) (7) for any year. The carryover provisions of section 404 (a) (1) (D), before effect has been given to section 404 (a) (7), may be illustrated by the following example for a plan put into effect in a taxable year ending December 31, 1954:

Taxable year ending Dec. 31, 1954:	
Amount of contributions paid in year	$100,000
Limitation applicable to year	60,000
Amount deductible for year	60,000
Excess carried over to succeeding years	40,000
Taxable year ending Dec. 31, 1955:	
Amount of contributions paid in year	25,000
Carried over from previous years	40,000
Total deductible subject to limitation	65,000
Limitation applicable to year	50,000
Amount deductible for year	50,000
Excess carried over to succeeding years	15,000
Taxable year ending Dec. 31, 1956:	
Amount of contributions paid in year	10,000
Carried over from previous years	15,000
Total deductible subject to limitation	25,000
Limitation applicable to year	45,000
Amount deductible for year	25,000
Excess carried over to succeeding years	None

Section 1.404 (a)-8, contributions of an employer under an employees' annuity plan which meets the requirements of section 401 (a); application of section 404 (a) (2): If contributions are paid by an employer under an annuity plan for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see sec. 1.404 (a)-1), the contributions are deductible under section 404 (a) (2) if the further conditions provided therein are satisfied. For the meaning of "annuity plan" as used here, see section 1.404 (a)-3. In order that contributions by the employer may be deducted under section 404 (a) (2), all of the following conditions must be satisfied:

(1) The contributions must be paid toward the purchase of retirement annuities (or for disability, severance, insurance, or survivorship benefits incidental and directly related to such annuities) under an annuity

plan for the exclusive benefit of the employer's employees or their beneficiaries. See section 1.401–1 (a).

(2) The contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it meets the applicable requirements with respect to discrimination set out in section 401 (a) (3), (4), (5), and (6). In order that contributions carried over may be deducted in a succeeding taxable year of the employer in accordance with section 404 (a) (1) (D), the succeeding year also must end with or within a taxable year of the plan for which it meets such requirements. See sections 1.401–3 and 1.401–4. These requirements are considered to be satisfied for the period beginning with the date on which an annuity plan was put into effect and ending with the 15th day of the 3d month following the close of the taxable year of the employer in which the plan was put into effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period. See section 401 (b) and section 1.401–5. It should be noted that the period in which a plan may be amended to qualify under section 401 (b) ends before the date taxpayers, other than corporations, are required to file income tax returns.

(3) There must be a definite written arrangement between the employer and the insurer that refunds of premiums, if any, shall be applied within the taxable year of the employer in which received or within the next succeeding taxable year toward the purchase of retirement annuities (or for disability, serverance, insurance, or survivorship benefit incidental and directly related to such annuities) under the plan. For the purpose of this condition, "refunds of premiums" means payments by the insurer on account of credits such as dividends, experience rating credits, or surrender or cancellation credits. The arrangement may be in the form of contract provisions or written directions of the employer or partly in one form and partly in another. This condition will be considered satisfied where—

(i) All credits are applied regularly, as they are determined, toward the premiums next due under the contracts before any further employer contributions are so applied, and

(ii) Under the arrangement,

(a) No refund of premiums may be made during continuance of the plan unless applied as aforesaid, and

(b) If refunds of premiums may be made after discontinuance of the plan on account of surrenders or cancellations before all retirement annuities provided under the plan with respect to service before its discontinuance have been purchased, such refunds will be applied in the taxable year of the employer in which received, or in the next succeeding taxable year, to purchase retirement annuities for employees by a procedure which does not contravene the conditions of section 401 (a) (4).

(b) Where the above conditions are satisfied, the amounts of deductions under section 404 (a) (2) are governed by the limitations provided in section 404 (a) (1). See sections 1.404 (a)–3 to 1.404 (a)–7, inclusive.

Section 1.404 (a)–9, contributions of an employer to an employees' profit-sharing or stock bonus trust that meets the requirements of section 401 (a); application of section 404 (a) (3) (A): (a) If contributions are paid by an employer to a profit-sharing or stock bonus trust for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see section 1.404 (a)–1), the contributions are deductible under section 404 (a) (3) (A) if the further conditions provided therein are also satisfied. In order to be deductible under section 404 (a) (3) (A) the contributions must be paid in a taxable year of the employer which ends with or within a taxable year of the trust for which it is exempt under section 501 (a) and the trust must not be designed to provide retirement benefits for which the contributions can be determined actuarially. In order that contributions carried over may be deducted in a succeeding taxable year of the employer in accordance with the third sentence of section 404 (a) (3) (A), the succeeding year also must end with or within a taxable year of the trust for which it is exempt under section 501 (a). This section is also applicable to contributions to a foreign situs profit-sharing or stock bonus trust which could qualify for exemption under section 501 (a) except that it is not created or organized and maintained in the United States.

(b) The amount of deductions under section 404 (a) (3) (A) for any taxable year is subject to limitations based on the compensation otherwise paid or accrued during such taxable year to the employees who, in such year, are beneficiaries of the trust funds accumulated under the plan. For this purpose "compensation otherwise paid or accrued" means all of the compensation paid or accrued except that for which a deduction is allowable under a plan that qualifies under section 401 (a), including a plan that qualifies under section 404 (a) (2). The limitations under section 404 (a) (3) (A) apply to the total amount deductible for contributions to the trust regardless of the manner in which the funds of the trust are invested, applied, or distributed, and no other deduction is allowable on account of any benefits provided by contributions to the trust or by the funds thereof. Where contributions are paid to two or more profit-sharing or stock bonus trusts satisfying the conditions for deduction under section 404 (a) (3) (A), such trusts are considered as a single trust in applying these limitations.

(c) The primary limitation on deductions for a taxable year is 15 percent of the compensation otherwise paid or accrued during such taxable year to the employees who, in such year, are beneficiaries of the trust funds accumulated under the plan. So long as the contributions do not in any year exceed the primary limitation, this is the only limitation under section 404 (a) (3) (A) which has any effect.

(d) In order that the deductions may average 15 percent of compensation otherwise paid or accrued over a period of years, where contributions in some taxable year are less than the primary limitation but contributions in some succeeding taxable year exceed the primary limitation, deductions in each succeeding year are subject to a secondary limitation instead of to the primary limitation. The secondary limitation for any year is equal to the lesser of (1) twice the primary limitation for the year, or (2) any excess of (i) the aggregate of the primary limitations for the year and for all prior years over (ii) the aggregate of the deductions allowed or allowable under the limitations provided in section 404 (a) (3) (A) for all prior years.

(e) In any case where the contributions in a taxable year exceed the amount allowable as a deduction for the year under section 404 (a) (3) (A), the excess is deductible in succeeding taxable years, in order of time, in which the contributions are less than the primary limitations. However, the total deduction for any such succeeding year cannot exceed the lesser of (1) the primary limitation for such year, or (2) the sum of the contributions in such year and the excess contributions not deducted under the limitations of section 404 (a) (3) (A) for prior years.

(f) In case deductions are allowable under section 404 (a) (1) or (2), as well as under section 404 (a) (3) (A), the limitations under section 404 (a) (1) and (3) (A) are determined and applied without giving effect to the provisions of section 404 (a) (7), but the amounts allowable as deductions are subject to the further limitations provided in section 404 (a) (7). See section 1.404 (a)–13.

(g) The provisions of section 404 (a) (3) (A) before giving effect to section 404 (a) (7), may be illustrated as follows:

Illustration of provisions of sec. 404 (a) (3) (A) for a plan put into effect in the taxable (calendar) year 1954, before giving effect to sec. 404 (a) (7)

[In thousands]

	Taxable (calendar) years						
	1954	1955	1956	1957	1958	1959	1960
1. Amount of contributions:							
(i) In taxable year	$65	$10	$15	$100	$70	$40	$30
(ii) Carried over from prior taxable years	0	8	0	0	4	5	3
2. Primary limitation applicable to year: 15 percent of covered compensation in year [1]	57	54	51	48	45	42	39
3. Secondary limitation applicable to year:							
(i) Twice primary limitation	------	------	------	96	90	84	------
(ii) (a) Aggregate primary limitations (see item 2)	------	------	------	210	255	297	------
(b) Aggregate prior deductions (see item 4 (iii))	------	------	------	90	186	255	------
(c) Excess of (a) over (b)	------	------	------	120	69	42	------
(iii) Lesser of (i) or (ii)	------	------	------	96	69	42	------
4. Amount deductible for year on account of:							
(i) Contributions in year	57	10	15	96	69	40	30
(ii) Contributions carried over	0	8	0	0	0	2	3
(iii) Total	57	18	15	96	69	42	33
5. Excess contributions carried over to succeeding years	8	0	0	4	5	3	0

[1] Compensation otherwise paid or accrued during the year to the employees who are beneficiaries of trust funds accumulated under the plan in the year.

Section 1.404 (a)–10, profit-sharing plan of an affiliated group; application of section 404 (a) (3) (B). (a) Section 404 (a) (3) (B) allows a corporation a deduction to the extent provided in paragraphs (b) and (c) of this section for a contribution which it makes for another corporation to a profit-sharing plan or a stock bonus plan under which contributions are determined by reference to profits, provided the following tests are met:

(1) The corporation for which the contribution is made and the contributing corporation are members of an affiliated group of corporations as defined in section 1504, relating to the filing of consolidated returns, and both such corporations participate in the plan. However, it is immaterial whether

all the members of such group participate in the plan.

(2) The corporation for which the contribution is made is required under the plan to make the contribution, but such corporation is prevented from making such contribution because it has neither current nor accumulated earnings or profits, or because its current and accumulated earnings or profits are insufficient to make the required contribution. To the extent that such a corporation has any current or accumulated earnings or profits, it is not considered to be prevented from making its required contribution to the plan.

(3) The contribution is made out of the current or accumulated earnings or profits of the contributing corporation.

(b) The amount that is deductible under section 404 (a) (3) (B) is determined by applying the rules of section 404 (a) (3) (A) and section 1.404 (a)-9 as if the contribution were made by the corporation for which it is made. For example, the primary limitation described in section 1.404 (a)-9 (c) is determined by reference to the compensation otherwise paid or accrued to the employees of the corporation for which the contribution is made, and the secondary limitation described in section 1.404 (a)-9 (d) and the contribution carryover described in section 1.404 (a)-9 (e) are determined by reference to the prior contributions and deductions of such corporation. The contributing corporation may deduct the amount so determined subject to the limitations contained in paragraph (c) of this section. The contributing corporation shall not treat such amount as a contribution made by it in applying the rules of section 404 (a) (3) (A) and section 1.404 (a)-9 either for the taxable year for which the contribution is made or for succeeding taxable years. The corporation for which the contribution is made shall treat the contribution as having been made by it in applying the rules of section 404 (a) (3) (A) and section 1.404 (a)-9 for succeeding taxable years.

(c) The allowance of the deduction under section 404 (a) (3) (B) does not depend upon whether the affiliated group does or does not file a consolidated return. If a consolidated return is filed, it is immaterial which of the participating corporations makes the contribution and takes the deduction or how the contribution or the deduction is allocated among them. However, if a consolidated return is not filed, the contribution which is deductible under section 404 (a) (3) (B) by each contributing corporation shall be limited to that portion of its total current and accumulated earnings or profits (adjusted for its contribution deductible without regard to section 404 (a) (3) (B)) which the prevented contribution bears to the total current and accumulated earnings or profits of all the participating members of the group having such earnings or profits (adjusted for all contributions deductible without regard to section 404 (a) (3) (B)). For the purpose of this section, current earnings or profits shall be computed as of the close of the taxable year without diminution by reason of any dividends during the taxable year, and accumulated earnings or profits shall be computed as of the beginning of the taxable year.

(d) The application of section 404 (a) (3) (B) may be illustrated by the following example in which the affiliated group does not file a consolidated return:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
A	($10,000)	($140,000)	($150,000)	$200,000	1/5	$6,000	0			
B	(5,000)	105,000	100,000	300,000	3/10	9,000	$9,000	$91,000	6/326 × 91,000	$1,674.85
C	75,000	175,000	250,000	500,000	1/2	15,000	15,000	235,000	6/326 × 235,000	4,325.15
Total	60,000	140,000	200,000	1,000,000		30,000	24,000	326,000		6,000.00

Column: (1) Member
(2) Earnings and profits of the taxable year
(3) Accumulated earnings and profits at beginning of taxable year
(4) Total current and accumulated earnings and profits (col. 2 plus col. 3)
(5) Compensation of participating employees
(6) Contribution formula: 50 percent of consolidated earnings and profits, allocated among participating members in proportion of covered payroll of each to covered payroll of consolidated group
(7) Individual contribution had it not been prevented
(8) Individual contribution made by each employer for its own employees
(9) Balance of accumulated earnings and profits (col. 4 minus col. 8)
(10) Proportion of makeup contribution
(11) Makeup contribution

Section 1.404 (a)-11, trusts created or organized outside the United States; application of section 404 (a) (4). In order that a trust may constitute a qualified trust under section 401 (a) and be exempt under section 501 (a), it must be created or organized in the United States and maintained at all times as a domestic trust. See section 1.404-1 (a). Paragraph (4) of section 404 (a) provides, however, that an employer which is a resident, a corporation, or other entity of the United States, making contributions to a foreign stock bonus, pension, or profit-sharing trust, shall be allowed deductions for such contributions, under the applicable conditions and within the prescribed limits of section 404 (a), if such foreign trust would qualify for exemption under section 501 (a) except for the fact that it is a trust created, organized, or maintained outside the United States. Moreover, if a nonresident alien individual, foreign corporation, or other entity is engaged in trade or business within the United States and makes contributions to a foreign stock bonus, pension, or profit-sharing trust, which would qualify under section 401 (a) and be exempt under section 501 (a) except that it is created, organized, or maintained outside the United States, such contributions are deductible subject to the conditions and limitations of section 404 (a) and to the extent allowed by section 873 or 882 (c).

Section 1.404 (a)-12, contributions of an employer under a plan that does not meet the requirements of section 401 (a); application of section 404 (a) (5); Section 404 (a) (5) covers all cases for which deductions are allowable under section 404 (a) but not allowable under paragraph (1), (2), (3), (4), or (7) of such section. No deduction is allowable under section 404 (a) (5) for any contribution paid or accrued by an employer under a stock bonus, pension, profit-sharing, or annuity plan, or for any compensation paid or accrued on account of any employee under a plan deferring the receipt of such compensation, except in the year when paid, and then only to the extent allowable under section 404 (a). See section 1.404 (a)-1. If payments are made under such a plan and the amounts are not deductible under the other paragraphs of section 404 (a), they are deductible under paragraph (5) of such subsection to the extent that the rights of individual employees to, or derived from, such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid. If unfunded pensions are paid directly to former employees, their rights to such payments are nonforfeitable, and accordingly, such amounts are deductible under section 404 (a) (5) when paid. Similarly, if amounts are paid as a death benefit to the beneficiaries of an employee (for example, by continuing his salary for a reasonable period), and if such amounts meet the requirements of section 162 or 212, such amounts are deductible under section 404 (a) (5) in any case when they are not deductible under the other paragraphs of section 404 (a). As to what constitutes nonforfeitable rights of an employee in other cases, see section 1.402 (b)-1. If an amount is accrued but not paid during the taxable year, no deduction is allowable for such amount for such year. If an amount is paid during the taxable year to a trust or under a plan and the employee's rights to such amounts are forfeitable at the time the amount is paid, no deduction is allowable for such amount for any taxable year.

Section 1.404 (a)-13, contributions of an employer where deductions are allowable under section 404 (a) (1) or (2) and also under section 404 (a) (3); application of section 404 (a) (7): (a) Where deductions are allowable under section 404 (a) (1) or (2) on account of contributions under a pension or annuity plan and deductions are also allowable under section 404 (a) (3) for the same taxable year, on account of contributions to a profit-sharing or stock bonus trust, the total deductions under these sections are subject to the provisions of section 404 (a) (7) unless no employee who is a beneficiary under the trusts or plans for which deductions are allowable under section 404 (a) (1) or (2) is also a beneficiary under the trusts for which deductions are allowable under section 404 (a) (3). The provisions of section 404 (a) (7) apply only to deductions for overlapping trusts or plans, i. e., for all trusts or plans for which deductions are allowable under section 404 (a) (1), (2), or (3) except (1) any trust or plan for which deductions are allowable under section 404 (a) (1) or (2) and which does not cover any employee who is also covered under a trust for which deductions are allowable under section 404 (a) (3), and (2) any trust for which deductions are allowable under section 404 (a) (3) and which does not cover any employee who is also covered under a trust or plan for which deductions are allowable under section 404 (a) (1) or (2). The limitations under section 404 (a) (7) for any taxable year are based on the compensation otherwise paid or accrued during the year to all the employees who are beneficiaries under the overlapping trusts or plans in the year. For this purpose "compensation, otherwise paid or accrued" means all of the compensation paid or accrued except that for which a deduction is allowable under a plan that qualifies under section 401 (a), including a plan that qualifies under section 404 (a) (2). The employees who are beneficiaries under overlapping trusts or plans in a year include all the employees who, in the year, are beneficiaries of the funds accumulated under one or more of the overlapping trusts or plans.

(b) Under section 404 (a) (7), any excess of the total amount otherwise deductible for the taxable year under section 404 (a) (1), (2), or (3) as contributions to overlapping trusts or plans over 25 percent of the compensation otherwise paid or accrued during the year to all the employees who are beneficiaries under such trusts or plans, is not deductible for such year but is deductible for succeeding taxable years, in order of time, so that the total deduction for contributions to such trusts or plans for a

succeeding taxable year is equal to the lesser of—

(1) 30 percent of the compensation otherwise paid or accrued during the taxable year to all the employees who are beneficiaries under such trusts or plans in the year, or

(2) The sum of (i) the smaller of (a) 25 percent of the compensation otherwise paid or accrued during the taxable year to all the employees who are beneficiaries under such trusts or plans in the year, or (b) the total of the amounts otherwise deductible under section 404 (a) (1), (2), or (3) for the year for such trusts or plans and (ii) any carryover to the year from prior years under section 404 (a) (7), i. e., any excess otherwise deductible under section 404 (a) (1), (2), or (3), but not deducted for a prior taxable year because of the limitations under section 404 (a) (7).

(c) The limitations under section 404 (a) (7) are determined and applied after all the limitations, deductions otherwise allowable, and carryovers under section 404 (a) (1), (2), and (3) have been determined and applied, and, in particular, after effect has been given to the carryover provision in section 404 (a) (1) (D) and in the second and third sentences of section 404 (a) (3) (A). Where the limitations under section 404 (a) (7) reduce the total amount deductible, the excess deductible in succeeding years is treated as a carryover which is distinct from, and additional to, any excess contributions carried over and deductible in succeeding years under the provisions in section 404 (a) (1) (D) or in the third sentence of section 404 (a) (3) (A). The application of the provisions of section 404 (a) (7) and the treatment of carryovers for a case where the taxable years are calendar years and the overlapping trusts or plans consist of a pension trust and a profit-sharing trust put into effect in 1954 and covering the same employees may be illustrated as follows:

Illustration of application of provisions of sec. 404 (a) (7) and of treatment of carryovers for overlapping pension and profit-sharing trusts put into effect in 1954 and covering the same employees

[In thousands]

	Taxable (calendar) years			
	1954	1955	1956	1957
BEFORE GIVING EFFECT TO SEC. 404 (A) (7)				
Pension trust contributions and limitations, deductions, and carryovers under sec. 404 (a) (1):				
1. Contributions paid in year	$215	$85	$140	$60
2. Contributions carried over from prior years	0	5	0	20
3. Total deductible for year subject to limitation	215	90	140	80
4. Limitation applicable to year	210	175	120	85
5. Amount deductible for year	210	90	120	80
6. Contributions carried over to succeeding years	5	0	20	0
Profit-sharing trust contributions and limitations, deductions, and carryovers under sec. 404 (a) (3):				
7. Contributions paid in year	200	125	105	65
8. Contributions carried over from prior years	0	35	10	0
9. Total deductible for year subject to limitation	200	160	115	65
10. Limitation applicable to year	165	150	135	[1] 110
11. Amount deductible for year	165	150	115	65
12. Contributions carried over to succeeding years	35	10	0	0
APPLICATION OF SEC. 404 (A) (7)				
Totals for pension and profit-sharing trust:				
13. Amount deductible for year under sec. 404 (a) (7):				
(1) 30 percent of compensation covered in year [2]	(3)	300	270	180
(2) (i) (a) 25 percent of compensation covered in year [2]	275	250	225	150
(b) Total amount otherwise deductible for year: Item 5 plus item 11	375	240	235	145
(c) Smaller of (a) or (b)	275	240	225	145
(ii) Carryover from prior years under sec. 404 (a) (7)	0	100	40	10
(iii) Sum of (i) (c) and (ii)	275	340	265	155
(3) Amount deductible: Lesser of (1) or (2) (iii)	275	300	265	155
14. Carryover to succeeding years under sec. 404 (a) (7); Item 13 (2) (ii) plus item 13 (2) (i) (b) minus item 13 (3)	100	40	10	0

[1] Includes carryover of 20 from 1956.
[2] Compensation otherwise paid or accrued during the year to the employees who are beneficiaries under the trusts in the year.
[3] 30 percent limitation not applicable to first year of plan.

Section 1.404 (b) statutory provisions; deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan; method of contributions, etc., having the effect of a plan:

"SEC. 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan. * * *

"(b) Method of contributions, etc., having the effect of a plan.—If there is no plan but a method of employer contributions or compensation has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation, subsection (a) shall apply as if there were such a plan."

Section 1.404 (b)-1, method of contribution, etc., having the effect of a plan; effect of section 404 (b): Section 404 (a) is not confined to formal stock bonus, pension, profit-sharing and annuity plans, or deferred compensation plans, but it includes any method of contributions or compensation having the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation. Thus, where a corporation pays pensions to a retired employee or employees or to their beneficiaries in such amounts as may be determined from time to time by the board of directors or responsible officers of the company, or where a corporation is under an obligation, whether funded or unfunded, to pay a pension or other deferred compensation to an employee or his beneficiaries, there is a method having the effect of a plan deferring the receipt of compensation for which deductions are governed by section 404 (a). If an employer on the accrual basis defers paying any compensation to an employee until a later year or years under an arrangement having the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation, he shall not be allowed a deduction until the year in which the compensation is paid. This provision is not intended to cover the case where an employer on the accrual basis defers payment of compensation after the year of accrual merely because of inability to pay such compensation in the year of accrual, as, for example, where the funds of the company are not sufficient to enable payment of the compensation without jeopardizing the solvency of the company, or where the liability accrues in the earlier year, but the amount payable cannot be exactly determined until the later year.

Section 1.404 (c), statutory provisions; deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan; certain negotiated plans:

"SEC. 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan. * * *

"(c) Certain negotiated plans: If contributions are paid by an employer—

"(1) Under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, and pensions on retirement or death of employees; and

"(2) Such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). This subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501 (a)."

Section 1.404 (c)-1, certain negotiated plans; effect of section 404 (c): (a) Section 404 (a) does not apply to deductions for contributions paid by an employer under a negotiated plan which meets the following conditions:

(1) The contributions under the plan are held in trust for the purposes of paying, either from principal or income or both, for the benefit of employees and their families, at least medical or hospital care, and pensions on retirement or death of employees; and

(2) Such plan was established before January 1, 1954, a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged.

If these conditions are met, such contributions shall be deductible under section 162, to the extent that they constitute ordinary and necessary business expenses.

(b) The term "as a result of an agreement" is intended primarily to cover a trust established under the terms of an agreement referred to in paragraph (a) (2). It will

also include a trust established under a plan of an employer, or group of employers, who are in competition with the employers whose facilities were seized by reason of producing the same commodity, and who would therefore be expected to establish such a trust as a reasonable measure to maintain a sound position in the labor market producing the commodity. Thus, for example, if a trust was established under such an agreement in the bituminous coal industry, a similar trust established about the same time in the anthracite coal industry would be covered by this provision.

(c) If any such trust becomes qualified for exemption under section 501 (a), the deductibility of contributions by an employer to such trust on or after the date of such qualification would no longer be governed by section 404 (c), even though the trust may later lost its exemption under section 501 (a).

Section 1.404 (d) statutory provisions: Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan; carryover of unused deductions:

"SEC. 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan. * * *

"(d) Carryover of unused deductions: The amount of any unused deductions or contributions in excess of the deductible amounts for taxable years to which this part does not apply which under section 23 (p) of the Internal Revenue Code of 1939 would be allowable as deductions in later years had such section 23 (p) remained in effect, shall be allowable as deductions in taxable years to which this part applies as if such section 23 (p) were continued in effect for such years. However, the deduction under the preceding sentence shall not exceed an amount which, when added to the deduction allowable under subsection (a) for contributions made in taxable years to which this part applies, is not greater than the amount which would be deductible under subsection (a) if the contributions which give rise to the deduction under subsection (a) if the contributions wihch give rise to the deduction under the preceding sentence were made in a taxable year to which this part applies."

Section 1.404 (d)-1, carryover of unused deductions; effect of section 404 (d): Contributions for taxable years which began before January 1, 1954 (or ended before August 17, 1954, regardless of when they began), in excess of the deductible limits of section 23 (p) of the Internal Revenue Code of 1939 which would have been available as carryovers and deductible in succeeding taxable years, in order of time, had such section 23 (p) remained in effect, are allowable as deductions for taxable years beginning after December 31, 1953, and ending after August 16, 1954, to the same extent that such deductions would have been allowable had such section 23 (p) remained in effect. This provision, however, does not increase a deduction for a taxable year beyond the applicable limits of section 404 (a) had the carryover constituted part of the contribution for such year. Thus, for example, if a pension plan had been put into effect as of January 1, 1953, when the past service liability was $1 million, and the employer contributed $500,000 in 1953, only $100,000 would be deductible in 1953 under section 23 (p) (1) (A) (iii) of the 1939 code, and $400,000 was available as a carryover to 1954 under section 23 (p) (1) (A) (iv). If the employer made a contribution of the remaining $500,000 in 1954, it would not result in allowable deductions of $200,000 for past service funding in that year (i. e., $100,000 under section 404 (a) and another $100,000 under section 404 (d)). The total allowable deduction for such funding would be only $100,000 for 1954 (10 percent of the initial past service liability of $1 million), and the carryover to 1955 would be $800,000. Also, unused deduction carryovers which arose under the second sentence of section 23 (p) (1) (C) of the 1939 code are continued for years beginning after December 31, 1953, as though arising under the second sentence of section 404 (a) (3) (A).

Section 1.6033 (a), statutory provisions; returns by exempt organizations; general:

"SEC. 6033. Returns by exempt organizations:

"(a) General: Every organization, except as hereinafter provided, exempt from taxation under section 501 (a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the provisions of subtitle A as the Secretary or his delegate may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations, as the Secretary or his delegate may from time to time prescribe, except that, in the discretion of the Secretary or his delegate, an organization described in section 401 (a) may be relieved from stating in its return any information which is reported in returns filed by the employer which establish such organization. No such annual return need be filed under this subsection by any organization exempt from taxation under the provisions of section 501 (a)."

* * * * *

Section 1.6033-1, return by exempt organizations: (a) General. * * *

(3) Every employees' trust described in section 401 (a) which is exempt from taxation under section 501 (a) shall file an annual return on Form 990-P. The return shall include the information required by section 1.401-1 (b) (5) (ii). The trust must also file the information required by section 1.404 (a)-2, unless the employer has notified the trustee that he has or will timely file such information. If the trustee has received such notification from the employer, then the trust must file a copy thereof with its return and the other information required by the return.

JUSTIN F. WINKLE,
Acting Commissioner.

Approved September 13, 1956.

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

(Filed by the Division of the Federal Register September 24, 1956, 8:45 a. m.)

CONSTRUCTION OF FOUR UNITS OF GREATER WENATCHEE PROJECT, WASHINGTON

The PRESIDING OFFICER (Mr. HOBLITZELL in the chair) laid before the Senate the amendments of the House of Representatives to the bill (S. 1031) to authorize the Secretary of the Interior to construct, operate, and maintain four units of the Greater Wenatchee project, Washington, and for other purposes, which were, on page 3, strike out lines 7 through 9 inclusive, and insert:

SEC. 4. There is hereby authorized to be appropriated for construction of the works provided for in section 1 of this act the sum of $10,280,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein. There are also authorized to be appropriated such sums as are necessary for operation and maintenance of said works.

And to amend the title so as to read "An act to authorize the Secretary of the Interior to construct, operate, and maintain four units of the Greater Wenatchee division, Chief Joseph project, Washington, and for other purposes."

Mr. JACKSON. Mr. President, I move that the Senate concur in the amendments of the House of Representatives to S. 1031, to authorize the Secretary of the Interior to construct, operate, and maintain four units of the Greater Wenatchee project, Washington, and for other purposes, including an amendment to the title to read "to authorize the Secretary of the Interior to construct, operate, and maintain four units of the Greater Wenatchee division, Chief Joseph project, Washington, and for other purposes."

The principal amendment authorizes "to be appropriated for construction of the works provided for in section 1 of this act the sum of $10,280,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein. There are also authorized to be appropriated such sums as are necessary for operation and maintenance of said works."

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

Mr. JACKSON. I yield.

Mr. JAVITS. Have these provisions been cleared with the minority?

Mr. JACKSON. Yes. They have been cleared all the way around.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

Mr. KNOWLAND. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Gore	McNamara
Allott	Green	Monroney
Anderson	Hayden	Morse
Barrett	Hennings	Morton
Beall	Hickenlooper	Mundt
Bennett	Hill	Murray
Bible	Hoblitzell	Neuberger
Bricker	Holland	O'Mahoney
Bridges	Hruska	Pastore
Bush	Humphrey	Payne
Byrd	Ives	Potter
Capehart	Jackson	Proxmire
Carlson	Javits	Purtell
Carroll	Jenner	Robertson
Case, N. J.	Johnson, Tex.	Russell
Case, S. Dak.	Johnston, S. C.	Saltonstall
Church	Kefauver	Schoeppel
Clark	Kennedy	Smathers
Cooper	Kerr	Smith, Maine
Cotton	Knowland	Sparkman
Curtis	Kuchel	Stennis
Dirksen	Langer	Symington
Douglas	Long	Talmadge
Dworshak	Magnuson	Thurmond
Eastland	Malone	Watkins
Ellender	Mansfield	Wiley
Ervin	Martin, Iowa	Williams
Frear	Martin, Pa.	Yarborough
Goldwater	McClellan	Young

Mr. MANSFIELD. I announce that the Senator from New Mexico [Mr. CHAVEZ] and the Senator from Arkansas [Mr. FULBRIGHT], are absent on official business. The Senator from Ohio [Mr.

LAUSCHE] is absent because of a death in his family.

Mr. DIRKSEN. I announce that the Senator from Maryland [Mr. BUTLER] is necessarily absent.

The Senator from Vermont [Mr. FLANDERS] and the Senator from Minnesota [Mr. THYE] are absent on official business.

The Senator from New Jersey [Mr. SMITH] and the Senator from West Virginia [Mr. REVERCOMB] also are absent on official business.

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). A quorum is present.

ECONOMIC CONDITIONS AND THE COMMUNITY FACILITIES BILL

Mr. SPARKMAN. Mr. President, despite optimistic forecasts to the contrary, I have seen no real evidence that the end of this recession is in sight. The list of unemployed grows longer while the cost of living grows higher.

Each day's mail brings, in increasing numbers, stories of human tragedy, of fear, despair, and anxiety. And this, of course, is but a sample of the same repeated a thousandfold across the land.

Fortunately, Mr. President, the Senate has not been unmindful of our economic needs. It has responded promptly to those antirecession measures which have been proposed. Already the streamlined housing bill which I had the privilege to sponsor is having its effect; and soon the highway programs, expanded through the able leadership of the distinguished Senator from Tennessee [Mr. GORE], will bring increasing employment to all sections of the Nation. Were it not for the unfortunate veto of the President, I might also add the farmer and the farm economy to this list.

However, let us not recriminate, but be grateful. With the President's veto of the farm bill and the rivers and harbors bill, we can only be thankful that the housing and highway programs escaped unscathed.

The Congress will not sit still, Mr. President, as long as the line of the jobless grows longer.

I am hopeful, Mr. President, that the proposed community facilities bill, S. 3497, will soon become law. Immediately after the introduction of this bill by my good friend, the distinguished Senator from Arkansas [Mr. FULBRIGHT]—in which I was pleased to join with him—I wrote every municipality in Alabama to determine the need for community facility financing. In short order I received a tremendous response, the tenor of which I think every Member of the Senate will be interested in.

Accordingly, Mr. President, I have made a brief résumé of some of the responses I have received showing typical projects that would be built throughout the country, giving employment to tens of thousands of workers not now employed.

Mr. President, I ask unanimous consent that this résumé be printed in the RECORD immediately after my remarks.

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

ABBEVILLE	
Paving street and sidewalks	$75,000
Recreation	75,000
Sewer extensions and disposal	100,000
Rehabilitation and health	125,000
Airport	35,000
ALABASTER	
Sewer facilities	80,000
ALBERTVILLE	
Sewage treatment	150,000
School construction	1,000,000
ALTOONA	
Water system	75,000
Recreation building	25,000
ANDALUSIA	
Sewer lines	300,000
Sidewalk	50,000
Street paving	300,000
Storm sewers	50,000
Recreational facilities	60,000
ASHFORD	
Water system improvements	100,000
Sewage facilities	---------
ATHENS	
Sewage treatment	360,000
School construction	500,000
ATMORE	
Sewerage	---------
Gas and water extensions	---------
Disposal plant	---------
Street and sidewalks	---------
BESSEMER	
Paving and resurfacing	1,000,000
Sewerage	2,500,000
Schools	3,000,000
Hospital	2,000,000
Airport	1,000,000
Parks, swimming pool	1,500,000
BOAZ	
Extension to waterworks and sewage facilities	---------
BLOUNTSVILLE	
Expand water and sewage facilities	130,000
New townhall	40,000
CORDOVA	
Sewer project	125,000
Post office, city hall, and recreation facilities	250,000
CITRONELLE	
Water-facilities extension	170,000
Sewage-facilities extension	210,000
CLANTON	
Addition to city hall	50,000
Curb and gutter	35,000
Sidewalks	35,000
New street paving	25,000
Street resurfacing or resealing	10,000
Sewer-line extensions and improvements	20,000
Garbage disposal	10,000
Park and recreation	40,000
COLLINSVILLE	
Sewage system	140,000
COURTLAND	
Curb, gutter, and storm sewer projects	---------
DADEVILLE	
Hospital	---------
Sewerage treatment plant	---------
Expansion of present sewerage system	---------
Additional water treatment facilities	---------
Additional water mains and fire plugs	---------
City hall	---------
EAST BREWTON	
Expansion of sewage facilities	$250,000
Expansion of water system	75,000
Street paving	45,000
Recreational area, 40 acres	50,000
FAIRHOPE	
City pier	250,000
School recreational facilities	100,000
FOLEY	
Sewage treatment	125,000
Municipal buildings	250,000
GARDEN CITY	
Municipal building	40,000
Streets	20,000
TOWN OF GLENCOE	
Construction of a city hall	75,000
Extension of water works and sewer system	200,000
Street improvements	100,000
Construction of storm sewers	75,000
Dredging out Cove Creek to the Coosa River	30,000
Recreational facilities	50,000
School buildings	300,000
Sanitation facilities	30,000
Fire equipment	5,000
CITY OF HALEYVILLE	
Sewerage extension and construction	350,000
Improvement school facilities	150,000
City auditorium	50,000
Recreation	50,000
Health center	75,000
TOWN OF HANCEVILLE	
Water facilities and streets	100,000
CITY OF HUNTSVILLE	
Street and road construction	2,400,000
Bridge construction	360,000
Drainage structures	1,200,000
Sanitary sewer outfall mains	1,250,000
CITY OF IRONDALE	
Expansion of water system	---------
Streets	---------
CITY OF JASPER	
Repair work on existing facilities	80,000
Bridges	120,000
Expansion of sewage system	500,000
Public refuse and garbage facilities	50,000
City hall	500,000
Public schools	250,000
Sidewalk program	65,000
CITY OF LINDEN	
School buildings	400,000
Sewer extensions and disposal plant	300,000
Water extensions and well	40,000
Public hospital	375,000
TOWN OF MADISON	
Water system	---------
Curbs and gutters	---------
Playgrounds	---------
Sewage disposal	---------
TOWN OF OAKMAN	
Sewage facilities	170,000
TOWN OF ODENVILLE	
Water system	71,000
CITY OF ONEONTA	
Water and sewage facilities	1,180,000
Public recreation facilities	125,000
Garbage disposal facilities	25,000
Public streets	80,000
Fire protection facilities	35,000
TOWN OF ORRVILLE	
Water system	92,000
CITY OF OZARK	
School	---------
Recreational facilities	---------
Street improvement	---------

TOWN OF PARRISH

School gymnasium and auditorium	$70,000
Water system	125,000
Sewage disposal	100,000

CITY OF PELL CITY

Water system	45,000
Sanitary sewer system	355,000

CITY OF PIEDMONT

Sewage treatment	---------
Street improvement	401,355

CITY OF RED BAY

Streets	---------
School recreational facilities	---------
Library	---------
Sewage facilities	---------

TOWN OF REFORM

New city hall	100,000

CITY OF RUSSELLVILLE

New high school	600,000
Street improvements	100,000
Additional sewer system	75,000
Addition to city hall	100,000
Additions to water plant	100,000

CITY OF SAMSON

Schools	---------
Streets	---------
Sewage system	---------

CITY OF SHEFFIELD

A new fire station	35,000
Resurfacing of city streets, 14 miles	125,000
Northeast sewer district, pumping station and force mains	75,000
Sewage treatment plant	500,000
Storm sewer facilities	200,000
Proposed bridge across Georgia Avenue on 20th Avenue	25,000
School plants: (a) 1 junior high and 2 elementary schools	1,200,000
Paving of cemetery roads	15,000
Department of Recreation and Parks	50,000

CITY OF SYLACAUGA

Sewage system	500,000

CITY OF THOMASVILLE

Sewerage	225,000
Paving	125,000
Extension water system	80,000

TOWN OF TOWN CREEK

Water system, capacity, 100,000 gallons	100,000
Sewage system, complete	75,000

TOWN OF TRAFFORD

Street grading and drainage	40,000
Water plant extension	10,000
City hall	20,000

CITY OF TRUSSVILLE

City hall (plans finished)	150,000
Fieldhouse	150,000
We are in the process of city planning; we are in need of sidewalks along the highway immediately	100,000
Garbage disposal facilities	100,000
We have talked of constructing a library	25,000

TOWN OF VALLEY HEAD

Street paving and repair	---------
Expansion of water system	---------
Sidewalks	---------
Recreational facilities	---------
Sewage facilities	---------

TOWN OF WARRIOR

Town hall	60,000
Swimming pool	30,000
Health clinic	50,000

THE TOWN OF WILTON

Municipal building	60,000
Street and sidewalks	40,000
Filter plant	50,000

CITY OF WINFIELD

Streets	$35,000
Sidewalks	10,000
Parking lot	15,000
Public refuse and garbage disposal facilities including sewage treatment plant	175,000
New fire equipment	10,000
Additional water supply	250,000

TOWN OF RAINBOW CITY

Recreation building and swimming pool	100,000
Water tank	150,000

CITY OF SELMA

Paving program	1,050,000

PETITION FROM OTTAWA, KANS., FAVORING S. 582, TO PROHIBIT THE TRANSPORTATION IN INTERSTATE COMMERCE OF ADVERTISING OF ALCOHOLIC BEVERAGES

Mr. CARLSON. Mr. President, I present a petition sent to me by Mrs. Mary C. Black, 736 South Sycamore, Ottawa, Kans., signed by 926 persons living in the vicinity of that city, favoring the enactment of the bill (S. 582) to prohibit the transportation in interstate commerce of advertising of alcoholic beverages. I ask unanimous consent that the petition may be printed in the RECORD.

There being no objection, the petition, without the signatures, was ordered to be printed in the RECORD, as follows:

Our homes, in common with millions of others in America, are being constantly invaded by liquor advertising. We urge you, for the sake of the younger generation, to use your power and influence to obtain passage of S. 582, to prohibit in interstate commerce and over the air the transportation of alcoholic-beverage advertising.

EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

The Senate resumed the consideration of the bill (S. 2888) to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.

Mr. KENNEDY. Mr. President, the Senate is now considering an amendment offered by the Senator from Colorado [Mr. ALLOTT] which, in my opinion, would gut this bill. If accepted, it would really make the bill useless. It would have the effect of exempting plans covering at least 90 percent of the employees, which is the whole object of the bill.

If Members of the Senate desire to defeat the bill, they should do so, but they should not be under any illusions. If they accept the amendment of the Senator from Colorado, this bill is, for all practical purposes, dead. Therefore, any Member of the Senate who believes in disclosure, who believes a beneficiary of the program is entitled to this information, who believes that the pension program is a form of deferred wages, who believes it is a form of benefit to be added to an employee's working career or a benefit which he may receive while ill or unemployed, he should vote against the amendment. If any Member of the Senate thinks an employee is not entitled to such information, then he should vote for the amendment of the Senator from Colorado.

But if Senators believe in this bill, which the administration has strongly supported and which has had the bipartisan support of Senators, including the support of the Senator from New York [Mr. IVES], and if Senators believe in disclosure and believe in the employees having a right to the information in question, they should definitely vote against the amendment of the Senator from Colorado.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. I yield.

Mr. LONG. Can the Senator explain briefly why the amendment would kill the bill?

Mr. KENNEDY. It would kill the bill because it would exempt all of the so-called level-of-benefit plans, which are about 90 percent of the plans.

Mr. JOHNSON of Texas. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. JOHNSON of Texas. Mr. President, I ask for the yeas and nays on the Allott amendment.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I am very hopeful the bill will be passed. The bill represents a major step forward, and in the long run it will be in the interest of the employees, the employers, and the Government. I hope the Senate will adopt the bill as it stands and will reject the amendment of the Senator from Colorado.

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

Mr. KENNEDY. I yield.

Mr. GOLDWATER. I should like to ask the chairman of the subcommittee how many wrong acts were discovered with reference to the 90 percent which the amendment would exempt?

Mr. KENNEDY. The Senator from Illinois [Mr. DOUGLAS] discussed that question in his address of last night. The Senator indicated that the major part of the investigation was conducted with respect to the Taft-Hartley type of joint plans, but when the subcommittee began to move into the field at the end there was found some evidence of mishandling of these funds.

I would say to the Senator from Arizona that even if the subcommittee headed by the Senator from Illinois [Mr. DOUGLAS] and the Senator from New York [Mr. IVES] did not turn up many examples of misuse of these funds, it was chiefly because they did not investigate these funds; they were investigating primarily the joint plans.

I think we can consider that the bill is essential on the merits of the issue, whether abuse is unveiled or not. I think it is not adverse to the interests of any employer to report exactly what he has in the bank in order to meet his obligation under a pension or welfare plan. That is what the bill finally comes down to.

Does the Senator believe it would be mistreating the employer or making an excessive demand upon him to ask him to file a report with the Secretary of Labor giving the details of his program?

Mr. GOLDWATER. Mr. President, will the Senator further yield?

Mr. KENNEDY. I yield.

Mr. GOLDWATER. Frankly, I am a little surprised to hear my colleague, the Senator from Massachusetts, say that we should consider the merits of the bill, when there has not even been an adequate investigation of the field, by the Senator's own admission. The record itself, I think, discloses one or two cases of investigation in the level-of-benefit field. I think the Senate is acting very unwisely in even considering a bill which has not had a full investigation.

Mr. KENNEDY. The Senator from Arizona knows that we have had voluminous reports on the matters covered in the bill. We have permitted representatives of the employers, the union organizations, the employees, the actuaries, the insurance companies, and the banks, all to come in and testify.

In my opinion, the real point is that most employers have nothing to hide. Therefore, all we are asking from them is a general report which will give some information to the beneficiaries of these plans which is not being given today. It seems to me that if any employer is doing the right thing by his employees, he should be very glad to report it to the Government and to disclose what he is doing. I should think the employer would be happy to have that done, instead of feeling that he can operate completely in the dark and do exactly what he wants to do with his funds, which is the case today.

Mr. GOLDWATER. Mr. President, that is not the exact case.

The PRESIDING OFFICER. The Senate will be in order, please.

Mr. GOLDWATER. Ninety percent of these funds are already reporting to the United States Government, and in most cases they are reporting not only to 1 agency, but are reporting to 2 agencies, and they are also reporting to State agencies. I do not know of a more thorough reporting than these funds we are now discussing are involved in.

Mr. KENNEDY. The Senator from Arizona and I have engaged in the argument about whether the reports which all businesses must make to the Internal Revenue Service are the same type of report, and we have also discussed the fact that the Internal Revenue Service accepts these plans on a different basis. The question is, Does that give sufficient protection to the beneficiaries? Does that give sufficient publicity to them, so that the beneficiaries are informed as to the details of the pension plans?

As the Senator knows, the Internal Revenue Service made it quite clear in its letter, which is printed beginning at page 493 of the report I have in my hand, that the Service did not think its responsibility in this field was wide enough to encompass the purposes for which the legislation was brought forward.

Mr. GOLDWATER and Mr. IVES addressed the Chair.

Mr. KENNEDY. I shall yield further to the Senator from Arizona, and then I shall yield to the Senator from New York [Mr. IVES].

Mr. GOLDWATER. Mr. President, I merely wish to point out that if a proper investigation had been made as to the 90 percent of the funds which we are discussing, the committee would have discovered that the State agencies give adequate protection in this area, and the State is the proper regulatory body as to disclosure with regard to such funds.

The State of the Senator from Massachusetts is 1 of 6 States which regulate such funds. The State of the Senator from Massachusetts is the only State which does not exclude the level-of-benefit fund.

Mr. KENNEDY. That is one of the reasons for consideration of the legislation. As the Senator knows, there are six States which give some protection as to disclosure with respect to some plans. Massachusetts is the only State which includes all plans.

I am convinced that this is an entirely new field, and the States are going to move into the field exactly as Massachusetts and five other States have done. It seems to me we shall make it far easier for the companies if we provide one uniform disclosure act. Otherwise the large companies, which do business in many States, will be at the mercy of all the States, which will write different laws requiring different disclosures.

Mr. GOLDWATER. Mr. President, I wish to conclude this colloquy with the Senator from Massachusetts, because I know the Senator desires to yield to the Senator from New York [Mr. IVES].

However, I am frankly amazed that the United States Senate would consider a measure which is so important and so far reaching as is this measure, which would give to the unions information they have not been able to obtain at the bargaining table, when the bill has not been thoroughly investigated by a Senate committee in regard to 90 percent of the funds and when we admit that there has been no disclosure of wrongdoing as to those funds. I am amazed that we should want to cut off our arm to cure a little sore finger.

Mr. KENNEDY. I yield now to the Senator from New York [Mr. IVES].

Mr. GOLDWATER. I have not heard an answer from the chairman of the subcommittee as to why he wants to press legislation of such importance without adequate hearings on the subject.

Mr. KENNEDY. The Senator is completely mistaken as to the facts.

Mr. GOLDWATER. No; the Senator is not.

Mr. KENNEDY. We have had voluminous hearings on the subject. I have before me a copy of the hearings on this legislation held last year. This whole book is a record of the hearings.

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

Mr. KENNEDY. I yield.

Mr. IVES. In the first place, I should like to ask the distinguished Senator from Massachusetts a question. Is it not a fact that all of the information which is possessed by the Internal Revenue Service is confidential and not open to public inspection?

Mr. KENNEDY. The Senator is correct.

Mr. IVES. How could such information be inspected?

Mr. KENNEDY. It could not be.

Mr. IVES. It could not be inspected unless we should enact a law providing for the inspection of such information. If we did that, would it be in the proper form? I doubt it very much.

We explored that question very thoroughly in the committee hearings, and we came to the conclusion that such was not the proper approach.

Mr. KENNEDY. I think we came to that conclusion with the support of the Internal Revenue Service, which clearly said the Service was not competent to deal with this program.

Mr. IVES. They do not want it.

Mr. KENNEDY. They do not want it.

Mr. IVES. They told us so. I asked all of the witnesses whether the Internal Revenue Service wanted the program, and they said the Service was not qualified to handle it and that they had more work than they could handle now, in substance. The Senator will remember that.

In the next place, although we have learned about only 1 or 2 or perhaps 3 funds which have gone wrong in this field, that does not mean that others have not gone wrong or cannot go wrong. Might there not be theft or larceny of one kind or another in connection with such funds? I know of no reason why there cannot be.

I wish to say to my good friend, the Senator from Arizona, that I do not think it is necessary to investigate fully and completely all these questions. We know that the distinguished Senator from Colorado is proposing that 90 percent of the plans not be included, yet is it fair to all to have any funds exempt in this entire field? The position of the Secretary of Labor, which I think is utterly sound, is that none should be exempt. The Secretary does not even approve of the 100-man exemption which is in S. 2888. We made that concession so that the bill would be workable. We must have something which is workable. I point out that such an exemption would greatly reduce the cost of administration of the program.

I cannot follow the reasoning of the Senator at all. I do not think it is a sound approach.

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

Mr. IVES. The Senator does not have to have a hearing to know what is obvious.

Mr. GOLDWATER. Mr. President, I never thought I would hear the distinguished Senator from New York say that we could legislate without a proper hearing.

Mr. IVES. I did not say that. We have had complete hearings and a proper investigation.

Mr. GOLDWATER. We have learned of 2 cases out of 42,000 in which the fund went wrong.

Mr. IVES. There is one exception. We have talked about the insurance companies not being subject to the provisions of the legislation, but we have

one exception in the State of New York, which was uncovered. The Senator from Colorado will remember that item. The Security Mutual case was uncovered in the State of New York. I think the Senator from Illinois brought up that subject yesterday in his remarks.

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

Mr. IVES. I do not have the floor. The Senator from Massachusetts has the floor.

Mr. KENNEDY. I shall be glad to yield if the Senator from New York has concluded.

Mr. IVES. No; I have not. I wish to point out what happened.

Mr. KENNEDY. I shall be glad to yield for the purpose of permitting the Senator from New York to inform the Senator from Colorado, provided I do not lose the floor.

Mr. IVES. Was the Senator from Colorado present when the Senator from Illinois cited a certain case yesterday afternoon?

Mr. ALLOTT. Which one was that?

Mr. IVES. The case involving the Mutual Security Life Insurance Co., of Binghamton, N. Y. In that case the executive vice president skipped to California. That case was governed by the insurance laws of the State of New York; and the insurance laws of the State of New York are pretty sound laws. I do not say that they are the best in the country, but they are pretty good. They are recognized as such.

Mr. ALLOTT. Let me say to the Senator from New York that the committee cannot take credit for uncovering that case. The insurance commission of New York was really the agency which uncovered that case in the first place.

Mr. IVES. They did nothing about it.

Mr. ALLOTT. Oh, yes, they did. Prior to the time the Senator's committee was functioning, the Insurance Commission of New York did something about it. They were the ones who had already gotten on top of Mr. Wicks, and stopped the excessive commissions going to Mr. Saperstein from the insurance company.

Mr. IVES. After it had been going on for a long time.

Mr. ALLOTT. Actually it had not.

The Senator's own committee did not start to function until 1953, if I recall correctly.

Mr. IVES. Nineteen hundred and fifty-four.

Mr. ALLOTT. The fund itself operated from 1951 to 1953, so it had operated for only 2 or 2½ years before the Senator's committee started to function. The State insurance agency, or commission, in New York focused attention upon that situation.

Mr. IVES. I understand all that. However, the fact still remains that the culprits got away with a great deal under the administration of the State of New York during that period of time.

Mr. ALLOTT. That was the formative stage in this entire area. Hardly anyone knew very much about the subject.

The Senator cannot claim on the one hand that he did not investigate the level-of-benefit type of plan, and then ask the legislature, on the other hand, to place restrictive and expensive legislation on 90 percent of all funds, when it has not been shown that any need exists. I still say that no need has been shown to ask for registration or reporting of the level of benefit plans. If there is any such need, and if it is shown by the hearings, I should like to have it pointed out to me.

Mr. KENNEDY. Mr. President, has the Senator from New York concluded?

Mr. IVES. No; I wish to answer the Senator from Colorado.

I think there is a need. I think there is no question that there is a need. I think the Senator from Massachusetts has covered that need. I think the Senator from Illinois covered it pretty thoroughly yesterday, and I tried to do so today.

Mr. ALLOTT. I have before me a copy of the hearings——

Mr. IVES. What I am talking about has nothing to do with the hearings. It is a matter of principle.

Mr. ALLOTT. I am talking about principle too.

Mr. IVES. I am talking primarily about principle. If anyone is to report, everyone should report who can report and still leave the plan workable.

Mr. ALLOTT. That is what the Senator believes.

Mr. IVES. That is what I believe.

Mr. ALLOTT. There is no need shown in the hearings. One can peruse the hearings from one end to the other, and not find it.

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

Mr. KENNEDY. I yield.

Mr. COOPER. As a member of the full committee, I had to make up my mind on this question, as did other members.

Let me say, particularly to my lawyer friends in the Chamber, that I think there is a principle involved which I have not heard discussed in the debate.

What is the basis for placing these funds under the supervision of the Secretary of Labor? Is it upon the basis that in a certain class there have been more abuses than in another class? I should say not. The basis is that the people who operate these funds, whether they are employers or whether they are union officials, or whether the funds are jointly managed, are fiduciaries. They are in the legal position—at least we would place them in such a position by this legislation—of trustees or fiduciaries.

I should certainly say that on any basis of law, when fiduciaries are required to report, we do not make any exceptions as to classes. All are required to report. I do not think we can decide this question upon the basis that in a certain class there have been more abuses than in some other class. Thus far the abuses which have been developed have been by union officials. However, the principle of responsibility on the part of a fiduciary applies to all of them.

I do not see how we can get around that legal principle. I should like to hear some comment on that subject from my friends who are learned in the law.

Mr. CASE of South Dakota. Mr. President, will the Senator yield?

Mr. KNOWLAND rose.

Mr. KENNEDY. Is the Senator from California seeking recognition?

Mr. KNOWLAND. I should like to be recognized for half a minute.

Mr. KENNEDY. I am glad to yield, provided I do not lose the floor.

Mr. KNOWLAND. Of course.

Mr. President, for the information of the Senate, the following release was issued this afternoon from the Department of Labor, by James P. Mitchell, Secretary of Labor:

Secretary of Labor James P. Mitchell today made the following statement:

"In January the President submitted to Congress a comprehensive legislative program to protect the rights of individual workers, the public, and management, and unions in labor-management relations. The Senate is now debating one piece of the administation's total package, a bill (S. 2888) to safeguard the health, welfare and pension funds of American workers.

"While this bill is generally acceptable to the administration, it is by no means enough to give adequate protection to American workers against the corruption and abuses of trust and power which have been disclosed in the labor-management field.

"At present a number of amendments to S. 2888, going far beyond the regulation of health, welfare, and pension funds, will be debated in the Senate. Thus, in effect, the Senate is considering the subject matter of the total administration program. In view of this fact and the President's earnest desire for the passage of his total legislative program in this area, the administration urges the Senate to adopt these proposals which have been made by Senator SMITH of New Jersey."

The Senator from New Jersey intends to offer a series of amendments. They are incorporated in individual bills which he has previously introduced. I refer to Senate bills 3097, 3098, and 3099.

I thank the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I am astonished at the suggestion of the Secretary of Labor. He was given an opportunity, before the Easter recess, to come before the committee and testify with respect to his legislative proposals. The head of the AFL–CIO was also given an opportunity to be heard. The hearings began 1 day after the Senator from Arkansas [Mr. MCCLELLAN] submitted the report from his committee dealing with the first year's work.

The Senator from Arkansas [Mr. MCCLELLAN] did not introduce his bill, based upon the first year's work of his committee, until last week. The Secretary of Labor wishes to have his measures considered without affording an opportunity to the business community to come in and discuss them.

The proposals are far reaching. They not only deal with the recommendations of the McClellan committee, but they propose substantial changes in the Taft-Hartley Act itself.

Are these proposals to be considered on the floor before the subcommittee of the Committee on Labor and Public Welfare concludes its hearings?

I think it is an extraordinary action on the part of the Secretary of Labor to deny to others a privilege which he claims for himself. The Secretary testified before our committee. There was one other witness, Mr. Meany.

The Senate then took its Easter recess. It was made clear that we desired to continue the hearings. The committee has not even had an opportunity to consider other proposals, including the one of the Senator from Arkansas [Mr. McCLELLAN]. I think the Secretary of Labor has taken an extraordinary attitude.

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

Mr. KENNEDY. I yield.

Mr. IVES. I should like to ask a question which I think will tend to clarify the situation.

I think there is some reticence on the part of some Members of the Senate on this side of the aisle to vote against any of the proposed amendments, aside from the one proposed by the Senator from Colorado, which deals strictly with the bill, or any others which deal strictly with the bill, unless Senators are assured that the hearings to which the Senator from Massachusetts refers are to be held, and unless they know that our committee is going to report out legislation dealing with these subjects. I believe they should receive such assurance. I should like to have the Senator from Massachusetts give that assurance, so that there will be no question about it. I am sure that if they had the assurance that within a reasonable time there would be before the Senate bills on which the committee agrees—and all of us have programs in mind—we would have a different situation. As I say, all of us have programs in mind. The Senator from Massachusetts has one, and I have one.

I should also say that if one of my own bills were before us in the form of an amendment to the pending bill, I would vote against it. I would vote against it because it has no place here. I cannot answer for anyone else, but I want to make sure that hearings will be held and that there will be reported to the Senate proposed legislation which will receive floor action, so that we may have an opportunity to vote on some bills.

Mr. KENNEDY. It is clear that the committee headed by the distinguished Senator from Arkansas [Mr. McCLELLAN] made its report on Monday, March 24, and that our subcommittee began to hold hearings very shortly thereafter, on Wednesday, March 26, and that we could not have acted any more promptly. The Senator from Arkansas, who has done such great work with his committee, did not introduce his bill, dealing with the first year's survey of the McCLELLAN committee, until last week.

I can assure the Senate that we are going ahead with the hearings and that we shall continue those hearings a week from Monday. I expect that they will take perhaps no more than 3 weeks. In my opinion, proposed legislation will come from the committee on these subjects, and will be reported to the floor of the Senate. That is my complete intention, and I believe it is also the intention of most of the members of the committee. Of course there may be some question as to what particular form the proposed legislation should take, but there is no disagreement—and I know that the Senator from Alabama [Mr. HILL] agrees—that we will give the subject a thorough hearing and that we will report proposed legislation to the Senate.

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

Mr. KENNEDY. I yield.

Mr. KNOWLAND. I should like to say to the distinguished Senator from Massachusetts that, of course, I am glad to hear the Senator say that the subcommittee will go ahead with the hearings. I understand that, so far, since the administration bill was introduced and since other bills dealing with the same subject were introduced, there have been only 2 days of hearings, 1 on March 26 and 1 on March 27. It seems to me that the Senate should have an assurance beyond the mere statement that hearings will be held on some unnamed date and that a bill will be reported to the Senate.

I call attention to the fact, also, that both major political parties, in national conventions, made a solemn covenant with the people of this country and pledged their support to statehood for Alaska and for Hawaii, and that bills on those subjects have been reported by the appropriate legislative committee, namely, the Committee on Interior and Insular Affairs. The Alaska statehood bill, which is S. 49, has been on the calendar since August 29, 1957, and the Hawaii statehood bill, S. 50, has been on the calendar since the same day, August 29, 1957. Both bills have rusticated on the calendar since that time, and no action whatever has been taken on them.

Therefore, I should like to know whether the Senator from Massachusetts can give us any assurance as to when the bills he has reference to, if reported, will be called up in the Senate, so that we have an opportunity, at least, to give the 96 representatives of the 48 States of the Union an opportunity to vote on this very important policy question.

Mr. KENNEDY. In spite of my high regard for the distinguished Senator from California, I will not accept the charge that the subcommittee which I head has been tardy in any way. In fact, the Senator from Massachusetts has come in for some criticism for holding hearings so quickly after the McClellan report was filed.

The Senate took its Easter recess, and by the following Tuesday or Wednesday many Members had left town. Some had already left the previous Friday. The McClellan committee held an important hearing in Philadelphia, and four members of the committee participated in that hearing.

It is my intention to the utmost—and I pledge myself to it—to continue hearings beginning a week from Monday. It is my judgment that the hearings will not take more than 3 weeks.

It is my hope that we in the committee will be able to reach agreement on the proposed legislation that should be reported. The bill before us covers only 1 of the 5 areas of the recommendations made by the chairman of the committee, the Senator from Arkansas [Mr. McCLELLAN], namely, the disclosure of pension and welfare plans.

This proposed legislation, in a sense, antedates the McClellan committee, but that committee gave new emphasis and new stimulus to it. We are moving on 1 of the 5 areas set out by the McClellan committee.

I intend to look into all the other areas, and intend to report to the Senate such legislation as is needed. That does not mean that everyone will agree on what type of legislation will be needed, but at least some proposed legislation will be reported to the Senate.

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

Mr. KENNEDY. I yield.

Mr. HILL. The Senator from Massachusetts previously stated to me exactly what he has now stated to the Senate, and that is that he and his subcommittee will proceed expeditiously to hold hearings on the labor bills, and then expeditiously to report a bill to the full committee. I wish to say to the Senate, as chairman of the full committee—as I have said to the distinguished Senator from Massachusetts, the chairman of the subcommittee—that as soon as his subcommittee is ready to report a bill, we will have a meeting of the full committee, and the full committee will act expeditiously to bring that bill to the floor of the Senate.

Our distinguished majority leader had an urgent call to attend to off the floor of the Senate. When he returns I am sure he will speak for himself, but I know that the majority leader has assured the distinguished Senator from Massachusetts, the chairman of the subcommittee, and has assured the senior Senator from Alabama, the chairman of the full committee, that when such proposed legislation is reported to the Senate, the majority leader will see to it that that proposed legislation receives the expeditious consideration of the Senate.

Mr. KENNEDY. I thank the Senator.

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

Mr. KENNEDY. I yield to the Senator from Oregon.

Mr. MORSE. As a member of the subcommittee, I should like to say that the chairman of the subcommittee completely expresses my views in regard to the duty of the subcommittee to proceed with hearings, as the chairman of the subcommittee has been proceeding with hearings. I believe he has been proceeding with hearings in all haste. I believe he should receive the commendation of the Senate for the course of action he has followed, instead of implied criticism, because he does not have bills before the Senate at the present time.

I wish to say one word further. I believe we are demonstrating again tonight the inadvisability of passing legislation on the floor of the Senate as a Committee of the Whole. I believe all Senators know my point of view on that subject.

I do not intend to reopen it at any length at this time.

Committee procedures, in my judgment, are vital to sound legislative processes in the Senate. This proposed legislation should be handled by the committee.

I should like to state this hypothetically, because I do not believe that it is a reality which will come to pass. However, I wish to say that if the Committee on Labor and Public Welfare does not proceed to report a bill to the Senate or does not report to the Senate adversely bills that have been submitted to it, by not later than June 10 of this year, I myself, as a member of the committee, will move to discharge the committee from further consideration of such bills. I say that because I shall never support, as a member of a committee, a bottling-up process. If some Senators are worried about a bottling-up process, they have an opportunity, so far as the Senator from Oregon is concerned, to vote at least on the procedural motion to discharge the committee.

I am satisfied that what we now have before the Senate as a result of the strategy that is being used on the floor of the Senate is the question as to whether we wish to place confidence in the Committee on Labor and Public Welfare. If we do not place such confidence in the committee, let us get another committee. As a member of that committee, I say that Senators have no justification for not placing confidence in that committee and in the able leadership of the chairman of the committee, the Senator from Alabama [Mr. HILL], and in the able leadership of the chairman of the subcommittee, the Senator from Massachusetts [Mr. KENNEDY]. What we would be doing, if we were to use the proposed procedure, would be undermining and undercutting the Committee on Labor and Public Welfare, and, in my judgment, doing an injustice to it.

All I can say is what I have said already as to my position, and what that position as a member of the committee is. I am satisfied that under the leadership of the Senator from Alabama and the Senator from Massachusetts we will get a bill to the floor of the Senate.

If we do not get it by June 10, I shall make a motion to discharge the committee.

Mr. KENNEDY. That is a very fair statement.

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

Mr. KENNEDY. I yield.

Mr. IVES. Speaking for myself, I wish to say that I did not submit my program as a joke. I intend to support it. I do not know whether the committee will see fit to report any of my bills, but I assume that the committee will reach the conclusion that the committee thinks is the best conclusion. If I am not satisfied with that conclusion, I shall offer one or the other or all of my bills as a substitute for what is reported by the committee.

I assume—in fact, I know—the same thing can be done by every Senator. This applies also to the program of the minority leader, the distinguished Senator from California [Mr. KNOWLAND].

I am sure that with the assurances of the Senator from Massachusetts and the distinguished chairman of the committee [Mr. HILL], all of us can afford to go along and handle this question in the regular fashion.

As I said earlier in my remarks, if one of my bills were to be taken up in this way as an amendment to the bill under consideration, I would oppose it and vote against it.

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

Mr. KENNEDY. I yield.

Mr. GOLDWATER. I am glad to hear the utterances which have been made; but I believe firmly that "What is past is prologue." In 1952, both major parties favored, as a part of their platforms, amendments to the Taft-Hartley Act. In 1956, the same promise was made in varying degrees by both parties.

Unless the distinguished chairman of the subcommittee wishes to call the two hearings held prior to the recess hearings on the Taft-Hartley amendments, there have not been, to my recollection, any hearings on the Taft-Hartley Act since 1953.

I have introduced three bills: One to remove the non-Communist oath; one with respect to economic strikers, to allow them to vote; and one on States rights. These bills have been introduced since the opening day of the 85th Congress. There has not been one hearing on them.

My opinion is that this is the only opportunity the Senate will have to vote on proposed legislation this year. We have another question to consider, and this, again, comes from the majority party in the House. I understand that the House Committee on Education and Labor has voted not to consider any amendment to the Taft-Hartley Act this year.

So again, with all due respect to the Senator from Alabama and the Senator from Massachusetts, I think this is the only opportunity the Senate will have to vote on proposed legislation in which the people of America are vitally interested. If we do not vote on it, I think we shall be rightly condemned by the people, who are becoming fed up with what they have been hearing about some of the union leaders of the Nation.

Mr. CASE of South Dakota. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. CASE of South Dakota. If anything has been learned, or should have been learned, from the history of labor legislation in Congress in recent years, it is that legislation dealing with labor organizations should be evenhanded. Legislation dealing with employee-management relationships should be evenhanded.

A few Senators may recall that in 1946 the junior Senator from South Dakota was much interested in labor legislation and sponsored a bill which was passed by Congress but was vetoed by the President. The bill sought to establish evenhanded treatment, so far as the Wagner Act was concerned. Students of labor legislation will recall that the Wagner Act originally contained a bill of particulars concerning unfair labor practices on the part of management; but many Members of Congress felt that, to be evenhanded, there should also be a table or a catalog of unfair labor practices on the part of labor, if such practices existed. The basis for the so-called labor bill in 1946 was to seek to make labor legislation evenhanded.

If we intend to deal with possible unfair practices on the part of labor or management, we should also deal with such practices on the other side. I say this because something has been said about principle in labor legislation. It is my conviction, based upon my experience in 1946, and based also upon my observations of the operations of the Taft-Hartley Act, after the earlier bill had been vetoed, that to be effective and to command confidence, labor legislation must treat all parties alike.

Therefore, on that basis and principle, I should oppose the pending amendment, because it seems to me that the reports of welfare funds should be subjected to the same treatment.

I myself think that the so-called non-Communist affidavit in the Taft-Hartley Act would have worked better, and the act as a whole would have received, generally, better public acceptance, if the same oath had been required of management as was required of labor organizations or leaders of labor organizations.

Therefore, in this instance, I think the same rule should apply to all types of welfare funds which grow out of the employer-employee relationship.

Mr. KENNEDY. I thank the Senator from South Dakota.

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

Mr. KENNEDY. I yield to the Senator from Nebraska.

Mr. CURTIS. I thank the Senator from Massachusetts. I feel very strongly that this will be our only opportunity to enact much needed legislation in the field of labor and management. I have a proposal dealing with secondary boycotts. It was introduced prior to the formation of the McClellan committee. As a matter of fact, I introduced the bill in the previous Congress. I have urged that hearings be held on my proposal. I have spoken about it on the floor and have done everything else I could to have it considered. I am thoroughly convinced that the only opportunity to have it considered is as an amendment to S. 2888.

My bill deals with a situation which is very serious. It concerns abuses which are unfair to working people. It deals with abuses which have put a number of small businesses completely out of business. It deals with abuses which are most unfair to consumers.

I would be unfair to the people I represent and to the people involved in these transactions if I took any attitude other than that appropriate amendments in the field of labor and management should be considered now, because past experience has proved that this will be our only opportunity to get any legislation concerning these much needed situations.

I thank the Senator from Massachusetts.

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

Mr. KENNEDY. I yield.

Mr. KNOWLAND. I commend the committee for having reported a bill which goes this far. It so happens that I am supporting the position of the committee concerning this particular phase of the problem.

But the fact remains that the President of the United States has made a number of recommendations in the field of labor relations. Many bills on this subject have been introduced by Senators on both sides of the aisle. I know of the interest of the distinguished Senator from Massachusetts in this subject. But in spite of the interim recommendations of the McClellan committee, which Senators have read and which, I am sure, the people of the country as a whole have read with great interest, the only piece of proposed legislation which has been reported by the committee to date happens to be one—and it may be sheer coincidence—which the labor organizations have been seeking to have enacted.

I do not blame the labor organizations for this. I think there is justification for legislation in that field, and I shall support it. But I call attention to the fact that in the hearings before the Subcommittee on Labor on March 27, page 146, the distinguished president of the American Federation of Labor-Congress of Industrial Organizations, Mr. George Meany, was present. I have high regard for Mr. Meany. I think he is a labor statesman. I think that in the field of foreign policy he has been very sound—far more sound, in many respects, than many persons now in Government or who have previously been in Government have been. Mr. Meany rendered distinguished service to his country as a member of the United States delegation to the United Nations. But, after Mr. Meany's testimony, the distinguished Senator from Massachusetts, speaking to Mr. Meany, said:

> Looking through your suggestions, you have opposed, it seems to me, every legislative proposal that has been put forward before the subcommittee—

Except, of course, the one bill which labor itself favors. I have no complaint about that, except that it seems to me that, since the bill is before the Senate, having been reported by the Committee on Labor and Public Welfare, and since we have the background and experience of the difficulty of getting anything of this nature to the floor, some of us who feel very deeply on the subject would be remiss in fulfilling our obligations if we did not attempt to secure the protection which we feel is needed for the rank and file of the union membership who are experiencing some of the abuses which have been clearly demonstrated before the McClellan committee and at other places.

So we believe we are amply justified in submitting these questions to the Senate and in having the Senate vote on them.

I regret to say that I believe this is the best opportunity the Senate will have at this session to pass, and have enacted, any proposed legislation on this subject.

Mr. YOUNG. Mr. President, will the Senator from Massachusetts yield to me?

Mr. KENNEDY. I yield.

Mr. YOUNG. Mr. President, I appreciate the courtesy of the distinguished Senator from Massachusetts in yielding to me.

Let me say that I voted for the Taft-Hartley Act, and I believe my vote on it was a good one. If I had that opportunity again, I would vote as I did then.

But I believe the Taft-Hartley Act needs amendment.

On the other hand, more than 25 amendments have been submitted to the pending bill, and those amendments involve very intricate technical problems with which not many Members of the Senate are particularly well acquainted.

I do not feel qualified to vote on amendments of such far-reaching consequences as the ones which have been before the Senate for only two or three days. I may vote for some of the amendments, and I should like to vote for a great many more, and I probably would if they came before the Senate in the form of a regular bill.

But in the present situation, I feel compelled to vote against most, if not all, of these amendments.

Mr. MANSFIELD. Mr. President, will the Senator from Massachusetts yield to me?

Mr. KENNEDY. I yield.

Mr. MANSFIELD. Mr. President, the Senator from Massachusetts has already given his word, has he not, that he intends to have his committee hold hearings on many of these measures, and that he intends to report them to the Senate, on the basis of the committee's recommendations, in the form of legislation, within a reasonable time.

Mr. KENNEDY. Yes.

Mr. MANSFIELD. Furthermore, as I recall the colloquy between the Senator from Massachusetts, the chairman of the subcommittee, and another member of the Committee on Labor and Public Welfare, that was the Senator's position at that time.

So it is not the intent of the Senator from Massachusetts, is it, to sidetrack this subject? Instead, I understand that it is his intention to have the Senate pass on these questions—including the ones before the committee—on the basis of their merits.

Mr. KENNEDY. Yes. I repeat that we did not receive the recommendations of the McClellan committee until March 23 or March 24. We began the hearing one day later, and we announced that we would hold hearings beginning a week from Monday.

In addition, the Senator from Oregon has stated very specifically that if a bill on this subject is not brought to the floor—and let me say that such a bill might, of course, be unsatisfactory to many Senators, but at least it was stated that a bill dealing with one subject involved in the hearings will come to the floor—he will move to have the committee discharged from the further consideration of this matter.

So it seems to me that if on the 10th of June, or before then, we report the bill to the Senate, the Senator will have an opportunity to offer his amendments, and then to have the Senate act on them.

On the other hand, in view of the questions involved, and inasmuch as many of them relate to amendment of the Taft-Hartley Act, I believe it would be a great mistake for the Senate to act on these amendments at this time, before the committee has considered them.

Therefore, I hope the bill will be passed without the adoption of these crippling amendments or the amendments referred to by the Secretary of Labor.

Mr. President, at this time I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Gore	McNamara
Allott	Green	Monroney
Anderson	Hayden	Morse
Barrett	Hennings	Morton
Beall	Hickenlooper	Mundt
Bennett	Hill	Murray
Bible	Hoblitzell	Neuberger
Bricker	Holland	O'Mahoney
Bridges	Hruska	Pastore
Bush	Humphrey	Payne
Byrd	Ives	Potter
Capehart	Jackson	Proxmire
Carlson	Javits	Purtell
Carroll	Jenner	Robertson
Case, N. J.	Johnson, Tex.	Russell
Case, S. Dak.	Johnston, S. C.	Saltonstall
Church	Kefauver	Schoeppel
Clark	Kennedy	Smathers
Cooper	Kerr	Smith, Maine
Cotton	Knowland	Sparkman
Curtis	Kuchel	Stennis
Dirksen	Langer	Symington
Douglas	Long	Talmadge
Dworshak	Magnuson	Thurmond
Eastland	Malone	Watkins
Ellender	Mansfield	Wiley
Ervin	Martin, Iowa	Williams
Frear	Martin, Pa.	Yarborough
Goldwater	McClellan	Young

The PRESIDING OFFICER. A quorum is present.

The question is on agreeing to the amendment of the Senator from Colorado [Mr. ALLOTT]. On this question, the yeas and nays have been ordered.

Mr. ALLOTT. Mr. President, at this time I should like to address the Senate for only a few moments in regard to the pending question.

As I stated when the debate on this question began, I believed there would be a general tendency to proceed, by means of slogans, to have the bill in its present form passed.

Mr. President, it is not without a great deal of hesitancy that, after working with such leaders as the Senator from New York and the Senator from Illinois over a period of years, in connection with the consideration of such a bill, I reach a conclusion different from the one they have reached.

At this point in the consideration of the bill and the pending amendment, now that the Senate is about to vote on the amendment, I wish to state to the Senate that I firmly believe the pending bill provides only a slapdash approach to this problem.

The pending bill will not cure the irregularities which have occurred under the Taft-Hartley Act. Of course, this afternoon I have discussed many of those irregularities. I have stated to the Senate why not one person in the United

States has been convicted, under the provisions of the Taft-Hartley Act, for wrongdoing in connection with the matters to which we have referred. Certainly the pending bill will not cure those difficulties. Furthermore, certainly no measure which would amend the Taft-Hartley Act in such respects has been acted on favorably by the Senate. So we cannot avoid that problem.

In my participation in the debate this afternoon—and I proceeded for approximately 4 hours—my purpose was to lay before the Senate the individual problems which have arisen in connection with the administration of these funds.

I say in all sincerity that the pending bill would not stop those evils. Inasmuch as it would not stop them, I cannot vote for the bill in its present form, for, if I were to vote for the bill in its present form, I would not be able to say to my constituents in Colorado—to the workers of Colorado—or to the workers of the rest of the United States, that I had voted for a measure which would be of assistance and value to them.

The bill as it now stands would not do for the workers of the United States what it should do. It would not do so, any more than the present Taft-Hartley Act does, nor any more than the reports made by the unions, under the present provisions of the Taft-Hartley Act, to the Department of Labor have stopped the abuses the McClellan committee found.

I wish to say to my friend, the Senator from Kentucky, who made the inquiry—and it deserves to be answered—that, as regards the Supreme Court case—and, Mr. President, although the chairman of the subcommittee has stated that that case does not affect this issue, yet it does affect it; and I make this statement for the information of Senators who wonder about the question of fiduciary relationships—that that question was not raised until the last few monthhs, when an effort was made by some to ascertain a way to prevent taking the more logical approach which I have taken.

It was raised then because it was the one thing upon which they could pin their hopes.

The Supreme Court has very well said:

> A fiduciary relationship connotes a relation of trust as the basis of obligation of the one and of security for the protection of the right of the other, rather than a basis of contractual provisions. It requires an element of confidence reposed by one in another without that limitation upon authority or accountability that contract terms impose, or without those exact limitations that are applicable in determining the rights and responsibilities of a creditor and debtor. Fiduciary relationship cannot exist in those instances * * * where the contract is resorted to in order that the exact rights and responsibilities may be definitely defined.

In conclusion, I say to Members of the Senate that the parties, under a level-of-benefits plan, have a right to contract. That right to contract will be denied them unless the Senate adopts my amendment or one similar to it. The right to contract in a level-of-benefits plan includes not merely the right to contract for benefits that will be received, but also includes the right to contract for how much they will be, what reports will be made, what disclosure will be made; and it even includes the right to contract as to how the fund shall be operated and how it shall be funded.

I say it is not the province of Congress to interfere with that right. If we do our duty, we will not interfere with that right, and will adopt the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado [Mr. ALLOTT].

Mr. CURTIS. Mr. President——

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. CURTIS. Mr. President, I shall support the Allott amendment. I think it is logical and practical. I think without the Allott amendment we would set in motion a program of filing such great sums of reports that we would add to the ineffectiveness of whatever good might come of the bill.

I wish at this time to point out the ineffectiveness of S. 2888 as it was reported by the Committee on Labor and Public Welfare. This bill would not protect the pension and welfare funds of the working men and women of the country. In my opinion, it totally fails in this regard. To state to the workers that the passage of this measure in its present form would guarantee an honest custody and administration of pension and welfare funds is, in my opinion, to mislead them.

The bill is based upon the assumption that by filing reports on pension and welfare funds with the Secretary of Labor, mismanagement, embezzlement, and other abuses will end. This simply is not so. This statement can be made unequivocally by reason of the experience that the Nation has had under the existing terms of the Taft-Hartley law.

Under the Taft-Hartley law, unions which come under its benefits are required to file annual reports concerning their dues money. This system of reporting has not prevented theft, waste, and other misuses of dues money. I challenge any Member of this body to produce any evidence showing that the filing of such reports has caused any Secretary of Labor to initiate any civil or criminal action arising from the misuse of dues money. I challenge Senators to show any instance in which any Secretary of Labor has, on the basis of such reports, referred any instances of the misuse of dues money to any prosecutor or to any court or to the Department of Justice. I challenge anyone to show wherein any Secretary of Labor has, on the basis of the reports filed under the Taft-Hartley law, for the last 11 years, cited any misuse of dues money to any Congressional committee dealing with the subject matter.

If the filing of reports with the Secretary of Labor has not prevented the misuse of dues money by dishonest labor leaders—and the files of the McClellan committee are replete with evidence of such misuses—how can we expect that another system of filing reports with the Secretary of Labor will bring any protection of pension and welfare funds?

I wish to read a short paragraph from the interim report of the McClellan committee. This is what it states:

> As an overall finding from the testimony produced at our hearings, the committee has uncovered the shocking fact that union funds in excess of $10 million were either stolen, embezzled, or misused by union officials over a period of 15 years, for their own financial gain or the gain of their friends and associates.

All during that time unions have been required to file financial reports with the Secretary of Labor. How can we embark on any program of filing reports with the Secretary and contend to the workers of the country that we are protecting their pension and welfare funds?

To enact legislation such as the bill before the Senate as it comes from the committee, without amendment, is to offer a false hope and a snare to the working men and women of this country. To contend to the workers of America that we are protecting their pension and welfare funds by such a method is, in my opinion, but to deceive them. If we are to legislate effectively in this field, we must adopt additional amendments that will be presented in connection with this measure.

Mr. JAVITS. Mr. President——

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. I have heard the debate with great interest. As it involves a material legal question, I wish to take a few moments of the Senate's time to point out what I consider to be the determinative legal point which induces me to vote against the amendment of my dear friend and colleague from Colorado, for whom I have high regard and deep respect. I would rather be with him than on the other side.

The plans which are sought to be excluded are set up for the beneficiaries. The workers are the beneficiaries. It is an elementary principle of law that a third party beneficiary has the right to accountability. He is seized of an interest in the fund when the fund is created for his benefit. In view of the fact that the scheme adopted in the bill is a practical way of recognizing such accountability, it seems to me that we face that privity of contract and law which entitles us to include these funds under the pending bill.

I have had considerable experience with labor. I have been supported by labor in my campaigns for statewide office, for attorney general, and for the Senate. I know a great many representatives of labor. Some of us like to think that the rank and file do not believe in many of the things which labor leaders advocate. That may be a proper argument for another day. I shall make my points on the generalized amendments to the bill tomorrow. One thing I am sure of: When it comes to the protection of welfare and pension funds, the rank and file is with all other decent elements of labor in wanting those funds protected, in the most effective way we can devise, with the most condign penalties provided for those who violate their responsibilities to the working people.

For those reasons, Mr. President, I feel that I must vote against the amendment.

Mr. AIKEN. Mr. President, murder laws have not prevented murders. Laws against stealing have not prevented stealing. Laws as to arson have not prevented fire. Laws as to speeding have not prevented speeding. Game laws have not prevented fishermen from keeping short trout.

I think it is a poor argument to say we should not enact legislation for the proper control of welfare funds because such legislation would not be fully effective. I expect to vote for such legislation and against the amendment offered by the Senator from Colorado [Mr. ALLOTT].

Mr. ALLOTT. Mr. President, I cannot let the remarks of my very good friend from New York [Mr. JAVITS] pass without answering them, because they carry an implication. Although I know the Senator did not mean so, the remarks carry an implication that anyone who supports my amendment is against labor.

Let me say unequivocally that no Member of the Senate and no citizen of the United States wants to see these funds cleaned up more than I do. I have not devoted all this time to the subject on my own behalf merely for the pleasure of making a speech this afternoon.

I say to the Senator from New York that if what he says is true, we would not only have the United States regulating national banks but we would also have the United States regulating State banks. We would not only have the United States regulating Federal savings and loan associations, but we would also have the United States regulating all savings and loan associations. We would have the Federal Government regulating State industrial banks, in addition, because all of those banks take money and they all dispose of it.

There is an answer to the problem. Under the terms of the bill it is proposed to take away from the people who bargain for these rights the right to say what the benefits shall be, the right to say how the fund shall be administered, the right to say to whom there will be a report, the right to say how the plan is to be funded, and the right to say how disclosure shall be made. These are rights which belong to the people. If the employer and the employee feel that those rights belong implicitly to them, they have a right to so bargain and to so contract.

No one stated the proposition better than did the employees of the United States Steel Corp. union who testified before our committee.

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

Mr. ALLOTT. I am happy to yield to the Senator from New York.

Mr. JAVITS. I am deeply grieved to hear the Senator say he thinks there was any implication in what I said——

Mr. ALLOTT. I am sure the Senator did not mean it.

Mr. JAVITS. Let me make this clear, because I think it is due the Senator from Colorado.

With respect to the Senator's position on the meeting of the welfare fund situation, I feel that the Senator is as deeply sincere as I or any other Member of this Chamber. I thought I had very clearly separated my remarks as between the legal point on the amendment and my general views upon the bill. I wish to make that crystal clear.

The Senator from Colorado is to my knowledge one of the most devoted men in terms not only of honesty but of the most scrupulous ethics involved in this field. I know he is pursuing the subject with diligence and learning, which is typical of him, in a deep determination to do exactly what I am trying to do, except that the Senator has his own way of doing it.

Mr. ALLOTT. I appreciate the remarks of the Senator from New York, for whom I have the greatest affection. I was sure the Senator had nothing in his own mind as to some of the implications I felt might be imagined when the written word was read.

Mr. President, I yield the floor.

SEVERAL SENATORS. Vote! Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Colorado [Mr. ALLOTT]. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The Chief Clerk called the roll.

Mr. MANSFIELD. I announce that the Senator from New Mexico [Mr. CHAVEZ], and the Senator from Arkansas [Mr. FULBRIGHT] are absent on official business. The Senator from Ohio [Mr. LAUSCHE] is absent because of a death in his family.

I further announce that on this vote the Senator from New Mexico [Mr. CHAVEZ] is paired with the Senator from Maryland [Mr. BUTLER]. If present and voting, the Senator from New Mexico would vote "nay" and the Senator from Maryland would vote "yea."

The Senator from Arkansas [Mr. FULBRIGHT] is paired with the Senator from Vermont [Mr. FLANDERS]. If present and voting, the Senator from Arkansas would vote "nay" and the Senator from Vermont would vote "yea."

Mr. DIRKSEN. I announce that the Senator from Maryland [Mr. BUTLER] is necessarily absent.

The Senator from Vermont [Mr. FLANDERS] and the Senator from Minnesota [Mr. THYE] are absent on official business.

The Senator from New Jersey [Mr. SMITH] and the Senator from West Virginia [Mr. REVERCOMB] also are absent on official business.

If present and voting, the Senator from New Jersey [Mr. SMITH] would vote "yea."

On this vote, the Senator from Maryland [Mr. BUTLER] is paired with the Senator from New Mexico [Mr. CHAVEZ]. If present and voting, the Senator from Maryland would vote "yea" and the Senator from New Mexico would vote "nay."

The Senator from Vermont [Mr. FLANDERS] is paired with the Senator from Arkansas [Mr. FULBRIGHT]. If present and voting, the Senator from Vermont would vote "yea," and the Senator from Arkansas would vote "nay."

The result was anounced—yeas 28, nays 59, as follows:

YEAS—28

Allott	Curtis	Morton
Barrett	Dirksen	Purtell
Bennett	Dworshak	Robertson
Bricker	Goldwater	Saltonstall
Bridges	Hickenlooper	Schoeppel
Bush	Hoblitzell	Watkins
Byrd	Hruska	Wiley
Capehart	Jenner	Williams
Carlson	Martin, Iowa	
Cotton	Martin, Pa.	

NAYS—59

Aiken	Holland	Morse
Anderson	Humphrey	Mundt
Beall	Ives	Murray
Bible	Jackson	Neuberger
Carroll	Javits	O'Mahoney
Case, N. J.	Johnson, Tex.	Pastore
Case, S. Dak.	Johnston, S. C.	Payne
Church	Kefauver	Potter
Clark	Kennedy	Proxmire
Cooper	Kerr	Russell
Douglas	Knowland	Smathers
Eastland	Kuchel	Smith, Maine
Eilender	Langer	Sparkman
Ervin	Long	Stennis
Frear	Magnuson	Symington
Gore	Malone	Talmadge
Green	Mansfield	Thurmond
Hayden	McClellan	Yarborough
Hennings	McNamara	Young
Hill	Monroney	

NOT VOTING—8

Butler	Fulbright	Smith, N. J.
Chavez	Lausche	Thye
Flanders	Revercomb	

So Mr. ALLOTT's amendment was rejected.

Mr. MANSFIELD. Mr. President, I move that the Senate reconsider the vote by which the amendment was rejected.

Mr. JOHNSON of Texas. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion to lay on the table was agreed to.

Mr. ALLOTT. Mr. President, I have another amendment at the desk which I desire to call up at this time.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 6, line 10, it is proposed to strike out "subsection (b)," and insert in lieu thereof "subsections (b) and (c)".

On page 7, between lines 21 and 22, insert the following:

(c) The provisions of sections 6 and 7 of this act shall not apply with respect to an employee welfare or pension benefit plan if such plan is an employee welfare benefit plan established by an employer or by an employee organization, or both, on a "level of benefits" basis. A plan shall be deemed to be established on a "level of benefits" basis if (1) it provides for a specified predetermined evel or levels of benefits for its participants or beneficiaries, (2) the rate of employees' contributions, if any, toward the cost of the benefits is predetermined, and (3) the employer or employee organization, or both, are obligated to make contributions over and above such employee contributions, if any, to provide the agreed benefits: *Provided*, That no employee welfare or pension benefit plan shall be deemed to be established on a "level of benefits" basis, if the employer or employee organization contributions are specified in the plan in terms other than the amount of such benefits such as, but not limited to, number of participants, number of hours worked, units of production or percentage of compensation.

The PRESIDING OFFICER. The Senator from Colorado has the floor.

Mr. ALLOTT. I yield the floor at this time.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Colorado [Mr. ALLOTT].

APPEARANCE OF THE ATTORNEY GENERAL OF PENNSYLVANIA BEFORE THE SELECT COMMITTEE TO INVESTIGATE IMPROPER ACTIVITIES IN THE LABOR AND MANAGEMENT FIELD

Mr. CLARK. Mr. President, a few days ago the attorney general of Pennsylvania, the Honorable Thomas D. McBride, appeared before the McClellan committee investigating labor racketeering in order to state his position with respect to his representation of Teamsters Local Union 107.

Some criticism had been leveled at Mr. McBride in the press as the result of that local representation on his part. I believe his explanation to the committee was entirely satisfactory. Indeed, the distinguished Senator from Massachusetts [Mr. KENNEDY] undertook to state publicly before the committee that Mr. McBride had done nothing improper. Subsequently, Mr. McBride furnished an affidavit to the committee, which is presently contained in the record of the committee, giving in further detail the reason why, under the practice in Pennsylvania, it is entirely appropriate for an attorney general to represent private clients as long as there is no conflict of interest, and pointing to a long history in which every attorney general of Pennsylvania for many years has done that.

I ask unanimous consent that the affidavit may appear in the RECORD at this point in my remarks.

Mr. KENNEDY and Mr. KEFAUVER addressed the Chair.

Mr. MUNDT. Mr. President, I reserve the right to object. Of course, I shall not object, and I make this reservation so that I may interpolate a statement of my own in this connection, because I would not want my silence on the floor to indicate complete agreement with what has been indicated by the distinguished Senator from Pennsylvania, as I understood him, that all members of the committee were pleased and completely satisfied with the explanation of Mr. McBride.

Mr. CLARK. That is not what I said.

Mr. MUNDT. I thought the Senator from Pennsylvania said that the committee members felt it was perfectly all right.

Mr. CLARK. I said that the Senator from Massachusetts so expressed himself.

Mr. MUNDT. I thought the Senator also stated that the committee felt that way. At any rate, as one member of the committee I wish it to be clear in the RECORD that I have some reservation about this matter, and I have a reservation about Mr. McBride's former law partner also, who I believe is Mr. Carroll.

While I have no desire to make an issue of this question, I did not want my silence on the floor, as a member of the committee, to be encompassed in the statement of the Senator from Pennsylvania, as I understood it, that all members of the committee felt that Mr. McBride had at all times acted properly. In my opinion there is some doubt about it.

Mr. CLARK. If I said that all members of the committee had agreed that Mr. McBride had done nothing improper, I assure the Senator from South Dakota that it was quite inadvertent on my part, and that it was not my intention to say that. I was calling attention to the fact that my good friend, the Senator from Massachusetts [Mr. KENNEDY] had made the comment that he personally was in complete accord with what I had said.

Mr. MUNDT. I have no objection to that, I merely wish to have the RECORD show my position.

Mr. KENNEDY. I should like to say to the Senator from Pennsylvania that I am glad he has put this material in the RECORD. I believe it is an unwise provision of law in Pennsylvania which permits the attorney general to appear for private clients. However, I understand that that has been the custom in the past, and therefore I did not feel that Mr. McBride had done anything improper. After the Bar Association of Philadelphia had ruled on the question, Mr. McBride sent back last month's check, the check for March. That shows that he was sensitive about it. It was for that reason that I said I thought he had acted properly. I am glad that the Senator from Pennsylvania is getting the record completely straight.

Mr. CLARK. Mr. President, in view of what has been said by the Senator from South Dakota, I think I should say further that the affidavit which I have asked to have placed in the RECORD indicates that Mr. McBride is the first attorney general in the history of the Commonwealth who has determined not to conduct any private law practice while he is the attorney general. The incidents which were referred to in the affidavit all took place during the first 2 or 3 months when Mr. McBride was in office. He concluded shortly thereafter that he should not accept any further private practice. He is the first attorney general in his State who has taken that position.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania?

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

COMMONWEALTH OF PENNSYLVANIA,
County of Dauphin, ss:

I, Thomas D. McBride, being duly sworn according to law, make the following statement for the purpose of having it incorporated in the record of the Select Committee To Investigate Improper Activities in Labor-management Relations, in accordance with rule 12.

The attorney general of Pennsylvania is appointed by the Governor and is subject to confirmation by the senate. There is no rule, custom, statute, decision, or tradition that the attorney general may not represent litigants in private cases contemporaneous with his representation of the Commonwealth. Of course, his ability to handle private litigation is necessarily circumscribed by two factors:

1. He must not represent any interest adverse to the Commonwealth.

2. He must not permit his private practice to become so extensive as to prevent him from the efficient conduct of his public duties.

I am advised, believe, and therefore state that none of my distinguished predecessors for at least the last 50 years ever gave up the private practice of law or failed to practice law privately during his tenure of office. This fact is important because since it is so I would have been entitled to have continued to represent local 107, or any other private client, at all times while I have been attorney general.

Prior to my assumption of office, however, on December 14, 1956, I solicited the opinion of the committee on professional guidance of the Philadelphia Bar Association as to my further remaining a member of a law firm which practiced not only in the State but in the Federal courts. The gist of the opinion filed by that committee on January 18, 1957, is that so long as I remained a member of the firm neither I nor my partners should participate in any criminal case, State or Federal, nor in quasi criminal proceedings, nor in any case where an actual conflict of interest would exist. It did not say that I could not practice law privately where no conflict existed. The committee defined a conflict of interest in accordance with Canon 6 of the Canons of Professional Ethics of the American Bar Association, as follows:

"A lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

After the opinion of the committee on professional guidance was received by me and to free my partners of restrictions placed upon them if I were to continue as a partner, but more particularly because of the pressure of my public duties, I decided to withdraw from the firm and to refuse all private cases. I did this as a purely voluntary act and have steadfastly continued it up to and including the present time. I have not accepted any new retainers since January 1957, and concluded only one case in equity, of which I spoke in my testimony.

In the light of these facts, therefore, the situation of my having accepted a Christmas gift 3 days after my assumption of office, from a private client not doing any business whatever with the Commonwealth and having no connection whatever with the performance of my official duties, was entirely appropriate in the same way as if I had received it from a long-time individual client or a corporation. This applies also to the fees received in January and February 1957.

I want to emphasize therefore that there is nothing that makes the holder of the office of attorney general ineligible to practice law on behalf of private litigants.

THOMAS D. MCBRIDE.

Sworn to and subscribed before me this 21st day of April, A. D. 1958.

MINA J. WELD,
Notary Public.

TENTH ANNIVERSARY OF INDEPENDENCE OF ISRAEL

Mr. KEFAUVER. Mr. President, 10 years ago the United States played an important role in the establishment of one of the newest members of the community of nations, the State of Israel. Its birth was fraught with hardship, its infancy beset with enemies who would

have destroyed this promising offspring before it had an opportunity to reach its full maturity. We can be very gratified to review the growth of Israel since 1948 and note the really remarkable progress that has occurred and the current prospects for further development.

In many ways the history of the Israeli people parallels the experience of early settlers of North America. Persecuted for centuries, suffering from unspeakable torture and privation in lands that they had come to think of as their homes, and desperate for opportunity to utilize their own talents and imagination to improve their lot, Jews all over the world looked upon Israel as a haven from their oppressors and a place to start life anew. They gathered to the shores of Israel by the hundreds of thousands asking nothing more than the privilege of working under conditions of freedom and respect for their individuality.

On the 10th anniversary of the establishment of Israel, we might ask whether their dreams were realized. And the only possible answer to the question is in the affirmative. Israel is firmly established in the traditions of the Western democracies, with the adoption of parliamentary institutions, protection against arbitrary use of governmental authority, and respect for the deepest private convictions of the individual. The creation of a democratic state in that area of the world is noteworthy in itself when one considers the arbitrary and despotic rule of some of its neighbors, who now want to stamp out this thriving country.

Along with the creation of democratic political institutions, the Israeli people have labored against seemingly insurmountable obstacles to develop a viable economy. Here again the progress has been outstanding. Notwithstanding large yearly additions to the population there has been a steady rise in the standard of living. From 1950 to 1956 the national income rose 87 percent with an average annual rise of 11 percent. The per capita national income was 30 percent higher in 1956 than in 1950. While necessarily directing much of their available capital into enterprises leading to economic expansion, Israel has dedicated itself to providing a standard of living which will allow the enjoyment of such civilized pursuits as education, leisure time activity, and cultural development.

There are other indications of economic progress. Agricultural acreage has been more than doubled, and agricultural production nearly trebled. Minerals, particularly oil, are being exploited and these have contributed heavily to progress in other areas of the economy. New industries have been founded including steel, rubber products, electrical appliances and automobile assembly. During the years 1953 to 1956 industrial output experienced an annual growth rate of better than 10 percent, a truly remarkable rate of expansion.

Still the threat of hostility between Israel and its neighbors lingers on. The struggle between East and West further endangers her existence. For this reason Israel finds it necessary to maintain herself in a high degree of armed readiness. It is my sincere hope that suitable means can be found to resolve these international problems. Not only will the Israeli people benefit, but the entire world will be blessed as both Israel and the Arabs contribute energies to the betterment of man, instead of a perpetual state of armed readiness.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD an article entitled "Israel Survives Years of Travail," written by Drew Pearson, and published in the Washington Post and Times Herald of April 24, 1958.

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

ISRAEL SURVIVES YEARS OF TRAVAIL

(By Drew Pearson)

This week marks the 10th anniversary of a little country founded in tears and built in travail—Israel. Twenty-four hours after it declared its independence seven Arab nations attacked on three sides. King Farouk of Egypt was so sure of marching into its biggest city that he had a stamp printed featuring his picture. Underneath was the word "Tel Aviv."

Farouk and the Egyptian army never got to Tel Aviv. The Israeli army 8 years later would have got to Cairo had Mr. Eisenhower and Secretary Dulles not intervened.

The fiery determination that stopped seven Arab countries in 1948 and which routed the Russian-armed, vastly superior Egyptian army in 1956 is the secret of Israel. It's a nation built on the suffering of the exiled tribes of Israel, built in the dream, nurtured during 20 centuries, that someday the Jews would come back, to a home of their own, built as a living memorial to the 6 million Jews burned in the gas chambers of Hitler.

All this behind the dedication, the determination, the pioneering spirit that has made Israel.

You have to go there to understand it. You have to see the bulldozers pushing rocks, rocks eroded since the days of Abraham, millions of rocks pushed aside so that crops can be raised in little patches of clean soil underneath. Or boys and men and women painfully picking up the rocks and putting them on stone fences to line the little patches of soil being cultivated to feed the sons of Abraham.

THIS IS ISRAEL

And you have to see the trees—millions of trees—imported from similar climates in Australia, contributed by Jews from all over the world, carefully planted along the roadsides and the highways.

You have to see the irrigation works, the Yarkon project, no bigger at its headwaters than Rock Creek which ambles through Washington; one-fourth the size of the Schuylkill which runs through Philadelphia; one thousandth the volume of the Hudson as it flows past Manhattan. Yet the headwaters of the Yarkon, every drop of water cherished like gold, spreads out over the plain of Sharon and makes the Negev Desert bloom 50 miles away.

Or you have to see the farm settlements: Refugees from Hitler living next to refugees from Nasser, along with refugees from Poland or from Algeria or Yemen. At first they have only one bond in common, their religion. They speak no common language, have been separated by the centuries. But they learn Hebrew and their children learn to know each other and to marry each other, and soon out of a melting pot of diverse nationalities has grown a close-knit, cooperating, thriving community. This is how Israel has grown.

Or you have to see the children—buoyant, beautiful children, as radiant and healthy as any in the United States; or the old people as they go down to bathe in the warm Mediterranean; the Moslems at their prayers; the Christians as they worship in the cathedrals of Jerusalem and Nazareth; the schools, the universities, the camels and the caravan, and the new railroad cars contributed by West Germany as a token of penitence for the soap factories of Hitler.

Or you have to see the hospitals, where men like Dr. Haim Sheba pioneer new Near East medicine; where Arabs are given the same treatment as Jews; and where Egyptian wounded taken in Sinai, were nursed back to life. You have to know that doctors from Israel, though overworked, have been loaned to the new African Republic of Ghana and to the new Republic of Burma; and that the scientific discoveries for eradicating flies, mosquitoes, Near Eastern diseases have been made available to the Arab States.

DANGER OF WAR

On one side of Israel lap the blue waters of the Mediterranean, warm and friendly. On the other three sides are deserts and mountain ranges from which peer Arab guards, ever on watch, ever posing the possibility of border raids. Beyond them several million more Arabs vow vengeance, await the day when they can do what King Farouk and Colonel Nasser failed to do—conquer Israel.

So Israel on her 10th anniversary faces a greater crisis than ever—not immediate, but eventual.

From the Near East last September I reported the Kremlin timetable. It was: Unite Egypt and Syria; subvert Saudi Arabia and Jordan; overrun Lebanon; bring all the Arab States with their 70 percent of the world's oil reserves under Moscow and Nasser. That timetable is running on schedule. Egypt and Syria are joined. A new ruler has virtually taken over Saudi Arabia, pro-Nasser riots are disrupting Lebanon.

All the problems of the Near and Middle East are tied up together. They cannot be solved separately.

This is the most complicated problem facing the free world. It's a problem which carries the greatest potentiality for war. Yet there are some solutions, as this column will endeavor to point out in the near future.

DEATH OF ERNEST NORRIS

Mr. KEFAUVER. Mr. President, the passing of Ernest Norris removes from the scene one of the ablest and most notable southern business statesmen. For 40 years, culminating in his long presidency, he was connected with the Southern Railway system. He had much to do with building the Southern into one of America's strongest and most progressive railway systems.

Mr. Norris knew that to build the Southern it was also necessary to build the industry of the South. There can be no question but that the aggressive spirit of Mr. Norris and the Southern contributed very largely indeed to the present industrial development of the Southern States, including my own State of Tennessee.

Tennessee comes close to being the heart of the Southern Railway. The interests of Tennessee and those of the Southern have always been closely entwined. I am glad that during his lifetime the University of Tennessee recognized the achievements of Mr. Norris on behalf of the State and honored him with a doctorate of law.

I know that I speak for all Tennesseans when I express sorrow at the passing of Ernest Norris.

BILL OF RIGHTS FOR LABOR

Mr. MUNDT. Mr. President, while the Senate has before it the very important subject of labor and whatever else may be considered by the Senate to be appropriate corrective steps in the field of labor relations, I call attention to an editorial entitled "Bill of Rights for Labor Urgent," published in the Bloomington, Ill., Pantagraph of February 13, 1958.

I am gratified by the contents of the editorial, and I am gratified that it was published in a very important American newspaper, no less important, certainly, because it is owned and published, in part, at least, as I understand, by the family of the distinguished Democratic candidate for President in 1956 and 1952.

While I do not know who writes the editorials of the newspaper, I am happy that proposed legislation which I have introduced has been approved by such distinguished auspices.

I ask unanimous consent that the editorial be printed at this point in my remarks.

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

BILL OF RIGHTS FOR LABOR URGENT

The 5-point bill of rights for labor advocated by Senator KARL E. MUNDT at the Association of Commerce annual meeting Tuesday night should be must legislation at the present session of Congress. The proposals in principle are reasonable. They would:

1. Protect union funds against misuse by dishonest union officials.
2. Provide for secret ballot vote by union members on elections, strikes, and other major issues affecting the members.
3. Ban those with crime records from holding union office.
4. Prohibit picket lines unless one-third of the workers in the picketed plant request them.
5. Prevent unions from collecting money from members for political purposes against the will of the donor.

These proposals grew out of the hearings held by the Senate Labor Rackets Committee, of which Senator MUNDT is a member. They are nonpartisan. It was this committee which exposed Dave Beck and the teamsters union and several others.

The proposals are not antilabor. The point relative to picketing is extremely liberal. It would seem reasonable to require that at least 51 percent of the employees favor picketing before a picket line could be set up. Senator MUNDT suggests that only a third of the employees be required.

The Senator's last point relative to involuntary giving by union members for political purposes will be the most difficult to frame into legal terms and still not discriminate against unions as compared with other organizations which try to influence elections.

Yet it is most essential because union membership is compulsory in many cases while membership in other organizations sponsoring political action is not. Such legislation should not prohibit the union member from contributing toward political funds if he so desires as any other citizen can do.

The AFL-CIO by its actions in ousting unions exposed by the committee demonstrated its determination to have clean, well-operated unions. In doing so it saved all organized labor from undue loss of face.

Honest, capable, and dedicated union officials as well as union members will serve labor and the Nation best by working for laws which carry out the purposes set down by Senator MUNDT.

REORGANIZATION PLAN NO. 1 OF 1958, RELATING TO FEDERAL DEFENSE MOBILIZATION AND CIVIL DEFENSE FUNCTIONS — MESSAGE FROM THE PRESIDENT (H. DOC. NO. 375)

Mr. JOHNSON of Texas. Mr. President, the President of the United States has transmitted to the Congress today identical messages, accompanied in each instance by Reorganization Plan No. 1 of 1958, relating to Federal defense mobilization and civil defense functions.

I am informed that the message has been read and referred in the House, and, in the interest of time, I ask unanimous consent that the reading of the message may be waived in the Senate, and that it be printed in the RECORD in full and appropriately referred, and also that it be printed.

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). Is there objection to the request of the Senator from Texas?

There being no objection, the message from the President was referred to the Committee on Government Operations, as follows:

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1958, prepared in accordance with the Reorganization Act of 1949, as amended. The reorganization plan provides new arrangements for the conduct of Federal defense mobilization and civil defense functions.

In formulating Reorganization Plan No. 1 I have had the benefit of several studies made by the executive branch as well as those conducted by the Congress. The reorganization plan will overcome the major difficulties revealed by those studies and mentioned in my 1959 budget message where I made the following statement:

The structure of Federal organization for the planning, coordination, and conduct of our nonmilitary defense programs has been reviewed, and I have concluded that the existing statutes assigning responsibilities for the central coordination and direction of these programs are out of date. The rapid technical advances of military science have led to a serious overlap among agencies carrying on these leadership and planning functions. Because the situation will continue to change and because these functions transcend the responsibility of any single department or agency, I have concluded that they should be vested in no one short of the President. I will make recommendations to the Congress on this subject.

The principal effects of the reorganization plan are:

First, it transfers to the President the functions vested by law in the Federal Civil Defense Administration and those so vested in the Office of Defense Mobilization. The result is to establish a single pattern with respect to the vesting of defense mobilization and civil defense functions. At the present time disparity exists in that civil defense functions are vested in the President only to a limited degree while a major part of the functions administered by the Office of Defense Mobilization are vested by law in the President and delegated by him to that Office. Under the plan, the broad program responsibilities for coordinating and conducting the interrelated defense mobilization and civil defense functions will be vested in the President for appropriate delegation as the rapidly changing character of the nonmilitary preparedness program warrants.

Second, the reorganization plan consolidates the Office of Defense Mobilization and the Federal Civil Defense Administration to form a new Office of Defense and Civilian Mobilization in the Executive Office of the President. I have concluded that, in many instances, the interests and activities of the Office of Defense Mobilization and the Federal Civil Defense Administration overlap to such a degree that it is not possible to work out a satisfactory division of those activities and interests between the two agencies. I have also concluded that a single civilian mobilization agency of appropriate stature and authority is needed and that such an agency will ensue from the consolidation and from the granting of suitable authority to that agency for directing and coordinating the preparedness activities of the Federal departments and agencies and for providing unified guidance and assistance to the State and local governments.

Third, the reorganization plan transfers the membership of the Director of the Office of Defense Mobilization on the National Security Council to the Director of the Office of Defense and Civilian Mobilization and also transfers the Civil Defense Advisory Council to the Office of Defense and Civilian Mobilization.

Initially, the Office of Defense and Civilian Mobilization will perform the civil-defense and defense-mobilization functions now performed by the Office of Defense Mobilization and the Federal Civil Defense Administration. One of its first tasks will be to advise me with respect to the actions to be taken to clarify and expand the roles of the Federal departments and agencies in carrying out nonmilitary defense preparedness functions. After such actions are taken, the direction and coordination of the civil-defense and defense-mobilization activities assigned to the departments and agencies will comprise a principal remaining responsibility of the Office of Defense and Civilian Mobilization.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1958 is necessary to accomplish one or more of the purposes set forth in section 2 (a) of the Reorganization Act of 1949, as amended.

I have also found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of new officers specified in sections 2 and 3 of the plan. The rates of

compensation fixed for these officers are, respectively, those which I have found to prevail in respect of comparable officers in the executive branch of the Government.

The taking effect of the reorganizations included in Reorganization Plan No. 1 of 1958 will immediately reduce the number of Federal agencies by one and, by providing sounder organizational arrangements for the administration of the affected functions, should promote the increased economy and effectiveness of the Federal expenditures concerned. It is, however, impracticable to itemize at this time the reduction of expenditures which it is probable will be brought about by such taking effect.

I urge that the Congress allow the reorganization plan to become effective.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *April 24, 1958.*

TAX REDUCTIONS RECOMMENDED BY ARTHUR F. BURNS AND ARTHUR R. BURNS

Mr. MORSE. Mr. President, on April 15, 1958, I placed in the CONGRESSIONAL RECORD a letter published in the New York Times and signed by a group of professors in the economics department of Columbia University. Among the signers of the letter was Arthur Robert Burns. I assumed that that was the Arthur Burns who formerly was the economic adviser to the President of the United States. I said on April 15:

> He is the former economic adviser to the President of the United States.

On April 21, 1958, I placed in the RECORD a letter which I had sent to the editor of the Oregon Statesman, Salem, Oreg., answering his criticisms of me for my position in support of a tax cut. In the course of my letter to the editor of the Oregon Statesman I referred to the letter signed by the group of economics professors at Columbia University, and I said in my letter to Mr. Sprague:

> I share the view of the economics faculty of Columbia University, including Arthur Burns, who was until recently the President's chief economic adviser.

I discovered that there are two persons named Arthur Burns on the faculty of the economics department of Columbia University. The group, including the Arthur Burns who signed the letter, favor a 10-percent tax cut. The Arthur Burns who was the former economic adviser to the President did not sign the letter because he favors only a 5-percent tax cut, which, incidentally, was the amount of the tax cut, in essence, which the Senator from Illinois [Mr. DOUGLAS], in effect, suggested in his original proposal to the Senate.

I feel that I am in good company in making this mistake, because the Senator from Illinois [Mr. DOUGLAS] made the same mistake of identity that I did, as is shown by the statement that he made in the RECORD on April 23, 1958. He caught the error more quickly than I did, however, because the Senator from Illinois said:

> I may say, in connection with this statement, that last week I put into the RECORD a letter which was published in the New York Times, advocating a tax cut, which was signed by Arthur R. Burns. I was under the impression that the Arthur R. Burns was the former economic consultant to the President. I now find there are two Arthur Burns on the faculty of Columbia University, and that Mr. Arthur R. Burns, and not Mr. Arthur F. Burns, was the one who signed the letter.

I join with the Senator from Illinois in making this correction of the RECORD, because both of us try always to be exceedingly accurate; and when we are not accurate, we try to correct our mistakes and to be fair.

The fact is, however, that the Dr. Burns who was the economic adviser to the President does favor a tax cut, and a tax cut of $5 billion; whereas his colleagues on the Columbia University faculty who signed the letter favor just twice that amount—$10 billion.

The Senator from Illinois and I, so the RECORD will show, were supporting a tax cut in the neighborhood of the one the President's former chief economic adviser was recommending—a tax cut somewhere in the neighborhood of $5 billion.

I make this statement tonight so that no one will be able to charge that I have been unfair to Dr. Burns, who was the chief economic adviser to the President.

ARIZONA MUSHROOMS IN WESTWARD BOOM

Mr. GOLDWATER. Mr. President, daily in these halls we hear our colleagues from various of the States of the Union discuss the dire economic situation which exists in their States. For those States and their problems, I have great sympathy.

On the other hand, Mr. President, the situation is not dark all the way across the country. The other day I obtained unanimous consent to have printed in the RECORD an article published by one of the country's outstanding newspapers, the Phoenix Gazette. The article showed that the first quarter of 1958 was one of the best quarters our State of Arizona has had.

At this time, I ask unanimous consent to have printed in the RECORD an article entitled "Arizona Mushrooms in Westward Boom." The article was published in the Christian Science Monitor of February 18.

The subheading of the article is "Manufacturing Spurts." Then in the article we find the following:

> What can happen to a State and its economy when more and more people, trekking across it on their way westward, decide to drop off and stay? This story of Arizona is told by John C. Waugh, staff correspondent of the Christian Science Monitor, in a series of five articles, of which this is the first.

Mr. President, from time to time, I intend to ask unanimous consent to have all the articles printed in the CONGRESSIONAL RECORD, so that from day to day there will be a little bit of economic sunlight in these halls.

At this time I ask unanimous consent that the first of the articles, as published on February 18 in the Christian Science Monitor, be printed at this point in the RECORD.

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

ARIZONA MUSHROOMS IN WESTWARD BOOM—MANUFACTURING SPURTS

(By John C. Waugh)

(What can happen to a State and its economy when more and more people, trekking across it on their way westward, decide to drop off and stay? This story of Arizona is told by John C. Waugh, staff correspondent of the Christian Science Monitor, in a series of five articles, of which this is the first.)

PHOENIX, ARIZ.—Arizona and the Red Sea have things in common.

Both of them have seen an amazing number of persons troop across their dry ground in search of a promised land. Furthermore, in Arizona, many of them are finding it.

In this State, long noted for climate and quiet, there now is throbbing growth. Where there were 616,000 persons in 1946, there now are nearly twice as many. Where copper, cattle, and cotton were once king, there is rising a new economic monarch—manufacturing.

Arizona suddenly finds itself out in front of the Nation in the business of growing. It ranks first nationally in growth of bank capital, manufacturing employment, farm income, and bank deposits. It struggles each year with Nevada for first place nationally in rate of population growth.

ARIZONA BOBS IN WAKE

This State has been caught up in the same population explosion and growth phenomenon that turned the Los Angeles city limits into an international growth joke. Arizona is merely bobbing in the backwash of the same boom.

George V. Christie, vice president of the First National Bank of Arizona, explains it this way:

"Six million people—the greatest mass migration in the history of the world—have trooped across this State since World War II, all bound for California. Not since the passage of the Jews through the Red Sea or the peasant migration of czarist Russia has there been anything like it.

"Arizona is the beneficiary. People headed for California, saw things they liked, and decided to stay. This thing sneaked up on us."

Whatever it was and however it came—leaders point to many factors that persuaded people to stay—it is transforming Arizona.

As far as the future stretches, State leaders see uninterrupted growth, punctuated by an estimated population in 1970 of nearly 2 million.

Arizona's future looks as shiny as its sun. Yet it is not an unclouded future. The thunderheads that roll in with any boom loom here. There is the problem of an economy in violent state of change. There is the challenge not only to plan big, but to plan well. There is the task of growing and still maintaining the traditional way of life.

These are real problems. They mean that the critical period of Arizona's growth is still ahead.

It is growth that must be put into proper perspective. Numerically, both as to population and industry, it cannot begin to compare with the stampede that has rolled into California. Arizona expects to absorb half a million more people by 1970. Los Angeles alone in the same period fully expects to grow by 3.3 million.

But, relatively speaking, the boom here has been quite fantastic. "After all," one Arizona leader points out, "we began from a standing start."

ECONOMIC PUZZLE

What are all these people doing now that they are here? Tucson residents like to joke that they are "taking in one another's wash." Clarence E. Hockings, a vice president of the Tucson Gas, Electric Light & Power Co., says it is a "tough economy to put your finger on." He says that plain old consumerism has employed a sizable chunk of people. The State is a haven for the retired.

Most leaders here agree that industrial employment has been the key support to Arizona's growth. Swamped in the great western migration, Arizona soon saw that its traditional agricultural and mining economy, which was exhaustible, couldn't possibly support such inexhaustible growth.

So Arizona found its solution in light industry—electronics in particular. The banks, the chambers of commerce, the utility companies began plugging to bring industry into Arizona. They have succeeded rather spectacularly. Now many State leaders are thinking in terms of applying the brakes and beginning to plan more carefully.

"By 1955," says Lewis Haas, of the Phoenix Chamber of Commerce, "industry had actually become a top dog in the Arizona economy. If you had said 3 years earlier that such would be the case, you would have been laughed off the street."

TAX LAWS EASED

When all the money is counted for 1957, manufacturing is expected to be the leading single source of income in this State, topping everything, even mining. Manufacturing income in 1956 was $400 million. It will be more than that for 1957.

Sunny climate has been paramount in explaining why Arizona grows. Air conditioning has made even the summer heat bearable. Then there is the western way of life that Arizona offers in heaping proportions.

The State legislature has thrown out several stiff, unhappy tax laws, making the State more attractive to industry. Light industries such as electronics have found it almost embarrassingly easy to recruit highly skilled personnel eager to live under the Arizona sun. Industry has also found a good, highly skilled labor force already here, for the same reason.

Then there is land aplenty and lots of speculation to go along with it. And transportation in all directions is getting better and busier every day.

These are but some of the factors which have worked together to turn Arizona into a promised land, modern-day American style.

AGRICULTURE'S ALTERNATIVES

Mr. CARLSON. Mr. President, on August 8 of last year, I addressed this distinguished body on the desirability of using a commodity-by-commodity approach in working out a solution to our persistent farm problems.

Much has happened since then. We have acquired more experience and more information. Commodity groups have made substantial progress in reconciling their differences. But we have made far too little progress in the solution of the persistent problems.

On the favorable side I am happy to report that wheat exports in the 1956–57 crop marketing year reached an all-time high of 549 million bushels. One-third of this was exported without the aid of special Government programs. The wheat carryover dropped 124 million bushels last year and may drop another 30 million, to 879 million bushels, by July 1, 1958.

We have made even greater progress in reducing cotton stocks. The carryover of cotton on August 1, 1958, is expected to be about 8.7 million bales—a whopping 5.8 million bales lower than it was just 2 years ago.

Domestic demand for food continues high. The number of consumers has steadily increased. In addition, civilian consumption of food per person is slightly higher than in the immediate postwar period. It is a full 12 percent higher than in the late 1930's.

On the less favorable side, feed supplies are continuing the buildup they started 5 years ago. Record carryover stocks of feed grains of 49 million tons, as of October 1, 1957, are expected to increase another 10 million to 12 million tons by October 1, 1958. While realized net farm income did not increase in 1957 as expected, it held about steady. Because of the great movement of people from farms to towns and cities and because there was an increase in nonfarm income last year, the per capita income of farm people reached a new high in 1957.

Although there has been progress and improvement in some parts of agriculture I am far from satisfied with either the current income position of farmers or the current progress of legislation for improvement in price-support programs.

EFFECT OF CURRENT FARM PRICE SUPPORTS ON FARM INCOME

In the farm price support field, I sense a confusion about the economic consequences of the various alternatives which are open to the farm people at this time. The confusion is especially great with respect to the economic effects of the current price-support programs.

As my colleagues know, I voted for Senate Joint Resolution 162, which would have prevented a drop in price supports from 1957 levels. I voted for this resolution because I believed it was unwise by Government action to allow farm income to drop another $500 million at this time, when the total economy is contracting. My vote was not one to continue existing price-support programs indefinitely. It was to continue existing price supports at 1957 levels until we can agree on better programs to maintain farm prices and farm income.

I regret that we do not have the domestic parity plan for wheat authorized in S. 774, and also that we do not have a self-help plan for dairy products in operation now. When we get these plans in operation, it will be possible to stabilize incomes of wheat producers and dairymen, with little or no direct cash costs to the United States Treasury.

But to get back to the main point, few people realize the extent to which farm commodity price-supports, marketing controls, and supplementary distribution programs have bolstered farm income in recent years. My agricultural economist friends advise me that the Department of Agriculture does not publish sufficient details about its price supporting operations at the present time to permit wholly satisfactory appraisal. We do know, however, that the Commodity Credit Corporation has been acquiring about $3 billion worth of farm products each year in its loan and purchase operations. Sales at world price levels in dollar markets abroad, sales for foreign currency, and donations for relief distribution at home and abroad have been used to dispose of Commodity Credit Corporation stocks. By these operations, Commodity Credit Corporation holdings have been reduced from $8.9 billion in February 1956, to $7.2 billion in December 1957. But many of these disposals have been outside commercial markets; they have been in the form of donations to public institutions, the school lunch program and public relief programs in this country, and donations to relief agencies and sales for foreign currencies abroad.

The net removal of farm products from commercial markets by Government price-supporting operations has varied from $3.2 to $1.8 billion in the past 4 years. Economists are not fully agreed on how much lower farm incomes would have been but for the removal of these large quantities of farm products from commercial markets. As a conservative estimate it appears that farm income would have been at least $2 to $5 billion lower during each of the last few years, except for the Government's price-supporting activities.

Total realized net income from farming has varied from $13.9 to $11.5 billion during the last 5 years. Except for the price-supporting activities of the Government, including production controls on a number of crops, and extensive supplementary distribution programs, realized net farm income almost surely would have been 25 to 30 percent or more lower.

PRICE SUPPORTS HAVE STIMULATED TECHNICAL PROGRESS

There also is confusion with respect to the longer run effects of price-support programs on the cost of food.

The public, as well as farmers, have reaped benefits from past price-support programs. While price supports increased farm income in years of overabundant supplies, stocks carried forward and released in the war years and in 1950–51 increased consumer food supplies in those years.

The increased stability and higher level of prices, because of Government price-support activities in many of the last 25 years, also have speeded up technological progress in agriculture. Consider these facts for example: In the 19 years preceding the adoption of farm price-support and adjustment programs, farm output increased 6 percent. In the 20 years of farm price-support programs—excluding the war years 1941–45—farm output increased 40 percent.

I cite these figures, not as a justification for a continuation of existing price-support programs; I cite them as evidence that, in the long run, price-supports have increased farm output, and have tended to lower food costs to consumers, in the same manner that our research and educational programs have done.

FARM OUTPUT CONTINUES TO INCREASE

When it comes to a judgment regarding the success of our emergency measures of the past few years, one of the important considerations is what has

been happening to production trends. The evidence is not reassuring.

In spite of a Soil Bank program costing about $700 million last year, and marketing quotas on all basic crops subject to marketing quota controls, farm output equaled the record level achieved in 1956, 8 percent higher than in 1951–52, and 13 percent higher than in 1947–49. One would not be surprised at this performance if farmers were enjoying relatively high prices and incomes. But we must remember that net farm income in 1957 was 19 percent lower than in 1952.

A 12 percent decline in the number of farmworkers in the past 5 years has been fully offset by increased use of machinery, fertilizers, and pesticides. Total inputs used in agricultural production in 1957 were slightly higher than in 1952 in spite of lower farm income, marketing quotas, and the Soil Bank.

Throughout the entire postwar period, including these more recent years of declining income, farm output has been increasing a little faster than our total population increased. On the basis of these facts and others which are commonly known, I believe we must formulate future agricultural policies with the expectation that in the next 10 years or so farm output will continue to increase as fast as or faster than population increases. We must anticipate that farm output probably will continue to be excessive in relation to market outlets, even though prices drop further.

MARKET EXPANSION POSSIBILITIES

This brings me to another subject about which there is much misunderstanding at the present time. I refer to market expansion as a means of solving our farm problem.

Mr. President, I want to remind this distinguished body that I have been one of the strong supporters of legislation to increase the research and development work on industrial uses of farm products. I always have supported the use of Public Law 480 funds for market development work abroad. Likewise, I have been a strong supporter of domestic market development projects.

However, market expansion is a long-run, not a short-run solution to the farm problem. Let me share with Senators a few relevant facts in this field.

In 1957, American consumers, with 13 percent higher per capita incomes than in 1952, bought 11 percent more food from farmers, including more high-cost animal products. Yet in 1957 farmers were paid only $19.5 billion for this food—$600 million less than they were paid for the smaller quantity, containing fewer livestock products, in 1952. Consumers appear to have fared better than farmers in this 5-year experiment in learning to "live with abundance."

Let me summarize this experience in another way. Farmers' production expenses were $416 million higher in 1957 than in 1952. Consumers' disposable income had increased $63.2 billion in the 5-year period. The advertising and promotional efforts of both producers and the food trade were much greater in 1957 than they were 5 years earlier. Grocers' shelves displayed many new food products. Yet, because of the lack of bargaining power on the part of farmers, their best customers, the domestic consumers, through the commercial marketing system, paid fewer dollars for a larger quantity of food containing more livestock products in 1957 than in 1952.

Mr. President, in view of this record, we cannot put much reliance on market expansion as a short-run solution to the current problem of excessive supplies in relation to market outlets.

INCOME LOSSES NOT OFFSET BY FEWER FARMERS

In the past few months I have heard a great deal about solving the farm problem by moving people out of agriculture. In my great State of Kansas we have made impressive strides in industrialization. We now have about three workers in nonfarm jobs for each farm worker. But we must face the facts. All States are not so fortunate. It will be a long time before there are sufficient nonfarm-job opportunities in many States to meet the needs.

As in the case of market expansion, the movement of farm people into nonfarm jobs is a long-run, not a short-run, solution of the current farm problem. Many people get over-enthusiastic about this solution and advocate Government programs to speed the process of people leaving agriculture.

Obviously such programs have no merit at a time when there is serious unemployment. And even though the current recession reverses itself in the next few months, it is doubtful that people will find it possible to find nonfarm jobs at a faster rate than in recent years.

Over the past 5 to 10 years people have been leaving farms at an annual rate of 1 to 2 percent. Many of these people have been leaving low-income, noncommercial farms which produce very few farm products for sale.

The year to year decline in number of farms, largely as a result of farm consolidation, has about equaled the annual decline in farm population. When I attempt to evaluate how farm consolidation and the movement of people to nonfarm jobs will affect the farm picture in the next 5 to 10 years, I find no basis for expecting any substantial change in recent trends. On the one hand, as I expect to show later, a drop of 25 to 40 percent in net farm income must be expected if all farm production is channeled through commercial markets. On the other hand, farm consolidation and the movement of people to nonfarm jobs will only reduce the number of farm families and farm people sharing in this income, at best, by 2 percent a year.

I shall continue to use my best efforts to speed industrial development in rural areas and to facilitate the movement of rural people to desirable long-term nonfarm jobs, but, Mr. President, this is no short-run solution for the current farm income problem.

THE MEANING OF RISING LAND VALUES

Let me turn now to another area where a faulty diagnosis has been made. Some people have pointed to rising land values as an indication that the agricultural industry is fundamentally sound and has a bright economic future. It is true that land values have increased sharply since 1947–49. Perhaps land values were too low at that time.

Without attempting to indicate what level of farmland prices should prevail at this time, let me call attention to these facts: Since 1952, although farm real-estate values on a per acre basis have increased 11 percent, the realized return per hour to all farm labor and management has declined 16 percent. Furthermore, while the returns to farm labor were declining 16 percent, hourly earnings of workers in manufacturing increased 24 percent. Farmworkers, including the farm operators, received a return of 69 cents an hour for their labor and management in 1957, in contrast to $2.07 an hour received by workers in manufacturing.

No doubt these facts will suggest different things to different people. I am reminded that about two-thirds of all farmland purchases are made by farmers. I look upon these facts as evidence of intense economic pressure for farm consolidation. Farmers, in order to fully utilize modern equipment and meet the challenge of lower prices, have been bidding up the price of land.

Quite frankly I do not believe farm people would be so foolish as to bid up the price of land to a point where they receive little for their labor if they had satisfactory nonfarm job opportunities open to them. The recent increases in farmland values are the result of many factors. One of the important ones in my opinion is the intense competition for land for farm enlargement by families who cannot find satisfactory nonfarm jobs. In this sense rising land values are an indication of the difficulties encountered in reorganizing agriculture to utilize modern technology. The associated low returns to labor are certainly to be deplored. In only a very limited sense can we look upon recent increases in land values as an indication of increasing prosperity on the part of farm families.

AGRICULTURE'S ALTERNATIVES

Mr. President, it is against this background of recent trends and developments that we must look at agriculture's alternatives in the next 5 to 10 years. As I view the situation, if agriculture is to achieve bargaining power comparable to other economic groups it has a choice between three widely different courses of action or some combination of them. However, each course of action is relatively unattractive. Each has many undesirable features. Because of this, it will be difficult to choose among them. And, as I will point out later, we will be forced to accept some combination of them.

In the absence of effective production controls, if farm income is to be maintained at current levels, existing supplementary distribution programs must be continued without slackening for the next 5 to 10 years. These programs, distributing $1 to $2 billion of farm products each year for the last 3 years, have made little progress in reducing total stocks. Reductions in dairy products, cotton, and wheat have been largely offset by increased stocks of feed grains.

One course of action, which at best would merely maintain farm income at current levels, would be to develop a long run policy of distributing $1 to $2 billion of farm products outside of commercial markets each year. These products would continue to be distributed through Public Law 480, school lunch and similar programs.

A second course of action would be to bring farm production into balance with market outlets at current price levels, through an integrated system of production controls. Many people doubt the feasibility of developing effective aggregate production controls. If this course of action is chosen, however, it will be necessary to hold production 4 to 6 percent below what it otherwise would be year after year for at least 5 or 10 years.

Again, in the absence of large supplementary distribution programs, production restrictions of this magnitude are required just to maintain farm income at current levels.

The third course of action, and the one that is being advocated by many who have been disappointed in existing programs, is to free producers from production restrictions, lower price supports to long term normal levels and allow all production to move through commercial channels. Those who advocate this course of action place a high value on the greater freedom permitted farmers and they mistakenly assume that farm income will be maintained or increase.

Mr. President, in my earlier paragraphs I have tried to lay the groundwork for what to expect in terms of farm prices and income if this third course of action is chosen. We must remember that it takes 65 percent of the income farmers receive just to pay their production expenses. A 10.5 percent drop in farm prices results in a 30 percent drop in net farm income.

With 4 to 6 percent more farm products coming to market year after year than there are market outlets available at stable prices, a sharp fall in farm prices and incomes is inevitable. If this third course of action is chosen I see no alternative to accepting a 25 to 40 percent reduction in net farm income—a reduction to a net income level no higher than 50 or 60 percent of the income levels farmers enjoyed in 1952.

Mr. President, as I said before, all three of these courses of action have many undesirable features. But to my mind this latter course will be totally unacceptable to the farm people of the United States. I do not believe they will willingly accept a 25 to 40 percent reduction in net income below current levels.

ADVANTAGES OF DOMESTIC PARITY PLANS

Agriculture, of course, does not have to select one course of action and completely exclude the other two. A combination of production restrictions and supplementary distribution programs could be continued. Or a combination of production restrictions for the domestic market and increased freedom in producing for foreign markets might be adopted.

When I first introduced S. 3183 in the 84th Congress to authorize a domestic parity plan for wheat I did not have available all the facts and figures that I have reviewed for the Senate today. When I consider these various alternatives today, however, I find the domestic parity plans for wheat, rice, and cotton appear even more desirable than when we first developed them.

Congress must decide whether it wants to go the free-market route in agricultural policy or whether it wants to modernize existing price-support programs and maintain and improve the income of farm families. When the economic facts are fully understood as I have presented them today, there is no doubt in my mind what course of action the electorate will demand and Congress will take. I am confident we will modernize existing price-support programs and maintain the income of farm families.

Domestic parity programs for our major export crops—cotton, wheat, and rice—have the great advantage that they assure producers stable prices and incomes on their production for domestic markets. At the same time, either immediately or in the near future they will allow farmers to grow as much of these crops as they desire for export at unsubsidized world prices.

Domestic parity programs have a number of advantages as compared with existing farm price supports.

First. They increase the freedom of producers.

Second. They reduce Government costs.

Third. They maintain income at current levels.

Fourth. They get the Government out of business and permit the commodities to move in commercial trade channels.

BROAD SELF-HELP AUTHORITY NEEDED

As I mentioned earlier, if we now had in operation a domestic parity plan for wheat and a self-help plan for dairy products we could maintain the incomes of producers of these products at 1957 levels with little cost to the United States Treasury.

After all, the self-help dairy program authorized in S. 3125 is simply a plan for utilizing both supplementary distribution plans and price incentives to discourage milk production in excess of available outlets. Under such a self-help plan dairymen will be able to balance market supplies with market outlets and achieve a bargaining power position more nearly equal to that of the processors and distributors of dairy products.

I am greatly in favor of reducing Government's role in the production and marketing of farm products. What I believe is needed is not only authorization for a self-help plan for dairy producers but a broad authority allowing other commodity groups to increase their bargaining power by means of self-help plans for balancing market supplies with market outlets.

In many respects our existing marketing agreement authority meets this need. But the use of marketing agreements is sharply limited by existing legislation. Perhaps we can best provide the authority for flexible self-help plans by broadening marketing agreement legislation. If this is not feasible I believe we should consider a suitable amendment to our basic price support legislation.

COMPREHENSIVE FEED GRAIN PROGRAM NEEDED

In closing I want to say just a few words about the urgent need for adopting a feed grains program similar to the one being developed by the House Committee on Agriculture. Feed grain and livestock products, while enjoying satisfactory incomes at the present time, will probably suffer greater income losses in the next few years than any other major agricultural group.

Feed grain stocks have been accumulating for 5 years under the existing price support programs, which indirectly have supported livestock prices and livestock incomes. These feed grain stocks cannot be diverted to foreign countries to the same extent that it is possible to divert wheat and cotton stocks. In addition, substantial increases in the output of livestock-products per unit of feed are probable, especially in hog production.

In many ways, feed grains and livestock are the safety valve for the entire farm production plant. Land diverted from the production of other farm products either because prices are unattractive or because of acreage allotments usually finds its way into feed grain and forage production. Wheat that cannot be sold for human food also is used for livestock feeding.

Yet we have no regular export market for a large volume of animal products. It is because of these conditions that I believe a workable feed grains program is urgently needed. In addition to the feed grains program now in the process of development, I believe we should be developing plans to stabilize hog prices in 1959 and 1960 when burdensome market supplies again are expected.

Mr. President, this has been a rather long statement, but the agricultural problem today is a complex and badly misunderstood problem. We and the public have been confused by the substitution of cheerful and hopeful statements for vital economic facts. This is my only explanation for the failure of farm groups to agree on satisfactory and workable domestic parity and self-help plans to modernize existing price supports. I hope that this statement will help to clear away the existing confusion and speed up progress on badly needed, realistic farm price support legislation.

Mr. CASE of South Dakota. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. NEUBERGER in the chair). Does the Senator from Kansas yield to the Senator from South Dakota?

Mr. CARLSON. I yield to the Senator from South Dakota.

Mr. CASE of South Dakota. Mr. President, I wish to express my appreciation for the excellent address which the Senator from Kansas has made on the subject of farm legislation and farm price problems.

It was my privilege to join with the Senator from Kansas in sponsoring the domestic parity amendment for wheat to the farm bill some years ago when that subject was considered in the 84th Congress. I regret that we were not given an opportunity to have that question tried out.

The Senator from Kansas has been consistent in his support for the program and also in his exposition of support for self-help programs. I feel what the Senator has said with regard to a self-help program for the dairy interests is also worthy of the consideration of the Committee on Agriculture and Forestry and of the Senate.

In that connection, Mr. President, I am hopeful that the self-help program which the beef cattle producers have been testifying for in recent days will receive favorable consideration. It seems to me not defensible that the industries which are willing to work out programs to help themselves should not be given every possible legislative encouragement.

The Senator from Kansas has made a most helpful and constructive statement. I want to thank him for having made it.

Mr. CARLSON. Mr. President, it has been a privilege to be associated with and to work with the distinguished junior Senator from South Dakota on agricultural problems. We both come from an area where these are very real problems. They are vital not only to the people who live in those sections but to the prosperity and economic welfare of the Nation. I feel that the present recession has many of its roots out in the agricultural areas of the great midsection of the United States.

I say to the distinguished junior Senator from South Dakota that it will be a pleasure to continue to work with him in the future, as we have worked together in the past, on behalf of agriculture.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

INCREASED PROGRAM OF RESEARCH ON FORESTRY AND FOREST PRODUCTS

Mr. HUMPHREY. Mr. President, on March 21 Representative HAROLD COOLEY wrote me asking me to consider the introduction of a companion bill to his House bill 11495. Subsequent to that time, I have had a good many letters from schools of forestry from various parts of the country, including the University of Minnesota, urging me to introduce that proposed legislation.

I ask unanimous consent that Representative COOLEY's letter and two letters from Prof. F. H. Kaufert, director of the School of Forestry at the University of Minnesota, be printed in the RECORD at this point.

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

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 21, 1958.

Hon. HUBERT H. HUMPHREY,
United States Senator, Senate Office Building, Washington, D. C.

DEAR HUBERT: There are enclosed herewith two copies of H. R. 11495 which I introduced on March 18.

If, after consideration of the contents, you should desire to introduce a companion bill in the Senate, I shall be most honored to have you do so. As you may know, Congress HILL, the ranking minority member of my committee also introduced a bill, and I am certain that we will be able to get a Republican Senator to introduce a similar measure.

With kind personal regards, I am,

Sincerely yours,

HAROLD D. COOLEY.

UNIVERSITY OF MINNESOTA,
INSTITUTE OF AGRICULTURE,
SCHOOL OF FORESTRY,
St. Paul, Minn., March 24, 1958.

The Honorable Senator HUBERT H. HUMPHREY,
United States Senate,
Washington, D. C.

DEAR SENATOR HUMPHREY: Thank you very much for your letters of March 7 and 17 relative to legislation being prepared by Congressman HAROLD D. COOLEY to provide funds for the stimulation of graduate study and research in United States forestry schools.

I am in receipt of a letter from Dean R. J. Preston, of North Carolina State and a typed copy of a bill to accomplish this objective which Representative COOLEY has prepared and plans to introduce in the House. This bill has been reviewed by representatives of the United States Forest Service and is satisfactory to them.

I do not know whether Representative COOLEY has as yet introduced the proposed bill in the House and whether copies are now available. However, I know from our discussions with him that Representative COOLEY would be very interested in having a companion bill introduced in the Senate. All of the forestry school representatives who have reviewed the proposed bill to achieve these desirable objectives of stimulating and developing forestry training and research in the United States forestry schools in cooperation with the United States Department of Agriculture are very enthusiastic regarding its possibilities. We hope that it may be possible to obtain its adoption during the present session of Congress.

I know that all foresters and others interested in forestry research and graduate training join me in expressing to you their appreciation for the interest you have shown in this proposal. We hope that you will contact Representative COOLEY regarding this legislation and discuss with him the introduction in the Senate of companion legislation.

Your interest in this legislation is deeply appreciated.

Very truly yours,

F. H. KAUFERT,
Director.

UNIVERSITY OF MINNESOTA,
INSTITUTE OF AGRICULTURE,
SCHOOL OF FORESTRY,
St. Paul, Minn., March 25, 1958.

The Honorable HUBERT H. HUMPHREY,
United States Senate,
Washington, D. C.

DEAR SENATOR HUMPHREY: Yesterday I wrote you relative to legislation being developed by Representative COOLEY to stimulate the development of forestry research and training in the United States forestry schools.

In today's mail there was a very fine letter from Representative COOLEY and several copies of H. R. 11495, which he developed to cover this need. In my opinion, this bill covers in excellent fashion the proposal for Federal stimulating funds which has been discussed with the United States Forest Service and industry representatives and on which I wrote you yesterday.

We are glad to see this proposal develop. Its adoption should go a long way toward giving forestry research and the underlying basic graduate training the type of boost needed. If you have questions relative to H. R. 11495 or there is anything I can do to help in moving this measure forward, I hope you will call on me.

Very truly yours,

F. H. KAUFERT,
Director.

Mr. HUMPHREY. Mr. President, on April 12, I wrote to Professor Kaufert notifying him of my intention to introduce a Senate bill. I ask unanimous consent that my letter of April 12 be printed in the RECORD at this point.

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

APRIL 12, 1958.

Prof. F. H. KAUFERT,
Director, School of Forestry, Institute of Agriculture, University of Minnesota, St. Paul, Minn.

DEAR PROFESSOR KAUFERT: This is just a note to tell you that I intend to introduce the Senate companion bill to H. R. 11495. As soon as it is introduced I will send copies to you.

Best wishes.

Sincerely yours,

HUBERT H. HUMPHREY.

Mr. HUMPHREY. Mr. President, I am convinced, after studying the matter in the intervening weeks, that this legislation is highly desirable, and consequently I introduce a companion bill to H. R. 11495, and ask that it be appropriately referred. I hope the Senate Committee on Agriculture will take prompt and favorable action.

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

The bill (S. 3695) to authorize an increased program of research on forestry and forest products and for other purposes, introduced by Mr. HUMPHREY, was received, read twice by its title, and referred to the Committee on Agriculture and Forestry.

TENTH ANNIVERSARY OF THE ESTABLISHMENT OF ISRAEL

Mr. WILEY. Mr. President, the other day, when the Senate had before it the resolution honoring Israel on its 10th anniversary, I was prepared to say a few words. However, I had a conflicting engagement, which prevented my being recognized at that time.

Probably it was a good thing that I was not, because today I read in the New York Times what I consider to be one of the finest editorials in relation to that lighthouse on the shore of the Mediterranean. I wish to read a few sentences from the editorial, because it speaks with dramatic certainty and with

a purity of English which I think is quite remarkable.

Conceived in idealism and born in fire, Israel has already accomplished the impossible.

Yes, it has accomplished the impossible. It has made the desert bloom like a rose. It has taken the sand heaps of that section of the world and has transformed them into areas of fine trees and fine crops. But, more than that, there has been implanted in that place the force of character and courage in arms and the determination to survive on the part of a people which, through the centuries, has demonstrated determination, courage, and, what is more important, great spiritual values.

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

Mr. WILEY. I have not finished.

Mr. GOLDWATER. I was afraid the Senator might be finished. I suggest that he read more of the article, so that we may all enjoy it.

Mr. WILEY. Some of what I was saying was my own language. I thank the Senator, however, for the implied compliment.

The article I have been referring to speaks in wonderful terms of the people of Israel and their determination to live as a nation. Among other things, the editorial states:

They could not perform the miracles they have performed without help, nor without paying a fearful price. The help has come mainly from the United States, and it will be needed for a long time to come.

In surmounting difficulties, weathering storms, and seeking to exist, Israel has built itself into a great nation having sterling character.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the editorial entitled "Israel's Tenth," published in the New York Times of April 24, 1958.

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

ISRAEL'S 10TH

From the hills of Galilee to the sands of Aqaba, from the waters of the Dead Sea to the shores of the Mediterranean, a myriad of blue-and-white flags will be flying proudly today in celebration of the 10th anniversary of the independence of the State of Israel.

Conceived in idealism and born in fire, Israel has already accomplished the impossible. It has established itself as a free democracy on an ancient, rocky soil that had not known freedom for centuries. It has grown in strength and security though surrounded by hostile neighbors. It has created a new kind of civilization at this traditional crossroads of old civilizations. It has done so through the unconquerable strength of a pioneer spirit welling up from 2,000 years of tragic history.

The force of character, the courage in arms, the determination to survive, the will to create, that have marked the first decade of this extraordinary state combine to give assurance of its future. Militarily undefensible, economically unviable, politically impossible, it has yet managed to defend itself, to develop its economy, to establish its institutions. It has thrown open its doors to Jewish victims of oppression throughout the world, giving a new sense of dignity to those denied this basic human right in the countries from which they came. The men and women who have built the State of Israel in these first 10 crucial years have plowed the soil, have planted forests, have created industries, have brought water to the desert, have constructed homes and towns and cities, have deepened ports, have opened mines; and in doing all this and more they have not failed to give attention to the most important factor of all in their national development: the education of their youth and the fusion of many kinds of people with diverse backgrounds into a vigorous and, eventually, a common culture.

They could not perform the miracles they have performed without help, nor without paying a fearful price. The help has come mainly from the United States, and it will be needed for a long time to come. The price has been the unwavering enmity of the Arab world, which failed in its attempt to throttle Israel at the start and which has not yet become openly reconciled to the fact that Israel is here to stay. The Arabs' reiterated hostility and refusal for 10 years to make peace gives Israel good reason for her constant posture of military readiness; but Israel herself has sometimes in the past seemed too quick on the trigger in an explosive situation that could engulf the globe.

The continuing state of tension between Israel and the Arab countries is obviously one of the most dangerous elements in the world today; and, by any objective appraisal of this situation, it makes no sense. If the Arab States would recognize the realities and negotiate peace, and if in turn Israel would be willing to make concessions toward that end, the moral, political, and economic benefits to all the peoples of the area would be beyond calculation. David Ben-Gurion, Israel's messianic Prime Minister, has told Parliament in his latest message that "we must make untiring and incessant efforts to find a way to the hearts of the peoples who are still hostile to us and bring about peace between the Jewish people and their Arab neighbors." The achievement of this goal must be the deepest hope of all of Israel's friends throughout the Free World who are congratulating her in this, her 10th anniversary.

THE FEDERATION OF THE WEST INDIES

Mr. WILEY. Mr. President, when a new child appears in a family, it is a great event. When a new nation appears among the nations of this planet—an event such as occurred in the days of the American Revolution—it is a great event.

Now another birth has taken place, to which we have not paid much attention, but which is of considerable significance. I read from an editorial entitled "Birth of a Nation," published in the New York Times of today, April 24. It reads, in part—

The West Indies, the newly formed federation of former British colonies in the Caribbean, have now embarked on their separate national existence.

A new nation has come into existence. It is our neighbor. It is a new nation. Its significance only the future can tell. The editorial further states:

Acting on behalf of Queen Elizabeth, Princess Margaret has inaugurated the federation's first parliament.

It is significant when a nation is created and free men gather in a parliament, in a congress, in an assembly, where they make the laws, where they learn to listen, where they exchange ideas in relation to government, and live in the process of giving and taking.

That also is a new birth. The new nation is another tribute to the political alliance of the British people. The new nation will be a commonwealth, but in 5 years it will be absolutely free, although within the commonwealth of British nations. I read further from the editorial:

For that reason, the federation will remain dependent upon British financial help for some time to come, and the United States has already concluded technical cooperation agreements with five islands. But Prime Minister Adams declares that "we set our steps on the new road in sober confidence, with high hopes," and there is good reason to assume that his confidence and his hopes will be justified.

There is good reason to assume that the confidence of the Prime Minister of this new nation will be justified and that it will merit the confidence and fulfill the hopes of all of us. The new nation is just off our own shore. We greet her with the saluation: "Godspeed and good luck, sister neighbor."

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

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

BIRTH OF A NATION

With the best wishes of the British Crown and Nation, in which the American people will surely join, the West Indies, the newly born federation of former British colonies in the Caribbean, have now embarked on their separate national existence. They have achieved complete self-government that is to lead to complete independence within the British Commonwealth in about 5 years. Acting on behalf of Queen Elizabeth, Princess Margaret has inaugurated the federation's first Parliament in its capital at Port of Spain in Trinidad and given full effect to its federal constitution.

The new nation is another tribute to the political genius of Britain, and again a telling refutation of the charge of colonialism hurled at the West by Soviet Russia, which keeps both its own separate nationalities and its satellites under its iron heel.

Under the new constitution, matters of defense, foreign relations, and financial stability may be regulated by the British Crown until the day of final independence. But in all other respects the federation will govern itself either through the federal parliament or the legislatures of its 10 autonomous territorial units. This will be no easy task, since all these units suffer from overpopulation, underemployment, and too much dependence on agriculture, mainly sugar. For that reason the federation will remain dependent on British financial help for some time to come, and the United States has already concluded technical cooperation agreements with 5 islands. But Prime Minister Adams declares that "we set our steps on the new road in sober confidence, with high hopes," and there is good reason to assume that his confidence and his hopes will be justified.

COMMAND OF A GLOBAL WAR

Mr. GOLDWATER. Mr. President, on numerous occasions recently the President of the United States has discussed the reorganization of the Department of Defense. Tonight I shall address my few remarks to a subject which is closely related to that question. I

hope that during my discussion some of my colleagues may benefit from my analysis of the needs for a command of a global war.

My colleagues might wonder where I obtained the temerity to discuss such a subject. I have spent the last 28 years in and out of the military service, so I am merely reciting what I feel I have learned during that time.

Within the past year, Russia successfully launched a missile into outer space, carrying the earth's first man-made satellite. It is to be sincerely hoped that along with this missile did not go man's ability to reason calmly and to reflect upon the lessons of history in his endeavors to solve the problems of tomorrow.

It would be easy to say, at this point in our history, that the phenomena of newness has never happened before, therefore, we must look to some unthought-of means of counteracting what appear to be a Russian superiority in certain military fields.

Coincidentally, throughout history, this has been the first reaction to all new developments in warfare. When the rock was replaced by the spear many people living must have felt that the ultimate weapon had been developed and that there was no protection from it. When the bow and arrow followed the spear the same conclusions were probably quickly reached. And, with the coming of gunpowder mankind probably looked in awe at what they felt was the instrument to destroy peace and civilization.

In my lifetime, I can remember the development of the machinegun and the tank and the effect they had upon the military thinking and planning of earlier wars. We have but recently seen the development of the airplane and can remember in the early stages of World War II, with Germany's then superiority in that field, the world being awestruck with the ultimate power that rested in this arm.

At this moment, though, we are faced with the problem of missile warfare and what to do about it. Missiles with hydrogen or atomic heads that supposedly, when fully developed, can strike any place on the earth from any other place on the earth without adequate warning.

With the swiftness of this new vehicle and the power of its warhead, it is small wonder that today many people are suggesting rather unusual approaches to the solving of our offensive problems. So it is with a hope that we can apply some of the thinking and philosophy of history to this present problem and can develop a solution to what is one of our military problems today that I approach this subject tonight.

The basic principle of war, whether it be actual warfare as we commonly understand it or warfare through psychological or economic efforts, is to impose the will of one nation upon another. Gen. Carl Von Clausewitz states it in another way in his book, Principles of War:

> The most important thing in war will always be the art of defeating our opponent in combat.

If we recognize this basic principle of warfare, and then apply the new dimensions of modern war as expressed by Gen. Thomas D. White in Air Force magazine of January 1958, in his statement, "The rapid application of force in hours or days, not weeks, months, or years," as a part of our national policy, then I think we can begin to plan for the war of the future.

Progress, in our history, regardless of whether it has been in the military, political, social, or economic fields, has been based upon the application of known successes in the past. Whenever we have deviated from that, and have tried to embark upon some new and untried program, we invariably have come back to the tried basis, on which to erect a substantial and properly operating facility.

It is, however, very tempting, at this time, to discard the lessons of history, and to embark on a new path. But I believe that the present time calls for a calm regard of what has transpired in warfare in history and what has transpired in the application of national policies, and to try to remember from the lessons of tradition and history the constructive things in them, and then to apply them to the problem which confronts us today.

We have learned through history that the balance of power in the world has always rested with the countries that have mastered the mode of transportation in use at the particular times when they found themselves ascending to leadership. We have developed, time and again, the history of this thesis, as it began in the valleys of Asia, as the small, hand-hewn craft of the natives moved up and down the rivers. At that time the power was held by the tribes that gained mastery of that type of transportation.

Following the subsequent developments in Egypt, the Mediterranean, Portugal, and then in England, England became master of the seas for nearly 200 years; and with that mastery she possessed the ability to maintain a semblance of peace for that period. We have witnessed the railroad development of Germany, the railroad development in the internal part of the United States, and a corresponding transfer of power to those areas, if only for a brief time.

At the end of World War I, we began to realize that superiority in the air would mean the centralization of power in the country that mastered that particular means of transportation. Following World War II, superiority in this area gave to the United States its position of world leadership.

With the increased development of missiles, it is proper to ask, What is the difference between air power and space power? Are they separate? If we think of the missile as only a means of transporting a weapon of destruction from one point to another, possibly we can discern some difference between air power and space power, as we try to relate the latter to the world leadership which we must maintain.

If, however, we can see in the missile an ultimate means of transporting people, and items of trade, then space power becomes a higher level of air power and the same are together.

The conclusions of air power experts, such as Mr. Rickenbacker, that this will be so brings the concept that the missile will become a part of overall air power, so that the axiom that has often been stated of centralizing national strategy in the strongest force will mean that we will continue to concentrate our concept of strategy in the air, whether it be in the form of a missile propelled miles above the earth at fantastic speeds, or whether it be in the aircraft that, at the same time, will be a part of the overall air program.

Referring, briefly now, to the title of this paper, which is "Command For A Global War," it could be stated very quickly if I merely used the word, "reorganization." I know, however, that is an overused word at the present time, so I want to go on and discuss the complete reorganization that I have in mind, realizing, as I do so, that there are many students who will disagree with parts or the whole of my approach. Nevertheless, I am reminded constantly as I confront these problems of the Air War College, of a remark once made to me by the professor of military science and tactics when I was a student in a military school as we were working at sand table problems. He told us not to be afraid to make suggestions, or make decisions based upon our own thinking, because there was only one place that strategy or tactics could be proven right or wrong, and that was on the battlefield. The best that he could do, he always said, was to advise us as to the practicability of our approach from the lessons that had been taught by history. So, with the admonition of that man, who later became Gen. Alexander Patch, I wish now to embark on the program that I would suggest for a global command in the world today.

First, I refer to the part of the national policy stated by the Chief of Staff of the Air Force that one of the basic principles which guides planning for local conflicts, so as to invoke the least risk of general war, are these: The rapid application of force in hours or days, not weeks, months, or years. It is safe to assume that this same basic principle would be applied to any general world conflict that would be started by our enemies, which it would be obvious from the outset could not be contained in a local war. Such a problem is the one that faces us today. Small or local wars, as they are referred to, will be controlled by our enemy. If a loss seems probable, they will do one of two things—start a new small war someplace else, or enlarge on the existing small war. So, if we have a belief in our ability to defeat our enemy, then I think we must recognize that we will have to defeat him in a large global war, no matter what it starts as, either a small war or a large war, for the enemy cannot lose without trying to engage us in other conflicts in which he might have an opportunity of ultimate victory.

In suggesting my reorganization, therefore, I will go into some areas which I did not originally contemplate going into, but, which, nevertheless, I

feel is needed for the overall accomplishment of the mission assigned to the military of the United States.

In the Congress, today, before the Committee on Preparedness, we are hearing a lot about the need for a more unified military. Many suggestions have been made, so far, relative to the streamlining of the staff, the juggling of roles, and missions, and others, which are only in the formulative stage now.

My suggestion for an effective military in this country could well be called a unified military plan, but, for the lack of a better description, I will call it a "One Military Plan." This plan would mean the abolishment of the four different uniforms that are worn today and the replacement thereof by one uniform denoting the Military Establishment of the United States.

Now, how do we approach this situation, so as to achieve it in a manner that will produce the maximum results for our country?

Today, our military command, like many of the other controlling units in our economy and our Government, is a series of compromises that have resulted in a hodgepodge built upon mistakes, and new mistakes are compounded to correct old ones, instead of, at some time in our history, our facing the overall problem and doing something about it in a complete manner.

For example, wars have never been, and never will be, a simple operation. They are among the most complex engagements in which a man can find himself; and even when a war is confined, or when a war is, as we call it today, a small war, we find difficulty upon difficulty heaped on the command and staff of the organization.

Peculiarly, as man has increased his individual firepower capabilities, therefore decreasing the need for manpower, he has, at the same time, built a greater and greater complexity into the area of command. When Genghis Khan led his gigantic horde, he made up his mind, probably after consultation with a very few of his leaders. The same command methods were used by Alexander the Great, as he developed his phalanxes. In short, when military organizations were larger, the command level was smaller.

In World War II we saw the theater of operations concept used as it had never been used before in warfare, and we also saw it become a complex, and, in some instances, an almost unmanageable weapon of war. Today, as our manpower needs in the Air Force decrease, as our manpower needs in the Navy and the ground forces decrease, and we actually, in all segments of the military, are planning manpower decreases, we find no corresponding decrease at the level of command. This is one of the major reasons why I have come to the conclusion that we must revert to a single military that will have a minimum staff and command to run and control it—coupled with adequate civilian safeguards to continue our belief in subservience of the military to the civilian.

This "one military" cannot be reached overnight. There must be planning to accomplish it, so I will go back farther than is probably necessary to gain this objective, in order to develop my full concept of what the one military should embrace.

General Clausewitz, in his book, On War, observes that the uncivilized people never produced any really great generals, and that it was seldom that they produced anyone who could be called a military genius. He further observes that the civilized people, or those people who have a greater degree of education, have been the ones that have produced the great military leaders of history. It is easy to gather from his statements, which have been borne out in history since his time, the importance that intellectual powers have in a superior military leader. The selection of future officer material, and the education of those individuals, therefore, become the first order of business in any approach that we use to the establishment of a one military system.

Today we have three Academies that are turning out brilliantly educated scholars who become officers in their separate branches of the service. They go through their military careers, becoming more and more imbued with the importance of their own particular segment of the military, until they reach the stage where they become general officers. There they are often placed in positions where they must decide on the size of forces, on the type and quality and quantity of weapons, and must defend these outlays before the Congress of the United States. Instead of having a feeling for the success of the overall military, these men are, naturally, and I say this without any indicating of blaming them, inclined toward the service in which they have served all of their military lives.

While it is difficult to say this, because I know that I myself have been guilty of this feeling in relation to the Air Force, this old school-tie attitude has done as much to slow down military progress in the United States as has any one thing.

I would suggest, then, that the United States establish one military school that would be an institution of higher education and, at the same time, embody the principles of the three academies that are devoted to the instillation of patriotism, honor, and fidelity.

The prospective officer would attend this school for his 4 years of college, and then would spend necessary time completing his studies in each of the three military schools that we now have. He would wind up an officer schooled in the Navy, the Army, and the Air Force. According to his qualifications, and to some extent his desires, he would then be assigned to a segment of the one military for which he would be best suited. That might be the air part of it, it might be the ground branch, or it might be the sea part. He would not be singled out by uniform or by loyalty to any one of these as a separate branch, such as we know them today, but his loyalty and his efforts would be assigned to the military.

It is highly possible and desirable that during his career he serves in all components. When this officer, after having traveled through the various grades, reached that point in his career where he was made a general officer, he would become a general officer of the military, not an admiral of the Navy, nor a general of the Air Force, nor a general of the Marines, nor a general of the Army.

WEAPONS PROCUREMENT-DEVELOPMENT

To achieve the full effectiveness of a one military approach, we must discover all of the problems that exist under the present system, explore them, and make suggestions for their solution.

Having had the unusual opportunity for the past 5 years of watching and studying the development and procurement policies of the armed services, I am in agreement with many men in civilian life that weapons procurement and weapons development would be better handled if both of these were removed from the prime responsibility of the military.

Dr. J. Sterling Livingston, professor of business administration at the Harvard Business School, in a recent paper, clearly stated the reasons for this change when he remarked that the notion of planning years ahead for weapons is "contrary to the military's traditional and, indeed, appropriate mission of maximum immediate readiness."

A good example of this can be illustrated by the development of the jet engine. As early as 1941, the Whittle engine was discussed in detail with the General Electric Co., and the then Chief of the Air Force, General Arnold, persuaded this company to take on the manufacture of this new and advanced engine. Almost a year later, two of the newly developed engines were mounted in the first jet plane the Air Force had, the Bell P-59, and the craft was successfully flown. General Electric continued work on this engine and within a very short time had one which could produce 2,000 pounds of thrust. The engine was not put into production, even though it had high thrust and gave complete indication that the company would be capable of developing larger engines rapidly, because, at the time, the Air Force's plans called for still more powerful engines, which at the moment could be found only in reciprocal ones.

Had the Air Force allowed General Electric to continue with this development and, at the same time, used the available reciprocal engine, there is not much doubt but what the United States Air Corps would have had a jet figher in the air of sufficient power to guarantee air superiority even if the Germans had gone ahead with the development of their ME-263, which would have prevented a catastrophe had the Luftwaffe been able to put quantities of jets in the air against our propeller-driven aircraft.

There was a case of the military thinking in terms of weapons at hand instead of allowing a private enterprise organization to proceed with the development of a weapon of the future. The military should not be responsible for the development of radically new weapons systems. It should certainly have a hand in that work but only insofar as continuing research for each of the three phases of the military would be

concerned with the introduction of new ideas to a civilian organization based upon the development of strategy around these ideas.

Another example of how weapons development has been retarded by the military having complete control over that operation can be illustrated by the Air Force's decision in 1947 to cancel a long-range ballistic missile study that was being conducted at that time by Consolidated Vultee. The Air Force decided to give up the long-range missile for a concentration on shorter-range air-breathing ones for the stated reason that they could become operationally ready at an earlier date.

Had this matter been under the control of a civilian agency, such as has been suggested, there is no question but what study and development would have proceeded on the longer range missile, and, at the same time, the same procedure would have been followed in relation to the shorter range missile, giving the military services today a superior position to the one which they occupy.

The wartime Office of Scientific Research and Development would be the type of agency which could best handle the development of modern weapons, and this organization, working closely with private enterprise and also at the same time closely with the military, could, in this writer's opinion, provide the United States with constantly improving weapons at a much more satisfactory relationship between the dollar and the item.

STRUCTURE OF COMMAND

Earlier in this paper, I pointed out the manner in which the command structure has become more complex as the forces in being have become more compact and fewer in number.

It is well, at this point, to review briefly some of the contributing factors to that rather unsual situation. Earlier in papers that I have prepared I have attempted to point out that the national strategy should be woven around the dominant weapon and in this regard it has been repeatedly pointed out that such a procedure follows the lessons of history. Before the advent of seapower, landpower was the dominant weapon, and national strategy throughout the world was woven around this service. The armies of Genghis Khan did not have to contend with competing services, so they were able to keep command at the basic level of the commander himself with such delegation of authority as was needed to maintain contact among such a vast number of men. As seapower began to come into prominence we added one more factor to both warfare and the problems of command, in that seapower would be a contributing factor in any war. Even though seapower was the dominant power in the world for nearly 200 years, the wars which were fought during that period were based upon ground strategy. At the same time, strategists had to recognize the importance of the sea arm, so the navy was included in command planning, strategy, and execution.

As airpower developed at the end of World War I, we added still another factor to the problems of command in that it, too, could contribute, along with the seapower, to the success on the ground. So, the airman was recognized as a newcomer to the family of command, and the complex situation grew even more so.

In spite of the early obvious fact that airpower would be the dominant power of World War II, the war in its early phases, and even in some instances its later phases, was built around the strategy of the ground. The truth of the matter is that we can say that all wars in the past have been based upon the strategic concepts of land forces and, as a result, they have been fought pretty much on the ground. It was, of course, to be hoped that we would have learned our lesson in World War II, that the strategy would be built in the future around the dominant weapon, and that we would have used that weapon as the basic weapon in Korea. But such was not the case, as we reverted again to the ground concept of strategy. Defenders of ground strategy will argue that the terrain in Korea prevented any other strategy from being used, but the truth of the matter is that the Air Force was never given a green light in that conflict and we cannot say that Korea was a test of air power even though air superiority did exist.

Now we are faced with the problem of constructing a command for the future—a command for a global war which, in my opinion, would also be a command for local wars.

It is time we recognize that the three services today are concerning themselves chiefly with one weapon and that the one weapon is air power, whether we speak of it as the airplane or the missile. The ground forces are busily engaged in developing a tactical air support for future ground operations, and much of the new pentomic division strength is built upon the support of this air weapon. The ground forces are in the air defense business and deeply in the missiles program.

The sea forces, while developing, in my opinion, one of the greatest additions to our weapon systems in the atomic submarine, still cling to the concept that the aircraft carrier can be a source of great strategic strength in future wars. Even with the development of the atomic submarine they are now developing as one of its chief weapons an air missile that can be launched either from the surface or from under the surface, so, in effect, the sea forces are tying their future weapons capabilities pretty much to the air. They, too, are in the missile business. It can be gathered from this, therefore, that there is much general agreement among the existing forces that the air is going to provide the dominant weapons of the present and the future and it is, therefore, with this assumption that I again press for a recognition of the air as our central power around which should be built our national strategy.

Land strategy as used in the fighting of our wars utilized the other services, such as the sea and the air, as auxiliary weapons instead of primary weapons. Decisions to use these weapons were based upon the judgment of the commanding officers of the theaters in World War II and in Korea upon the commanding general of the entire area.

In recognizing the air as our focal point of strategy, we must, at the same time, recognize that any weapon used in attaining and maintaining air or space superiority entails correspondingly quick decisions on the part of command.

Time has always been of the essence in military strategy, but never before has it become of such urgency that we must consider the abandonment of nearly 200 years of command concept to approach a structure that will be more realistic in the age of aircraft and missiles.

Now to maintain democratic institutions, where military strength is called for, means that we must have the most efficient system of command and the most efficient military that man can devise and, in this, it is my opinion that the Joint Chiefs of Staff concept has failed.

Another point that has been made, namely the protection of the integrity of the military profession, the recent investigation before the United States Senate Preparedness Subcommittee is demonstrating that this concept of command has not produced this to the extent that is needed to maintain the military.

To maintain the integrity of the military profession means maintaining, to a large degree, the dignity of that profession and under a system that has grown to include not only an overburdened staff of military personnel, but also an overburdened staff of civilian personnel, it is very difficult for the professional military man to make his feeling felt where they will do good. I might add at this point in this discussion, even though it does not have any direct bearing upon my remarks, that the integrity and dignity of the military profession would be greatly enhanced if it were possible to have enacted some of the provisions of the Cordiner report which would provide incentive pay in the military that would correspond with the incentive pay of the free enterprise system.

Because the war of the future will be one demanding quick decisions that will result in quick victory, I can envision a situation that would not involve the use of the theater concept as used during World War II where we had the European theater of operations, China-Burma-India theater of operations, the South Pacific theater of operations, the Central Pacific theater of operations, and so forth.

There will be no telegraphing of punches in any global war, even if that war is one created by our enemies in their efforts to change the balance of victory in any small wars we might become engaged in with them. The decision will be reached at their point of central command and the first we will know about it, assuming no change in

detection devices, will be the landing of missiles upon their targets, whether they be our strategic air bases overseas or actual targets within the continental limits of the United States.

If swiftness of decision is to be one of the weapons of the enemy, swiftness of decision must be one of the weapons of the United States. Swiftness of decision cannot occur under our present command structure with its cumbersome top-heaviness.

Added to this, however, is the advantage of the better procurement of men and materiel during times of peace. Much of the difficulty that we now find ourselves in we can assume to stem from authority not going with responsibility, and responsibility not going with authority, in the hodgepodge that is the command situation in the services today. When the Joint Chiefs of Staff concept was initiated, and when the President had ordered the reorganization of the Defense Department, there were two points stressed. One was the maintenance of democratic institutions and the other the protection of the integrity of the military profession.

It will be possible, for instance, to have a situation such as was characterized by the command in the South Pacific Theater of Operations, under General MacArthur, and command in the Central Pacific Theater, under Admiral Nimitz, with the operations of the 20th Air Force being retained under the Joint Chiefs of Staff. No overall commander was available for this important part of the world, and with weapons being what they are today an overall commander is needed, not just for an area of the world, but, in my estimation, for any global conflict in which we became engaged.

The war of the future will be fought, in my estimation, by task forces launched, if they are needed, after the first series of retaliatory blows are delivered against the homeland of the enemy. In the event that these task forces are needed, they can be more quickly dispatched by a central command than by any combination of commanders including sea, air, and ground, civilian and theater. They, of course, would be dispatched by air.

This leads me now into an explanation of my actual organization chart for this command of a global war. I should like to point out here that in my estimation any command of a global war must assume operations that will proceed before war during times of peace and I base this whole concept upon the assumption that our military forces in the future will be a permanent establishment, not augmented by Reserve or National Guard coming in and out of the picture during peacetime but being used only in wartime after thorough and adequate training during peacetime.

A glance at my suggested chart shows that the concept of command is one of a General Staff with a Chief of Staff. This is not a new suggestion in military organization in this country. In fact, it has been debated ever since this country has been in existence and the entire subject has been a matter of concern for students of military back through the ages.

There is a sharp reaction in this country to the suggestion of a General Staff guided by a Chief of Staff. It creates a strong feeling among those who see in it the only solution to the complex and unwieldy command structure we have today and, at the same time, creates fear among those who see in the Chief of Staff a potential danger to the freedom of our country. I believe we must recognize the arguments on both sides and attempt to come up with a workable protection for the civilian side and, at the same time, a workable protection for the military side. It is to be remembered that in history the Chief of Staff has at various times been made a member of the Cabinet of the Government and, at times, this has worked and at times it has not.

Clausewitz notes that the Emperor of Austria did that in 1809 and that the allied sovereigns did it in 1813, 1814 and 1815 and, to quote Clausewitz, "Their arrangement proved perfectly satisfactory." However, he notes in the very next sentence in his treatise "On War" the failure of this strategy when it was used in France in 1793 to 1795.

My organization scheme does not envision making the Chief of Staff a member of the Cabinet. It does, however, provide for the Secretary of Defense to be a member of the Cabinet and that he would exercise control over the operations of the General Staff and the Chief of Staff.

This is such an important part of this whole presentation that I feel it necessary to dwell briefly upon the background of the attitude of the American people against the military occupying any position of authority that is not completely controlled by a civilian.

One of England's legacies to America was contained in the British Bill of Rights in 1689, which provided:

> The raising or keeping of a standing army within the kingdom in time of peace unless it be with the consent of Parliament is against the law.

Thus our feeling is a historic one and stems from sources originating before our Government. The colonial pronouncements of the First Continental Congress, the Virginia Bill of Rights, the Declaration of Independence, and the Massachusetts Bill of Rights all contain similar provisions against a standing army. George Washington, in 1777, expressed himself on this subject in a dispatch to Henry Laurence, then President of the Continental Congress, to this effect: "I have been well aware of the prevalent jealousy of military power and that this has been considered as an evil, much to be apprehended, even by the best and most sensible among us."

When the Constitution was framed, the military inheritance from Britain remained as a source of fear among those wise men who framed that document. While giving the Government almost unlimited authority to raise military forces, certain provisions were granted to Congress to control the military. Congress retained the right to declare war, and while the President was to nominate and appoint officers, the Constitution provided that such appointments must be confirmed by the Senate. The President was made Commander in Chief of the Armed Forces, but he was to command only those forces which Congress saw fit to put at his disposal.

A further protection is found in the provision that the President is subject to impeachment for a betrayal of this trust. The necessity of a standing army was recognized only in the need for a defense against hostile Indians and the repelling of any possible invasion from abroad.

Even though this was recognized, four checks were granted to keep a standing army from ever becoming a source of denial of freedom to the American people: First, the policy of keeping military forces at a minimum; second, reliance upon the militia, primarily a standing army was to be called upon only when it was deemed necessary; third, keeping the States' militia independent and thus available to counteract any possible uprising on the part of the standing army; fourth, insurance that the professional forces remain under the control of politically responsible persons. This wide distrust of the military was in all probability responsible for the preparation and adoption of the second and third amendments, which read as follows: The second:

> A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

The third:

> No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

In spite of the recognition of the need of a standing army, it was not until after 1812 that a regularly organized standing army came into being. President Andrew Jackson, a soldier, reflected in his first inaugural address in 1829 the continuing development of suspicion of the people of the country in relation to the military. While he did not advocate doing away with the regular army, he certainly was determined not to see it grow.

On through history we see a continuance of this attitude on the American people's part, and as we reach that point in history, 1860–61, the United States could only boast a standing army of about 16,000 men.

Objective students of history were beginning to recognize, however, that some compromise must be started with the general abhorrence of the military on the part of the people and the needs of a growing nation. Students of military history had never believed that the Nation should be, in effect, an armed camp in peacetime, but students were beginning to see where a relaxing of interest in the maintenance of adequate forces could prove a very dangerous policy. For instance, Gen. Emery Upton, in his analysis of America's military policy from the Revolution through the first 2 years of the Civil War, stated:

> Twenty thousand regular troops at Bull Run would have routed the insurgents, settled the question of military resistance, and relieved us from the pain and suspense of 4 years of war.

We continued then to pay little heed to the need for a strong military force during peacetime up until the time of World War I. After World War I, America seemed to have learned her lesson, for we then saw the organization of the Reserve Officers' Training Corps, citizen military training camps, and the more ready acceptance of military personnel by the civilian.

That the ROTC and CMTC were wise approaches was demonstrated in World War II, when many of our officers came from the ranks of the men who trained at colleges and trained in the summertime to prepare themselves for military duty.

Great attempts were made by pacifists during the period between World War I and World War II to destroy the concept of teaching the young man in high school and in college the art of warfare, and it is regrettable that they succeeded to the extent to which they did.

In the Second World War more Americans than ever before became engaged in the defense of their country and of the ideals upon which it has been built. As a result, the end of the war found the American people with a greater disposition than at any time in our history to place trust in professional military people and their opinions.

Professional military people began to be accepted into responsible positions of Government, as witnessed by the ascendancy to the Office of Secretary of State by former General Marshall. The ascendancy of Gen. Dwight D. Eisenhower to the Presidency is probably the best indication that the American people now realize more completely than at any other time in our history that they must rely not only upon the economic strength of this country but also upon the potential military strength to preserve peace in our way of life.

It is a peculiar commentary, however, on the historic antimilitary attitude of our people to see us turning to military leaders in time of trouble: witness Washington, Jackson, and Teddy Roosevelt, in addition to Eisenhower. The majority of people who voted for President Eisenhower in both of his terms, and for the other military men who have been President, did so, I feel certain, because of a reliance on their military knowledge and the need for that during a time of world tension.

There is no doubt in my mind that the American people today accept the need for a permanent standing military.

They have evidenced this by their consent to continued high taxes to sustain the military strength of the Nation. They have indicated to a rather surprising extent a trust of military people instead of a distrust.

Congress sees fit more and more every day to consult with the military leaders of the Nation to help them in formulating legislation.

It is suggested now that the American people consider going one step further and accept a Chief of Staff working under and controlled by the Secretary of Defense, the President's Cabinet, the President, and Congress. There are two major reasons for my reaching this decision. The first one is that it is in consonance with my concept of the military as being a one military; the second is, the proven need for quick, decisive decisions both in peace and wartime.

RESERVES AND NATIONAL GUARD

I have placed the reserves directly under the Chief of Staff because in the military force that I envision for the future the reserves and the National Guard will become as thoroughly trained in the three units of the military as are the regularly assigned personnel and, in the event of war, the Chief of Staff could more quickly assign the Reserve and National Guard units to where he felt they would be best fitted.

In this connection it is to be noted that I have put Civilian Defense under the Chief of Staff but have connected that organization with the ground forces because of the feeling that in the event of any global war the primary targets would be in this order: First, the strategic air bases of the continental United States, and, second, the major industrial cities.

The first operations, then, where sizable forces would be needed would be in the policing, hospitalizing, and cleaning up of damaged population centers. Unquestionably, Reserve and National Guard forces would augment ground forces in this operation and would continue in this area as long as they were needed. In the writer's opinion, Civilian Defense will become one of the most important assignments of any future war, and we will probably see more military personnel actually engaged in that activity in the early phases of any war than we will find actually engaged on the field of combat.

As the military situation develops and the enemy shows a continuing force not subdued by our first retaliatory efforts, the Chief of Staff will have at his disposal such elements of air, sea, and ground, or combinations of them, as he sees fit to use to dispatch to the areas of the world where they are needed. For transportation by air, air superiority is needed, but we must assume that any operation that is undertaken will be undertaken only after air superiority has been gained. With air superiority and the maintenance of it, the Chief of Staff should be able to transport quickly to any part of the world task forces which, working in conjunction with our allies, would take care of situations as they developed.

In dispatching these forces, the command of the force would rest with the force commander.

With the responsibility of this command would go the authority necessary to insure the full utilization of all weapons assigned to the force regardless of its composition.

This responsibility would include the decision to use weapons of any magnitude and to use them when in the commander's opinion the use was needed.

Under this concept, we would undoubtedly find situations where the air alone could be employed, the sea alone could be employed, or the ground alone could be employed. And the same command responsibility which would go with the combined task force would be assigned to the commanders of the separate units if and when the occasion arose for their use.

In this organization chart I have eliminated such details as logistic supply, materiel operations, personnel, intelligence, and the like, because I feel the chart would be too cumbersome and that these details would be included in the natural organization of any military for either peacetime or war uses.

CONCLUSION

The requirements that I have outlined for the command of a global war, in my opinion, would also take care of a global peace. Smaller forces in being, with a more streamlined command with responsibility and authority assigned to every level of command up to and including the Chief of Staff, will assure a unified military, a quicker operating military, and a military which will grow in stature in the eyes of the American people and, therefore, attract more and more and retain more and more of the type of man that the military needs.

This type of command, in my opinion, would suffice not only for a war of a few days' duration, but for a year or two or as many years as the war might drag on. I might say, in closing, and in respect to my prior remark, that in my estimation the wars of the future will continue to be wars of some duration and that the economic strength of the Nation must be employed to win them. Therefore, I feel that a strong military is not enough, nor is a strong economy enough, but that there must be a fine balance between the two, maintained to the end that this country can reach and attain a position of leadership in the world and through that leadership exercise those forces which are necessary for the maintenance of peace.

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

Mr. GOLDWATER. I am very happy to yield to my friend the Senator from Colorado.

Mr. ALLOTT. I wish to comment briefly on the remarks of the Senator from Arizona and to compliment him on what he has said. I know of no other Member of the Senate who has devoted himself to the armed services more assiduously than has the junior Senator from Arizona. I recall one instance in particular which has reminded me, and kept me reminded, of this fact. That is that long before most Senators were even aware that the Cordiner Committee was operating, the junior Senator from Arizona rose in the Senate, at which time I was pleased to be present, and made a statement favoring, in general terms, the report of the Cordiner Committee. I am sure the Senator remembers that at this time.

I was pleased to comment on it at that time, because I am satisfied that, in that particular respect, it is the only answer and the only way out for the armed services.

Many Members of the Senate have served in the armed services; among them are the junior Senator from Arizona and myself. But I know of no Member of the Senate, not even a member of the Armed Services Committee, who has

devoted himself in such complete fashion to consideration of the questions which will vitally determine the future of the country.

I know that the people of Colorado and the people of the other States I have visited are vitally concerned because the Department of Defense is not organized in such a way as to produce the maximum number of weapons so as to achieve the quickest possible military decisions in any emergency which may face the country.

In that respect, I wish to compliment the Senator from Arizona. I believe he has made a real contribution. Of course that is not unusual; it is what I would have expected of him in any event, because I would expect him to be a little ahead of most of the other people of the United States in thinking on this subject.

Mr. GOLDWATER. Mr. President, I thank the distinguished senior Senator from Colorado for his very generous and kind remarks.

He has touched on a question on which I hope the Senate will have an opportunity to act within a very few days. I believe I saw in the press tonight—although I am not certain of it—a statement to the effect that the military pay bill, as it is now called, was acted on favorably by the subcommittee. The passage of that particular bill—although, in its present form, the bill does not contain all the suggestions or provisions of the Cordiner report—will, in my estimation, do more toward solving the problems of the military at the moment than anything else we could accomplish would do.

Today, the armed services face a staggering loss of manpower. In the last fiscal year, approximately 80,000 men dropped out of the Air Force, alone. Some of them probably would have left the service, regardless of incentive pay. However, that loss of manpower cost the American people approximately $1,250 million, as a result of the loss of the services of those trained men.

At airbase after airbase, I have seen master sergeants—who can take care of airplanes, and who spend from 12 years to 18 years in learning how to maintain them—spend their time teaching draftees or new enlistees who, in turn, leave the service after one or two terms, and thus the benefit of their training is lost.

So I believe those proposals, if acted on, will be of great benefit to the American people.

There is another area in which I was pleased to assist, namely, in joining the Senator from Colorado [Mr. ALLOTT] in supporting the President's proposals for reorganization of the armed services. Frankly, I do not think those proposals go far enough. However, I think they are a much-needed step in the right direction; and I hope we can bury some of our ancient concepts and ideas, and recognize that what we did in 1947, in creating the Joint Chiefs of Staff, which at that time we thought was a step in the right direction, has not—despite the finest military men we could put in those positions—worked with the speed and precision required of the military command today.

Mr. ALLOTT. Mr. President, I really did not mean to divert the Senator from Arizona by referring to the Cordiner report, the principles of which I support, as he knows, just as strongly as he does. I wished to refer to it as an example of the foresightedness the Senator from Arizona has shown regarding the military affairs of our country.

As I have said, long before most Members of the Senate were aware that the Cordiner committe was meeting, the Senator from Arizona [Mr. GOLDWATER] made a speech on the floor of the Senate in which he espoused and supported in general terms the principles which later were incorporated in the Cordiner report. I agree with him wholeheartedly. This is one of the peculiar areas in which people all over the United States are far ahead of those in Washington, particularly the group which surrounds Capitol Hill.

I am sure that the people of Arizona, as well as the people of Colorado, are completely in support of the President's idea and ideal that the United States has now reached a point in world affairs where, in the interest of the defense of our country, we must adopt a new concept of the world and a new concept of defense. We shall no longer have an adequate defense if we send out a few vessels manned by our sailors or a few of our fighting planes or bombing planes, as the case may be, or even if we send out a few marines or a few members of the Army.

On the contray, in future warfare our country will have to make an immediate, all-out effort which will depend upon a command which can act immediately, not through a number of departments or agencies of the Department of Defense—for instance, the Quartermasters, the Engineers, the Air Force, the Navy, the Marines, or the Army, but through a coordinated effort by all those branches of the armed services.

It seems to me that the President has expressed this problem more forcibly than anyone else has done.

So I am extremely pleased to see the Senator from Arizona [Mr. GOLDWATER] who has given so much thought to this subject, and who in his thinking has been so far in advance of the thinking of almost everyone else in the country, devote this important hour to the discussion of this most important matter.

Mr. GOLDWATER. Mr. President, I thank the Senator from Colorado.

EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

The Senate resumed the consideration of the bill (S. 2888) to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.

During the delivery of Mr. GOLDWATER'S remarks,

Mr. SMITH of New Jersey. Mr. President, will the Senator from Arizona yield to me, so that I may send to the desk some amendments to Senate bill 2888?

Mr. GOLDWATER. I am very happy to yield for that purpose to my friend, the Senator from New Jersey.

Mr. SMITH of New Jersey. Mr. President, I thank the Senator from Arizona for yielding to me.

Mr. President, last January, on behalf of the administration, I introduced three bills, which are known as Senate bill 3097, Senate bill 3098, and Senate bill 3099. Those three bills cover the President's labor program as set forth in the labor message he sent to Congress.

At the time when I introduced the three bills, I made a brief explanation of them.

In view of the developments in connection with Senate bill 2888, it seems to me to be wise to have the substance of those bills added, as amendments, to Senate bill 2888, which now is pending, but which covers only one of the problems dealt with in the President's labor program.

Mr. President, very soon a number of amendments to Senate bill 2888—amendments which go far beyond regulation of health, welfare, and pension funds—will be debated in the Senate. Thus, in effect, the Senate is considering the subject matter of the total administration program.

In view of this fact and in view of the President's earnest desire for the passage of his total legislative program in this area, the administration urges the Senate to adopt these proposals, which were made by me early in January.

Instead of discussing those proposals—the bills I introduced in January—further at this time, I have had them prepared in the form of 11 amendments to Senate bill 2888. I send the amendments to the desk and ask that they be ordered to lie on the table and to be printed, to be offered as amendments to the pending bill at such time as I may see fit, later, to offer them.

Mr. GOLDWATER. Mr. President, will the Senator from New Jersey read, or have read, the titles of the amendments, so we may know what amendments he is sending to the desk?

Mr. SMITH of New Jersey. All of them are in the form of amendments to the pending bill, and I think they indicate clearly the parts of the bill to which they relate.

Mr. LAUSCHE. Mr. President, will the Senator from Arizona yield to me, to permit me to ask a question of the Senator from New Jersey?

Mr. GOLDWATER. I yield.

Mr. LAUSCHE. Do the amendments conform to the recommendations of the President?

Mr. SMITH of New Jersey. They were prepared at the recommendation of the President when he submitted his message. At that time we had the bills prepared, and I introduced them—in January.

I am now sending those proposals to the desk, in the form of amendments to the pending bill, so the Senate will have the entire labor picture before it at this session. Otherwise, we fear that if we were to wait for the committee to consider all these bills, no legislation in connection with them would be enacted at this session; and we do not believe that Senate bill 2888 is adequate to cover the

fields which should be covered in the area of labor legislation.

Mr. LAUSCHE. I thank the Senator from New Jersey.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the amendments be read at this time by title.

The PRESIDING OFFICER (Mr. PROXMIRE in the chair). Without objection, the amendments will be read by title.

The legislative clerk read the amendments by title, as follows:

General Counsel, National Labor Relations Board.

Repeal of non-Communist affidavit requirement.

Secondary boycotts.

Amendment of section 8 (d), National Labor Relations Act.

Representation picketing.

Voting in representation elections by employees on strike.

State jurisdiction over certain labor disputes.

Payments to employee representatives.

An amendment to add, at the end of the bill, a new clause (C) following clause (B) of subsection (c) (1) of section 9 of the National Labor Relations Act, as amended.

An amendment to add, at the end of the bill, a new section amending subsection (c) of section 302 of the Labor-Management Relations Act, 1947, as amended.

Welfare and pension plans.

The PRESIDING OFFICER. The amendments will be received and printed, and will lie on the table.

Mr. LANGER. Mr. President, will the Senator from Arizona yield to me, in order that I may ask a question of the Senator from New Jersey?

Mr. GOLDWATER. I am happy to yield.

Mr. LANGER. Does the distinguished Senator from New Jersey expect to call up all of these amendments?

Mr. SMITH of New Jersey. I expect to call up all the amendments—but not tonight—I assure the distinguished Senator from North Dakota.

Mr. LANGER. I mean during the further consideration of this bill.

Mr. SMITH of New Jersey. I have asked that the amendments be printed and lie on the table; and during the further consideration of the bill, I expect to call up all of them and have them acted on by the Senate.

Mr. LANGER. I thank the Senator from New Jersey.

Mr. SMITH of New Jersey. They embody the position or program of the administration on labor legislation.

Mr. GOLDWATER. Mr. President, I recall with great pleasure serving on the Committee on Labor and Public Welfare when the senior Senator from New Jersey [Mr. SMITH] was chairman of the committee.

Mr. SMITH of New Jersey. I remember that very well, and I appreciate that association with the Senator from Arizona.

Mr. GOLDWATER. I think the Senator from New Jersey will remember that the last attempt to amend the Taft-Hartley Act was under Republican leadership. Is that correct?

Mr. SMITH of New Jersey. Yes.

Mr. GOLDWATER. Am I also correct in recalling that the platforms of both parties in 1952 and also in 1956 promised that amendments would be made to the Taft-Hartley Act?

Mr. SMITH of New Jersey. That is true.

Mr. GOLDWATER. But in all the time since then, the only national political party that has fulfilled its promise to organized labor and to the public has been the Republican Party.

Mr. SMITH of New Jersey. That is true. The bill we reported—to amend the Taft-Hartley Act—was debated in the Senate briefly, but the Senate voted to return the bill to the committee. So the Senate never took final action on the bill. That was because the Democratic majority in the Senate did not wish to have the Senate pass that proposed legislation.

Mr. GOLDWATER. Let me suggest to my friend that tonight the Democratic Party finds itself in pretty much the same position it found itself in then, namely, that if it fails to support the amendments which have been proposed to the pending bill, it will, in effect, have failed once again to carry out the promises it made to organized labor, to the public, and to management.

Mr. SMITH of New Jersey. We are trying to solve the problem now, by means of the pending bill and the amendments to it. If no measure is enacted—and it is perfectly true that if the Democratic Party wishes to defeat these measures, it will be able to do so—that will be the result.

Mr. GOLDWATER. I point out that for 6 years I have had pending an amendment to the Taft-Hartley Act, an amendment to eliminate the non-Communist oath, and also an amendment to extend voting privileges to noneconomic strikers. But no hearings have been held on those measures.

Two of them are measures which organized labor has repeatedly insisted on having debated on the floor of the Senate and on the floor of the House of Representatives, namely, measures for elimination of the non-Communist oath and for extension of voting privileges to noneconomic strikers.

I remind the Senator of that situation, so that somewhere, sometime, when responsibility is placed for the failure of the Congress to enact any legislation to curb what the McClellan committee has been disclosing—any legislation to do for the workingmen what both political parties have promised to do—the blame will be laid on those across the aisle, not on those on this side of the aisle.

Mr. SMITH of New Jersey. Mr. President, I think the Senator from Arizona has made a correct statement. But it is fair to say that since January of this year, the Committee on Labor and Public Welfare has been very busy with hearings on various subjects—among others, the education bill, which I hope the committee will report to the Senate. I am advised by the Senator from Massachusetts [Mr. KENNEDY] that he is planning to hold hearings on the various labor measures which have been proposed.

Mr. President, I ask unanimous consent that the remarks I have just made be printed in the RECORD at the conclusion of the speech of the Senator from Arizona, rather than to have these remarks interrupt the continuity of his speech.

Mr. GOLDWATER. Yes, Mr. President, I ask unanimous consent that any interruptions of my speech be printed in the RECORD at the conclusion of my remarks.

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

Mr. GOLDWATER. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LAUSCHE in the chair). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ECONOMIC CONDITIONS IN WASHINGTON, D. C., AREA

Mr. CAPEHART. Mr. President, I ask unanimous consent to have printed in the body of the RECORD an article appearing on the first page of tonight's Washington Evening Star, under the heading "Star Business Barometer," which describes the condition of the economy and business in the District of Columbia. It is a very encouraging report. I would like to have all the pessimists read it, because I think it would be very helpful to them.

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

AREA PAYROLLS UP AS BUYING LAGS

(By Donald B. Hadley)

An increase in payrolls, savings and bank deposits reflected sound underlying economic health for the Washington area in the first quarter of 1958, a survey by the Star indicated today.

Compared with a like period a year ago, payrolls were up 3.8 percent, invested savings 11.5 percent and bank deposits 2 percent.

On the credit side also was the outlook for sharply increased public and private construction this year, as well as an upswing in life insurance sales, new public utilities connections and new home units.

However, the rosier aspects were offset somewhat by a drop-off in employment, a lag in automobile sales following the national trend, and a slight decline in department store sales and hotel business, due largely to adverse weather.

The figures presented here represent the first of the area economic barometers to be published each month in the Star. The compilation represents the most up-to-date figures available.

EMPLOYMENT

While area employment of 641,600 persons was down 10,600 or 1.6 percent from a year ago in March, higher wage averages lifted estimated area payrolls to $252,430,000, an increase of 3.6 percent from March last year.

The big increase—7.7 percent—in private payrolls materially offset the 1.3 percent decline in United States Government payrolls. Private jobs were off 0.8 percent as compared to 3.8 percent in Government.

Area unemployment of 25,500 was up 41.1 percent from a year earlier in March, but the total remained little more than 4 percent of employment. Unemployment compensation

payments in the District for March amounted to $747,459, a jump of 49.6 percent from a year ago. Comparisons between March 1957 and 1958 follow:

	1958	1957	Change
			Percent
Area employment	641,500	652,100	−1.6
Area payrolls	$252,430,000	$243,672,000	+3.6
U. S. Government jobs	224,000	232,900	−3.8
U. S. Government payrolls	$103,488,000	$104,805,000	−1.3
Private jobs	374,600	377,600	−.8
Private payrolls	$132,983,000	$123,475,000	+7.7
Local and State government jobs	42,900	41,600	+3.3
Local and State government payrolls	$15,957,000	$15,392,000	+3.7
Area unemployment	25,500	18,100	+41.1
D. C. jobless payments	$747,459	$499,250	+49.6

CONSTRUCTION

With more than $79 million of public and private construction authorized in the area during the first quarter, it became apparent that building will provide one of the strongest additions to area activity in 1958.

Three months' figures on area construction follow:

	Period	1958	1957	Change
	Month			*Percent*
Area construction (public and private)	3	$79,178,536	$58,612,977	+35.1
Residential permits	3	40,094,165	30,519,755	+31.3
Nonresidential	3	29,847,468	19,915,471	+49.5
New home units	3	3,830	2,612	+46.9

UTILITIES

Reflecting continued expansion in population, public utility connections reached new all-time highs on March 31, with moderate gains from a year ago. Sales of gas rose sharply due to weather conditions.

Figures on utility connections and consumption follow:

	Period	1958	1957	Change
				Percent
Area electric sales (kilowatt-hours)	3 months	1,070,600,765	1,008,059,781	+6.2
Electric customers	Mar. 31	457,184	447,540	+2.1
Area gas consumption (therms)	3 months	193,042,566	163,296,915	+18.3
Gas meters	Mar. 31	370,551	362,442	+2.3
Area telephone calls (daily average)	March	4,590,199	4,380,954	+4.5
Telephones	Mar. 31	1,073,538	1,033,903	+3.9

BANKS AND INSURANCE

Leading financial barometers were ahead of a year ago at the end of the first quarter.

Both area and District bank deposits were around 2 percent above a year ago, while invested savings of building and loan associations showed an increase of 11.5 percent.

Life insurance sales in the District were up 2 percent from a year ago in 3 months of this year. A more general barometer, postal receipts were up 3.3 percent from a year ago in 3 months.

Latest figures are compared below:

	Period	1958	1957	Change
				Percent
Area bank deposits	Mar. 4	$1,934,113,011	$1,899,399,936	+2.0
District of Columbia bank deposits	do	1,408,404,779	1,379,007,015	+2.0
District of Columbia bank clearings	3 months	1,784,013,483	1,677,127,977	+6.3
District of Columbia savings and loan (invested savings).	Mar. 31	815,738,554	731,460,059	+11.5
District of Columbia life insurance sales	3 months	53,562,000		+2.0
District of Columbia postal receipts	do	6,931,778	6,668,794	+3.3

SALES

Area department store sales in the first 3 months of 1958 lagged 2 percent behind a year ago with several bad storms and cold weather a major factor.

Hotel sales, also affected by weather, were 3 percent behind a year earlier. However, passengers handled at National Airport were 5.7 percent ahead of a year ago in 3 months, with sharp increases on good days more than offsetting effects of the weather.

In line with the nationwide trend in the automobile business, new-car sales in the area were 16.4 percent behind a year ago in 2 months of this year.

In the District alone, new-car sales for 3 months were off 20.2 percent and used-car sales were down 5.9 percent. District auto registrations on March 31 were only 0.6 percent behind a year earlier.

District gasoline sales for 2 months this year were down 3.7 percent from a year ago.

	Period	1958	1957	Change
				Percent
Area department store sales	3 months	(1)		−2.0
District of Columbia department store sales	do	(1)		−1.9
District of Columbia hotel sales	do	(1)		−3.0
Air passengers	do	1,033,413	977,903	+5.7
Area new-car titles	2 months	9,516	11,385	−16.4
District of Columbia new-car titles	3 months	4,777	5,982	−20.2
District of Columbia used car titles	do	13,476	14,319	−5.9
District of Columbia registrations	Mar. 31	206,077	207,262	−.6
District of Columbia gasoline sales (in gallons)	2 months	28,978,834	30,050,779	−3.7

[1] Not divulged.

EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

The Senate resumed the consideration of the bill (S. 2888) to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado [Mr. ALLOTT].

Mr. DIRKSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DIRKSEN. What is the pending question?

The PRESIDING OFFICER. The pending question is on agreeing to the amendment of the Senator from Colorado [putting the question].

Mr. ALLOTT. Mr. President.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLOTT. I am constrained to talk about my amendment, identified as B, which is now before the Senate, and the insistence on proceeding at this time, after the Senate has been in session 11 hours, to the consideration of what undoubtedly is the most complicated piece of proposed legislation which has been before the Senate for many, many years, and I bar none.

With respect to proceeding to the matter at this time, I should like to read a short squib from a record of yea and nay votes in the 83d Congress, 2d session, vote No. 104, which was on a motion to adjourn made by the then minority leader [Mr. JOHNSON] who is now the majority leader of the Senate.

I read from the synopsis of the situation:

Majority Leader KNOWLAND, anticipating the move by the minority leader, requested permission to make a statement. The following exchange took place prior to the making of the motion.

The minority leader said that the hour was late, the Senate had been in continuous session more than 6 hours—

This is the then minority leader, now the majority leader of the Senate—

many Senators had worked all the morning in their offices, beginning at an early hour, a number of Senators wanted to speak on the pending measure but were not prepared to do so until the following day, and the pending measure could not be disposed of this day in any event. Speaking more generally—

And this is still the then minority leader, and now the majority leader of the Senate—

he said that very little legislative work was ever done at night sessions, and that there was no good reason to require 96 Senators to attend night sessions this early in the second session. He said further that he had not received the consideration customarily given the minority leader of being consulted about the holding of a night session.

That is not what happened here, by the way.

He disclaimed any attempt to take control away from the Republican leadership, saying that he wanted only to demonstrate the necessity of better cooperation between the two leaders.

The majority leader made these points, in opposing the move to adjourn: He had discussed with the minority leader the possible necessity of holding night sessions; the 2d session should be brought to an end by July 31, but much more progress would have to be made to come near that goal; instead of the usual all-night sessions near the closing date, he thought it preferable to spread out the transactions, with an occasional evening session now; the pending measure (the so-called Bricker amendment) had been under consideration in the Senate for 5 weeks, and many Senators were anxious to complete their labor on it immediately. The majority leader said that he had been scrupulous to discuss with the minority

leader the various problems with relation to the legislative program. He suggested that the move might be an indication of the desire on the part of the Democrats to take over control. He referred to the difficult position of the present majority leadership, and asked both sides to give him their support in opposing the motion.

The motion to adjourn was agreed to, on a yea-and-nay vote.

Mr. President, I call that matter to the attention of the Senate for the reason that the Senate has been in continuous session now for 11 hours, and there are many Senators on the floor of the Senate who have been in attendance on the floor of the Senate for 11 hours. I note that there are many Senators who have not been on the floor for 11 hours.

I have been engaged all my life in a work and in a profession which has required a great deal of application. It is my opinion that no one can devote himself to any subject for 11 hours, if he is to devote himself with any diligence, and expect to come to any intelligent answer, and that applies to the situation now before the Senate.

I am fully aware of the responsibility which is that of the majority leader, and I am not seeking to be derogatory in any respect, but I think there are others of us who are entitled to respect at this time, too. There are many of us, for example, who have devoted ourselves to the question under consideration, not for a matter of a half hour, not for a matter of an hour, not for a matter of a day, not for a matter of a week, and not for a matter of a month, but literally for years.

This is an important question. It is a complicated question. The questions which were asked in the Senate in the latter part of the debate disclosed completely that many Senators still did not comprehend, even after some 8, 9, or 10 hours of debate, what the question was about.

It is my personal suggestion that very little is accomplished, as very little was accomplished at the end of the last session, by holding the Senate in session all night, because men's minds and physical fatigue reach a point where men can go no further.

Despite the fact that I have already spoken on the floor of the Senate for more than 4 hours today, and the fact that we have discussed this question, I am perfectly willing to proceed, and I do so now, upon my amendment, although I have requested informally that we be permitted to go home until tomorrow morning and rest, and arrange our materials so that we can present them more capably and more ably. However, it is my understanding that that is not the decision of the majority.

I should like to call attention, in conclusion—and I shall say no more about the matter—to the fact that this week, on April 22, 2 days ago, which was Tuesday, today being Thursday, the distinguished majority leader, in whom I have the greatest confidence, of course, made an announcement, as shown on page 6358 of the RECORD, with relation to the legislative program, at the conclusion of which he said:

Sometime later, I shall announce to the Senate when we plan to have the Senate proceed to the consideration of Calendar No. 1465, Senate bill 2888. However, I do not expect to do so before the Senate acts on the relatively minor bills to which I have already referred, and until I have received a report from the Committee on Labor and Public Welfare, at which time I shall confer with my distinguished colleague, give him ample advance notice, and make an announcement to the Senate.

I see present in the Chamber the senior Senator from Alabama [Mr. HILL], the chairman of the Committee on Labor and Public Welfare, of which committee I am a member. If the distinguished majority leader received a report from the Senator from Alabama on that date I certainly was not notified of the committee meeting which rendered the report.

The last sentence I have read says, "Give him ample advance notice." There have been criticisms in the Senate about the judiciary writing legislation. This is a situation in which ample notice is being served upon us; and ample notice to take up a major piece of legislation now amounts to 35 minutes. We took up the legislation Tuesday afternoon.

Mr. President, I am willing to discuss at length the matter which I have at hand. If any Senator is sufficiently interested, I am prepared to discuss it for a period of 4 or 5 hours.

The amendment which I have offered to the Senate at this time is 4-22-58-B, which the clerk has read. This particular amendment is very similar to the amendment which was previously offered, the amendment on which we had a yea-and-nay vote, except that the present amendment is in the nature of a compromise, whereas the previous amendment merely exempted completely from the operation of the Act all plans which could be classified as level-of-benefit plans as defined in the legislation.

Mr. COOPER. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. LAUSCHE in the chair). The Senate will be in order.

Mr. ALLOTT. This is a modification of the amendment, and I think it is substantially an improvement upon the bill. I have no hallucinations that the majority will accept it. I do not propose it in that light.

I shall not read the amendment through and analyze each word and sentence, but the amendment provides in substance that every union—I will not say union because it might not be a union group—every welfare and pension plan in the United States—would be required to register and be subject to the provisions of S. 2888. The amendment goes a little further and exempts from the reporting and disclosure requirements funds which are based upon a level-of-benefits plan.

I have discussed this question at some length this afternoon, with regard to the provisions and features which differentiate the level-of-benefits funds from other funds. I would feel much more comfortable personally if it were possible for all Members of the Senate to sit around with the committee to discuss at one time the ramifications of a bill such as this.

I have tried to point out how the very nature and essence of the situation makes this one of the most complicated subjects the Senate has ever considered. I do not believe even the ramifications of the Taft-Hartley Act surpassed the ramifications of the bill now under consideration.

I realize this completely, because I have argued the matter with the members of my committee, including the distinguished senior Senator from Alabama, the chairman of the committee, for whom I entertain the greatest affection and respect, who is now present in the Senate. I realize that this is not a bill upon which we can spend a few passing moments and then vote, because the ramifications and complexities are so great that not a few hours nor even a few days, but only weeks can lead any person to a somewhat intelligent conclusion on this subject matter.

On page 2 of the majority report, referring to the activities of the subcommittee which investigated welfare and pension funds, under the chairmanship of the Senator from New York [Mr. IVES] the following statement is made:

Although it made studies of the overall characteristics and problems in private employee benefit plans this subcommittee confined its field investigations to collectively bargained, jointly administered welfare funds, and uncovered abuses, mismanagement, and waste in the administration of a number of plans of this type.

The question has been asked whether the subcommittee under the chairmanship of the Senator from Illinois [Mr. DOUGLAS] made any investigations with respect to any other type of benefit plans, particularly the true level-of-benefits plans, and an equivocating answer has been given time and time again to the effect that we did. We did not. Officially there was never any investigation before the committee on the level-of-benefits plans. Unofficially the staff of the committee, headed by Mr. Paul Cotter, did make an investigation of this type of plan.

We started our investigation with a counsel by the name of William Leace. That counsel was changed to Mr. Cotter. Mr. Cotter is now present in the Senate, listening to the debate, although I do not believe he is any longer a counsel for the committee. When Mr. Cotter started as counsel for the committee he did, on his own, for the committee and for the staff, investigate the level-of-benefits plans in several instances. Because these level-of-benefits plans were not investigated formally before the committee, the people who proposed the opposite side have chosen to shift their side this way and that way, and sometimes it is said they have investigated level-of-benefits plans and sometimes it is said they have not. It depends upon how it suits their argument.

The question has been asked, as to whether any of the plans in which any type of abuse, mismanagement or avoidable waste occurred were plans which had been qualified under section 401 of the Internal Revenue Code. Section 401 of the Internal Revenue Code provides that before an employer may deduct payments made to a welfare or benefit

plan under section 302 (c) of the Taft-Hartley Act he must file with the Internal Revenue Service a certain application, the forms for which will be made a part of the RECORD by the distinguished junior Senator from Arizona.

The contention has been made that such forms are not particularly applicable. The bald truth of the matter is that the Internal Revenue Service has a very neat, tidy little organization which is concerned wholly with the duty of trying to enforce the revenue laws—and I do not blame them for that. The Service made it abundantly clear to our committee not once or twice, but a dozen times, that the Service did not want to have anything to do with the committee. They did not want to have anything to do with the proposed legislation. That fact appears in the record of the hearings which Senators have at hand and which they can read very easily. It is very easy to read the statement of the Internal Revenue Service and to understand that the whole motive of the Service in appearing before the committee was to do every possible thing, and still keep within what is known as the truth to avoid taking any responsibility for the reporting of these funds.

We have talked a long time this afternoon—at least I have—about some of the things which must be done in order for one to qualify for the Taft-Hartley funds. There is an additional step which must be taken, and that is that under section 401 of the Internal Revenue Code one must file an extremely detailed, complicated report in order to be able to take the deductions which are paid into the welfare funds as a deduction or expense of operation.

It is absolutely ridiculous for a department of Government to plagiarize itself to the extent that the Internal Revenue Service did in this case. They said: "Oh, no, we are not interested in these things at all; all we are interested in is whether or not they have filed truthful statements."

The Senator from Arizona spoke on this subject a little while ago. If there is a Senator present who has had any experience with the Internal Revenue Service in trying to get an exemption for a welfare or pension plan, under section 401 of the Internal Revenue Code, he knows it is far more difficult and complicated than the mere filing of a statement under oath.

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

Mr. ALLOTT. I am happy to yield to the Senator from Arizona.

Mr. GOLDWATER. What the Senator from Colorado is saying is abolutely correct. I believe it would be wise at this point in his discussion if I mentioned a few of the things that must be done in order to qualify under section 401 of the Internal Revenue Code.

Will the Senator permit me to enumerate some of the provisions which must be met by a business before it can get a letter from the Internal Revenue Service permitting it to participate in such a plan?

Mr. ALLOTT. I am happy to do so.

Mr. GOLDWATER. It has been intimated on the floor of the Senate that practically anyone can walk in and get such a letter for a plan under section 401. I call the attention of my colleagues to the fact that I have suffered through nearly 3 years of working out a plan with the Internal Revenue Service. I know how strict they are on this subject, and I know how complete the reporting must be.

Mr. ALLOTT. Contrary to what the statement of the Internal Revenue Service states, they inquire into every phase and every facet of what one has done, what he proposes to do, and the means that one is to use to set up such a plan, and everything in connection with it.

Mr. GOLDWATER. Not only that, but they tell a person how he is to set up the plan. One does not make suggestions. They investigate the applicant, to determine whether he comes within the rules and regulations. I do not criticize them for it. It is perfectly proper procedure. However, one must first meet their requirements before one is allowed to proceed. However, let me read this language.

Mr. ALLOTT. Before the Senator reads it, I should like to say that I, too, am not criticizing them for their action. I am criticizing their attempt to hoodwink the committee and their attempt to hoodwink the Senate into the belief that their only operation is a slight accounting procedure.

Mr. GOLDWATER. I agree with the Senator in that statement. Further, I feel free to criticize them when they state in the hearings, in letter form, that they feel their reporting procedures do not go far enough.

If the Senator will indulge me for a few minutes more, I should like to refer to section 401 of the Internal Revenue Code. To qualify for tax benefits under such a plan, the trust thus established must meet the following requirements:

(a) It must be impossible under the trust instrument to use or divert the funds for purposes other than the exclusive benefit of employees or their beneficiaries.

(b) The trust must provide benefits which are not discriminatory in favor of employees who are officers, shareholders, supervisors, or highly compensated employees.

(c) The contributions to the plan must not discriminate in favor of the persons described in the preceding sentence.

(d) To maintain its qualification, the trust must not engage in so-called prohibited transactions, described in section 503 (c) of the Internal Revenue Code. This section provides as follows:

(c) Prohibited transactions: For the purpose of this section, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this section—

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property for more than adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in sec. 267 (c) (4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

The policing of these provisions is covered by section 1.404 (a)-2, Treasury Department Regulations. Initial and annual reporting thus required is at least—and I call particular attention to this language—as detailed as would be required by S. 2888. Notwithstanding numerous investigations of these plans at the State and local levels—Mr. President, I wish to emphasize this point, because, although we have said it time and time again, there are still some persons who doubt it—in spite of numerous investigations of these plans at the State and local levels, not one instance of embezzlement or of wrongful diversion of funds for personal purposes has been found. There is good reason to believe that none will ever be found, since it would be detrimental to the employer's interest, even assuming it were possible to steal from such funds. He would merely be taking funds which would, by law, be required to be repaid with the stringent penalties of loss of deductibility of not only the contribution but, also, the interest of funds previously accumulated.

I might say that this is a far greater penalty than specified by S. 2888, the bill we are debating.

Mr. ALLOTT. That is entirely true. I turn now to the letter from the Internal Revenue Service, beginning at page 493 of the hearings during the first session of the 85th Congress on similar bills.

I ask unanimous consent at this time that the letter from the Internal Revenue Service be made a part of my remarks at this point in the RECORD.

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

JULY 11, 1957.

MY DEAR SENATOR: You asked for my comments in your letter of June 27, 1957, on statements made to the Subcommittee on Welfare and Pension Plans Legislation relative to registration, reporting, and disclosures with respect to such plans, and also requested information and advice as to certain aspects of these plans which come within the Internal Revenue area.

Specifically, you requested comments on the statements of Mr. John L. Gibbons, on behalf of the American Bankers Association, submitted to the subcommittee on June 18, 1957. Mr. Gibbons recommended that any pension, profit-sharing, or welfare plan which meets the applicable requirements of the

Internal Revenue Code be exempt under any new legislation from further registration and filing requirements since considerable information is already required to be filed with the Internal Revenue Service.

The statements made by Mr. Gibbons regarding the required information relating to qualified pension and profit-sharing plans and exempt welfare funds are, for the most part, correct. The following comments, however, might be noted:

In the case of pension and profit-sharing plans, the information is generally furnished by the employer in connection with deductions claimed on his tax return. All of the information mentioned is required for the first year in which a deduction is claimed. For later years, it is not necessary to furnish information concerning the 25 highest paid employees, except with respect to employees owning, directly or indirectly, more than 5 percent of the voting stock of the employer. Also, copies of the plan and trust agreement and information as to actuarial assumptions and methods need not be filed after the first year, unless there has been a change.

If the employer does not file the required information—for example, where the employer is a nontaxable organization, or when the employer does not claim a deduction for contributions because of having sustained a loss—then the trustee must file the required information. Otherwise, the trustee need file on form 990-P only certain identifying information and answers to questions relating to transactions with the creator of the trust or controlled interests, and information regarding unrelated business income. Therefore, except as to investments in the employer's securities or loans to the employer made after March 1, 1954, neither the trustee nor the employer files any detailed information regarding trust investments.

In the case of welfare plans, while a fund claiming exemption must apply on form 1026 and file certain information annually on form 990, the employer's deductions for contributions are not conditioned upon exemption of the fund. Therefore, a welfare fund with no taxable income (e. g. where all money is paid over to an insurance company) would not claim exemption, so no information would be filed with the Internal Revenue Service with respect to such a fund. Moreover, welfare funds are not subject to tax on unrelated business income or to the provisions regarding prohibited transactions. Hence, in no case does a welfare fund file any detailed information as to its investments, except as to corporate stocks of which the association owns 10 percent or more.

It might also be noted that PS No. 56, referred to in Mr. Gibbons' statement, which advises trustees to notify the Commissioner before distributing the trust assets when a plan is terminated, was not designed as a protection to beneficiaries, but is intended to protect the revenue in the event it is determined that the trust has lost its exemption and a liability for taxes exists.

In summary, although the exceptions noted above to Mr. Gibbons' statements are relatively minor, it might be said that the information obtained by the Internal Revenue Service is for the purpose of administering the applicable requirements of the Internal Revenue Code relating to pension and profit-sharing plans and exempt welfare funds. Since it is obtained in connection with tax returns, it may not be disclosed for the purpose of protecting beneficiaries; and even if legislation were to make it available to public inspection its usefulness for this purpose would be limited, as indicated above and hereinafter.

For similar reasons—because the resources of the Internal Revenue Service and the training of its personnel must be directed to the important task of administering the Nation's revenue laws—I do not consider the Service as the proper agency to administer a reporting and disclosure statute.

The following relates to the specific additional points on which you requested comments:

1. The degree of protection the Internal Revenue Service administration of present laws and regulations gives the beneficiaries, and whether public disclosure of the operation of these plans would afford additional and needed protection of the beneficiaries.

(a) Tax-exempt pension plans.—Important tax advantages apply in the case of qualified pension and profit-sharing trusts Not only is the trust income-exempt, but also employer contributions to the trust are deductible from gross income, within prescribed limits, and the employees are not taxed on the employer contributions until benefits are received or made available and also may receive certain favored tax treatment. Hence, all concerned have an interest in maintaining the qualified status of the plan.

While this undoubtedly has a salutary effect on the operation of plans, it does not, however, afford complete protection to the beneficiaries. As indicated above, information obtained from employers may not be disclosed by the Internal Revenue Service. When employees request information on the operation of plans, they must be told to obtain it from the employer or trustee; and when they complain of violation of their rights, they are told they must enforce them under State law. If the operation of the plan by the employer or the trustee violates the applicable requirements of the code, the result of Internal Revenue Service enforcement would be taxation of the trust and denial of deductions to the employer or taxation of the employees. The result might well be a tax penalty on the victims, rather than on the perpetrators of the violation. For example, an employer or trustee who diverted funds may not be solvent, and the penalty might be assessment of a tax liability against the trust fund, as well as denial of tax deferment and capital gains treatment to the beneficiaries. It may also be noted that much of the information required by the Service is useful only for the purpose of determining the deductions allowable to the employer.

(b) Tax-exempt welfare funds—Internal Revenue Service administration of code section 501 (c) (9), relating to welfare funds, affords less protection to the beneficiaries of such funds than in the case of our administration of the code provisions relating to pension plans, because form 990 provides the only information we receive regarding welfare plans. Also, since the employer's deductions for contributions to a welfare plan are not conditioned upon the exemption of the fund, there may be less deterrent to improper practices on the part of the administrators of the fund.

In the case of both pension welfare plans, the information obtained by the Internal Revenue Service on forms 990 and 990-P is used for the purpose of administering the provisions of the Internal Revenue Code relating to qualification and exemption from tax. The Service has limited manpower available to review the forms 990 and 990-P, since even intensive review would not be nearly as productive from a revenue standpoint as equal time spent on reviewing taxable returns.

Moreover, the Service obtains no information from these forms which would reveal excessive premiums, commissions, or fees paid to insurance companies, brokers, agents, or trustees, or which would reveal improper transactions between the trustees and officials of the employer or of a union or persons related to or associated with them or the trustees. The information which is obtained with respect to prohibit transactions in the case of pension trusts relates only to transactions with the creator of the trust or controlled or related interests—i. e., usually with the employing corporation itself or controlled subsidiaries. In short, the information obtained by the Service would be of limited usefulness in policing conditions which your subcommittee seeks to correct. Therefore, to the extent that information on the operation of pension and welfare plans not now furnished is obtained and made subject to disclosure by an agency charged with this task, it would seem that additional protection to the beneficiaries would be afforded.

2. The extent to which investments of pension trusts are examined by the Internal Revenue Service and the purposes.

There are three purposes for examining the investments of pension trusts. One is to determine whether the investments are consistent with the requirement that the plan be operated for the exclusive benefit of employees and their beneficiaries. Another is to determine whether prohibited transactions are involved. The third is to inquire into possible unrelated business activities and, if found to exist, to see that the income therefrom is properly reported.

Where trust funds are invested in the stock or securities of the employer a complete disclosure is to be made to the Service. This consists of the employer's balance sheets, profit and loss statements, surplus analysis, and dividend paying record, a description of the investment, the reasons therefor, and a statement of trust assets. This information is analyzed to determine whether the cost does not exceed fair market value at the time of purchase, a fair return commensurate with the prevailing rate is provided, sufficient liquidity of trust assets is maintained so as to permit distributions in accordance with the terms of the plan, and whether the safeguards that a prudent investor would look to exist. The analysis is also extended to determine whether a prohibited transaction or unrelated business taxable income may be involved.

In other respects, investments are not examined. The Service specifically refrains from passing upon the desirability of certain types of investments or as to adherence by the trust to any particular investment program. The Service does not obtain detailed information regarding specific investments, other than that indicated above.

3. The extent to which compliance with section 401 (a) and other sections of the Internal Revenue Code and regulations makes for actuarial soundness of qualified pension plans.

Compliance with the requirements of section 401 (a) and other sections of the Internal Revenue Code and regulations issued thereunder does not assure or directly affect actuarial soundness of qualified pension plans, since the code and regulations make no mention of actuarial soundness as a requirement for qualification. However, compliance with the nondiscrimination requirements of code section 401 (a) does, to some extent, have an indirect effect on a pension plan which is so inadequately funded that it must be terminated or curtailed soon after its establishment. This is explained more fully in the attached statement, which is similar to one submitted to an earlier Senate subcommittee which was studying these problems.

4. Whether it would be possible to work out standard reporting forms for plans qualifying for tax exemption which might serve equally well for registration and reporting under a disclosure statute in order to avoid all unnecessary expensive and burdensome work on the part of administrators of such plans.

Forms can be designed to secure information to be made available for public inspection in connection with tax-exempt pension trusts provided the statute clearly prescribes the information be made public. For an

example of a form of this type, see the attached form 990-A, which was developed to implement the statutory requirements of sections 6033 (b) and 6104. Pages 3 and 4 of this form are placed on file in directors' offices for public inspection in accordance with the requirement of section 6104.

I also understand that a proposed form has been prepared when this problem had been considered by an earlier subcommittee for the purpose of combining information submitted for tax purposes with other information which may be required as a result of legislation in this area.

The extent to which a requirement of this kind would burden the administrators of the pension trusts would depend upon the volume and the nature of the information required to be supplied.

In this connection, it should be noted that in many cases information supplied to the Internal Revenue Service is regarded by the administrators of such plans as very highly confidential. Section 7213 imposes severe penalties upon any person disclosing information obtained from returns filed with the Internal Revenue Service, and, therefore, we strongly urge that any legislation requiring public disclosure of information in this area clearly specify exactly the information which is to be required to be opened for public inspection.

I am also in receipt of a copy of the statement made by Mr. Bernard D. Meltzer before the subcommittee on July 1, 1957, together with a request for any comments on such statement with respect to tax-exempt plans.

In the main, the points raised by Mr. Meltzer relative to paralleling income-tax exemptions with the legislation under consideration have already been discussed in this letter. I should like, however, to correct certain misconceptions which appear in Mr. Meltzer's statement.

Mr. Meltzer states on page 4 "These exemptions would cover charitable and educational institutions exempted by section 501 (c) (3) of the code and certain fraternal beneficiary societies, which may include unions, exempted by section 501 (c) (8)." Labor organizations are exempt under section 501 (c) (5), not (8). It should also be noted that exempt welfare funds are governed by section 501 (c) (9).

Mr. Meltzer also states on the same page. "The income-tax exemption accorded to fraternal beneficiary societies is subject to the condition that they avoid so-called prohibited transactions and also avoid investments which threaten their basic purposes (sec. 503, sec. 504 (1))." Neither the provisions of section 503 nor 504 are applicable to fraternal beneficiary societies, or to welfare funds. Fraternal beneficiary societies which meet the applicable requirements are exempt under section 501 (c) (8). Section 503 applies only to certain organizations which qualify for exemption under section 501 (c) (3), which does not include fraternal beneficiary societies, and to pension, profit sharing, and stock bonus trusts which qualify under section 401 (a). Section 504 applies only to those organizations which are exempt under 501 (c) (3) and which are subject to the provisions of section 503.

With respect to Mr. Meltzer's statement on the same page, "It is also not clear whether the income-tax exemption would be destroyed by diversion of assets unauthorized by those ultimately responsible for the administration of the funds involved," I have heretofore pointed out that denial of tax exemption might well be a tax penalty on the victims, rather than on the perpetrators of the violation.

Very truly yours,

RUSSELL C. HARRINGTON,
Commissioner.

Mr. KNOWLAND. Mr. President, will the Senator yield, without losing his right to the floor, so that I may submit an amendment and ask that it be printed and lie on the table?

Mr. ALLOTT. I yield for that purpose, with that understanding.

The PRESIDING OFFICER. Without objection, the Senator from California may proceed.

Mr. KNOWLAND. The amendment is very brief, and it reads as follows: On page 26, line 17, it is proposed to strike out "This" and insert in lieu thereof "Sections 1 through 18 of this."

At the end of the bill add the following:

SEC. . Section 9 (f) (A) of the National Labor Relations Act, as amended, is amended by inserting after paragraph (6) the following new paragraph:

"(7) (a) the name of each subordinate body of such labor organization which is in trusteeship, (b) the date each such trusteeship was established, (c) the reason for the establishment of each such trusteeship, and (d) whether or not the trustee over any such subordinate body of such labor organization is permitted to cast votes in any union election of such labor organization."

The PRESIDING OFFICER. Without objection, the amendment will be received and printed, and will lie on the table.

Mr. IVES. Mr. President, will the Senator from Colorado yield so that I may submit an amendment and ask that it be printed and lie on the table?

Mr. ALLOTT. I yield for that purpose, with the understanding that I do not lose the floor.

The PRESIDING OFFICER. Without objection, the Senator from New York may proceed.

Mr. IVES. Mr. President, I send to the desk an amendment and ask that it be printed and lie on the table.

On page 26, line 17, the amendment would strike out "This" and insert in lieu thereof "Sections 1 to 18, inclusive of this."

At the end of the bill it would add a new section.

I do not wish to read all of it to the Senate this evening. Briefly, the amendment I propose would make discrimination because of race, religion, color, or national origin an unfair labor practice under the Taft-Hartley law.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Mr. ALLOTT. Referring to the colloquy which we have had, I call the attention of the Senate, particularly as it appears on page 493 of the hearings before the Subcommittee on Welfare and Pension Plans Legislation of the Committee on Labor and Public Welfare of the 85th Congress, 1st session, to a letter from Mr. Harrington, Commissioner of the Internal Revenue Service, addressed to the distinguished chairman of our subcommittee. In the middle of page 495, or thereabouts, the attempt of the Commissioner to avoid any responsibility or any chance that he might have to administer these funds is very apparent when he says:

Moreover, the Service obtains no information from these forms which would reveal excessive premiums, commissions, or fees paid to insurance companies, brokers, agents, or trustees, or which would reveal improper transactions between the trustees and officials of the employer or of a union or persons related to or associated with them or the trustees.

The ironical thing about this statement is that if the Senate passes the bill as it has been introduced, neither the Senate nor the Secretary of Labor will know as much as one crossing of a "t" or dotting of an "i" more than the Internal Revenue Service knows at present about these codes. If I ever saw a statement before a committee of the Senate which was a complete and total farce, this is it. I am sorry to say that they were able to file it without being cross-examined in an extremely severe manner about the motives which prompted it.

Mr. Harrington goes on to say, at a later place on the same page:

Where trust funds are invested in the stock or securities of the employer, a complete disclosure is to be made to the Service.

That is more than the bill provides.

This consists of the employer's balance sheets, profit and loss statements, surplus analysis, and dividend paying record, a description of the investment, the reasons therefore, and a statement of trust assets.

That, I say to Senators, is about three times as much as the bill provides for.

This information is analyzed to determine whether the cost does not exceed fair market value at the time of purchase, a fair return commensurate with the prevailing rate is provided, sufficient liquidity of trust assets is maintained so as to permit distributions in accordance with the terms of the plan, and whether the safeguards that a prudent investor would look to exist.

I do not know how one would determine actuarial responsibility in a fund if that is not it, although they say they do not do it.

The analysis is also extended to determine whether a prohibited transaction or unrelated business taxable income may be involved.

So while they disclaim any interest at all in the qualities of a fund which would make it a sound and valid fund, they turn right around and tell us the regulations which require twice as much as S. 2888 would require to be filed with the Department of Labor.

This is somewhat collateral to the issue, but I should say it is characteristic of the "bunk"—and I use that term advisedly—which has been filed and presented to the Subcommittee on Welfare and Pension Plans Legislation in the last 2 years. This is no better or worse than many of the rest of them.

Mr. President, I turn now to the next part of my remarks.

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

Mr. ALLOTT. I am happy to yield.

Mr. GOLDWATER. Earlier today I referred to two reporting forms, one designated "990-P," the other designated "990-T." They were forms under the exempt organization and business income tax returns. Apropos of what the Senator from Colorado has been saying, and if he will allow me to do so, I should like to read some of the things which must be reported on those forms.

Mr. ALLOTT. Mr. President, I ask unanimous consent that I may yield to the Senator from Arizona for 5 minutes.

Mr. JOHNSON of Texas. Mr. President, reserving the right to object——

Mr. ALLOTT. Mr. President, do I have the floor?

Mr. JOHNSON of Texas. I agree the Senator from Colorado has the floor.

Mr. ALLOTT. Mr. President, I withdraw my request.

Mr. JOHNSON of Texas. Mr. President, reserving the right to object—and I shall object—I want to give my reasons for objecting.

Earlier in the day, I raised the question with the distinguished minority leader as to whether a prolonged filibuster was in progress against the Secretary of Labor's recommendations on the bill. I understood that it involved the first point of the President's labor program.

The minority leader told me that he did not feel there would be any filibuster on the bill and that we could, perhaps, proceed to a vote on at least two amendments following the Allott amendment, which was discussed most of the day.

Relying upon the judgment of the minority leader, and believing that most Senators wanted to act upon the twenty-odd amendments which were pending, I informed Senators of the majority that 1 or 2 votes on the amendments were expected this evening, and that it was expected that the Senate would remain in session until a reasonable hour, perhaps 10:30 or 11 o'clock.

After I had informed Senators on both sides of the aisle of our plans, we heard a very beloved and distinguished Senator address us on the subject of agriculture. Another informed Senator addressed us on the subject of military reorganization. I am informed now by one of my Democratic colleagues that the distinguished Senator from Colorado, who has already violated the rules by speaking 3 times on 1 amendment today, plans to speak until 1 or 2 o'clock tonight.

Mr. ALLOTT. Mr. President——

Mr. JOHNSON of Texas. I do not yield.

Mr. ALLOTT. If it is necessary for the Senator to speak——

Mr. JOHNSON of Texas. It is not necessary for the Senator from Colorado to speak——

Mr. ALLOTT. Mr. President, I call for the regular order.

The PRESIDING OFFICER. (Mr CLARK in the chair.) The regular order has been called for. The Senator from Colorado has the floor.

Mr. JOHNSON of Texas. Then I will yield to the Senator from Colorado.

Mr. ALLOTT. I shall be happy to yield to the Senator from Texas if and when he shows me the same consideration that I have always, without exception, tried to show to him.

Mr. JOHNSON of Texas. Mr. President, will the Senator yield?

Mr. ALLOTT. I will yield when I have finished my sentence. When the Senator from Texas says that I have violated the rules of the Senate today by speaking many times on the same amendment, I think he will find that he is in error, in that I have spoken only twice in behalf of my own amendment, and I believe that that is within the confines of the rules of the Senate.

Mr. JOHNSON of Texas. If that is the fact, the Senator from Texas will say that the Senator from Colorado is correct in his interpretation of the rules. I inquired of the Parliamentarian today. It was my understanding that the Senator from Colorado had spoken three times today after he had called up his amendment. Of course, I did not object.

If the Senator from Colorado spoke only twice, then he is correct. Does the Senator care to speak until 1 or 2 o'clock in the morning on the pending amendment?

Mr. ALLOTT. I wish to answer at this time another remark which the Senator from Texas has made. This is not a filibuster in any sense. Let me point out to the distinguished Senator from Texas—and, believe me, I say this to him with all the respect that anybody can pay to a man who has achieved, through sheer ability, the position which he occupies in the United States Senate—that as a comparatively junior Member of the Senate, I have remained relatively quiet in the Chamber of the Senate for 3 years; in fact, for 3¼ years.

I have seen the rules of the Senate violated, by consent, not once, not twice, but a hundred times in the more than 3 years that I have been here.

It could possibly be true that I spoke three times. Technically, I might have obtained the floor three times today, but I believe it was only twice. At least, I spoke only twice when I got the floor.

Mr. JOHNSON of Texas. The RECORD will speak for itself.

Mr. ALLOTT. The RECORD will speak for itself. If I am in error, it is one of those errors to which many of us are subject when we are deeply involved in a matter.

I say to the majority leader that I am in a peculiar position in this matter. I am in the peculiar position of having devoted much time and thought to this question, so much so that I would say, almost without question, that I am the only Member of the Senate with whom the question occupies a peculiar and particular first-place interest.

Mr. JOHNSON of Texas. I appreciate the Senator's position.

Mr. ALLOTT. It is not that I am belittling in any sense the interest of any other Senators, however, or the interest which the distinguished Senator from Massachusetts or the distinguished Senator from Illinois or my great friend, the distinguished Senator from New York has shown.

I am not filibustering; but I know, more than any other Senator, I feel certain, that this matter is so complicated that only an extended discussion of it can result in a fair decision on the merits.

I am sure the Senators remember the distinguished former Senator Eugene Millikin, of Colorado, who was my senior colleague when I came to the Senate. I remember that on one occasion I discussed with him the effects of rule XXII. At that time I made what was a rather immature remark, I am sure, about that rule. Senator Millikin said to me then, "Remember that the debate rule or the cloture rule of the Senate, whatever may be its faults and defects, never forecloses debate on the floor of the Senate by any Senator in behalf of any interest, how little it may be."

So I say to the Senator from Texas, that although my interest may be little or small—it amounts to $100 million, divided between the employers and the workers of this country—and even though I may be the only Senator who is interested in it, I remember the words of Senator Millikin, that the rules of the Senate were evolved from a long series of decisions and conferences, and that they are based on a great deal of knowledge.

I am sure the Senator from Texas is laboring under a misapprehension that, somehow, I delayed this matter in the committee. If the Senator from Texas believes that, and if he wishes to have the record regarding that matter presented, I shall be happy to present it or supply it. I am sure it will dispel any such misunderstanding.

My only purpose is to discuss this subject as intelligently as I can, with my limited capacity, in order that, somehow, I may bring to my colleagues as good an understanding as the one which I believe I have; and of course in that I may be mistaken.

Before the Senator from Texas entered the Chamber, I said—and I now repeat—that after the Senate has been in session for almost 12 hours, I believe it is time for an adjournment to be taken, so all Members may return to their homes and get some rest, and then resume their labors on tomorrow.

Mr. JOHNSON of Texas. Mr. President, will the Senator from Colorado yield to me?

The PRESIDING OFFICER (Mr. CLARK in the chair). Does the Senator from Colorado yield to the Senator from Texas?

Mr. ALLOTT. I yield.

Mr. JOHNSON of Texas. Mr. President, I did not consult the Senator from Colorado as to how long the session of the Senate today should last. But I did consult his colleague, the minority leader, with whom I have had—at least, until very recently—a very good working relationship.

It was necessary for the Senate to remain in session late today, in order to act promptly on this bill.

The military-pay bill is to be acted on by the Senate next week; and various appropriation bills are ready. But action on these measures must be deferred until the Senate has acted on the pending bill.

I felt that most Members of the Senate were willing to have the debate on this bill proceed for a reasonable length of time today.

Let me say that I understood there was a delay of several days, for the Senator from Colorado to prepare his views. I understood that the committee waited 7 days for him to prepare his supplemental report.

Mr. ALLOTT. That is not correct; the committee did not wait 1 hour for me to prepare my report; and the record will so show.

Mr. JOHNSON of Texas. The information I have been furnished is that the committee had until April 14 to file its report, and that the Senator from Colorado had until April 21, or some 7 days later, to file his supplemental report or views.

Mr. ALLOTT. I challenge any member of the committee to support that statement, because it is not accurate. The date set was April 21; and my report was filed on the Saturday before that—on April 19.

Mr. JOHNSON of Texas. That does not contradict the statement I made. It was my impression that in the committee it was agreed that the majority report would be filed on the 14th, and that the Senator from Colorado would have until April 21 to file his supplemental report or views. Is that incorrect?

Mr. ALLOTT. I am sorry to have to disagree with the Senator from Texas. The first date which was discussed was April 14.

Mr. JOHNSON of Texas. For the filing of the majority report?

Mr. ALLOTT. The first date which was discussed for the filing of reports was April 14. At that time I said I should like to see the majority report before I filed the supplemental report of my own views; and I said that until I had seen the majority report, I would not know whether I would want to file a supplemental report.

That suggestion was objected to by the Senator from Massachusetts. Therefore I said, "All right; I will file my report when you file yours."

The Senator from Massachusetts himself, therefore, set April 21 as the date when the reports were to be filed. On the Saturday before that—on April 19—the reports were out of my office, by mail; and I think they were then in the hands of the committee. At any rate, they were in the committee's hands before noon on April 21.

Mr. JOHNSON of Texas. As for the Senator's recollection about Senator Millikin, I concur wholeheartedly in what Senator Millikin said. Senator Millikin always informed his colleagues of his desires or wishes in regard to any matter.

If I had been informed by the Senator from Colorado or the Senator from California, or any other Senator, that such Senator felt he could not remain in the Senate Chamber during the consideration of this measure today, later than 10, 10:30, or 11 p. m., I would have attempted to accommodate myself to the wishes of such Senator.

I was informed that the Senator from Colorado said he would speak until 1 or 2 a. m. tomorrow, if necessary. I assumed that he did not care to have the Senate vote on the amendment tonight.

If it is not possible for the Senate to vote on the amendment tonight, I am very desirous that all Senators be permitted to end their labors for today, and go to their homes.

Unanimous consent has been obtained to have the Senate convene tomorrow at 10:30 a. m. Tomorrow, we wish to have the session continue into the evening. If that program does not please the Senator from Colorado, we shall attempt to accommodate ourselves to his pleasure.

We hope the Senate will meet on Saturday of this week. Important bills are waiting for Senate consideration and action. But there is no desire to rush any Senator in connection with the consideration of any measure.

Mr. ALLOTT. Mr. President, I hope my friend, the Senator from Texas, will not put the situation on that basis. I realize that I am a comparatively junior Member of this body. On the other hand, I believe it is well once in a while to recall that each Member of this body represents a sovereign State and must represent it as best he can.

When a total of 96 Senators are involved in connection with the consideration of legislative business, far be it from me to wish to have the desire of any one Member, even myself, take precedence.

Mr. JOHNSON of Texas. Mr. President, will the Senator from Colorado tell us what his desire is?

Mr. ALLOTT. Mr. President, about 1 hour ago I expressed my views to the assistants of the Senator from Texas, namely, that I thought the Senate had remained in session long enough today. I said that personally I was fairly well worn out; but I announced that, if necessary, I would speak on this subject for 4 or 5 hours.

But if the Senate adjourns at this time, and thus enable Senators to get their material organized, I have hopes that it will be possible for the Senate to dispose of my amendment—which I believe is the last one which I, at least, intend to propose—in reasonably short order tomorrow morning.

But, Mr. President, with all due deference, I believe that 12 hours is long enough for the Senate to work at any one time.

Mr. JOHNSON of Texas. Mr. President, I believe that is a very reasonable request. If I had had that information a little earlier in the day, I would not have insisted that the Senator from Colorado remain here this long.

It was my information that we could hope to vote on at least one or two amendments this evening. After I had informed Senators of our expectations, I wanted to carry them out.

This is the first information I have received that the Senator from Colorado did not desire to have the vote on his amendment taken this evening.

Inasmuch as the Senator from Colorado does not desire to have the vote on his amendment taken this evening; since there is no rush about the matter; since the bill is an administration-recommended measure; and since we are trying to take up other administration-recommended measures, I do not wish to hold the Senate in session any longer tonight.

I repeat that the information which comes from the committee is that the majority report was ready for the minority on April 14, as agreed to; that the minority report or views were submitted to the Senate on April 21, as agreed to by the committee. If that information is in error, then the committee has supplied me with the wrong information.

Mr. ALLOTT. Let me say unequivocally that it is in error.

Mr. JOHNSON of Texas. I appreciate that the Senator from Colorado speaks with authority on that matter, and the record itself will show the facts.

I do not care to be argumentative about the question.

Mr. ALLOTT. Neither do I. But this is not the first time, in connection with the deliberations of this subcommittee, that such things have occurred, and I want the RECORD to be straight and fair. I have already charged that on one occasion the minutes in the subcommittee were changed.

I say tonight that the information which has been given to the Senator from Texas is not accurate. I say that it was agreed by the whole subcommittee that both reports would be filed simultaneously on April 21.

Mr. JOHNSON of Texas. I thought I was told yesterday by the Senator from Colorado himself that he had until April 21 to file his report.

Mr. ALLOTT. That is right; I did—because both reports were to be filed on that date.

Mr. JOHNSON of Texas. I am not contending that they were not to be filed on that date.

The only point that has been raised is that the Senator from Colorado held up the minority report until April 21.

Mr. ALLOTT. That is not true.

Mr. JOHNSON of Texas. I thought that was the Senator's own statement to me yesterday.

Mr. ALLOTT. I did not request that extension. It was made because the date which was originally set fell in the middle of the Easter recess. So the date was extended beyond that—but not at my request.

Mr. JOHNSON of Texas. When were the hearings on the bill concluded, and when was it decided that the committee's report on it would be filed?

Mr. ALLOTT. I shall have to consult the records, before I can state the exact date. The last meeting of the committee was held just prior to the Easter recess.

Mr. JOHNSON of Texas. In any event, I think the Senator's point—that if we proceed further tonight, consideration of his amendment will require 4 or 5 hours, whereas if he has an opportunity to "sleep on it," he can organize his material and it will be possible for the Senate to vote on his amendment in a relatively short time tomorrow—is a very reasonable one.

Tomorrow is Friday. I have no desire to keep the Senate in session during any evening.

However, action by the Senate on other important measures must wait until the pending bill is disposed of. In that connection, I refer to the important military pay bill; and I hope the Senator from Colorado realizes that some per-

sons will be affected by the failure to take up that bill before the 1st of May. I should like, if possible, to have all the amendments to the pending bill, and the bill itself, disposed of this week.

If there is any reason to anticipate a delay in that schedule we shall just face the facts and shall inform Senators, so they need not be here on Saturday or on Monday, but will be able to wait until Tuesday, if any Senator needs that much time. In that way, we can work out the situation.

But, from my information, I thought we were ready to vote on at least 1, and perhaps 2, amendments tonight. Statements were made on agriculture, military reorganization, and other subjects. It occurred to me that there might be Senators who did not want to vote tonight. The Senator has confirmed that. Since he has confirmed it, I wonder if he is willing that the Senate move to adjourn.

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

Mr. ALLOTT. I yield to the Senator from California.

Mr. KNOWLAND. With all due respect to the distinguished Senator from Texas, both before and up to and including the present time, I thought we had cooperated reasonably well while sitting across the aisle from each other. So far as I am concerned, I intend to continue that relationship, regardless of what the Senator's views may be.

As the Senator knows, we have some responsibility on this side of the aisle. There are 47 Members on my side of the aisle. The Senator from Texas happens to have at the moment 48 Members on his side of the aisle.

When we discussed the subject earlier, I thought we would reach a vote on 2 or 3 amendments during the day. As the evening wore on, it appeared we would not. This is not an unusual situation. I think the Senate would be wise, in view of the hour and the circumstances, if it should adjourn until 10:30 o'clock tomorrow morning.

I have tried to oblige the Senator from Texas as much as has any Senator on this side of the aisle. I had personal objections to meeting at 10:30 tomorrow morning. I happen to be a member of the Appropriations Committee, and we are in the process of marking up a bill and holding important hearings. I was about to suggest that the Senate not convene until 11 or 12 o'clock, but the Senator from Texas had made an announcement. Because I did not want to inconvenience the majority leader, and having respect for the position of majority leader, who has charge of the general operations of the Senate—I have never done to the Senator what the Senator did to me as majority leader, moved to adjourn or change the procedures—I made arrangements, and I consented to come in at 10:30 tomorrow morning.

I think the Senate has been in session long enough today.

I did not vote with the distinguished Senator from Colorado. I supported the committee position on the question, but I think the Senator from Colorado has, in the whole discussion today, kept to the subject matter under discussion. The subject is one to which he has obviously given deep study. It is one with respect to which he has obviously great concern. I think, as a member of the committee, he has been as diligent as has any member of the Committee on Labor and Public Welfare. I think he is making a very real contribution. By no stretch of the imagination could it be considered that he was filibustering, and I think it really comes with ill grace from the other side of the aisle to talk about a bill as important as this one being filibustered, when there has been only one day of discussion on it.

So far as the minority leader is concerned, I have constantly sought to expedite the business of the Senate without using means to unduly cut off debate.

In my judgment, we should be able to reach votes tomorrow on several of the amendments which I am proposing. I have a speech prepared which I expect to deliver tomorrow. It is a short speech. I doubt if it will take more than half an hour to deliver it.

Under all the circumstances, I think it is obvious that it would be better for all concerned if the Senate adjourned until 10:30 tomorrow morning.

Mr. JOHNSON of Texas. If that information had been available to me earlier, that would have been the course that would have been followed. The only reason why the Senate has remained in session until this hour is that the Senator told me he expected at least 1 or 2 rollcalls. He has confirmed that he said that. I have not charged the Senator from Colorado with delaying the Senate or keeping it in session unduly. I said there have been various speeches made which were not connected with the bill.

Mr. KNOWLAND. That is not unusual.

Mr. JOHNSON of Texas. I did not say it was usual or unusual. I just pointed out the fact.

Mr. WILEY. Let us go home.

Mr. JOHNSON of Texas. We will go home, and return tomorrow and attempt to follow the procedure outlined by the distinguished minority leader. If it is agreeable to him, we will come here tomorrow and take up the amendments, and stay in session until a reasonable hour tomorrow night. If there is any desire not to complete action on the bill this week, we will take it up again next week.

Before we agreed to convene early in the morning and remain in session late in the evening, I talked with the minority leader. I thought I had his agreement and concurrence.

Mr. KNOWLAND. We have assembled early and we have remained reasonably late.

Mr. JOHNSON of Texas. And we are about to adjourn.

A great point is being made of the fact that the Senate is remaining in session until 10:30 tonight. Earlier in the session the minority leader requested that the Senate remain in session this late and come in early. There is no use making a great point that we are imposing on people when we have legislation to consider. We are not following any different procedure than is normally followed, as the Senator well knows. Before we started this debate, I discussed with the Senator from California the idea of having the Senate meet early and remain in session until a reasonably late hour, because the Senator from California told me he wanted yea-and-nay votes on each of his amendments. I thought it would be fair to let the Senator from California have the yeas and nays on his amendments. I wanted to get to the point of calling the roll if and when the Senator was ready. If he does not want to have the Senate remain in session beyond 10 o'clock tomorrow night, I will notify all Members to that effect. If the Senator from Colorado wants to talk until 1 o'clock, we will accommodate him and stay until a late hour tomorrow. If the Senator is prepared to have me do so, I am ready to move to adjourn to meet at 10:30 tomorrow morning. Senators can make addresses during the morning hour, and then Senators can proceed to call up amendments.

Mr. ALLOTT. Mr. President, my statement that I was prepared to speak 4 or 5 hours was made because I had previously notified the assistants of the majority leader that I thought it was time to adjourn. They said that could not be done. I said, "All right. In that event, I am prepared to speak 4 or 5 hours," and I said that with the understanding that the Senate would adjourn until tomorrow morning and resume the consideration of the bill at that time.

I yield the floor.

ADDITIONAL BILL INTRODUCED

Mr. HUMPHREY, by unanimous consent, introduced a bill (S. 3695) to authorize an increased program of research on forestry and forest products and for other purposes, which was read twice by its title and referred to the Committee on Agriculture and Forestry.

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

ADJOURNMENT TO 10:30 A. M. TOMORROW

Mr. JOHNSON of Texas. Mr. President, I should like to inform the Senate that, under the order previously entered, the Senate will convene at 10:30 o'clock tomorrow morning. I hope all Senators who have amendments will be prepared to have the Senate vote on them, and if they want yea-and-nay votes on the amendments, we will have them. I hope we may act on the bill by Saturday night, if the Senate is willing.

Mr. President, I move that the Senate adjourn until 10:30 o'clock tomorrow morning.

Mr. HOLLAND. Mr. President, will the Senator yield? I did not hear the request. Neither could I hear his earlier remarks. We were straining our ears, but the Senator turned in the other direction. The Senator made a statement as to whether the Senate would or would

not have a Saturday session. It was with relation to that statement that I wished to inquire. Will the Senator repeat the statement?

Mr. JOHNSON of Texas. It is our present plan to have a Saturday session, in an attempt to dispose of the bill, unless it is disposed of tomorrow. I will say to the Senator that it was announced yesterday and earlier today that a Saturday session was planned.

Mr. HOLLAND. I misunderstood the Senator. I understood him to say there would be no Saturday session. That was the reason for my question. I knew he said something to that effect. I must have missed his exact words. I regret that there is to be a Saturday session.

Mr. JOHNSON of Texas. I, too, regret the necessity. We have announced on three occasions, that we plan to have a Saturday session, in the hope that we will be able to dispose of the bill.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas that the Senate stand in adjournment until 10: 30 o'clock tomorrow morning.

The motion was agreed to; and (at 10 o'clock and 22 minutes p. m.) the Senate adjourned, the adjournment being, under the order previously entered, until tomorrow, Friday, April 25, 1958, at 10: 30 o'clock a. m.

NOMINATIONS

Executive nominations received by the Senate April 24, 1958:

UNITED STATES DISTRICT JUDGE

Albert C. Wollenberg, of California, to be United States district judge for the northern district of California, vice Michael J. Roche, retired.

IN THE NAVY

Rear Adm. James W. Boundy, Supply Corps, United States Navy, to be paymaster general and Chief of the Bureau of Supplies and Accounts in the Department of the Navy for a term of 4 years.

HOUSE OF REPRESENTATIVES

THURSDAY, APRIL 24, 1958

The House met at 12 o'clock noon.

The Chaplain, Rev. Bernard Braskamp, D. D., offered the following prayer:

I Thessalonians 5: 17–18: *Pray without ceasing; in everything give thanks for this is the will of God in Christ Jesus concerning you.*

Eternal God, our Father, hitherto Thou hast blessed us and we have found Thee keeping faithfully all Thy promises.

May our minds now be kindled with noble desires and our hearts be quickened with lofty aspirations.

Grant that our lives may be rich in the realization of Thy presence and fruitful in service for God and man.

Make us worthy citizens of Thy heavenly kingdom; men and women of invincible good will; builders of a social order in which righteousness reigns and the law of love is triumphant over hatred and strife.

Hear us in the name of the Prince of Peace. Amen.

The Journal of the proceedings of yesterday was read and approved.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Ratchford, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and a joint resolution of the House of the following titles:

On April 4, 1958:

H. R. 11086. An act to amend the Agricultural Adjustment Act of 1938, as amended, with respect to wheat acreage history.

On April 7, 1958:

H. R. 7907. An act relating to contracts for the conduct of contract postal stations, and for other purposes;

H. R. 8268. An act to amend section 512 of the Internal Revenue Code of 1954; and

H. R. 10843. An act to amend section 114 of the Soil Bank Act with respect to compliance with corn acreage allotments.

On April 9, 1958:

H. R. 4815. An act to provide permanent authority for the Postmaster General to establish postal stations at camps, posts, or stations of the Armed Forces, and at defense or other strategic installations, and for other purposes;

H. R. 5822. An act to amend section 406 (b) of the Civil Aeronautics Act of 1938 with respect to the reinvestment by air carriers of the proceeds from the sale or other disposition of certain operating property and equipment; and

H. R. 7910. An act to revise the laws relating to the handling of short paid and undeliverable mail, and for other purposes.

April 11, 1958:

H. R. 1140. An act to amend Public Law 85–56 to permit persons receiving retired pay for nonregular service to waive receipt of a portion of that pay to receive pensions or compensation under laws administered by the Veterans' Administration; and

H. J. Res. 347. Joint resolution authorizing the President to invite the several States and foreign countries to take part in the Fourth International Automation Congress and Exposition to be held in the New York Coliseum at New York, N. Y., from June 13, 1958.

On April 16, 1958:

H. R. 776. An act to permit temporary free importation of automobiles and parts of automobiles when intended solely for show purposes;

H. R. 5005. An act to suspend for 2 years the duty on crude chicory and to amend the Tariff Act of 1930 as it relates to chicory;

H. R. 8794. An act to provide exemptions from the tax imposed on admissions for admissions to certain musical and dramatic performances and certain athletic events; and

H. R. 9821. An act to amend and supplement the Federal-Aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented, and the act approved June 29, 1956 (70 Stat. 374), to authorize appropriations for continuing the construction of highways, and for other purposes.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. McGown, one of its clerks, announced that the Senate had passed a joint resolution of the following title, in which the concurrence of the House is requested:

S. J. Res. 159. Joint resolution to authorize and request the President to proclaim July 4, 1958, a day of rededication to the responsibilities of free citizenship.

ANNA MAE ALLEN ET AL. v. SOUTHERN RAILWAY COMPANY ET AL.

The SPEAKER laid before the House the following communication, which was read by the Clerk:

APRIL 17, 1958.

The honorable the SPEAKER,
House of Representatives.

SIR: From the Superior Court of the 26th Judicial District of North Carolina I have received a subpena duces tecum, directed to me as Clerk of the House of Representatives, to appear before said court as a witness in the case of *Anna Mae Allen et al.* v. *Southern Railway Company et al.*, and to bring with me certain and sundry papers therein described in the files of the House of Representatives.

The rules and practice of the House of Representatives indicates that the Clerk may not, either voluntarily or in obedience to a subpena duces tecum, produce such papers without the consent of the House being first obtained. It is further indicated that he may not supply copies of certain of the documents and papers requested without such consent.

The subpena in question is herewith attached, and the matter is presented for such action as the House in its wisdom may see fit to take.

Very truly yours,

RALPH R. ROBERTS,
Clerk, United States House of Representatives.

The SPEAKER. The Clerk will read the subpena:

The Clerk read as follows:

NORTH CAROLINA 26TH JUDICIAL DISTRICT, MECKLENBURG COUNTY, IN THE SUPERIOR COURT—ANNA MAE ALLEN ET AL., PLAINTIFFS, *v.* SOUTHERN RAILWAY CO. ET AL., DEFENDANTS—SUBPENA DUCES TECUM

To: Ralph R. Roberts, Clerk of the House of Representatives of the Congress of the United States, Washington, D. C.

You are hereby commanded to be and appear before the undersigned judge of superior court at the Mecklenburg County Courthouse in Charlotte, N. C., on the 21st day of April 1958 to give evidence on behalf of the plaintiffs in a civil action then and there to be tried wherein Anna Mae Allen et al. are plaintiffs and Southern Railway Co. et al. are defendants and to have with you before said court the following documents:

Report No. C–4125 filed by the Committee on Political Education of the AFL–CIO, known as COPE, and showing its receipts and disbursements for the year 1956.

Report No. C–4127 filed by the Railway Labor's Political League, known as RLPL, and showing its receipts and disbursements for the year 1956.

Issued this 15th day of April 1958.

J. WILL PLESS, Jr.,
Judge of Superior Court.

Mr. McCORMACK. Mr. Speaker, I offer a resolution (H. Res. 547) and ask for its immediate consideration.

The Clerk read as follows:

Whereas in the case of *Anna Mae Allen et al.* v. *Southern Railway Company et al.*, pending in the Superior Court of the 26th Judicial District of North Carolina, a subpena duces tecum was issued by the said court and addressed to Ralph R. Roberts, Clerk of the House of Representatives, di-